

# **BAE SYSTEMS STANDARD CONDITIONS OF PURCHASE (2022 EDITION V2 SEPT)**

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## BAE SYSTEMS STANDARD CONDITIONS OF PURCHASE (2022 EDITION V2 SEPT)

### 1. DEFINITIONS AND INTERPRETATION

1.1 The definitions and rules of interpretation in this clause 1 apply to the Agreement.

“Agreement”	means the Order together with: (a) these BAE Systems Standard Conditions of Purchase (including the Schedules); (b) the Special Conditions; (c) the Specification; and (d) any other relevant documents which are expressly referenced on the Order (or, in the absence of such express reference, are deemed to be referenced on the Order).
“Anti-Corruption Laws”	has the meaning given to it in clause 20.1 (Ethical Behaviour).
“Background IPR”	means any Intellectual Property Rights owned, created or acquired by or licensed to a Party prior to the date of the Agreement and/or outside of the Agreement and/or outside of the Supplies.
“BAE Systems Group”	means BAE Systems plc and any of its wholly-owned subsidiaries from time to time within the meaning of Section 1159 of the Companies Act 2006.
“BAE Systems Information Security Requirements”	has the meaning given to it in clause 11.1 (Information Security).
“Business Day”	means a day (other than a Saturday or Sunday or a day on which the Purchaser’s relevant site is closed due to a holiday) on which banks are open for business generally in London.
“CIS”	has the meaning given to it in clause 10.12 (CIS).
“Commencement Date”	has the meaning given to it in clause 13.4.1 (TUPE).
“Confidential Information”	<p>means any and all confidential information, including without limitation, any and all technical, financial, commercial or other information, (howsoever recorded, preserved or disclosed) disclosed directly or indirectly 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 <b>provided that</b> Confidential Information shall not include any information which the Receiving Party can show through documentary evidence:</p> <p>(a) is or becomes publicly available otherwise than as a result of a breach of the Agreement or the fault of the Receiving Party;</p> <p>(b) has been lawfully received from a third party without restriction as to its use or disclosure;</p> <p>(c) was already in its possession free of any such restriction as to its use or disclosure prior to receipt from the Disclosing Party;</p> <p>(d) was independently developed by or for the Receiving Party without making use of any Confidential Information; or</p> <p>(e) has been approved for release or use (in either case without restriction) by written authorisation of the Disclosing Party,</p> <p>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,</p> <p>and, for the purposes of clause 18 (Confidentiality), references to “Confidential Information” shall be deemed to include Background IPR, Controlled Material, Foreground IPR and Personal Data.</p>

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"Controlled Material"	has the meaning given to it in clause 19.1 (Export Control).
"Counterfeit Goods"	mean: (a) Goods which have been identified, marked and/or altered by a source other than the Goods' legally authorised source and which have been misrepresented to be an authorised item of the legally authorised source; and/or (b) previously used Goods provided as new.
"Defaulting Party"	has the meaning given to it in clause 15.1 (Termination and Consequences of Termination).
"Deliverable"	means an identifiable and measurable output in connection with the Services.
"Disclosing Party"	means a Party which discloses any Confidential Information to the Receiving Party.
"DPA 2018"	means the Data Protection Act 2018 (and regulations made thereunder).
"eProcurement"	means the relevant eProcurement platform.
"EU REACH"	has the meaning given to it in clause 10.4 (REACH).
"Force Majeure Event"	means any circumstance not within a Party's reasonable control, including without limitation: (a) acts of God, drought, flood, earthquake or other natural disaster; (b) epidemic or pandemic; (c) terrorist attack, civil war, civil commotion or riots, or war; (d) nuclear, chemical or biological contamination or sonic boom; and (e) any labour or trade dispute, national strikes, industrial action or lock-outs or other industrial disputes (but only where it involves the workforce of a third party and does not involve a Party or a member of a Party's Group or any persons that the Supplier engages to deliver the Supplies).
"Foreground IPR"	means any Intellectual Property Rights in the Supplies (but excluding any Background IPR contained in the Supplies) and/or as may otherwise be created as a result of the work undertaken by the Supplier or by any persons that the Supplier engages to deliver the Supplies.
"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.
"Goods"	mean any goods, including without limitation, materials, technical data, technology, software, hardware, system design documentation, prototypes or test results which are to be provided by the Supplier to the Purchaser pursuant to the Agreement and means any or all of them, as the context may require.
"Greenhouse Gas Emissions"	has the meaning given to it in clause 10.11 (Greenhouse Gas Emissions).
"Greenhouse Gases"	has the meaning given to it in clause 10.11 (Greenhouse Gas Emissions).
"Group"	means a holding company and any of its subsidiaries from time to time, each within the meaning of Section 1159 of the Companies Act 2006.
"Implementation Plan"	has the meaning given to it in clause 11.2 (Information Security).
"Indemnified Party"	means the Purchaser and any member of the BAE Systems Group.
"Information Security Incident"	means the actual or suspected occurrence of: (a) any unauthorised access to, use or disclosure of, any Purchaser Information; and/or any unauthorised or accidental destruction, damage, deletion and/or (b) loss of any Purchaser Information (including copies).

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“Intellectual Property Rights”	mean: (a) patents, inventions, designs, copyright and related rights, database rights, know-how, trade secrets, trade marks and related goodwill, trade names (whether registered or unregistered), and rights to apply for registration; (b) proprietary rights in domain names; (c) applications, extensions and renewals in relation to any of these rights; and (d) all other rights of a similar nature or having an equivalent effect anywhere in the world.
“Legal Claim”	has the meaning given to it in clause 20.1 (Ethical Behaviour).
“Non-Defaulting Party”	has the meaning given to it in clause 15.1 (Termination and Consequences of Termination).
“Order”	means the purchase order or any other agreed form of order method placed by the Purchaser on the Supplier, or any instruction given by the Purchaser to the Supplier, in respect of the Supplies.
“Party”	means each of the Purchaser and the Supplier and includes their successors in title, permitted assignees and permitted transferees.
“Personal Data”	has the meaning given to it in the UK GDPR and the DPA 2018.
“Price”	means the amount payable by the Purchaser to the Supplier in respect of the Supplies.
“Process”, “Processing” and “Processed”	each has the meaning given to it in the UK GDPR and the DPA 2018.
“Public Official”	has the meaning given to it in clause 20.1 (Ethical Behaviour).
“Purchaser”	means the BAE Systems company identified on the Order and having a place of business at the address for correspondence shown on the Order.
“Purchaser Information”	means (i) any and all data, information or material provided directly or indirectly by the Purchaser to the Supplier under the Agreement and which is: (a) Background IPR; (b) Controlled Material; (c) Confidential Information; (d) Foreground IPR; and/or (e) Personal Data; and (ii) any information or data created by the Supplier based on any of the foregoing.
“REACH”	has the meaning given to it in clause 10.4 (REACH).
“Receiving Party”	means a Party which receives any Confidential Information from the Disclosing Party.
“Sanctioned Person”	has the meaning given to it in clause 21.1 (Sanctions Compliance).
“Sanctions”	has the meaning given to it in clause 21.1 (Sanctions Compliance).
“Services”	mean any services, including without limitation, work, technical assistance and/or training which are to be performed by the Supplier and any Deliverable which is to be delivered by the Supplier pursuant to the Agreement and means any or all of them, as the context may require.
“Special Conditions”	mean the conditions which are expressly set out or referenced on the Order (whether marked as Special Conditions or not).
“Specification”	means the document (if any) which sets out the agreed design, performance, functionality of and procedures for the Supplies and which is expressly referenced on the Order (or which, in the absence of such express reference, is deemed to be referenced on the Order).
“Supplier”	means the supplier on which the Order is placed and, where applicable, (a) references to “Supplier” shall be deemed to include the relevant member of the Supplier’s Group or any persons that the Supplier engages to deliver the Supplies and (b) the Supplier shall be responsible for procuring the compliance of the relevant member of the Supplier’s Group

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	or any persons that the Supplier engages to deliver the Supplies with any relevant provisions in the Agreement.
"Supplies"	mean any Goods and/or Services and means any or all of them, as the context may require.
"Termination Date"	has the meaning given to it in clause 13.4.2 (TUPE).
"Termination Sum"	has the meaning given to it in clause 15.4 (Termination and Consequences of Termination).
"UK GDPR"	has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the DPA 2018.
"UK REACH"	has the meaning given to it in clause 10.4 (REACH).
"VAT"	means value added tax as provided for in the Value Added Tax Act 1994.

1.2 Clause headings are for convenience only and shall not affect the interpretation of the Agreement.

1.3 Words in the singular shall include the plural and vice versa.

1.4 A reference to a statute, statutory provision or other legislation, whether of the UK or elsewhere, is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment, or any laws substantially amending, replacing or superseding it following the exit by the UK from the EU, and includes any subordinate legislation for the time being in force made under it.

## 2. CONTRACT FORMATION

2.1 The Order constitutes an offer by the Purchaser to purchase the Supplies **provided that**, if the Order is not accepted in accordance with the provisions of clause 2.2 within ten (10) Business Days of the date of the Order, the Purchaser's offer will lapse without the Purchaser incurring any liability to the Supplier.

2.2 The Supplier shall accept the Order by signing and returning the order acknowledgement or by sending a written confirmation to the Purchaser or, if trading through eProcurement, by accepting the Order through the relevant process. Alternatively, if the Supplier fails to do this, the Supplier shall be deemed to have accepted the Order as soon as it commences work.

2.3 On the Supplier's acceptance of the Order in accordance with clause 2.2, the Agreement shall be formed.

2.4 It is expressly agreed that any other terms and conditions of business contained in any acknowledgements, confirmations, standard forms or other documents issued by either Party or in the quotation, letter of offer, technical proposal or other similar documents issued by the Supplier to the Purchaser in respect of the Supplies or implied by trade custom, practice or course of dealing shall not apply.

2.5 In the event of any conflict, the following order of precedence shall apply:

2.5.1 the Special Conditions;

2.5.2 these BAE Systems Standard Conditions of Purchase (including the Schedules);

2.5.3 the Specification; and then

2.5.4 any other relevant documents which are expressly referenced on the Order (or, in the absence of such express reference, are deemed to be referenced on the Order).

**SUPPLIES**

**3. DELIVERY OF GOODS**

- 3.1 The delivery term in respect of any Goods shall be DAP (Incoterms® 2020).
- 3.2 All Goods must be properly and securely packed.
- 3.3 The Supplier shall quote the Order number and item number on all documents and packages sent by it to the Purchaser in respect of the Agreement.
- 3.4 On delivery of each consignment of the Goods, the Supplier shall deliver to the Purchaser such documents as are required by the Agreement, including without limitation, customs export documents, advice notes, certificates of conformity and civil approved certificates and, if the Supplier is not the original manufacturer of the Goods, copies of the original manufacturer's certificate of conformity or civil approved certificate together with test figures and heat treatment particulars, where applicable.
- 3.5 If the Supplier fails to comply with the provisions of this clause 3, the Purchaser shall be under no obligation to accept delivery of the relevant Goods.

**4. ACCEPTANCE OF GOODS**

- 4.1 Where acceptance tests are set out in the Agreement, acceptance of Goods delivered shall be subject to completion of the acceptance tests to the satisfaction of the Purchaser.
- 4.2 Where no acceptance tests are set out in the Agreement, the Purchaser shall have the right to inspect the Goods after delivery and acceptance shall take place on inspection if the Purchaser is satisfied that the Goods are in accordance with the Agreement or, if no inspection is made, the Goods shall be accepted on the earlier of: (a) when they have been taken into final and beneficial use by the Purchaser; or (b) twenty (20) Business Days after delivery in accordance with clause 3 (Delivery of Goods).
- 4.3 If the Purchaser is not satisfied that the Goods are in accordance with the Agreement, the Purchaser may in its absolute discretion give written notice to the Supplier to:
  - 4.3.1 reject the Goods in whole or in part; and/or
  - 4.3.2 repair or replace the Goods without delay at the Supplier's own expense and risk.

**5. RISK IN AND TITLE TO GOODS**

- 5.1 Risk in any Goods shall pass to the Purchaser upon delivery in accordance with clause 3 (Delivery of Goods).
- 5.2 Title to any Goods shall pass to the Purchaser upon acceptance in accordance with clause 4 (Acceptance of Goods).

**6. WARRANTY FOR GOODS**

- 6.1 The Supplier warrants to the Purchaser that the Goods shall be delivered:
  - 6.1.1 in accordance with the terms of the Agreement;
  - 6.1.2 fit for the purpose for which they are intended;
  - 6.1.3 free from defects (whether actual or latent) in design, materials and workmanship;

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- 6.1.4 of satisfactory quality and in accordance with all reasonably applicable quality standards and with those set out as a Special Condition and/or in the Specification and/or in the Purchaser's quality approval/authority issued to the Supplier and/or such other quality standard as may be agreed between the Parties; and
- 6.1.5 in compliance with all applicable laws and regulations as well as all of the Purchaser's site (or, if applicable, the Purchaser's customer's or a BAE Systems Group site) policies and rules.
- 6.2 The warranties in clause 6.1 shall continue for twelve (12) calendar months from the date of acceptance of (i) the relevant Goods in accordance with clause 4 (Acceptance of Goods) or (ii) the repaired or replaced Goods in accordance with clause 6.3.2.
- 6.3 Without prejudice to any other right available to the Purchaser by contract or generally in law, if there is a defect in the Goods during the warranty period, the Supplier shall upon receipt of written notice from the Purchaser but at the absolute discretion of the Purchaser:
  - 6.3.1 refund the Purchaser on demand for the Price of the defective Goods and, if the Purchaser requests, collect and remove the defective Goods at the Supplier's own expense and risk; or
  - 6.3.2 repair or replace the defective Goods within the time period specified by the Purchaser and at the Supplier's own expense and risk **provided that**, if the Supplier fails to do so or the Purchaser decides that it is more practical, the Purchaser may arrange for them to be repaired or replaced by a party other than the Supplier and the Supplier shall indemnify the Purchaser on demand for any costs and expenses incurred by the Purchaser.
- 6.4 The Supplier agrees that the benefit of all warranties attaching to the Goods shall be capable of being assigned to the Purchaser's customer or other user by the Purchaser without prior written notice to the Supplier.

## 7. SERVICES AND DELIVERABLES

- 7.1 The Supplier warrants to the Purchaser that the Services shall be performed:
  - 7.1.1 in accordance with the terms of the Agreement;
  - 7.1.2 with reasonable care and skill;
  - 7.1.3 in accordance with Good Industry Practice; and
  - 7.1.4 in compliance with all applicable laws and regulations as well as all of the Purchaser's site (or, if applicable, the Purchaser's customer's or a BAE Systems Group site) policies and rules.
- 7.2 Without prejudice to any other right available to the Purchaser by contract or generally in law, if there is a breach of the warranties set out in clause 7.1, the Supplier shall upon receipt of written notice from the Purchaser but at the absolute discretion of the Purchaser:
  - 7.2.1 refund the Purchaser on demand for the Price of the relevant Services; or
  - 7.2.2 perform or re-perform the relevant Services within the time period specified by the Purchaser and at the Supplier's own expense and risk **provided that**, if the Supplier fails to do so or the Purchaser decides that it is more practical, the Purchaser may arrange for them to be performed or re-performed by a party other than the Supplier and the Supplier shall indemnify the Purchaser on demand for any costs and expenses incurred by the Purchaser.

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- 7.3 The Supplier agrees that the benefit of all warranties attaching to the Services shall be capable of being assigned to the Purchaser's customer or other user by the Purchaser without prior written notice to the Supplier.
- 7.4 In respect of any Deliverable:
- 7.4.1 The Supplier shall be solely responsible for the delivery to the Purchaser of the Deliverable.
- 7.4.2 Where acceptance criteria are set out in the Agreement, acceptance of the Deliverable shall be subject to it meeting such acceptance criteria to the satisfaction of the Purchaser.
- 7.4.3 Where no acceptance criteria are set out in the Agreement, the Purchaser shall have the right to review the Deliverable after delivery and acceptance shall take place on review if the Purchaser is satisfied that the Deliverable is in accordance with the Agreement or, if no review is made, the Deliverable shall be accepted twenty (20) Business Days after delivery.
- 7.4.4 If the Purchaser is not satisfied that the Deliverable is in accordance with the Agreement, the Purchaser may in its absolute discretion give written notice to the Supplier to: (a) reject the Deliverable and/or (b) re-work the Deliverable without delay at the Supplier's own expense.

### **8. AMENDMENT TO SUPPLIES**

- 8.1 If the Purchaser requests an amendment to the scope or execution of the Supplies, the Supplier shall within five (5) Business Days of the date of the Purchaser's request or such other time as may be agreed between the Parties provide a written estimate to the Purchaser of: (a) the likely time required to implement the amendment; (b) any necessary variations to the Price which reasonably arise from the amendment; and (c) any other impact of the amendment on the terms of the Agreement.
- 8.2 If the Purchaser wishes to proceed with the amendment, the Parties shall amend the Agreement in accordance with clause 32 (Amendment). If the Purchaser does not wish to proceed with the amendment, there shall be no amendment to the Agreement.
- 8.3 If, in either Party's opinion, the time to evaluate and respond to one or more amendment requests, may result in a delay in the schedule, affect the costs or otherwise impair the success of any relevant project, that Party will notify the other Party and the Parties will not take action with respect to such amendment requests until the Parties mutually agree upon an appropriate course of action.

### **9. PRICE AND PAYMENT**

- 9.1 Where the Price is agreed at the time of the Order, it shall be set out as a Special Condition. Where the Price is not agreed at the time of the Order, it shall be agreed as soon as possible thereafter and the Parties shall amend the Agreement in accordance with clause 32 (Amendment).
- 9.2 The Price shall be non-revisable and shall be exclusive of VAT and, in the case of non-UK Supplies, exclusive of import taxes. If VAT is payable, it shall be separately identified on the invoice and shall be payable by the Purchaser subject to receipt of a valid VAT invoice. No additional charges shall be payable by the Purchaser for packaging, insurance or delivery unless otherwise agreed and set out as a Special Condition and any such charge shall be separately identified on the invoice.
- 9.3 The Price shall be payable by the Purchaser to the Supplier in accordance with the provisions of this clause 9. The Purchaser is a signatory to the Prompt Payment Code and any payment

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disputes shall be dealt with in accordance with this clause 9 and clause 36 (Law and Jurisdiction).

- 9.4 The Supplier shall submit to the Purchaser on or after the provision of the Supplies an invoice in respect of the Supplies properly provided. Each invoice must: (a) be clearly addressed to the correct legal entity of the Purchaser; (b) be sent to (separately from any Supplies) c/o Accounts Payable Department as specified on the Order (or, if trading through eProcurement, by using the relevant process); (c) reference the Order number with respect to the Supplies and the number and date of the relevant delivery advice note; and (d) set out each relevant line item of the Supplies delivered, accompanied by copies of any documents provided with the delivery of such line item.
- 9.5 Each correctly submitted and, where applicable, valid VAT invoice shall become due for payment at the end of the calendar month following the calendar month in which the invoice is received (or, if trading through eProcurement and the Purchaser has a direct debit or standing order in place for the Supplier, in accordance with the instructions for that direct debit or standing order) **provided that** the Supplies have been delivered by the Supplier and accepted by the Purchaser in accordance with the Agreement.
- 9.6 The Supplier acknowledges and agrees that invoices shall only be passed for payment by the Purchaser if they comply with the provisions of this clause 9. Should any invoice contain incomplete or incorrect information or an incorrect or invalid charge, the Purchaser will be entitled to reject such invoice and return it to the Supplier or ask the Supplier to have it rectified and resubmitted (any such rectified invoice shall become due for payment at the end of the calendar month following the calendar month in which the resubmitted invoice is received) or request the Supplier to issue a credit note to correct the error.
- 9.7 Payments to the Supplier shall be made by the Purchaser in Pounds Sterling (or the agreed currency of the Agreement) by Bankers Automated Clearing System (BACS) or equivalent Electronic Funds Transfer (EFT) or any established standing order.
- 9.8 Where the Purchaser is using a corporate purchasing account payment mechanism:
- 9.8.1 the provisions of clauses 9.4 to 9.7 shall not apply;
- 9.8.2 the Supplier shall submit to the corporate purchasing account provider on or after the provision of the Supplies, line item information in respect of the Supplies properly provided in the relevant provider platform and the relevant corporate purchasing account provider shall pay the Supplier in accordance with the agreed payment terms;
- 9.8.3 in the event that any line item information contains incomplete or incorrect information or an incorrect or invalid charge, the Purchaser shall be entitled to ask the Supplier to (i) have it rectified and then resubmitted or (ii) request the Supplier to issue a credit to correct the error;
- 9.8.4 corporate purchasing account credits must state the original Order reference number and the price of any Supplies returned by a corporate purchasing account holder (on behalf of a Purchaser). Any pricing discrepancies should be credited promptly to that corporate purchasing account holder's account;
- 9.8.5 the subsequent re-delivery of Supplies that have been returned to the Supplier shall be treated by the Supplier as a new transaction but the Supplier shall quote the original Order reference number unless instructed otherwise by the Purchaser;
- 9.8.6 the Supplier shall ensure that the corporate purchasing account number or card number does not appear on any delivery paperwork; and

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- 9.8.7 the corporate purchasing account holder shall provide the Supplier with cost centre details which must be quoted in the payment service provider portal when the Supplier bills the corporate purchasing account.
- 9.9 Where the Purchaser is required to deduct withholding tax from its payment to the Supplier, it will deduct the minimum required by law and pay this to its tax authority within the statutory time limit. As soon as reasonably practicable, the Purchaser will provide evidence reasonably satisfactory to the Supplier that the tax deduction has been made and payment has been made to the relevant taxing authority.
- 9.10 Without prejudice to any other right or remedy the Purchaser may have, the Purchaser shall be entitled to set-off any payment owed by it to the Supplier under the Agreement against any sums that are due and payable by the Supplier to the Purchaser under the Agreement and/or any other agreement.
- 9.11 The Supplier reserves the right to charge default interest on any valid overdue payment at the rate of four per cent (4%) per annum above the Bank of England's base rate from time to time, such default interest accruing from the first day on which such payment is overdue until such payment has been received by the Supplier.
- 9.12 Where any cost or expense under the Agreement is to be reimbursed, refunded or taken into account in any computation, the amount of that cost or expense shall be net of any VAT to the extent that the person meeting such cost or expense is able to recover such VAT as input tax under the provisions of the Value Added Tax Act 1994 or under any other relevant legislation.

### **SUPPLIER'S RESPONSIBILITIES**

#### **10. GENERAL**

- 10.1 The Supplier shall provide the Supplies to the Purchaser in accordance with the Agreement and the Supplier shall allocate sufficient resources to enable it to comply with its obligations under the Agreement.
- 10.2 The Supplier shall provide to the Purchaser reports (in a format and content agreed between the Parties) in relation to the provision of the Supplies and such other information as the Purchaser may request from the Supplier from time to time. In addition, the Supplier shall agree with the Purchaser the frequency of meetings to be held between the Supplier and the Purchaser in order to review the Supplier's performance under the Agreement.
- 10.3 The Supplier shall:
- 10.3.1 at all times obtain and maintain all necessary licences and consents and comply with all applicable laws and regulations which are relevant to any of the Supplies;
  - 10.3.2 at all times maintain a business continuity plan in accordance with Good Industry Practice;
  - 10.3.3 provide written instructions to the Purchaser in respect of any particular requirements for the Supplies, including without limitation, in respect of handling, storage, maintenance and disposal;
  - 10.3.4 ensure that the Purchaser is advised, before receipt, of any Supplies which are intrinsically hazardous to life or harmful to the environment by providing in writing all relevant health, safety and environmental data so that appropriate precautionary arrangements can be made and ensuring that the Purchaser is provided with all updates of such data;
  - 10.3.5 ensure that waste and surplus materials and the like arising from any Supplies are not deposited on any area other than a public or private disposal facility controlled or

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- recognised by the relevant local authority (and, where applicable, credit the Purchaser with any relevant income arising from the surplus materials);
- 10.3.6 comply with all the requirements of the Environmental Protection Act 1990 and any other applicable legislation governing the controlled tipping of waste;
- 10.3.7 promptly notify the Purchaser as soon as it becomes aware of any health and safety hazards or issues which arise in relation to any Supplies;
- 10.3.8 promptly notify the Purchaser if it is or when it becomes, or if it ceases to be, an authorised economic operator, being a company which holds a current authorisation, issued by its relevant tax authority, in recognition of a level of compliance set by that tax authority, in respect of the control of goods throughout the supply chain; and
- 10.3.9 promptly notify the Purchaser of any restrictions that apply in respect of any relevant customs legislation preventing the export, re-export or transfer of the Supplies by the Purchaser or, if requested by the Purchaser, confirm in writing that no such restrictions apply.
- 10.4 **REACH:** To the extent that The REACH etc. (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/758 and subsequent amending SIs) ("**UK REACH**") or the EU Registration Evaluation Authorisation and Restriction of Chemicals Regulation (1907/2006) ("**EU REACH**") (UK REACH and EU REACH, together "**REACH**") apply to any Supplies, the Supplier shall:
- 10.4.1 comply with REACH and other chemical legislation as applicable;
- 10.4.2 where required, ensure that the substances present in the Supplies have been registered in accordance with REACH by the Supplier (where the Supplier is registered in the UK) or by the Supplier's appointed 'Only Representative' registered in the UK (where the Supplier is registered outside the UK);
- 10.4.3 provide to the Purchaser all necessary information in order for the Purchaser to comply with and/or be satisfied that the Supplier has complied with REACH (including without limitation, safety data sheets, information required under Article 33 of REACH (Communications on Substance of Very High Concern (SVHC) where the SVHC content of an article is greater than 0.1% w/w) for each relevant article in an assembly, chemical composition data, test data, hazard information and exposure scenarios) and permit the Purchaser to disclose such information to a third party where the Purchaser deems it necessary or is required by REACH;
- 10.4.4 where a substance present in the Supplies is listed in Annex XIV of REACH, ensure and confirm to the Purchaser that such chemical substance is authorised for the Purchaser's particular use, sale or disposal of the Supplies; and
- 10.4.5 promptly notify the Purchaser of any applicable restriction on the use of substances present in the Supplies as set out in the list of restrictions under UK REACH or Annex XVII under EU REACH or communicated by an authority implementing REACH which impacts, or is likely to impact, the Purchaser's use, sale or disposal of the Supplies.
- 10.5 **Personal Data:** Other than limited business contact information in respect of the Purchaser's employees and any persons that the Purchaser engages which may be used by the Supplier solely for contract management activities in accordance with all applicable laws and regulations, the Supplier shall not Process any Personal Data in relation to the Agreement and shall not appoint any sub-processors unless and until the Purchaser has authorised such Processing by way of a Special Condition which shall, amongst other things, set out the precise nature of the information to be Processed, the scope of Processing and the additional terms and conditions that will apply to any such Processing. If the Supplier provides the Purchaser with any Personal Data of any persons that it engages to deliver the Supplies (including without limitation, the identities of the relevant individuals, their contact information, and their role and their

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responsibilities), the Supplier acknowledges and agrees that it shall advise such individuals of the provision of such Personal Data prior to it taking place. Further, the Supplier shall provide such individuals with the URL of the BAE Systems Group's data privacy portal which can be found at: [www.baesystems.com/en/privacy](http://www.baesystems.com/en/privacy).

- 10.6 The Supplier shall not, without the Purchaser's prior written consent, include, incorporate, use or link (whether statically or dynamically) to any computer program or software code that is subject to terms that, as a condition of use, copying, modification or redistribution, may require any of the Purchaser's or any third party's Intellectual Property Rights and/or derivative works thereof to be: (a) disclosed or distributed in source code form; (b) licensed for the purpose of making derivative works; or (c) redistributed free of charge.
- 10.7 Subject to the provisions of clauses 15 (Termination and Consequences of Termination) and 16 (Force Majeure Event), the Supplier shall immediately notify the Purchaser of the occurrence and cause of any event or conditions that might delay or prevent completion of any of its obligations under the Agreement and the measures being taken by it to rectify the situation.
- 10.8 Any drawings, information or documentation to be provided by the Supplier to the Purchaser shall be in one hard copy and one machine-readable copy in reproducible format unless otherwise agreed. The Purchaser may make copies of the same at no charge.
- 10.9 If the Supplier sells, provides or utilises any materials in an electronic form or format (including emails and computer programs) for or in connection with the provision of Supplies, the Supplier shall use its best endeavours to ensure that such materials shall be free from viruses, bugs and logic bombs or other unauthorised, malicious or malignant code, program, routine or software protocol which disables, disrupts, restricts, slows down, impedes or otherwise obstructs the proper performance and operation of a computer system or any application run on such system.
- 10.10 The BAE Systems Group operates an Environmental Policy, details of which can be found at [www.baesystems.com](http://www.baesystems.com). It expects and encourages all its suppliers to embrace similar standards of its own and will work with them to share best practice and stimulate improved performance where needed.
- 10.11 **Greenhouse Gas Emissions:** The BAE Systems Group expects and encourages all its suppliers to measure, manage and reduce their Greenhouse Gas Emissions. The Supplier undertakes that it will:
- 10.11.1 cooperate and collaborate with the Purchaser on reducing Greenhouse Gas Emissions; and
- 10.11.2 at the Purchaser's request, provide information on Greenhouse Gas Emissions associated with the Supplies.

**"Greenhouse Gas Emissions"** mean emissions of Greenhouse Gases each expressed as a total in units of carbon dioxide equivalent (CO<sub>2</sub>e); and

**"Greenhouse Gases"** mean gases which trap thermal radiation in the earth's atmosphere and as specified in Annex A of the 1998 Kyoto Protocol to The United Nations Framework Convention on Climate Change (UNFCCC), as amended from time to time, or otherwise specified by the UNFCCC or notified by the Purchaser from time to time.

- 10.12 **CIS:** To the extent that the Construction Industry Scheme ("**CIS**") rules apply to any Supplies:
- 10.12.1 The Supplier shall assess the provision of any Supplies for compliance with the CIS rules and shall notify the Purchaser prior to providing the Supplies if the Supplies fall within the CIS rules.
- 10.12.2 The Supplier shall ensure that it discloses the information required for the Purchaser to file returns with HM Revenue & Customs under the CIS rules. In particular, the

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Supplier shall ensure that all costs are identified and categorised correctly (with documentary evidence of those costs being provided to the Purchaser) to enable the Purchaser to file the necessary returns with HM Revenue & Customs. Where a deduction is required under the CIS rules, the Purchaser shall deduct the appropriate amount from the Supplier's invoice prior to payment to the Supplier.

- 10.13 If the Purchaser of any relevant construction services is registered for the VAT CIS, it must confirm to the Supplier whether it is an end-user of the Supplies or an intermediary so the Supplier can invoice appropriately.

### 11. INFORMATION SECURITY

- 11.1 The Supplier shall at all times implement and maintain appropriate levels of security to protect all Purchaser Information which as a minimum are required to:

11.1.1 comply with the relevant BAE Systems Information Security Requirements;

11.1.2 reflect Good Industry Practice; and

11.1.3 comply with all applicable laws and regulations.

In this clause 11, “**BAE Systems Information Security Requirements**” mean: (a) the BAE Systems information security requirements identified as “Information Security Requirements Level 1”; and (ii) any additional information security requirements that have been incorporated by way of a Special Condition, in each case as at the date of the Agreement and made available at <https://www.baesystems.com/en/what-we-do/suppliers/united-kingdom/supplier-it-security-requirements>.

- 11.2 In the event that the Supplier is unable to comply with the relevant BAE Systems Information Security Requirements, the Supplier shall immediately notify the Purchaser and put forward an implementation plan (**the “Implementation Plan”**) for the Purchaser's approval. The Implementation Plan shall identify the relevant BAE Systems Information Security Requirements which are not met by the Supplier at the date of the Agreement and detail: either (i) the steps to be taken and the time period required by the Supplier to achieve full compliance with the relevant BAE Systems Information Security Requirements; or (ii) any compensatory or equivalent measures that the Supplier has in place which appropriately mitigate the risks arising from any of the relevant BAE Systems Information Security Requirements not being implemented in full. The Purchaser shall consider the Implementation Plan and: either (a) approve it; or (b) where, in the Purchaser's sole opinion, the Implementation Plan is not acceptable to the Purchaser, the Parties shall agree any amendments, acting reasonably and in good faith, that are required in order for the Implementation Plan to be approved by the Purchaser and, in either case following any such approval, the Supplier shall work towards, and achieve, compliance by the date stated in the Implementation Plan.

- 11.3 Upon becoming aware of, or reasonably suspecting, an Information Security Incident, the Supplier shall without undue delay (but, in any event, within twenty-four (24) hours) notify the Purchaser of such Information Security Incident in accordance with the relevant BAE Systems Information Security Requirements. In the event of an Information Security Incident, the Supplier shall not inform any third party without first obtaining the Purchaser's prior written consent, unless notification is required by any applicable laws and regulations to which the Supplier is subject, in which case the Supplier shall to the extent permitted by such laws and/or regulations inform the Purchaser of that legal requirement, provide a copy of the proposed notification and consider any comments made by the Purchaser before notifying any third party of the Information Security Incident.

- 11.4 At the request of the Purchaser, the Supplier shall (at no additional cost to the Purchaser) appoint an independent auditor to verify the Supplier's compliance with its obligations under this clause 11 **provided that** the Purchaser shall not be permitted to make more than one (1) request to the Supplier during any twelve (12) calendar month period unless the Supplier suffers

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an Information Security Incident. The independent auditor must possess the appropriate experience and qualifications, be selected in accordance with Good Industry Practice and be acceptable to the Purchaser. The Supplier shall provide the Purchaser with an audit certificate from such auditor and an annual SSAE 18 (SOC 2 Type 2) report along with all other material required under the relevant BAE Systems Information Security Requirements. Where any such audit report or material discloses any material findings of non-compliance by the auditor, the Supplier shall promptly remediate the issues raised to the satisfaction of the auditor.

### 12. INSURANCE

- 12.1 The Supplier shall, as a minimum, maintain at its own cost the following primary insurance policies at the specified amount (unless the Purchaser has specified some other sum) with reputable insurers authorised to conduct business in the jurisdictions in which the Agreement is performed against all risks usually insured against in accordance with Good Industry Practice, including without limitation, protection for claims for third party legal liability for injury or damage and for negligent acts or omissions which result in a claim for any form of financial loss against the Purchaser as a result of entering into the Agreement or the provision to it of the Supplies:
- 12.1.1 a policy of Public Liability Insurance for an amount not less than ten million Pounds Sterling (£10 million) per event or series of events in respect of loss of or damage to property of the Purchaser, any member of the BAE Systems Group, the Purchaser's customer or the end user, or death, disease, illness or injury to persons resulting from entering into the Agreement or the provision of the Supplies;
  - 12.1.2 a policy of Product Liability Insurance for an amount not less than ten million Pounds Sterling (£10 million) per event or series of events in respect of loss of or damage to property of the Purchaser, any member of the BAE Systems Group, the Purchaser's customer or the end user, or death, disease, illness or injury to persons resulting from entering into the Agreement or the provision of the Supplies;
  - 12.1.3 a policy of Professional Indemnity Insurance, in respect of loss arising out of the provision by or on behalf of the Supplier of Supplies constituting or including professional services or advice, for an amount not less than five million Pounds Sterling (£5 million) per event or series of events;
  - 12.1.4 where the Supplies constitute, include or relate to aviation products and services, a policy of Aviation Products Liability Insurance and/or a policy of Aviation Liability Insurance, each for an amount not less than one hundred million Pounds Sterling (£100 million) per event or series of events;
  - 12.1.5 where the Supplies constitute, include or relate to marine products and services, a policy of Marine Liability Insurance for an amount not less than ten million Pounds Sterling (£10 million);
  - 12.1.6 where Supplies constitute or materially rely upon data, digital content or technology or where the Supplier will hold Purchaser Information on any of its IT networks, a policy of Cyber Liability or Technical Errors and Omissions Insurance for an amount not less than five million Pounds Sterling (£5 million) per event or series of events; and
  - 12.1.7 any other insurance which the Supplier may be legally required to maintain.
- 12.2 The Supplier shall procure that such insurance is arranged in accordance with all applicable laws and regulations and insurance disclosure requirements, on a continuing basis and shall make the Purchaser aware of any material conditions, limitations, exclusions or restrictions within such insurance policies.

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- 12.3 The Supplier will provide evidence of the insurances in place pursuant to clause 12.1, to the Purchaser's reasonable satisfaction, within five (5) Business Days of any request by or on behalf of the Purchaser.
- 12.4 The Purchaser and its customers shall have the benefit of the Supplier's policies detailed in this clause 12 through invoking any "indemnity to principals" clauses within the Supplier's liability insurance policies where applicable.
- 12.5 If the Supplier is required to provide some of the Supplies on the Purchaser's site (or the Purchaser's customer's or a BAE Systems Group site) where there is construction movement and/or test of military and/or civilian aircraft, ships and/or vehicles, the Supplier shall notify its insurance companies and procure adequate insurance cover as required (but in any event for an amount not less than ten million Pounds Sterling (£10 million) per event or series of events).
- 12.6 The Purchaser shall have no liability for damages or loss to any property of the Supplier or personal property of any persons that the Supplier engages to deliver the Supplies while such property is on the Purchaser's site (or the Purchaser's customer's or a BAE Systems Group site) except to the extent that it is caused by the Purchaser's negligence.

### 13. PERSONNEL

- 13.1 **Real Living Wage:** The Purchaser is an accredited Living Wage Employer and the Supplier represents and warrants to the Purchaser that any relevant persons that it engages to deliver the Supplies will be paid in accordance with the Real Living Wage in place from time to time. Details of the Real Living Wage can be found at: <https://www.livingwage.org.uk/>.

### 13.2 Anti-Slavery and Human Trafficking:

13.2.1 The BAE Systems Group is committed to conducting business responsibly and to maintaining and improving systems and processes to reduce the risk of slavery or human trafficking in its business and supply chain.

13.2.2 The Supplier represents and warrants that neither the Supplier nor any of its directors, officers, or employees: (a) has been convicted of any offence involving slavery and human trafficking; and (b) to the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.

13.2.3 The Supplier shall: (a) comply with all applicable employment, child labour, anti-slavery and human trafficking laws, statutes, regulations from time to time in force, including without limitation, the Modern Slavery Act 2015; (b) have and maintain throughout the term of the Agreement its own policies and procedures to ensure compliance with clause 13.2.3(a); (c) implement due diligence procedures for any persons that it engages to deliver the Supplies, to ensure that there is no slavery or human trafficking in its supply chains; (d) implement a system of training for its employees to ensure compliance with anti-slavery and human trafficking laws, statutes, regulations from time to time in force, including without limitation, the Modern Slavery Act 2015; (e) include in its contracts with any persons that it engages to deliver the Supplies anti-slavery and human trafficking provisions that are at least as onerous as those set out in this clause 13.2; and (f) notify the Purchaser as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with the Agreement.

- 13.3 **IR 35:** If, in the course of supplying any Supplies, the Supplier supplies the Purchaser with personnel, then the provisions of Schedule 1 shall apply to and be incorporated into the Agreement.

### 13.4 TUPE:

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- 13.4.1 Prior to the date for the commencement of provision of the Services (**the “Commencement Date”**), in the event that services similar or equivalent to the Services to be provided by the Supplier to the Purchaser under the Agreement were provided by another supplier, then the provisions of clauses 1.1 and 1.2 to 1.9 of Schedule 2 (inclusive) shall apply to and be incorporated into the Agreement.
- 13.4.2 The Purchaser and the Supplier acknowledge and agree that the transfer of responsibility for the provision of the Services on or immediately after the termination of the Agreement (in whole or in part) in accordance with the provisions of the Agreement or, where relevant, the date of the transfer of responsibility for the provision of the Services (in whole or in part) from the Supplier to another supplier (**the “Termination Date”**) may (depending on the precise facts of each case) constitute a “relevant transfer” for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 and the provisions of clauses 1.1 and 1.10 to 1.18 of Schedule 2 (inclusive) shall apply to and be incorporated into the Agreement.
- 13.5 At no time during the Agreement shall any persons that the Supplier engages to deliver the Supplies, as a consequence of the provision of the Supplies (or any part of them), be an employee or a worker of the Indemnified Parties. The Supplier shall indemnify the Indemnified Parties against any liabilities suffered or incurred by the Indemnified Parties in respect of any claim or allegation that any or all of the persons that it engages to deliver the Supplies are employees or workers of the Indemnified Parties.
- 13.6 The Supplier shall provide any persons that it engages to deliver the Supplies with and ensure use of any protective clothing and safety equipment required in providing any Supplies to the Purchaser.
- 13.7 The Supplier shall ensure that any persons that it engages to deliver the Supplies have appropriate qualifications, training and expertise and that they are made aware of and comply with the security classification of any information relating to the Supplies (including, if applicable, under the Official Secrets Acts 1911 to 1989).
- 13.8 The Purchaser shall be responsible for ensuring that any person that it engages to deliver the Supplies who has a need to access Controlled Material (in electronic or paper format) or to work on the Purchaser’s site (or the Purchaser’s customer’s or a BAE Systems Group site) is cleared in accordance with the relevant security and export control procedures. In the event that any such person is not security and export control cleared, the Purchaser shall promptly notify the Supplier and the Supplier shall use all reasonable endeavours to replace such a person. The Purchaser does not guarantee that any person will satisfy the necessary clearance requirements, either at all or by a given time, and accordingly shall not be liable to the Supplier if clearance is delayed or declined.
- 13.9 The Supplier shall at all times be responsible for any persons that it engages to deliver the Supplies and shall ensure that, when within the boundaries of the Purchaser’s site (or the Purchaser’s customer’s or a BAE Systems Group site), they:
- 13.9.1 are made aware of and comply with rules, regulations and requirements of that site as may be in force for the time being (including any national security requirements). Copies of these will be provided upon request by the relevant site security manager or in the case of Controlled Material, by the relevant Legal Team;
- 13.9.2 shall not, without the Purchaser’s prior written consent, use any of the Purchaser’s (or the Purchaser’s customer’s or a BAE Systems Group member’s) site equipment or services;
- 13.9.3 permit the relevant site security personnel to stop and search them and any of their vehicles when entering or leaving the site and to also search any of their huts, toolboxes or other equipment or property on the site at any time; and

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- 13.9.4 adhere to the rules and regulations notified in advance to the Supplier in writing regarding their connection, either directly or via remote access, to any part of the site's IT network.
- 13.10 At the Purchaser's request, the Supplier shall remove any person that it engages to deliver the Supplies where the Purchaser considers that it is not in the interests of the Purchaser for such a person to be engaged in the provision of the Supplies and the Supplier shall replace the same with another person having appropriate qualifications, training and expertise (at no additional cost to the Purchaser).
- 13.11 The Purchaser shall have the right to refuse access to its site to any person that the Supplier engages to deliver the Supplies who in the opinion of the Purchaser is not a fit and proper person to have access to the site. The Purchaser shall notify the Supplier as soon as reasonably practicable if it does refuse access to its site, specifying the reasons for such refusal.

### 14. AUDIT

- 14.1 Upon the Purchaser providing reasonable notice to the Supplier, the Supplier shall at no additional cost to the Purchaser or the Purchaser's customer:
  - 14.1.1 promptly provide evidence of its compliance with any of its obligations under the Agreement;
  - 14.1.2 subject to the Purchaser's right to request that the Supplier appoint an independent auditor under clause 11 (Information Security), allow the Purchaser and persons authorised by the Purchaser (which may include the Purchaser's customer) access at any time during normal working hours to the Supplier's electronic information systems and/or communication networks and/or premises (and those of any persons that the Supplier engages to deliver the Supplies) that are being used in the provision of the Supplies in order to inspect and audit the Supplier's compliance with its obligations under the Agreement;
  - 14.1.3 provide adequate data to the Purchaser relating to progress of work on the Supplies and their quality; and
  - 14.1.4 provide all necessary assistance (including, where appropriate, access to office accommodation and high speed internet connection) to enable the above-referenced rights to be fully exercisable.

## GENERAL

### 15. TERMINATION AND CONSEQUENCES OF TERMINATION

- 15.1 Without affecting any other right or remedy available to it, either Party (**a "Non-Defaulting Party"**) may terminate the Agreement with immediate effect by giving written notice to the other Party (**a "Defaulting Party"**) if:
  - 15.1.1 the Defaulting Party commits a material breach of any term of the Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within twenty (20) Business Days after being notified in writing by the Non-Defaulting Party to do so; or
  - 15.1.2 the Defaulting Party is unable to pay its debts generally as they fall due; or
  - 15.1.3 a resolution is passed at a meeting of the Defaulting Party for (or to petition for) its winding-up or administration, or the Defaulting Party presents any petition for its winding-up or administration, or an order for the winding-up or administration of the Defaulting Party is made, (unless in each case it is a voluntary solvent winding-up,

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- reconstruction, amalgamation or reorganisation or part of a solvent scheme of arrangement); or
- 15.1.4 the Defaulting Party agrees to any kind of composition, rescheduling, scheme, compromise or arrangement involving it and its creditors generally (or any class of them) as a result of financial difficulties; or
- 15.1.5 any administrative or other receiver or any manager of all or substantially all of the assets of the Defaulting Party is appointed or an encumbrancer takes possession of, or any execution or distress is levied against, all or substantially all of the assets of the Defaulting Party and which is not paid out or discharged within thirty (30) calendar days after such appointment, taking possession or levy; or
- 15.1.6 there occurs, in relation to the Defaulting Party, in any country or territory in which it carries on business or to the jurisdiction of whose courts it or any of its assets are subject, any event which corresponds in that country or territory with any of those mentioned in clauses 15.1.2 to 15.1.5 inclusive (subject to the same thresholds, grace periods and exceptions).
- 15.2 Without affecting any other right or remedy available to it, the Purchaser may terminate the Agreement with immediate effect by giving written notice to the Supplier if:
- 15.2.1 the Supplier commits a breach of clause 20 (Ethical Behaviour) or clause 21 (Sanctions Compliance) (which breach shall be deemed to be an irremediable breach); or
- 15.2.2 the Supplier is acquired by or merged with any third party or any change of control of the Supplier occurs; or
- 15.2.3 the Supplier is or may be unable, in the Purchaser's reasonable opinion, to perform its obligations under the Agreement.
- 15.3 The Defaulting Party shall immediately notify the Non-Defaulting Party of the occurrence of an event set out in clause 15.1 which relates to the Defaulting Party and the Supplier shall immediately notify the Purchaser of the occurrence of an event set out in clause 15.2 which relates to the Supplier.
- 15.4 The Purchaser may at any time terminate the Agreement for convenience upon giving the Supplier written notice **provided that** in such case the Purchaser agrees that it will reimburse the Supplier for any costs which the Supplier can prove it has reasonably and properly incurred as a direct consequence of such an early termination which shall represent full and final settlement of such early termination (**the "Termination Sum"**). The Supplier shall submit invoices to the Purchaser (which shall comply with the provisions of clause 9 (Price and Payment)) for the Termination Sum and any outstanding sums due under the Agreement within three (3) calendar months of any notice of termination issued pursuant to this clause 15.4 and any claim or request for costs after that date shall not be considered by the Purchaser. This provision shall apply regardless of the reason for termination and whether or not clause 36.3 (Law and Jurisdiction) has been invoked.
- 15.5 Upon termination of the Agreement, the Supplier shall:
- 15.5.1 cease provision of the Supplies as directed by the Purchaser;
- 15.5.2 return all of the Purchaser's information, tooling and data forthwith to the Purchaser and shall, if requested, provide the Purchaser with all such documentation and information as may be necessary to enable either the Purchaser or a third party to complete the Supplies ordered; and
- 15.5.3 minimise all its costs associated with the termination of the Agreement.

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15.6 Termination of the Agreement shall not affect or prejudice the accrued rights and remedies of the Parties (including the right to claim damages in respect of any breach of the Agreement) as at termination or the continuation of any provision which implicitly survives termination.

15.7 The terms and conditions of the Agreement do not override a Party's statutory and common law rights and are in addition to those rights and not in substitution for them.

### 16. FORCE MAJEURE EVENT

16.1 Neither Party shall be deemed in breach of the Agreement or liable to the other for delay in performing its obligations, or failure to perform any such obligations, under the Agreement, if the delay or failure results from a Force Majeure Event **provided that** the affected Party:

16.1.1 promptly notifies the other Party, in writing, and promptly provides reasonable evidence, of: (a) the occurrence of such Force Majeure Event; (b) the expected duration of such Force Majeure Event; and (c) the effect of such Force Majeure Event on the affected Party's ability to perform its obligations under the Agreement;

16.1.2 uses all reasonable endeavours to eliminate or minimise the delay in performing or failure to perform its obligations under the Agreement and continues to fulfil its obligations to the extent that they are not affected by the Force Majeure Event;

16.1.3 recommences its full performance as soon as is reasonably possible; and

16.1.4 gives prompt notice of the cessation of any Force Majeure Event previously notified to the other Party.

16.2 For the avoidance of doubt, a Party cannot claim relief under this clause 16 if the Force Majeure Event is one where a reasonable party should have foreseen its effect on such Party's ability to perform its obligations under the Agreement or if the affected Party's delay in performing, or failure to perform, its obligations is attributable to a failure by such Party to either comply with the provisions of its business continuity plan or to have a business continuity plan in place.

16.3 If a Force Majeure Event has the effect of preventing or delaying the performance of the Supplier's obligations for a continuous period of thirty (30) calendar days or more, then the Purchaser shall have the right by written notice to the Supplier to terminate the Agreement immediately without having any liability to the Supplier except in respect of that part of the Supplies already delivered to and accepted by the Purchaser prior to such termination.

### 17. INTELLECTUAL PROPERTY RIGHTS

17.1 Any Foreground IPR shall vest in and be the absolute property of the Purchaser or its nominee. The Supplier assigns with full title guarantee and free from all third party rights any and all Foreground IPR to the Purchaser or its nominee and the Supplier shall (at its own cost) do all necessary acts to vest the Foreground IPR in the Purchaser or its nominee, including without limitation, executing or procuring the execution of documents. The Supplier may only use Foreground IPR as may be necessary for the purposes of performing any of its obligations under the Agreement.

17.2 The Background IPR of a Party shall remain vested in that Party or its licensor. Each Party grants to the other Party a non-exclusive and royalty-free licence to use such of its Background IPR as may be provided by that Party to the other Party to the extent necessary for the purposes of performing its obligations under the Agreement only. A Party shall not grant any sub-licences of any of the Background IPR of the other Party, unless expressly permitted in the Agreement, save that the Purchaser may grant sub-licences of the Supplier's Background IPR to members of the BAE Systems Group.

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- 17.3 If any of the Supplier's Background IPR is included in or is necessary for the use of any Supplies it must be clearly and legibly marked and/or identified by the Supplier and the Supplier grants to the Purchaser an irrevocable, perpetual, non-exclusive, worldwide and royalty-free licence (with the right to grant sub-licences) to use the Supplier's Background IPR as may be necessary to use and/or exploit the relevant Supplies and/or Foreground IPR.
- 17.4 The Supplier represents and warrants to the Purchaser that the Supplies and any Foreground IPR and Background IPR used by the Supplier in relation to the Supplies will not infringe any Intellectual Property Rights of a third party.
- 17.5 The Supplier shall indemnify each Indemnified Party against any and all liability, loss, claims, costs, expenses, damages, payments and royalties of any kind whatsoever incurred by an Indemnified Party as a result of or in connection with any claim or allegation that the Intellectual Property Rights owned or controlled by a third party are infringed by the use of the Supplies and/or any Background IPR of the Supplier or Foreground IPR.
- 17.6 Nothing in the Agreement shall give or be deemed to give either Party during or after the term of the Agreement any right, title or interest in any of the other Party's trade marks, service marks or trade names.

## 18. CONFIDENTIALITY

- 18.1 The Receiving Party undertakes:
- 18.1.1 only to use, or allow to be used, any Confidential Information as may be necessary for the purposes of performing any of its obligations under the Agreement and, in the case of any Background IPR or Foreground IPR, to use, or allow to be used, such Background IPR or Foreground IPR in accordance with the relevant licence granted under clause 17 (Intellectual Property Rights) and not to use any Confidential Information, or allow it to be used, for any other purpose except with the prior written consent of the Disclosing Party;
- 18.1.2 to keep any Confidential Information confidential and not copy or disclose it to any person or party except as permitted under the Agreement, save that the Receiving Party may disclose Confidential Information where required by law, court order or any government or regulatory body **provided that** the Receiving Party will, where possible without breaching any legal or regulatory requirements, give the Disclosing Party advance notice of the disclosure requirement and will co-operate with the Disclosing Party in seeking to oppose, minimise or obtain confidential treatment of the requested disclosure to the extent reasonably practicable;
- 18.1.3 only to disclose any Confidential Information to its directors, persons employed in or by its business, its professional advisers and/or, where the Receiving Party is the Purchaser, any member of the BAE Systems Group, in each case, which need-to-know such Confidential Information for the purpose of the Agreement **provided that** the Receiving Party shall ensure that each such person or party agrees to observe terms no less stringent than those contained in this clause 18 prior to any Confidential Information being disclosed to that person or party and the Receiving Party shall be responsible for such person or party's compliance;
- 18.1.4 not to disclose any Confidential Information to any third party (other than as permitted under the Agreement) except as required for the purpose of the Agreement and with the prior written consent of the Disclosing Party **provided that** the Receiving Party procures such third party's written undertaking to the Disclosing Party to observe terms no less stringent than those contained in this clause 18 prior to any Confidential Information being disclosed to that third party;
- 18.1.5 not to copy, reproduce or reduce to writing any Confidential Information, or any part thereof, or allow any person or party receiving such Confidential Information from the

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Receiving Party to do so, except as is reasonably necessary for the purpose of the Agreement;

- 18.1.6 to establish and maintain adequate security measures to safeguard the Confidential Information from unauthorised use, reproduction, disclosure or access (and, where the Receiving Party is the Supplier, in accordance with the provisions of clause 11 (Information Security)); and
  - 18.1.7 to notify the Disclosing Party as soon as reasonably practicable if it becomes aware of, or reasonably suspects, any loss or actual compromise of any Confidential Information or the possession, use or knowledge of any Confidential Information by a third party other than in accordance with the terms of this clause 18.
- 18.2 On termination of the Agreement:
- 18.2.1 the Receiving Party shall on written demand by the Disclosing Party: (a) return to the Disclosing Party any Confidential Information (and any copies thereof) reduced to any permanent form disclosed by the Disclosing Party under the Agreement; (b) use its reasonable endeavours to delete all electronic copies of Confidential Information from any computer systems; and (c) provide to the Disclosing Party a certificate, signed by an officer of the Receiving Party, confirming that the obligations in this clause 18.2.1 have been complied with;
  - 18.2.2 if the Disclosing Party has not made a demand under clause 18.2.1 within three (3) calendar months of termination, the Receiving Party may destroy, erase or procure the destruction or erasure of, such Confidential Information (and any copies thereof) in accordance with its usual business practices; and
  - 18.2.3 the Receiving Party shall make no further use of the Confidential Information, save that the Receiving Party may retain one (1) copy of any Confidential Information solely for the purpose of enabling it to comply with the provisions of the Agreement or for legal or regulatory purposes.

## 19. EXPORT CONTROL

- 19.1 If the Supplies are regulated by the Export Control Order 2008, the US Department of State's International Traffic in Arms Regulations, the US Department of Commerce's Export Administration Regulations and/or all applicable laws and regulations of any jurisdiction relating to import or export controls at any time during the performance of the Agreement, then the Supplies shall constitute "**Controlled Materials**" and the provisions of Schedule 3 shall apply to and be incorporated into the Agreement (or shall be deemed to apply to and be incorporated into the Agreement from the date of the Agreement).
- 19.2 Where the Supplier requires access to Purchaser Information that is Controlled Material and that requires export licences or other authorisations to enable such access by the Supplier, the Purchaser shall ensure that the Controlled Material is identified as such and that the required licences and/or other authorisations are in place. Unless otherwise agreed, all Supplies will be delivered to and performed in the UK and all Purchaser Information will be held by the Supplier in the UK.

## 20. ETHICAL BEHAVIOUR

- 20.1 The following definitions shall apply to this clause 20:
  - 20.1.1 "**Anti-Corruption Laws**" means all laws which have as their objective the prevention of bribery and corruption, including without prejudice to the generality of the foregoing: (a) the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions ("**OECD Convention**"); (b) the US Foreign Corrupt Practices Act as amended by the Foreign Corrupt Practices Act Amendments

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of 1988 and 1998 and as may be further amended and supplemented from time to time ("**FCPA**"); (c) the Bribery Act 2010 and, in relation to conduct prior to the Bribery Act 2010 being brought into force, the Public Bodies Corrupt Practices Act 1889, the Prevention of Corruption Act 1906 and the Anti-Terrorism, Crime and Security Act 2001 (**together with the Bribery Act 2010, the "UK Anti-Corruption Laws"**); and (d) the relevant in-country law, and for these purposes the offences created by the OECD Convention, the FCPA, the UK Anti-Corruption Laws and relevant in-country law are deemed to apply to the Parties, their shareholders and their affiliates and any of their directors, employees or agents irrespective of the jurisdictional scope of the OECD Convention, the FCPA, the UK Anti-Corruption Laws and the relevant in-country law;

- 20.1.2 "**Legal Claim**" means any claim, legal action, proceeding, suit, litigation, prosecution, investigation, enquiry, mediation or arbitration which could have an effect on: (i) a Party's ability to perform its obligations under the Agreement; (ii) the reputation of either Party; (iii) the validity of the Agreement; and/or (iv) the rights and remedies of either Party under the Agreement; and
- 20.1.3 "**Public Official**" means any person holding a legislative, administrative or judicial office, including any person exercising a public function for a public agency, a public enterprise or a public international organisation.
- 20.2 Each Party undertakes as a condition of the Agreement that:
- 20.2.1 it shall throughout the duration of the Agreement and at all times comply with all applicable laws and regulations, including Anti-Corruption Laws;
- 20.2.2 it shall not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010, if such activity, practice or conduct had been carried out in the UK; and
- 20.2.3 it has not made or offered and it will not make or offer with respect to the matters which are the subject of the Agreement, any payment, gift, promise or other advantage (whether financial or not) whether directly or through intermediaries, to or for the use of any Public Official, or any other third party, where such payment, gift, promise or advantage would violate any applicable laws and regulations, including Anti-Corruption Laws.
- 20.3 Each Party shall:
- 20.3.1 not engage in any activity, practice or conduct which would constitute either: (a) a UK tax evasion facilitation offence; or (b) a foreign tax evasion facilitation offence, under section 45(5) or 46(6) of the Criminal Finances Act 2017 respectively;
- 20.3.2 have and maintain in place throughout the term of the Agreement such policies and procedures as are reasonable to prevent the facilitation of tax evasion by another person (including without limitation employees of the Party) and to ensure compliance with clause 20.3.1.
- 20.4 The Supplier shall immediately notify the Purchaser in writing if:
- 20.4.1 it becomes aware of any breach of clause 20.2, or has reason to believe that it or any person associated with it has received a request or demand for any undue payment, gift, promise or other advantage in connection with the performance of the Agreement; and/or
- 20.4.2 it becomes aware of any breach of clause 20.3 or has reason to believe that it or any person associated with it has received a request or demand from a third party to

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facilitate the evasion of tax within the meaning of Part 3 of the Criminal Finances Act 2017, in connection with the performance of the Agreement.

- 20.5 The Supplier shall incorporate provisions relating to compliance with Anti-Corruption Laws no less restrictive than those in the Agreement in its agreements with any persons that the Supplier engages to deliver the Supplies.
- 20.6 If the Supplier is in breach of any of clauses 20.2 to 20.5 (inclusive) it shall indemnify each Indemnified Party against all claims by any third party, including damages, losses, penalties, costs and/or expenses, arising from or related to the subject matter of any breach by the Supplier of such clause.
- 20.7 The Supplier represents and warrants to the Purchaser that as at the date of the Agreement it is not involved whether as claimant or defendant or other party in any Legal Claim, no Legal Claim is pending or threatened by or against it and there are no investigations, disciplinary proceedings, or other circumstances likely to lead to any Legal Claim and it shall immediately notify the Purchaser if this representation and warranty becomes untrue at any time during the term of the Agreement.
- 20.8 The Supplier shall conduct reasonable due diligence to prevent and detect bribery and corruption in all business arrangements, including partnerships, the engagement of any persons that the Supplier engages to deliver the Supplies, joint ventures, offset agreements, and the hiring of third-party intermediaries such as agents or consultants.
- 20.9 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).
- 20.10 Responsible behaviour is fundamental to how the BAE Systems Group conducts business. Regular assessments of the BAE Systems Group's supply base are a critical part of this commitment. The BAE Systems Group'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 [www.baesystems.com](http://www.baesystems.com).

## 21. SANCTIONS COMPLIANCE

- 21.1 The following definitions shall apply to this clause 21:
- 21.1.1 **"Sanctioned Person"** means any person or government (or agency or instrumentality thereof) who is a target of any form of Sanctions; and
- 21.1.2 **"Sanctions"** mean any financial sanctions, trade embargo or other restrictive measures which are imposed by the United Nations, the UK, the United States, the European Union or Member States thereof, Australia or Canada or which are imposed by another country and are applicable to the Purchaser or Supplier in relation to the performance of this Agreement or the known end use of the Supplies.
- 21.2 The Supplier represents and warrants that it is not, nor is it directly or indirectly owned or controlled by or acting on behalf of, a Sanctioned Person or incorporated, domiciled or ordinarily resident in a country subject to Sanctions, and it shall immediately notify the Purchaser if this representation and warranty becomes untrue at any time during the term of the Agreement.
- 21.3 The Supplier undertakes as a condition of the Agreement that it shall comply with all applicable Sanctions, including but not limited to those administered and enforced by the UK Office of Financial Sanctions Implementation and the US Treasury Office of Foreign Assets Control, and it shall not take any action or make any omission that could cause the Purchaser and any member of the BAE Systems Group to be in violation of any Sanctions applicable to any of

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them, to be exposed to a risk of restrictive measures under Sanctions, or to be designated as a Sanctioned Person.

- 21.4 The Purchaser shall not be required by the Agreement to do or not to do anything that would, in its reasonable opinion, constitute a violation of Sanctions, or expose it to a risk of restrictive measures under Sanctions, or to be designated as a Sanctioned Person.
- 21.5 The Supplier shall not engage, directly or indirectly, with any Sanctioned Person, or territory targeted by Sanctions, in the development, manufacture, supply, delivery, financing or any other action relating to any Supplies.
- 21.6 The Supplier shall maintain compliance measures designed to ensure its compliance with applicable Sanctions and to its Sanctions-related undertakings in the Agreement. The Supplier shall provide to the Purchaser policy and process documents describing the Supplier's compliance measures upon request of the Purchaser. The Supplier shall maintain records relating to any transaction related to the Agreement, during the term of the Agreement and for a period of five (5) years thereafter, or as required by law, whichever is longer.
- 21.7 The Supplier shall promptly inform the Purchaser if it or any third party it is engaging with in connection with the performance of the Agreement becomes a Sanctioned Person, becomes subject to or otherwise involved in an investigation or enforcement action relating to Sanctions, or becomes aware of any apparent violation of Sanctions by any person with respect to any action taken in the course of performing an obligation under the Agreement.
- 21.8 The Supplier shall promptly provide such information as the Purchaser may reasonably request for the purpose of evaluating the Supplier's compliance with Sanctions in connection with the Agreement.
- 21.9 The Supplier shall incorporate provisions relating to Sanctions compliance no less restrictive than those in the Agreement in its agreements with any persons that the Supplier engages to deliver the Supplies.
- 21.10 If the Supplier is in breach of any of clauses 21.2 to 21.9 (inclusive), it shall indemnify each Indemnified Party against all claims by any third party, including damages, losses, penalties, costs and/or expenses, arising from or related to the subject matter of any breach by the Supplier of such clause.

## **22. COUNTERFEIT GOODS**

- 22.1 The BAE Systems Group expects and encourages all its suppliers to only use parts for the Goods which have been purchased from the original equipment manufacturer, the original component manufacturer or their authorised sources.
- 22.2 The Supplier shall ensure that Goods are in line with the requirement for a conforming product and Counterfeit Goods are not delivered to the Purchaser.
- 22.3 If the Supplier becomes aware of or suspects that it has acquired Counterfeit Goods, the Supplier shall as soon as reasonably practicable notify the Purchaser using existing non-conforming / escapes / alerts notification processes. The Supplier shall provide documentation that authenticates the affected Goods and, where applicable, provide traceability of the sourcing route. The Supplier shall support the Purchaser in any investigation to support resolution of any such suspect or affected Goods.
- 22.4 In the event that Goods delivered under the Agreement constitute or include Counterfeit Goods, subject to the other provisions of the Agreement, the Supplier shall, at its own expense, promptly replace such Counterfeit Goods with genuine Goods conforming to the requirements of the Agreement.

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22.5 Notwithstanding any other provision in the Agreement, the Supplier shall be liable for all costs relating to the removal and replacement of Counterfeit Goods, including without limitation, the Purchaser's costs of removing Counterfeit Goods, of reinserting replacement Goods and of any testing necessitated by the reinstallation of Goods after Counterfeit Goods have been exchanged.

### **23. SPARES AND TOOLING**

23.1 If there are spares in relation to the Goods, the Supplier shall ensure that such spares are made available to the Purchaser for the term of the Agreement and for a minimum period of five (5) years thereafter.

23.2 If the Supplier has created items, including without limitation, tooling, moulds, test equipment, circuit boards or other technology, specifically in relation to the Goods, the Purchaser shall have the option to either licence or purchase such items and/or any related Intellectual Property Rights from the Supplier.

### **24. PROPERTY ISSUED BY THE PURCHASER**

24.1 If the Purchaser provides any property, including without limitation tools and fixtures, to the Supplier under the terms of the Agreement:

24.1.1 the Supplier shall not, without the Purchaser's prior written consent, use such property otherwise than for the performance of the Agreement;

24.1.2 such property is and shall remain the property of the Purchaser and the Supplier shall not acquire any legal or beneficial interest in the property;

24.1.3 the Supplier shall ensure that such property is held at the Supplier's risk, is stored safely and booked separately from other property, is maintained at the Supplier's expense in good and serviceable condition, is clearly marked as the Purchaser's property and is not copied, duplicated or reverse engineered;

24.1.4 the Supplier shall promptly give notice to the Purchaser of any infringement of the rights of the Purchaser in, or any unauthorised use of or access to, such property of which the Supplier becomes aware and shall give the Purchaser all reasonable assistance in connection with any action or proceedings which the Purchaser wishes to take in respect of such infringement, unauthorised use or access;

24.1.5 upon the Purchaser providing reasonable notice to the Supplier, the Purchaser shall have the right to enter the Supplier's premises to inspect and/or recover or take possession of such property; and

24.1.6 at the request of the Purchaser or on termination of the Agreement, such property shall, unless incorporated into the Supplies, be returned promptly to the Purchaser.

### **25. CONTINUITY OF SUPPLY**

25.1 If the Purchaser may in the future require goods similar or equivalent to the Goods, the Supplier shall use its reasonable endeavours to accept further orders from the Purchaser in relation to such future requirements at prices and delivery lead times no less favourable to the Purchaser than those agreed under the Agreement having regard to the economic circumstances at the time.

25.2 In the event that the Supplier is unable or unwilling to accept such further orders from the Purchaser, the Supplier shall use its reasonable endeavours to deliver to the Purchaser on fair and reasonable terms any necessary drawings, specifications, manufacturing information and tooling in its possession or under its control to enable the Purchaser to make such goods or have them made by another supplier.

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### **26. OFFSET**

- 26.1 The Supplier understands that the Purchaser and other companies within the BAE Systems Group and associated companies of BAE Systems plc accrue significant offset obligations resulting from international sales and that the Purchaser may engage with the Supplier on a case-by-case basis for the purposes of satisfying these obligations. On request by the Purchaser, the Supplier will actively support the relevant company in registering agreed offset activities with the applicable authorities.
- 26.2 The Supplier shall obtain the Purchaser's prior written consent to using the Agreement and/or any sub-contracts arising from the Agreement in satisfaction of the Supplier's own or any of the Supplier's other customers' offset obligations.
- 26.3 If the offset involves activities by US persons wherever located or by non-US persons located in the US to facilitate the manufacture, export, permanent import, transfer, re-export, or re-transfer of US or foreign defense articles or defense services, the Parties shall consult on the applicability of any US Department of State's International Traffic in Arms Regulations brokering requirements and each, as may be appropriate given the nature of the offset transaction, shall promptly apply for any necessary US Department of State's International Traffic in Arms Regulations registration and licensing authorisation.

### **27. NON SOLICITATION**

To the extent permitted by law and subject to the operation of the Transfer of Undertakings (Protection of Employment) Regulations 2006, each Party agrees that as from the date of commencement of the Agreement until six (6) calendar months after the date of termination of the Agreement, it shall not, without the other Party's prior written consent, directly or indirectly actively solicit or hire for employment or engagement, or entice away on behalf of itself or any other person or organisation, any of the other Party's staff who have been directly associated with the Agreement and who are then still employed by the other Party. Nothing in this clause 27 shall restrict either Party from employing any individual who applies unsolicited in response to general advertising or other general recruitment campaigns.

### **28. PUBLICITY**

The Supplier shall not, and shall not permit any person to, without the Purchaser's prior written consent, publicise in any media or public announcement information regarding the terms of the Agreement or the Supplies provided or use "BAE Systems" or derivatives of the company name as part of any publicly available material.

### **29. NOTICES**

- 29.1 Any notice under or in respect of the Agreement sent by one Party to the other shall be in writing and shall be sent by first class post using special delivery or recorded delivery to its address set out in the Agreement or to such other address as may from time to time be notified by the one to the other and shall be deemed to be delivered two (2) Business Days after posting it from and to an address in the UK and seven (7) Business Days from the date of posting it from or to an address elsewhere. Emails will not be an acceptable means of sending notices.
- 29.2 Unless otherwise agreed, all notices and correspondence under or in respect of the Agreement shall be in the English language.

### **30. WAIVER**

No failure or delay by a Party to exercise any right or remedy provided under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

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### **31. SEVERABILITY**

If any of the provisions of the Agreement are found to be invalid, illegal or unenforceable, such provision or provisions shall be deemed deleted, but this shall not affect the validity of the remaining provisions. In the event of such occurrence, the Parties shall, in so far as it is legally permitted, agree on the replacement of the relevant provision with a valid one achieving the same or a similar purpose.

### **32. AMENDMENT**

If the Parties wish to amend the Agreement, the Parties shall sign a written amendment to the Agreement **provided that**, if the Supplier fails to sign such written amendment, it shall be deemed to have accepted it by carrying out the work which reflects that written amendment.

### **33. ASSIGNMENT AND SUB-CONTRACTING**

33.1 Subject to the provisions of clauses 6.4 (Warranty for Goods) and 7.3 (Services and Deliverables), a Party may not, without the prior written consent of the other Party, assign or transfer all or any of its rights and/or obligations under the Agreement **provided that** the Purchaser may, without the prior written consent of the Supplier, assign or transfer all or any of its rights and/or obligations under the Agreement to another member of the BAE Systems Group.

33.2 The Supplier shall not, without the Purchaser's prior written consent, sub-contract any of its obligations under the Agreement. Notwithstanding any such sub-contracting, the Supplier shall remain wholly liable to the Purchaser for all obligations under the Agreement.

### **34. ENTIRE AGREEMENT**

The Agreement is the only and entire agreement between the Parties with respect to the subject matter of the Agreement and supersedes any prior discussions, oral or written agreement with respect to the subject matter of the Agreement. Each of the Parties acknowledges that, in entering into the Agreement, it has not relied on any oral or written representation, warranty or other assurance (except as provided for or referred to in the Agreement) and waives all rights and remedies which might otherwise be available to it in respect thereof, **provided always that** nothing in this clause 34 limits or excludes any liability for fraud.

### **35. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

Except for any Indemnified Party, a third party which is not a Party to the Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

### **36. LAW AND JURISDICTION**

36.1 The Agreement, and any non-contractual obligations arising out of or in connection with it, shall be governed by and construed in accordance with English law.

36.2 If there is any dispute at any time between the Parties arising out of or in connection with the Agreement, then the Parties shall use reasonable endeavours to resolve the dispute amicably.

36.3 The Parties agree that any dispute arising out of or in connection with the Agreement that cannot be resolved amicably in accordance with clause 36.2 or which one or both of the Parties considers is not suitable for amicable resolution, including any question regarding its existence, validity or termination, and any dispute relating to any non-contractual obligations arising out of or in connection with the Agreement, shall be referred to and finally resolved by arbitration under the LCIA Rules, which Rules are deemed to be incorporated by reference into this clause 36. The

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number of arbitrators shall be one. The seat or legal place of arbitration shall be London. The language to be used in the arbitration shall be English.

**SCHEDULE 1: IR 35**

**1. IR 35**

- 1.1 The following definitions shall apply to this Schedule 1:
- 1.1.1 **"IR35 Worker"** means any individual who personally performs or is under an obligation to personally perform any part of the Services and is engaged (either by the Supplier or via any other intermediary or intermediaries) through a Personal Service Company. For the avoidance of doubt and without limitation, if an individual is named in any document (including without limitation, the Order, the Specification, any Special Condition or any other document) as performing the Services or if the Purchaser has the ability to stipulate that s/he should perform the Services, then that individual will be considered to be personally performing or under an obligation to personally perform the Services;
  - 1.1.2 **"Personal Service Company"** means a limited company or partnership which meets the conditions specified in sections 61O or 61P (as applicable) of the ITEPA;
  - 1.1.3 **"ITEPA"** means the Income Tax (Earnings and Pensions) Act 2003;
  - 1.1.4 **"IR35 Off Payroll Working Rules"** means all applicable laws and regulations relating to or associated with Chapter 10 of Part 2 of the ITEPA; and
  - 1.1.5 **"MSC"** means a Managed Service Company (within the meaning of section 61B of the ITEPA).
- 1.2 The Supplier shall comply with all of its obligations under the ITEPA, including without limitation, the IR35 Off Payroll Working Rules.
- 1.3 The Supplier shall promptly provide such information and documentation as the Purchaser reasonably requires in writing from time to time, for the purposes of enabling the Purchaser's compliance with the IR35 Off Payroll Working Rules and the BAE Systems Group's internal corporate processes for compliance with IR35.
- 1.4 The Supplier shall not provide to the Purchaser or otherwise utilise in the provision of any of the Services to the Purchaser, an IR35 Worker, unless:
- 1.4.1 the Supplier notifies the Purchaser in writing at least ten (10) Business Days in advance of the date on which the IR35 Worker is to begin supplying the Services of its proposal to use the IR35 Worker to supply the Services or, where the IR35 Worker is already supplying the Services as at 1 January 2021, notifies the Purchaser in writing immediately and without delay that this is the case (the **"Notification"**); and
  - 1.4.2 the Purchaser provides written confirmation to the Supplier that it consents to the use of the IR35 Worker for the supply of the Services (the **"Confirmation"**).
- 1.5 Following the Notification and the Confirmation in respect of an IR35 Worker, and before the IR35 Worker provides any part of the Services, the Purchaser will undertake an assessment in respect of the IR35 Worker to determine whether, if the Services were provided directly by the IR35 Worker to the Purchaser, the IR35 Worker would be regarded for income tax purposes as an employee of the Purchaser or the holder of an office under the Purchaser (a **"Deemed Employee"**).
- 1.6 Prior to the first payment to or in respect of the IR35 Worker, the Purchaser will prepare and provide to each of the IR35 Worker and the Supplier a statement in accordance with the requirements of section 61NA of the ITEPA (the **"Status Determination Statement"**).
- 1.7 The Status Determination Statement will specify:

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- 1.7.1 whether the IR35 Worker is considered to be a Deemed Employee; and
- 1.7.2 the basis on which the Purchaser has reached the determination.
- 1.8 The Parties agree that the Purchaser may use such means of reaching the determination detailed in the Status Determination Statement as it shall decide is reasonable from time to time. For the avoidance of doubt, this may include (but is not limited to) using HM Revenue & Customs' 'Check Employment Status for Tax' tool.
- 1.9 Immediately following the Confirmation, the Supplier shall provide such information and assistance as the Purchaser shall reasonably require, for the purposes of completing and issuing a Status Determination Statement.
- 1.10 As soon as reasonably practicable after the Supplier receives a copy of the Status Determination Statement from the Purchaser, the Supplier will ensure that a copy of the Status Determination Statement is provided to any other third party intermediary via which that IR35 Worker provides the Services.
- 1.11 The Supplier shall notify the Purchaser in writing as soon as reasonably practicable if it becomes aware of any information which may be relevant to the ongoing applicability of any Status Determination Statement, and the Purchaser shall be entitled at any time to require the Supplier to immediately cease to supply the Services using the IR35 Worker.
- 1.12 In the event that the Supplier and/or the IR35 Worker make(s) representations to the Purchaser disputing the determination in the Status Determination Statement (an "**Appeal**"), the Purchaser will inform the Supplier and the IR35 Worker of the outcome of the Appeal within forty-five (45) calendar days of receipt of the Appeal. For the avoidance of doubt, the Supplier is only entitled to make representations under this clause 1.12 if it is considered to be the Deemed Employer for the purposes of section 61T of the ITEPA.
- 1.13 The Supplier will, or will procure that the IR35 Worker will, provide such information and assistance as the Purchaser shall reasonably require from time to time, in order that the Purchaser can respond to any Appeal which the IR35 Worker or the Supplier may submit in relation to a Status Determination Statement issued by the Purchaser.
- 1.14 If at any time the Purchaser finds that its initial determination in the Status Determination Statement was incorrect or determines that there has been a material change in the circumstances of the engagement of the IR35 Worker such that the determination in the Status Determination Statement needs to be revised, it will issue a revised Status Determination Statement to the Supplier and the IR35 Worker.
- 1.15 The obligations on the Supplier under clause 1.10 will apply to any revised Status Determination Statement in the same way as they apply to the initial Status Determination Statement.
- 1.16 The Supplier shall continue to apply the Status Determination Statement in respect of all payments made to the relevant IR35 Worker, unless notified otherwise in writing by the Purchaser.
- 1.17 Subject to clause 1.18, if the Status Determination Statement that is issued by the Purchaser to the Supplier provides that the IR35 Worker is a Deemed Employee, then the Supplier shall:
  - 1.17.1 make such deductions of income tax and National Insurance Contributions from any payment of fees to the IR35 Worker as is required by law;
  - 1.17.2 make such payment of employer National Insurance Contributions and Apprenticeship Levy in respect of such payment of fees to the IR35 Worker as is required by law;

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- 1.17.3 within fourteen (14) calendar days of a request from the Purchaser, provide details of the sums so deducted and/or paid; and
- 1.17.4 in the event that the IR35 Worker supplies the Services via a third party intermediary other than the Supplier, ensure that such intermediary complies with any obligations to make such deductions or payments as is required by law from any payment of fees to the IR35 Worker.
- 1.18 For the avoidance of doubt, the Purchaser will be entitled to make deductions from payments made to the Supplier in respect of the IR35 Worker in respect of income tax and National Insurance Contributions if it reasonably considers that it is required to do so by law, including in the event that changes are made to legislation applying to engagements involving intermediaries which make the Purchaser responsible for the application of income tax and National Insurance Contributions in respect of IR35 Workers.
- 1.19 The Supplier shall indemnify each Indemnified Party against any and all loss incurred by each Indemnified Party arising out of or in connection with any failure by the Supplier to fulfil any of its obligations contained in this Schedule 1. For the avoidance of doubt, the Supplier shall indemnify each Indemnified Party in the event that an Indemnified Party becomes liable to account for deductions of income tax, National Insurance Contributions, Apprenticeship Levy, payment of employer National Insurance Contributions or any other liability, deduction, contribution, assessment or claim, together with any associated interest and/or penalties thereon, in respect of any IR35 Worker, other than in circumstances where an Indemnified Party is deemed by HM Revenue & Customs to have failed to have taken reasonable care in coming to the determination in the Status Determination Statement in respect of an IR35 Worker, where the Supplier has fulfilled all of its obligations contained in this Schedule 1 to provide information in respect of such IR35 Worker.
- 1.20 The Supplier shall insert the substance of this Schedule 1, including this clause 1.20 in all subcontracts and other commercial instruments entered into in connection with the supply of the Services.
- 1.21 The Supplier warrants that it will not engage a MSC to provide the Services.
- 1.22 The Supplier acknowledges and agrees that the Purchaser does not wish to engage the services of any worker via a MSC and, in the event that any Personal Service Company involved in the provision of the Services is held by a relevant statutory authority to have the status of a MSC, the Purchaser neither encouraged nor has been actively involved in the provision of that worker through a MSC.
- 1.23 In the event that a Personal Service Company is held by a relevant statutory authority to be a MSC and there is a transfer of debt to the Purchaser under Schedule 3 to the Finance Act 2007, the Supplier agrees, covenants and undertakes to defend, indemnify and hold harmless each Indemnified Party from any claims, suits, costs (including legal costs), expenses, liabilities, judgements, fines, penalties and demands arising in connection with the performance of the Services.
- 1.24 The Supplier will not make any payment to or in respect of an IR35 Worker through a company, organisation, institution, legal entity, person or bank account located outside the UK, other than where the making of such payment has been approved in writing in advance by the Purchaser.

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### SCHEDULE 2: TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS

#### 1. TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS

1.1 The following definitions shall apply to this Schedule 2:

- 1.1.1 “Assigned Employees” means those individuals employed or engaged by the Supplier who are wholly or mainly assigned to the performance of the Services immediately prior to the Termination Date whose employment or engagement transfers to an Incoming Supplier pursuant to the Regulations;
- 1.1.2 “Employee Liabilities” means costs, claims, settlements, damages, payments, liabilities, losses and expenses;
- 1.1.3 “Expenses” means salaries, wages, accrued holiday entitlements, bonuses, commission payments, pension contributions, and other emoluments and any other benefits and other outgoings including those in respect of PAYE, tax deductions and national insurance;
- 1.1.4 “Incoming Supplier” means the company or other entity which is to provide services similar or equivalent to the Services to the Purchaser after the Termination Date instead of the Supplier (and such company or other entity might be the Purchaser, another member of the BAE Systems Group or a third party supplier) **provided that**, where applicable, references in clauses to “Incoming Supplier” shall include the relevant member of the Incoming Supplier’s Group or any persons that the Incoming Supplier engages to deliver the Supplies;
- 1.1.5 “Non-Disclosed Assigned Employee” means any individual employed or engaged by the Supplier immediately before the Termination Date (other than an Assigned Employee in respect of whom the Supplier has provided the information required under clause 1.13 below) whose employment is found or alleged to continue with the Incoming Supplier after the Termination Date, or in respect of whom liabilities are found or alleged to transfer to the Incoming Supplier, in either case as a result of the transfer contemplated by the Agreement;
- 1.1.6 “Non-Disclosed Transferring Employee” means any person employed by the Outgoing Supplier immediately before the Commencement Date (other than a Transferring Employee) whose employment is found or alleged to continue with the Supplier after the Commencement Date as a result of the transfer contemplated by the Agreement;
- 1.1.7 “Outgoing Supplier” means any company which provided services similar or equivalent to the Services to the Purchaser prior to the Commencement Date and which is to be replaced by the Supplier (and such company might be the Purchaser, another member of the BAE Systems Group or a third party supplier) **provided that**, where applicable, references in clauses to “Outgoing Supplier” shall include the relevant member of the Outgoing Supplier’s Group or any persons that the Outgoing Supplier engages to deliver the Supplies;
- 1.1.8 “Regulations” mean the Transfer of Undertakings (Protection of Employment) Regulations 2006; and
- 1.1.9 “Transferring Employees” means those of the Outgoing Supplier’s employees wholly or mainly engaged in the performance of services prior to the Commencement Date, details of whom are provided by the Outgoing Supplier and/or the Purchaser and whose employment or engagement transfers to the Supplier pursuant to the Regulations.

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- 1.2 Prior to the Commencement Date, in the event that services similar or equivalent to the Services to be provided by the Supplier to the Purchaser under the Agreement were provided by an Outgoing Supplier, then the provisions of clauses 1.1 and 1.3 to 1.9 (inclusive) shall apply.
- 1.3 The Supplier and the Purchaser acknowledge and agree that the transfer of responsibility for the provision of the Services on the Commencement Date shall, with respect to the Transferring Employees, constitute a “relevant transfer” for the purposes of the Regulations. Pursuant to and save as provided by the Regulations, the contract of employment of each of the Transferring Employees shall have effect on and after the Commencement Date as if originally made with the Supplier instead of the Outgoing Supplier.
- 1.4 Prior to the Commencement Date, the Supplier shall actively cooperate with and provide the Outgoing Supplier with the information required pursuant to Regulation 13 of the Regulations in respect of the Transferring Employees and the Supplier shall, jointly with the Outgoing Supplier, consult and communicate with the Transferring Employees regarding the transfer of their employment to the Supplier and shall meet appropriate representatives (as defined in the Regulations) in accordance with the Regulations and in accordance with the consultation and communication plan to be agreed between the Outgoing Supplier and the Supplier. In respect of each Transferring Employee, the Purchaser shall use all reasonable endeavours to procure that the Outgoing Supplier shall provide the Supplier with the information as required by and in accordance with Regulation 11 of the Regulations.
- 1.5 In respect of a Non-Disclosed Transferring Employee, then:
- 1.5.1 the Supplier will notify the Purchaser in writing of any finding or allegation that a Non-Disclosed Transferring Employee’s employment is to continue after the Commencement Date within seven (7) calendar days of the Supplier becoming aware of it;
- 1.5.2 in consultation with the Supplier, the Purchaser will within seven (7) calendar days of being requested by the Supplier use all reasonable endeavours to procure that the Outgoing Supplier makes an offer to that Non-Disclosed Transferring Employee in writing to employ that Non-Disclosed Transferring Employee under a new contract of employment to take effect upon the Commencement Date on terms and conditions which, when taken as a whole, do not materially differ from the terms and conditions of employment of that Non-Disclosed Transferring Employee immediately before the Commencement Date;
- 1.5.3 at any time after the expiry of fourteen (14) calendar days from a request by the Supplier for the Purchaser to procure the offer in clause 1.5.2, but within twenty eight (28) calendar days of the Supplier becoming aware of any such finding or allegation, the Supplier may, subject to giving reasonable prior written notice to the Outgoing Supplier, terminate the employment of that Non-Disclosed Transferring Employee (including any alleged employment of such Non-Disclosed Transferring Employee), having taken all necessary steps to mitigate the cost of termination, and subject to the provisions set out in this clause 1.5, to the extent that the Purchaser is able to recover such Employee Liabilities from an Outgoing Supplier pursuant to an existing agreement between the Purchaser and the relevant Outgoing Supplier, the Purchaser shall be responsible for and indemnify the Supplier against all Employee Liabilities and Expenses arising directly or indirectly from (a) the employment or alleged employment of the Non-Disclosed Transferring Employee from the Commencement Date until such termination of that employment or alleged employment; (b) that termination (including without limitation, any redundancy pay and compensation for unfair or wrongful dismissal or breach of contract); and (c) the failure or alleged failure of the Supplier to comply with its obligations under Regulation 13 of the Regulations in respect of any such Non-Disclosed Transferring Employee; save to the extent that

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such Employee Liabilities arise out of any act or omission of the Supplier that constitutes unlawful discrimination; and

- 1.5.4 if such Non-Disclosed Transferring Employee is neither re-employed by the Outgoing Supplier nor served with a notice of dismissal of any employment or alleged employment relationship by the Supplier within the timescales set out in this clause 1.5, such person shall be deemed to be a Transferring Employee and the indemnity in clause 1.5.3 shall not apply.
- 1.6 Save to the extent falling within the scope of the indemnity set out in clause 1.7 below, to the extent that the Purchaser is able to recover such Employee Liabilities from an Outgoing Supplier pursuant to an existing agreement between the Purchaser and the relevant Outgoing Supplier the Purchaser shall indemnify the Supplier against any and all Employee Liabilities suffered or incurred by the Supplier arising from:
  - 1.6.1 any act or omission of the Outgoing Supplier or any event or circumstance in relation to the employment of any Transferring Employee occurring prior to the Commencement Date; and
  - 1.6.2 any failure by the Outgoing Supplier to comply with its obligations to inform and/or consult with its employees and/or their appropriate representatives for the purposes of Regulation 13 of the Regulations, save where such failure arises as a result of an act or omission of the Supplier.
- 1.7 The Supplier shall indemnify the Indemnified Parties (for themselves and any Outgoing Supplier) against any and all Employee Liabilities suffered or incurred by any of the Indemnified Parties and/or the Outgoing Supplier arising from:
  - 1.7.1 any claim or allegation by any Transferring Employee that in connection with the transfer, or proposed transfer, of his or her contract of employment to the Supplier, there will be or is proposed to be a change in such employee's terms and conditions of employment and/or working conditions to his or her detriment;
  - 1.7.2 any change of identity of employer occurring by virtue of the Regulations and/or the Agreement being significant and detrimental to any of the Transferring Employees;
  - 1.7.3 any act or omission of the Supplier or any event or circumstance in relation to the employment of any Transferring Employee occurring after the Commencement Date; and
  - 1.7.4 any failure by the Supplier to comply with its obligations to inform and/or consult with the relevant employees and/or their appropriate representatives or to provide information to an Outgoing Supplier for the purposes of Regulation 13 of the Regulations.
- 1.8 The Supplier shall be liable for all Expenses relating to or concerning any of the Transferring Employees in respect of the period on or after the Commencement Date and shall indemnify the Indemnified Parties (for themselves and any Outgoing Supplier) against any and all Employee Liabilities suffered or incurred by Indemnified Parties and/or the Outgoing Supplier in respect thereof. The Outgoing Supplier shall be liable for all Expenses relating to or concerning any of the Transferring Employees in respect of the period prior to the Commencement Date and to the extent that the Purchaser is able to recover such Employee Liabilities from an Outgoing Supplier pursuant to an existing agreement between the Purchaser and the relevant Outgoing Supplier, the Purchaser shall indemnify the Supplier against any and all Employee Liabilities suffered or incurred in respect thereof. For the avoidance of doubt, all such Expenses payable for any period starting before the Commencement Date and ending after it shall be apportioned pro-rata. The party bearing the responsibility for PAYE and NI contributions for the relevant period shall pay the relevant amounts to the appropriate authority.

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- 1.9 The Supplier shall take all reasonable steps to effect the smooth and efficient transfer of the Transferring Employees on the Commencement Date. The Purchaser shall use all reasonable endeavours to procure that the Outgoing Supplier takes all reasonable steps to effect the smooth and efficient transfer of the Transferring Employees on the Commencement Date.

### Termination of the Agreement

- 1.10 The Purchaser and the Supplier acknowledge and agree that the transfer of responsibility for the provision of the services similar or equivalent to Services on or immediately after the Termination Date may (depending on the precise facts of each case) constitute a “relevant transfer” for the purposes of the Regulations. Where there is such a relevant transfer, pursuant to and save as provided by the Regulations, the contract of employment of each of the Assigned Employees shall have effect from the Termination Date as if originally made with the Incoming Supplier instead of the Supplier.

- 1.11 Prior to the Termination Date, the Purchaser shall use all reasonable endeavours to procure that the Incoming Supplier shall actively cooperate with and provide the Supplier with the information required pursuant to Regulation 13 of the Regulations, and the Supplier shall, jointly with the Incoming Supplier, consult and communicate with the Assigned Employees regarding the transfer of their employment to the Incoming Supplier and shall meet appropriate representatives (as defined in the Regulations) in accordance with the Regulations and in accordance with the consultation and communication plan to be agreed between the Supplier and the Incoming Supplier. In respect of each Assigned Employee, the Supplier shall provide the Incoming Supplier with the information as required by and in accordance with Regulation 11 of the Regulations and warrants that such information will be complete and accurate in all material respects.

- 1.12 During the twelve (12) calendar month period prior to the Termination Date or after either Party has given notice to terminate the Agreement (in whole or in part), the Supplier agrees not to, without the Purchaser’s prior written consent (not to be unreasonably withheld), in respect of any individual who may be an Assigned Employee:

1.12.1 terminate employment or give notice to terminate employment, other than in relation to that individual's gross misconduct; or

1.12.2 vary or offer or promise to vary terms and conditions of employment; or

1.12.3 vary duties or the proportion of time spent on the provision of the Services,

and further, the Supplier agrees that it will not, redeploy or replace any such individual or employ or engage any additional individual in the provision of the Services or increase the number of personnel providing the Services and to immediately notify the Purchaser in respect of any individual who may be an Assigned Employee who has left or served notice of termination of their employment with the Supplier during this time and will not recruit any replacement without the Purchaser’s prior written consent.

- 1.13 During the twelve (12) calendar month period prior to the Termination Date or after either Party has given notice to terminate the Agreement (in whole or in part), or at any time during the term of the Agreement on the Purchaser’s written request and subject to the relevant employer’s data protection obligations (but using all reasonable endeavours to provide such information), the Supplier shall:

1.13.1 provide details of which of its employees or any other personnel (including agency workers or subcontractors) are providing the Services (including their name, age and length of continuous employment), and details of the terms and conditions of employment or engagement (including in respect of salary, wages, overtime, pension, other benefits, notice and redundancy arrangements) of, and time spent by, such individuals working in the provision of the Services and such other information as the Purchaser may reasonably require;

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- 1.13.2 provide any such information in relation to its employees or other personnel providing the Services as the Purchaser may reasonably require;
  - 1.13.3 and the Purchaser may share any information provided by the Supplier pursuant to clauses 1.13.1 and 1.13.2 with any potential Incoming Supplier, either before, during or after any tendering process.
- 1.14 In respect of a Non-Disclosed Assigned Employee, then:
- 1.14.1 the Purchaser will notify the Supplier of any finding or allegation that a Non-Disclosed Assigned Employee's employment is to continue after the Termination Date, or that any liabilities in respect of such an individual are to transfer to the Incoming Supplier, within seven (7) calendar days of the Purchaser becoming aware of it;
  - 1.14.2 in consultation with the Incoming Supplier, the Supplier will within seven (7) calendar days of being requested by the Incoming Supplier make an offer to that Non-Disclosed Assigned Employee in writing to employ that Non-Disclosed Assigned Employee under a new contract of employment with the Supplier to take effect upon the Termination Date;
  - 1.14.3 the offer of employment in clause 1.14.2 will be on terms and conditions which, when taken as a whole, do not materially differ from the terms and conditions of employment of that Non-Disclosed Assigned Employee immediately before the Termination Date;
  - 1.14.4 at any time after the expiry of fourteen (14) calendar days from a request by the Incoming Supplier to make the offer in clause 1.14.2, but within twenty eight (28) calendar days of the Purchaser becoming aware of any such finding or allegation, the Incoming Supplier may subject to giving reasonable prior written notice to the Supplier, terminate the employment of that Non-Disclosed Assigned Employee (including any alleged employment of that Non-Disclosed Assigned Employee), having taken all necessary steps to mitigate the cost of termination, and subject to the provisions set out in this clause 1.14.4, the Supplier shall be responsible for and indemnify the Indemnified Parties against all Employee Liabilities and Expenses suffered or incurred by any of the Indemnified Parties and the Incoming Supplier arising directly or indirectly from (a) the employment or alleged employment of that Non-Disclosed Assigned Employee from the Termination Date until such termination of that employment or alleged employment; (b) that termination (including without limitation, any redundancy pay and compensation for unfair or wrongful dismissal or breach of contract); (c) the failure or alleged failure of the Incoming Supplier to comply with its obligations under Regulation 13 of the Regulations in respect of any such person; save to the extent that such Employee Liabilities arise out of any act or omission of the Incoming Supplier that constitutes unlawful discrimination; and (d) where it is found or alleged that any liabilities in respect of a Non-Disclosed Assigned Employee are to transfer to the Incoming Supplier (without continuation of their employment), all such Employee Liabilities and Expenses: and
  - 1.14.5 if such Non-Disclosed Assigned Employee is neither re-employed by the Supplier nor served with a notice of dismissal of any employment or alleged employment relationship by the Incoming Supplier within the timescales set out in this clause 1.14, such person shall be deemed to be an Assigned Employee and the indemnity at clause 1.14.4 shall not apply.
- 1.15 The Supplier shall indemnify the Indemnified Parties (for themselves and any Incoming Supplier) against any and all Employee Liabilities suffered or incurred by the Indemnified Parties and/or the Incoming Supplier arising from:
- 1.15.1 any act or omission of the Supplier or any event or circumstance in relation to the employment of any Assigned Employee occurring prior to the Termination Date; and

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- 1.15.2 any failure by the Supplier to comply with its obligations to inform and/or consult with its employees and/or their appropriate representatives for the purposes of Regulation 13 of the Regulations or other applicable legislation, save where such failure arises as a result of an act or omission of the Incoming Supplier.
- 1.16 Save to the extent falling within the scope of the indemnity in clause 1.15, the Purchaser shall indemnify the Supplier against any and all Employee Liabilities suffered or incurred by the Supplier arising from:
- 1.16.1 any act or omission of the Incoming Supplier or any event or circumstance in relation to the employment of any Assigned Employee occurring in respect of the period on or after the Termination Date; and
- 1.16.2 any failure by the Incoming Supplier to comply with its obligations to inform and/or consult with the relevant employees and/or their appropriate representatives or to provide information to the Supplier for the purposes of Regulation 13 of the Regulations, save where such failure arises as a result of an act or omission of the Supplier.
- 1.17 The Incoming Supplier shall be liable for all Expenses relating to or concerning any of the Assigned Employees in respect of the period on or after the Termination Date and the Purchaser shall indemnify the Supplier against any and all Employee Liabilities suffered or incurred in respect thereof. The Supplier shall be liable for all Expenses relating to or concerning any of the Assigned Employees in respect of the period prior to the Termination Date and the Supplier shall indemnify the Indemnified Parties (for themselves and any Incoming Supplier) against any and all Employee Liabilities suffered or incurred by any of the Indemnified Parties and the Incoming Supplier in respect thereof. For the avoidance of doubt, all such Expenses payable for any period starting before the Termination Date and ending after it shall be apportioned pro-rata between the Incoming Supplier and the Supplier. The party bearing the responsibility for PAYE and NI contributions for the relevant period shall pay the relevant amounts to the appropriate authority.
- 1.18 The Supplier shall take all reasonable steps to effect the smooth and efficient transfer of the Assigned Employees to the Incoming Supplier's employment on the Termination Date. The Purchaser shall use all reasonable endeavours to procure that the Incoming Supplier takes all reasonable steps to effect the smooth and efficient transfer of the Assigned Employees to its employment on the Termination Date.

**SCHEDULE 3: EXPORT CONTROL**

**1. EXPORT CONTROL**

- 1.1 The following definitions shall apply to this Schedule 3:
- 1.1.1 **“Declaration Form”** means the Export Control Jurisdiction & Classification Declaration Form or any other form approved by BAE Systems plc’s Group General Counsel for the collection of jurisdiction and/or classification information from suppliers;
  - 1.1.2 **“EAR”** means the US Department of Commerce’s Export Administration Regulations;
  - 1.1.3 **“EAR Technology”** has the meaning given to it in the EAR;
  - 1.1.4 **“ITAR”** means the US Department of State’s International Traffic in Arms Regulations; and
  - 1.1.5 **“ITAR Technical Data”** has the meaning given to it in the ITAR.
- 1.2 Each Party shall comply with all applicable import and export control laws and regulations in fulfilling the Agreement.
- 1.3 The Supplier shall provide all information about the Supplies, including without limitation, information regarding constituent parts thereof, that may be necessary for the Purchaser’s compliance with all applicable import and export control laws and regulations.
- 1.4 The Supplier shall:
- 1.4.1 notify the Purchaser in writing at the time the Order is accepted or as soon as the Supplier is aware, but no later than thirty (30) calendar days prior to the first agreed scheduled delivery or performance date, as well as when any changes occur or subsequent information is received or identified by the Supplier, whether the Supplies (or any part thereof) constitute Controlled Material;
  - 1.4.2 in addition to the notification at clause 1.4.1, when requested by the Purchaser, provide a completed and signed Declaration Form, certifying the jurisdiction and classification of Controlled Material. The Purchaser will provide the Supplier with a Declaration Form for completion which the Supplier will return to the Purchaser within thirty (30) calendar days of the date of the Agreement and in any event in advance of receipt by the Purchaser of any Controlled Material provided under the Agreement. The Supplier shall provide the following information as a minimum: (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;
  - 1.4.3 obtain all required export licences, agreements and other authorisations necessary to ensure delivery of the Supplies to the Purchaser in accordance with the delivery or performance dates required under the Agreement; and
  - 1.4.4 comply with all conditions relating to export, re-export, transfer or use of Controlled Material contained within export licences, agreements and other authorisations.
- 1.5 If any of the Controlled Material, including any constituent part thereof, to be provided by or through the Supplier under the Agreement is regulated under the ITAR or EAR (unless such are

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classified by the US exporter/manufacturer as EAR99 in which case the Supplier shall notify the Purchaser of this status in writing), the Supplier shall:

- 1.5.1 immediately after the Order is accepted, consult with the Purchaser about the relevant authorisations required from the appropriate US authorities and request information from the Purchaser which is necessary to make the Supplier's authorisation request to the US authorities 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 organisation authorisations which may be applicable; and
  - 1.5.2 provide to the Purchaser the following further information and documentation in writing at the time the Order is accepted or no later than thirty (30) calendar days prior to the first agreed scheduled delivery or performance date: (a) details of the relevant US export 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 1.5.1, and any limitations/provisos; or (b) full copies of such US export 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 that are necessary for the Purchaser's compliance.
- 1.6 **ITAR Delivery.** Unless the applicable regulations have been revised to require otherwise, for each **ITAR Defense Article** being delivered by the Supplier, the Supplier shall include as an integral part of the invoice and, in the case of **ITAR Technical Data**, on the document itself: (a) the country of ultimate destination; (b) the end user; (c) the license or other approval number or exemption citation; and (d) the Destination Control Statement required under the ITAR (i.e. 22 C.F.R. 123.9).
- 1.6.1 In respect of **ITAR Technical Data** the following additional marking must be included on the cover sheet or document itself: "**EXPORT CONTROLLED DATA:** This document contains technical information and the export, re-export and transfer (in-country) is governed by the U.S. International Traffic in Arms Regulations (ITAR)".
  - 1.6.2 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 the Purchaser with the appropriate EAR classification information for each item. This includes the Export Control Classification Number (ECCN) or EAR99 designation.
- 1.7 **EAR Delivery.** Unless the applicable regulations have been revised to require otherwise, for each item of **EAR Controlled Material** being delivered by the Supplier, the Supplier shall include as an integral part of the invoice that accompanies the shipment, and, in the case of EAR Technology, on the EAR Technology itself: (a) the country of ultimate destination; (b) the end user; (c) the license or other approval number or exemption citation; and (d) the Destination Control Statement required under the EAR (i.e. 15 C.F.R. 758.6).
- 1.7.1 In respect of **EAR Technology** the following additional marking must be included on the cover sheet or document itself: "**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)".
  - 1.7.2 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).

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- 1.8 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.
- 1.9 If engaged in the business of either exporting or manufacturing (whether exporting or not) ITAR Defence Articles or defence services (as defined in the ITAR 22 C.F.R 120.6 and 120.9 respectively), the Supplier shall maintain an effective export/import compliance program in accordance with the ITAR and, if located in the US, shall register with the US Department of State as required by the ITAR.
- 1.10 If engaged in brokering activities within the meaning of the ITAR (22 C.F.R. 129), the Supplier shall obtain and maintain registration with the US Department of State as required by the ITAR and shall obtain and maintain any necessary approval with respect to the Supplies.
- 1.11 If, in the performance of the Agreement, either Party is, or envisages being, engaged in trafficking and brokering activities under any jurisdiction, for example where Controlled Material is to be moved between two third countries, they shall inform the other Party insofar as those activities impose any legal obligations on the other Party. The Parties shall, in addition to any US brokering requirements, obtain and maintain the registrations and authorisations that are required under all applicable legislation.
- 1.12 The Supplier recognises and accepts that the Supplier and the Purchaser have disclosure requirements when making applications for the export, re-export, or retransfer of US defense articles or defense services subject to the ITAR Part 130. In this context, when requested to do so by the Purchaser, the Supplier shall make a written certification to the Purchaser in a timely manner and not later than twenty (20) calendar days after receipt of such request, stating all necessary information required to comply with Part 130 of the ITAR.
- 1.13 The Supplier shall provide immediate written notification to the Purchaser in the event of any changes to information provided to the Purchaser under this Schedule 3 or any changes in circumstances affecting any licence or agreement, and shall respond promptly to any written inquiry made by the Purchaser seeking to confirm or update information in relation to the Supplier.
- 1.14 At the Purchaser's direction, the Supplier shall return or 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 the Purchaser within five (5) Business Days of the destruction, and create and maintain the records required under the ITAR and EAR.