

**ROLLS-ROYCE SUBMARINES LIMITED**

**GENERAL CONDITIONS OF PURCHASE**

**GOODS AND SERVICES**

**SUBS/GCP Issue 5.0/May 2023**

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**PART 1 – GENERAL**

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

- 1.1 The definitions and rules of interpretation set out in Schedule 1 (Interpretation) apply to the Contract.
- 1.2 In the event of any conflict or inconsistency between any parts of the Contract the following order of precedence shall apply:
  - (a) the Order (excluding the Specification or description of the Deliverables and/or Services as set out, or referred to, in the Order);
  - (b) these GCP; and
  - (c) the Specification or description of the Deliverables and/or Services as set out, or referred to, in the Order.
- 1.3 Subject to clause 31.6, in the event of any conflict or inconsistency within any document or between documents (or any part thereof) of the same order of precedence, Rolls-Royce will determine which part or document takes precedence.

**2 CONTRACT FORMATION**

- 2.1 The Parties agree that these GCP shall be incorporated into any Contract upon the issue by Rolls-Royce of the Order.
- 2.2 The Contract shall commence on the Effective Date and shall continue in full force for the term as stated in the Order, or if no such term is specified, until the obligations of the Parties under the Contract are met (the “**Term**”), unless terminated earlier pursuant to clauses 26 (Termination by Rolls-Royce) or 27(Termination by the Supplier).
- 2.3 The Parties agree that the terms of the Contract are the only terms and conditions on which Rolls-Royce will purchase the Services and any Deliverables from the Supplier, and the Contract will apply to the exclusion of any other terms and conditions of business that may be referenced by the Supplier in any document issued by the Supplier to Rolls-Royce or implied by trade custom, practice or any course of dealings between the Parties.
- 2.4 Delivery of the Deliverables or commencement of performance of the Services will be deemed conclusive evidence of the Supplier’s acceptance of the terms of the Contract.

**3 REPRESENTATIONS AND WARRANTIES**

- 3.1 The Supplier represents and warrants to Rolls-Royce that:
  - (a) it has the power to enter into and perform and has taken all necessary action to authorise its entry into and performance of the Contract and the transactions contemplated by it;
  - (b) any and all obligations expressed to be assumed by it in the Contract are legal, valid, binding and enforceable obligations;
  - (c) it shall perform its obligations under the Contract in accordance with Good Industry Practice;
  - (d) 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 the Contract;

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- (e) 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 the Contract;
  - (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 the Contract or otherwise interceded or negotiated on the Supplier's behalf in relation to the agreement or negotiation of the Contract;
  - (g) it shall promptly and regularly provide Rolls-Royce with such reports and other information pertaining to the Supplier's progress and performance under the Contract. This obligation shall include the provision of facilities to hold progress meetings on the Supplier's or its Subcontractor's premises should these be required at reasonable intervals; and
  - (h) it will not be regarded as an Intermediary and no individuals who are or will be involved in the provision of the Services will be engaged via an Intermediary.
- 3.2 If at any point during the Term, any of the representations and/or warranties set out in clause 3.1 cease to be true in relation to the Supplier, the Supplier shall notify Rolls-Royce in writing immediately providing details of the reason why such representation and/or warranty no longer applies to the Supplier.
- 3.3 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 the Contract, any Specification and all applicable Law;
  - (b) be fit for any purpose held out by the Supplier or made known to the Supplier expressly or by implication and in this respect, Rolls-Royce relies on the Supplier's skill and judgement;
  - (c) be free from any defects (whether actual or latent) in workmanship and materials;
  - (d) where the Supplier or a Subcontractor is responsible for the design of the Deliverables, be free from defects (whether actual or latent) in design; and
  - (e) be merchantable, of satisfactory quality, and be produced with at least the degree of skill and care in workmanship 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.
- 3.4 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.

**PART 2 – PAYMENT, TRANSPARENCY & VARIATIONS**

**4 PRICE AND PAYMENT**

**Price**

- 4.1 Unless otherwise stated in the Order, the “Firm Price” provisions as set out in section 1 of Schedule 3 (Pricing and Payment) shall apply to the Contract. Where the Price is stated in the Order to be on a “Cost Plus” basis, the provisions of section 2 of Schedule 3 (Pricing and Payment) shall instead apply to the Contract.
- 4.2 Subject to the Supplier performing its obligations in accordance with the terms of the Contract, Rolls-Royce will pay the Price to the Supplier in accordance with this clause 4.
- 4.3 The Price and the currency for payment are as set out in the Order. The Price will not be subject to any escalation or other adjustment, subject to the provisions of clause 4.16 to 4.22 and Schedule 3 (Pricing and Payment).
- 4.4 The only monies to be paid by Rolls-Royce in connection with the supply of the Deliverables and the performance of the Services will be the Price which is inclusive of all costs and expenses incurred by the Supplier including all packaging, insurance, carriage and delivery costs and all travel, accommodation and subsistence expenses.

**Payment**

- 4.5 The Supplier shall be entitled to submit an invoice to Rolls-Royce:
  - (a) upon Acceptance by Rolls-Royce of the relevant Deliverables and/or Services; or
  - (b) following the achievement of a particular Milestone (as set out in the Order) to which that invoice relates, provided that evidence of the achievement of such Milestone has been submitted to and approved by Rolls-Royce in writing.
- 4.6 The Supplier shall include in any invoice a full breakdown of the Price. The invoice must include sufficient information to enable Rolls-Royce to verify that the relevant payment is due in accordance with the terms of the Contract.
- 4.7 The Supplier agrees and acknowledges that Rolls-Royce shall have no liability in respect of any payments due hereunder which are not validly invoiced by the Supplier in accordance with the Order or that are not validly invoiced within twelve (12) months following the date when the Supplier first became entitled to submit such invoice to Rolls-Royce under this clause 4.
- 4.8 The Supplier will agree the format of the invoice in advance with Rolls-Royce prior to submitting any invoices due under the Contract. Each invoice provided by the Supplier will be a valid Value Added Tax (“VAT”) invoice and will contain the following:
  - (a) the invoice date;
  - (b) the Order number;
  - (c) the period to which the invoice relates;
  - (d) a description of the Deliverables and/or Services to which the invoice relates;
  - (e) if applicable, details of any Milestone (including the Milestone number) for which payment is sought, including a copy of Rolls-Royce’s written approval that such Milestone has been achieved;
  - (f) a summary of the amounts previously paid by Rolls-Royce to the Supplier under the Contract; and

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(g) details of any applicable VAT in accordance with clause 4.14,  
(an invoice meeting the requirements of this clause 4.8 being a “**Valid Invoice**”).

- 4.9 The Supplier will submit its invoice(s) to Rolls-Royce’s Financial Service Centre at the address stated in the Order.
- 4.10 Provided the Supplier has complied with all of its obligations under the Contract, including its obligations under clauses 4.5 to 4.9, and subject to clause 4.16, payment of the invoice, unless otherwise stated on the Order, will be due and payable by Rolls-Royce on the first Friday falling on or after the date that is thirty (30) days following receipt by Rolls-Royce of a Valid Invoice from the Supplier. If such date is not a Working Day, then payment will be made on the following Working Day. Rolls-Royce will electronically transfer payment to the Supplier.
- 4.11 Rolls-Royce will be entitled to set-off any liability owed by it to the Supplier under the Contract against any liability of the Supplier or any of its Affiliates to Rolls-Royce or any of its Affiliates under the Contract or under any other agreement, whether such liability is present or future or liquidated or unliquidated.
- 4.12 If the Supplier does not receive any amount due from Rolls-Royce under the Contract on or before its due date (as set out in clause 4.10 above), the Supplier will be entitled to charge interest on such amount at a rate of 0.5% 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. The Parties agree that this clause 4.12 is a substantial remedy for late payment of any sum payable under the Contract, for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998.
- 4.13 No payment made by Rolls-Royce will constitute Acceptance or otherwise prejudice any rights or remedies which Rolls-Royce may have against the Supplier.

### **Tax**

- 4.14 The Price is exclusive of VAT or any other similar tax 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 clauses 4.5 to 4.9.
- 4.15 Subject to clause 4.14, 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, Rolls-Royce, and the personnel or any Affiliate of either Party, 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 Services and/or Deliverables under the Contract.

### **Disputed Invoices**

- 4.16 Without prejudice to clause 4.18, if Rolls-Royce, on bona fide grounds, disputes any part of an amount invoiced by the Supplier, Rolls-Royce will, within 30 days following the date of receipt of the relevant invoice, notify the Supplier in writing of that dispute giving details of the nature of the dispute and the amount that it claims should have been invoiced and:
- (a) within 14 days of its receipt of notice from Rolls-Royce in relation to the Disputed Sum, the Supplier will (as instructed by Rolls-Royce) either:
- (i) issue to Rolls-Royce a credit note for the amount of the Disputed Sum;  
or

- (ii) issue to Rolls-Royce a credit note for the invoice against which a dispute has been identified and submit a replacement invoice for the invoice value less the Disputed Sum;
  - (b) following receipt by Rolls-Royce of the credit note in accordance with clause 4.16(a)(i) or the credit note and replacement invoice in accordance with clause 4.16(a)(ii) above, Rolls-Royce will pay the amount invoiced in accordance with clause 4.5 or clause 4.16(a)(ii) (as applicable) to the Supplier on or before the first Friday falling on or after the date that is thirty (30) days following the date of receipt by Rolls-Royce of such credit note or replacement invoice (and for the avoidance of doubt, clause 4.10 will not apply to the payment of invoices falling within the scope of this clause 4.16);
  - (c) the Supplier will provide all such information and evidence as may be reasonably necessary to verify the Disputed Sum;
  - (d) following resolution of the dispute, the Supplier will, if necessary, issue a new Valid Invoice to Rolls-Royce for that part of the Disputed Sum (if any) as it is resolved is payable by Rolls-Royce (the "**Resolution Invoice**"); and
  - (e) provided that Rolls-Royce is satisfied that the Resolution Invoice accurately reflects the resolution of the dispute in respect of the Disputed Sum, Rolls-Royce will pay the amount of such Resolution Invoice to the Supplier on or before the first Friday falling on or after the date that is thirty (30) days following the date of receipt by Rolls-Royce of the Resolution Invoice (and for the avoidance of doubt, clause 4.10 will not apply to the payment of invoices falling within the scope of this clause 4.16).
- 4.17 For the avoidance of doubt, if Rolls-Royce fails to notify any dispute about the amount of an invoice to the Supplier in accordance with clause 4.16, this will not constitute a waiver of Rolls-Royce's right to dispute the amount of that invoice.
- 4.18 If Rolls-Royce, on bona fide grounds, disputes any part of an amount invoiced by the Supplier after such invoice has been paid by Rolls-Royce, Rolls-Royce will notify the Supplier in writing of that dispute giving details of the nature of the dispute and the amount that it claims should have been invoiced. Following such written notification by Rolls-Royce, clauses 4.16(a), 4.16(b), 4.16(d), and 4.16(e) will apply in respect of the Disputed Sum and the Supplier will repay on demand any sums due to Rolls-Royce.

**Allowable costs**

- 4.19 In accordance with Section 20(2) of the Defence Reform Act 2014, the Supplier agrees that the costs which the Supplier is entitled to be paid under the Contract are only those which are appropriate, attributable to the Contract and reasonable in the circumstances, having regard to the Statutory Guidance on Allowable Costs ("**Allowable Costs**").

**Compliant costs**

- 4.20 If at any time the Authority or the SSRO makes a determination that any cost which forms part of the Price is not allowable under Section 20 of the Defence Reform Act 2014 (a "**Disallowed Cost**"), and Rolls-Royce is either:
- (a) required to repay any Disallowed Cost to the Authority; or
  - (b) required not to invoice the Authority for such Disallowed Cost,
- then Rolls-Royce shall notify the Supplier of such Disallowed Costs and clause 4.21 shall apply.



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- 4.21 Following a notification made under clause 4.20, the Supplier shall either:
- (a) promptly repay any Disallowed Costs to Rolls-Royce within three (3) Working Days following receipt of the notice under clause 4.20; or
  - (b) where the Disallowed Costs relate to part of the Price which Rolls-Royce has not yet paid, not invoice Rolls-Royce for such Disallowed Costs,
- and the Price shall, in each case, be amended accordingly.
- 4.22 Any repayments made by the Supplier to Rolls-Royce under clause 4.20(a) in connection with any Disallowed Costs shall not be subject to any of the limitations or exclusions on the Supplier's liability set out in the Contract and any such amounts shall not be taken into account in calculating whether any of the financial limitations on the Supplier's liability set out in the Contract have been reached or exceeded.

## **5 TRANSPARENCY AND OPEN BOOK**

### **Transparency and Open Book Disclosure Obligations**

- 5.1 The Supplier agrees that it will operate under the terms of the Contract in accordance with transparency and open book principles, including:
- (a) the provision of the right information at the right time and in a suitable format agreed by both Parties, to enable efficient decision making and monitoring;
  - (b) the sharing of data, details of assumptions and supporting evidence to provide justification of amounts and/or explanations; and
  - (c) such other transparency and open book information as reasonably required by Rolls-Royce from time to time.
- 5.2 Any disclosure of open book data shall be subject to the provisions of clause 30 (Confidentiality) and clause 32 (Data Privacy).
- 5.3 The Supplier shall provide Rolls-Royce with full financial transparency across the Supplier's business to the extent that it relates to the Contract. Transparency shall include the provision of data in the Rolls-Royce CCW (Cost Component Worksheet) format (or such other format as may be agreed between the Parties) and, where deemed necessary by Rolls-Royce (at its sole discretion), additional explanation, justification and benchmarking information shall be provided.
- 5.4 The Authority, any authorised representatives of the Authority and any other approved bodies and their respective staff may require and shall be given access to any Supplier sites, where access has been permitted, in accordance with the Order and any other Supplier site relevant to the Order.

## **6 VARIATIONS**

- 6.1 Save as otherwise expressly provided in the Contract, no variation to the Contract (a "**Variation**") will be effective unless it is in writing and signed by a duly authorised representative on behalf of each of the Parties.
- 6.2 Any work conducted by the Supplier pursuant to a proposed Variation in advance of such Variation being agreed between the Parties is entirely at the Supplier's risk and Rolls-Royce shall have no obligation to pay for such work.

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

**7 DELIVERY AND VESTING**

- 7.1 The Supplier will, by the Scheduled Delivery Date and during Working Hours, (i) Deliver the Deliverables on a DDP basis (Incoterms 2020) to the location specified in the Order, and (ii) deliver all documentation required by the Contract to such location(s) as is or are specified in the Order. Notwithstanding anything contained in the Incoterms 2020, risk of loss or damage to a Deliverable will remain with the Supplier until Delivery.
- 7.2 The Services will be provided by the Supplier to Rolls-Royce from the Effective Date within the Specified Timescales.

**Supplier Delay**

- 7.3 Time of Delivery is of the essence.
- 7.4 Without prejudice to clause 7.3, if the Supplier fails to:
- (a) Deliver the Deliverables on or before the Scheduled Delivery Date; or
  - (b) perform the Services in accordance with any Specified Timescales,
- (each a “**Supplier Delay**”),
- then, in each case, Rolls-Royce may require the Supplier to pay to Rolls-Royce on demand in cleared funds the liquidated damages set out in the Order, or (where no such liquidated damages are specified), liquidated damages of 1% of the Price for each week (pro rata for any part week) that Supplier Delay continues, subject, in each case, to a maximum of 10% of the Price (the “**Liquidated Damages Cap**”).
- 7.5 If the Supplier fails to perform the Services in accordance with any Specified Service Levels, then Rolls-Royce may require the Supplier to pay to Rolls-Royce on demand in cleared funds the liquidated damages set out in the Order, or (where no such liquidated damages are specified), liquidated damages of 1% of the Price for each week (pro rata for any part week) in which the Services are not performed in accordance with the Specified Service Levels, subject to a maximum of 10% of the total value of the applicable Order (the “**Services Liquidated Damages Cap**”).
- 7.6 Where the liquidated damages payable under clause 7.4 meet the Liquidated Damages Cap or the liquidated damages payable under clause 7.5 meet the Services Liquidated Damages Cap, Rolls-Royce may treat each such failure as a default which is not remediable in accordance with clause 26.4 (Termination for Cause).
- 7.7 Without prejudice to any other rights and remedies available to Rolls-Royce (whether under the Contract or at Law), the liquidated damages specified at clause 7.4 are agreed as a genuine pre-estimate of the Losses which Rolls-Royce is likely to suffer as a result of the specified delay, failure or breach by the Supplier, and are a proportionate amount to protect the interests of Rolls-Royce in the performance of the Contract and will not be regarded as penalty provisions. The Supplier waives any right to claim that the liquidated damages are penalty provisions.
- 7.8 In the event that the Supplier fails to pay any liquidated damages to Rolls-Royce in accordance with clause 7.4, Rolls-Royce will be entitled to:
- (a) deduct the outstanding amount of such liquidated damages from any payments due to be paid by Rolls-Royce to the Supplier;

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- (b) notify the Supplier in writing that it requires the Supplier to issue a credit note in the sum of such liquidated damages, and the Supplier will within 14 days of its receipt of such notice from Rolls-Royce, issue to Rolls-Royce a credit note for the sum of such liquidated damages; or
- (c) recover from the Supplier (as a debt) the amount of liquidated damages owed by the Supplier under clause 7.4.

### **Vesting**

7.9 Subject to clause 7.10:

- (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 items 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 related items are so 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.

7.10 Neither the Supplier, nor a Subcontractor, nor any other person shall have a lien on any Deliverable, material or related items which has vested in Rolls-Royce under clause 7.9 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 related items.

7.11 Pursuant to clause 7.10, the Supplier will ensure that a mark which identifies Rolls-Royce's ownership is placed onto each Deliverable as soon as the construction begins, and onto all materials and related items at the point these are acquired or allocated in relation to each Deliverable (or otherwise as soon as practicable). Where this is not possible, a notice shall be displayed and record made by the Supplier as necessary for the purpose of ensuring that all such Deliverables, materials or related items 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 related items.

## **8 ACCEPTANCE**

8.1 Acceptance of Deliverables shall occur at the point at which all of the following criteria have been met:

- (a) where applicable, the passing of all Tests relevant to the Deliverables including Tests for sub-components incorporated into the Deliverables;
- (b) Delivery of the Deliverables in accordance with clause 7 (Delivery and Vesting);
- (c) delivery of a Certificate of Conformity in relation to all of the Deliverables;
- (d) where applicable, delivery of all documentation relating to the Deliverables; and
- (e) where applicable, rectification of any Non-Conformance identified prior to Acceptance pursuant to clause 9.2.

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- 8.2 Acceptance of Services shall occur when the Supplier has met the acceptance criteria for the relevant Services as set out in the Order, and in any event where the Services have not been expressly rejected by Rolls-Royce, forty-five (45) Working Days following Delivery, or such other period as may be agreed in writing between the Parties.
- 8.3 Where a Deliverable and/or Service is subject to a Concession, Acceptance will be deemed to have taken place upon (i) notification to the Supplier by Rolls-Royce that such Concession will be made, and (ii) payment by the Supplier to Rolls-Royce of the Administration Charge and application of the Concession Discount.

## 9 NON-CONFORMANCES

- 9.1 If at any point during the Term and/or during an applicable Warranty Period, any Non-Conformance in relation to the Deliverables and/or Services is identified by the Supplier, the Supplier will immediately report such Non-Conformance to Rolls-Royce.

### Pre-Acceptance Non-Conformances

- 9.2 If any Non-Conformance is identified prior to Acceptance, Rolls-Royce may:
- (a) terminate the Contract immediately by giving written notice to that effect to the Supplier;
  - (b) require the Supplier, at Rolls-Royce's option, to promptly and at no additional cost to Rolls-Royce:
    - (i) in respect of any Non-Conforming Deliverable, repair or replace the relevant Deliverable;
    - (ii) in respect of any Non-Conforming Service, re-perform the relevant Services and/or take any such actions as may be required to remedy the failure; or
  - (c) subject to clauses 9.5 to 9.8, accept such Non-Conformance (a "**Concession**").
- 9.3 Clause 9.1 will apply to any repaired or replacement Deliverables and/or remedial Services supplied under clause 9.2(b).
- 9.4 If, after Acceptance of any Deliverable Rolls-Royce identifies that the Certificate of Conformity for the Deliverables or any information contained or referred to in it was Defective, then Rolls-Royce may reject the Deliverable as Non-Conforming and clauses 9.1 to 9.3 shall apply as if Acceptance had not occurred. In such circumstances Rolls-Royce shall notify the Supplier within twenty (20) Working Days after becoming aware of any Defect in the Certificate of Conformity and in any event no later than ninety (90) Working Days following Acceptance of the relevant Deliverable.

### Concessions

- 9.5 Where Rolls-Royce expresses that it may consider a Concession in accordance with clause 9.2(c), the Supplier shall provide all necessary information and/or support to Rolls-Royce in assessing whether such Concession will be made. Any costs incurred by the Supplier in providing any such information or support will be the Supplier's liability and will not be recoverable from Rolls-Royce.
- 9.6 Without prejudice to the other rights and remedies available to Rolls-Royce (whether under the Contract or any Law), where Rolls-Royce agrees to make a Concession under clause 9.2(c), it will be entitled to charge the Supplier the applicable administrative charge as stated in the table below (the "**Administration Charge**"). 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 Non-Conformance and

are not a penalty:

<b>Quality Issue Cost Description</b>	<b>Administration Charge</b>
Non-Conformance identified by Supplier prior to Delivery and/or completion of the Services	£750
Non-Conformance identified by Rolls-Royce following Delivery and/or completion of the Services	£1,250
Non-Conformance identified by Permitted User	£3,000

- 9.7 In addition to payment by the Supplier of the Administration Charge, the Supplier shall reduce the relevant Price by an amount as Rolls-Royce may determine is appropriate to reflect the extent and impact of the Non-Conformance (the “**Concession Discount**”).
- 9.8 A Concession will not release the Supplier from complying with its other obligations under the Contract (including any warranties or representations given or made by the Supplier under the Contract).

**Post-Acceptance Non-Conformances**

- 9.9 Without prejudice to clause 9.4, if after any Deliverable and/or Service has been Accepted, it is found to have or develops a Non-Conformance within the Warranty Period, Rolls-Royce may:
- (a) immediately terminate the Contract by giving written notice to that effect to the Supplier;
  - (b) in respect of any Non-Conforming Deliverable, require the Supplier, at Rolls-Royce’s option, to promptly:
    - (i) at no additional cost to Rolls-Royce, repair or replace the relevant Deliverable;
    - (ii) refund the amount paid for the Deliverable to Rolls-Royce in full; or
    - (iii) refund such lesser amount as Rolls-Royce may agree is appropriate to reflect the extent and impact of the Non-Conformance;
  - (c) in respect of any Non-Conforming Service, require the Supplier to re-perform the relevant Services and/or take any such actions as may be required to remedy the failure at no additional cost to Rolls-Royce;
  - (d) in respect of any Non-Conforming Deliverables, 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 following Rolls-Royce invoicing the Supplier); or
  - (e) in respect of any Non-Conforming Services, 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 following Rolls-Royce invoicing the Supplier for those costs).

**Collection of Non-Conforming Deliverables**

- 9.10 If Rolls-Royce notifies the Supplier that it intends to exercise its rights to require the Supplier to repair or replace any Deliverable under clauses 9.2(b)(i) or 9.9(b)(i), the Supplier will collect the Deliverable, at the Supplier’s sole cost, from the address notified by Rolls-Royce, within thirty (30) days following such notification.

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- 9.11 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 following such notification as described in clause 9.10, Rolls-Royce will be entitled to scrap or dispose of the Deliverable at the Supplier's cost.
- 9.12 For the avoidance of doubt, any costs relating to the removal or re-installation of Deliverables which are incurred in relation to the obligations in this clause 9 shall be borne by the Supplier.
- 9.13 Where Rolls-Royce exercises its rights under clauses 9.2(b)(i) or 9.9(b)(i), risk in the Deliverable(s) will pass to the Supplier on collection and pass back to Rolls-Royce on re-Delivery.
- 9.14 The representations and warranties set out at clause 3.3 will apply in full to any Deliverable repaired or replaced or Service re-performed under this clause 9.

### **Testing**

- 9.15 Where repaired or replacement Deliverables are provided by the Supplier to Rolls-Royce under this clause 9, the Supplier will perform any tests as Rolls-Royce may require to ensure that such repaired or replaced Deliverables comply with the requirements of the Order.

## **10 FREE IN AID MATERIAL**

- 10.1 All Free in Aid Material required by the Supplier to fulfil the requirements of any Contract shall be identified by the Supplier and agreed with Rolls-Royce in writing before the relevant Contract is entered into and confirmed in the Order. Rolls-Royce shall have no obligation to provide Free in Aid Material which is not listed in the Order.
- 10.2 Nothing in the Contract shall vest any title or ownership to the Free in Aid Material in the Supplier, which the parties acknowledge and agree is owned by either Rolls-Royce or the Authority.
- 10.3 Free in Aid Material while in the Supplier's custody or control will be held at the Supplier's risk and the Supplier will at all times:
  - (a) be fully responsible for any loss of, or damage to any Free in Aid Material;
  - (b) only use the Free in Aid Material for the purposes of the Contract or as otherwise instructed or authorised in writing by Rolls-Royce;
  - (c) at the Supplier's expense, keep the Free in Aid Material insured in an amount equal to its replacement cost with insurance proceeds payable to Rolls-Royce (all Losses payable to Rolls-Royce);
  - (d) ensure that the Free in Aid Material is plainly and permanently marked or otherwise adequately identified by the Supplier as belonging to Rolls-Royce or the Authority as directed by Rolls-Royce;
  - (e) at the Supplier's expense, maintain and keep in good condition the Free in Aid Material (fair wear and tear excepted) at such locations as specified in the Order or as otherwise approved in advance in writing by Rolls-Royce; and
  - (f) maintain comprehensive records of the Free in Aid Material and will keep any logbooks, records (including the list and location, maintenance or use records) and any other documents relating to the Free in Aid Material, fully up to date. Rolls-Royce shall be provided with access to such records upon request.

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- 10.4 The Supplier shall subject Free in Aid Material to (i) on receipt, a reasonable visual inspection, and (ii) within fourteen (14) days following receipt (or such longer period as may be specified in the Order) such reasonable additional inspection and testing as may be necessary and practicable to check that the Free in Aid Material is not defective or deficient for the purpose for which it has been provided, provided that:
- (a) where Free in Aid Material is issued in a 'preserved, identified and packaged' condition it shall not be unpacked earlier than is necessary and, for such items, the fourteen (14) day period stated in clause 10.4 above shall commence from the date on which packages are opened; and
  - (b) the Supplier shall promptly advise Rolls-Royce if it is unable to carry out its obligations under clause 10.4 above, and thereafter the Supplier shall comply at no additional cost with such alternative arrangements as Rolls-Royce may instruct.
- 10.5 In the event that any defects or deficiencies in the Free in Aid Material are discovered by the Supplier in accordance with clause 10.4:
- (a) the Supplier shall notify Rolls-Royce as soon as is reasonably practicable of such defects or deficiencies; and
  - (b) instructions for the repair, return or disposal of defective or deficient Free in Aid Material shall be issued by Rolls-Royce 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.
- 10.6 The Supplier will immediately follow any instructions from Rolls-Royce to return to Rolls-Royce any Free in Aid Material (whether issued under clause 10.5(b) or otherwise).
- 10.7 The Supplier will indemnify Rolls-Royce on demand against all losses, liabilities, costs, damages and expenses that Rolls-Royce does or will incur or suffer, all claims or proceedings made, brought or threatened against Rolls-Royce by any person and all losses, liabilities, costs (on a full indemnity basis), damages and expenses Rolls-Royce does or will incur or suffer as a result of defending or settling any such actual or threatened claim or proceeding, in each case arising out of or in connection with a breach by the Supplier of the provisions of this clause 10.
- 10.8 Neither the Supplier, nor any Subcontractor, nor any other person, shall have a lien on Free in Aid Material, whether paid for by 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 Free in Aid Material.

## **11 QUALITY**

- 11.1 The Supplier will comply in full with the 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 at the issue identified in the Order, and flow down the applicable requirements and expectations of Rolls-Royce to its Subcontractors, unless (in each case) 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 the Contract.
- 11.2 Unless otherwise specified in the Order, the Supplier will ensure that any Deliverables are new and unused on Delivery.

**12 WARRANTY PERIOD**

- 12.1 Without prejudice to Rolls-Royce's other rights and remedies, the warranty period in respect of Non-Conformances shall be twenty four (24) months following Acceptance unless otherwise stated in the Order (the "**Warranty Period**").
- 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 Deliverables 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, as Rolls-Royce 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, repair any Defect or rectify any failure or breach by a Subcontractor, without complying with the requirements of clause 12.2. The Supplier shall, unless or to the extent otherwise instructed by notice from Rolls-Royce in accordance with clause 38 (Communications), 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 Price in connection with the performance of the Supplier's obligations under the Contract. For the avoidance of doubt, the Supplier shall not be entitled to recover any costs from Rolls-Royce which it has recovered from any Subcontractor or, where relevant, any Subcontractor's insurers.
- 12.4 Pursuant to clause 43 (Third Party Rights), Rolls-Royce shall be permitted to extend the benefit of this warranty for such Warranty Period to its Permitted Users under the Head Contract, and/or to the Authority.



**PART 4 – SUPPLIER OBLIGATIONS**

**13 WORKFORCE MATTERS**

- 13.1 The Supplier shall ensure that the Supplier Personnel:
- (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 Supplier Personnel 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;
  - (c) comply with all relevant statutes, statutory provisions and other Law; and
  - (d) observe and comply with the Global Supplier Code of Conduct and any other applicable codes of practice.

**Removal of Supplier Personnel and Employment Obligations**

- 13.2 If Rolls-Royce, its Affiliates, or any Permitted User, reasonably believes that any member of the Supplier Personnel is sub-standard, or shall at any time be dissatisfied for any reason with the performance or behaviour of any person engaged in performing the Services or any services required for the performance of the Contract, or otherwise unsuitable to perform their obligations in connection with the Contract, Rolls-Royce may, in its absolute discretion, give notice requiring the Supplier to remove any such member of the Supplier Personnel from the provision of the Services or services required for the performance of the Contract. The Supplier shall (at its own cost) promptly arrange for the removal of such Supplier Personnel from the performance of the Contract and shall within twenty-four (24) hours provide a substitute person satisfactory to Rolls-Royce and, as applicable, its Affiliates and/or the Permitted User at no additional cost to Rolls-Royce.
- 13.3 The Supplier Personnel will at all times remain employed or engaged by the Supplier and the Supplier shall meet all employment costs and liabilities in respect of such Supplier Personnel.
- 13.4 The Supplier shall be responsible for all acts and/or omissions of the Supplier Personnel while at the premises of Rolls-Royce, its Affiliates or any Permitted User, whether or not such acts and/or omissions are in the normal course of business. The Supplier shall indemnify Rolls-Royce, any of its Affiliates (as applicable) and any Permitted User (as applicable) against any Losses and Employment Liabilities that the indemnified person does or will incur or suffer arising from or in connection with the acts and/or omissions of the Supplier Personnel, including any loss or damage to Rolls-Royce and/or any of its Affiliates' (as applicable) equipment and/or tangible property arising from any act or omission of the Supplier Personnel.
- 13.5 The Supplier shall notify Rolls-Royce immediately in writing on becoming aware of any breach or suspected breach by the Supplier (to include Supplier Affiliate and Supplier Personnel) or any Subcontractor, of any applicable Laws or, of any act or omission that might put Rolls-Royce in breach of any applicable Laws and shall provide Rolls-Royce with such assistance as it may require to investigate such allegations and correct any breach and on Rolls-Royce's request (at the Supplier's own cost) do all such things as are necessary in order to minimise the impact of such breach.

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- 13.6 The Supplier will not utilise the services of any independent contractors to provide or perform the Supplier's obligations under the Contract except for those Subcontractors engaged pursuant to clause 14.
- 13.7 The Supplier shall not without the prior written consent of Rolls-Royce allow any person on to any of Rolls-Royce's premises or sites other than those persons directly engaged in providing the Services, supplying the Deliverables and/or providing services required for the performance of the Contract.
- 13.8 Without prejudice to the generality of clause 13.1, the Supplier shall ensure that:
- (a) the Supplier, the Supplier Personnel and each Subcontractor shall not export, re-export or transfer (including orally or in writing, electronic or other form) information, technology, software or equipment which is controlled by Export Laws to:
    - (i) a country subject to Sanctions; and/or
    - (ii) a Sanctioned Person; and
  - (b) the Supplier shall only use ITAR technical data received from Rolls-Royce in the performance of the work required to deliver the Services or supply the Deliverables under the Contract and shall not transfer or otherwise provide access to any ITAR or EAR controlled item, data or services to any Supplier Personnel (including Supplier Personnel within the same country) who is not a "U.S. person" as defined in the ITAR (22 C.F.R. 120.15), without the authority of a US Government export licence, agreement or other authorisation, such as an applicable licence exemption or exception.

### **TUPE**

- 13.9 None of the 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.
- 13.10 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. If, as a consequence of the termination or expiry of the Contract (whether in whole or in part), the contract of employment or engagement of any person who was engaged (or formerly engaged) in providing the Services (or part of the Services) has the effect or is alleged to have such effect, pursuant to the Transfer Regulations, as if originally made between Rolls-Royce, any Affiliate of Rolls-Royce, any Permitted User (if applicable), or any Successor Supplier (as applicable) and any such person, then, the Supplier shall indemnify Rolls-Royce (and shall pay to Rolls-Royce such sums as would, if paid to the relevant Affiliate, Permitted User (if applicable), or Successor Supplier (as applicable), indemnify the relevant Affiliate, Permitted User (if applicable), or Successor Supplier (as applicable)) in full against all Losses that Rolls-Royce, any Affiliate of Rolls-Royce, any Permitted User (if applicable), and/or any Successor Supplier does or will incur or suffer arising from or in connection with (i) any such employment or engagement, and (ii) any termination of any such employment or engagement.
- 13.11 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.

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13.12 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**");
- (b) (unless they do wish to employ or engage such an employee themselves and the employee accepts such an offer, in accordance with clause 13.13 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 following 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.

13.13 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 13.12 above), then if termination is not effected in accordance with clause 13.12, upon the formal commencement of such employment the above indemnities at clause 13.10 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 all remuneration of any kind due to the employee and any negligence claims or unlawful discrimination.

13.14 The Parties agree that the Contracts (Rights of Third Parties) Act 1999 will apply to this clause 13 to the extent necessary to ensure that, pursuant to section 1(1) of the Contracts (Rights of Third Parties) Act 1999:

- (a) any Affiliate(s) of Rolls-Royce and any Permitted User will have the right to enforce the obligations owed to them under this clause 13 in their own right; and
- (b) 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 under this clause 13,

and 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 clause 13 to any such Successor Supplier.

- 13.15 The Supplier agrees that, in respect of any employees of Rolls-Royce, its Affiliates, or any Permitted User involved in connection with the Contract, the Supplier shall not, during the term of the Contract and for a period of twelve (12) months after the expiry or termination of the Contract, 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 13.15 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).

#### **14 SUBCONTRACTING**

- 14.1 The Supplier may subcontract any of its obligations under the Contract in accordance with this clause 14, provided to do so would not conflict with any of its obligations under the Contract.
- 14.2 Where the Supplier subcontracts any of its obligations under the Contract it shall at all times remain liable to Rolls-Royce for the proper performance of all of its duties and obligations under the Contract regardless of whether or not such duties or obligations are subcontracted to any Subcontractor.
- 14.3 Subject to clause 14.6, where the Supplier subcontracts work to a third party, it shall include in each Subcontract and shall procure that each Subcontractor (of any tier) to whom any of its obligations are subcontracted shall include in each Subcontract the following clauses as stated in the Contract:
- (a) Clauses 7.9 – 7.11 (Vesting);
  - (b) Clause 10 (Free in Aid Material);
  - (c) Clauses 17.1 and 17.3 (Supply of Information and Rights of Inspection);
  - (d) Clause 18 (Security Aspects);
  - (e) Clause 19 (Information Security);
  - (f) Clause 29 (Corrupt Gifts and Payments of Commission);
  - (g) Clause 30 (Confidentiality);
  - (h) Clause 31 (Prohibition of Publication and Disclosure);
  - (i) Clause 37 (Ethics); and
  - (j) Clause 45 (Cooperation).
- 14.4 Subject to clause 14.6, where the Supplier subcontracts work to a third party, it shall include in each such Subcontract and shall procure that each Subcontractor (of any tier) to whom any of its obligations are subcontracted shall include in each Subcontract the following terms:
- (a) require payment to be made by the Supplier to the Subcontractor within a specified period not exceeding thirty (30) days from receipt of valid and undisputed invoice as defined by the Subcontract requirements;
  - (b) require that the Subcontractor complies with all relevant statutes, statutory provisions and other Law;
  - (c) require the Subcontractor to provide to the Supplier the notification required by clauses 33.10 and 33.11 as though in that clause the “Supplier” was the Subcontractor and “Rolls-Royce” was the Supplier;

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- (d) prohibit the Subcontractor from placing or causing to be placed, any order with any supplier, or otherwise incur liabilities, in the name of Rolls-Royce or the Authority or any of its representatives, unless and to the extent, if any, specifically provided for in the Contract;
- (e) where applicable, an obligation on the Subcontractor which is equivalent to that required of the Supplier under clause 17.7;
- (f) grant to the Authority a perpetual, royalty free, non-exclusive licence to have copied, modified and used any Subcontractor owned Background IPR required for the purposes of enabling a party on behalf of the Authority to utilise the Foreground IPR;
- (g) require the Subcontractor to provide such information as may be necessary to enable the Supplier to fulfil its reporting requirements under the Contract;
- (h) require the Subcontractor to comply with any instruction issued to it by the Authority pursuant to clause 43.1(e)(i)(B);
- (i) ensure so far as is reasonable and appropriate, taking account of the subject matter and value of the Subcontract, that the Subcontractor provides such transparency and open book as is consistent with the provisions of the Contract;
- (j) procure termination provisions and provisions relating to the consequences of termination which are consistent with terms entered into in the ordinary course of business and are on reasonable commercial terms and include an obligation on the relevant Subcontractor to use its reasonable endeavours to mitigate any losses that it can claim under the Subcontract;
- (k) require that either party to the Subcontract shall release to Rolls-Royce any of those parts of the Subcontract documentation as are necessary to demonstrate Rolls-Royce's and the Supplier's compliance with the provisions of the Contract and Subcontract and that any such release shall not amount to a breach of any provision of confidentiality contained within the Subcontract;
- (l) where the Supplier places any Subcontract with a value of more than £50,000 (fifty thousand pounds sterling) in connection with the Contract, it shall ensure that it has the right to terminate that Subcontract for convenience by giving not less than twenty (20) Working Days' notice (or such other notice period as Rolls-Royce shall give under the Contract);
- (m) where the Supplier subcontracts work under the Contract, which is likely to be subject to foreign export control, secure compliance with the relevant provisions of the Contract identified in clause 22(Overseas Expenditure Notification);
- (n) where required by Rolls-Royce or the Authority, the Subcontractor shall provide an appropriate warranty (or equivalent) in respect of all or any part of the Services or Deliverables provided by such Subcontractor on such terms reasonably required by Rolls-Royce and such warranty (or equivalent) shall be freely transferable by Rolls-Royce or the Authority (or, if the Authority elects, to a third party contractor of the Authority) and where such warranty (or equivalent) is not available, the Supplier shall notify Rolls-Royce before placing the Subcontract;
- (o) equivalent terms to those specified in clause 23 (inserting relevant party names where appropriate); and
- (p) the Appendix to DEFCON 528.

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- 14.5 The Supplier will ensure that all terms which are included in a Subcontract pursuant to the requirements of this clause 14 (Subcontracting) will operate for the benefit of the Authority and Rolls-Royce, and that the Authority and/or Rolls-Royce shall be able to enforce those terms which confer a benefit on the Authority and/or Rolls-Royce in accordance with the terms of the Subcontract.
- 14.6 Where the Supplier is unable to procure (or is unable to procure that any Subcontractor procures) in any Subcontract the inclusion of the obligations in accordance with clauses 14.3 and 14.4 the Supplier shall give written notice to Rolls-Royce. Rolls-Royce shall then advise on the actions required by the Supplier prior to the placement of any Subcontract, which the Supplier must comply with.

## **15 LIABILITY AND INDEMNITY**

- 15.1 If the Supplier is entitled under the 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.
- 15.2 If Rolls-Royce is entitled under the 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.
- 15.3 The Supplier will indemnify Rolls-Royce in full against all Losses that Rolls-Royce does or will incur or suffer as a result of the Supplier's breach of any term of the Contract or as a result of any tortious (including negligent) acts or omissions of the Supplier (or any Subcontractor) in connection with the performance of the Contract.

## **16 INSURANCE**

- 16.1 The Supplier shall at its own cost, obtain and maintain until the later of (i) the end of the Term, or (ii) the expiry of the relevant Warranty Period (or any other period stated in the Order), the following insurances together with any additional insurance requirements stipulated in the Order:
- (a) employers' liability insurance for the sum of not less than £10,000,000 (ten million pounds sterling) or such higher amount as may otherwise be required by law;
  - (b) motor insurance cover as required by law;
  - (c) 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;
  - (d) product liability insurance for the sum of not less than £10,000,000 (ten million pounds sterling) per annum;
  - (e) professional indemnity insurance for the sum of not less than £10,000,000 (ten million sterling) per annum; and
  - (f) any other insurances which the Supplier is required to maintain 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 the Contract.

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- 16.2 Whenever so required and requested by Rolls-Royce, the Supplier shall provide within three (3) Working Days following such request an insurance broker's letter confirming that it holds such policies required in accordance with clause 16.1.
- 16.3 The Supplier agrees to advise Rolls-Royce of any claims made against any of the insurance policies in clause 16 (including those arising out of the work undertaken outside of the Contract).
- 16.4 The Supplier warrants that nothing has or will be done or omitted to be done which may result in any of the insurance policies set out above being or becoming void, voidable or unenforceable.
- 16.5 The stipulations contained in this clause 16 (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 the Contract.
- 16.6 The Supplier will ensure that Rolls-Royce is either named as an additional insured party or provided with an indemnity to principal under each of the above-named policies.

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

- 17.1 Rolls-Royce may, at its absolute discretion and at any time before the termination or completion of the Contract, inspect, or nominate a Permitted User, a Regulatory Body or an independent third party to inspect:
  - (a) the Supplier's premises where any work related to the Contract, 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 to ensure that Rolls-Royce or, as applicable, a Permitted User, a Regulatory Body or an independent third party is able to conduct and complete such inspections promptly and to Rolls-Royce's satisfaction.
- 17.2 The Supplier shall provide to Rolls-Royce such reasonable working accommodation for representatives for the duration of the inspection as Rolls-Royce may require. Working accommodation provided shall be adequately furnished (including telephone facilities), lighted, heated and ventilated.
- 17.3 Rolls-Royce will usually give the Supplier reasonable written notice of its intention to exercise its rights under clause 17.1, however Rolls-Royce retains, at its sole discretion, the right to conduct inspections by providing no more than 48 hours' prior notice to the Supplier.

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- 17.4 If any inspection is required by Rolls-Royce under clause 17.1 as a result of reasonable concerns relating to the Supplier's ability to perform its obligations in accordance with the Contract, the Supplier will be responsible for the costs of the inspection.
- 17.5 In addition to the foregoing, if Rolls-Royce has reasonable grounds for believing the Supplier may be unable to perform its obligations under the 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 the Contract, within thirty (30) days following Rolls-Royce's request.
- 17.6 Any inspections carried out by Rolls-Royce, a Permitted User, a Regulatory body or an independent third party in accordance with this clause 17 will not imply Acceptance or any waiver of the Supplier's obligations or Rolls-Royce's rights under the Contract.
- 17.7 Where the estimated value of the Contract or any Subcontract exceeds £500,000 (five hundred thousand pounds sterling), the Supplier shall provide details of its incurred costs for certification and validation by CAAS in accordance with its standard certification procedures from time to time.

## **18 SECURITY ASPECTS**

- 18.1 The provisions of DEFCON 659A (Security Measures) and DEFCON 660 (Security Requirements) are incorporated into the Contract by reference and shall apply.
- 18.2 Supplier Personnel with access to assets classified as Official or above is required as a minimum to have Baseline Personal Security Standard (BPSS) clearance as defined in HMG Baseline Personnel Security Standard Version 6.0 – May 2018 as amended.
- 18.3 Where information to be shared with a Supplier is identified by Rolls-Royce to be classified as above Official, Rolls-Royce will generate a Security Aspects Letter. The Supplier is required to confirm by acknowledgement their compliance to the requirements of the Security Aspects Letter prior to any exchange of classified information.
- 18.4 The Supplier confirms that the classification and definition of the information has been brought to the attention of the person directly responsible on behalf of the Supplier for the security of the Contract and the information, that the definition is understood and that measures can and will be taken to safeguard the information.
- 18.5 If the Supplier proposes to enter into a Subcontract which will involve the disclosure of information which is classified as above Official to the Subcontractor, the Supplier shall:
  - (a) submit for the 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 the appendix to DEFCON 659A (Security Measures) and such secrecy and security obligations as Rolls-Royce shall direct (including if appropriate the issuing and acknowledgement of a Security Aspects Letter to the Subcontractor). In such appendix "Agreement" shall mean the "Subcontract", "First Party" shall mean the "Supplier" and "Second Party" shall mean the "Subcontractor"; and
  - (c) inform Rolls-Royce immediately if it 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 Subcontract.



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- 18.6 Submissions for approval under clause 18.5(a) above are not required in respect of work to be carried out by Subcontractors at premises which are known to be security-approved by the Authority. In other cases, the information required under clause 18.5(a) shall be submitted to the Rolls-Royce security representative and copied to the Supplier's security adviser.

## **19 INFORMATION SECURITY**

- 19.1 Clause 19.2 to 19.4 will apply unless the Order states that the cyber risk level is high in which case clause 19.5 shall apply.
- 19.2 For the Term, the Supplier shall possess Cyber Essentials Accreditation, which shall be renewed annually with evidence provided of such renewal submitted to Rolls-Royce's Representative (identified in the Order) within five (5) Working Days of the expiry date of the Cyber Essentials Accreditation.
- 19.3 Where the Supplier does not currently have Cyber Essentials Accreditation, the Supplier shall demonstrate to Rolls-Royce's satisfaction that the Supplier meets the technical requirements prescribed by the Cyber Essential Scheme and that it can provide evidence of verification by a technically competent third party which demonstrates current compliance with Cyber Essentials Accreditation technical requirements.
- 19.4 In addition, if information classified above Official is to be exchanged electronically with the Supplier, the Supplier shall possess Cyber Essentials Plus Certification in conjunction with Cyber Defence Risk (CyDR) accreditation which shall be renewed annually with evidence provided of such renewal submitted to Rolls-Royce's Representative (identified in the Order) within five (5) Working Days of the expiry date of the Cyber Essentials Accreditation
- 19.5 The Supplier shall comply with DEFCON 658. The cyber risk level and the applicable Supplier Assurance Questionnaire reference will be defined in the Order.

## **20 IMPORT AND EXPORT CONTROL**

### **Export Control Compliance**

- 20.1 The Supplier:
- (a) at all times, and without prejudice to any of its other obligations, will comply with all applicable export control laws and regulations in particular but not limited to the Export Control Order 2008 and Export Control (Amendment) Order 2021, EU Council Regulation ("EC") No. 428/2009, the United States Department of Energy, 10 CFR Part 810 ("DoE"), the Nuclear Regulatory Commission 10 CFR Part 110 of the United States Code of Federal Regulations, the Export Administration Regulations, and all other applicable international and national export control law and regulations;
  - (b) acknowledges and agrees that any information or deliverables provided to or received by it may be subject to export control laws and regulations. The Supplier warrants and undertakes that it will not use or permit the use of, export, transfer, re-export or retransfer by any means, electronic or otherwise, any information or deliverables which are subject to export control without complying in all respects with the applicable export control laws, regulations, orders, rules and/or codes of conduct, relevant export authorisation(s), guidelines, notices and/or instructions relating to such exports or transfers, re-exports or re-transfers of the export controlled Information or deliverables;

- (c) acknowledges and agrees that the determination and provision of export classifications is fundamental to export control compliance and shall provide the export classifications of any controlled product(s)/technology(s), and that all controlled technologies will be marked with applicable export classification from the originating regulatory jurisdiction;
  - (d) where goods, technology, software or services are subject to export controls and the Supplier wishes to export, the Supplier is responsible for applying for the applicable authorisations(s) and awaiting the granting of an export authorisation(s) prior to an export being made. Where goods, technology, software or services are provided to Rolls-Royce that are subject to export controls and / or an export authorisation(s) applies, the Supplier shall provide details as soon as practicable to Rolls-Royce. Such details shall include the export licence type and reference, country of origin, exemptions, exceptions, etc. and where applicable, any conditions or restrictions in the export authorisation(s) in order that Rolls-Royce can maintain compliance with any associated export authorisation(s);
  - (e) where goods, technology, software or services are not subject to export controls shall provide positive affirmation that items are not listed or not subject to export control; and
  - (f) prior to the Effective Date provide a fully populated declaration using the Rolls-Royce template Defence Export Control Authorisation Form (“**DECAF**”) and thereafter provide a revised DECAF as soon as practicable informing Rolls-Royce of any changes to previously provided information.
- 20.2 The Supplier will at all times have in place adequate procedures to address all export requirements including but not limited to export classification, export control marking, destination and denied party screening, export authorisations, physical exports, intangible transfers, record keeping, US export controls, access controls and re-exports.
- 20.3 In the event the Supplier breaches any of the provisions of the above clauses it shall notify and indemnify Rolls-Royce with respect to all losses, damages, claims, compensation, awards, expenses (including legal fees), fines and judgments incurred as a result or as a consequence of such breach.
- 20.4 The Supplier shall clearly mark all documents provided to Rolls-Royce with the export control classification of the document. The export classification marking shall be in accordance with the Regulators Strategic Export Control Lists and is particularly important where the material is of US origin or has US design content.

#### **Import Licence**

- 20.5 If, in the execution of the Contract, the Supplier needs to import material into the UK for which an import licence is required, the responsibility for applying for the licence shall rest with the Supplier.

### **21 ECONOMIC AND TRADE SANCTIONS COMPLIANCE**

- 21.1 The Parties acknowledge the importance and responsibilities of full compliance with applicable Sanctions.
- 21.2 Each Party represents and warrants to the other that none of the Party, any of its subsidiaries or affiliates, any director, officer or employee of the Party or any of its subsidiaries or affiliates is an individual or entity (“Person”):
- (a) listed on any Sanctions List;

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- (b) located, organized or resident in a country or territory that is currently the target of any comprehensive, territory-wide Sanctions;
  - (c) directly or indirectly owned or controlled by any Person currently listed on any Sanctions List, or directly or indirectly owned or controlled by any Person who is located, organized, or resident in a country or territory that is the target of comprehensive, territory-wide Sanctions; or
  - (d) currently the subject of any Sanctions investigation, or directly or indirectly owned or controlled by any Person who is currently the subject of a Sanctions investigation.
- 21.3 The Parties will not directly or indirectly deliver or otherwise make any item subject to the Contract available to a person, individual, country or territory in any manner that would result in a violation of Sanctions.
- 21.4 Changes to Sanctions that are beyond the control of either Party that result in the inability to deliver items as per the Contract will constitute a Force Majeure Event and hold the other Party free from any arising liabilities.

## 22 OVERSEAS EXPENDITURE NOTIFICATION

- 22.1 The Supplier shall report, in writing to Rolls-Royce, details of any direct expenditure outside of the United Kingdom of Great Britain and Northern Ireland under an individual Subcontract valued at over £1,000,000 (one million pounds sterling) (excluding any taxes) ("**Overseas Expenditure**") likely to be incurred in the performance of the Contract immediately once the possibility is known (if such details were not furnished by the Supplier to Rolls-Royce at the time of tendering the contract). The details to be provided by the Supplier are as follows:
- (a) contract number;
  - (b) country in which the Subcontract is placed/to be placed;
  - (c) name, division and full postal address of the Subcontractor;
  - (d) value of the Subcontract as applicable to the Contract; and
  - (e) the date the Subcontract is placed/to be placed.
- 22.2 For the purpose of this clause 22 (Overseas Expenditure Notification), direct Overseas Expenditure comprises only those direct payments over £1,000,000 (one million pounds sterling) made by the Supplier to non-UK Subcontractors for the supply of finished or semi-finished manufactured products imported directly into the UK by the Subcontractor or by such UK firms/branches.
- 22.3 The Supplier shall submit any information required by clause 22.1 to Rolls-Royce's Representative (identified in the Order).

## 23 MATERIAL SINGLE SOURCE SUB-CONTRACTS (NON QUALIFYING)

- 23.1 The provisions contained in this clause 23 (Material Single Source Sub-Contracts (Non-Qualifying)) shall be included in all Material Single Source Sub-Contracts as defined below.
- 23.2 Wherever the following words and expressions appear in this clause or any reference to this clause, they shall have the following meaning given to them, except where the context requires a different meaning:
- (a) "**Group Undertaking**" has the meaning given by section 1161 of the Companies Act 2006;

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- (b) **“Material Single Source Sub-Contract”** means a Subcontract entered into by the Supplier where:
- (i) the Subcontract is entered into at the same time as, or after, the date on which the Contract was entered into;
  - (ii) the Subcontract is entered into for the purposes of the Contract;
  - (iii) the award of the Subcontract is not the result of a “competitive process” as defined in the Single Source Contract Regulations 2014 (SSCR) for Qualifying Sub-Contracts (QSC);
  - (iv) at least 50% of the Subcontract (by value) is required either to enable performance of the Contract, or to enable the combined performance of the Subcontract and any other Qualifying Defence Contract (QDC) or QSC, or prospective QDC or QSC, to which the Supplier or any Group Undertaking of the Supplier is a party, or might become a party;
  - (v) the value of the Subcontract is of or above £1,000,000; and
  - (vi) the Subcontract is not a QSC;
- (c) **“Relevant Records”** means accounting and other records:
- (i) which the Supplier may reasonably be expected to keep; and
  - (ii) which are sufficiently up-to-date and accurate for use by the Authority for any of the purposes listed in clause 23.4 below;
- (d) **“Representatives”** means employees, agents, officers, advisers and other representatives of the Authority; and
- (e) **“Subcontract Completion Date”** means:
- (i) the date described in the Subcontract as the date by which completion is required; or
  - (ii) if no such date is described in the Subcontract, the date on which the Subcontractor completes all obligations which entitle it to final payment under the Subcontract; and
  - (iii) if the Subcontract is terminated before the date described in paragraphs (i) and (ii) above, the date on which the Subcontract is terminated.

23.3 The Supplier shall maintain Relevant Records from the date on which the Subcontract was entered into for the period ending on the sixth anniversary of the end of the accounting period to which those Relevant Records relate or two (2) years after the Subcontract Completion Date, whichever is the sooner.

23.4 Rolls-Royce, the Authority, or their Representatives, may examine Relevant Records maintained by the Supplier where reasonably required for one or more of the following purposes:

- (a) verifying whether a cost of the Supplier is an Allowable Cost;
- (b) verifying the reason for any difference between an estimated and actual Allowable Cost;
- (c) verifying any other matter relating to the price payable under the Subcontract;
- (d) monitoring the Supplier’s and the Subcontractor’s performance of its obligations under the Subcontract; and
- (e) monitoring the Supplier’s performance of its obligations under the Contract.

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- 23.5 Rolls-Royce or the Authority must give to the Supplier at least twenty (20) Working Days' prior written notice of its intention to examine the Relevant Records and the purposes for which the examination is required.
- 23.6 Rolls-Royce or the Authority may only examine the records on any Working Day during Working Hours.
- 23.7 Where required by Rolls-Royce or the Authority, the Supplier shall make copies available (in hard or electronic form) for the purposes of enabling those records to be examined.
- 23.8 Where required by Rolls-Royce or the Authority, the Supplier shall provide further information or explanation relating to the Relevant Records, whether after the examination of the Relevant Records or otherwise.
- 23.9 Rolls-Royce agrees that, where exercise of the rights granted at clauses 23.7 and 23.8 would cause significant time and effort to be incurred by the Subcontractor, and/or other significant disruption to the Subcontractor, the exercise of that right shall be proportionate. When determining what is proportionate for that purpose, Rolls-Royce or the Authority shall consider the benefit which may be achieved through the exercise of the rights and the disruption caused to the Subcontractor. This shall include but not be limited to the impact on the Subcontractor's provision of the subject-matter of the Subcontract.
- 23.10 Except where Rolls-Royce notifies the Supplier in writing that it is not required, the Supplier shall use reasonable endeavours to include in any Material Single Source Sub-Contract equivalent terms to those specified in this clause (inserting relevant party names where appropriate).
- 23.11 Before entering into a Material Single Source Sub-Contract the Supplier shall promptly notify Rolls-Royce where it is unable to include the terms specified in clause 23 (Material Single Source Sub-Contracts (Non-Qualifying)), or where it believes that the inclusion of those terms will prevent the achievement of a fair and reasonable price for that Subcontract.

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

**24 RELIEF EVENTS**

- 24.1 If an event occurs as a direct result of a breach by Rolls-Royce under the Contract which delays, prevents or adversely affects, or is likely to delay, prevent or adversely affect, the Supplier from performing any of its obligations under the Contract (a “**Relief Event**”), the Supplier shall as soon as possible 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 the Contract including:
    - (i) any impact on the Scheduled Delivery Date or the Specified Timescales (separately identifying any forecast and actual impact);
    - (ii) any increase in Price as a result of the Relief Event;
    - (iii) the steps, if any, taken and proposed to be taken to mitigate the effect of the Relief Event and the outcome or anticipated outcome of those steps; and
    - (iv) any impact on the ability of the Parties to meet their respective obligations under the Contract.
- 24.2 Where, for the purposes of clause 24.1(b), the actual effect is not ascertainable at the time of Supplier’s notice, the Supplier 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.
- 24.3 In the event of the occurrence of any Relief Event the Parties shall effect a Variation in accordance with clause 6 (Variations), taking account of the obligations of the Parties under clause 24.4.
- 24.4 Each Party shall take reasonable steps to mitigate the effect of Relief Event on the performance of its obligations under the 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 the Relief Event.
- 24.5 Rolls-Royce shall not be entitled to bring a claim against the Supplier for a breach of its obligations under the Contract to the extent caused directly by a Relief Event
- 24.6 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 the 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 24.4.
- 24.7 If the Supplier fails to comply with its obligations under this clause 24 (Relief Events) then no relief in respect of the Relief Event shall be available to the Supplier until it complies with this clause 24 (Relief Events) and the obligations of each Party shall continue in force until such compliance.
- 24.8 The Supplier shall not be entitled to terminate the Contract as a consequence of any Relief Event.
- 24.9 The Supplier acknowledges and agrees that its rights under this clause 24 (Relief Events) are its sole rights against Rolls-Royce under or in relation to the Contract in respect of any Relief Event.

### **Early Warning Process**

- 24.10 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 the 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.
- 24.11 If the Supplier notifies Rolls-Royce or 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, without prejudice to any other rights or remedies of Rolls-Royce, 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 and/or Services. The proposal shall demonstrate to Rolls-Royce's satisfaction how (and through its implementation) the Supplier shall be able to Deliver the Deliverables by the Scheduled Delivery Date or Deliver the Services within the Specified Timescales.
- 24.12 Unless Rolls-Royce confirms otherwise, the Supplier shall adopt the revised methods referred to in clause 24.11, 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 Price). 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 to which Rolls-Royce is entitled under clause 7.4).
- 24.13 If the circumstances in clauses 24.10 and 24.12 apply in part as a result of a Relief Event and in part from other causes, clauses 24.10 and 24.12 shall apply to the extent of the delay attributable to such other causes.

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

- 24.14 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 the Contract for a continuous period of up to six (6) months. Where such suspension is for a reason other than a breach or failure by the Supplier, the Supplier may request a Variation in accordance with clause 6 (Variations).

## **25 FORCE MAJEURE**

- 25.1 Provided that the affected Party has not directly or indirectly caused a Force Majeure Event and subject to the affected Party's compliance with clauses 25.2 and 25.3, the time specified for the performance by a Party of any obligation of that Party in the Contract 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.
- 25.2 The affected Party will use all reasonable endeavours to mitigate the effect of a Force Majeure Event.

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- 25.3 If a Force Majeure Event occurs that will or may prevent the timely performance of a Party's obligations under the Contract, the affected Party will notify the other Party as soon as possible and in any event within five (5) days following 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.
- 25.4 If Rolls-Royce receives a notification from the Supplier under clause 25.3 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 the Contract, Rolls-Royce may immediately, on written notice to the Supplier, terminate the Contract (or any part of it).
- 25.5 Where there is a partial termination under clause 25.4, the Contract shall remain in force only in respect of such part of the Services and/or Deliverables that have not been terminated.
- 25.6 In the event of termination pursuant to clause 25.4:
- (a) in respect of Services, neither Party will have any other liability to the other in respect of such termination; and/or
  - (b) in respect of Deliverables, the Supplier will repay to Rolls-Royce any amount paid by Rolls-Royce in respect of the terminated Deliverables before their termination, and if the Contract is terminated in part, this clause 25.6 will apply insofar as it relates to the terminated part of the Contract.

## **26 TERMINATION BY ROLLS-ROYCE**

### **Termination for Convenience**

- 26.1 Rolls-Royce shall be entitled to terminate the Contract in whole or in part at any time by giving to the Supplier written notice specifying the date of termination of the Contract (being a date not less than twenty (20) Working Days following the date of such Termination Notice).

### **Termination for Change in Control**

- 26.2 If a Change in Control occurs in respect of the Supplier, or the Supplier believes it will be subject to a Change in Control, the Supplier will immediately notify Rolls-Royce with full details of the person that does or is proposed to either obtain or cease to have Control of the Supplier.
- 26.3 Rolls-Royce may terminate the Contract in whole or in part immediately by giving written notice to that effect to the Supplier if there is a Change in Control of the Supplier.

### **Termination for Cause**

- 26.4 Rolls-Royce may, without prejudice to its other rights or remedies under the Contract terminate the Contract in whole or in part:
- (a) immediately on written notice to the Supplier, without liability to the Supplier, if:
    - (i) the Supplier suffers an Insolvency Event;
    - (ii) the financial position of the Supplier deteriorates to such an extent that in the opinion of Rolls-Royce the capability of the Supplier to adequately fulfil its obligations under the Contract has been placed in jeopardy;



- (iii) the Supplier becomes an Affiliate of a Competitor;
  - (iv) the Supplier breaches clauses 7.3, 17.1, 30 (Confidentiality), 32 (Data Privacy), 34 (Compliance with Law), 35 (REACH and UK REACH) or clause 37 (Ethics);
  - (v) any representation or warranty made by the Supplier in clause 3.1 is or becomes incorrect;
  - (vi) Rolls-Royce or an Affiliate of Rolls-Royce has a right to terminate any other agreement between Rolls-Royce or any Affiliate of Rolls-Royce and the Supplier or an Affiliate of the Supplier, following a breach by the Supplier or an Affiliate of the Supplier's (or its Affiliate's) obligations under such agreement; or
  - (vii) the Supplier breaches any other clause of the Contract (and in the case of a breach that is remediable, does not remedy such breach within thirty (30) days following receiving from Rolls-Royce written notice of the breach and a request to remedy the breach);
- (b) immediately on written notice pursuant to clauses 9.2(a), 9.9(a), 25.4 and 29.2(a);  
or
- (c) as otherwise set out in the Order.

## **27 TERMINATION BY THE SUPPLIER**

- 27.1 The Supplier may terminate the Contract by giving at least ninety (90) days' written notice to Rolls-Royce in the following circumstances only and any right the Supplier may otherwise have to terminate the Contract 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 the Contract and such breach continues for a period of ninety (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.

## **28 CONSEQUENCES OF TERMINATION**

- 28.1 Any termination of the Contract shall be 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.

### **Termination for Convenience**

- 28.2 In the event of a Termination Notice being issued to the Supplier by Rolls-Royce under clause 26.1 (Termination for Convenience), Rolls-Royce shall at any time before the Termination 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 terminated Deliverables and/or Services;
  - (c) to direct the Supplier to complete (or to commence and complete as the case may

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- be) in accordance with the 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 the Contract;
  - (d) to require the Supplier to repay to Rolls-Royce any payment made in respect of the terminated 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; and/or
    - (ii) determine on the best possible terms any Subcontracts subject to any direction given under this clause 28.2 as far as may be possible; and/or
  - (f) in each case the Supplier shall be entitled to payment for performance of its obligations up to the Termination Date under this clause 28.2 in accordance with the pricing and payment provisions of the Order.
- 28.3 The Supplier's entitlement to payment pursuant to a Termination Notice issued under clause 26.1 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 terminated Deliverables and/or Services up to the date on which Rolls-Royce notified the Supplier of its intention to terminate the Deliverables and/or Services; and
  - (b) any costs incurred by the Supplier (which the Supplier has not recovered under clause 28.3(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 28.2(c).
- 28.4 The total amount payable to the Supplier by Rolls-Royce under clause 28.3 shall be in full satisfaction of all claims arising out of such termination, and will in no circumstances exceed the portion of the Price attributable to the terminated Deliverables and/or Services.
- 28.5 The Supplier must submit its full claim under clause 28.3 to Rolls-Royce within thirty (30) days following the Termination Date. If the Supplier fails to submit its full claim under clause 28 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.
- 28.6 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 clause 26.1 (Termination for Convenience).

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- 28.7 On termination of the Contract, for whatever reason, the Supplier shall:
- (a) promptly return to Rolls-Royce or at Rolls-Royce's request destroy (and the Supplier shall provide written certification of such destruction) all Information relating to the Contract and all copies thereof and all other materials, data, information, documentation and the like (including such materials which are electronically stored) which have been provided, used or processed or created by or on behalf of Rolls-Royce in respect of the Contract;
  - (b) promptly return to Rolls-Royce any Free in Aid Material;
  - (c) immediately cease Processing any Personal Data; and
  - (d) in respect of Services, provide all assistance as Rolls-Royce may reasonably require to ensure an orderly transition of the Services to Rolls-Royce or any Successor Supplier.
- 28.8 Promptly following the Termination Date, the Supplier will, if required by Rolls-Royce to do so, provide the Users with, and licence the Users to, use all such designs, documentation, IPR and information as may be necessary to enable each User to provide the Services and/or Deliverables itself, or have a third party do so.
- 28.9 Subject to clause 33 (Intellectual Property Rights), the Users will have no right to use the designs, documentation and information provided under clause 28.8 for any purpose other than providing the Services and/or completing the Deliverables itself, or engaging a third party to do so on its behalf.
- 28.10 On termination or expiry of the Contract for 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.

**29 CORRUPT GIFTS AND PAYMENTS OF COMMISSION**

- 29.1 The Supplier warrants that in entering the Contract it:
- (a) has not offered, given or agreed to give, and will not offer, give or agree to give to any employee of Rolls-Royce, Affiliate of Rolls-Royce or any Crown servant any gift or consideration of any kind as an inducement or reward:
    - (i) for committing or not committing (or for having committed or not having committed) any act in relation to the Contract or any other contract with Rolls-Royce or the Crown; or
    - (ii) for showing or not showing favour or disfavour to any person in relation to the Contract or any other contract with Rolls-Royce or the Crown;
  - (b) has not entered into the Contract or any other contract with Rolls-Royce, any Affiliate of Rolls-Royce or the Crown, and will not enter into any other contract with Rolls-Royce, any Affiliate of Rolls-Royce or 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 the Contract or such contract (as applicable) 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 Rolls-Royce, hereafter referred to as "**Prohibited Acts**".

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- 29.2 If the Supplier, its employees, agents or any Subcontractor (or anyone acting on its behalf or any of its Subcontractors or their employees) commits any of the Prohibited Acts or commits any offence under any Laws anywhere in the world which relate to anti-bribery and/or anti-corruption, including the Bribery Act 2010, with or without the knowledge or authority of Rolls-Royce in relation to the Contract or any other contract with the Crown, Rolls-Royce shall be entitled (whether or not directed by the Authority):
- (a) to terminate the Contract and recover from the Supplier the amount of any loss resulting from the termination; and
  - (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 29, where the Contract has not been terminated.
- 29.3 In exercising its rights under clause 29.2(a), Rolls-Royce shall:
- (a) act in a reasonable and proportionate manner having regard to such matters as the seniority of, and the identity of the person performing the Prohibited Act; and
  - (b) give all due consideration, where appropriate, to action other than termination of the Contract, including requiring the Supplier to:
    - (i) terminate a Subcontract where the Prohibited Act is committed by a Subcontractor or anyone acting on its or their behalf;
    - (ii) dismiss an employee (or where the Prohibited Act is committed by an employee of a Subcontractor procure the dismissal of an employee).
- 29.4 Recovery action taken against any employee of Rolls-Royce, Affiliate of Rolls-Royce or Crown servant shall be without prejudice to any recovery action taken against the Supplier pursuant to clauses 29.2 and 29.3.
- 29.5 The Supplier shall notify Rolls-Royce in writing as soon as it becomes aware of the occurrence of any Prohibited Act or offence under any Laws anywhere in the world which relate to anti-bribery and/or anti-corruption, including the Bribery Act 2010.

**PART 6 – CONFIDENTIALITY AND DATA**

**30 CONFIDENTIALITY**

- 30.1 Subject to clause 30.2, 30.3, 30.4, 30.6 and 30.7, 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 keep the Information secret, safe and secure;
  - (b) 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);
  - (c) not to use the Information other than for the purposes of performing its obligations under the Contract;
  - (d) not to disclose the Information at any time or to any third party without the written approval of the other Party; and
  - (e) not to remove, alter or deface any proprietary, confidentiality or security designations denoted on the Information.
- 30.2 The following Information shall, for the purposes of clause 30.1, be deemed to be Information acquired by the Supplier from Rolls-Royce, regardless of which Party creates or makes it available:
- (a) Information that is protected by Foreground IPR; and
  - (b) the existence and terms of the Contract.
- 30.3 Rolls-Royce shall be entitled to use and disclose any Information it receives from the Supplier or any of its Affiliates in order to use the Deliverables and the Foreground IPR for any purpose (including by way of copying, modifying or developing the Deliverables).
- 30.4 The provisions of clause 30.1:
- (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 30.6 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 the 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 or to the Authority.
- 30.5 Each Party will be responsible for the observance of the provisions of this clause 30 (Confidentiality) by its employees or any other third parties to whom Information is disclosed in accordance with this clause 30 (Confidentiality).
- 30.6 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, to the extent possible, 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 the Contract. The Receiving Party will always, to the extent possible, notify the Disclosing Party in writing of the means, content and timing of such a disclosure before such a disclosure is made.
- 30.7 Rolls-Royce may release to the Authority any of those parts of the Contract documentation as is necessary to demonstrate Rolls-Royce’s and the Supplier’s compliance with the provisions of the Contract. Any such release shall not amount to a breach of any provision of confidentiality contained within the Contract.

### **31 PROHIBITION OF PUBLICATION AND DISCLOSURE**

- 31.1 Subject to the provisions of clause 30 (Confidentiality) the Supplier shall be prohibited from:
- (a) the publication in Open Literature of Technical Information with a classification of Official or higher about work performed for the NNPP;
  - (b) the publication in Open Literature about the association with the NNPP of any work done for purposes other than NNPP; and
  - (c) disclosure to foreign nationals (including dual nationals) of any Technical Information with a classification above “Official” about work performed for the NNPP.
- 31.2 The Supplier shall procure that every Subcontract placed for the purpose of work under or in pursuance of the Contract which will or may involve the Subcontractor receiving Technical Information about work performed for the NNPP with a classification above “Official” shall be made subject to the provisions of clauses 31.1 and 0 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.
- 31.3 The provisions of clauses 31.1 and 31.2 may be waived in writing in whole or in part by Rolls-Royce when, in the reasonable opinion of Rolls-Royce:
- (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 Rolls-Royce is satisfied with the restrictions and controls being applied by the Supplier to the disclosure.
- 31.4 Waivers under clause 31.3 shall be limited in effect to the matters in respect of which they are expressly given and, save as expressly so waived by Rolls-Royce, the provisions of clauses 31.1 to 31.6 shall continue in full force and effect.

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- 31.5 Notwithstanding any other provision in the 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.
- 31.6 The provisions of clauses 31.1 to 31.4 shall prevail in the event of inconsistency or conflict with any other provisions within the Contract.
- 31.7 The Supplier shall not make any public announcement, comment or other disclosure with respect to the existence or terms of the Contract, any Subcontract, or any other agreements or similar arrangements put in place by the Supplier or Subcontractors for the purposes of the Contract.

## **32 DATA PRIVACY**

- 32.1 Each Party acknowledges and agrees that it may need to Process Personal Data in relation to the other Party's representatives (in its capacity as a Controller) in order to (as appropriate): (a) administer and provide the Services and/or Deliverables; (b) request and receive the Services and/or Deliverables; (c) compile, dispatch and manage the payment of invoices relating to the Services and/or Deliverables; (d) manage the Contract and resolve any disputes relating to it; (e) respond and/or raise general queries relating to the Services and/or Deliverables; and (f) comply with its regulatory obligations.
- 32.2 Each Party shall Process such Personal Data for the purposes set out in clause 32.1 in accordance with its privacy policy. Each Party acknowledges that it may be required to share Personal Data with its Affiliates and other relevant parties, within or outside of the country of origin, in order to carry out the activities listed in clause 32.1, and in doing so each Party will ensure that the sharing and use of this Personal Data complies with applicable Data Privacy Laws.
- 32.3 The Parties do not envisage that either Party will Process any Personal Data for or on behalf of the other Party, under or in connection with the Services and/or Deliverables. Where and to the extent that in undertaking the obligations set out in the Contract, either Party anticipates that the other will Process Personal Data for and on behalf of the other Party it shall notify the other Party and the Parties shall agree a change to the Contract to incorporate appropriate provisions in accordance with Article 28 of the UK GDPR, or as otherwise required by applicable Data Privacy Laws.

**PART 7 – INTELLECTUAL PROPERTY**

**33 INTELLECTUAL PROPERTY RIGHTS**

- 33.1 Foreground IPR 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 IPR, with effect immediately on the creation of such Foreground IPR and the Supplier shall (at its own cost) do, and procure that any person creating Foreground IPR on its behalf does, all necessary acts to vest such Foreground IPR in the name of Rolls-Royce or its nominee and enable Rolls-Royce or its nominee to register or otherwise protect such Foreground IPR, such acts to include the execution of documents in respect of any invention arising from the performance of the work under the Contract.
- 33.2 Nothing in the Contract will affect the ownership of Rolls-Royce's or the Supplier's Background IPR.
- 33.3 If the Supplier incorporates any of its Background IPR in any Deliverables, the relevant content must be clearly and legibly marked by the Supplier as the Supplier's Background IPR.
- 33.4 If and to the extent that any Deliverables constitute or incorporate Foreground IPR, they must be clearly and legibly marked by the Supplier as the IPR of Rolls-Royce and/or the Authority, or as otherwise instructed by Rolls-Royce.
- 33.5 The Supplier shall maintain, and make available to Rolls-Royce upon written request, a copy of all Information that constitutes or is protected by Foreground IPR. This obligation shall survive the termination of the Contract.
- 33.6 The Supplier hereby grants to each of Rolls-Royce and the Authority an irrevocable, perpetual, non-exclusive, worldwide, royalty-free licence (with the ability to sublicense) to use the Supplier's Background IPR in order to use the Deliverables and the Foreground IPR for any purpose (including by way of copying, modifying or developing the Deliverables).
- 33.7 Rolls-Royce hereby grants to the Supplier a non-exclusive, royalty-free licence to use the Foreground IPR and Rolls-Royce's Background IPR for the sole purpose of performing the Supplier's obligations under the Contract. The Supplier shall not use such IPR for any other purpose. The Supplier may not sublicense the foregoing licence without the prior written consent of Rolls-Royce.
- 33.8 Where the Supplier is the owner or licensee of any Intellectual Property Rights which are necessary or desirable in connection with the Contract, it will make use of those Intellectual Property Rights at no additional cost to Rolls-Royce.
- 33.9 The Supplier shall indemnify Rolls-Royce and the Authority 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 any claim or allegation that the use of the Deliverables or Foreground IPR infringes any IPR owned or controlled by a third party [other than where such infringement arises as an unavoidable result of the Supplier following a specification issued to the Supplier by Rolls-Royce or using, in connection with the Contract, any Information supplied by Rolls-Royce for such purpose].
- 33.10 Without prejudice to clause 33.10, the Supplier shall promptly notify Rolls-Royce in writing if it becomes aware of:
- (a) any claim, demand or action brought, made or threatened against the Supplier, Rolls-Royce or the Authority for infringement or alleged infringement of any IPR in the creation, delivery or use of any Deliverables under the Contract;



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- (b) any IPR owned by a third party which appear to be relevant to the performance of the Contract or the use of the Deliverables; and/or
- (c) any restriction as to the disclosure or use, including any export requirement or restriction, in respect of any IPR required for the performance of any Contract or the use of the Deliverables.

33.11 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.

**PART 8 – MISCELLANEOUS**

**34 COMPLIANCE WITH LAW**

- 34.1 The Supplier will, and will procure that its officers, employees, agents and Subcontractors 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 those relating to and governing:
    - (i) export control (including in particular the United States International Traffic in Arms Regulations and the Export Administration Regulations);
    - (ii) health and safety (including the Health and Safety at Work Act 1974);
    - (iii) environmental protection;
    - (iv) the disposal of any waste;
    - (v) employment;
    - (vi) 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”), and REACH Regulations 2006, The Reach etc. (Amendment etc.) (EU Exit) Regulations 2019, The REACH etc. (Amendment etc.) (EU Exit) (No.2) Regulations 2019, The REACH etc. (Amendment etc.) (EU Exit) (No.3) Regulations 2019 and The REACH etc. (Amendment etc.) (EU Exit) Regulations 2020 (together “UK REACH”)) and any other applicable legislation;
    - (vii) Data Privacy Laws; and
    - (viii) the ABC Laws;
  - (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.
- 34.2 The Supplier shall be responsible at its own cost and risk for managing the effects of any general change in Law and/or Regulatory Requirements applying to any part of the Contract.
- 34.3 Any Services provided and/or any Deliverables supplied or installed under the Contract shall be so formulated, designed, constructed, finished, packaged and performed so as to be safe and without risk to health and all Deliverables will be supplied with full instructions for their proper use maintenance and repair and with any necessary warning notices clearly displayed.

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- 34.4 The Supplier agrees before Delivery to furnish Rolls-Royce in writing with a list, by name and description, of any harmful or potentially harmful properties or ingredients in the Deliverables whether in use or otherwise and following Delivery to notify Rolls-Royce of any changes in such properties or ingredients.
- 34.5 The Supplier represents and warrants that any information provided by the Supplier in accordance with clause 34.4 will be true and accurate in all respects and the Supplier hereby acknowledges that Rolls-Royce will rely on the such information to satisfy its own obligations under the Health and Safety at Work Act 1974 (as extended, applied, replaced or amended and in force from time to time) and any other Laws.
- 34.6 The Supplier shall, and shall procure that all its officers, employees, subcontractors (including any Subcontractors) and agents shall:
- (a) comply with the Modern Slavery Act 2015 and, without limiting the generality of this clause 34.6, only employ individuals whose presence is voluntary and not use forced, indentured, involuntary, prison, or uncompensated labour under any circumstances; and
  - (b) ensure that its employees and other personnel have the right to work in the territories appropriate to their engagement and comply with applicable government guidance on appropriate right to work checks.
- 34.7 The Supplier represents and warrants that neither the Supplier nor any of its officers, employees, subcontractors (including Subcontractors) and agents:
- (a) has been convicted of any offence involving slavery and human trafficking; and
  - (b) to the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 34.8 The Supplier shall implement due diligence procedures for its own suppliers, subcontractors (including Subcontractors) and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.
- 34.9 The Supplier shall notify Rolls-Royce as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with the Contract.

## **35 REACH and UK REACH**

- 35.1 The Supplier warrants that where it sells, delivers or transfers Deliverables to Rolls-Royce in the European Economic Area or the United Kingdom, it has complied with REACH or UK REACH (as applicable). 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 or Annex 14 of UK REACH. In any circumstance where the chemical does appear on Annex XIV of REACH or Annex 14 of UK REACH, the Supplier must ensure that it is authorised for Rolls-Royce's use.
- 35.2 The Supplier confirms that if a chemical substance used in the provision of the Services appears under Annex XIV of REACH or Annex 14 of UK REACH and:
- (a) the Services are being provided at a location in the European Economic Area or the United Kingdom; or

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- (b) either Party is an entity incorporated in a European Economic Area member state or the United Kingdom,

then such chemical substance is authorised for Rolls-Royce's particular use in accordance with the provisions of REACH or UK REACH (as applicable).

- 35.3 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 35 applies to all deliverables sold, supplied or transferred to Rolls-Royce inside or outside of Europe.
- 35.4 Whether or not REACH or UK 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 and UK REACH, its own quality processes, or its contractual obligations under the Head Contract. This clause 35.4 applies to all Deliverables sold, supplied or transferred to Rolls-Royce inside or outside of Europe.
- 35.5 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 35 (REACH and UK REACH).

## **36 OFFSET**

- 36.1 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 the Contract (or any Subcontracts resulting from the Contract).
- 36.2 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 the Contract.

## **37 ETHICS**

- 37.1 The Supplier represents that neither it nor its Associated Persons:
  - (a) have engaged in any conduct which was or would be an offence under any of the ABC Laws (whether or not the Supplier is subject to that ABC Law); or
  - (b) have done anything that may put Rolls-Royce or any of its Associated Persons in breach of any of the ABC Laws.
- 37.2 The Supplier shall ensure that neither it nor its Associated Persons:
  - (a) will engage in any conduct which was or would be an offence under any of the ABC Laws (whether or not the Supplier is subject to that ABC Law); or
  - (b) will do anything that may put Rolls-Royce or any of its Associated Persons in breach of any of the ABC Laws.

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- 37.3 The Supplier shall ensure that it shall not:
- (a) act in breach of any duty of confidentiality owed to any third party in the course of performing its obligations under the Contract; and
  - (b) offer or provide any Prohibited Information, whether specifically related to the subject matter of the Contract or otherwise.
- 37.4 The Supplier shall ensure that neither it nor its Associated Persons, in respect of the Contract, has or 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.
- 37.5 The Supplier will comply in full with the Rolls-Royce Global Supplier Code of Conduct.
- 37.6 Notwithstanding any other provision of the Contract, any money due from Rolls-Royce to the Supplier in connection with the Contract will not be payable if the Supplier or any of its Associated Persons has committed any breach of any of the ABC Laws, or has caused Rolls-Royce to breach any of the ABC Laws.

## **38 COMMUNICATIONS**

- 38.1 All communications under the Contract must be in writing and in English.
- 38.2 All notices under the Contract must be delivered by hand, by commercial courier, by electronic mail, or by registered or certified post to the address of the relevant Party listed in the Order for the attention of the person or office specified in the Order or, in the absence of any person or office being specified in the Order, for the attention of the company secretary or equivalent person in charge of legal compliance.
- 38.3 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 Working 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 electronic mail at the time of sending the e-mail provided notification of a successful and complete transmission is obtained.
- 38.4 The Supplier will ensure that any notice which it serves upon Rolls-Royce by electronic mail under the Contract is copied to such e-mail address as specified in the Order, or as otherwise notified to it by Rolls-Royce from time to time.
- 38.5 Either Party may change its notice details by giving at least seven (7) days' written notice to the other Party.

## **39 MISCELLANEOUS**

- 39.1 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 the Contract.
- 39.2 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.
- 39.3 If any provision of the 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.
- 39.4 The provisions of the Contract may only be varied in accordance with clause 6 (Variations) of the Contract.
- 39.5 Each Affiliate of Rolls-Royce and Permitted User of Rolls-Royce shall have the benefit of all rights provided for in this any Contract and shall be entitled to enforce the Contract subject to and in accordance with its terms.
- 39.6 Nothing in the 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; or create a contract of employment between the Parties or with any Subcontractor.
- 39.7 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; pledge the credit of the other Party; or represent itself as being the other Party, or an employee or representative of the other Party.
- 39.8 The Supplier shall procure that no Subcontractor shall, hold itself out as having the authority or power to bind Rolls-Royce in any way.
- 39.9 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.
- 39.10 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).
- 39.11 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.
- 39.12 The Contract 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 by the other Party before entering in to the Contract, 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 the 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.
- 39.13 The Supplier will not assign, delegate responsibility for or otherwise transfer its rights or obligations under the Contract.

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- 39.14 All rights and remedies exercisable by Rolls-Royce in accordance with the Contract will, unless otherwise expressly specified in the Contract, be without prejudice to any other rights and remedies of Rolls-Royce, whether contained in, or deriving from, the Contract or not.
- 39.15 The rights and remedies of either Party in respect of the 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 the Contract shall be by notice in writing. The waiver by either Party of any breach of the 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.
- 39.16 The Contract 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.
- 39.17 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 Permitted User, 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 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.
- 39.18 The Supplier shall report any injury, disease or dangerous occurrence at any Government Establishment or premises of Rolls-Royce or any Permitted User or Other Industry Parties arising out of the performance of the Contract, which is required to be reported under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (“**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).

## **40 ONGOING OBLIGATIONS**

- 40.1 The following clauses (along with such of the Mandatory Step-Down Clauses and other provisions as context may require) will survive the termination of the Contract and such provisions will continue in full force and effect:
- (a) Clause 1 (Interpretation and Applicability of the Contract Terms);
  - (b) Clause 3 (Representations and Warranties);
  - (c) The following specific subclauses to Clause 4 (Price and Payment) - 4.11;
  - (d) Clause 9 (Non-Conformances);

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- (e) Clause 11 (Quality);
- (f) Clause 12 (Warranty Period);
- (g) Clause 13 (Workforce Matters);
- (h) Clause 14 (Subcontracting);
- (i) Clause 15 (Indemnity);
- (j) Clause 16 (Insurance);
- (k) Clause 17 (Supply of Information and Rights of Inspection);
- (l) Clause 18 (Security Aspects);
- (m) Clause 19 (Information Security);
- (n) Clause 30 (Confidentiality);
- (o) Clause 31 (Prohibition of Publication and Disclosure);
- (p) Clause 32 (Data Privacy);
- (q) Clause 33 (Intellectual Property Rights);
- (r) Clause 34 (Compliance with Law);
- (s) Clause 36 (Offset);
- (t) Clause 37 (Ethics);
- (u) The following specific subclauses to Clause 39 (Miscellaneous) - 39.2, 39.3, 39.11, 0 and 39.16;
- (v) Clause 40 (Ongoing Obligations);
- (w) Clause 41 (Publicity);
- (x) Clause 42 (Law and Dispute Resolution);
- (y) Clause 43 (Third Party Rights); and
- (z) Clause 44 (Continuity of Supply).

### **41 PUBLICITY**

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

### **42 LAW AND DISPUTE RESOLUTION**

- 42.1 The Contract and any non-contractual obligations arising out of or in relation to the Contract, will be governed by and construed in accordance with the Laws of England.
- 42.2 The United Nations Convention for International Sale of Goods dated April 11th 1980 will not apply to the Contract.
- 42.3 Subject to clauses 42.7 and 42.9, neither Party may during the Term commence proceedings in relation to a Dispute unless that Party has:
- (a) served a written notice (a "**Referral Notice**") on the other Party notifying it of the relevant Dispute; or
  - (b) already received a Referral Notice from the other Party in relation to the same Dispute.



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- 42.4 Following service of a Referral Notice in relation to a Dispute, each Party will respectively procure that such Dispute be referred for resolution to any person of Global Commodity Manager level (or above) for the time being on behalf of Rolls-Royce, and any person of Project Manager level (or above) for the time being on behalf of the Supplier. Those representatives will meet at the earliest convenient time and in any event within seven days of the date of service of the relevant Referral Notice and will negotiate in good faith and attempt to resolve the Dispute.
- 42.5 If a Dispute has not been resolved within seven days of the date of service of the relevant Referral Notice each Party will respectively procure that such Dispute be referred for resolution to the Director Supply Chain (or equivalent role or above) for the time being on behalf of Rolls-Royce and the Managing Director for the time being on behalf of the Supplier. Those representatives will meet at the earliest convenient time and in any event within 14 days of the date of service of the relevant Referral Notice and will negotiate in good faith and attempt to resolve the Dispute.
- 42.6 If a Dispute is not resolved within 14 days of service of the relevant Referral Notice either Party may commence proceedings in accordance with clause 42.7.
- 42.7 Any Dispute shall be referred to and finally resolved by arbitration under the London Court of International Arbitration rules ("**Rules**"), which Rules are deemed to be incorporated by reference into this clause and:
- (a) the number of arbitrators shall be one;
  - (b) the seat, or legal place, of arbitration shall be London;
  - (c) the language to be used in the arbitral proceedings shall be English; and
  - (d) the governing law of this clause 42.7 shall be the substantive law of England.
- 42.8 If the Supplier is not incorporated in the United Kingdom, the Supplier will provide the name and contact details of its process agent under the Contract for service of process in any proceedings in England arising out of or in connection with the Contract. 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. The Parties agree that this clause 42 does not affect any other method of service allowed by Law.
- 42.9 Nothing in this clause 42 (Law and Dispute Resolution) limits the right of Rolls-Royce from:
- (a) seeking orders for specific performance, interim or injunctive relief;
  - (b) exercising any rights it has to terminate the Contract; or
  - (c) commencing any proceedings where this is necessary to avoid any loss of a claim due to the rules on limitations of actions.

## **43 THIRD PARTY RIGHTS**

- 43.1 The Parties do not intend that any term of the Contract will be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person, except as follows:
- (a) as specified in clause 12.4;
  - (b) as specified in clause 13.14;
  - (c) as specified in clause 39.5;

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- (d) as expressly agreed between the Parties in writing, which agreement must refer to this clause 43 (Third Party Rights);
- (e) by the Authority:
  - (i) in the event of Intervention, where 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:
    - (A) accelerating to early completion or suspending the provision of any Deliverable or Service;
    - (B) providing instructions to the Supplier, any Subcontractor and the Supplier Personnel in accordance with the Authority's directions in relation to the performance of the obligations of the Supplier or any Subcontractor under the Contract or its Subcontract and any amendment to the Contract or any Subcontract required by the Authority; and/or
    - (C) requiring the Supplier to terminate any Subcontract, and the Supplier shall promptly comply, and procure compliance by all relevant Subcontractors with, any instruction issued by the Authority pursuant to this clause 43.1(e); and
  - (ii) to the extent required and referred to in Schedule 2 of the Contract (Authority Mandatory Step Down Clauses).

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

## **44 CONTINUITY OF SUPPLY**

### **Notification of supply chain issues**

- 44.1 For the Term, the Supplier shall have a continuous obligation to:
- (a) develop and maintain proactive subcontractor risk management processes and, where appropriate, an Obsolescence Management Plan; and
  - (b) monitor and manage Subcontractors in accordance with the Subcontractor risk management process developed under Clause 44.1(a); and
  - (c) where appropriate manage obsolescence in accordance with the Obsolescence Management Plan; and
  - (d) enforce the terms of any relevant Subcontract.
- 44.2 At any time during the Term the Supplier shall immediately notify Rolls-Royce as soon as it becomes aware of any Supplier Fragility Event or an Obsolescence Event and provide the following information:
- (a) part number and description of the affected component/s;
  - (b) date of expected component discontinuity;
  - (c) proposed solution; and
  - (d) purchase options (which may include bulk buy for the lifetime buys).
- 44.3 The Parties shall review and agree within sixty (60) Working Days, or a longer or shorter period as the Parties may agree, the most appropriate solution.

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- 44.4 Following a Supplier Fragility Event or an Obsolescence Event, and subject to Clause 33 (Intellectual Property Rights), the Supplier shall offer Rolls-Royce the opportunity to procure a non-exclusive licence on fair and reasonable terms to enable it to procure or manufacture any component which is the subject of clause 44.2 above.

### **Additional costs or delay resulting from Supplier Fragility Events or Obsolescence Events**

- 44.5 If the Supplier incurs additional costs or delay as a result of a Supplier Fragility Event or an Obsolescence Event any such costs or delay shall be treated as a Variation in accordance with clause 6 (Variations), provided and to the extent that the Supplier has undertaken the activities described at clause 44.1.

**45 COOPERATION**

45.1 The Supplier shall during the term of the 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 6 (Variations) shall apply; and
- (b) all consents necessary for the provision of such information and/or access are identified and obtained.

**46 DEFENCE DOCUMENTS**

46.1 The following conditions (“**DEFCONS**”), standards (“**DEFSTANS**”) and forms (“**DEFFORMs**”) published and promulgated by the UK Ministry of Defence and NATO Quality Assurance Procedural Requirements (“**AQAPs**”) (collectively the “**Defence Documents**”) shall apply to the Contract to the extent that they are relevant to the Deliverable or Services. The Defence Documents shall generally be construed to have such amendments as are necessary for them to function as between the Supplier and Rolls-Royce. Without limitation to the generality of the foregoing, references in the Defence Documents to the Contractor shall be construed to mean the Supplier. References to the Authority shall be construed to mean Rolls-Royce and/or the Authority as the context requires.

**DEFCONS**

<b>DEFCON</b>	<b>Edition</b>	<b>Description</b>
5J	(07/08)	Unique Identifiers
68	(02/17)	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.
129	(04/19)	Packaging (For Articles other than Munitions)
129J	07/08	The Use of Electronic Business Delivery Form
528	10/04	Overseas Expenditure And Import Licences
532B	(05/18)	Protection of Personal Data
534	06/97	Prompt Payment (Subcontracts)
627	12/10	Quality Assurance – Requirement for a Certificate of Conformity
632	02/07	Third Party Intellectual Property - Rights and Restrictions

**DEFSTANS**

DEFSTAN	Description
02-207	Parts 1 & 2, Iss 2 – Quality Management Framework and Requirements for Materiel Safety in Submarines
05-57	Iss 6 – March 2014 – Configuration Management of Defence Materiel
05-61	Part 1, Iss 6 – Quality Assurance Procedural Requirements –Part No 1: Concessions Dated 31/03/2016
05-61	Part 4, Iss 3 – Quality Assurance Procedural Requirements : Contractor Working Parties
05-61	Part 9, Iss 5 – Quality Assurance Procedural Requirements: Independent Inspection Requirements for Safety Critical Items
05-99	Iss 4 – Managing Government Furnished Assets in Industry + Amdt 2 dated 31 October 2011 – Managing Government Furnished Assets in Industry
05-135	Avoidance of Counterfeit Material – Issue No: 1 dated 10/07/2014
81-41	“Packaging of Defence Materiel” part No 1: Introduction to Defence Packaging Requirements Issue 9 dated 14/12/2016
81-41	“Packaging of Defence Materiel” part No 2: Design Issue 9 dated 14/01/2017
81-41	“Packaging of Defence Materiel” part No 3 Environmental Testing Issue 6 dated 12/06/2014
81-41	Packaging of Defence Materiel part No 4: Service Packaging Instruction Sheet Issue 8 dated 16/10/2015
81-41	Packaging of Defence Materiel part No 5 – Packaging Processes Issue 8 dated 14/01/2017
81-41	Packaging of Defence Materiel part No 6 – Package Marking Issue 9 dated 09/10/2015

**AQAPs**

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

46.2 The following standards shall apply to this Contract to the extent that they are relevant to the Deliverable or Services. The standards shall generally be construed to have such amendments as are necessary for them to function as between the Supplier and Rolls-Royce.

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- a) ADMP-01 (Edition A Version 1) – 14 August 2014 NATO Standard – Guidance for Developing Dependability Requirements;
- b) ADMP-02 Edition A Version 1 Guidance for Managing Dependability Requirements dated 14-08-2014
- c) BR3019(5) Naval Reactor Severe Accident Manual Amdt 3 – 01/09/2013
- d) BS7000-1:2008 Design Management Systems - Part 1: Guide to Managing Innovation;
- e) BS7000 PART 2:2015 Design Management Systems – Part 2: Guide to Managing the Design of Manufactured Products;
- f) BS7000-3:1994 Design Management Systems Part 3: Guide to Managing Service Design;
- g) BS7000 PART 4:1996 Design Management Systems Part 4: Guide to Managing Design in Construction (G);
- h) BS7000-6:2005 Design management systems – Part 6: Managing inclusive design (Guide). (Including Corrigenda 15638 & 15949)
- i) BS7000-10:2008 Design Management Systems Part 10: Vocabulary of Terms Used in Design Management;
- j) BS EN ISO 14001:2015 Environmental management systems – Requirements with guidance for use
- k) BS EN(BS IEC) 61513:2013 – Nuclear power plants —Instrumentation and control for systems important to safety — General requirements for systems
- l) BS EN 60880:2009 – (inc Corrigendum 1, 30 June 2015) – Nuclear power plants – Instrumentation and control systems important to safety –Software aspects for computer-based systems performing category A functions
- m) BS EN 62402:2007 Obsolescence management — Application guide;
- n) DSA01.1 (v1.0) Aug 16 Defence Policy for Health, Safety and Environmental Protection
- o) IAEA GS-R-3 The Management System for Facilities and Activities: Safety Requirements 2006.
- p) IAEA Safety Standards: Specific Safety Requirements Series No SSR-6: Regulations for the Safe Transport of Radioactive Material – 2012 Edition, published Monday, October 22, 2012
- q) ISO 25051: 2008 Software Engineering – Software product Quality Requirement and Evaluation Requirements for quality of COTS Software, Product and Instructions for Testing
- r) JSP 440 – Defence Manual of Security (Information technology)
- s) JSP 392 – Radiation Safety Handbook Part 1 V 1.0 Sep 14
- t) JSP 518 Regulation of the Naval Nuclear Propulsion Programme Issue 4.1 – July 2014 pt. 1 & Pt 2
- u) NRPA-3-14 NRPA Nuclear Safety Management Arrangements: NRTE Vulcan
- v) SSP 25 Issue 3 October 2000 amdt 1 August 2004 Quality assurance for Safety in Submarines

**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 use of atomic energy for mutual defence purposes, dated 3 July 1958, as amended from time to time;

“**ABC Laws**” means the United Kingdom Bribery Act 2010, the United States Foreign Corrupt Practices Act 1977, as amended, and any other laws relating to anti-bribery and corruption matters applicable to the subject matter of the Contract;

“**Acceptance**” means acceptance of the relevant Deliverables and/or Services (as applicable) in accordance with the provisions of clause 8 (and “Accepted” shall be construed accordingly);

“**Administration Charge**” has the meaning given in clause 9.6;

“**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;

“**Allowable Costs**” has the meaning given in clause 4.19;

“**AQAPS**” has the meaning given in clause 46.1;

“**Associated Person**” means any Affiliates of a Party; directors, owners, employees or representatives of that Party or its Affiliates; or other persons acting on behalf of that Party or its Affiliates;

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

“**Background IPR**” means IPR, other than Foreground IPR, which is owned by or licensed to a Party and which is (i) developed or acquired before the Effective Date or (ii) developed or acquired after the Effective Date other than through participation in the Contract;

“**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;

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

“**Certificate of Conformity**” means a certificate, to be provided by the Supplier to Rolls-Royce confirming that a Deliverable conforms to the requirements of the Specification, such certificate being in the form of a Rolls-Royce TX0206. A reference to the Order in a Certificate of Conformity issued under the Contract shall be deemed to be a reference to the Contract;

“**Change in Control**” means where, in respect of a person (the “relevant entity”): (a) Control of the relevant entity is obtained (whether directly or as a result of obtaining Control of one or more other persons) by any person who did not at the Effective Date hold Control (whether directly or as a result of having Control of one or more other persons) of the relevant entity; or (b) a person who has Control (whether directly or as a result of having Control of one or more other persons) of the relevant entity at any time during the term of the Contract ceases to have Control (whether directly or as a result of having Control of one or more other persons) of the relevant entity;

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**“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;

**“Concession”** has the meaning given in clause 9.2(c);

**“Concession Discount”** has the meaning given in clause 9.7;

**“Contract”** means the legally binding contract between Rolls-Royce and the Supplier for the provision of Services and/or supply of the Deliverables, comprising these GCP, the Mandatory Step-Down Clauses, the Defence Documents, the Specification (if applicable) and the Order;

**“Control”** means the power, directly or indirectly, either to (i) 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 (ii) direct or cause the direction of the management and policies of such person, whether by contract or otherwise, and “Controls” and “Controlled” will be construed accordingly;

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

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

**“Cyber Essentials Plus Accreditation”** means the possession of A Cyber Essentials Plus Certificate 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 Privacy Laws”** means any law, statute, declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding pronouncement, including findings, orders, decisions and judgements of a competent court or supervisory authority or regulator with jurisdiction as updated and amended from time to time which applies to each Party in any territory in which they Process Personal Data and relates to the protection of individuals with regards to the Processing of Personal Data, which includes the EU General Data Protection Regulation 2016/679 (the **“GDPR”**), the e-Privacy Directive and relevant member state laws in the European Economic Area (**“EEA”**) and in relation to the United Kingdom (**“UK”**), the Privacy and Electronic Communications Regulations 2003 (as amended by SI 2011 no. 6), the Data Protection Act 2018 and the GDPR (as incorporated into UK law under the UK European Union (Withdrawal) Act 2018) (**“UK GDPR”**) as each is amended in accordance with the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019 (as amended by SI 2020 no. 1586);

**“DECAF”** has the meaning given in clause 20.1(f);

**“DEFCONS”** has the meaning given in clause 46.1;

**“Defect”** means any non-conformance, incompleteness, inaccuracy, fault error, defect or omission in any Deliverable or Certificate of Conformity (or any part thereof) (and “Defects” shall be construed accordingly);

**“Defence Documents”** has the meaning given in clause 46.1;

**“DEFFORMS”** has the meaning given in clause 46.1;

**“DEFSTANS”** has the meaning given in clause 46.1;



**“Deliverables”** means those products or goods that the Supplier has agreed to supply to Rolls-Royce as specified in the Order, including such items to be manufactured and supplied and their constituent parts and spares (where spares are included as a Deliverable under the Contract), reports, information, data and software;

**“Delivery”** means the time at which: (a) in respect of a Deliverable, the Deliverable is delivered (pursuant to clause 7.1) by the Supplier to Rolls-Royce in accordance with the Order; or (b) in respect of Services, the performance of such Services has been completed by the Supplier in accordance with the Order (and “Deliver” shall be construed accordingly);

**“Disallowed Cost”** has the meaning given in clause 4.20;

**“Disclosing Party”** has the meaning given in clause 30.6(a);

**“Dispute”** means a dispute that arises out of or in connection with the Contract (including in relation to any non-contractual obligations);

**“Disputed Sum”** means that part of an amount invoiced by the Supplier which is the subject of a bona fide dispute, as notified by Rolls-Royce to the Supplier under clause 4.16;

**“DoE”** has the meaning given in clause 20.1(a);

**“EAR”** means the Export Administration Regulations;

**“EC”** has the meaning given in clause 20.1(a);

**“Effective Date”** means the date the Contract was entered into by the Parties, being the date specified as the commencement date in the Order, or where no commencement date is specified, the date of the Order;

**“Employment Liabilities”** means all claims, demands, penalties, actions, proceedings, damages, compensation, court or tribunal order or awards, fines, costs, expenses, pension liabilities and all other losses and liabilities (including legal and other professional expenses assessed on an indemnity basis);

**“Export Laws”** means: (a) any laws of the United States of America, the United Kingdom, the European Union or of any of its Member States that relate to the control of export, re-export or transfer of the Deliverables and/or in relation to the Services; (b) any controls administered by the governments and official institutions or agencies of those territories referred to in (a) including, the US Department of Commerce and/or the US Department of State; and (c) any other export or import controls or restrictions imposed or adopted by any government, state or regulatory authority in a country in which obligations under the Contract are to be performed and/or provided;

**“Force Majeure Event”** means, subject to such events being (a) unforeseeable at the time the Parties entered into the 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 created by the Supplier or its agents, suppliers or subcontractors, as a result of or in connection with the performance of the Contract;

**“Free in Aid Material”** 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 the Contract, to be used in the provision of the Services and/or the manufacture of or incorporated into the Deliverables;

**“General Conditions of Purchase” (or “GCP”)** means the terms and conditions including the Schedules, contained herein;

**“Global Supplier Code of Conduct”** means Rolls-Royce’s Global Supplier Code of Conduct (as updated from time to time), which can be found at <https://suppliers.rolls-royce.com>;

**“Good Industry Practice”** means using the degree of skill, care, prudence, supervision, diligence, foresight, quality control and quality management using what the industry would (at the relevant time) regard as the best generally accepted processes, techniques and materials;

**“Government Establishment”** means any office, department, site including any of His Majesty's Ships or Vessels and Service Stations;

**“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;

**“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 any entity directly or indirectly owned or controlled thereby;
- b) any public international organisation or supranational body (including 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;

**“Head Contract”** means 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;

**“HMRC”** means HM Revenue & Customs;

**“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 the Contract and any other agreements or documents executed by the Parties in connection with the Contract;

**“Insolvency Event”** means an event where a Party (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, (e) ceases to trade or appears, in the reasonable opinion of the other Party, to be likely to cease to trade, (f) any other steps are taken to enforce any encumbrance over all or part of that persons assets and/or undertaking, or (g) takes steps, or is subject to actions, analogous to the items specified in (a) to (f) above under the laws of any applicable jurisdiction;

**“Intellectual Property Rights”** (or **“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;

**“Intervention”** means the period between issue by the Authority to Rolls-Royce of a notice of intervention stating that the Authority intends to exercise its rights of intervention and the serving by the Authority to Rolls-Royce of the relevant termination notice;

**“ITAR”** means the United States International Traffic in Arms Regulations;

**“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 as extended, applied, replaced, or amended and in force from time to time (including any directive or order promulgated by any competent national or supra national body);

**“Liquidated Damages Cap”** has the meaning given to it in clause 7.4;

**“Losses”** means all losses, liabilities, damages, costs, claims, suits, judgments, orders, taxes, compensation, fines and expenses incurred or to be incurred (including legal fees on a full indemnity basis and other professional advisors' 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 provisions set out in Schedule 2, which the Authority has mandated (i) are to be included within the Contract and (ii) are to be included in all subcontracts placed by the Supplier or its Subcontractors pursuant to the Contract;

**“Milestone”** means the relevant milestone including the criteria to be fulfilled by the Supplier to achieve the relevant milestone, as specified in the Order;

**“NNPP”** means the UK Naval Nuclear Propulsion Programme;

**“Non-Conformance”** means a failure, defect or shortcoming in Deliverables or Services which means that such Deliverables or Services do not conform with the terms of clause 3.3 (and “Non-Conforming” shall be construed accordingly);

**“Notification”** has the meaning given in clause 13.12(a);

**“Obsolescence Event”** means, in relation to a component, that such component:

- a) is no longer available for purchase to the same specification from the Original Equipment Manufacturer or the Original Equipment Supplier, as applicable at the time when it is required to meet the Scheduled Delivery Date; or
- b) is available for purchase from the Original Equipment Manufacturer or the Original Equipment Supplier at the time when it is required to meet the Scheduled Delivery Date but:
  - (i) the Original Equipment Manufacturer or the Original Equipment Supplier has notified the Supplier or Subcontractor (as applicable) of a future end of service provision, manufacture, supply or support of the component; or
  - (ii) is no longer recommended for use by the Original Equipment Manufacturer or the Original Equipment Supplier, as applicable;

**“Obsolescence Management Plan”** means a plan developed by the Supplier to manage Obsolescence Events;

**“Officer in Charge”** means Heads of Government Establishments and shall be deemed to include Officers Commanding Service Stations, Ships' Masters or Senior Officers;

**“Official”** means information assets which are classified as OFFICIAL in accordance with Government Security Classifications May 2018, version 1.1 as amended.

**“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 issued by Rolls-Royce that incorporates these General Conditions of Purchase by reference;

**“Original Equipment Manufacturer”** means the original manufacturer of a component identified by a unique part number for the component;

**“Original Equipment Supplier”** means the original supplier of a component identified by a unique part number for the component;

**“Other Industry Parties”** 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;

**“Overseas Expenditure”** has the meaning given in clause 22.1;

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

**“Permitted User”** means the Authority, Other Industry Parties and 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 the Contract;

**“Personal Data”** has the meaning set out in the Data Privacy Laws and for the purposes of the Contract, includes special categories of Personal Data (as set out in Article 9 of the GDPR/ UK GDPR) and criminal conviction data (as set out in Article 10 of the GDPR/ UK GDPR);

**“Price”** means the price payable by Rolls-Royce to the Supplier for the Services and/or Deliverables, as set out in the Order and subject to clause 4;

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**"Process"** and **"Processing"** have the meaning given to such terms in the Data Privacy Laws;

**"Profit"** means the mark-up on Allowable Costs specified in the Order;

**"Prohibited Acts"** has the meaning given in clause 29.1;

**"Prohibited Information"** means any information whether offered in written, verbal or other form that such Party is not authorised to have and use in connection with the Contract, including, but not limited to, any information from a competitor's confidential proposals, bid terms or contract and pricing terms;

**"REACH"** has the meaning given in clause 34.1(b)(vi);

**"Receiving Party"** has the meaning given in clause 30.6;

**"Referral Notice"** has the meaning given in clause 42.3(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 the Contract and "Regulatory Body" shall be construed accordingly;

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

**"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, including any Supplier Personnel, and who transfers, or is alleged to have transferred, to Rolls-Royce, a Successor Supplier, the Authority, a Permitted User 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;

**"Relief Event"** has the meaning given in clause 24.1;

**"Resolution Invoice"** has the meaning given in clause 4.16(d);

**"RIDDOR"** has the meaning given in clause 39.18;

**"Rolls-Royce"** means Rolls-Royce Submarines Limited (incorporated in England with company registration number 00620485) whose registered office is at Atlantic House, Raynesway, Derby DE21 7BE, United Kingdom;

**"Rules"** has the meaning given in clause 42.7;

**"Sanctions Authority"** means the United States, the United Nations Security Council, the European Union or any member state thereof, the United Kingdom, Canada, or other sanctions authority of any relevant jurisdiction;

**"Sanctions List"** means any list of individuals or entities subject to asset freeze or blocking sanctions, including, without limitation (i) the "Specially Designated Nationals and Blocked Persons" (SDN) maintained by the Office of Foreign Assets Control, U.S. Department of the Treasury, (ii) the Denied Persons List and Entity List maintained by the U.S. Department of Commerce, (iii) the consolidated list of persons, groups and entities subject to EU financial sanctions maintained by the EU, (iv) the Consolidated List of Financial Sanctions Targets maintained by His Majesty's Treasury, or (v) any similar lists maintained by any Sanctions Authority, each as amended, supplemented or substituted from time to time;

**“Sanctioned Person”** means any person that: (a) is subject to or the target of Sanctions either personally or by virtue of being incorporated, located or otherwise operating in a country or territory which is the subject of Sanctions; or (b) is owned, operated or controlled by a person that is subject to or the target of Sanctions; or (c) appears on or is owned, operated or controlled by any person who appears on any list issued or maintained by any Sanctions Authority, in each case as amended, supplemented or substituted from time to time;

**“Sanctions”** means any economic, financial, trade or other sanction, embargo, import or export ban, prohibition on transfer of funds or assets or on performing services or equivalent measure imposed by any Sanctions Authority or by the laws of any state or any union of states;

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

**“Security Aspects Letter”** means the letter referred to in clause 18.3;

**“Services”** means those services that the Supplier has agreed to provide to Rolls-Royce as specified or described in the Order;

**“Services Liquidated Damages Cap”** has the meaning given to it in clause 7.4;

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

**“Specification”** means the specifications, drawings, samples, examples, trials, demonstrations, representations, relevant quality plan or descriptions provided in the Order;

**“Specified Service Levels”** means those service levels set out in the 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 the Order;

**“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 contract entered into between the Supplier and a Subcontractor or a contract entered into between the Supplier’s Subcontractor and their Subcontractor/s in connection with the supply of any aspect of the Deliverables or Services;

**“Subcontractor”** means any subcontractor of any tier to the Supplier engaged by the Supplier under the Contract pursuant to clause 14, to include any employees, officers, directors and personnel of the subcontractor involved in the performance of the Supplier’s obligations under the Contract (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 to which the Order is addressed and from whom Rolls-Royce purchases the Services and/or Deliverables;

**“Supplier Assurance Questionnaire”** has the meaning given in DEFCON 658;

**“Supplier Delay”** has the meaning given in clause 7.4;

**“Supplier Fragility Event”** means, means, in respect of a Subcontractor:

- (a) a Subcontractor Insolvency Event;
- (b) an agreement by the Supplier and Rolls-Royce for the Supplier to take specific actions to prevent or mitigate the risk of a Subcontractor suffering an Insolvency Event; or
- (c) a strategic decision of a Subcontractor to withdraw from the applicable market and no longer supply such materials or services in respect of the Contract;

**“Supplier Personnel”** means all employees, agents, consultants, officers, directors, contractors, personnel and other representatives of the Supplier, relevant Affiliates of the Supplier (whether current or former) or of any Subcontractor, who are involved in the performance of the Supplier’s obligations under the Contract;

**“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;

**“Term”** has the meaning given in clause 2.2;

**“Termination Date”** means the date of termination of the Contract as determined in accordance with clauses 26 or 27;

**“Termination Notice”** means any notice issued by Rolls-Royce to the Supplier under clause 26 to terminate the Contract;

**“Tests” or “Testing”** means all tests to be carried out whether by the Supplier, Rolls-Royce or the Authority that are specified in the Contract in relation to any Deliverable;

**“Transfer Regulations”** means: (i) in the case of any country in the EEA, the Acquired Rights Directive (2001/23/EC) (as amended from time to time) and any domestic legislation implementing this directive into the national law of the country from time to time; (ii) in the case of the United Kingdom, the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended, consolidated or replaced from time to time); or (iii) in the case of any other country, any legislation enacted which transfers the employment of staff automatically to a new employer when services which were previously performed by the employer of those staff are transferred either to a new service provider or taken back in-house;

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

**“UK REACH”** has the meaning given in clause 34.1(b)(vi);

**“Users”** means Rolls-Royce and any Permitted User and/or a third party engaged by Rolls-Royce to complete the Deliverables;

**“Valid Invoice”** has the meaning given in clause 4.8;

**“Variation”** has the meaning given in clause 6.1;

**“VAT”** has the meaning given in clause 4.8;

**“Warranty Period”** has the meaning given in clause 12.1;

**“Working Day”** means a day that is not a Saturday, Sunday or public or bank holiday in England and/or Wales; and

**“Working Hours”** means 9:00 am to 5:00 pm on a Working Day.

**1.2 Construction**

- (a) In these GCP 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 GCP;
  - (iii) a “paragraph” or “sub-paragraph” is a reference to a paragraph or sub-paragraph of a schedule to these GCP;
  - (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 GCP do not affect its interpretation.



**SCHEDULE 2: AUTHORITY MANDATORY STEP DOWN CLAUSES**

**1 COLLATERAL WARRANTY**

- 1.1 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 Schedule 2.

**2 RETENTION OF RECORDS**

- 2.1 The Supplier shall:
- a) at all times during the term of the Contract and not for less than two (2) years from delivery and Acceptance keep, or cause or procure to be kept and 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 the Contract and all monies payable or paid to it under the Contract by Rolls-Royce; and
  - b) within three (3) months following the date falling two (2) years after the date of Acceptance, collate and transfer to Rolls-Royce the accurate accounts and full supporting documentation referred to in paragraph 2.1(a) above.

**Appendix 1 to Schedule 2 – 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 the 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; and
    - (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 & PAYMENT**

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

**1 FIRM PRICING METHOD**

**Firm Price**

- 1.1 Subject to the provisions of clause 4 (Price and Payment) and the following provisions of this clause, Rolls-Royce shall pay the Supplier the Price specified in the Order, which is a firm price and not subject to variation.

**Payment Plan**

- 1.2 The Milestones and their corresponding payment and retention amounts are defined in the Order.

**Entitlement to Invoice**

- 1.3 The Supplier shall be entitled to invoice Rolls-Royce:
- (a) following the achievement of the particular Milestone specified in the Order;
  - (b) once the relevant evidence of achievement of the Milestone has been submitted to Rolls-Royce by the Supplier and accepted by Rolls-Royce in writing; and
  - (c) provided that all previous Milestones (where relevant) have been achieved.
- 1.4 Following acceptance by Rolls-Royce that the relevant Milestone has been achieved Rolls-Royce will issue to the supplier a Service Entry Sheet (“**SES**”) number.
- 1.5 The Supplier shall clearly state the applicable SES number on the corresponding invoice which it shall submit in accordance with clause 4 (Price and Payment).
- 1.6 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.
- 1.7 Where no Milestone payment plan is agreed between the Supplier and Rolls-Royce, the Supplier shall be entitled to invoice Rolls-Royce on Acceptance of all Deliverables and/or all Services.

**2 COST PLUS PRICING METHOD**

**Cost Plus**

- 2.1 Subject to the provisions of clause 4 (Price and Payment) and the following provisions of this paragraph, Rolls-Royce shall pay all Allowable Costs plus Profit to the Supplier.
- 2.2 Rolls-Royce shall pay the Supplier the Allowable Costs and Profit up to the limit of liability 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.
- 2.3 The Supplier shall immediately inform Rolls-Royce in writing as soon as sums payable to the Supplier under the Contract in respect of Allowable Costs and Profit (including all payments to, or commitments to pay, Subcontractors) reach an amount equal to 80% of the limit of liability stated in the Order.

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- 2.4 If the Supplier considers that it will exceed such limit of liability, the Supplier shall give notice to Rolls-Royce requesting that the relevant limit of liability be raised. This notice will advise the reasons as to why and when the limit will be exceeded and the level to which the relevant limit of liability is required to be raised.

### **Flow downs**

- 2.5 The Appendix to DEFCON 653 shall apply with the following amendment: references to the “subcontractor” and the “subcontract” shall be read as references to the Supplier and the Contract respectively.

### **Invoicing**

- 2.6 The Supplier shall submit its invoice in accordance with clause 4 (Price and Payment).
- 2.7 Allowable Costs shall be paid monthly in arrears. The Supplier shall be entitled to invoice Rolls-Royce in respect of those Allowable Costs at the end of the calendar month, subject to paragraph 2.2 above. All invoices shall contain a detailed breakdown of its Allowable Costs.
- 2.8 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.
- 2.9 Profit shall be paid following the completion of all Deliverables or Services under the Order upon the validation by Rolls-Royce of the Final Cost Certificate in accordance with paragraphs 2.12 to 2.14 (Cost Certificates) below.

### **Cost verification and audit requirements**

- 2.10 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 Delivery, 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.
- 2.11 The requirement to give prior notice shall not apply where Rolls-Royce or the Authority require to take access to enforce any rights.

### **Cost certificates**

- 2.12 The Supplier shall provide, to Rolls-Royce, an Annual Cost Certificate, in the form set out in DEFFORM 812 (Contractor Cost Statement) 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) (save that references to ‘the Authority’ shall be interpreted as ‘the Authority and/or Rolls-Royce’).
- 2.13 If applicable, following agreement and promulgation by 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.

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- 2.14 In addition to the Cost Certificates to be provided under paragraph 2.12 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').