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Repair or Modification of Engineering Equipment

Schedule S5

1 DEFINITIONS

(1) In the event of any inconsistency or conflict between the Terms and Conditions of Purchase, the Purchase Order and this Schedule, the following order of precedence shall apply:
  (a) the Purchase Order;
  (b) the Schedule;
  (c) the Conditions

(2) The following definitions apply to this Schedule. Any term not defined herein shall have the definition ascribed to it in Clause 1 of the Conditions:

"Confidential Information"	means all information of a confidential nature in any form whatsoever, whether or not marked as confidential, disclosed or made available by or on the behalf of the Buyer (or any of its Affiliates) to the Contractor (or any of its employees, representatives, sub-contractors or agents) and regardless of whether or not disclosure was made before or after the date of the Contract.
"Contractor"	means the Supplier as defined in the Conditions.
"Equipment"	means the equipment which is subject of the Services
"Services"	means the repair and/or modification of engineering equipment services and works more particularly described in the Purchase Order or a written statement of work.
"SHE Standards and Requirements and Site Rules"	means the Buyer's written policies and rules regarding health and safety and other requirements of visitors to a Site as notified to the Contractor from time to time.
"Site"	means the location(s) referred to in the Contract where the Services are to be performed.
"Take-over"	means the date or dates upon which the Goods and/or Services or any part thereof are taken-over by the Buyer following certification in accordance with Clause 12 of this Schedule.

2 GENERAL OBLIGATIONS AND STANDARDS

(1) The Contractor shall throughout the duration of the Contract commence, execute with due expedition and safety, complete the Services to the reasonable satisfaction of the Buyer in accordance with the provisions specified in or reasonably to be inferred from the Contract.

(2) The Contractor agrees to adhere to the following responsibilities:
  (a) The Contractor is deemed to have understood the nature and extent of the Services and to have visited each Site and shall make no claim against the Buyer (or its Affiliates) founded on its failure to have done so. The Buyer shall, on request of the Contractor, grant such access as may be reasonable for this purpose.
  (b) In the absence of a specified commencement date for performance of the Services, the Services shall commence upon notice being given by the Buyer and the Buyer from time to time thereafter shall provide possession of so much of a Site as is necessary for the performance of the Services, but such possession shall not be exclusive to the Contractor and it shall, as directed by the Buyer, allow others to work on and have access to the Site and afford them all reasonable facilities so to do.
  (c) The Contractor shall not make any delivery to a Site, nor commence any work on any Site before advising details to and obtaining the prior consent of the Buyer.
  (d) The Contractor shall make all prior arrangements for, and subsequently effect, the offloading and adequate storage of the Equipment and/or Goods unless otherwise stated in the Contract.
  (e) No work on a Site shall be covered or hidden until approved by the Buyer and such approval shall not be unreasonably delayed.
  (f) Explosives or naked lights shall not be used on any Site without the prior written consent of the Buyer.
  (g) Burning shall not be carried out at any Site without the prior written consent of the Buyer.
  (h) No service (including without limitation any utility service) may be interfered with, disconnected or diverted at any Site without the prior approval in writing of the Buyer.
  (i) The Contractor shall only engage reputable third parties to perform any sub-contracted obligations pursuant to the Contract.

(j) The type of equipment and methods of working that the Contractor intends to use for the performance of the Services shall be subject to the approval in writing of the Buyer and no Services on a Site shall commence until such approval has been obtained but any such approval shall not relieve the Contractor from any of its obligations or liabilities under the Contract.
(k) The Contractor shall not interfere with the operation of any plant, machinery, equipment or services at a Site without the prior approval in writing of the Buyer.
(l) The Contractor shall not use any part of a Site for depositing plant, equipment, machinery, materials or dismantled structures arising out of the execution of the Services without the prior approval in writing of the Buyer.
(m) All consignments arranged by or on behalf of the Contractor to be delivered to a Site shall be clearly marked with the Contractor's name, together with such other markings as may be required by the Buyer. These references shall also appear on all consignment notes. The Contractor shall be responsible for receiving and off-loading all such deliveries to a Site, for storage to the Buyer's satisfaction and for all demurrage other than that arising directly from a cause for which the Buyer (or other third party contractor employed by the Buyer) is responsible.
(n) The Contractor shall remove all rubbish, materials and debris frequently and progressively as the Services proceed unless otherwise agreed or instructed by the Buyer and such removal and/or disposal shall be undertaken in compliance with all applicable laws.
(o) On the completion of the Services the Contractor shall remove from each Site all constructional plant, accommodation, rubbish, debris, equipment and temporary works of every kind, and leave each Site in a clean, tidy and safe condition to the reasonable satisfaction of the Buyer.
(p) Any further use (including without limitation any re-sale) of any rubbish, materials, debris, plant, equipment, or any other matter removed from a Site as a result of the performance of the Services, is entirely at the risk of the Contractor and to the fullest extent permitted by law no warranties (expressed or implied by law) are provided to the Contractor with regard to such removed matter.

3 HEALTH AND SAFETY

(1) In addition to Clause 11 of Conditions, the Contractor represents and warrants that it shall:
  (a) Carry out the Services with proper regard to safety of all persons.
  (b) Comply with the SHE Standards and Requirements and Site Rules and all applicable health and safety legal requirements and shall procure that its employees and the employees of its subcontractors (if any) so comply.
(2) The Buyer shall have the right to require the immediate removal of any person brought to a Site by the Contractor who:-
  (a) has failed to comply with any applicable laws, work rules and/or the SHE Standards and Requirements and Site Rules; or
  (b) has in the opinion of the Buyer been negligent, incompetent or acted without due care; or
  (c) by act or omission has been prejudicial to the health and/or safety of persons;
  and any such person so removed shall not be granted future access to any Site or be engaged further by the Contractor to provide the Services without the prior permission of the Buyer.
(3) The Contractor shall be responsible for the suitability and safety of any equipment, machinery and materials used by it to perform the Services and no equipment, machinery or materials shall be used which may be unsuitable, unsafe or liable to cause damage or injury to property or persons. Without prejudice to the generality of the foregoing, if in the Buyer's opinion any such equipment, machinery or materials are unsuitable, unsafe or liable to cause damage or injury to property or persons, upon written or oral notification from the Buyer it shall not be used in the performance of the Services and it shall be replaced with suitable and safe equipment, machinery or materials with the minimum of delay and at the Contractor's cost.
(4) The Contractor shall not permit any person to visit a Site whose presence is not necessary for the performance of the Services without the prior consent of the Buyer.
(5) The Buyer shall have the power at any time during the progress of the Services to order in writing:
  (a) the removal from a Site of any materials which are not in accordance with the Contract;
  (b) the substitution of proper and suitable materials;
  (c) the removal and proper re-execution of any Services that are not in accordance with the Contract.
(6) The Contractor shall keep and thereafter safely maintain and protect against loss and damage such health, safety and environmental records relating to the Services as can reasonably be expected from a prudent and reputable contractor (including without limitation records relating to personnel, training, inductions, risk assessments, investigations and accidents at work).

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4 CONTRACTOR'S RESPONSIBILITY FOR INFORMATION

(1) The Contractor shall be responsible for any errors or omissions in drawings, specifications, calculations or other information provided by it whether the same have been approved by the Buyer or not and the Contractor shall rectify all such errors and omissions. The Contractor shall be responsible for the cost of such rectification of the Services as shall be necessitated thereby unless the errors and omissions are due to inaccurate information provided in writing by, or on behalf of, the Buyer, save insofar as any inaccuracy should have been reasonably apparent to an experienced Contractor or ought to have been detected by the Contractor and the Contractor fails to bring it promptly to the attention of the Buyer.

5 CONFIDENTIALITY

(1) The Contractor undertakes to:
  (a) keep confidential all Confidential Information;
  (b) not without the written consent of the Buyer disclose any Confidential Information in whole or in part to any other person save those of its directors, employees, agents or professional advisers involved in the performance of the Services and provided in all cases that they have a need to know the same and that such disclosure is made in accordance with Clause 5.3 of this Schedule; and
  (c) use any Confidential Information solely in connection with the provision of Services to the Buyer and not otherwise for its own benefit or for the benefit of any third party.

(2) The restrictions set out in Clause 5 of this Schedule shall not apply to any Confidential Information:
  (a) that the Contractor can demonstrate to the reasonable satisfaction of the Buyer through the use of appropriate evidence was:
    (i) known to the Contractor free from any obligation of confidence prior to the date of its disclosure by the Buyer otherwise than as a result of being obtained directly or indirectly from the Buyer;
    (ii) obtained from a third party free from any obligation of confidence who lawfully possessed such Confidential Information and which was not obtained by that third party in a breach of a duty of confidence owed to the Buyer; and/or
    (iii) in the public domain in the form in which it is possessed by the Contractor and other than as a result of a breach of a duty of confidence owed to the Buyer by any person;
  (b) which is required to be disclosed by the Contractor as a requirement of law or to any regulatory body to whose rule the Contractor is subject. In such circumstances, the Contractor shall provide the Buyer with as much notice as reasonably possible of any request for it to disclose any Confidential Information and, shall assist the Buyer to resist the disclosure in question to the maximum extent permitted.

(3) Without prejudice to the generality of Clause 5 of this Schedule, the Contractor further undertakes to make all relevant directors, employees, sub-contractors, agents and professional advisers aware of the confidential nature of the Confidential Information under this Clause and shall procure the compliance of all such persons with the provisions of this Clause as if those persons were a direct signatory to the Contract. If required by the Buyer, the Contractor shall procure that all such persons used in connection with the Services sign a non-disclosure agreement directly with the Buyer.

(4) The Contractor shall not make use of or make any reference to the name of the Buyer (or any Affiliate of the Buyer) for any advertisement, announcement, marketing or publicity without the prior written consent of the Buyer.

(5) The Contractor shall not without the prior consent of the Buyer in writing take or permit to be taken any photographs of any Site or any part thereof, or any property of the Buyer (including without limitation equipment and installations).

(6) This Clause 5 of this Schedule shall survive termination of the Contract for whatever reason

6 FREE ISSUE MATERIALS

(1) Where the Buyer, for the purposes of the Contract, issues materials free-of-charge to the Contractor such materials shall be and remain the property of the Buyer. The Contractor shall maintain all such materials in good order and condition. The Contractor shall use such materials solely in connection with the Contract and for no other purpose. Surplus materials shall be returned or disposed of at the Buyer's option. Waste, loss or damage to such materials arising from the default of the Contractor, bad workmanship or negligence of the Contractor shall be made good at the Contractor's expense.

(2) On receipt of such materials the Contractor shall carry out a reasonable visual examination to check that the materials are free from defects or deficiencies and accord with the Contract. The Contractor shall notify the Buyer as soon as practicable, but in any event within seven days of receipt of such materials, where any such defects or deficiencies are discovered. The Buyer shall replace the materials or make good the deficiencies within a reasonable time of such notice. The Buyer shall be under no liability to the Contractor to pay extra costs if the defect or deficiency was not so notified or arose out of the Contractor's failure to maintain the materials in good order and condition.

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7 CONDITION OF THE EQUIPMENT

(1) In addition to Clause 9 of Conditions, If at any time it appears to the Contractor that the condition of the Equipment to be repaired or modified is such that the intent of the Contract is not reasonably practical, the Contractor shall promptly notify the Buyer in writing setting out fully the reasons and possible solutions. The Buyer may then instruct the Contractor to vary the Services, whereby a reasonable sum will be paid or reimbursed for any difference in Price, or terminate the Contract, whereby a reasonable sum will be paid for any Services performed prior to such termination.

8 SITE LABOUR

(1) The Contractor and its subcontractors (if any) unless otherwise specifically notified shall pay their respective employees engaged on the Site the rates of wages, and observe hours and conditions of working, recognised by the national agreements for the industries or trades applicable to the Contractor's work. In the absence of such agreements the Contractor and its subcontractors shall observe rates and conditions approved by the Buyer.

(2) Bonus and other payments outside those defined in Clause 8(1) above shall only be made in accordance with principles agreed with the Buyer.

(3) Once the Contract has commenced the Contractor and its subcontractors shall not introduce or commence to negotiate any changes in the arrangements in Clauses 8(1) and (2) above without the written consent of the Buyer. Notice shall be given to the Buyer of the implementation of any national awards affecting these arrangements.

9 INSURANCE

(1) Clause 12 of the Conditions, details the requirements of Third Party Liability, Professional Indemnity, Workmen's Compensation and Buyers Liability insurances that shall be maintained by the contractor

(2) In addition to Clause 12 of the Conditions, the Contractor shall also maintain the following other insurance policies, with an insurance office of good repute to cover any foreseeable commercial risk, including but not limited to:

  (i) Insurance for the replacement of the Contractor's equipment, defective materials, tools and any other item that is necessary to be used for the completion of the Services.

  (ii) Motor, Marine or Aviation Insurance as appropriate.

(3) The Contractor shall ensure that any subcontractor also maintains each of the insurances set out in Clause 9 of this Schedule.

10 LIABILITY FOR DAMAGE, LOSS AND INJURY

(1) In addition to Clause 10.1 of the Conditions, the Contractor shall indemnify the Buyer and keep the Buyer indemnified against any liability, claims, actions, demands, expenses, costs (including but not limited to legal costs and other professional costs), proceedings, losses (including but not limited to loss of profit) or damages ("**Losses**") arising out of the Services, (and including but not limited to for the avoidance of doubt arising from any equipment, machinery or materials) and including but not limited to losses or costs incurred by the Buyer in connection with any regulatory enforcement action and/or damage to property, land, personal injury and death. This Clause 10 of this Schedule shall survive termination of the Contract for whatever reason.

11 LOAN OF BUYER'S PLANT AND EQUIPMENT

(1) Where plant or machinery is loaned to the Contractor by the Buyer and such is operated by an employee, servant, sub-contractor or other representative of the Buyer:-

  (a) such operator shall not become an employee or servant of the Contractor but shall carry out with such loaned plant or machinery such work as the operator may be directed to do by the Contractor; and

  (b) the Contractor shall be liable for any loss or damage to such loaned plant and machinery caused by the misdirection or misuse of it due to negligence on the part of the Contractor, its servants or agents.

(2) Where loaned plant or machinery of the Buyer is operated by a servant, employee or agent of the Contractor or subcontractor, the Contractor shall be liable for all loss, theft and damage to such loaned plant and machinery unless it can show that it was caused by a defect present therein at the commencement of the loan.

(3) Unless the loaning of the plant and machinery by the Buyer to the Contractor is specified in the Contract, the Contractor has no automatic right to receive loaned plant or machinery.

(4) The Buyer shall have the right to withdraw any loaned plant and machinery at any time and shall be under no liability to the Contractor in connection with the Buyer for failing to lend plant or machinery at any time.

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12 TESTS AND TAKEOVER

(1) Prior to Take-over, relevant tests shall be carried out at the request of the Buyer to check the Services and/or Equipment have been completed in accordance with the Contract. These tests should be carried out in the presence of, and at times agreed by, the Buyer.

(2) If any portion of the Services and/or Equipment fails to pass such tests, the tests shall, at the cost of the Contractor, be repeated within a reasonable time.

(3) As soon as, in the opinion of the Buyer, the Services and/or Equipment have been successfully completed and have passed all relevant tests, or where the Buyer waives its right to have the tests completed, the Buyer shall issue a take-over certificate in respect of the Services and/or Equipment, or any portion thereof, stating therein the date of the Take-over.

(4) The Buyer shall be responsible for the care and operation of the Services and/or Equipment so certified as taken-over.

13 WARRANTY PERIOD

(1) In addition to Clause 3 of the Conditions, the Contractor warrants for a period of twenty-four (24) months from the date of Take-over that the Equipment and Service Deliverables shall be free from defects in design, materials and workmanship and the Contractor agrees at its own cost and as soon as reasonably practicable to repair or replace the Equipment and/or Service Deliverables (or any part thereof) that is the subject of any such defect(s). For the avoidance of doubt, this warranty shall not apply to such parts of the Equipment that have not been the subject of any Services.

(2) If it is necessary for the Contractor to repair or replace any part of the Equipment pursuant to Clause 13(1) of this Schedule, the provisions of Clause 13(1) of this Schedule shall apply to such parts of the Equipment so repaired or replaced until the expiration of eighteen (18) months from the date of such repair or replacement.

(3) Without prejudice to any other rights and remedies, in the event that the Contractor does not comply with Clause 13(1) of this Schedule the Buyer may carry out such repairs or replacements as its deems reasonably necessary and shall be entitled to claim full reimbursement from the Contractor of all reasonable costs incurred in doing so. Such action shall not relieve the Contractor of its continuing obligations under the Contract.

14 INTELLECTUAL PROPERTY

(1) In addition to clause 9.2 of the Conditions, the Consultant may only make such number of copies of any Input Materials as are necessary for the purpose of performing the Services.

(2) Any Intellectual Property Rights that arise or are otherwise obtained or developed by the Consultant, or by an employee or sub-contractor on behalf of the Consultant in the course of or in connection with the Services shall upon creation vest in and be the exclusive property of the Buyer. The Consultant hereby assigns with full title guarantee (in the case of any future Intellectual Property Rights by way of a present assignment of a future right) ownership of all such Intellectual Property Rights to the Buyer. Both during the term of the Contract and afterwards, the Consultant shall execute all documents and do all things necessary to vest ownership of such Intellectual Property Rights in the Buyer as the sole beneficial owner and the Consultant irrevocably waives all moral rights in respect of any materials or works which give rise to an assignment of Intellectual Property Rights pursuant to this Clause 14(2) of this Schedule.

(3) The Consultant shall promptly disclose to the Buyer any idea or invention created in the course of providing the Services.

(4) To the extent the Buyer reasonably requires use of Intellectual Property Rights of the Consultant to make use of the Services, the Consultant hereby licenses such rights of use to the Buyer free of charge and on a perpetual, non-exclusive sub-licensable worldwide basis.

(5) On termination or expiry of the Contract or completion of the Services, the Consultant shall deliver up to the Buyer all Documents, products, tools, equipment and other materials that the Buyer owns or is licensed to use pursuant to this Clause 14 of this Schedule.

15 VARIATION OF THE SERVICES

(1) In the event that the Buyer requires additional works or services to the Services or any changes to the Services, the Buyer shall notify the Contractor of its requirements. Following such notification and in any event within two working days following receipt of the request, the Contractor shall advise the Buyer in writing of the impact (if any) of any requested change on:

(a) the Price, together with a detailed breakdown of such additional costs, expenses and charges to be incurred by the Contractor as a result of the requested change; and

(b) the timescales for the performance of the Services, together with a detailed breakdown of additional time required to perform the Services (as revised).

Any suggested revision by the Contractor to the Price and/or the timescales for performance of the Services must be proportionate to the change requested to the Services by the Buyer and the Contractor shall use all commercially reasonable efforts to minimise any additional charges and delay in performance of the Services. If requested by the Buyer, the parties shall meet to discuss any requested change and/or any impact on the Price or timescales for performance of the Services as soon as practicable.

(2) The Contractor may not unreasonably withhold or delay its agreement to any reasonable request by the Buyer to add to or alter the Services and both parties shall negotiate any amendments required to the Contract in good faith.

(3) Any change to the Services or any other terms of the Contract shall only be effective and binding if documented in writing and signed by an authorised representative of each party.