

**CONDITIONS OF PURCHASE FOR CONSTRUCTION WORKS (March 2024)****1. DEFINITIONS AND INTERPRETATION****1.1** In these terms and conditions ("**Conditions**"): 

"**Affiliate**" means in relation to a Party, any entity that directly or indirectly Controls, is Controlled by, or is under common Control with that Party from time to time;

"**Authority**" means the UK Ministry of Defence;

"**Background IPR**" means the Intellectual Property Rights owned by a Party or any of its Affiliates or which a Party has the unlimited right to use and license and which exist prior to the date of commencement of the Works, as well as those acquired or developed thereafter independently of this Contract;

"**Building Regulations**" means the Building Regulations 2010 (SI 2010/2214);

"**CDM Regulations**" means the Construction (Design and Management) Regulations 2015 (SI 2015/51);

"**Charges**" means the price payable for the Works, as set out on the Purchase Order;

"**Client**" means QinetiQ Limited (company number 03796233) whose registered office is at Cody Technology Park, Ively Road, Farnborough, Hampshire, GU14 0LX;

"**Completion**" occurs when the Contractor has completed the Works in accordance with the Scope except for correcting notified Defects which do not prevent the Client from using the Works and others from doing their work;

"**Completion Date**" means the scheduled date for delivery of the Works set out on the Purchase Order unless such date is later changed in accordance with this Contract;

"**Construction Act**" means the Housing Grants, Construction and Regeneration Act 1996;

"**Construction Products Regulations**" means the UK Construction Products Regulation 2011 and the Construction Products Regulations 2013 (SI 2013/1387);

"**Contract**" means the Scope, the Purchase Order and these Conditions and any other document expressly referred to in the Scope or Purchase Order as forming part of this Contract;

"**Contractor**" means the company, firm or individual named as such on the Purchase Order;

"**Contractor Staff**" means all persons employed and/or engaged by the Contractor to perform the Contractor's obligations under this Contract, including but not limited to its directors, officers, employees and agency workers and those of its subcontractors, agents, representatives and advisers;

"**Control**" means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company, and "**Controls**" and "**Controlled**" shall be construed accordingly;

"**Data Protection Laws**" means any legislation and regulatory requirements and other applicable law of any country in force from time to time which apply to a Party relating to the security, confidentiality, protection, or privacy of personal data (including, without limitation, privacy of electronic communications) or the use of personal data including (without limitation) (i) the UK GDPR; (ii) any laws or regulations ratifying, implementing, adopting, supplementing or replacing the UK GDPR; (iii) the Data Protection Act 2018; (iv) the Privacy and Electronic Communications (EC Directive) Regulations 2003; and (v) any guidance or statutory codes of practice issued by the relevant Data Protection Regulator, in each case, as updated, amended or replaced from time to time;

"**Data Protection Regulator**" means a regulatory, administrative, supervisory or governmental agency, body or authority (whether regional, national or supranational) with jurisdiction over the personal data processing activities contemplated by this Contract;

"**Defect**" is a part of the Works which is not in accordance with the Scope;

"**Defect Correction Period**" means the period of two (2) weeks beginning on the later of Completion and the date when a Defect is notified;

"**Defects Certificate**" means either a list of Defects that the Client has notified before the Defects Date which the Contractor has not corrected or, if there are no such Defects, a statement that there are none;

"**Defects Date**" means the date falling fifty-two (52) weeks after Completion;

"**Deleterious**" means any material that does not comply with the guidelines and recommendations of the British Council for Offices' publication Good Practice in the Selection of Construction Materials (as it may be updated from time to time), or any other material that does not comply with any current relevant British Standard, relevant code of practice and good building practice current at the relevant time or is otherwise generally known or considered in the construction industry at the relevant time as (a) posing a threat to the health and safety of any person; or (b) posing a threat to the durability, structural stability, performance or physical integrity of the Works or any part or component of the Works; or (c) having been supplied or placed on the market in breach of the Construction Products Regulations;

"**Deliverables**" means any drawings, documents, materials and other work produced by or on behalf of the Contractor in performing the Works and all updates, additions and revisions to them;

"**Effective Date**" has the meaning given to it in Clause 3 (Term);

"**Environment**" means all or any of the media of air, water and land (wherever occurring) and any living organisms or systems supported by those media and, in relation to the media of air and water, includes the air and water within buildings and the air and water within other natural or man-made structures above or below ground and includes all natural resources and the built environment;

"**Environmental Law**" means all laws, regulations and any codes of practice, circulars, guidance notes and other materials which have the force of law in the jurisdiction in which the Contractor is operating at the relevant time concerning the pollution or protection of the Environment including, without limitation, the generation, transportation, storage, treatment or disposal of Hazardous Materials and the common law actions of negligence, nuisance, trespass or the rule in *Rylands v Fletcher* but excluding health and safety legislation except in so far as such legislation relates to Hazardous Materials;

"**Export Control Laws**" has the meaning given to it in Clause 33.1;

"**Export Control Licences**" has the meaning given to it in Clause 33.2;

"**Greenhouse Gas Emissions**" means emission of gases, both natural and human caused, that absorb and emit radiant energy, causing climate change, including but not limited to carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulphur hexafluoride (SF<sub>6</sub>);

"**Hazardous Materials**" means any natural or artificial substance (whether in solid or liquid form or in the form of a gas, vapour or ionising radiation and whether alone or in combination or in reaction with any other substance) capable of causing harm to man or any other living organism supported by the Environment or damaging or harming the Environment or public health or welfare, including, but not limited to, any controlled special, hazardous, toxic or dangerous waste or biological or radioactive material;

"**Intellectual Property Rights**" means all inventions, patents, registered designs, design rights, database rights, and copyrights, trademarks and trade names, trade secrets and know-how and other intellectual property rights (whether registered or not) and the goodwill attaching to any of them and applications for any of them and any right or forms of protection of a similar nature and having equivalent or similar effect to any of them which may subsist anywhere in the world;

"**Living Wage**" means the UK Living Wage or London Living Wage (as applicable) as set by the Living Wage Foundation or any successor body;

"**LTPA**" means the Long Term Partnering Agreement dated 28 February 2003 (as amended from time to time) between the Authority and the Client;

"**Party**" means either the Client or the Contractor as applicable, together being the "**Parties**";

"**Plant and Materials**" means items intended to be included in the Works;

"**Purchase Order**" means the Client's written instruction to supply the Works, including any documents attached to, or referred to in, the Purchase Order (excluding the Client's standard terms and conditions referred to in the Purchase Order, which will be superseded by these Conditions);

"**Relevant Employees**" has the meaning given to it in Clause 30.1;

"**Required Standard**" has the meaning given to it in Clause 4.3;

"**Scope**" means the description or scope of the Works and information stating any constraints on how the Contractor is to provide the Works, as referred to in the Purchase Order, including any statements of work, descriptions or other documents attached to or referred to in the Purchase Order;

"**Site**" means the site identified in this Contract or the site owned or occupied or made available by the Client or the Authority to the Contractor (or its subcontractors) for the purpose of carrying out the Works;

"**Statutory Requirements**" means (a) all statutes, statutory instruments, regulations, rules and orders made under any statute or directive having the force of law which affect the Works or performance of any obligations under this Contract, including but not limited to all applicable health and safety legislation and Environmental Law; and (b) any regulation, bye-law, permission or approval of any local authority or statutory undertaker having jurisdiction in relation to the Works or with whose systems the Works are, or are to be, connected;

"**Term**" means the term of this Contract as determined in accordance with Clause 3;

"**UK Construction Products Regulation 2011**" means the UK version of Regulation (EU) No 305/2011, as it forms part of English law under the European Union (Withdrawal) Act 2018;

"**UK GDPR**" means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 as modified by Schedule 1 to the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019;

"**Value Added Tax**" or "**VAT**" means value added tax as provided for in the Value Added Tax Act 1994 and any other tax of a similar nature; and

"**Works**" means the works described in the Scope (including Plant and Materials and any Deliverables) that the Contractor has agreed to carry out under this Contract.

1.2 In this Contract, references to:

- 1.2.1 any statute or statutory provision shall, unless the context otherwise requires, be construed as references to that statute or provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced;
- 1.2.2 the masculine include the feminine and the neuter and vice versa;
- 1.2.3 the singular include the plural and vice versa;
- 1.2.4 Clauses and Annexes are references to the clauses of and Annexes to these Conditions and references to paragraphs are to paragraphs of the Annexes;
- 1.2.5 this Contract or to any other agreement or document are references to this Contract or such other agreement or document, in each case as varied from time to time;

- 1.2.6 the words "include" and "including" shall be construed without limitation;
- 1.2.7 a person include firms, partnerships and corporations and their successors and permitted assignees or transferees;
- 1.2.8 the Contractor shall include the Contractor Staff and its subcontractors where the context requires; and
- 1.2.9 "writing" or "written" shall include email.

1.3 The headings to these Conditions will not affect their interpretation.

## 2. APPLICATION OF CONDITIONS

- 2.1 These Conditions are the only conditions upon which the Client is prepared to deal with the Contractor and they shall govern this Contract to the entire exclusion of all other conditions. The Contractor waives any right which it might otherwise have to rely on its terms and conditions.
- 2.2 Unless acceptance of these Conditions by the Contractor expressly occurs at an earlier time, the commencement of the Works by the Contractor shall be deemed to be conclusive evidence of the Contractor's acceptance of these Conditions.
- 2.3 The Parties acknowledge that the Client is required to flow down specific terms from the LTPA into the agreements it enters into with its suppliers. Accordingly, where this Contract states that the Works will be performed at designated LTPA site(s) or otherwise relate to the LTPA, the Contractor shall comply with the additional terms and conditions set out in Annex 1 (LTPA Flow-Down Terms) to these Conditions.
- 2.4 In the event of any conflict or inconsistency between the terms in the main body of this Contract, the Schedules and any other document forming part of this Contract, the following order of precedence shall apply:
  - 2.4.1 the terms of Annex 1 (LTPA Flow-Down Terms) (where applicable);
  - 2.4.2 the Purchase Order and the Scope;
  - 2.4.3 these Conditions;
  - 2.4.4 any other terms and/or conditions of this Contract (other than those referred to in Clauses 2.4.1 to 2.4.3); and
  - 2.4.5 any other document referred to in this Contract.

## 3. TERM

- 3.1 This Contract shall commence on the date of acceptance or deemed acceptance of these Conditions in accordance with Clause 2.2 (the "**Effective Date**") and continue until completion of the Parties' obligations under this Contract or the date of termination of this Contract in accordance with these Conditions.

## 4. CARRYING OUT OF THE WORKS

- 4.1 The Contractor shall carry out the Works in accordance with the Scope and the other requirements of this Contract (including any variations made in accordance with Clause 26.1).
- 4.2 Save as expressly set out in this Contract, the Contractor is responsible for checking the accuracy and completeness of any drawings, design, data or information received by the Contractor from the Client and nothing contained in such material will relieve the Contractor from its responsibility for providing the Works.
- 4.3 Where any design work is incorporated in the Scope or the Contractor is otherwise required to carry out design, then the Contractor's obligation for design is to use the skill and care normally used by professionals designing works similar to the Works (the "**Required Standard**"). Subject to the Required Standard, the Contractor accepts responsibility for all such design (including all design work prepared before or after the Effective Date, whether carried out by or on behalf of the Client or the Contractor) and for any mistake, omission, discrepancy or inaccuracy therein and shall comply with the provisions of the Scope and this Contract in relation to such design.
- 4.4 The Contractor warrants that:
  - 4.4.1 it has exercised and will continue to exercise the Required Standard not to specify or use anything in the Works which is Deleterious at the time of specification or use;
  - 4.4.2 the Works comprise or will comprise only materials and goods which are new and of good and satisfactory quality;
  - 4.4.3 the Works will be carried out in a proper and workmanlike manner; and
  - 4.4.4 all workmanship, manufacture or fabrication will be to the standards necessary for completion of the Works in accordance with this Contract.
- 4.5 The Contractor:
  - 4.5.1 confirms that it has reviewed the information on the Site referred to in the Scope and any other part of this Contract;
  - 4.5.2 shall be deemed to have carried out, using the Required Standard, a visual inspection of the Site and its surroundings and the form and nature of the Site;
  - 4.5.3 confirms that it is aware of the extent, nature and difficulty of the Works and materials necessary for the completion of the Works, the means of communication with the Site and any restrictions on access to the Site;
  - 4.5.4 shall not be entitled to claim any increase in the Charges or an extension to the Completion Date on the grounds of (a) any failure by the Contractor to review the information referred to in the Scope or any other part of this Contract, carry out a visual inspection of the Site or obtain the information referred to in this clause; (b) any mistake, discrepancy, inconsistency, ambiguity, omission or inaccuracy in any inspections undertaken or information obtained by the Contractor; or (c) any misunderstanding or misinterpretation of any inspections undertaken or information obtained by the Contractor; and

- 4.5.5 acknowledges that the Client makes no warranty or representation as to the completeness or accuracy of any information on the Site referred to in the Scope or any other survey, report or other document prepared by or on behalf of the Client (or otherwise prepared by another party) regarding any physical conditions and other conditions of or affecting the Site.
- 4.6 The Contractor shall make available to the Client adequate health and safety information about the Works and any conditions regarding the use of the Works.
- 4.7 In carrying out the Works, the Contractor shall:
- 4.7.1 co-ordinate its activities with others, including but not limited to, those who may be working on the Site or those who may be employed by the Client;
- 4.7.2 co-operate with other contractors or consultants engaged by the Client on the Site in obtaining or providing information which they need in connection with the Site or the Works;
- 4.7.3 comply with the Client's instructions (whether set out in the Scope or otherwise) so as to prevent or minimise any interference with the use of the Site by the Client or any third party (including the Client's customers); and
- 4.7.4 take all reasonable steps to avoid prejudicing the relationship of the Client (or any of its customers) with any statutory undertaker, landlord or owner or occupier of any adjacent property whose services, land, premises or rights may be affected by the Works or whose consent is necessary in connection with the Works;
- 4.7.5 unless otherwise stated in the Scope, be responsible for obtaining and maintaining any permissions, approvals, authorisations, consents, permits, agreements, certificates, licences (or waiver of licences) which must be obtained from any person in order lawfully to carry out the Works (including any permission or approval of any local authority or statutory undertaker having jurisdiction in relation to the Works or with whose systems the Works are, or are to be, connected); and
- 4.7.6 comply with any permit, consent, approval, authorisation, agreement, order, permission, certificate, waiver of licence which must be obtained from any person (including any permission or approval of any local authority or statutory undertaker having jurisdiction in relation to the Works or with whose systems the Works are, or are to be, connected) in order lawfully to carry out the Works.
- 4.8 The Contractor shall at all times whilst present at the Site, comply with:
- 4.8.1 the operating procedures of the Client and the Authority as notified to the Contractor insofar as they are relevant to the provision of the Works, including those relating to environmental matters (which may be amended from time to time subject to prior consultation); and
- 4.8.2 any other reasonable requirements of the Client and the Authority in relation to the management and control of Hazardous Materials at, on, in or under the Site.
- 4.9 The Contractor shall not make use of any Hazardous Materials in the course of performance of the Works without the prior written consent of the Client, and where such Hazardous Materials are so used, the Contractor shall ensure that no harm, damage or injury is caused or contributed to by such use of Hazardous Materials by it (or any party for whom it is responsible). The Contractor undertakes that, in the performance of any of the Works, it shall ensure that it (and any party for whom it is responsible) does not cause, contribute to, exacerbate or disturb any contamination or cause other harm or damage to the Environment at the Site.
- 4.10 At all times during the Term, the Contractor shall maintain a suitable quality management system, which complies with the requirements of ISO 9001. For the avoidance of doubt, this does not extend to a requirement for the Contractor to obtain certification under ISO 9001.

## 5. COMPLIANCE WITH LEGISLATION

- 5.1 The Contractor shall provide the Works in compliance with all Statutory Requirements.
- 5.2 The Parties agree that in relation to the Works:
- 5.2.1 the Client is the "client" in respect of the Works for the purposes of the CDM Regulations and Part 2A of the Building Regulations;
- 5.2.2 unless otherwise agreed in writing between the Parties, the Contractor is appointed as "principal contractor" in respect of the Works and shall carry out and fulfil, in all respects, the duties of a principal contractor under the CDM Regulations and Part 2A of the Building Regulations respectively and the Contractor shall have no entitlement to claim for any additional time, loss, expense or other financial consequence arising from or in connection with, any delay or disruption to the progress of the Works occasioned by activities necessary to comply with the CDM Regulations, Part 2A of the Building Regulations and/or any other applicable regulations;
- 5.2.3 unless otherwise agreed in writing between the Parties, the Contractor is appointed as "principal designer" in respect of the Works and shall carry out and fulfil, in all respects, the duties of a principal designer under the CDM Regulations and Part 2A of the Building Regulations respectively;
- 5.2.4 where the Client appoints a third party to act as "principal designer", the Contractor shall co-operate and work with such nominated principal designer as required under the CDM Regulations and Part 2A of the Building Regulations; and
- 5.2.5 prior to Completion of the Works, the Contractor shall be responsible for completing in full and returning to the Client a handover documentation pack and health and safety plan and associated documentation and attachments in a format reasonably specified and issued by the Client to the Contractor on or within a reasonable time from commencement of the Works.
- 5.3 Where this Contract is a contract for construction operations as defined in section 567 of the Income and Corporation Taxes Act 1988, the Contractor shall comply with the construction industry scheme as set out in Part 3, Chapter 3 and Schedule 11 Finance Act 2004 and the Income Tax (Construction Industry Scheme) Regulations 2005 (SI 2005/2045) (CIS) and shall provide the Client with all appropriate tax certificates and documentation required by the Client to demonstrate compliance with the requirements of such construction industry scheme. The Client shall make payment net of any deduction which is required in accordance with the status of the Contractor.

**6. COMPLETION OF THE WORKS**

- 6.1 Subject to Clause 6.2, the Contractor shall carry out the Works so that Completion is achieved by the Completion Date.
- 6.2 If the Contractor is delayed in carrying out any of the Works by the relevant Completion Date due to:
- 6.2.1 a change agreed by the Parties in accordance with Clause 26.1; or
- 6.2.2 suspension of the Works effected in accordance with Clause 15.1 (Suspension) save where such suspension arises from a breach of this Contract or any default by the Contractor or the Contractor Staff; or
- 6.2.3 suspension of the Works effected in accordance with Clause 15.2 (Suspension); or
- 6.2.4 any breach of this Contract by the Client or any default of the Client or its employees, agents or third party contractors,
- then the Contractor shall be granted an extension of time to complete the Works equal to the period of delay and the relevant Completion Date shall be amended to reflect such extension of time.
- 6.3 In addition to any express obligations set out in this Contract, the Contractor shall provide the Client with:
- 6.3.1 regular progress updates and/or attend progress meetings in relation to the Contractor's performance under this Contract, as reasonably requested by the Client from time to time; and
- 6.3.2 such data as the Client may reasonably require from time to time in order to meet its own reporting requirements and any reporting requirements under relevant customer contracts.

**7. TITLE AND RISK**

- 7.1 All Plant and Materials shall remain at the risk of the Contractor prior to Completion. Unless rejected by the Client under Clause 8 (Inspection and Rejection), title to all Plant and Materials included in the Works shall pass to the Client on certified Completion or at the time of payment of the Charges for such Plant and Materials if payment occurs earlier than certified Completion.
- 7.2 Where the Works involve the Contractor being given custody or control of equipment, assets or other property of the Client (or any customer of the Client or other party on whose behalf the Client is acting), then such equipment, assets or property shall be at the risk of the Contractor whilst they are in the Contractor's custody or control (which shall include any period where the equipment, assets or property are being transported using a carrier arranged by the Contractor).

**8. INSPECTION AND REJECTION**

- 8.1 The Client shall have the right to inspect and test the Works (including the Plant and Materials and any Deliverables) prior to or within a reasonable time after Completion, at such times as the Client may reasonably require. Where this Contract contains acceptance criteria relating to the carrying out of the Works, these shall apply in addition to the provisions of this Clause.
- 8.2 Any omission by the Client to undertake, or any approval given during or after, such inspection or testing shall not constitute a waiver of any of the Client's rights or remedies in respect of the Works. Any such inspection or testing shall not diminish or otherwise affect the Contractor's obligations under this Contract.
- 8.3 If any part of the Works do not conform to this Contract, including the Scope and any other requirements referred to in this Contract, the Client may serve a written remediation notice on the Contractor, requiring it immediately to take such action as is necessary to ensure conformity to the reasonable satisfaction of the Client. Such action may include providing replacement Plant and Materials and/or re-performing the Works.
- 8.4 Notwithstanding Clause 8.3, where any of the Works do not conform to this Contract, the Client shall be entitled to exercise any remedies available at law or under this Contract.

**9. CHARGES AND PAYMENT**

- 9.1 The Charges shall be as stated in the Purchase Order and shall, unless otherwise agreed in writing by the Client, be exclusive of VAT but inclusive of all other charges. The Client shall pay the Charges net of any deductions or withholding taxes required by law.
- 9.2 Unless specified otherwise in the Purchase Order, where any of the Works will be of a duration of forty-five (45) days or less, the Contractor shall submit an invoice for the Charges payable under this Contract to the Client following completion of such Works. The payment due date for the invoice shall be the date when the Client receives the invoice provided always that the invoice conforms to the requirements of Clause 9.4.
- 9.3 Where any of the Works are expected to be of a duration of more than forty-five (45) days, the Charges payable for such Works shall be paid in instalments in accordance with the milestones set out in the Purchase Order or, where no milestones have been agreed, at intervals of not less than one (1) calendar month. Where payments are to be assessed at monthly intervals, the first assessment date is decided by the Parties to suit the procedures of the Parties and is not less than one (1) calendar month after the date of commencement of the relevant Works. Later assessment dates occur at the end of each calendar month following the first assessment date until Completion of such Works. The Contractor shall submit to the Client an invoice for each instalment of the Charges payable for such Works either following completion of each milestone or after each assessment date (as the case shall require). The invoice and supporting documents shall specify the sum that the Contractor considers will become due on the invoice date in respect of the instalment of the Charges, and the basis on which that sum is calculated ("**the notified sum**"). The payment due date for each invoice shall be the date when the Client receives the invoice provided always that the invoice conforms to the requirements of Clause 9.4. Payments will not become due under this Contract unless and until a valid VAT invoice has been submitted to the payer.
- 9.4 The Contractor shall submit a valid VAT invoice for each instalment of the Charges payable under this Contract, together with any supporting documents that are reasonably necessary to check the invoice. All invoices submitted by the Contractor must quote the relevant Purchase Order number. The Client may, at its option, require the Contractor to submit all invoices for work carried out under this Contract to the invoice address given on the Purchase Order or via its electronic invoicing system, details of which are also set out on the Purchase Order. The same invoice must not be sent via both methods.
- 9.5 Unless otherwise agreed by the Parties in writing, the final date for payment shall be thirty (30) days after the payment due date.

- 9.6 Subject to Clause 9.9 and unless the Client has served a notice under Clause 9.7, the Client shall pay the Contractor the sum referred to in the Contractor's invoice issued under Clause 9.2 or Clause 9.3, as the case shall require (in this Clause 9, the "notified sum") on or before the final date for payment of each invoice.
- 9.7 Not less than seven (7) days before the final date for payment (in this Clause 9, the "prescribed period") the Client may give the Contractor notice that it intends to pay less than the notified sum (a "pay less notice"). Any pay less notice shall specify:
- 9.7.1 the sum that the Client considers to be due on the date the notice is served; and
- 9.7.2 the basis on which that sum is calculated,
- and where a pay less notice is given in accordance with this Clause 9.7, the obligation in Clause 9.6 to pay the notified sum applies only in respect of the sum specified in that pay less notice.
- 9.8 If the Client fails to pay an amount due to the Contractor by the final date for payment and fails to give a pay less notice under Clause 10.7, then the Client shall pay interest on the overdue amount at an annual rate equivalent to 2 percentage points above the base lending rate of Barclays Bank plc from time to time. Such interest shall accrue on a daily basis from the final date for payment until actual payment of the overdue amount, whether before or after judgment. The Client shall pay interest together with the overdue amount. The Parties acknowledge that the Client's liability under this Clause 9.8 is a substantial remedy for the purposes of section 9(1) of the Late Payment of Commercial Debts (Interest) Act 1998.
- 9.9 Notwithstanding Clause 9.7 and Clause 9.8 and without prejudice to Clause 16 (Termination), if the Contractor becomes insolvent as defined in section 113 of the Construction Act after the prescribed period, the Client shall not be required to pay the Contractor the notified sum on or before the final date for payment.

## 10. DEFECTS

- 10.1 Until the Defects Date, the Client may instruct the Contractor to search for a Defect.
- 10.2 The Client may notify a Defect to the Contractor at any time before the Defects Date.
- 10.3 The Contractor shall correct a Defect whether or not the Client notifies it to the Contractor. Before Completion, the Contractor shall correct a notified Defect before it would prevent the Client or others from doing their work.
- 10.4 After Completion, the Contractor shall correct a notified Defect before the end of the Defect Correction Period. This period begins at the later of Completion and when the Defect is notified.
- 10.5 The Client shall issue the Defects Certificate to the Contractor at the Defects Date if there are no notified Defects, or otherwise at the earlier of (a) the end of the last Defect Correction Period; and (b) the date when all notified Defects have been corrected.
- 10.6 If the Contractor has not corrected a notified Defect within its Defect Correction Period, the Client assesses the cost of having the Defect corrected by other people and the Contractor shall pay this amount to the Client.
- 10.7 Until the Defects Certificate has been issued and unless otherwise instructed by the Client, the Contractor shall promptly repair or replace any damage or loss caused to the Works and the Plant and Materials.

## 11. WARRANTY

- 11.1 As far as it is legally able to do so, the Contractor will pass on to the Client the benefits of any warranties given by any third party manufacturer in relation to any of item forming part of the Plant and Materials.

## 12. INTELLECTUAL PROPERTY RIGHTS

- 12.1 Ownership of Background IPR shall remain unaffected by the terms of this Contract. Accordingly, all Intellectual Property Rights in any statements of work, specifications, instructions, plans, drawings, patterns, models, designs or other material furnished to or made available to the Contractor by the Client ("Client Materials") shall, subject to the rights of third parties, remain vested solely in the Client and the Contractor shall not (except to the extent necessary to provide the Works) use or disclose any such Client Materials which the Contractor may obtain without the prior written consent of the Client. On Completion of the whole of the Works or on earlier termination of this Contract, the Contractor shall return the Client Materials to the Client or, at the Client's election, destroy or delete the Client Materials, save that the Contractor shall be entitled to retain a copy of the Client Materials solely for insurance and audit purposes to the extent necessary.
- 12.2 The Contractor grants to the Client, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of the Deliverables and to reproduce the designs and works contained in them for all purposes relating to or connected with the Works, the Site and/or the property comprising the Works including (without limitation) the design, construction, completion, reconstruction, modification, extension, refurbishment, maintenance, funding, disposal, letting, fitting-out, advertisement, demolition, reinstatement and repair of the Works. The Client's licence carries the right to grant sub-licences and is transferable to third parties without the consent of the Contractor and survives termination (for any reason) of the Contractor's employment under this Contract.
- 12.3 Insofar as ownership of any Intellectual Property Rights in any of the Deliverables is vested in any person other than the Contractor (including, without limitation, any subcontractor), the Contractor shall procure for the Client the benefit of a licence on the terms set out in Clause 12.2. The Contractor shall, if so requested at any time, execute such documents and/or perform such acts as may be required fully and effectively to assure to the Client and/or any third party the rights referred to in this clause.
- 12.4 The Contractor shall have no liability for use of the Deliverables for any purpose other than that for which they were prepared and/or provided.
- 12.5 The Contractor waives any moral rights it may have under Chapter IV of the Copyright, Designs and Patents Act 1988 as the author of the Deliverables and shall procure that its subcontractors waive any such rights as they may have in the Deliverables. So far as legally possible, the Contractor irrevocably and unconditionally waives any equivalent rights that it may have in any other territory of the world and ensures that any employees and third parties engaged by the Contractor do the same.
- 12.6 The Contractor shall notify the Client of any claim, action or litigation in respect of any alleged infringement of any Intellectual Property Rights relating to the Deliverables or the Works immediately upon becoming aware of any such claim, action or litigation.

- 12.7 The Contractor shall indemnify the Client and keep the Client indemnified against all liabilities, actions, suits, claims, demands, losses, charges, costs and expenses (including legal and other professional fees and expenses) suffered or incurred by the Client as a result of or in connection with any claim made against the Client for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with (a) the use or supply of the Deliverables; and (b) to the extent that the Contractor is designing the Works, the use or supply of the Works.
- 12.8 If an allegation of infringement of any Intellectual Property Rights is made in respect of any of the Works and/or the Deliverables or, in the Client's reasonable opinion, is likely to be made, then the Contractor may at its own expense and subject to the prior written agreement of the Client:
- 12.8.1 procure for the Client the right to continue to use the part of the Works and/or the Deliverables which is subject to the infringement claim; or
- 12.8.2 replace or re-perform the infringing Deliverables and/or Works so that there is no infringement of any Intellectual Property Rights provided that (a) such replacement or re-performance of the Deliverables and/or Works is entirely compatible with and of no lesser functionality than the allegedly infringing Deliverables and/or Works and complies in all material respects with the requirements of this Contract; and (b) such replacement or re-performance is without prejudice to any other right or remedy of the Client arising under this Contract in respect of the loss or damage it has suffered.

### 13. INSURANCE

- 13.1 The Contractor shall:
- 13.1.1 take out and maintain the following insurances with a reputable insurer for the period beginning on the Effective Date and ending on the date when the Defects Certificate is issued or (if earlier) the date of termination of this Contract:
- (a) construction all risks insurance for the full replacement value of the Works;
  - (b) public liability insurance with a level of cover of not less than £5,000,000 (five million pounds) for each and every claim;
  - (c) employers' liability insurance with a level of cover of not less than £10,000,000 (ten million pounds) for each and every claim;
  - (d) where the Works involve working in, under or on, the sea or waterways or operating a marine vessel, marine liability insurance in respect of its operations with a level of cover of not less than £10,000,000 for each and every loss and unlimited in any one period of insurance;
  - (e) where the Works involve working in or on an aircraft, or visiting an airfield (airside operations), aviation liability insurance in respect of its operations and vehicles with a level of cover of not less than £50,000,000 for each and every incident, and unlimited in any one period of insurance. For clarity, if the Contractor is to visit or provide any Works on the LTPA MOD Boscombe site airfield zone or any other airfield zone as advised by the Client, the Contractor shall be responsible for providing the Client with prior notice of such visit and/or attendance and shall not visit or provide such Works on the aforementioned airfield zone without first ensuring that it complies with the insurance requirements in this Clause 13.1.1(e); and
- 13.1.2 where the Contractor is providing design as part of the Works, take out and maintain with a reputable insurer professional indemnity insurance with a level of cover of not less than £1,000,000 (one million pounds) for each and every claim for the period beginning on the Effective Date and ending on the date falling six (6) years after the date when Defects Certificate is issued or (if earlier) the date of termination of this Contract.
- 13.2 The Contractor will provide all facilities, assistance and advice reasonably required by the Client or the Client's insurers for the purpose of dealing with any action, claim or matter arising out of the Contractor's performance of this Contract.
- 13.3 The Contractor shall produce to the Client upon request, copies of a broker's verification of insurance to demonstrate that the required insurance cover referred to in Clause 13.1 is in place. The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities arising under this Contract.

### 14. LIABILITY

- 14.1 For the avoidance of doubt, neither Party excludes or limits its liability to the other Party under this Contract for:
- 14.1.1 death or personal injury caused by its negligence and/or the negligence of its employees, agents or subcontractors;
  - 14.1.2 its own fraud or fraudulent misrepresentation;
  - 14.1.3 deliberate repudiatory breach of this Contract and/or wilful default by it and/or its employees, agents or subcontractors; or
  - 14.1.4 any liability which may not otherwise be lawfully excluded or limited.
- 14.2 Nothing in this Contract shall limit any liability arising under Clause 19 (Confidentiality) of this Contract.
- 14.3 Subject to Clauses 14.1, 14.2 and 14.4, the liability of the Contractor arising out of or in connection with this Contract, whether in contract, breach of statutory duty, tort (including negligence) or otherwise is limited:
- 14.3.1 in respect of the design of the Works, to £1,000,000 (one million pounds);
  - 14.3.2 for loss of or damage to property, to £5,000,000 (five million pounds); and
  - 14.3.3 in respect of all other losses, damages, charges, costs and/or expenses, to 200% of the total of the Charges.
- 14.4 The Contractor shall not be liable to the Client for the Client's indirect or consequential loss except as provided for in these Conditions.
- 14.5 Each Party shall use its reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Contract, including any losses, liabilities, damages, claims, proceedings, costs and/or expenses for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Contract.

**15. SUSPENSION**

- 15.1 The Client may at any time suspend performance of all or part of the Works by giving not less than seven (7) days' written notice to the Contractor. Subject to Clause 15.2, the Contractor shall resume performance of the Works as soon as reasonably practicable after receiving a written notice to do so from the Client.
- 15.2 If:
- 15.2.1 subject to Clause 9.9, the Client fails to pay in full the notified sum to the Contractor under this Contract by the final date for payment specified in Clause 9.5; and
- 15.2.2 the Client has not given a pay less notice complying with Clause 9.7,
- the Contractor may suspend the performance of any or all of the Works and other obligations under this Contract by giving not less than seven (7) days' notice to the Client of its intention to do so and stating the ground or grounds on which it intends to suspend performance.
- 15.3 Where Client serves written notice to suspend the Works under Clause 15.1 or the Contractor exercises its right of suspension under Clause 15.2, the Client shall pay to the Contractor:
- 15.3.1 a reasonable amount in respect of costs and expenses reasonably incurred by the Contractor as a result of exercising such right of suspension; and
- 15.3.2 taking into account any sum paid under Clause 15.3.1, any adjustment to the Charges due under Clause 9 (Price and Payment) for Works carried out by the Contractor up until the date of such suspension,
- and such payment shall be the Contractor's sole compensation for suspension of the Works and obligations under this Contract. The Client shall have no liability to pay any compensation to the Contractor under this Clause 15.3 where the Client exercises its right of suspension under Clause 15.1 as a result of the Contractor's breach of this Contract or any default or wrongful act or omission by the Contractor or the Contractor Staff.

**16. TERMINATION**

- 16.1 The Client shall have the right at any time to terminate this Contract (in whole or in part) for convenience by giving the Contractor not less than thirty (30) days' written notice, whereupon all work on this Contract (or the part of this Contract so terminated) shall be discontinued. The Contractor will take all reasonable steps to mitigate the effects of termination. Upon termination under this Clause 16.1, the Client shall pay to the Contractor fair and reasonable compensation for work-in-progress at the time of termination, but such compensation shall not include loss of anticipated profits or any indirect or consequential loss nor shall it exceed the price that would have been payable to the Contractor if this Contract (or the relevant part of this Contract) had not been terminated. Title in all Plant and Materials paid for by the Client shall pass to the Client on such payment, and (if not already delivered) shall be delivered to the Client at that time.
- 16.2 Either Party shall have the right to terminate at any time by giving the other Party written notice to terminate this Contract immediately if:
- 16.2.1 the other Party commits a material breach of this Contract which (if capable of remedy) it fails to remedy within thirty (30) days of receipt of written notice of the same;
- 16.2.2 the other Party repeatedly breaches any of the terms of this Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Contract;
- 16.2.3 any distress, execution or other process is levied upon any of the assets of the other Party;
- 16.2.4 the other Party agrees to any kind of composition, rescheduling, scheme, compromise or arrangement involving it and its creditors generally (or any class of them) as a result of financial difficulties;
- 16.2.5 an order is made or an effective resolution is passed for the other Party's winding up (except for the purposes of amalgamation or reconstruction as a solvent company), or if a petition is presented to court, or if a receiver/manager, administrative receiver or administrator is appointed in respect of the whole or any part of the other Party's undertaking or assets;
- 16.2.6 any event occurs, or proceeding is taken, with respect to the other Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clauses 16.2.3 to 16.2.5 inclusive;
- 16.2.7 the other Party ceases or threatens to cease to carry on its business; or
- 16.2.8 the financial position of the other Party deteriorates to such an extent that, in the reasonable opinion of the non-defaulting Party, the capability of the other Party to adequately fulfil its obligations under this Contract has been placed in jeopardy.
- 16.3 The expiry or termination of this Contract, however arising, will be without prejudice to the rights and obligations of the Parties which have accrued prior to expiry or termination. The provisions of Clauses 11 (Warranty), 12 (Intellectual Property Rights), 13 (Insurance), 14 (Liability), 16.3, 17 (Remedies), 19 (Confidentiality), 21 (Assignment and Subcontracting), 22 (Publicity), 26 (Miscellaneous), 34 (Dispute Resolution) and 35 (Governing Law and Jurisdiction) shall survive expiry or termination of this Contract, together with any provisions hereof which by their nature should survive the expiry or termination of this Contract.

**17. REMEDIES**

- 17.1 Without prejudice to any other rights or remedies which the Client may have under this Contract or otherwise, if any of the Works are not supplied in accordance with, or the Contractor fails to comply with, this Contract and the Contractor has failed to remedy such breach of this Contract within thirty (30) days of receipt of a written remediation notice from the Client, the Client shall be entitled to avail itself of one or more of the following remedies, whether or not any part of the Works has been accepted by the Client:
- 17.1.1 to require the Contractor to provide replacement Plant and Materials and/or re-perform the Works;



- 17.1.2 to reject defective Plant and Materials (in whole or in part) and return them to the Contractor, at the risk and cost of the Contractor, on the basis that a full refund for defective Plant and Materials shall be immediately paid by the Contractor;
- 17.1.3 to carry out, at the Contractor's expense, any work necessary to make the Works comply with this Contract, including obtaining the Works in substitution from another contractor; and
- 17.1.4 to claim such damages as may have been sustained as a result of the Contractor's breaches of this Contract.

## 18. HEALTH, SAFETY AND SECURITY

- 18.1 The Contractor shall ensure that the Works are designed and/or constructed so as to be safe for persons using or affected by the same.
- 18.2 The Contractor represents and warrants that the Contractor has made available to the Client adequate health and safety information about the Works and about any conditions necessary to ensure that when put to use the Works will be safe.
- 18.3 The Contractor shall immediately notify the Client in the event that the Contractor, the Contractor Staff or the Contractor's subcontractors commit any incidents in connection with the performance of this Contract that give rise to:
  - 18.3.1 obligations under applicable health and safety law for reporting of injuries, diseases and dangerous occurrences;
  - 18.3.2 a breach of applicable health and safety law or the site requirements in force at the Site; or
  - 18.3.3 an investigation or inquiry by the Health & Safety Executive or any other public body or authority.
- 18.4 The Contractor shall (and will procure that the Contractor Staff):
  - 18.4.1 where applicable, abide by the provisions of the Official Secrets Acts 1911 to 1989;
  - 18.4.2 obtain any security clearances required to perform this Contract and provide such evidence as the Client may reasonably require to verify that the security clearances are in place;
  - 18.4.3 manage all security clearances sponsored by the Contractor in accordance with the relevant obligations imposed by the issuing authority;
  - 18.4.4 comply with the Client's reasonable security policies and requirements;
  - 18.4.5 inform the Client immediately it becomes aware of any breach by the Contractor Staff of any secrecy or security obligation relating to this Contract; and
  - 18.4.6 co-operate with any investigation relating to breaches of secrecy or security.
- 18.5 Where any access to the Site or any other premises of the Client or the Authority is necessary in connection with carrying out of the Works, the Contractor shall (and will procure that the Contractor Staff):
  - 18.5.1 only enter the Site or other premises for the purpose of performing this Contract;
  - 18.5.2 obtain any necessary permission to proceed from the Client and complete any required Client induction training before commencing work at the Site or other premises; and
  - 18.5.3 at all times comply with any security and health and safety regulations currently in force at the Site or other premises, as notified to the Contractor from time to time, including (where relevant) the Government Functional Standard GovS 007: Security and JSP440 Leaflet 8 as a baseline and any security policies required by the Client for specific tasks or activities.
- 18.6 In the event that any of the Contractor Staff require unescorted security pass access to the Site or other premises of the Client, the Contractor shall ensure that prior to accessing the Site or other premises, such Contractor Staff produce a completed basic level Criminal Records Declaration form for review by the Client that is less than six (6) months old from Disclosure Scotland or the Disclosure and Barring Service to accompany their security check application pack. The Client reserves the right to prevent any of the Contractor Staff from having access to the Site or other premises of the Client if their application for security clearance is not returned within a reasonable timeframe or is returned with a result that includes conditions and/or restrictions which are not acceptable to the Client.
- 18.7 The Client may require the removal of any Contractor Staff from the Site or other premises of the Client or the Authority if in the reasonable opinion of the Client their performance or conduct is or has been unsatisfactory or such Contractor Staff have failed to comply with the provisions of this Clause 18. On receipt of such request, the Contractor shall promptly remove the relevant Contractor Staff and replace them with a suitably qualified and competent replacement, unless a replacement is unnecessary.
- 18.8 Compliance with this Clause 18 is a condition of this Contract and any failure by the Contractor to comply with this Clause shall also constitute a material breach of this Contract.

## 19. CONFIDENTIALITY

- 19.1 Each Party shall keep confidential and not disclose or knowingly permit to be disclosed to any person or use other than for the purpose of this Contract any technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed by one Party to the other Party or its representatives and any other confidential information concerning the other Party's business or its products which the other Party may obtain or learn, except as permitted by this Clause 19.
- 19.2 The receiving Party may disclose the disclosing Party's confidential information without prior written consent to its employees, agents, contractors or advisers who need to know the same for the purpose of discharging the receiving Party's obligations or exercising its rights under this Contract and it shall ensure that such employees, agents, contractors and advisers are subject to like obligations of confidentiality as are contained in this Clause 19.
- 19.3 The obligations of confidentiality owed by each Party to the other Party in this Clause 19 shall not apply to information which:
  - 19.3.1 is in or enters the public domain (otherwise than by a breach of the receiving Party's confidentiality obligations whether arising under this Contract or otherwise);

- 19.3.2 is known without restriction to the receiving Party at the time of disclosure without breach of any obligation of confidentiality;
- 19.3.3 becomes known to the receiving Party without restriction from an independent source having the right to convey it; or
- 19.3.4 is shown to the reasonable satisfaction of the originating Party to have been generated independently by the receiving Party.
- 19.4 Nothing shall prevent the disclosure by the receiving Party of the disclosing Party's confidential information to the extent required by applicable law or by the regulations of any stock exchange or regulatory authority to which such Party is subject or pursuant to any order of court or other competent authority or tribunal PROVIDED THAT:
- 19.4.1 the receiving Party first gives the other Party, where possible, the opportunity to make and/or manage the necessary disclosure;
- 19.4.2 where the receiving Party is required to make the disclosure itself, the disclosure made is the minimum required, having regard to all possible exemptions from disclosure, and is made under maximum possible constraints of confidentiality; and
- 19.4.3 to the extent permitted by applicable law, the other Party is provided with full information on the intended disclosure and is fully consulted.
- 19.5 Upon request by the Client and in any event on expiry or termination of this Contract, the Contractor shall (at its expense) promptly deliver to the Client all confidential information of the Client (and all copies thereof) disclosed to the Contractor under this Contract that is in the Contractor's possession, custody or control without making or retaining any copies of them in any form. Where it is not reasonably practicable for the Contractor to remove all traces of the Client's confidential information from its business and computer systems, then the Contractor shall take reasonable steps to restrict access to the information, and any residual Confidential Information will continue to be governed by this Contract for so long as it is retained on the business and computer systems, but the Contractor shall have no further right to use such confidential information.

## 20. INDEPENDENT CONTRACTOR

- 20.1 The relationship of the Contractor to the Client will be that of independent contractor. The Contractor will not be construed as the partner or agent of the Client by virtue of this Contract and the Contractor shall not hold itself out as such, nor will any Contractor Staff be construed as an employee, worker, agent or partner of the Client and the Contractor shall procure that the Contractor Staff do not hold themselves out as such.
- 20.2 Nothing in this Contract is intended to, or shall be deemed to, authorise either Party to make or enter into any commitments for or on behalf of the other Party.
- 20.3 The Contractor warrants that its employees are employed by it and that the Contractor will account to the appropriate authorities for tax and National Insurance contributions for its employees.
- 20.4 The Contractor shall account for any Value Added Tax to the appropriate authorities.
- 20.5 The Contractor hereby undertakes to indemnify the Client and keep it indemnified against:
- 20.5.1 any income tax (whether under PAYE or otherwise) or primary National Insurance contributions, including any interest, penalties or costs incurred in connection with the same, which may at any time be levied, demanded or assessed on the Client by HMRC or other statutory authority as a result of or in connection with the provision of Works by the Contractor hereunder and/or in relation to sums paid to the Contractor Staff (whether by the Contractor or a third party) where the recovery is not prohibited by law; and
- 20.5.2 any legal fees or other costs incurred by the Client in enforcing its rights under this Clause 20.5.
- 20.6 The Contractor hereby acknowledges that insofar as the indemnity in Clause 20.5 relates to primary National Insurance contributions, any amount due will be deductible from any future earnings and will not be recoverable in any other way.

## 21. ASSIGNMENT AND SUBCONTRACTING

- 21.1 The Contractor shall not be entitled to assign, transfer or subcontract any of its rights or obligations under this Contract, in whole or in part), without the prior written consent of the Client, which shall not be unreasonably withheld.
- 21.2 Subcontracting by the Contractor shall not in any way relieve the Contractor of its responsibilities under this Contract.
- 21.3 The Client has the right to transfer its rights and obligations under this Contract, in whole or in part, upon written notice to the Contractor. Upon the Client's request, the Contractor shall enter into such instruments as are reasonably required to give effect to such transfer.

## 22. PUBLICITY

- 22.1 Neither Party shall do any of the following for publicity purposes without the prior written consent of the other Party:
- 22.1.1 make use of the other Party's name or the name of that Party's personnel, customers or agents; or
- 22.1.2 refer to the other Party or this Contract in any advertisement, announcement or notice, except to the extent required by law or any competent regulatory body.

## 23. NOTICES

- 23.1 A notice given under or in connection with this Contract must be in writing and (a) delivered by hand; or (b) sent by next working day delivery service providing proof of delivery; or (c) sent by email. Such notice shall be sent to the address of the Client or to the address of the Contractor shown on the Purchase Order or to such other address as either the Contractor or the Client may substitute by written notice to the other Party (as the case may be). Unless otherwise notified in writing by the Client, all notices issued by the Contractor to the Client by email shall be sent to [procurement@qinetiq.com](mailto:procurement@qinetiq.com).
- 23.2 Notice shall be deemed given:

23.2.1 if delivered by hand, on the day of delivery;

23.2.2 if sent by next working day delivery service providing proof of delivery, at the time recorded by the delivery service; and

23.2.3 if sent by email, at the time of transmission during normal UK business hours.

#### 24. COUNTERFEIT MATERIALS

24.1 The Contractor shall ensure that it complies with all applicable anti-counterfeiting or anti-piracy laws, legislation, regulations or directives ("**Anti-Counterfeiting Legislation**") which apply to its business and shall not source or provide any Plant and Materials which are counterfeit and/or which have been sourced from unauthorised distributors which are not validly licensed. The Contractor will not, and will use reasonable endeavours to procure that Contractor Staff will not, engage in any activity, practice or conduct which would constitute an offence under any applicable Anti-Counterfeiting Legislation.

24.2 A breach of this Clause 24 shall constitute a material breach of this Contract.

#### 25. REGULATORY COMPLIANCE

25.1 To the extent that the Registration, Evaluation, Authorisation and Restriction of Chemicals Regulation (EC/1907/2006) ("**REACH**") applies to the Plant and Materials, the Contractor warrants that such Plant and Materials, and any substances contained therein, are supplied in compliance with, and not prohibited or restricted by, REACH or any other applicable legislation and/or regulations in force from time to time. The Contractor shall provide the Client with all the necessary information required for the Client to comply with and/or be satisfied that the Contractor has complied with REACH.

25.2 The Contractor shall be responsible for ensuring that the Plant and Materials, and all components forming part of the Plant and Materials, shall comply with the requirements of the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2006 ("**RoHS Regulations**") and the Classification, Labelling and Packaging Regulation (EC/1272/2008) ("**CLP Regulation**") or any replacement thereof. In respect of all Plant and Materials supplied under this Contract, the Contractor shall, upon the Client's request, provide a certification in a form acceptable to the Client that the Plant and Materials supplied comply with the RoHS Regulations and the CLP Regulation.

25.3 In supplying the Plant and Materials, the Contractor shall, at its own expense, comply with the requirements of the Waste Electrical and Electronic Equipment Regulations 2013 to the extent that they apply to any of the Plant and Materials being supplied. The Contractor shall be responsible for the collection and disposal of any such Plant and Materials at the end of their life and for any cost associated with such collection and disposal of Plant and Materials from any end user. Upon commencement of this Contract, the Contractor shall provide the Client with details of the arrangements it has in place for the collection and disposal of such Plant and Materials.

25.4 The Contractor shall bear all costs, charges and expenses in relation to compliance with this Clause 25.

#### 26. MISCELLANEOUS

26.1 No variation of this Contract shall be valid unless it is agreed in writing by the Parties' duly authorised representatives and, where required, issued as a written Purchase Order amendment by the Client.

26.2 A waiver of any right or remedy under this Contract or by law is only effective if given in writing. Failure or delay by the Client in enforcing any provision of this Contract shall not be a waiver of any of the Client's rights under this Contract or of the right at any time subsequently to enforce that provision or any other provision of this Contract. No waiver in respect of any right or remedy shall operate as a waiver in respect of any other right or remedy.

26.3 A person who is not a Party to this Contract shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract, provided that any Affiliate of the Client which is involved in procuring the Works from the Contractor shall have the right to enforce any provision of this Contract to the extent that it applies to the Works which it procures. The Parties shall not be under any obligation to seek the consent of any Affiliate of the Client for any amendment to this Contract. This Clause does not affect any right or remedy of any person that exists otherwise than pursuant to that Act.

26.4 If any provision of this Contract is or becomes invalid, illegal or unenforceable in whole or in part, it shall be deemed deleted, but the validity of the other provisions of this Contract shall not be affected.

#### 27. SUPPLIER CODE OF CONDUCT

27.1 The Contractor shall comply, and will procure that the Contractor Staff and its subcontractors comply, with the Client's Supplier Code of Conduct which can be viewed on the Client's website at: [www.QinetiQ.com/suppliers/code\\_of\\_conduct](http://www.QinetiQ.com/suppliers/code_of_conduct).

#### 28. VENDOR REGISTRATION PROCEDURES AND COMMON ASSESSMENT STANDARD

28.1 During the Term, the Contractor shall maintain compliance with all obligations relating to its registration as a qualified vendor of goods and/or services to the Client as set forth in the Client's vendor registration procedures. This will include a requirement to maintain accreditation to the Common Assessment Standard or, if the Contractor does not have accreditation to the Common Assessment Standard, to obtain such accreditation within twelve (12) months of the Effective Date.

#### 29. NET ZERO

29.1 The Client is committed to reducing its Greenhouse Gas Emissions and making a positive contribution to climate change. The Client also seeks to contribute to and influence the climate change improvements of its wider value chain. To this end, the Client has put in place its Net-Zero Greenhouse Gas Emissions Plan, which can be viewed on the Client's website at [www.qinetiq.com/en/our-company/sustainability/climate-change/net-zero](http://www.qinetiq.com/en/our-company/sustainability/climate-change/net-zero).

29.2 The Parties acknowledge their common intention to minimise the impact of fulfilling their obligations under this Contract on climate change, including minimising Greenhouse Gas Emissions.

#### 30. LIVING WAGE

30.1 The Contractor shall, to the extent permitted by law, adopt the measures set out in Clause 30.2 in relation to any of its employees (other than an apprentice or volunteer) who provides a service to or on behalf of the Client involving two (2) or more hours of work

a week for eight (8) or more consecutive weeks in a year on the Site or any other property owned or occupied by the Client where the Works are being performed (the "**Relevant Employees**").

- 30.2 From the Effective Date, and subject to any amendments made to this Clause 30.2 by the Client from time to time, the Contractor shall for Relevant Employees based in the United Kingdom:
- 30.2.1 pay such Relevant Employees aged 18 or over not less than the Living Wage;
  - 30.2.2 increase the amount which it pays to such Relevant Employees by the same amount as any increase to the Living Wage within six (6) months of the date on which any increase in the Living Wage is officially announced; and
  - 30.2.3 notify all Relevant Employees of the date of the next increase within one month of the official announcement unless the Relevant Employees have been previously notified about the date on which they will receive at least the increase in the Living Wage.
- 30.3 The Contractor shall ensure that, to the extent permitted by law, any of its subcontractors which supply an individual who provides a service that falls within the parameters of Clause 30.1, shall adopt the measures set out in Clause 30.2 in relation to such individuals as if they were the Contractor's employees in respect of that individual's work for the Contractor.
- 30.4 The Contractor shall on request provide the Client with all such documentation as the Client may reasonably request to demonstrate the Contractor's compliance with the requirements of this Clause 30.

### 31. BUSINESS ETHICS, SANCTIONS AND MODERN SLAVERY

- 31.1 Each Party shall comply with the Bribery Act 2010 and any other anti-corruption and anti-bribery laws, legislation, regulations or directives ("**Anti-Corruption Legislation**") which apply to its business or which apply in the place where this Contract is performed. Each Party shall not, and will procure that its employees, agents, contractors and representatives shall not, engage in any activity, practice or conduct which would constitute an offence under any Anti-Corruption Legislation. In addition, the Contractor shall maintain in place policies and procedures governing its business ethics which ensures it complies with the requirements of the Client's Supplier Code of Conduct referred to in Clause 27.1.
- 31.2 The Contractor shall and will procure that each of its Affiliates shall:
- 31.2.1 comply with any trade, financial or other sanctions regime imposed by the UN, EU, UK, US, including regimes administered by the United States Department of the Treasury, Office of Foreign Assets ("**OFAC**") and His Majesty's Treasury, and any other such regime which applies in relation to the Contractor's business ("**Sanctions**"); and
  - 31.2.2 ensure that it shall not supply any goods or other items pursuant to this Contract from, or on behalf of, a "**Restricted Person**" (being any person listed as, targeted by Sanctions, including but not limited to persons on the "**Specifically Designated Nationals and Blocked Persons**" list issued by OFAC and the "**Consolidated List of Financial Sanctions Targets in the UK**" issued by His Majesty's Treasury, or located or incorporated in any country which is the target of country-wide Sanctions) nor use any monies paid by the Client for the benefit of a Restricted Person.
- 31.3 The Contractor shall comply with the Modern Slavery Act 2015 and any other modern slavery laws, legislation, regulations or directives ("**Modern Slavery Legislation**") which apply to its business or which apply in the place where this Contract is performed. The Contractor shall not and will procure that its employees, agents, representatives and subcontractors shall not, engage in any activity, practice or conduct which would constitute an offence under Modern Slavery Legislation.
- 31.4 A breach of this Clause 31 shall constitute a material breach of this Contract.

### 32. DATA PROTECTION

- 32.1 In this Contract, the expressions "controller", "processor", "personal data", "processing" and "data subjects" have the meanings given to them in the Data Protection Act 2018.
- 32.2 In performing its obligations under this Contract, each Party complies with and ensures that its employees, agents, representatives and contractors comply with the Data Protection Laws. The Contractor shall not perform its obligations under the contract in such a way as to cause the Client to breach any of its obligations under the Data Protection Laws.
- 32.3 The Contractor undertakes that it will not act as processor for the purposes of this Contract without first agreeing with the Client (i) a description of the scope, nature and purpose of the processing; (ii) the duration of the processing; and (iii) the types of personal data and categories of data subjects.
- 32.4 Any breach by the Contractor of this Clause 32 shall constitute a material breach of this Contract.

### 33. EXPORT COMPLIANCE

- 33.1 The Contractor shall notify the Client of the export control classification established by the competent national or extraterritorial authorities, including the applicable control list and the classification number, of each item of hardware, software, technical data, technology, documentation or other article or item required for the carrying out of the Works that is subject to export control laws and regulations, including the export laws and regulations of the United States ("**Export Control Laws**").
- 33.2 The Contractor shall obtain in good time all export control authorisations and licences required under the Export Control Laws to perform this Contract ("**Export Control Licences**"). The Contractor warrants that it either holds all required Export Control Licences on the Effective Date or will obtain such Export Control Licences in good time to meet the Completion Date(s).
- 33.3 The Contractor shall inform the Client immediately of any issues related to the Export Control Licences which may have an adverse impact on its capacity to perform its obligations under this Contract. The Client will assist the Contractor in producing the documentation necessary to obtain the Export Control Licences, including end use and end user statements.
- 33.4 When further subcontracting is permitted under this Contract, the Contractor shall include provisions equivalent to this Clause 33 in any further subcontracts entered into in respect of the Works, where applicable. The Contractor shall procure that all subcontractors requiring access to items that are subject to Export Control Licences shall be covered by the relevant Export Control Licences to the extent required by the Export Control Laws.

- 33.5 The Contractor acknowledges that the Works may be subject to one or more trade remedies in the United Kingdom (such as anti-dumping, countervailing duty or safeguard remedies), which may result in the imposition of additional duties or other charges or quantitative restrictions on goods imported into the United Kingdom. The Contractor shall take reasonable steps to minimise the risk that additional duties or other charges are imposed on goods supplied to the Client under this Contract and the amount of such duties or charges.
- 34. DISPUTE RESOLUTION**
- 34.1 Subject to either Party's right to adjudicate referred to in Clause 34.2, the Parties shall use their reasonable endeavours to resolve any dispute or difference arising out of or in connection with this Contract amicably through negotiation or by mediation.
- 34.2 In the event that any of the Works are subject to the Construction Act then, notwithstanding any other provision of this Contract:
- 34.2.1 either Party may refer a dispute arising under this Contract to adjudication at any time under Part I of the Scheme for Construction Contracts (England and Wales) Regulations, which Part shall take effect as if it was incorporated into this Clause;
- 34.2.2 the adjudicator shall be to be agreed by the Parties or, in the absence of agreement, nominated by the Chartered Institute of Arbitrators; and
- 34.2.3 any decision of the adjudicator shall be final and binding on the Parties.
- 34.3 Nothing in this Clause 34 shall restrict or prevent either Party from seeking injunctive relief at any time.
- 35. GOVERNING LAW AND JURISDICTION**
- 35.1 This Contract and any dispute or claim arising out of or in connection with it (whether such disputes are 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 law of England and Wales.
- 35.2 Subject to Clause 34.2, each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation save that each Party shall be entitled to take injunctive or enforcement proceedings against the other in any jurisdiction where that other Party holds assets.

**ANNEX 1 (LTPA FLOW-DOWN TERMS)****1. DEFINITIONS AND INTERPRETATION**

- 1.1 The following additional definitions shall apply in this Annex:
- 1.1.1 **"Contractor Default"** means (a) a breach of this Contract by the Contractor; and/or (b) a tortious or unlawful act or omission or negligence or breach of statutory duty on the part of the Contractor or any of the Contractor Staff or any party authorised by the Contractor, and for this purpose any act or omission on the part of any of the Contractor Staff and/or any party authorised by the Contractor shall be deemed to be an act or omission by the Contractor itself;
- 1.1.2 **"Good Environmental Management"** means the exercise of that degree of skill, diligence, prudence and foresight with a view at all times of minimising any risk of harm to the Environment which would reasonably and ordinarily be expected from a skilled and experienced person, seeking in good faith to comply with its contractual obligations, engaged in the United Kingdom in the operation and stewardship of sites which may be contaminated or engaged in services equivalent to or comparable with the Works and with sufficient financial resources to perform its obligations under this Contract and having regard to the history and use of the sites of which the Contractor is, or ought reasonably to be, aware save that this standard shall not be interpreted as imposing a greater obligation than under Environmental Law;
- 1.1.3 **"Prohibited Act"** means: (a) offering, giving or agreeing to give to any servant of the Crown any gift or consideration of any kind as an inducement or reward: (i) for doing or not doing (or for having or not having done) any act in relation to the obtaining or performance of this Contract, the LTPA or any other contract with the Crown; or (ii) for showing or not showing favour or disfavour to any person in relation to this Contract, the LTPA or any other contract with the Crown; (b) entering into this Contract or any contract with the Crown in connection with which commission has been paid or has been agreed to be paid by the Contractor or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Client; (c) committing any offence: (i) under the Bribery Act 2010; (ii) under legislation creating offences in respect of fraudulent acts; or (iii) at common law in respect of fraudulent acts in relation to this Contract, the LTPA or any other contract with the Crown; or (d) defrauding or attempting to defraud or conspiring to defraud the Crown.

**2. CONTRACTOR STAFF**

- 2.1 The Contractor shall use all reasonable endeavours to comply at all times with all applicable legislation and all applicable common law and contractual obligations relating to the employment by it or any other person of all servants, employees or agents of the Contractor, any of its subcontractors or of the Authority (and employees of the Authority shall be deemed to include for the purposes of this paragraph 2 members of HM Armed Forces) employed in the performance of this Contract.
- 2.2 Where any Contractor Staff are or are likely to be working on the Site, the Contractor shall, at the Client's request, procure that such Contractor Staff sign a confidentiality undertaking in the form provided by the Client before starting work.

**3. INDEMNITY**

- 3.1 The Contractor shall indemnify the Client in respect of any Contractor Default to the extent that it results in or contributes to any actions, proceedings or claims (including, for the avoidance of doubt, a claim by the Client) in relation to any of the following:
- 3.1.1 injury to, ill-health, disease or death of the Client's employees or any other third parties;
- 3.1.2 loss of or damage to land and tangible property;
- 3.1.3 any other loss or damage recoverable at law by third parties;
- 3.1.4 the incurring by the Client or the Authority of costs and expenses that would not have been incurred by them but for the Contractor Default, including such costs as may be incurred in or towards mitigation, rectification or remediation of the Contractor Default, or in or towards protection or enforcement of the Client's rights under this Contract.

**4. PROVISION OF INFORMATION**

- 4.1 The Contractor shall at its own cost and expense and to the extent reasonably required by the Client to comply with any requests for information from the Authority under the LTPA, maintain and make available to the Client from time to time any records, reports or information which concern the Works in the format reasonably required by the Client. All records shall be retained by the Contractor for a period of six (6) years and one month after the Contractor's responsibilities have been discharged.

**5. TERMINATION**

- 5.1 The Client shall have the right to terminate this Contract with immediate effect on giving written notice to the Contractor if the Contractor or any of the Contractor Staff or Contractor's subcontractors commits a Prohibited Act.
- 5.2 The Contractor shall (and will procure that its subcontractors shall), where and to the extent requested by the Client, co-operate with the Client and the Authority (and any party nominated by the Client or the Authority) to ensure an orderly and efficient transition of the work performed under this Contract to any party taking over responsibility for the provision of such work upon any termination or expiry of this Contract. Other than where this Contract has terminated by reason of Contractor Default, then the costs properly and reasonably incurred by the Contractor in providing such assistance shall be paid by the Client.
- 5.3 In the event of termination of the LTPA (or the part of the LTPA relevant to this Contract):
- 5.3.1 where directed to do so by the Authority, the Client shall be entitled to novate this Contract to the Authority or any party nominated by the Authority and the Contractor agrees to accept any such novation and enter into such documents and do such other things as necessary to give effect to such novation; and
- 5.3.2 where the Authority requires the Client to prepare an exit plan, the Contractor will co-operate with the Client in the generation of an exit plan and the costs properly and reasonably incurred by the Contractor in providing such assistance shall be paid by the Client, save to the extent that termination of the LTPA (or the relevant part of the LTPA) arises from any Contractor Default.

**6. PROVISION OF ASSISTANCE TO SUPPORT ACTION BY THE AUTHORITY**

- 6.1 The Parties acknowledge that the Authority is entitled under the LTPA to take such action as it reasonably believes necessary where:
  - 6.1.1 a serious risk exists to the health or safety of persons or property or to the Environment;
  - 6.1.2 it is required to discharge a statutory duty; or
  - 6.1.3 the existence of any other event prevents or interrupts the provision of services under the LTPA.
- 6.2 At the Client's request, the Contractor shall provide such assistance as the Client may reasonably require to support any such action taken by the Authority under the LTPA.
- 6.3 Where any such action is taken as a result of Contractor Default, the Contractor shall pay the reasonable costs incurred by the Client and/or the Authority as a result of such action.

**7. MEASURES IN A CRISIS**

- 7.1 The Parties acknowledge that the Authority may request the provision of information and/or changes to the services delivered under the LTPA where the Authority deems it necessary or appropriate in view of:
  - 7.1.1 a material threat to the national security and defence, or a material adverse effect on the national interests, of the United Kingdom, or the occurrence of a state of war, crisis, state of tension or national emergency (whether or not involving hostilities);
  - 7.1.2 a request to the Authority by a local authority, public body, or statutory corporation for assistance in relation to the occurrence (or possible occurrence) of a major accident, crisis or natural disaster; or
  - 7.1.3 a request by NATO, the United Nations, the European Union or another country for support or assistance in relation to international obligations.
- 7.2 Where, and to the extent that, the events detailed in paragraphs 7.1.1 to 7.1.3 affect the requirements of this Contract, the Contractor shall, at the Client's request and insofar as it is practicable to do so:
  - 7.2.1 accommodate any change requested by the Client in such requirements and within such period as may be specified by the Client and any such change shall be subject to the mutual written agreement of each Party's respective authorised representatives; and
  - 7.2.2 provide such information in the possession, knowledge or control of the Contractor as the Client may reasonably require to fulfil any obligation upon the Client (whether pursuant to the LTPA or otherwise) as a result of the relevant crisis.

**8. ENVIRONMENTAL MANAGEMENT**

- 8.1 The Contractor shall comply with the principles of ISO 14001 and, if expressly required for the provision of the Works in respect of any LTPA requirements, obtain certification as soon as reasonably practicable after the Effective Date.
- 8.2 The Contractor shall carry out the Works in accordance with Good Environmental Management.

**9. DEFCONS**

- 9.1 For the purposes of the DEFCONS referred to in this paragraph 9, references to:
  - 9.1.1 "Authority" shall be read as meaning the "Client";
  - 9.1.2 "Contractor" shall be read as meaning the "Contractor"; and
  - 9.1.3 "Contract" shall be read as meaning this Contract

except where otherwise stated, or the rights and/or obligations are of a nature that they must necessarily continue to be read as rights and/or obligations of the Authority (including without limitation where it is only the Authority that can satisfy the obligation) or the rights and/or obligations should be read as applying to both the Client and the Authority where this is necessary to ensure due and effective performance of the LTPA.

- 9.2 The following DEFCONS shall apply to this Contract:

DEFCON 76 (Edn 12/06) - Contractor's Personnel at Government Establishments
DEFCON 501 (Edn 11/17) - Definitions and Interpretations
DEFCON 516 (Edn 04/12) – Equality
DEFCON 520 (Edn 05/18) - Corrupt Gifts and Payments of Commission
DEFCON 528 (Edn 07/17) - Overseas Expenditure and Import Licences
DEFCON 534 (Edn 06/17) - Subcontracting and Prompt Payment Note: Where the Contractor enters into a subcontract in connection with the performance of this Contract, the Contractor shall include a term in such subcontract which requires payment to be made to the subcontractor in line with DEFCON 534 (i.e. within a period not exceeding thirty (30) days from receipt of a valid VAT invoice).
DEFCON 601 (Edn 04/14) - Redundant Materiel

<p>DEFCON 609 (Edn 08/18) - Contractor's Records For the purposes of DEFCON 609, the Contractor's records shall be made available to the Client and the Authority.</p>
<p>DEFCON 611 (Edn 02/16) - Issued Property The provisions of this DEFCON will also apply to items furnished directly or indirectly by the Client or the Authority to the Contractor in relation to this Contract.</p>
<p>DEFCON 658 (Edn 10/17) – Cyber This DEFCON will apply only where so stated in this Contract. Where applicable, the cyber risk level will be as stated in the Scope.</p>
<p>DEFCON 659A (Edn 02/17) - Security Measures This DEFCON will apply only where so stated in this Contract.</p> <p>The Appendix to DEFCON 659A shall apply to this Contract where this Contract involves the disclosure of Secret Matter to the Contractor. In the Appendix, "Agreement" shall mean the "Contract", "First Party" shall mean the "Client", "Second Party" shall mean the "Contractor" and "Authority" shall mean the Authority. For the purposes of clause 7 of the Appendix, where the Contractor proposes to enter into a subcontract which will involve the disclosure of Secret Matter to the subcontractor, it shall seek the Authority's approval to subcontract via the Client, by seeking permission to subcontract in accordance with the provisions of Clause 21 (Assignment and Subcontracting).</p>
<p>DEFCON 705 (Edn 11/02) – Intellectual Property Rights – Research and Technology This DEFCON will apply only where so stated in this Contract.</p>

9.3 Any breach by the Contractor of DEFCONs 534 and (where relevant) DEFCONs 658 and 659A shall be deemed to be a material breach of this Contract.