



**Registration of a Charge**

Company name: **BAE SYSTEMS PLC**

Company number: **01470151**



X83MOWDT

Received for Electronic Filing: **18/04/2019**

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**Details of Charge**

Date of creation: **11/04/2019**

Charge code: **0147 0151 0050**

Persons entitled: **HOMES AND COMMUNITIES AGENCY**

Brief description: **ALL THAT FREEHOLD LAND KNOWN AS AIRFIELD AT BROUGH HU15 1EQ COMPRISING PART OF TITLE NUMBER HS31335 AND AS MORE PARTICULARLY SHOWN EDGED RED ON THE PLAN ANNEXED TO THE CHARGING INSTRUMENT. FOR MORE DETAILS PLEASE REFER TO THE CHARGING INSTRUMENT.**

**Contains fixed charge(s).**

**Contains negative pledge.**

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**Authentication of Form**

This form was authorised by: **a person with an interest in the registration of the charge.**

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**Authentication of Instrument**

Certification statement: **I CERTIFY THAT SAVE FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION**

**FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL  
INSTRUMENT.**

Certified by:

**ASHURST LLP**



## **CERTIFICATE OF THE REGISTRATION OF A CHARGE**

Company number: 1470151

Charge code: 0147 0151 0050

The Registrar of Companies for England and Wales hereby certifies that a charge dated 11th April 2019 and created by BAE SYSTEMS PLC was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 18th April 2019 .

Given at Companies House, Cardiff on 18th April 2019

The above information was communicated by electronic means and authenticated  
by the Registrar of Companies under section 1115 of the Companies Act 2006



**Companies House**



**THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES**

dated 11 April 2019

**BAE Systems plc**

and

**Homes and Communities Agency**

## **Third Party Fixed Charge Over Land**

(To: The Chief Land Registrar. Note: This Charge contains (in clause 4.1) the consent of the Chargor to the lodgement at the Land Registry of an application by or on behalf of Homes England to enter a restriction in the Proprietorship Register and (in clause 4.3.3) the consent of the Chargor to the lodgement at the Land Registry of an application by or on behalf of Homes England to enter a notice on the Charges Register.)

Trowers & Hamlins LLP  
3 Bunhill Row  
London  
EC1Y 8YZ  
t +44 (0)20 7423 8000  
f +44 (0)20 7423 8001  
www.trowers.com  
**EXECUTION VERSION**

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## Deed

dated 11 April 2019

### Parties

- (1) **BAE Systems plc** a company registered in England and Wales with company number 01470151, whose registered office is at 6 Carlton Gardens, London SW1Y 5AD (the **Chargor**); and
- (2) **Homes and Communities Agency** (trading as Homes England) of Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington WA3 7QH (**Homes England**).

### Introduction

- (A) Homes England has agreed to make loan facilities available to the Borrower in accordance with the terms of the Facility Agreement (as defined below).
- (B) The Chargor owns the Mortgaged Property.
- (C) It is a condition precedent to the granting of the loan facilities to the Borrower under the Facility Agreement that the Chargor enters into this Deed to provide security to Homes England for the purposes and on the terms as described below.
- (D) It is intended by the parties to this document that it will take effect as a deed.

### Agreed terms

#### 1 Definitions and interpretation

##### 1.1 Definitions

In this Deed, unless the context otherwise requires:

**Administrator** has the meaning given to it by paragraph 1 of Schedule B1 to the Insolvency Act 1986 (incorporated by Schedule 16 to the Enterprise Act 2002),

**Borrower** means Horncastle Group plc, a company registered in England and Wales with company number 00813569, whose registered office is at Unicorn House 8 Innovation Drive Newport East Yorkshire HU15 2FU;

**Charged Assets** means all the assets, rights, property and undertaking of the Chargor from time to time mortgaged, charged, assigned or agreed to be assigned to Homes England by the Chargor under this Deed;

**Collateral Rights** means all rights, powers and remedies of Homes England provided by or pursuant to this Deed or by law;

**Competent Authority** means any legal person and/or any court of law or tribunal in each case having authority under applicable Environmental Law;

**Consents** means and includes any necessary approval, authorisation, consent, exemption, licence, permit, permission or registration by, of or from any governmental or

other authority, the local planning authority, landlord, funder, adjoining land owner or any other person required to undertake the Works or deliver the Project;

**Deed of Priorities** means the deed of priorities dated on or about the date of this Deed between (1) Network Rail Infrastructure Limited (2) Homes England (3) Horncastle Group plc (4) the Chargor and (5) Jordan Brough South Developments LLP and others;

**Default Rate** means the rate of interest calculated in accordance with clause 7.3.5 of the Facility Agreement;

**Environment** means the environment as defined in Section 1(2) of the Environmental Protection Act 1990;

**Environmental Audit** means a full risk assessment of the Security Assets to ascertain the nature and extent of any harm or detriment caused to, or the risk of any possible harm or detriment which may be caused to the environment by any activity, including soil, air or water testing of the Security Assets and any other property;

**Environmental Consents** means all licences, authorisations, consents or permits of any kind under or relating to Environmental Laws including any conditions which attach thereto, which relate to or affect the Mortgaged Property and which is required by Environmental Law;

**Environmental Law** means any applicable common or statutory law, regulation, standard or code having the force of law, any code of practice, circular, guidance note, judgment or decision of any court or tribunal relating to the protection of human health and safety, the workplace or the Environment;

**Event of Default** has the meaning given to it in the Facility Agreement;

**Facility Agreement** means the facility agreement between the Borrower and Homes England originally dated 4 April 2016 and as amended on 15 November 2016, 19 February 2018 and 1 November 2018 and as further amended and restated on or about the date of this Deed;

**Finance Documents** means as such term is defined in the Facility Agreement;

**Fixtures** includes all buildings, erections and structures at any time on or in the course of construction on the Mortgaged Property and includes all fixtures, fittings, plant, materials, machinery, equipment, installations and apparatus now and from time to time in or on the Mortgaged Property;

**Insurances** means all contracts and policies of insurance of whatever nature which are from time to time taken out by or with the authority or on behalf of the Chargor in relation to the Security Assets or any part of them;

**Mortgaged Property** means all the freehold and leasehold property specified in Schedule 1 and any other freehold or, as the case may be, leasehold property which is the subject of a Security Interest under this Deed;

**Occupational Lease Document** means any tenancy or licence to occupy or any agreement for any of the same from time to time granted or entered into by the Chargor in

respect of any part of the Mortgaged Property and any licence, consent or approval given thereunder;

**Project** has the meaning given to it in the Facility Agreement;

**Planning Acts** means the **consolidating Acts** as defined in the Planning (Consequential Provisions) Act 1990 together with the Planning and Compensation Act 1991, the Planning and Compulsory Purchase Act 2004, the Planning Act 2008 and the Localism Act 2011 and all applicable laws, orders, regulations, instruments, by laws, instructions and standards, whether national, regional or local, including any subordinate legislation relating to town and country planning and to the use and/or occupation of a Mortgaged Property;

**Receiver** means a receiver or receiver and manager of the whole or any part of the Security Assets;

**Related Rights** means, in relation to any asset which comprises the Security Assets:

- (a) the proceeds of sale of any part of that asset;
- (b) all rights under any licence, agreement for sale or agreement for lease in respect of that asset;
- (c) all rights, covenants, easements, benefits, claims, contracts, warranties, remedies, security, indemnities or covenants for title in respect of that asset; and
- (d) any monies and proceeds paid or payable in respect of that asset;

**Rights** means any Security or other right or benefit whether arising by set-off, counterclaim, subrogation, indemnity, proof in liquidation or otherwise and whether from contribution or otherwise;

**Secured Liabilities** means all the money and liabilities now or hereafter due owing or incurred to Homes England by the Borrower or the Chargor under the terms of each Finance Document (including, without limitation, under any amendments, supplements or restatements of any Finance Document or in relation to any new or increased advances or utilisations) in any manner whatsoever, in any currency or currencies (whether present or future, actual or contingent) and whether owed by the Borrower or the Chargor as principal or surety or incurred solely or jointly with another, together with all interest accruing thereon and all costs charges and expenses incurred by Homes England in connection therewith and **Secured Liability** means any one of these obligations;

**Security** means the security constituted by or pursuant to this Deed;

**Security Assets** means all the assets, rights, property and undertaking of the Chargor from time to time mortgaged, charged, assigned or agreed to be assigned to, Homes England by the Chargor under this Deed including, without limitation, the Mortgaged Property;

**Security Interest** means any mortgage, pledge, lien, charge, security assignment, right of set off, hypothecation or security interest or any other agreement or arrangement having the effect of conferring security (including, for the avoidance of doubt, a floating charge) or

any other type of preferential arrangement (including, without limitation, title transfer or retention of title) having a similar effect;

**Security Period** means the period beginning on the date hereof and ending on the date upon which Homes England is satisfied that all the Secured Liabilities have been irrevocably and unconditionally paid in full and no further Secured Liabilities are capable of being outstanding;

**Tax** includes any form of taxation, levy, duty, charge, contribution or impost of whatever nature (including any applicable fine, penalty, surcharge or interest) imposed by any government authority, body or official (whether central, local, state or federal) anywhere in the world competent to impose any of them;

**Valuation** means any valuation relating to the Mortgaged Property supplied to Homes England by the Chargor (or on its behalf); and

**Works** has the meaning given to it in the Facility Agreement;

## 1.2 Interpretation

In this Deed, unless the context otherwise requires, a reference to:

**assets** includes present and future properties, undertakings, revenues, rights and benefits of every description;

an **authorisation** includes an authorisation, consent, approval, resolution, licence, exemption, filing or registration;

the **Chargor**, the **Borrower** or Homes England includes a reference to its respective successors, permitted assigns and permitted transferees;

a **person** includes a permitted body corporate, unincorporated association and partnership, in each case, whether or not having a separate legal personality;

a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;

one gender shall include a reference to other genders; an individual will be treated as including corporations and vice versa; words importing the singular will be treated as including the plural and vice versa and words importing the whole will be treated as including a reference to any part, in each case except where the context specifically requires otherwise;

this Deed or to any provision of this Deed or any other document (including, without limitation any of the Finance Documents) is a reference to it as amended, restated, supplemented, varied or novated from time to time;

the words **include** or **including** (or any similar term) are not to be construed as implying any limitation and general words introduced by the word **other** (or any similar term) will not be given a restrictive meaning by reason of the fact that they are preceded or followed by words indicating a particular class of acts, matters or things; and

a statute, a statutory provision, enactment or an EC Directive or subordinate legislation is a reference to any amendment, modification, extension, consolidation, replacement or re-enactment of any such statute, statutory provision, enactment or EC Directive, whether before or after the date of this Deed.

### **1.3 Facility Agreement**

1.3.1 Words and expressions defined in the Facility Agreement will have the same meanings when used in this Deed, unless the context otherwise requires. In the case of inconsistency, definitions set out in the Facility Agreement will prevail.

1.3.2 In the event of any inconsistency, ambiguity or discrepancy between the provisions of the Facility Agreement and the provisions of this Deed, then the provisions of the Facility Agreement shall prevail.

### **1.4 Deed of Priorities**

In the event of any inconsistency, ambiguity or discrepancy between the provisions of the Deed of Priorities and the provisions of this Deed, then the provisions of the Deed of Priorities shall prevail.

### **1.5 Headings**

The clause, paragraph and Schedule headings and the table of contents are inserted for ease of reference only and will not affect construction.

### **1.6 Law of Property (Miscellaneous Provisions) Act 1989**

For the purposes of Rule 68 of the Land Registration Rules 2003 (as amended) the covenant set out in section 4(1)(b) of the Law of Property (Miscellaneous Provisions) Act 1994 will be extended by the provisions of this Deed.

### **1.7 Nature of security over Mortgaged Property**

A reference in this Deed to a **charge or mortgage of or over the Mortgaged Property** includes:

1.7.1 all buildings and Fixtures and fittings (including trade and tenant's Fixtures and fittings) and fixed plant and machinery which are situated on or form part of the Mortgaged Property at any time; and

1.7.2 all Related Rights.

### **1.8 Third party rights**

A person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce, or to enjoy, any term of this Deed.

### **1.9 Avoidance of payments**

If Homes England considers an amount paid by the Chargor in respect of the Secured Liabilities is capable of being avoided or otherwise set aside on the insolvency, liquidation

or administration of the Chargor or otherwise set aside, that amount shall not have been irrevocably and unconditionally paid for the purposes of this Deed.

## **2 Payment of Secured Liabilities**

### **2.1 Covenant to pay**

The Chargor covenants with Homes England that it will, on demand, pay and discharge the Secured Liabilities as and when they fall due for payment, subject to the provisions of clause 2.3 (Limited Recourse) below.

### **2.2 Interest on demand**

If the Chargor fails to pay any sum on the due date for payment of that sum the Chargor will pay interest on such sum (before and after any judgment) from the date of demand until the date of payment calculated at the Default Rate.

### **2.3 Limited Recourse**

Notwithstanding any other provision of this Deed or any of the Finance Documents, it is expressly agreed and understood that:

2.3.1 the sole recourse of Homes England to the Chargor under this Deed is for the Chargor's interest in the Charged Assets; and

2.3.2 the liability of the Chargor pursuant to or otherwise in connection with this Deed or any of the Finance Documents shall be:

(a) limited in aggregate to an amount equal to that recovered as a result of the enforcement of this Deed and realised from the proceeds of sale or other disposal or realisation of the Charged Assets; and

(b) satisfied only from the proceeds of sale or other disposal or realisation of the Charged Assets pursuant to this Deed or the Finance Documents.

## **3 Security**

### **3.1 Fixed charges**

The Chargor hereby charges in favour of Homes England with full title guarantee as continuing security for the payment and discharge of the Secured Liabilities:

3.1.1 by way of a first fixed legal mortgage the Mortgaged Property;

3.1.2 by way of first fixed charge:

(a) the benefit of all present and future licences, consents and authorisations (statutory or otherwise) held or utilised by the Chargor in connection with the Security Assets or the use of any of the Security Assets and all rights in connection with them;

(b) the benefit of all other contracts, rents, guarantees, appointments, covenants and warranties relating to the Mortgaged Property and other

documents to which the Chargor is a party or which are in its favour or of which it has the benefit relating to letting, development, sale, purchase, use or the operation of the Mortgaged Property or any part of it or otherwise relating to the Mortgaged Property;

(c) the Fixtures; and

(d) insofar as the legal mortgage referred to in clause 3.1.1 or any of the assignments referred to in clause 3.2 shall for any reason be ineffective as a legal mortgage or an assignment, the assets referred to in those clauses.

### **3.2 Assignments**

The Chargor hereby assigns and agrees to assign by way of security to Homes England with full title guarantee (to the fullest extent assignable or capable of assignment without infringing any contractual provision restricting the same (unless any applicable consent or waiver to any such assignment has been given)) for the payment of the Secured Liabilities, all the Chargor's right, title and interest in, to and under each of the following present and future assets all rights and claims in relation to any Mortgaged Property including, without limitation, all rights and claims against any lessees, tenants, sub-lessees, sub-tenants, licensees or occupiers of the Mortgaged Property from time to time and all guarantors and sureties for the obligations of such persons (whether under the Occupational Lease Documents or otherwise) provided that, in each case, to the extent (if any) that the benefits, rights, titles, claims and interests assigned under this clause 3.2 are not assignable, such assignment will operate as an assignment of all proceeds received by the Chargor in connection with such benefits, rights, titles, claims and interests.

## **4 The Land Registry and further advances**

### **4.1 Land registration**

The Chargor hereby consents to an application being made to the Chief Land Registrar by or on behalf of Homes England to enter the following restriction (in form P of Schedule 4 to the Land Registration Rules 2003) in the Proprietorship Register of any property which is, or is required to be, registered forming part of the Mortgaged Property:

"No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a written consent signed by the proprietor for the time being of the charge dated [the date of this Deed] in favour of the Homes and Communities Agency (trading as Homes England) referred to in the Charges Register".

### **4.2 Implied covenants**

For the purposes of Rule 68(1) of the Land Registration Rules 2003, the covenants set out in Sections 2 to 5 (inclusive) of the Law of Property (Miscellaneous Provisions) Act 1994 will be extended by the provisions of this Deed.

### **4.3 Further advances**

- 4.3.1 Subject to the terms of the Finance Documents, Homes England is under an obligation to make further advances to the Chargor.
- 4.3.2 For the purposes of section 94(1)(c) of the Law of Property Act 1925, section 49(3) of the Land Registration Act 2002 and Rule 108 of the Land Registration Rules 2003, the obligation on Homes England to make further advances will be deemed to be incorporated in this Deed as if the same were set out in this Deed.
- 4.3.3 For the purposes of the Land Registration Rules 2003 and section 49(3) of the Land Registration Act 2002, the Chargor hereby consents to an application being made to the Chief Land Registrar by or on behalf of Homes England for the entry of a note of the obligation to make further advances on the Charges Register of any registered land forming part of the Mortgaged Property.

## **5 Further assurance**

### **5.1 Further assurance: general**

The Chargor shall, at its own expense, promptly do all such acts or execute all such documents (including, without limitation, assignments, transfers, mortgages, charges, notices and instructions) as Homes England or any Receiver may specify (and in such form as Homes England or any Receiver may require) in favour of Homes England or its nominees:

- 5.1.1 to perfect or protect the security created or intended to be created in respect of the Security Assets (which may include the execution by the Chargor of a mortgage, fixed charge or assignment over all or any of the assets constituting, or intended to constitute, Security Assets) or for the exercise of the Collateral Rights; and/or
- 5.1.2 to facilitate the realisation of the Security Assets; and/or
- 5.1.3 to obtain all necessary consents to procure the registration of this Deed with the registrar of companies and, in respect of the Mortgaged Property, at the Land Registry or on the Land Charges Register, as appropriate.

### **5.2 Consents**

The Chargor will use reasonable endeavours to obtain (in form and content satisfactory to Homes England) as soon as possible any consents necessary to enable the relevant Security Assets purported to be so charged or assigned to be the subject of an effective fixed charge or assignment pursuant to clauses 3.1 and 3.2 and, immediately upon obtaining any such consent, the relevant Security Asset shall become subject to such Security and the Chargor shall promptly deliver a copy of each such consent to Homes England.

### **5.3 Preservation of rights**

Neither the obligations of the Chargor contained in this Deed nor the rights, powers and remedies conferred in respect of the Chargor upon Homes England by the Finance Documents or by law shall be discharged, prejudiced or otherwise affected by:

- 5.3.1 the winding-up, dissolution, administration or reorganisation of the Chargor or any other person or any change in its status, function, control or ownership;
- 5.3.2 any of the obligations of the Chargor or any other person under the Finance Documents or under any other security relating to the Finance Documents being or becoming illegal, invalid, unenforceable or ineffective in any respect;
- 5.3.3 any time or other indulgence being granted or agreed to be granted to the Chargor or any other person in respect of its obligations under the Finance Documents;
- 5.3.4 any amendment to, or any variation, waiver or release of any obligation of the Chargor or any other person under the Finance Documents;
- 5.3.5 any failure to take, or fully to take, any security contemplated by the Finance Documents or otherwise agreed to be taken in respect of the Chargor's or any other person's obligations under the Finance Documents;
- 5.3.6 any failure to realise or fully to realise the value of, or any release, discharge, exchange or substitution of, any security taken or agreed to be taken in respect of the Chargor's or any other person's obligations under the Finance Documents; or
- 5.3.7 any other act, event or omission which, but for this clause 5.3, might operate to discharge, impair or otherwise affect any of the obligations of the Chargor or any other person or any of the rights, powers or remedies conferred upon Homes England by the Finance Documents or by law.

## **6 Negative pledge and disposal restrictions**

### **6.1 Negative pledge**

Save as permitted by the Finance Documents the Chargor will not, without the prior written consent of Homes England, create, purport to create, or permit to subsist (in favour of any person other than Homes England) any Security Interest over any of the Security Assets now or in the future, or agree or attempt to do so, or increase or extend any liability of the Chargor secured on any of the Security Assets save in respect of any security that is contemplated and regulated by the Deed of Priorities.

### **6.2 Disposal of fixed charge assets**

Save as permitted by the Finance Documents, the Chargor will not, without the prior written consent of Homes England (whether by a single transaction or number of related or unrelated transactions, and whether at the same time or over a period of time) sell, transfer, lease out, lend or otherwise dispose of any of the Security Assets or any interests therein or the right to receive or to be paid the proceeds arising from their disposal or agree or attempt to do so.

## **7 Representations and warranties**

### **7.1 Duration and to whom made**

The representations and warranties made by the Chargor in this clause 7 will remain in force (and will be deemed repeated on each day falling during) during the Security Period and are given to Homes England.

### **7.2 Matters represented**

Except as disclosed in writing to Homes England on or prior to the date of this Deed or on or prior to the date the Mortgaged Property becomes subject to a fixed charge hereunder that the Chargor is the legal and beneficial owner of the Mortgaged Property;

### **7.3 Security created**

Subject to registration with the registrar of companies, at the Land Registry or at the Land Charges Registry as appropriate and taking into account the Deed of Priorities, this Deed creates those Security Interests it purports to create ranking as set out above and is not liable to be avoided or otherwise set aside on the liquidation or administration of the Chargor or otherwise.

## **8 General undertakings**

### **8.1 Not to jeopardise the Security**

The Chargor will not do or allow to be done anything which could reasonably be expected materially to decrease the value of the Security to Homes England (other than fair wear and tear arising from the use of the Security Assets in the ordinary course of business).

### **8.2 Law**

The Chargor will comply with all applicable laws, regulations and authorisations affecting the Security Assets.

## **9 Mortgaged Property**

The Chargor undertakes to Homes England at all times during the Security Period:

### **9.1 Outgoings**

to pay punctually all Taxes, rents, rates, duties, assessments and other outgoings payable in respect of the Mortgaged Property;

### **9.2 Covenants**

to perform and observe all covenants (positive and restrictive), conditions and stipulations from time to time affecting the Mortgaged Property or the use or enjoyment of it;

### **9.3 User**

to use the Mortgaged Property only for such purpose or purposes as may for the time being be authorised as the permitted use or user thereof under or by virtue of the Planning Acts;

#### **9.4 Notices**

to pass onto Homes England immediately upon receipt a copy of any notice or proposal for a notice or order served on the Chargor by any public or local or any other authority in respect of the Mortgaged Property or any part thereof and to give notice to Homes England immediately on becoming aware of any other matter which is likely to affect adversely the Value of the Mortgaged Property, and in each case if Homes England so requires or approves and at the Chargor's cost to make such representations in respect of such notice or order as Homes England may require;

#### **9.5 Information**

at the request of Homes England promptly to provide Homes England with such documents or information relating to the Mortgaged Property or its development as Homes England may reasonably require;

#### **10 Power to remedy**

In the case of default by the Chargor in observing or performing any of the covenants or stipulations affecting the Security Assets, the Chargor will permit Homes England or its agents and contractors to enter on the Security Assets and to comply with or object to any notice served on the Chargor in respect of the Security Assets and to generally do such things or pay all such costs, charges and expenses as Homes England may consider are necessary or desirable to prevent or remedy any breach of covenant or stipulation or to comply with or object to any notice. The Chargor will indemnify and keep Homes England indemnified against all losses, costs, charges and expenses reasonably incurred in connection with the exercise of the powers contained in this clause 10.

#### **11 Enforcement of Security**

##### **11.1 When Security becomes enforceable**

On the occurrence of any Event of Default which is continuing, the security created by and under this Deed is immediately enforceable.

##### **11.2 Exercise of powers**

At any time after the Security becomes enforceable, Homes England may, without notice to the Chargor or prior authorisation from any court, in its absolute discretion whether or not it has appointed a Receiver, exercise all or any of the powers, authorities and discretions conferred by the Law of Property Act 1925 (as varied or extended by this Deed) on mortgagees and by this Deed on any Receiver or otherwise conferred by law on mortgagees or Receivers.

##### **11.3 Possession**

If Homes England, any Receiver or any delegate of any such person takes possession of the Security Assets, it or he may at any time relinquish such possession.

**11.4 No liability as mortgagee in possession**

Homes England will not be liable to account as a mortgagee in possession in respect of all or any part of the Security Assets or be liable for any loss upon realisation or for any neglect, default or omission in connection with the Security Assets to which a mortgagee in possession might otherwise be liable.

**11.5 Power of sale**

The power of sale under this Deed may be exercised notwithstanding that Homes England or the Receiver may have previously waived or refrained from exercising that power; and no demand or notice of sale made or given under this Deed will be waived by the acceptance of any payment on account of the Secured Liabilities, or by any negotiations between Homes England and the Chargor or any other party who is acting as agent for the Chargor or on behalf of it.

**11.6 Receiver's liability**

All the provisions of clause 11.4 will apply, mutatis mutandis, in respect of the liability of any Receiver and delegate of the Receiver or Homes England or any officer, employee or agent of Homes England, any Receiver or any delegate.

**12 Extension and variation of the Law of Property Act 1925**

**12.1 Extension of powers**

The power of sale or other disposal conferred on Homes England and on any Receiver by this Deed will operate as a variation and extension of the statutory power of sale under Section 101 of the Law of Property Act 1925 and such power will arise (and the Secured Liabilities will be deemed due and payable for that purpose) on the execution of this Deed.

**12.2 Restrictions**

The restrictions contained in Sections 93 and 103 of the Law of Property Act 1925 will not apply to this Deed or to the exercise by Homes England of its right to consolidate all or any of the Security with any other security in existence at any time or to its power of sale, which powers may be exercised by Homes England without notice to the Chargor.

**12.3 Power of leasing**

The statutory powers of leasing may be exercised by Homes England at any time and Homes England and any Receiver may make any lease or agreement for lease, accept surrenders of leases and grant options on such terms as it will think fit, without the need to comply with any restrictions imposed by Sections 99 and 100 of the Law of Property Act 1925.

**12.4 Non-application**

The following provisions of the Law of Property (Miscellaneous Provisions) Act 1994 will not apply to clause 3 being:

- 12.4.1 the words 'other than any charges, encumbrances or rights which that person does not and would not reasonably be expected to know about' in Section 3(1);

12.4.2 the words 'except to the extent that' and all words thereafter in Section 3(2); and

12.4.3 Section 6(2).

## **12.5 Application**

Section 109(8) of the Law of Property Act 1925 will not apply, and all monies received by Homes England or any Receiver in the exercise of any powers conferred by this Deed will be applied in the following order:

12.5.1 in the payment of:

- (a) all costs, charges, liabilities and expenses incurred by Homes England or any Receiver in the exercise of those powers or incidental to any Receiver's appointment, together with interest at the applicable rate set out in clause 2.2 (both before and after judgment) from the date those amounts became due until the date they are irrevocably paid in full; and
- (b) any Receiver's remuneration;

12.5.2 in or towards discharge of all liabilities having priority to the Secured Liabilities;

12.5.3 in or towards the satisfaction of the Secured Liabilities in such order as Homes England determines; and

12.5.4 in the payment of any surplus to the Chargor or other person entitled to it.

## **12.6 Application of sums received**

The Chargor will have no rights in respect of the application by Homes England of any sums received, recovered or realised by Homes England under this Deed.

## **13 Appointment of Receiver**

### **13.1 Appointment and removal**

At any time after the Security becomes enforceable, or if requested to do so by the Chargor, Homes England may by deed or otherwise (acting through an authorised officer of Homes England), without prior notice to the Chargor:

13.1.1 appoint one or more persons to be a Receiver of the whole or any part of the Security Assets or an Administrator of the Chargor;

13.1.2 remove (so far as it is lawfully able) any Receiver or an Administrator so appointed; and

13.1.3 appoint another person(s) as an additional or replacement Receiver(s) or Administrator(s).

### **13.2 Capacity of Receivers**

Each person appointed to be a Receiver under this Deed will be:

- 13.2.1 entitled to act individually or together with any other person appointed or substituted as Receiver;
- 13.2.2 for all purposes will be deemed to be the agent of the Chargor which will be solely responsible for his acts, defaults and liabilities and for the payment of his remuneration and no Receiver will at any time act as agent for Homes England; and
- 13.2.3 entitled to remuneration for his services at a rate to be fixed by Homes England from time to time (without being limited to the maximum rate specified by the Law of Property Act 1925).

### **13.3 Statutory powers of appointment**

The powers of a Receiver will be in addition to all statutory and other powers of Homes England under the Law of Property Act 1925 (as extended by this Deed), an administrative receiver under the Insolvency Act 1986 or otherwise and such powers will remain exercisable from time to time by Homes England in respect of any part of the Security Assets.

## **14 Powers of Receiver**

### **14.1 Powers**

Every Receiver appointed by Homes England will (in addition to all powers conferred on him by law) have the following powers exercisable in respect of the Security Assets upon such terms and conditions as he thinks fit:

- 14.1.1 to take possession of and generally to manage the Security Assets and any business of the Chargor;
- 14.1.2 to enter into, carry into effect, complete, deliver, perform, repudiate, rescind or vary any deed, contract, transaction or arrangement to which the Chargor is or is to be a party;
- 14.1.3 to carry out on any Mortgaged Property (or on any other property which it may in his opinion be necessary or desirable to work upon) any development or new works or complete any unfinished works of building, reconstruction, maintenance, furnishing or equipment and to apply for and obtain all planning permissions, consents or licences as may be necessary or desirable for such purposes;
- 14.1.4 to purchase or acquire any land and purchase, acquire, grant or release any interest in or right over land and enter into, take or release the benefit of covenants (positive or restrictive) binding on or benefiting the Mortgaged Property;
- 14.1.5 to sell, lease, licence, surrender or accept surrender of leases or licences of, charge or otherwise deal with and dispose of the Security Assets without restriction including (without limitation) power to dispose of any Fixtures separately from the land;

- 14.1.6 to carry into effect and complete any transaction by executing deeds or documents in the name of or on behalf of the Chargor;
- 14.1.7 to insure the Security Assets and any works and effect indemnity insurance or other similar insurance and obtain bonds or give commitments, guarantees indemnities and security;
- 14.1.8 to engage, rely on the advice of and discharge advisers, consultants, officers, managers, agents, workmen and others;
- 14.1.9 to purchase materials, tools, equipment, goods or supplies;
- 14.1.10 to bring, continue or defend any claim, dispute, action or legal proceedings and enter into any arrangement or compromise in relation to the Security Assets or any part of them;
- 14.1.11 to redeem any security and to borrow or raise any money and secure the payment of any money in priority to the Secured Liabilities for the purposes of the exercise of his powers and/or defraying any costs or liabilities incurred by him in such exercise;
- 14.1.12 to make any elections for value added tax purposes; and
- 14.1.13 to do any other acts or things as:
  - (a) he may consider to be necessary or desirable for the realisation of the Security Assets or any part thereof;
  - (b) as he may consider incidental or conducive to any of the rights or powers conferred on a Receiver under or by virtue of this Deed or law.

## **15 Protection of purchasers**

### **15.1 Consideration**

The receipt of Homes England or any Receiver will be conclusive discharge to a purchaser and, in making any sale or disposal of any of the Security Assets or making any acquisition, Homes England or any Receiver may do so for such consideration, in such manner and on such terms as it thinks fit.

### **15.2 Protection of purchaser**

No purchaser or other person dealing with Homes England or any Receiver will be bound to inquire whether the right of Homes England or such Receiver to exercise any of its powers has arisen or become exercisable or be concerned with any propriety or regularity on the part of Homes England or such Receiver in such dealings.

### **15.3 Ratification**

The Chargor will ratify and confirm all things lawfully done and all documents executed by any attorney in the exercise or purported exercise of all or any of his powers.

**16 Effectiveness of Security**

**16.1 Continuing Security**

The Security will remain in full force and effect as a continuing security for the Secured Liabilities unless and until discharged by Homes England.

**16.2 Cumulative rights**

The Security and the Collateral Rights will be cumulative, in addition to and independent of every other security which Homes England may at any time hold for the Secured Liabilities or any other obligations or any rights, powers and remedies provided by law. No prior security held by Homes England over the whole or any part of the Security Assets will merge into the Security.

**16.3 No prejudice**

Neither the Security nor the Collateral Rights will be prejudiced by any time or indulgence granted to the Chargor or any other person or by any other thing which might otherwise prejudice the Security or any Collateral Right.

**16.4 Remedies and waivers**

No failure on the part of Homes England to exercise, or any delay on its part in exercising, any Collateral Right will operate as a waiver thereof, nor will any single or partial exercise of any Collateral Right preclude any further or other exercise of that or any other Collateral Right.

**16.5 No liability**

None of Homes England, any Receiver or any delegate or sub-delegate will be liable by reason of:

16.5.1 taking any action permitted by this Deed; or

16.5.2 any neglect or default in connection with the Security Assets; or

16.5.3 taking possession of or realising all or any part of the Security Assets

except in the case of negligence or wilful default or fraud upon its part.

**16.6 Partial invalidity**

If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Deed nor of such provision under the laws of any other jurisdiction will in any way be affected or impaired thereby and, if any part of the Security is invalid, unenforceable or ineffective for any reason, that will not affect or impair any other part of the Security.

**16.7 Other security**

Homes England will not be obliged to resort to any guarantees, indemnities, Security Interests or other means of payment now or hereafter held by or available to it before enforcing this Deed and no action taken or omitted by Homes England in connection with any such guarantee, indemnity, Security Interests or other means of payment will discharge, reduce, prejudice or affect the liability of the Chargor or the Secured Liabilities nor will Homes England be obliged to account for any money or other property received or recovered in consequence of any enforcement or realisation of any such guarantees, indemnities, Security Interests or other means of payment.

**16.8 Variation**

No variation of the terms of this Deed will be valid unless it is in writing and executed as a deed by the Chargor and confirmed in writing by Homes England.

**17 Release of Security**

Upon the expiry of the Security Period and Homes England not being under any further actual or contingent obligation to make advances or provide other financial accommodation to the Chargor, Homes England will, at the request and cost of the Chargor, release and cancel the Security and procure the reassignment to the Chargor of the property and assets assigned to Homes England pursuant to this Deed and without recourse to, or any representation or warranty by, Homes England or any of its nominees.

**18 Subsequent Security Interests**

If Homes England at any time receives or is deemed to have received notice of any subsequent Security Interest affecting all or any part of the Security Assets or any assignment or transfer of the Security Assets which is prohibited by the terms of this Deed, all payments thereafter by or on behalf of the Chargor to Homes England will be treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Liabilities as at the time when Homes England received such notice.

**19 Assignment**

**19.1 Right of Homes England to assign**

Homes England may at any time assign or otherwise transfer all or any part of its rights under this Deed.

**19.2 Restriction on Chargor**

The Chargor may not assign or transfer any of its rights or obligations under this Deed.

**19.3 Confidentiality**

Homes England may give such information relating to the Chargor and the Secured Liabilities as it thinks fit to any person proposing to take an assignment and/or transfer from Homes England and/or to enter into contractual relations with Homes England with respect to this Deed.

**20 Expenses, stamp taxes and indemnity**

**20.1 Expenses**

The Chargor shall, forthwith on demand, pay to Homes England the amount of all costs and expenses (including legal fees and irrecoverable VAT relating thereto) incurred by it:

20.1.1 in connection with the variation or amendment of, or enforcement or preservation of any rights under this Deed; or

20.1.2 in investigating any Event of Default which has occurred at the fault of the Chargor only;

and such expenses will carry interest until so reimbursed at the rate referred to in clause 2.2.

**20.2 Stamp taxes**

The Chargor will pay all stamp, stamp duty land tax, registration and other Tax to which this Deed, the Security or any judgment given in connection with it is or at any time may be subject and will, from time to time, indemnify Homes England on demand against any liabilities, costs, claims and expenses resulting from any failure to pay or delay in paying any such Tax.

**20.3 Indemnity**

The Chargor will, notwithstanding any release or discharge of all or any part of the Security, indemnify Homes England, its agents, attorneys and any Receiver against any action, proceeding, claims, losses, liabilities and costs which it may sustain as a consequence of any breach by the Chargor of the provisions of this Deed, the exercise or purported exercise of any of the rights and powers conferred on them by this Deed or otherwise relating to the Security Assets.

**21 Payments free of deduction**

All payments to be made under this Deed will be made free and clear of and without deduction or withholding whatsoever for or on account of any Tax except to the extent that the Chargor is required by law to make such payment subject to the deduction or withholding of any Tax. If any Tax or amount in respect of Tax is required to be deducted from any amounts payable or paid by the Chargor, the Chargor will pay such additional amounts as may be necessary to ensure that after the making of the deduction or withholding which is required the relevant recipient receives and retains (free from any liability in respect of any such deduction or withholding) a net amount equal to the full amount which it would have received and retained had no such deduction or withholding been made.

**22 Discretion and delegation**

**22.1 Discretion**

Any power or discretion which may be exercised or any determination which may be made hereunder by Homes England or any Receiver may be exercised or made in its absolute and unfettered discretion without any obligation to give reasons.

## **22.2 Delegation**

Each of Homes England and any Receiver will have full power to delegate (either generally or specifically) the powers, authorities and discretions conferred on it by this Deed (including the power of attorney) on such terms and conditions as it sees fit, which delegation may include power to sub-delegate and will not preclude either the subsequent exercise of such power, authority or discretion by Homes England or the Receiver itself or any subsequent delegation or revocation thereof.

## **23 Perpetuity period**

The perpetuity period under the rule against perpetuities, if applicable to this Deed, will be the period of 125 years from the date of this Deed (as specified in section 5(1) of the Perpetuities and Accumulations Act 2009).

## **24 Counterparts**

This Deed may be executed in counterparts, all of which when taken together will constitute a single deed.

## **25 Certification**

The Chargor hereby certifies that its creation of this Deed in favour of Homes England does not contravene any of the provisions of the Companies Act 2006 or its memorandum and articles of association.

## **26 Reorganisation**

This Deed will remain binding on the Chargor notwithstanding any change in the constitution of Homes England or its absorption by, or amalgamation with, or the acquisition of all or part of its undertaking by, any other person, or any reconstruction or reorganisation of any kind. The Security will remain valid and effective in all respects in favour of Homes England and for any assignee, transferee or other successor in title of Homes England.

## **27 Set off**

Homes England may set off any matured obligation due from the Chargor under this Deed against any matured obligation owed by Homes England to the Chargor (whether actual or contingent, present or future), regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, Homes England may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

## **28 Payment of monies**

### **28.1 Date for payment**

Where neither the Facility Agreement nor this Deed specified the due date for payment of any monies owed by the Chargor to Homes England such monies will be due and payable to Homes England by the Chargor on demand.

### **28.2 Certificates**

A certificate signed by an official of Homes England as to the amount due or owing from the Chargor will be conclusive evidence against the Chargor, except in the case of manifest error.

**29 Notices**

**29.1 Service**

Any notice or communication to be given in connection with this Deed will be in writing and delivered by hand or sent by first class prepaid post or fax and:

29.1.1 sent to the Chargor at:

6 Carlton Gardens, London SW1Y 5AD

Fax: 01252 383015

Attention: The Company Secretary;

29.1.2 sent to Homes England at the address listed at the beginning of this Deed.

Unless either party has communicated another address or fax number to the other in which case it must be sent to the last address or fax number so communicated.

**29.2 Receipt by Chargor**

A notice or communication sent by Homes England to the Chargor under clause 29 will be deemed to have been received:

29.2.1 if delivered by hand, at the time of delivery;

29.2.2 if sent by first class pre-paid post, on the next business day after posting; or

29.2.3 if sent by fax, when received in legible form.

**29.3 Receipt by Homes England**

Any notice or communication given to Homes England by the Chargor under clause 30 will be deemed to have been received:

29.3.1 if delivered by hand, at the time of delivery;

29.3.2 if sent by first class pre-paid post, on the next business day after posting; or

29.3.3 if sent by fax, when received in legible form.

**30 Governing law**

**30.1 Governing law**

This Deed and any non-contractual obligations arising out of or in connection with it shall be governed by, and be construed in accordance with, the laws of England.

**30.2 Exclusive jurisdiction**

The courts of England have exclusive jurisdiction to settle any dispute arising in connection with this Deed (a **Dispute**). The parties agree that these courts are the most appropriate and convenient courts to settle any Dispute that arises under or in connection with this Deed and accordingly neither party will argue to the contrary.

**This Deed** has been executed as a deed by the parties and is delivered and takes effect on the date at the beginning of this Deed.

## **Schedule 1**

### **Mortgaged Property**

All that freehold land known as Airfield At Brough HU15 1EQ comprising part of HM Land Registry Title Number HS31335 and as more particularly shown edged red on the plan annexed to this Deed (with the intention that the Mortgaged Property is wholly within HM Land Registry Title Number HS31335 and that the northern boundary of the land hereby mortgaged is intended to follow the northern boundary on HM Land Registry's title plan for Title Number HS31335)

## Signatories

### Chargor

The common seal of **BAE SYSTEMS PLC** was  
affixed to this Deed in the presence of:

Authorised signatory

Signature of witness

Name

Address

Occupation

**David Parkes**  
**6 Carlton Gardens,**  
**London SW1Y 5AD**

**Company Secretary**

### Homes England

the common seal of )

**HOMES AND COMMUNITIES AGENCY** )

is hereunto affixed in the presence of: )

Authorised Signatory

[illegible]