

## STANDARD CONDITIONS OF PURCHASE

## 1. DEFINITIONS

In this order:

**Agreement:** means, subject to clauses 2(a) and 2(b) of these Conditions, the agreement between BAESMA and the Supplier, consisting of the following documents:

- (a) these Conditions; and
- (b) any Order.

**Authorised Officer:** means any of BAESMA's officers (as that expression is defined in the Corporations Act 2001 (Cth)) and any person employed by BAESMA or any related body corporate of BAESMA (as that expression is defined in the Corporations Act 2001 (Cth)) whose title or acting title includes the word "Counsel" or "Lawyer" and any solicitor acting for BAESMA.

**BAESMA:** means ASC Shipbuilding Pty Limited ACN 051 899 864 trading as BAE Systems Maritime Australia.

**BAE Systems Group:** means BAE Systems Australia Limited ACN 008 423 005 and any of its related bodies corporate within the meaning of Section 50 of the Corporations Act 2001 (Cth).

**BAE Systems Information:** means any and all data, information or material provided directly or indirectly by or on behalf of BAE Systems Australia Limited or any of its subsidiaries, to the Supplier under the Order, including any intellectual property, Controlled Material, Confidential Information and Personal Information.

**BCP:** means a business continuity plan described in clause 36.

**Change of Control** means:

- a. when a body corporate or entity that Controls the Supplier or a parent company of the Supplier, ceases to Control the Supplier or a parent company of the Supplier;
- b. when a body corporate or entity that does not Control the Supplier or a parent company of the Supplier, comes to Control the Supplier or a parent company of the Supplier;
- c. a change to the location of the Supplier or a parent company of the Supplier; or
- d. a change to the debarment status of the Supplier or a parent company of the Supplier.

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For the avoidance of doubt, reference to a parent company in the above includes the immediate and the ultimate parent company.

**CoA:** means the Commonwealth of Australia represented by the Department of Defence (ABN 68 706 814 312) or the equivalent entity.

**Conditions:** means these BAESMA Standard Conditions of Purchase.

**Confidential Information:** means any and all confidential information, including without limitation any and all technical, financial, commercial or other information or trade secrets (howsoever recorded, preserved or disclosed), disclosed by the Disclosing Party to the Receiving Party and either identified by a suitable legend or other marking as being confidential (or similar designation) in a prominent position or described as being confidential at the time of disclosure or which would reasonably be considered to be confidential having regard to all the circumstances of the disclosure; any information obtained by examination, testing or analysis in any way from such confidential information; and any derivative of any such confidential information provided that Confidential Information shall not include any information which the Receiving Party can show through documentary evidence:

- (a) is or becomes publicly available otherwise than as a result of a breach of the Agreement or the fault of the Receiving Party;
- (b) has been lawfully received from a third party without restriction as to its use or disclosure;
- (c) was already in its possession free of any such restriction as to its use or disclosure prior to receipt from the Disclosing Party;
- (d) was independently developed by, or for, the Receiving Party without making use of any Confidential Information; or
- (e) has been approved for release or use (in either case without restriction) by written authorisation of the Disclosing Party,

and, for the avoidance of doubt and without prejudice to the generality of the above, Confidential Information shall not be deemed to be publicly available merely because it may be derived from one or more items that are publicly available,

and shall include intellectual property, Controlled Material and Personal Information.

**Continuous Naval Shipbuilding (or CNS):** means the naval shipbuilding strategy of the Commonwealth that requires the long term continuous build of warships in Australia.

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**Control:** means, in relation to the Supplier or a parent company of the Supplier, any of the following:

- a. the ability to exercise or control the exercise of the right to vote in respect of 20% or more of the voting shares or other form of voting equity in the Supplier or a parent company of the Supplier;
- b. the ability to dispose or exercise control over the disposal of 20% or more of the shares or other form of equity in the Supplier or a parent company of the Supplier;
- c. the ability to appoint or remove a majority of the directors of the Supplier or a parent company of the Supplier;
- d. the ability to exercise or control the exercise of the casting of a majority of votes at the meeting of the board of directors of the Supplier or a parent company of the Supplier; and
- e. any other means, direct or indirect, of dominating the decision making and financial and operating policies of the Supplier or a parent company of the Supplier.

**Controlled Data Set:** means any BAE Systems Information that is subject to additional controls in respect of the handling and protection of that information, including but not limited to any information with document protection markings, government classified information, information relating to Controlled Material, and Commonwealth or Defence information.

**Controlled Material:** means any of the Supplies which, are regulated by the ITAR, the EAR, the UK Export Control Order 2008, the EU Dual-Use Regulation, the Australian Customs Act 1901 or any other laws or regulations of any jurisdiction relating to import or export controls.

**Counterfeit Supplies:** means (i) Supplies which have been identified, marked and/or altered by a source other than the Suppliers' legally authorised source and which have been misrepresented to be an authorised item of the legally authorised source and/or (ii) previously used Supplies provided as new.

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**Cyber Security Questionnaire:** means any form of supplier cyber security questionnaire provided by BAESMA in the course of its business operations (which may include the questionnaire known as 'CFDI').

**Data Breach:** means any unauthorised access to, or unauthorised disclosure of, BAE Systems Information.

**Data Contravention:** means any use or disclosure of any BAE Systems Information in contravention of clauses below 8 or 9.

**Declaration Form:** means the Export Control Jurisdiction & Classification Declaration Form or any other form approved by BAE Systems Group General Counsel for the collection of jurisdiction and/or classification information from suppliers.

**Defence Industry Security Program or DISP** means the program described by that name in the Defence Security Manual.

**Defence Purpose:** means a purpose related to any of the following:

- (a) the defence and defence interests of Australia;
- (b) the national security of Australia;
- (c) the provision of aid or assistance in respect of an emergency or disaster (whether natural or otherwise); and
- (d) peacekeeping or peace enforcement activities.

**Disclosing Party:** means a party that discloses any Confidential Information to the Receiving Party.

**EAR:** means US Department of Commerce's Export Administration Regulations. The EAR controls the export, re-export & transfer (in-country) of certain civil, dual use, and military items listed on the Commerce Control List or subject to the EAR.

**EAR Technology:** means specific information necessary for the "development", "production", or "use" of a product. The information takes the form of "technical data" or "technical assistance". Controlled "technology" is defined in the General Technology Note (Supplement No. 2 to Part 774) and in the Commerce Control List (Supplement No. 1 to part 774 of the EAR). "Technology" also is specific information necessary for any of the following: operation, installation (including on-site installation), maintenance (checking), repair, overhaul, refurbishing, or other terms specified in Export

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Control Classification Numbers (ECCNs) on the Commerce Control List that control “technology”.

**Good Industry Practice:** means the exercise of that degree of competence and/or practices and standards which would reasonably and ordinarily be expected from a skilled and experienced supplier engaged in the same or similar type of business as the Supplier under similar circumstances, including without limitation, having similar financial resources.

**HCFP Purpose:** means the purpose of BAESMA performing its obligations under the contract between BAESMA and the CoA in relation to the Hunter Class Frigate Program (or any subcontractor of BAESMA performing its obligations in relation to a subcontract for that purpose), including identifying interface or integration requirements of any Supplies for the purposes of integrating any other products or systems with the Supplies, and completing any installation or configuration of the Supplies.

**Hunter Class Frigate Program:** means any and all aspects of the program run by BAESMA to build ‘Hunter Class’ frigates for acquisition by the Commonwealth of Australia (represented by the Department of Defence) (‘CoA’) for the Royal Australian Navy.

**Indemnified Party:** means BAESMA and any of its related bodies corporate within the meaning of Section 50 of the Corporations Act 2001 (Cth).

**Information Security Incident:** means the actual or suspected occurrence of:

- (a) a Data Breach or Data Contravention, and/or;
- (b) any unauthorised or accidental destruction, damage, deletion and/or loss of any BAE Systems Information (including copies).

**ISRs:** means the BAE Systems Information and cyber security requirements which are identified in the Supplementary Conditions and are attached to the Order.

**ITAR:** means the United States Law (Section 39, Arms Export Control Act, 22 USC 2779) as implemented by the US Department of State in the *International Traffic in Arms Regulations*. The ITAR controls the export, re-export & retransfer of defense articles and defense services enumerated on the US Munitions List (USML) (ITAR Part 121) or specially designed parts, components, accessories, attachments or associated equipment and systems

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specially designed for items enumerated on the USML.

**ITAR Defense Articles:** means any item or technical data designated in the ITAR United States Munitions List (USML). This term includes technical data recorded or stored in any physical form, models, mockups or other items that reveal technical data directly related to items designated in the USML. It does not include basic marketing information on function or purpose or general system descriptions.

**ITAR Technical Data:** means information, other than software as defined in ITAR § 120.10(a)(4), which is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of defense articles. This includes information in the form of blueprints, drawings, photographs, plans, instructions or documentation. Classified information relating to defense articles and defense services; Information covered by an invention secrecy order; Software as defined in § 121.8(f) of the ITAR directly related to defense articles. This definition does not include information concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges and universities or information in the public domain as defined in §120.11 of the ITAR. It also does not include basic marketing information on function or purpose or general system descriptions of defense articles.

**LSL Scheme:** means a scheme which provides for portability of long service leave entitlements for workers within the Continuous Naval Ship Building industry.

**Loss:** means any and all liability, damages, costs, losses, claims, and expenses of any nature.

**Malware:** means any virus, bug, logic bomb, malware, or other unauthorised, malicious or malignant code, program, routine or software protocol which causes a Relevant Impact to the proper performance, operation or use of a Relevant System.

**Modern Slavery:** means any activity, practice or conduct that would constitute or in any way be consistent with slavery, forced labour, involuntary servitude, debt bondage, human trafficking, or other slavery-like exploitation, and which is prohibited or defined as a modern slavery offence under any applicable anti-slavery and human trafficking laws, statutes and codes from time to time in force, including but not limited to the *Criminal Code Act 1995* (Cth), the *Modern Slavery Act 2018* (NSW), the *Modern*

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*Slavery Act 2018* (Cth), and the *Modern Slavery Act 2015* (UK). For the avoidance of doubt, Modern Slavery includes any conditions or practices similar to those prohibited under those laws, statutes, regulations and codes.

**Order:** means the purchase order sent by BAESMA to the Supplier via email, facsimile or mail and any listed attachments, which shall incorporate these Standard Conditions of Purchase and any Supplementary Conditions, as contemplated under clauses 2(a) of these Conditions.

**Permitted Parties:** means any of the Supplier's employees, agents, consultants, professional advisors and/or approved subcontractors who has a 'need to know' BAE Systems Information for or in connection with the performance of the Order.

**Personal Information:** means information or an opinion about an identified or reasonably identifiable individual (for example, a person's contact details or tax file number) in all cases where obtained by or on behalf of a party or any of its employees, agents, officers or contractors in connection with this Order.

**Receiving Party:** means a party which receives any Confidential Information from the Disclosing Party.

**Relevant Impact:** means any negative or unfavourable impact, including corruption, disablement, disruption, restriction, obstruction, degradation, ransom, delay or slowness, impediment or obstruction.

**Relevant Systems:** means any underlying infrastructure, server, storage, network, information system, computer system, application, process and procedure.

**Relevant Work:** in relation to a Step In, means the work of the Supplier contemplated by the Agreement (including design, construction, installation, integration, testing and trialling) that is the subject of a Step In Notice and which work is undertaken at the land and infrastructure at the Osborne South Naval Shipyard in South Australia owned and administered by Australian Naval Infrastructure Pty Ltd.

**Security Incident:** any incident, failure or breach of any security of any Relevant Systems, including physical security, information security and network security, any security event (including any compromise) involving any Relevant System used in the supply of the Supplies to BAESMA, any vulnerabilities in critical risk areas in its Relevant Systems used in the supply of the Supplies to

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BAESMA, any actual or suspected occurrence of any data spills, Data Breach, Data Contravention, Information Security Incident, or any unauthorised or accidental destruction, damage, deletion or loss of, or a Relevant Impact caused by Malware in respect of, any BAE Systems Information (including copies).

**SHE:** means BAESMA's safety, health and environmental policies relevant to the Site.

**Site:** means a Site or a facility which is owned, leased or occupied by BAESMA.

**Step In:** means the exercise of, or action of exercising, a Step In Right under clause 30 of these Conditions.

**Step In Rights:** means the rights set out in clause 30(e) of these Conditions.

**Supplementary Conditions:** means any special conditions which may be included in the Order.

**Supplier:** means the person or company on whom the Order is placed.

**Supplier's Premises:** means the premises of the Supplier set out under "Supplier Address" on each Order.

**Supplies:** means all goods and services detailed on the Order.

**Third Party Items:** means any product or service procured by the Supplier and which is incorporated into or forms part of the Supplies.

**Tools:** means any software, media and/or tools used or deployed in the supply of the Supplies.

## 2. APPLICATION OF CONTRACT

- (a) These Conditions shall apply to Orders for the Hunter Class Frigate Program except where modified by Supplementary Conditions otherwise incorporated in the Order, which shall have precedence over these Conditions.
- (b) The Agreement shall be the entire agreement between BAESMA and the Supplier and shall supersede all previous communications or representations between BAESMA and the Supplier, including any standard conditions of sale issued by the Supplier. The Agreement shall not be varied unless agreed in writing by BAESMA.
- (c) If written notice of acceptance of the Order has not been received by BAESMA within twenty-eight (28) days from the date of the Order, BAESMA reserves the right to cancel this Order without incurring any liability to the Supplier,

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unless performance has commenced by the Supplier in the meantime.

- (d) Any qualification of these Conditions which may appear in the Supplier's notice of acceptance shall constitute a counter-offer by the Supplier which shall have no effect unless accepted in writing by BAESMA.
- (e) BAESMA Order number and Order line number, where applicable, must be quoted on all documents and correspondence relating to the Order.

**3. CHANGES**

- (a) BAESMA may direct a change to the Order with respect to the delivery date, the shipping or packing instructions, or the place of delivery and the Supplier shall comply with BAESMA's written instructions without delay.
- (b) Within fourteen (14) days after notification of any changes in accordance with clause 3(a), the Supplier shall submit an Order change proposal to BAESMA which shall detail the effect of such change on the delivery schedule or the price. BAESMA and the Supplier shall agree any reasonable adjustment to the delivery schedule or the price and incorporate such agreement into the Order by written amendment.
- (c) BAESMA may also amend the Order with respect to any of the following:
  - (i) the quantity of the Supplies;
  - (ii) the quality of the Supplies; or
  - (iii) any specification or drawings,

provided that an Order amendment pursuant to clause 3(c) shall not take effect until BAESMA and the Supplier have agreed any reasonable adjustment to be made to the delivery schedule or the price stated in the Order, and incorporated such agreement into the Order by written amendment.

**4. SUPPLIER'S RESPONSIBILITIES****General**

- (a) The Supplier shall provide the Supplies to BAESMA in accordance with the Agreement.
- (b) The Supplier shall obtain, maintain and observe all necessary regulatory approvals required for the provision of the Supplies.
- (c) The Supplier shall comply with all legislation, standards and regulations, including those relating to health, safety and environment, which are relevant to the Supplies and performance of the Order, and all security policies and standards

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of BAESMA and its customer as notified from time to time.

**CNS Industry Workforce Initiative (Long Service Leave Scheme)**

- (d) If a LSL Scheme has commenced and the Supplier has workers, or its subcontractors have workers, in the LSL Scheme, the Supplier will use all reasonable endeavours (and require each of its subcontractors to use all reasonable endeavours) to implement the LSL Scheme, including by seeking changes to industrial arrangements to give effect to the LSL Scheme.

**On Site Responsibilities**

- (e) Prior to commencing provision of the Supplies at a Site, the Supplier, and Supplier's employees, agents and sub-contractors who are required on Site, shall complete all inductions required by BAESMA in relation to SHE and Site obligations.
- (f) The Supplier shall, in providing any Supplies ensure that it, and its employees, agents and sub-contractors, are provided with, and comply with BAESMA policies, procedures, practices and reasonable directions given by BAESMA including the requirement to wear protective clothing and use safety equipment.
- (g) The Supplier shall ensure that it and all of its employees, agents and sub-contractors are aware of and comply with any security requirements applicable to the Site.
- (h) The Supplier shall ensure that it and all of its employees, agents and sub-contractors are aware of and comply with the obligations of this clause 4.

**5. DELIVERY, RISK AND TITLE**

- (a) In this clause 5:
  - (i) "Perfected" has the meaning given in the PPSA;
  - (ii) "PPSA" means the Personal Property Securities Act 2009 (Cth) and the Personal Property Securities Regulations 2010 (Cth), as amended from time to time;
  - (iii) "security interest" has the meaning given in the PPSA.
- (b)
  - (i) The Supplies shall be delivered to the place(s) named in the Order no later than the dates specified in the Order unless otherwise directed in writing by BAESMA. Partial deliveries shall not be

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made unless agreed in writing by BAESMA.

- (ii) Notwithstanding the dates for delivery specified in the Order, if requested by BAESMA, the Supplier agrees to store the Supplies securely in its possession and control at the Supplier's Premises, until such time as BAESMA requires delivery. Except for the purposes of delivery, the Supplier shall not dispose of or remove the Supplies (including any part of the Supplies subject of a security interest registered in favour of BAESMA, as the secured party (as that term is defined in the PPSA)) from the Supplier's Premises without the prior written consent of BAESMA. The Supplier will ensure that all Supplies are clearly labelled as owned by BAESMA and be held separately to any other goods at the Supplier's Premises.
- (c) The Supplies shall be packed to a good commercial trade pack standard suitable for the designated mode of transport and capable of long term storage without damage or degradation to the Supplies.
- (d) The Supplier shall provide a Safety Data Sheet for all hazardous chemicals (as defined in the Work Health and Safety Regulations 2011) that are part of the Supplies.
- (e) Title to the Supplies shall pass to BAESMA upon acceptance in accordance with clauses 6(d) and 6(e), unless otherwise specified in the Order, but without prejudice to any right of rejection which may accrue to BAESMA hereunder. Following transfer of title in the Supplies to BAESMA, and subject to clauses 5(a) to 5(r) of this Agreement, the Supplies must be free from all claims, liens, duties, levies, charges and encumbrances of any nature whatsoever.
- (f) Risk to the Supplies shall pass to BAESMA on delivery unless otherwise specified in the Order, but without prejudice to any right of rejection which may accrue to BAESMA hereunder.
- (g) BAESMA may assign title and risk of the Supplies to the CoA at any time.
- (h) Subject to clause 5(b), if any of the Supplies are not delivered by the date(s) specified in the Order, BAESMA shall be entitled:
  - (i) to return to the Supplier at the Supplier's risk and expense any of the Supplies already delivered but which cannot be effectively and commercially used, and to

recover from the Supplier any moneys paid by BAESMA for such Supplies; and

- (ii) to recover from the Supplier any additional expenditure reasonably incurred by BAESMA in obtaining other equivalent Supplies in replacement.
- (i) In order to secure the transfer of title contemplated in clause 5(e) of this Agreement, the Supplier grants a security interest in the Supplies (including the work, parts, materials and work-in-process relating in any way to the Supplies to be provided under the Order) and all and any proceeds arising in respect of any dealing in the Supplies, in favour of BAESMA.
- (j) The Supplier must promptly do any thing (such as obtaining consents, releases and priority arrangements, and signing documents) which BAESMA reasonably requires for the purposes of:
  - (i) creating and registering BAESMA's security interest including (but not limited to) providing details of any item of collateral sufficient to complete registration of the security interest in accordance with the PPSA;
  - (ii) ensuring that BAESMA's security interest is and remains enforceable, perfected and otherwise effective under the PPSA;
  - (iii) enabling BAESMA to gain first priority (or any other priority agreed to by BAESMA in writing) for its security interest; and
  - (iv) enabling BAESMA to exercise its rights in connection with the security interest or the PPSA,

on terms satisfactory to BAESMA.

- (k) BAESMA's rights under the Agreement are in addition to and not in substitution for BAESMA's rights under any other law (including the PPSA) and BAESMA may choose whether to exercise rights under this Agreement, and/or under such other law, in its discretion acting reasonably. For the avoidance of any doubt, any security interest that BAESMA may have in the Supplies will attach to proceeds (as that term is defined in the PPSA), in accordance with the PPSA.
- (l) To the extent that Chapter 4 of the PPSA applies to any security interest under this Agreement, the following provisions of the PPSA are "contracted out" of in accordance with section 115 of the PPSA and shall not apply: sections 95, 96, 121(4), 125, 129(2), 129(3), 130, 132(3)(d), 132(4), 135, 142 and 143.

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If the PPSA is amended after the date of this Agreement to permit BAESMA and the Supplier to agree not to comply with or to exclude other provisions of the PPSA, BAESMA may, acting reasonably, notify the Supplier that any of these provisions is excluded or that BAESMA need not comply with any of these provisions as notified to the Supplier by BAESMA.

- (m) In addition to any rights conferred upon BAESMA under the PPSA, the Supplier acknowledges and agrees that BAESMA shall, if the Supplier is in default of this Agreement, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any goods (including the Supplies), not only under those provisions under the PPSA but also, as additional and independent rights under this Agreement. The Supplier agrees that BAESMA may exercise any of its rights under this clause 5 in any way it deems fit acting reasonably.
- (n) To the maximum extent permitted by law, the Supplier waives its rights to receive a notice under the PPSA (including a verification statement, as that term is defined in the PPSA, and as contemplated under section 157 of the PPSA).
- (o) BAESMA and the Supplier agree not to disclose information of the kind that can be requested under section 275(1) of the PPSA.
- (p) The Supplier must not:
  - (i) dispose or purport to dispose of, or create or purport to create, or permit to be created, any security interest in the Supplies; or
  - (ii) lease, hire, bail, lend or part with possession of the Supplies; or
  - (iii) otherwise deal with the Supplies in a manner inconsistent with this Agreement.
- (q) To assure the Supplier's performance of its obligations under this clause 5, the Supplier irrevocably appoints BAESMA and any of its Authorised Officers severally as its attorney to do anything that the Supplier can lawfully do under or in connection with this Agreement even if this involves a conflict of duty or the attorney has a personal interest in doing so, pursuant to section 5 of the Powers of Attorney and Agency Act 1984 (SA). The Supplier acknowledges that any person dealing with an attorney under this power of attorney is entitled to rely on execution of any document by that attorney as conclusive evidence that this power of attorney has come into effect and that it has not been revoked and

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that the right or power has been properly exercised by the attorney.

- (r) The Supplier acknowledges and agrees that it shall be liable for all and any cost incurred by BAESMA in perfecting its security interest under this clause 5.

## 6. CONFORMITY WITH ORDER

- (a) The Supplier warrants that the Supplies shall conform to the quantity, quality (including quality assurance requirements) and specification stated in the Order, and shall be free from defect in design (except where BAESMA is the design agent), materials and workmanship.
- (b) The Supplier shall not substitute any Supplies or component parts of the Supplies, without prior written approval by BAESMA.
- (c) The Supplier must procure, for the benefit of BAESMA, warranties applicable to any Third Party Items.
- (d) Where BAESMA acceptance tests are defined in the Order, acceptance of the Supplies shall take place after successful completion of the acceptance tests to the satisfaction of BAESMA in its sole discretion.
- (e) Where no acceptance tests are defined in the Order, acceptance of the Supplies shall take place after completion of inspection by BAESMA.
- (f) If the Supplies do not conform to the quantity, quality (including quality assurance requirements) or specification stated in the Order, or do not meet the required standards of design, material or workmanship, then BAESMA shall be entitled, without prejudice to any other remedy, to exercise one or more of the following rights:
  - (i) to reject all or any of the Supplies and require the Supplier to credit BAESMA with the price of the Supplies;
  - (ii) to require the Supplier to promptly replace or repair the Supplies free of all cost and at the Supplier's risk; or
  - (iii) to require the Supplier to indemnify all BAESMA's reasonable expenses and additional costs connected with such defect (including, without limitation, costs incurred by BAESMA arising from its customers removing defective Supplies from other products).
- (g) The provisions of this clause 6 shall apply in addition to, and without prejudice to, any other of

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BAESMA's rights hereunder or at law, whether express or implied.

- (h) The Supplier agrees that:
- (i) any warranties granted by the Supplier in favour of BAESMA pursuant to this Agreement may be assigned by BAESMA to the CoA free from Royalty or any other fee (not otherwise included in this Agreement) unless CoA has agreed in writing to the payment; and
  - (ii) the Supplier must procure for the benefit of BAESMA any manufacturer, other supplier or other third party warranties; and
- the warranties procured pursuant to sub-clause (ii) will be subject to the same right of assignment as set out in sub-clause (i).

**7. ACCESS**

BAESMA representatives and those of its customer shall have access to the Supplier's works or place of business at all reasonable times for any purpose in connection with the performance by the Supplier of the Order. The Supplier shall use best endeavours to secure the same rights of access to the premises of its subcontractors.

**8. CONFIDENTIALITY**

- (a) The Supplier shall:
- (i) not use any BAE Systems Information except for the purpose of supplying the Supplies to BAESMA;
  - (ii) not grant third parties access to BAE Systems Information without the prior written consent of BAESMA, and only use such information for the purpose for which the consent is granted;
  - (iii) require any third party to whom BAE Systems Information is provided to sign an undertaking in the same terms as the Supplier's undertaking in this clause 8;
  - (iv) not analyse or reverse engineer any BAE Systems Information.
- (b) Nothing in this Order transfers or assigns the ownership of any BAE Systems Information.
- (c) The Supplier shall not use BAESMA's name or any of the BAE Systems Information for publicity or marketing purposes without BAESMA's prior written consent.
- (d) The Supplier must comply with all reasonable directions of BAESMA in respect of information with a Defence security classification.

**9. DATA PROTECTION**

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- (a) The Supplier warrants and must ensure that:
- (i) BAE Systems Information will not be transferred, disclosed, used, stored or processed outside of Australia; and
  - (ii) it will not use a cloud service provider to store or process any BAE Systems Information
- without the prior written consent of BAESMA.
- (b) The Supplier must take all necessary precautions to preserve the integrity and security of BAE Systems Information including those processed by the Supplier's Tools, and to prevent any corruption, interruption or degradation of any BAE Systems Information.
- (c) Where the Supplier may have access to any Controlled Data Sets in the supply of the Supplies, the Supplier must comply with any necessary directions and requirements from BAESMA to ensure full compliance with all legislative, regulatory and security controls relevant to the Controlled Data Sets, and ensure that the Tools and all Relevant Systems used by the Supplier in handling the Controlled Data Sets comply with the controls and requirements applicable to the Controlled Data Sets.
- (d) The Supplier shall indemnify each Indemnified Party against all Loss incurred by the Indemnified Party as a result of or in connection with any breach by the Supplier, its employees, agents or sub-contractors of this clause 9.

**10. ITEMS ON LOAN**

All tools, patterns, materials, drawings, specifications, data or equipment loaned by BAESMA to the Supplier, or obtained by the Supplier at a cost to BAESMA for the purposes of the Order, shall remain BAESMA property. The Supplier shall on completion of the Order or as otherwise directed surrender the same to BAESMA in good and serviceable condition (fair wear and tear excepted).

**11. PRICE AND PAYMENT**

- (a) Unless otherwise agreed, prices are fixed amounts (irrespective of exchange rate fluctuations), will be inclusive of all taxes (other than GST), duties, insurances, licence

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- fees, packaging and delivery of the Supplies to the destination or freight- forwarder stated in the Order.
- (b) In the event that a variable price has been agreed, no later than 6 months after submission of an invoice the Supplier shall submit a separate claim for payment of any amount calculated in respect of the price variation. The Supplier shall have no entitlement whatsoever in respect of claims made outside that period.
- (c) BAESMA requires invoices to be provided in the approved GST format and requires any applicable Australian GST to be separately identified on the invoice. Invoices not in the required format will not be processed by BAESMA. All prices shall be on a GST exclusive basis.
- (d) The Supplier shall submit an invoice in respect of the Supplies properly provided to BAESMA to the Accounts Payable Department by email to [au.aphelpdesk@baesystems.au](mailto:au.aphelpdesk@baesystems.au) with a copy to the BAESMA representative as specified in the purchase order, on or after the delivery of the Supplies.
- (e) Each correctly submitted and valid invoice shall become due for payment at the end of the month following the month of the invoice, unless otherwise nominated on the Order or Supplementary Conditions, provided that:
- (i) the Supplies have been delivered by the Supplier; and
- (ii) the Supplies have been accepted by and certified by the BAESMA Representative as satisfactorily completed and / or delivered.
- (f) All invoices raised must detail the Order number, line number and match the Order specifically with regard to the price, quantity and unit of measure. Invoices must be submitted in the same currency as the Order. All non-compliant invoices will be rejected.
- (g) The Supplier may claim expenses and disbursements incurred in the performance of its obligations under an Order, provided such claims:
- (i) include only those amounts which may be allowable costs under the Department of Defence Capability Acquisition and Sustainment Group's CASG Cost Principles (as amended from time to time), available on the date of this Agreement at the following link:  
<http://www.defence.gov.au/casg/DoingBusiness/ProcurementDefence/PoliciesGuidelinesTemplates/Cost%20Principles.asp>;

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- (ii) attach to the invoice, evidence of the expenses and disbursements;
- (iii) give CoA right of access to the Supplier's records for the purpose of verifying any claim; and
- (iv) ensure that subcontractors provide a similar right of access to CoA.
- (h) Expenses and disbursements will only be payable by BAESMA if they have been specifically provided for in this Agreement, the Order or if approved in advance by the BAESMA representative and are substantiated to the satisfaction of BAESMA:
- (i) expenses and disbursements may only be claimed at cost price or at rates approved in advance by BAESMA; and
- (ii) airfares (or other travel options which provide different levels of service) may only be claimed at the relevant economy class cost price, unless approved by BAESMA in advance of booking.
- (i) The making of a part or full payment by BAESMA is not an acknowledgement of acceptance of the Supplies by BAESMA.

## 12. DOCUMENTATION

Advice notes and certificates of conformity shall be submitted by the Supplier in duplicate, the original to accompany the Supplies and a copy to be sent by post or email to the BAESMA stores supervisor at the address stated in the Order.

## 13. INTELLECTUAL PROPERTY

- (a) The Supplier grants to BAESMA (or shall ensure BAESMA is granted) licences in respect of all intellectual property in respect of the Supplies, to:
- (i) use the intellectual property for any HCFP Purpose and grant a sublicense to any subcontractor of BAESMA for any HCFP Purpose; and
- (ii) grant a royalty-free sublicense to CoA to:
- A. use the intellectual property for any Defence Purpose; and
- B. grant a corresponding sublicense to a Commonwealth service provider to allow it to perform its functions and duties to CoA.
- (b) The Supplier indemnifies BAESMA against any claim or action made or instituted against BAESMA relating to any loss, injury or damage caused by or any infringement of copyright, registered and unregistered trademarks,

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registered designs, trade secrets, know-how, rights in relation to any circuit lay-out, data, invention, work or patent perpetrated by the Supplier in connection with the Supplies.

- (c) Where the design of the Supplies is furnished by BAESMA any copyright or design rights in any work produced by the Supplier in the course of providing the Supplies pursuant to this Order shall be and remain the property of BAESMA. Otherwise any intellectual property rights in the Supplies shall remain vested in the Supplier.
- (d) In the event that the Supplier is unable to or unwilling to continue to complete the Order, and the Order is terminated, the Supplier shall deliver to BAESMA all necessary drawings, designs and manufacturing information to enable BAESMA to make the Supplies or have them made elsewhere, and shall grant BAESMA a royalty free license for that purpose.
- (e) Nothing in clause 13(d) provides BAESMA with any right to commercialise intellectual property owned by the Supplier, or to make any number of Supplies in excess of the quantity stated in the Order.

**14. WAIVER**

Failure on the part of either party in exercising any right it may have under the Order shall not be deemed a waiver of that right.

**15. INDEMNITIES**

- (a) Subject to clause 15(b), the Supplier shall indemnify BAESMA against all Loss arising from the Supplier's negligence, breach of duty, breach of statute or otherwise, which is caused by or arises from:
  - (i) the performance by the Supplier of the Order;
  - (ii) the design, manufacture, sale, use or possession of the Supplies; or
  - (iii) any failure to conform to or comply with the requirements of the Order.
- (b) Neither party shall be liable to the other for loss of indirect revenue and/or profit, loss of anticipated savings, loss of opportunity, loss of reputation, or other indirect, consequential or special losses or damages.

**16. INSURANCE**

- (a) The Supplier agrees to maintain insurance cover with a reputable insurer for the following classes of risk in respect of work to be carried out under this Agreement, any Order and with respect to the Supplier's storage of the Supplies

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as contemplated in clause 5(a)(b)(ii) of these Conditions:

- (i) public and product liability insurance should be in the following relevant minimum sums (unless otherwise agreed in writing with BAESMA):
    - A. AUD \$10m for Orders up to AUD\$20m;
    - B. AUD \$20m for all other Orders;
  - (ii) employer's liability;
  - (iii) property insurance for the Supplies, for all risks of loss and damage, whilst the Supplies are stored at the Supplier's Premises, until the Supplies are loaded on the conveyance for delivery to BAESMA;
  - (iv) such other classes as are appropriate to the circumstances of the Order as specified by BAESMA, including Professional Indemnity if required in the Order.
- (b) Insurances are primary and without rights of contribution from any insurance held by BAESMA or CoA, unless otherwise agreed by BAESMA or CoA.

**17. SUBCONTRACTS**

- (a) The Supplier shall not subcontract work under this Agreement to a subcontractor, vary an existing subcontract or terminate a subcontract without BAESMA's prior written consent and subject to the subcontractor entering into an agreement with the Supplier under substantially the same terms and conditions to this Agreement, including the grant to BAESMA of security over the Supplies in accordance with clause 5, and any other conditions BAESMA may require in its absolute discretion acting reasonably.
- (b) In the event that the Supplier proposes subcontracting or otherwise engaging a third party to provide all or part of the services contemplated in the Agreement in relation to shipping, transporting, handling or receiving goods which are controlled or restricted under the ITAR the Supplier shall advise BAESMA of this intention and the identity of the third party prior to releasing such goods to it.
- (c) In the event that BAESMA advises the Supplier that the third party is unacceptable to it, the Supplier shall not engage that third party and in no event release the Supplies to the third party without BAESMA's prior written approval.

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- (d) The Supplier shall indemnify BAESMA against all Loss incurred by BAESMA arising from a breach of this clause.
- (e) The Supplier acknowledges and shall inform its subcontractors that BAESMA or CoA may be required to publicly disclose subcontractors' participation in the performance of this Agreement. If requested by BAESMA, the Supplier shall provide BAESMA with names of subcontractors and copies of subcontracts (which need not contain prices) for this purpose.

**18. CONTINUITY OF SUPPLY**

The Supplier agrees to accept further orders for similar Supplies at prices and delivery lead times no less favourable than those agreed in the Order, taking account of quantities, technical standards and economic conditions prevailing at the time of any further order. In the event that the Supplier is unwilling or unable to accept such orders the Supplier shall negotiate in good faith with BAESMA:

- (a) the delivery to BAESMA of all the necessary drawings, manufacturing information and tooling to enable BAESMA to make the Supplies itself or have them made elsewhere; and
- (b) a reasonable payment to be made to the Supplier,

which shall be agreed in writing by the parties.

**19. TERMINATION AND SUSPENSION**

- (a) This Agreement or any Order may be terminated for convenience by BAESMA at any time in whole or part by giving written notice of termination to the Supplier. In the event of such notice being given the Supplier shall stop work forthwith and shall comply with any directions with regard to the Supplies which may be given by BAESMA.
- (b) The Supplier shall submit within one (1) month from the effective date of termination the Supplier's termination claim. BAESMA shall pay a fair and reasonable price to the Supplier in respect of any commitments, liabilities or expenditure reasonably and properly incurred by the Supplier in connection with this Agreement or the Order (as the case may be) and which would otherwise represent an unavoidable loss to the Supplier. BAESMA shall not be liable to pay any sum which, when taken together with any other sum or sums paid or due to the Supplier under any Order, shall exceed the total price of the Supplies the subject of the said notice of termination.
- (c) In the event of any stoppage, delay or interruption of the Supplier's work or business as

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a result of strikes, lockouts, trade disputes, breakdown, accident or any cause whatsoever beyond the reasonable control of Supplier, then BAESMA may suspend or postpone its related obligations hereunder until the stoppage, delay or interruption has ceased.

- (d) If the Supplier defaults on any of its obligations under this Agreement or any Order, or is in breach of clause 5 in any way, BAESMA may issue the Supplier a default notice. If the Supplier's default is (in BAESMA's reasonable opinion) incapable of remedy, or the Supplier does not remedy the default within seven (7) days (or other time agreed by the parties), BAESMA shall have the right to terminate all or part of this Agreement or any Order by written notice without prejudice to any other of its rights or remedies, and shall be liable only for Supplies delivered and accepted by BAESMA, and in BAESMA's possession.
  - (e) If the Supplier becomes insolvent or has a receiver or administrator appointed in respect of its business or any of its assets or is compulsorily or voluntarily wound up, then BAESMA shall have the right to terminate the Order by written notice without prejudice to any other right or remedies, and shall be liable only for Supplies delivered and accepted by BAESMA.
  - (f) No termination or suspension of this Agreement or any Order shall prejudice any rights or obligations of either party hereunder or at law. Both parties shall use all reasonable endeavours to mitigate their losses on such termination or suspension.
  - (g) Upon termination of this Agreement or any Order:
    - (i) BAESMA shall retain ownership of any Supplies in respect of which title has passed to BAESMA under clause 5(e); and
    - (ii) the Supplier shall be entitled to payment of that part of the price attributable to the Supplies referred to in clause 19(g)(i) :
      - i. having regard to the amount already paid or payable in respect of the Supplies; and
      - ii. subject to the condition of the Supplies at that time and whether the Supplier has complied with clauses 5(e) and 5(j),
- as determined by BAESMA acting reasonably.

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- (h) BAESMA may, by way of a termination notice issued under clauses 19(a), 19(d) or 19(e) require any Supplies (whether completed, a work in progress or otherwise) for which title has not yet transferred to BAESMA (as contemplated under clause 5(e)), but are in the possession of the Supplier or a subcontractor to the Supplier to be delivered to BAESMA and:
- (i) the Supplier shall deliver the Supplies (in their current state of development) in accordance with the termination notice;
  - (ii) title to the Supplies shall pass to BAESMA upon delivery to BAESMA's nominated delivery address, free from all claims, liens, duties, levies, charges and encumbrances of any nature whatsoever; and
  - (iii) the Supplier shall be entitled to payment of that part of the price attributable to the Supplies referred to in clause 19(h)(i):
    - i. having regard to the amounts already paid or payable in respect of the Supplies; and
    - ii. subject to the condition of the Supplies at that time,  
as determined by BAESMA acting reasonably.
- (i) On termination of the Order, the Supplier must without charge, comply with all exit and transfer arrangements as set out in the ISR.

## 20. NOTIFICATION OF NON-CONFORMING PRODUCT

- (a) If, at any time during the period from delivery of the Supplies through the life of type of the Supplies, the Supplier becomes aware of any defect in the Supplies which adversely affects, or is likely to adversely affect, the operation of the Supplies or the safety of personnel, the Supplier shall give notice of the defect to BAESMA. Such notice shall be provided in writing in accordance with clause 20(c) below.
- (b) Where the adverse effect or likely adverse effect is critical to the operation of the Supplies or the safety of personnel, the Supplier shall give notice to BAESMA immediately on becoming aware of the defect and shall provide fully documented confirmation of the notice in accordance with clause 20(c) below.
- (c) The Supplier shall provide notices within the period prescribed in relevant regulations and

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legislation applicable to this Order and in all other cases within 20 working days of the Supplier becoming aware of the defect.

- (d) Notices are to be addressed to:

BAESMA Representative

ASC Shipbuilding Pty Limited trading as BAE Systems Maritime Australia

Locked Bag # 1005

PORT ADELAIDE SA 5015

or by email:

[ASCPRJHCFPSubcontractSupport@au.baesystems.com](mailto:ASCPRJHCFPSubcontractSupport@au.baesystems.com)

## 21. INDUCEMENT AND ETHICS

- (a) Whether acting alone or with others, the Supplier undertakes that it will not do, and warrants that prior to accepting the Order it has not done, any of the following:
  - (i) induce an employee, agent or subcontractor of BAESMA to make any concession or to confer any benefit on the Supplier, refrain or withhold from doing any act or alter any of the requirements of the Order in return for any gift, money, benefit or other inducement; nor
  - (ii) without the prior written consent of BAESMA, pay money or give any other benefit to any third party (either directly or indirectly) in connection with the negotiation and/or issue of the Order; nor
  - (iii) encourage or facilitate an employee, agent or sub-contractor of BAESMA to commit any act of dishonesty against BAESMA which may benefit the employee, agent or sub-contractor of BAESMA or be a detriment to BAESMA, or both.
- (b) The BAE Systems Group maintains an ethics and compliance programme that includes a written code of conduct, training and awareness for all employees, details of which can be found at [www.baesystems.com](http://www.baesystems.com). The BAE Systems Group expects and encourages all its suppliers to embrace ethical values and legal compliance practices of a comparable standard (including a method for reporting possible violations). The Supplier undertakes that it will abide by and comply with all applicable laws and regulations relating to anti-bribery and anti-corruption, including the Criminal Code Act 1995 (Cth), UK Bribery Act 2010 and the U.S. Foreign Corrupt Practices Act 1977.
- (c) Responsible behaviour is fundamental to how BAESMA conducts business. Regular

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assessments of BAESMA's supply base is a critical part of this commitment. BAESMA's "best practice" expectations of all current and proposed suppliers are contained in "Supplier Principles – Guidance for Responsible Business", details of which can be found at <https://www.baesystems.com/en/sustainability/responsible-supply-chain/suppliers/supplier-principles>.

## 22. PRIVACY LAW

- (a) Where a party obtains Personal Information under this Agreement, that party must handle the information in accordance, and shall comply, with the Australian Privacy Principles (as amended or replaced from time to time) in the Privacy Act 1988 and only to perform its obligations under this Order.
- (b) Each party is responsible for ensuring that any person it authorises to access that Personal Information meets the requirements of this clause.
- (c) The Supplier shall notify BAESMA as soon as reasonably practicable if:
  - (i) it becomes aware of a breach or possible breach of any of the obligations contained, or referred to, in this clause 22, whether by the Supplier or any other person to whom the Personal Information has been disclosed for the purposes of this Order, or
  - (ii) in relation to Personal Information the Supplier has obtained in the course of fulfilling its obligations under this Order:
    - A. the Supplier becomes aware that a disclosure of such Personal Information may be required by law; or
    - B. if the Supplier is approached by the Privacy Commissioner.
- (d) The Supplier must comply with all reasonable directions from BAESMA in respect of the protection of privacy and Personal Information obtained, and will be responsible for any and all acts of its recipients for any breach of the Privacy Act 1988 (Cth).
- (e) The Supplier:
  - (i) acknowledges and agrees that BAESMA is solely responsible for determining whether an Information Security Incident results in a real risk of serious harm to any of the individuals to whom any impacted Personal Information relates;
  - (ii) must co-operate with BAESMA to assist it in making the determination referred to above; and

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- (iii) to the extent permitted by law, must not disclose to any third party (including the Office of the Australian Information Commissioner or any other government agency) the existence or circumstances surrounding any Information Security Incident without the prior written approval of BAESMA.

## 23. OFFSET

- (a) The Supplier understands that BAESMA and other companies within the BAE Systems Group and associated companies of BAE Systems plc accrue significant offset obligations resulting from international sales. To assist in satisfying these obligations, BAESMA may wish to take advantage of the Supplier's offshore supply chain and investment activity, in order that potential offset credits can be claimed in identified target markets.
- (b) The Supplier acknowledges that companies within the BAE Systems Group and associated companies thereof may be entitled to utilise through BAESMA the total value of the Order and any sub-contracts placed by the Supplier arising from the Order, as fulfilment in whole or in part of any offset obligation placed, or to be placed, upon a company in the BAE Systems Group or an associated company thereof by an overseas customer.
- (c) The Supplier shall first seek and obtain BAESMA's written permission prior to using the Order and/or any sub-contracts arising from the Order in satisfaction of the Supplier's own or any of the Supplier's other customers' offset obligations.
- (d) On request by BAESMA or any of the BAE Systems Group, the Supplier shall assist the relevant company in registering the Order with the appropriate bodies as a satisfactory offset.
- (e) If the offset involves US defense articles or defense services, the Supplier and BAESMA shall consult on the applicability of any ITAR brokering requirements and each, as may be appropriate given the nature of the offset transaction, shall seek any necessary authorisation in a timely manner.

## 24. COUNTERFEIT SUPPLIES

- (a) The Supplier shall ensure that Counterfeit Supplies are not delivered to BAESMA. In fulfilling its obligations under the Order, the Supplier shall only purchase products to be delivered or incorporated as Supplies to BAESMA directly from the organisation that is the originating source for the production of legitimate components or equipment. Supplies

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shall not be acquired from distributors that are independent from the originating organisation's authorised distribution chain, without written consent from BAESMA.

- (b) The Supplier shall as soon as practicable notify BAESMA if the Supplier becomes aware or suspects that it has acquired Counterfeit Supplies. When requested by BAESMA, the Supplier shall provide documentation that authenticates traceability of the affected Supplies to organisation that is the originating source for the production of legitimate components or equipment.
- (c) In the event that Supplies delivered under the Order constitute or include Counterfeit Supplies, the Supplier shall, at its expense promptly replace such Counterfeit Supplies with genuine Supplies conforming to the requirements of the Order. Notwithstanding any other provision in the Order, the Supplier shall be liable for all costs relating to the removal and replacement of Counterfeit Supplies, including without limitation BAESMA's costs of removing Counterfeit Supplies, of reinserting replacement Supplies and of any testing necessitated by the reinstallation of Supplies after Counterfeit Supplies have been exchanged.

## 25. APPLICABLE LAW

These Conditions shall be governed by the laws of South Australia.

## 26. EXPORT CONTROL

- (a) The Supplier represents and warrants that it will comply with all applicable import and export control laws and regulations (including, if applicable, the US export control laws and regulations referred to in clause 26(b)(i) below in fulfilling the Order and will provide all information about the Supplies, including where relevant information regarding constituent parts thereof, that may be necessary for BAESMA compliance with all applicable import and export control laws and regulations. The Supplier shall:
  - (i) notify BAESMA in writing at the time the Order is accepted, as well as when any changes occur or subsequent information is received by the Supplier to stipulate that the Supplies (or any part thereof) are subject to such controls;
  - (ii) in addition to the notification at clause 26(b)(i) above, when requested by BAESMA, provide documentation, in the form of a signed Declaration Form, certifying the jurisdiction and classification of

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Controlled Material. BAE Systems will provide the Supplier with a Declaration Form for completion, which the Supplier will return to BAESMA within 30 calendar days of the date of issue of the Order and in any event in advance of receipt by BAESMA of such Controlled Material included in the Order. The Supplier is required to provide, amongst other things, the following types of information in the Declaration Form: (a) a description of the Controlled Material; (b) the name and address of the US exporter and/or manufacturer of all ITAR/EAR Controlled Material; (c) the part reference number for the Controlled Material; and (d) the ITAR US Munitions List category and paragraph number (and any special designation as Significant Military Equipment or Major Defense Equipment); the EAR Commerce Control List Export Control Classification Number (ECCN) (or other EAR designation); or the Military or Dual-Use List Classification Number and identification under UK, EU and Australian regulations; and

- (iii) obtain all required export licences, agreements and other authorisations necessary to ensure delivery of the Supplies to BAE Systems in accordance with the delivery dates required under the Order.

- (b) If any of the Controlled Material, including any constituent part thereof, to be provided by or through the Supplier under the Order are controlled under the ITAR or EAR, (unless such are classified by the US exporter/manufacturer as EAR99 in which case the Supplier shall notify BAESMA of this status in writing), the Supplier shall:

- (i) comply with all applicable US export control laws and regulations, including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C. 2751 et seq., the ITAR, 22C.F.R. 120 et seq., the Export Administration Act, 50 U.S.C. app. 2401-2420, and the EAR, 15 C.F.R. 730-774;
- (ii) immediately after the Order is accepted, consult with BAESMA about the relevant authorisations required from the US Authorities and request from BAESMA information necessary to make the Supplier's authorisation request complete and accurate, including, without limitation, full details of end use, end user(s), foreign consignees, intermediate consignees, sub-licensees and any other requirements such as information on dual or third country national employees, contract employees, location, or pre-existing company

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- organisation authorisations which may be applicable;
- (iii) obtain all required US export licences, agreements and other authorisations necessary to ensure delivery of the Supplies to BAESMA in accordance with the delivery dates required under the Order;
  - (iv) provide the following further information and documentation in writing at the time the Order is accepted, if already secured or, if not, as soon as possible upon being secured: (a) details of the relevant licence, agreement or other authorisation (including details of any exemptions or exceptions) such details to include the reference numbers and dates, authorised parties and end use as specified in clause 26(b)(ii) above, and any limitations/provisos; or (b) full copies of such licences, agreements or other authorisations including any correspondence with the US Department of State or the US Department of Commerce consenting to or giving guidance on the use of exemptions or exceptions or listing limitations/provisos, including transmittal letters.
- (c) Copies of the licences, agreements or other authorisations or detailed summaries of these authorisations as required under clauses 26(a)(iii) and 26(b)(iv) must be provided to BAESMA no later than five (5) days after any request by BAESMA. Any commercially sensitive information contained within licences or agreements may be deleted providing it does not prevent identification of the scope of the authorisation, including any relevant constraint; any provisos and conditions; the end users or the parties and/or consignees.
- (d) ITAR Delivery. Unless the applicable regulations (i.e. 22 C.F.R. 123.9) have been revised to require otherwise, for each ITAR Defense Article being delivered by the Supplier, the following information contained in clauses 26(d)(i) to 26(d)(iii), respectively shall be included as an integral part of the commercial invoice, and, in the case of ITAR Technical Data, on the document itself:
- (i) in respect of ITAR Defense Articles, information which identifies (i) the country of ultimate destination; the end user, (iii) the license or other approval number or exemption citation; and (iv) the following Destination Control Statement: "These items are controlled by the U.S. Government and authorized for export only to the country of ultimate destination for use by the ultimate consignee or end user(s) herein identified. They may not be resold, transferred, or otherwise disposed of, to any other country or to any person other than the authorized ultimate consignee or end- user(s), either in their original form or after being incorporated into other items, without first obtaining approval from the U.S. Government or as otherwise authorized by U.S. law and regulations.
  - (ii) When also exporting or re-exporting **items subject to the EAR** pursuant to a Department of State license or other authorisation or approval, the Supplier must also provide BAESMA with the appropriate EAR classification information for each item. This includes the Export Control Classification Number (ECCN) or EAR99 designation.
  - (iii) in respect of ITAR Technical Data, this data should be marked as follows: "EXPORT CONTROLLED DATA: This document contains technical information and the export, re-export and retransfer is governed by the U.S. International Traffic in Arms Regulations (ITAR) and "This item is controlled by the U.S. Government and authorized for export only to the country of ultimate destination for use by the ultimate consignee or end user(s) herein identified. It may not be resold, transferred, or otherwise disposed of, to any other country or to any person other than the authorized ultimate consignee or end-user(s), either in its original form or after being incorporated into other items, without first obtaining approval from the U.S. Government or as otherwise authorized by U.S. law and regulations." In addition, this marking legend should be supplemented with the following information, either on the document itself, or on an accompanying coversheet or document: "This information is authorized to the (i) country of ultimate destination: [●]; (ii) end user(s): [●]; (iii) pursuant to license or other approval number or exemption citation: [●]."
- (e) EAR Delivery. Unless the applicable regulations (i.e.15 C.F.R. 758.6) have been revised to require otherwise, for each item of EAR Controlled Material being delivered by the Supplier, the following Destination Control Statement shall be included as an integral part of the commercial invoice that accompanies the shipment, in the case of EAR Technology on the EAR Technology itself:
- (i) In respect of EAR Items: "These items are controlled by the U.S. Government and authorized for export only to the country of ultimate destination for use by the ultimate consignee or end-user(s) herein identified.

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They may not be resold, transferred, or otherwise disposed of, to any other country or to any person other than the authorized ultimate consignee or end-user(s), either in their original form or after being incorporated into other items, without first obtaining approval from the U.S. Government or as otherwise authorized by U.S. law and regulations." In addition, the Supplier must also provide the licence number(s) or license exception utilised and the ECCN for all 9x515 or 600 series items being exported, re-exported or transferred (in- country).

- (ii) In respect of EAR Technology: "EXPORT CONTROLLED DATA: This document contains technical information and the export, re-export and transfer (in-country) is governed by the U.S. Export Administration Regulations (EAR) and 'This item is controlled by the U.S. Government and authorized for export only to the country of ultimate destination for use by the ultimate consignee or end user(s) herein identified. It may not be resold, transferred, or otherwise disposed of, to any other country or to any person other than the authorized ultimate consignee or end-user(s), either in its original form or after being incorporated into other items, without first obtaining approval from the U.S. Government or as otherwise authorized by U.S. law and regulations.'" In addition, this marking legend should be supplemented with the following information, either on the document itself, or on an accompanying coversheet or document: "This information is authorized to the (i) country of ultimate destination: [●]; (ii) end user(s): [●]; (iii) pursuant to license or other approval number or license exception citation: [●]."
- (f) Any outer package containing the Controlled Material should be marked/labelled with an Export Control statement as described in clauses 26(d) and 26(e) above as appropriate to the nature, size, packaging, etc. of the item.
- (g) Where practical, the Supplier shall segregate deliveries of ITAR or EAR Controlled Material from other deliveries, and shall not mix ITAR Controlled Material with EAR Controlled Material on the same licences, agreements or authorisations unless permitted by US laws and regulations pursuant to Export Control Reform.
- (h) Without limiting the foregoing, the Supplier shall only use Controlled Material in accordance with the licensed authorisation. The Supplier shall only use ITAR Technical Data or EAR Technology received from BAESMA in the

performance of the work required to deliver the Order, and shall not transfer or otherwise provide access to any ITAR or EAR Controlled Material, to include transfer to any individual, company or organisation (including lower-tier sub-contractors), without the authority of a US Government export licence, agreement, or other authorisation, such as an applicable licence exemption or exception. The Supplier will strictly comply with the conditions in any such approval and in the export licence or other Government authorisation for such disclosure. The restrictions on the transfer of export controlled data apply equally to both data furnished by BAESMA and to any such data incorporated in documents, software or hardware generated by the Supplier. Any rights in the data may not be acquired by the Supplier unless expressly authorised pursuant to an export licence, export agreement or otherwise provided in the ITAR or EAR. Additionally, no disclosure of data furnished by BAESMA can be made unless and until BAESMA has considered the request and provided its written approval through contractually authorised channels. Technical Data exported from the United States may not be transferred to another person except pursuant to specific provisions in the regulations (such as ITAR 22 C.F.R 126.18), as specifically authorised in a license or agreement (e.g. pursuant to a non-disclosure agreement (NDA) in the case of sub-licensees), or where prior written approval of the Department of State has been obtained.

- (i) The Supplier hereby authorises BAESMA to disclose any and all Confidential Information to government authorities with jurisdiction over such Confidential Information as may be reasonably necessary for the purpose of disclosing, resolving or remediating any violation or potential violation of applicable export control laws or regulations, as provided in clause 8(a) (ii).
- (j) The Supplier shall immediately notify BAESMA if the Supplier is or becomes identified either individually or collectively on any list of denied, debarred, embargoed, blocked, prohibited, specially designated, sanctioned or otherwise ineligible parties maintained by any government or international organisation or, becomes ineligible to contract with the US Government, or if the Supplier's export privileges are otherwise denied, suspended or revoked in whole or in part by any government entity or agency.
- (k) If engaged in the business of either exporting or manufacturing (whether exporting or not) US defence articles or defence services (as defined

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in the ITAR 22 C.F.R. 120.6 and 120.9 respectively), the Supplier represents and warrants that it maintains an effective export/import compliance program in accordance with the ITAR and, if located in the US, that it is registered with the US Department of State as required by the ITAR.

- (l) If engaged in brokering activities within the meaning of the ITAR (22 C.F.R. 129), the Supplier represents and warrants that it is registered with the US Department of State as required by the ITAR and has obtained any necessary approval with respect to the Supplies provided in the Order.
- (m) If US defense articles or defense services subject to the ITAR form a part of the Order, the Supplier recognises and accepts that the Supplier and BAESMA have disclosure requirements when making applications for the export, re-export or re-transfer of US defense articles or defense services valued in an amount of US\$500,000 or more, which are being sold commercially or as a result of a contract with the US Department of Defense to or for the use of the armed forces of a non-U.S. country or international organisation, and for which disclosure requirements relate to the payment of any political contribution, fee or commission, directly or indirectly, whether in cash or in kind, to or at the direction of any person in order to solicit, promote or otherwise to secure the Order or any related orders. In this context, when requested to do so by BAESMA, the Supplier shall make a written certification to BAESMA in a timely manner and not later than 20 days after receipt of such request regarding:
- (i) whether in relation to the Order or any related orders the Supplier or its vendors (as defined in 22 C.F.R. 130.8) have made, or offered or agreed to make:
- A. any political contribution, including any loan, gift, donation or other payment of US\$1,000 or more to or for the benefit of, or at the direction of, any foreign candidate, committee, political party, political faction, or government or governmental subdivision, or any individual elected, appointed or otherwise designated as an employee or officer thereof; or
- B. any fee or commission, including any loan, gift, donation or other payment of US\$1,000 or more; and
- C. if so, the Supplier shall identify, as provided in 22 C.F.R. 130.12:

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- D. the amount of each Political Contribution paid, or offered or agreed to be paid, or the amount of each Fee or Commission paid, or offered or agreed to be paid;
- E. whether each reported payment was in cash or in kind;
- F. the date or dates on which each reported amount was paid, or offered or agreed to be paid; (iv) the recipient of each such amount paid, or intended recipient if not yet paid, including name, nationality, address and principal place of business, employer and title, and relationship, if any, to the Supplier and to any purchaser or end-user; and
- G. the person who paid, or offered or agreed to pay such amount; and
- (ii) the Supplier shall notify BAESMA immediately if the circumstances described in clauses 26(m)(i) or 26(m)(ii) change, and shall respond promptly to any written inquiry made by BAESMA seeking to confirm or update the Supplier's certification as provided in this clause 26(m).
- (n) Where the Supplier is a signatory, sub-licensee or consignee under an export licence, agreement or other authorisation, the Supplier shall provide immediate written notification to BAESMA in the event of changed circumstances affecting the said licence or agreement.
- (o) At BAESMA's direction, the Supplier shall return or Systems destroy all of the ITAR Technical Data and/or EAR Technology or other Controlled Material exported to the Supplier pursuant to the Order upon fulfilment of its terms, send written confirmation of the destruction to BAESMA within five (5) working days of the destruction and create and maintain the records required under the ITAR and EAR.
- (p) The Supplier shall indemnify each Indemnified Party against Loss incurred by each Indemnified Party as a result of or in connection with any breach by the Supplier, its employees, agents or sub-contractors of this clause 26.

**27. CHANGE OF CONTROL (OR OWNERSHIP) OF BAESMA**

Ownership and control of BAESMA may pass to CoA or an entity appointed by CoA without prior notice to or the approval of the Supplier.

**28. WORK HEALTH AND SAFETY**

Supplier must comply with, the obligation under the WHS Legislation to, so far as is reasonably practicable, consult, co-operate and co-ordinate

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activities with BAESMA and CoA (as the case may be) and any other person who, concurrently with BAESMA, CoA or the Supplier, has a WHS duty under the WHS Legislation in relation to the same matter.

## 29. DEFENCE SECURITY

- (a) If the Supplier or the Supplier's personnel require access to any BAESMA premises or CoA premises under the control or responsibility of Department of Defence, the Supplier will:
- (i) comply with any security requirements (including those contained in the Defence Security Principles Framework (DSPF)) notified to the Supplier by BAESMA from time to time; and
  - (ii) ensure that Supplier Personnel are aware of and comply with CoA security requirements notified by BAESMA or CoA.
- (b) The Supplier will:
- (i) ensure that Supplier Personnel undertake any security checks, clearances or accreditations as required by BAESMA or the CoA, which will be notified by BAESMA;
  - (ii) promptly notify BAESMA, who may inform CoA, of any changes to circumstances which may affect the Supplier's capacity to provide the Supplies in accordance with BAESMA's or CoA's security requirements;
  - (iii) promptly notify BAESMA of any changes to the chief security officer or the information security officer of the Supplier; and
  - (iv) provide a written undertaking in respect of security or access to CoA Premises in the form required by CoA.
- (c) The Supplier shall ensure that the Supplier and the Supplier Personnel comply with any cyber security requirements notified by BAESMA.
- (d) The security classification of the Supplies will be up to and including the level specified by BAESMA in the Order. The Supplier will:
- (i) if required in the Order, obtain and maintain membership of DISP in accordance with Principle 16 of the DSPF;
  - (ii) if not required to be a member of the DISP, comply with the classification and protection of official information requirements of Principle 10 of the DSPF;
  - (iii) ensure that all required personnel (if any) possess a personnel security clearance

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specified in the Order, and comply with the requirements and procedures of Principle 40 of the DSPF; and

- (iv) possess the facility accreditation (if any) and ICT system accreditation (if any) specified in the Order and comply with the requirements and procedures of Principle 73 of the DSPF.
- (e) Where work under the Contract is performed overseas, the Supplier shall comply with:
  - (i) the requirements of clauses 29(d)(iii) and 29(d)(iv) for the classification level (if any) specified in the Order or equivalent classification; and
  - (ii) comply with the relevant overseas government industry security policy.
- (f) For the purposes of clause 29(e), accreditations shall be issued by the relevant overseas government security authority, and shall be verified by the DSVS (through a bilateral security instrument or otherwise).
- (g) The Supplier shall classify all information in its possession relating to the performance of the Contract according to the Security Classification and Categorisation Guide to be provided by BAESMA and shall ensure that such information is safeguarded and protected according to its level of security classification.
- (h) With respect to security classified information, the Supplier shall:
  - (i) ensure that no security classified information furnished or generated under the Contract shall be released to a third party, including a representative of another country or a related body corporate, without prior written approval of the originator through CoA Representative;
  - (ii) promptly report to BAESMA, which BAESMA may report to CoA, any security incident, as defined by the DSPF, including instances in which it is known or suspected that security classified information furnished or generated under the Contract has been lost or disclosed to unauthorised parties, including a representative of another country;
  - (iii) ensure that all security classified information transmitted between the parties or a party and a subcontractor, in Australia, whether generated in Australia

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or overseas, shall be subject to the terms of Principle 73 of the DSPF; and

- (iv) comply with all reasonable directions of BAESMA.
- (i) Where COMSEC (**Communications Security**) material is transmitted in Australia, the Supplier shall ensure that:
  - (i) without limiting clause 29(h)(iii), all COMSEC material transmitted between the parties or a party and a subcontractor in Australia shall be subject to the special security provisions of Principle 13 of the DSPF; and
  - (ii) all security classified information transmitted between the parties or a party and a subcontractor located overseas whether generated in Australia or by another country shall be subject to the laws of the overseas country regarding the custody and protection of security classified information and to any bilateral security instrument between Australia and the overseas country.
- (j) Where COMSEC material is transmitted overseas, the Supplier shall ensure that:
  - (i) all COMSEC material transmitted between the parties or a party and subcontractor located overseas shall be subject to approval in the first instance by the Director ASD, in respect of Australian COMSEC material, and by the respective COMSEC authorities in other countries in respect of COMSEC material originating from those countries;
  - (ii) once approved for release, the material shall be subject to the laws of the overseas country regarding the custody and protection of COMSEC; and
  - (iii) material as determined by the Director ASD and to any bilateral security instrument between Australia and the overseas country.
- (k) If there has been a breach by the Supplier this clause 29, BAESMA may give the Supplier a notice of termination with immediate effect.

## 30. STEP IN RIGHTS

- (a) In addition to any other right BAESMA has under this Agreement or otherwise at law, if CoA by notice given to BAESMA (a **Step In Notice**), exercises its Step In Rights with effect on and from the Step In Date, then BAESMA may exercise its Step In Rights in relation to the

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Supplier on and from the date BAESMA receives the Step In Notice from CoA.

- (b) BAESMA or CoA may also, by notice to the Supplier, cease to exercise its Step In Rights with effect from the date specified in the notice (the **Step Out Date**).
- (c) With effect from the Step Out Date, BAESMA, CoA or their nominees (as applicable) shall cease exercising the Step In Rights in accordance with the notice and the Supplier shall recommence performance of the suspended obligations immediately or at a later time agreed by the BAESMA representative.
- (d) BAESMA shall ensure that it (or its nominee) returns to the Supplier:
  - (i) any materials, equipment, systems, tools or other things (to the extent not used or consumed); and
  - (ii) any land, premises or facilities, of the Supplier's used by BAESMA, CoA or their nominees (as applicable) in connection with the exercise of Step In Rights.
- (e) If BAESMA or CoA give a Step In Notice, the party giving such notice (or a person or persons nominated in the Step In Notice or in a later notice to the Supplier) is entitled to do any one or more of the following:
  - (i) have access to, and to use and to permit other persons to use, all or a specified part of the materials, equipment, system, tools and other things that the Supplier uses, or has in its possession and available for use, in connection with the Relevant Work;
  - (ii) have access to, and to manage and control any land, facilities, plant, equipment or other items (including partially completed Supplies and goods intended to be incorporated into the Supplies) that the Supplier is using, or has in its possession and available for use, in connection with the Relevant Work, including under Subcontract.
- (f) If BAESMA or an BAESMA nominee exercise a right, or perform an obligation of the Supplier in accordance with clause 30(e)(ii), BAESMA shall (or cause its nominee to) exercise that right or perform that obligation in accordance with the relevant contract or agreement.

## 31. CONSEQUENCES OF STEP IN RIGHTS

- (a) If BAESMA or the Commonwealth give a Step In Notice:
  - (i) the Supplier shall stop work in accordance with the Step In Notice;

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- (ii) the Supplier's obligation to undertake the Relevant Work is suspended;
- (iii) the Supplier shall comply with any direction issued by BAESMA given in support of the Step In Notice;
- (iv) the Supplier shall, if required to do so by BAESMA, take all reasonable steps to maintain, so far as practicable, the capacity of the Supplier and subcontractors to recommence work with minimum delay and cost;
- (v) the Supplier shall mitigate all Loss (including the costs of compliance with any direction issued by BAESMA) in connection with the exercise of the Step In Rights, including by (where relevant) suspending associated work under affected subcontracts;
- (vi) the Supplier shall provide all assistance, information and access to documents reasonably requested by the party which gave the Step In Notice to enable that party, or its nominee, to exercise the rights granted under this clause;
- (vii) the Supplier shall ensure that, if BAESMA or the Commonwealth exercise Step In Rights, Supplier personnel:
  - (i) comply with any direction given by the party exercising the Step In Rights or its nominee to the Supplier consistent with the Step In Notice; and
  - (ii) cooperate fully and in good faith with the party giving the Step In Rights, or its nominee, for the purpose of giving full effect to exercise of the Step In Rights.

**32. MODERN SLAVERY**

- (a) The Supplier represents, warrants and undertakes:
  - (i) that it does not engage in Modern Slavery;
  - (ii) that no form of Modern Slavery is used in the Supplier's business or by its directors, officers, employees, agents, representatives, contractors or subcontractors;
  - (iii) to comply with all applicable employment and work health and safety laws;
  - (iv) to comply with all applicable statutory requirements relating to Modern Slavery, including but not limited to compliance and reporting requirements under the Modern Slavery Act 2018 (NSW), the Modern

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Slavery Act 2015 (UK) and the Modern Slavery Act 2018 (Cth); and

- (v) to notify BAESMA promptly upon becoming aware of any incident, complaint or allegation that the Supplier or any entity in its supply chain, has engaged in Modern Slavery.
- (b) The Supplier shall have and maintain throughout the Term its own policies and procedures that are intended to ensure compliance with the warranties contained in clause 32(a).
 

Where "Term" means for the duration of the Agreement and completion of all and any Orders.
- (c) The Supplier acknowledges that BAESMA may have corporate reporting requirements with regard to Modern Slavery and, at the request of BAESMA, it will confirm in writing that it has complied with its undertakings under this clause 32 and will provide any information requested by BAESMA in support of such compliance.
- (d) Upon becoming aware of any actual, suspected or anticipated breach of this clause 32, the Supplier must immediately provide written notice of the breach, giving full details of such breach, to BAESMA.

**33. INFORMATION AND CYBER SECURITY**

- (a) The obligations in this clause 33 apply to the Order without limiting and in addition to the requirements set out in the ISRs (if applicable).

**Cyber Security Questionnaire and ISRs**

- (b) The Supplier shall at all times, without charge and at its own cost, implement and maintain appropriate levels of security and safeguards to protect any and all BAE Systems Information (including against the misuse, interference and loss of, or unauthorised access to, modification or disclosure of BAE Systems Information) which, as a minimum, comply with:
  - i. the ISRs (if any are attached to the Agreement);
  - ii. Good Industry Practice; and
  - iii. all applicable laws and regulations.
- (c) If the Supplier is unable or fails to comply with the above requirements, the Supplier shall immediately notify BAESMA in writing and follow all directions

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provided to achieve full compliance. Failure to comply with such directions will, without prejudice to other rights and remedies, enable BAESMA to treat such default as a material breach and terminate an Order or this Agreement.

- (d) The Supplier acknowledges and agrees that:
- i. as part of BAESMA's supplier evaluation process, it was required to provide a completed Cyber Security Questionnaire to BAESMA; and
  - ii. upon BAESMA's reasonable request, it shall:
    1. if it has not previously completed a Cyber Security Questionnaire for BAESMA, complete and promptly return to BAESMA the Cyber Security Questionnaire provided to it by BAESMA; and
    2. if it has previously completed a Cyber Security Questionnaire for BAESMA, promptly provide an updated Cyber Security Questionnaire to BAESMA.
- (e) The Supplier warrants that:
- i. there are no material facts or circumstances which have not been fully and fairly disclosed to BAESMA which, if so disclosed, might have affected the decision of BAESMA to issue an Order or accept the Supplies;
  - ii. it will keep the information and responses provided to BAESMA regarding the Supplier's compliance with this clause 33 (including the ISRs, if applicable) up-to-date and that all such information and responses will continue to be true, correct, accurate and complete; and
  - iii. it will continue to maintain at all times, the controls, mechanisms, processes and procedures at the levels expected by Good Industry Practice and described in the ISR (if applicable) and in its policies relating to information security and cyber security.
- (f) BAESMA may direct a change to the ISR at any time (but not more than once per year, unless compelled by its key customers or by law) and the Supplier shall comply with BAESMA's written instructions without delay.
- (g) The Supplier shall promptly notify BAESMA prior to making any change which may reduce or limit the protection of BAE Systems Information or the quality of the Supplies.

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- (h) The Supplier agrees that it is the Supplier's responsibility to ensure that its subcontractors also comply with the requirements of this clause 33 (including the ISRs, if applicable). The Supplier shall be liable for all non-compliance by its subcontractors, and indemnifies each Indemnified Party for any Loss incurred as a result of such non-compliance.

**Information Security Incidents**

- (i) If the Supplier becomes aware of, or reasonably suspects, an Information Security Incident, the Supplier shall:
- i. immediately take all reasonable steps necessary to contain and remedy the event, mitigate the event's impact on BAE Systems Information, and prevent its recurrence; and
  - ii. notify BAESMA without undue delay (and in any event within twenty-four (24) hours of becoming aware or reasonably suspecting the incident).
- (j) In notifying BAESMA in accordance with clause 33(i)ii, the Supplier shall provide BAESMA with details of the Information Security Incident as are reasonably required by BAESMA, including without limitation and to the extent then known:
- i. the categories, volume and description of the BAE Systems Information affected by the Information Security Incident and, where applicable, the categories and numbers of data subjects whose Personal Information is affected;
  - ii. the name and contact details of the Supplier's data protection officer or other relevant contact from whom more information may be obtained;
  - iii. a description of the likely impact on the BAE Systems Information which is affected by the Information Security Incident; and
  - iv. a description of the measures taken, or proposed to be taken, to address the Information Security Incident.
- (k) In the event of an Information Security Incident, the Supplier shall not inform any third party without first obtaining BAESMA's prior written consent, unless the Supplier is required by an applicable law to make a disclosure. If the Supplier is required by law to inform a third party, the Supplier shall (to the extent permitted by such law) inform BAESMA of that legal requirement, provide a copy of the proposed notification, and consider any

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comments made by BAESMA before notifying any third party of the Information Security Incident.

**Physical Access**

- (l) The Supplier shall implement appropriate and effective physical security measures at its premises in accordance with Good Industry Practice; such measures shall include establishing a policy which requires Permitted Parties to:
- i. securely store BAE Systems Information they have access to in the course of discharging their duties; and
  - ii. adequately dispose of any printed documents in a secure manner (for example, by putting them through a cross-cut shredder).

**Training and Vetting**

- (m) The Supplier shall ensure that all Permitted Parties are appropriately security vetted and trained on a continual basis. Training shall cover, at a minimum:
- i. identifying security breaches;
  - ii. identifying scams including phishing, information security risks; and
  - iii. the legal obligations associated with BAE Systems Information that is stored, handled and processed by such Permitted Parties.

**Tests, Scans, Audit**

- (n) The Supplier:
- i. must allow BAESMA and persons authorised by BAESMA access at any time during normal working hours to the Supplier's Relevant Systems and/or premises (and those of its subcontractors) that are being used in the provision of the Supplies in order to inspect and audit the Supplier's compliance with its obligations under any Order, including the ISRs, and in the event of a Security Incident; and
  - ii. consents to BAESMA undertaking its own tests and vulnerability scans of the Supplier's Relevant Systems upon 14 days' written notice, not more than once annually (except where there is a Security Incident).
- (o) Where any test or scan carried out for the purposes of clause 33(n) (including the ISR, if relevant) reveals any actual or potential breach of this clause 33, the Supplier shall:

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- (i) collaborate and cooperate with BAESMA in addressing any issues or concerns;
  - (ii) promptly correct such non-compliance at its own cost;
  - (iii) unless otherwise agreed with BAESMA, implement necessary changes to comply with this clause 33 (including any updated ISRs); and
  - (iv) repeat the relevant security tests within a reasonable period of time agreed by the parties.
- (p) If a repeated security test carried out reveals an actual or potential security breach exploiting the same root cause failure, such circumstance shall constitute a material breach, for which BAESMA may terminate any Order or this Agreement.

**Malware**

- (q) The Supplier shall:
- i. ensure that all of its Tools are of satisfactory quality and fit for any purpose relevant to the Supplies, free from material design, programming and implementation errors, designed, developed, tested and deployed in accordance with Good Industry Practice, are free from Malware and the latest versions of anti-virus software available from an industry-accepted anti-virus software provider is used to check for, contain the spread of, and minimise the impact of malicious software or code which may arise from the use of the Tools in the supply of the Supplies;
  - ii. use its best endeavours to ensure that any materials provided to BAESMA in an electronic form or format (including emails and computer programs) for or in connection with the provision of the Supplies, are free from Malware; and
  - iii. use its best endeavours to prevent the introduction of any Malware to BAESMA's environment and BAE Systems Information.

**Consequences of failure**

- (r) If any Indemnified Party incurs any Loss as a result of any Security Incident, Malware, or Relevant Impact to any BAE Systems Information or any Relevant Systems, then BAESMA may at its discretion:

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- i. require the Supplier at its cost to restore, reconstitute, reload or procure the restoration, reconstitution or reloading of such affected BAE Systems Information or Relevant Systems as soon as practicable but not later than 2 working days from the date of notice from BAESMA;
- ii. without limiting any rights or remedies, terminate any Order or this Agreement without any liability;
- iii. require the Supplier to indemnify the Indemnified Party against any and all Loss incurred by each Indemnified Party as a result of or in connection with any breach by the Supplier, its employees, agents or subcontractors of this clause 33, including for all costs incurred by BAESMA in restoring, reconstituting, reloading or procuring the restoration, reconstitution or reloading of such affected BAE Systems Information or Relevant Systems, and all Losses suffered as a result of the Security Incident, Malware, or Relevant Impact to any BAE Systems Information or Relevant Systems.

**34. Change of Control of the Supplier**

- (a) The Supplier shall provide BAESMA with written notice and shall seek BAESMA's prior written consent to a proposed Change of Control at least 15 working days before the proposed Change of Control is to occur.
- (b) In any notice given to BAESMA providing notice of, and seeking consent to, a proposed Change of Control, the Supplier shall include the following details:
  - (i) the ownership and management arrangements of the Supplier or a parent company of the Supplier that were in place immediately before the change or, if the change has yet to occur, that were in place at the time the Supplier became aware of the prospective change;
  - (ii) the ownership and management arrangements of the Supplier or a parent company of the Supplier that have been or will be put in place as a consequence of the change or, if the change has yet to occur, that the Supplier reasonably expects to be put in place if the change occurs;

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- (iii) the impact (if any) that the change has had on the Supplier's or a parent company of the Supplier's ability to meet its obligations under the Agreement or, if the change has yet to occur, that the Supplier reasonably expects the change to have on that ability;
  - (iv) the steps the Supplier has taken or proposes to take to minimise the impact of the change or prospective change; and
  - (v) any other information requested by BAESMA.
- (c) If there is a Change of Control and BAESMA does not consent to the Change of Control, then BAESMA may:
- (i) immediately terminate the Agreement by notice in writing; or
  - (ii) agree not to give the Supplier a notice of termination, subject to the Supplier providing further information, giving specified undertakings, or executing further agreements, as may be required by BAESMA.

**35. Data Decommissioning and Disposal**

- (a) Upon termination or expiry of the Agreement, the Contractor shall cease use of all BAE Systems Information and, at BAESMA's absolute discretion, either:
  - i. promptly (and in any event within twenty-eight (28) calendar days of expiry or termination) permanently delete all BAE Systems Information in its possession so that it cannot be recovered or reconstructed; or
  - ii. require the Supplier to return a complete copy of all BAE Systems Information to BAESMA by hand, by registered post, and/or by secure file transfer in a format stipulated by BAESMA, and

in either case, the Supplier shall confirm in writing that is no longer in possession of any BAE Systems Information (with the exception of any BAE Systems Information retained in accordance with clause 35(c)).
- (b) Unless otherwise permitted by the Agreement and where BAESMA has requested the deletion of BAE Systems Information, the Supplier shall ensure that, prior to disposal or decommissioning, a suitable

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software data wiping solution is used to permanently delete all BAE Systems Information in its possession in electronic form so that it cannot be restored. Where requested by BAESMA, the Supplier shall provide BAESMA with a certificate of destruction signed by an authorised signatory of the Supplier confirming the Supplier's compliance with this clause 35.

- (c) Notwithstanding clause 35(a), the Supplier may retain copies of BAE Systems Information only to the extent that such copies are:
- i. retained as part of the Supplier's archival backup system if such system stores the BAE Systems Information automatically and provided that such copies of the BAE Systems Information are not retrieved or used for any purpose other than for security, business continuity or disaster recovery procedures; or
  - ii. as required by law or for legal purposes and provided that such information is only retrieved and used as necessary for those purposes and for no other purpose, and

provided always that Supplier shall ensure the security and confidentiality of all such BAE Systems Information.

- (d) The Supplier shall, in relation to BAE Systems Information, comply with the additional data archival, retention, transition and disposal processes and instructions identified in any additional data management requirements specified by BAESMA from time to time (acting reasonably).

**36. Business Continuity**

- (a) The Supplier shall ensure that:

- i. it has, and is able to implement, a BCP which either meets all requirements specified and/or agreed with BAESMA, or if none are specified, is in line with Good Industry Practice; and

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- ii. if required by BAESMA, provides a copy of that BCP to BAESMA within 7 days of BAESMA's request.
- (b) The BCP shall include (without limitation) the following policies, at the standards required by clause 36(a):
- i. a data backup schedule;
  - ii. the requirement for data backups to be held in an encrypted/secure form at a secure location which is separate to the Supplier's primary business location(s);
  - iii. a prompt data restoration timeframe; and
  - iv. an appropriate BCP testing schedule.
- (c) The Supplier shall review and test the effectiveness of the BCP at least annually and, where requested, provide BAESMA with evidence of the effectiveness of the BCP. Any changes that the Supplier wishes to make to the BCP must not adversely affect the security and integrity of BAE Systems Information and shall be notified to BAESMA in writing in advance of such changes being implemented.
- (d) The Supplier shall implement technical controls and disaster recovery processes to manage and mitigate the impact of potential loss, corruption, damage or unavailability of BAE Systems Information due to unforeseen circumstances (including fire, flood and power outages) in line with the recovery time scales specified by BAESMA in the BCP or, if none are specified, in line with Good Industry Practice.