

BAE SYSTEMS MSDF STANDARD CONDITIONS OF PURCHASE (2018 EDITION)

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1. DEFINITIONS & 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 MSDF Standard Conditions of Purchase; (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).
"Authority"	means the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland and/or any part of the Ministry of Defence including CAAS (for so long as CAAS or that other part or division of the Ministry of Defence remains a part of division of the Ministry of Defence).
"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"	means: (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 .
"Business Day"	means a day (other than a Saturday or Sunday or a day on which HM Naval Base Portsmouth is closed due to a holiday) on which banks are open for business generally in London.
"Confidential Information"	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 provided that Confidential Information shall not include any information which the Receiving Party can show through documentary evidence: (a) is or becomes publicly available otherwise than as a result of a breach of the Agreement or the fault of the Receiving Party; (b) has been lawfully received from a third party without restriction as to its use or disclosure; (c) was already in its possession free of any such restriction as to its use or disclosure prior to receipt from the Disclosing Party; (d) was independently developed by or for the Receiving Party without making use of any Confidential Information; or (e) has been approved for release or use (in either case without restriction) by written authorisation of the Disclosing Party, and, for the avoidance of doubt and without prejudice to the generality of the above, Confidential Information shall not be deemed to be publicly available merely because it may be derived from one or more items that are publicly available,

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	and, for the purposes of clause 19, references to “Confidential Information” shall be deemed to include Background IPR, Controlled Material, Foreground IPR and Personal Data.
"Controlled Material"	means any of the Supplies which are regulated by the ITAR, the EAR, the UK Export Control Order 2008, the EU Dual-Use Regulation, the Australian Customs Act 1901 and all applicable laws and regulations of any jurisdiction relating to import or export controls.
"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.
"Cyber Essentials Scheme Basic Certificate"	means the certificate for the basic level of assurance awarded in accordance with the Cyber Essentials Scheme which is a UK Government-backed, industry-supported scheme to help organisations protect themselves against common online threats (as may be amended from time to time), details of which can be found at https://www.gov.uk/government/publications/cyber-essentials-scheme-overview .
"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.
"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.
"EAR"	means the US Department of Commerce’s Export Administration Regulations.
"EAR Technology"	has the meaning given to it in the EAR.
"Event of Default"	means an event specified as such in clause 16.1.
"Force Majeure Event"	means any nuclear, chemical or biological contamination; pressure waves caused by devices travelling at supersonic speeds; fire, explosion, lightning, storm, tempest, flood or earthquakes or other natural disaster, war, civil war, armed conflict or terrorism generally affecting the Maritime Support Industry in the United Kingdom or facilities management industry in the United Kingdom or a significant sector of such industries. For the avoidance of doubt, the inability (however caused) of a Party to pay shall not be a Force Majeure Event.
"Foreground IPR"	means any Intellectual Property Rights in the Supplies and/or as may be otherwise created as a result of the work undertaken by the Supplier or its sub-contractors under the Agreement.
"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, 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.
"Group"	means a holding company and any of its subsidiaries from time to time,

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	each within the meaning of Section 1159 of the Companies Act 2006.
“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).
“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.
“ITAR”	means the US Department of State’s International Traffic in Arms Regulations.
“ITAR Technical Data”	has the meaning given to it in the ITAR.
“Order”	means the purchase order placed by the Purchaser on 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 EU General Data Protection Regulation (EU) 2016/679 and any national implementing legislation.
“Price”	means the amount payable by the Purchaser to the Supplier in respect of the Supplies.
“Prime Contract”	means the BAE Maritime Support Delivery Framework Agreement (contract no: MCP/004) dated 30 September 2014 and between: (a) the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland; and (b) BAE Systems Surfaces Ships Limited.
“Process”, “Processing” and “Processed”	each has the meaning given to it in EU General Data Protection Regulation (EU) 2016/679 and any national implementing legislation.
“Prohibited Act”	means: <ul style="list-style-type: none"> (a) offer, promise or give to any H.M Government servant any gift or financial or other advantage of any kind as an inducement or reward: <ul style="list-style-type: none"> (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or execution of this Agreement or any contract with H.M Government; or (ii) for showing or not showing favour or disfavour to any person in relation to this Agreement or any contract with the H.M Government; or (b) enter into this Agreement or any contract with the H.M Government in connection with which commission has been paid or has been agreed to be paid by it or on its behalf, or to its knowledge, unless before the contract is made particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the Authority and, where it relates to this Agreement, the Purchaser.
“Purchaser”	means the BAE Systems company identified on the Order and having a place of business at the address for correspondence shown on the

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	Order.
"Purchaser Information"	means 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.
"Receiving Party"	means a Party which receives any Confidential Information from the Disclosing Party.
"Relief Event"	means any of the following (other than, in each case, where such event or circumstance arises or occurs as a result of an act, omission, default or failure of the Supplier): bursting or overflowing of water tanks, apparatus or pipes, or ionising radiation (in each case only to the extent it does not constitute a Force Majeure Event); riot and civil commotion; failure by any statutory undertaker, utility company, local authority or other like body to carry out works or provide services; any accidental damage to HM Naval Base, Portsmouth, or any roads servicing it; any failure or shortage of power, fuel or transport; any blockade or embargo; or any official or unofficial strike; lockout; go-slow or work-to-rule; or other dispute; generally affecting the maritime support services industry in the United Kingdom or facilities management industry in the United Kingdom or a significant sector of such industries.
"Secret Matter"	means any matter connected with this Order or the performance of it that is designated in writing by the Authority as "Top Secret" or "Secret", and shall include any information concerning the content of such matter and anything which contains or may reveal that matter.
"Security Policy Framework"	means the HMG Security Policy Framework v 2.0 as such framework is amended or updated from time to time.
"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).
"Sub-Supplier"	means any company, firm or person with whom the Supplier places a contract for the performance of all or any part of the Supplies.
"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 sub-contractor and (b) the Supplier shall be responsible for procuring the compliance of the relevant member of the Supplier's Group or any sub-contractor with any relevant provisions in the Agreement.
"Supplier Personnel"	means: (a) any person who is an employee, staff, director or officer of the Supplier or who occupies the position of a director or officer of the Supplier, by whatever title given; and (b) the employees, staff, directors or officers (or any person who occupies the position of a director or officer, by whatever title given) of any Sub-Supplier or agent of the Supplier or any Sub-Supplier engaged in relation to this Agreement.
"Supplies"	mean any Goods and/or Services and means any or all of them, as the context may require.
"VAT"	means value added tax as provided for in the UK Value Added Tax Act

	1994.
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- 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 any exit by the UK from the EU, and includes any subordinate legislation for the time being in force made under it.
- 1.5 Any reference to a DEFCON, DEFSTAN and/or DEFFORM shall be reference to the latest version issued as of the date of the Agreement.

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 three (3) months 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 an e-commerce platform, 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 MSDF Standard Conditions of Purchase;
 - 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).

SUPPLIER'S RESPONSIBILITIES

3. GENERAL

- 3.1 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.
- 3.2 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

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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.

3.3 The Supplier shall:

- 3.3.1 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;
- 3.3.2 at all times maintain a business continuity plan in accordance with Good Industry Practice;
- 3.3.3 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;
- 3.3.4 ensure that the Purchaser is advised, before receipt, of any Supplies which are intrinsically hazardous to life or harmful to the environment, including substances listed under the Montreal Protocol, 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;
- 3.3.5 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 recognised by the relevant local authority (and, where applicable, credit the Purchaser with any relevant income arising from the surplus materials);
- 3.3.6 comply with all the requirements of the Environmental Protection Act 1990 and any other applicable legislation governing the controlled tipping of waste;
- 3.3.7 notify the Purchaser as soon as it becomes aware of any health and safety hazards or issues which arise in relation to any Supplies;
- 3.3.8 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;
- 3.3.9 promptly notify the Purchaser of any restrictions that apply in respect of EU 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;
- 3.3.10 at all times provide all Supplies in accordance with all applicable orders, regulations or similar instruments and codes of practice without limitation as directed by H.M. Government and its representatives;
- 3.3.11 ensure that all title in and to the Supplies provided by the Supplier under this contract (together with their component parts) shall vest in and become the absolute property of the Purchaser; and
- 3.3.12 ensure that any changes to the provision of Services in the event of crisis, tensions, emergencies, surge, transition to war and during hostilities are dealt with in accordance with the further instructions of the Purchaser.

3.4 To the extent that the Registration Evaluation Authorisation and Restriction of Chemicals Regulation (1907/2006) ("REACH") applies to any Supplies, the Supplier shall:

- 3.4.1 comply with REACH;

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- 3.4.2 ensure that substances present in the Supplies have been pre-registered or registered in accordance with REACH by the Supplier itself or their supply chain or, where the Supplier is registered outside of the European Economic Area, by its appointed 'only representative' registered in the European Economic Area;
 - 3.4.3 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, any relevant registration numbers of registered substances, safety data sheets, information required under Article 33 of REACH, 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;
 - 3.4.4 where a substance present in the Supplies is listed in Annex XIV of REACH, ensure that such chemical substance is authorised for the Purchaser's particular use;
 - 3.4.5 promptly notify the Purchaser if any Supplies contain a substance which is or becomes listed on the Candidate List of substances of very high concern for Authorisation, continue to monitor such Candidate List for any updates and promptly provide the Purchaser with details of the substance together with any information required to ensure the Purchaser's compliance with its own obligations under REACH; and
 - 3.4.6 promptly notify the Purchaser of any restriction on the use or authorisation of substances present in the Supplies as set out in 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.
- 3.5 Other than limited business contact information in respect of the Purchaser's employees and sub-contractors, 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 its employees and sub-contractors in connection with the Agreement (including without limitation, the identities of the relevant individuals, their contact information, and their role and their 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 BAE Systems' data privacy portal which can be found at: www.baesystems.com/en/privacy.
- 3.6 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, including without limitation, software distributed under the GNU General Public License (GPL), GNU Lesser General Public License (LGPL) or GNU Affero General Public License (AGPL), Mozilla Public Licence (MPL), the Apache Licence, the Sun Community Source Licence, BSD licences or Sun Industry Standards Licence.
- 3.7 Subject to the provisions of clauses 16 and 17, the Supplier shall immediately notify the Purchaser of the occurrence of any event or conditions that might delay or prevent completion of any of its obligations under the Agreement, the reason for it and the measures being taken by it to rectify the situation.

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- 3.8 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.
- 3.9 If the Supplier sells, provides or utilises any materials in an electronic form or format (including e-mails 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.
- 3.10 The BAE Systems Group operates an Environmental Policy, details of which can be found at 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.
- 3.11 To the extent that the Construction Industry Scheme (“CIS”) rules apply to any Supplies:
- 3.11.1 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.
- 3.11.2 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 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.

4. INFORMATION SECURITY

- 4.1 The Supplier shall at all times implement and maintain appropriate levels of security to protect any and all Purchaser Information which as a minimum:
- 4.1.1 comply with the relevant BAE Systems Information Security Requirements;
- 4.1.2 are in accordance with Good Industry Practice; and
- 4.1.3 comply with all applicable laws and regulations.
- 4.2 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 with which the Supplier is non-compliant, the steps to be taken and the time period required by the Supplier to achieve full compliance. 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 initially 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.
- 4.3 Where the Supplier is located outside the UK and is unable to obtain a Cyber Essentials Scheme Basic Certificate, the Supplier must demonstrate, to the satisfaction of the Purchaser, that it has (and will continue to have) in place equivalent controls and measures to those required for the Cyber Essentials Scheme Basic Certificate.

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- 4.4 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 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.
- 4.5 At the request of the Purchaser, the Supplier shall appoint an independent auditor to verify the Supplier's compliance with its obligations under this clause 4 **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 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 inspection report, audit certificate and an annual SSAE 18 (SOC 1) report from such auditor. Where any such audit report or certificate discloses any material findings of non-compliance by the auditor, the Supplier shall promptly remediate the issues raised in the audit report to the satisfaction of the auditor.

5. EXPORT CONTROL

5.1 The Supplier shall:

- 5.1.1 comply with all applicable import and export control laws and regulations in fulfilling the Agreement; and
- 5.1.2 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.

5.2 The Supplier shall:

- 5.2.1 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 by the Supplier, whether the Supplies (or any part thereof) constitute Controlled Material;
- 5.2.2 in addition to the notification at clause 5.2.1, 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;
- 5.2.3 obtain all required export licences, agreements and other authorisations necessary to ensure delivery of the Supplies to the Purchaser in accordance with the delivery dates required under the Agreement; and

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- 5.2.4 comply with all conditions relating to export, re-export, transfer or use of Controlled Material contained within export licences, agreements and other authorisations.
- 5.3 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 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:
- 5.3.1 immediately after the Order is accepted, consult with the Purchaser about the relevant authorisations required from the appropriate US authorities and request from the Purchaser information 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
- 5.3.2 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 5.3.1, 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.
- 5.4 **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).
- 5.4.1 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)".
- 5.4.2 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.
- 5.5 **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).
- 5.5.1 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)".

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- 5.5.2 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).
- 5.6 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.
- 5.7 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.
- 5.8 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.
- 5.9 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.
- 5.10 The Supplier shall provide immediate written notification to the Purchaser in the event of any changes to information provided to the Purchaser under this clause 5 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.
- 5.11 The Supplier shall also immediately notify the Purchaser if the Supplier is or becomes identified either individually or collectively on any list of denied, debarred, embargoed, blocked, prohibited, specially designated, sanctioned or otherwise ineligible parties maintained by any government or international organisation or, becomes ineligible to contract with the US Government, or if the Supplier's export privileges are otherwise denied, suspended or revoked in whole or in part by any government entity or agency.
- 5.12 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.

6. INSURANCE

- 6.1 The Supplier shall, as a minimum, maintain 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 the provision to it of the Supplies:
- 6.1.1 a policy of Public Liability Insurance for an amount not less than £10 million per event or series of events in respect of loss of or damage to property of the Purchaser, BAE Systems Group, Purchaser's customer or end user, or death, disease, illness or injury to persons resulting from provision of the Supplies;

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- 6.1.2 a policy of Product Liability Insurance for an amount not less than £10 million per event or series of events in respect of loss of or damage to property of the Purchaser, BAE Systems Group, Purchaser's customer or end user, or death, disease, illness or injury to persons resulting from provision of the Supplies;
 - 6.1.3 where applicable, a policy of Professional Indemnity Insurance for an amount not less than £5 million per event or series of events;
 - 6.1.4 where applicable, a policy of Aviation Products Liability Insurance and/or a policy of Aviation Liability Insurance, each for an amount not less than £100 million per event or series of events;
 - 6.1.5 where applicable, a policy of Marine Insurance for an amount not less than £10 million;
 - 6.1.6 where applicable, a policy of Cyber Technical Errors and Omissions Insurance for an amount not less than £5 million per event or series of events;
 - 6.1.7 where applicable, a policy of Contractor's All Risk Insurance for an amount not less than a sum equivalent to 125% of the total of all payments due to the Supplier pursuant to the Order. Such insurance shall be in the joint names of the Supplier and all interested parties (including the Purchaser) and shall cover all of the Supplier's sub-contractors. In addition the Supplier shall take out and maintain, either as an extension to such insurance or as a separate joint names policy, insurance against loss or damage to project works and associated site materials caused by or resulting from terrorism;
 - 6.1.8 where applicable, non-negligence insurance for such amount as the Purchaser shall require; and
 - 6.1.9 any other insurance which the Supplier may be statutorily required to maintain.
- 6.2 The Supplier shall procure that such insurance is arranged on a continuing basis and shall make the Purchaser aware of any conditions, limitations, exclusions or restrictions within such insurance policies.
 - 6.3 The Purchaser shall have the full benefit of such policies detailed in this clause 6 and, where applicable, the Agreement shall invoke any "indemnity to principals" clauses within the Supplier's liability insurance policies.
 - 6.4 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 test of military and civilian aircraft, ships and/or vehicles, the Supplier shall notify its insurance companies and procure adequate insurance cover as required by such insurance companies (but in any event for an amount not less than £10 million per event or series of events).
 - 6.5 The Purchaser shall have no liability for damages or loss to any property of the Supplier or personal property of the Supplier's employees or sub-contractors 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.
- 7. PERSONNEL**
- 7.1 The Supplier shall provide its employees with and ensure that its employees and sub-contractors use any protective clothing and safety equipment required in providing any Supplies to the Purchaser.

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- 7.2 The Supplier shall ensure that its employees and sub-contractors 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).
- 7.3 The Supplier shall cooperate fully with any process put in place by the Purchaser to enable the appropriate level of security clearance for any of the Supplier's employees, agents and sub-contractors who have a need to work on the Purchaser's site (or the Authority's site), or in order to meet the appropriate level of security clearance stipulated by any government establishment (including any of Her Majesty's ships or vessels and service stations), and export control procedures (including where applicable those relating to access to US export controlled material or information). The Supplier is responsible for providing accurate information on its employees to enable such clearance. In the event that any such employees, agents and sub-contractors are not security cleared, the Purchaser shall promptly notify the Supplier and the Supplier shall use all reasonable endeavours to replace such a person.
- 7.4 The Supplier shall at all times be responsible for its employees and sub-contractors and shall ensure that they, when within the boundaries of the Purchaser's site (or the Authority's or a BAE Systems Group site):
- 7.4.1 comply with the requirements of DEFCON 76;
 - 7.4.2 are made aware of and comply with rules, regulations and requirements of that site (including any national security requirements as may be in force for the time being (copies of which will be provided upon request by the relevant site security manager or in the case of Controlled Material, by the relevant Chief Counsel) and shall carry out all instructions which relate to health and safety;
 - 7.4.3 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) site equipment or services;
 - 7.4.4 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
 - 7.4.5 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.
- 7.5 At the Purchaser's request, the Supplier shall remove any of its employees and sub-contractors where the Purchaser considers that it is not in the interests of the Purchaser for them 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).
- 7.6 The Purchaser shall have the right to refuse access to its site to any of the Supplier's employees and sub-contractors 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.
- 7.7 The Supplier confirms that, for the purposes of the Agency Workers Regulations 2010, none of the Supplier's employees or sub-contractors are acting in the capacity of an Agency Worker (as defined in those Regulations).
- 8. AUDIT**
- 8.1 Upon the Purchaser providing reasonable notice to the Supplier, the Supplier shall at no additional cost to the Purchaser or the Purchaser's customer:

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- 8.1.1 promptly provide evidence of its compliance with any of its obligations under the Agreement;
- 8.1.2 subject to the Purchaser's right to request that the Supplier appoint an independent auditor under clause 4, 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 its sub-contractors) 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;
- 8.1.3 provide adequate data to the Purchaser relating to progress of work on the Supplies and their quality; and
- 8.1.4 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.

SUPPLIES

9. DELIVERY OF GOODS

- 9.1 Save where agreed otherwise between the Purchaser and the Supplier, the delivery term in respect of any Goods shall be DAP HM Naval Base, Portsmouth (Incoterms 2010).
- 9.2 The delivery terms for the specified service delivery schedule shall be in accordance with the applicable Joint Service Publication.
- 9.3 In the event of any conflict between 9.1 and 9.2 then 9.2 shall take precedence.
- 9.4 All Goods must be properly and securely packed.
- 9.5 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.
- 9.6 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.
- 9.7 If the Supplier fails to comply with the provisions of this clause 9, the Purchaser shall be under no obligation to accept delivery of the relevant Goods.

10. ACCEPTANCE OF GOODS

- 10.1 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.
- 10.2 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 later 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 9.
- 10.3 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:

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- 10.3.1 reject the Goods in whole or in part; and/or
- 10.3.2 repair or replace the Goods without delay at the Supplier's own expense and risk.

11. RISK IN & TITLE TO GOODS

- 11.1 Risk in any Goods shall pass to the Purchaser upon delivery in accordance with clause 9.
- 11.2 Title to any Goods (as they are constructed together with their component parts and equipment so far as incorporated in the Goods) and to all materiel which the Supplier acquires or allocates for incorporation in any of the Goods, shall vest in and become the absolute property of the Purchaser (for immediate onward transmission to the Authority under the Prime Contract) as from the time the construction of the Goods begins or the materiel is acquired specifically for or is allocated for incorporation in any of the Goods and shall from that time be in the possession of the Supplier for the sole purpose of completing the Goods and delivering them when completed to the Purchaser, and shall not be within the control or disposition of the Supplier other than for that purpose.
- 11.3 The Supplier shall not grant nor permit to arise any lien over any Goods or material the property in which has vested in the Purchaser.
- 11.4 The Supplier shall ensure that from the time when the construction of any Goods begins, or as soon as practicable thereafter, or when any materiel is acquired specifically for or is allocated for incorporation in any of the Goods, they are marked or recorded so that they are readily identifiable as the property of the Purchaser or (where title has been passed by the Purchaser to the Authority) the Authority.
- 11.5 The Supplier shall hand over to the Purchaser on demand any Goods the property in which has vested in the Purchaser, and if it shall fail to do so the Purchaser shall be entitled to remove such Goods and to recover the cost of so doing from the Supplier.
- 11.6 Any Goods or materiel which is rejected by the Purchaser in accordance with clause 10.3 shall immediately re-vest in the Supplier.
- 11.7 If the Purchaser terminates this Agreement, any Goods that have not been accepted in accordance with clause 10 and any materiel which has not been incorporated in any Goods which has been accepted in accordance with clause 10 shall re-vest in the Supplier. Such re-vesting shall occur on the expiry of thirty days from the date on which that termination shall take effect, unless the Purchaser has given the Supplier notice, prior to that expiry, that the Purchaser elects to retain the property in the Goods or materiel.

12. WARRANTY FOR GOODS

- 12.1 The Supplier warrants to the Purchaser that the Goods shall be:
 - 12.1.1 in accordance with the terms of the Agreement;
 - 12.1.2 fit for the purpose for which they are intended;
 - 12.1.3 free from defects (whether actual or latent) in design, materials and workmanship;
 - 12.1.4 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
 - 12.1.5 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.

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- 12.2 The warranties in clause 12.1 shall continue for twelve (12) calendar months from the date of acceptance of the relevant Goods in accordance with clause 10.
- 12.3 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:
- 12.3.1 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; and/or
- 12.3.2 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 in either case the warranty shall continue for twelve (12) calendar months from the date of acceptance by the Purchaser of the repaired or replacement Goods; and/or
- 12.3.3 indemnify the Purchaser on demand for any costs and expenses incurred by the Purchaser in connection with a party other than the Supplier repairing or replacing the defective Goods under clause 12.3.2.
- 12.4 The Supplier agrees that 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.

13. SERVICES & DELIVERABLES

- 13.1 The Supplier warrants to the Purchaser that the Services shall be:
- 13.1.1 in accordance with the terms of the Agreement;
- 13.1.2 with reasonable care and skill;
- 13.1.3 in accordance with Good Industry Practice; and
- 13.1.4 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.
- 13.2 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 13.1, the Supplier shall upon receipt of written notice from the Purchaser but at the absolute discretion of the Purchaser:
- 13.2.1 refund the Purchaser on demand for the Price of the relevant Services; and/or
- 13.2.2 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/or
- 13.2.3 indemnify the Purchaser on demand for any costs and expenses incurred by the Purchaser in connection with a party other than the Supplier performing or re-performing the Services under clause 13.2.2.
- 13.3 The Supplier agrees that 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.

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- 13.4 In respect of any Deliverable:
- 13.4.1 The Supplier shall be solely responsible for the delivery to the Purchaser of the Deliverable.
 - 13.4.2 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.
 - 13.4.3 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 the later of: (i) the date of such review if the Purchaser is satisfied that the Deliverable is in accordance with the Agreement or (ii) twenty (20) Business Days after delivery.
 - 13.4.4 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.

14. AMENDMENT TO SUPPLIES

- 14.1 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.
- 14.2 If the Purchaser wishes to proceed with the amendment, the Parties shall amend the Agreement in accordance with clause 32. If the Purchaser does not wish to proceed with the amendment, there shall be no amendment to the Agreement.
- 14.3 If, in either Party's judgement, 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.

15. PRICE & PAYMENT

- 15.1 Where the prices are agreed at the time of the Order, they shall be set out as a Special Condition. Where prices are not agreed at the time of the Order, the provisions of DEFCON127 (Edn. 10/04) shall also apply to, and are hereby incorporated by reference into, the terms of this Order save that in interpreting and applying that DEFCON: (a) the term "Contractor Deliverables" shall be understood as referring to the Supplies; (b) in all paragraphs except for paragraph 5, the "Authority" shall be understood as referring to the Purchaser; (c) the "Contractor" shall be understood as referring to the Supplier; and (d) the following shall be inserted at the beginning of paragraph 5 "the Purchaser shall be permitted to share its findings with the Authority and the Authority shall be permitted to accompany the Purchaser and the Authority shall have the same rights under paragraph 3 as are granted to the Purchaser."
- 15.2 The provisions of DEFCON 652 (Edn. 07/04) shall apply to, and are hereby incorporated by reference into, the terms of this Order save that in interpreting and applying that DEFCON: (a) the term "Contract Price" shall be understood as referring to the price payable to the Supplier under this Order; (b) the "Authority" shall be understood as referring to the Purchaser; (c) the "Contractor" shall be understood as referring to the Supplier; and (d) "Equality of Information Pricing Statement" shall be understood as also referring to any document fulfilling a similar purpose to an Equality of Information Pricing Statement.

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- 15.3 The Price shall be non-revisable and shall be exclusive of VAT and, in the case of non-EU 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.
- 15.4 The Price shall be payable by the Purchaser to the Supplier in accordance with the provisions of this clause 15. The Purchaser is a signatory to the UK Prompt Payment Code and any payment disputes shall be dealt with in accordance with this clause and clause 36.
- 15.5 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 legal entity of the Purchaser; (b) be sent to (separately from any Supplies) c/o Accounts Payable Department as specified on the Order; (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.
- 15.6 Each correctly submitted and, where applicable, valid VAT invoice shall become due for payment within thirty (30) days (excluding bank holidays) of the date on which the invoice is received **provided that** the Supplies have been delivered by the Supplier and accepted by the Purchaser in accordance with the Agreement.
- 15.7 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 15. 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 within thirty (30) days (excluding bank holidays) of the date on which the resubmitted invoice is received) or request the Supplier to issue a credit note to correct the error.
- 15.8 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.
- 15.9 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 made to the relevant taxing authority.
- 15.10 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.
- 15.11 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.
- 15.12 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 provision of the UK Value Added Tax Act 1994 or under any other relevant legislation.

GENERAL

16. EVENTS OF DEFAULT, TERMINATION & REMEDIES

- 16.1 Each of the following events is an Event of Default:
- 16.1.1 the Supplier fails to comply with any of its obligations under the Agreement and, if that default is capable of remedy, the Supplier fails to cure that default within twenty (20) Business Days of the Purchaser giving written notice to it requiring remedy; or
 - 16.1.2 the Supplier is unable to pay its debts generally as they fall due; or
 - 16.1.3 a resolution is passed at a meeting of the Supplier for (or to petition for) its winding-up or administration, or the Supplier presents any petition for its winding-up or administration, or an order for the winding-up or administration of the Supplier is made, (unless in each case it is a voluntary solvent winding-up, reconstruction, amalgamation or reorganisation or part of a solvent scheme of arrangement); or
 - 16.1.4 the Supplier 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
 - 16.1.5 any administrative or other receiver or any manager of all or substantially all of the assets of the Supplier 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 Supplier and which is not paid out or discharged within thirty (30) calendar days after such appointment, taking possession or levy; or
 - 16.1.6 there occurs, in relation to the Supplier, 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 16.1.2 to 16.1.5 inclusive (subject to the same thresholds, grace periods and exceptions); or
 - 16.1.7 the Supplier is acquired by or merged with any third party or any change of control occurs; or
 - 16.1.8 the Supplier is or may be unable, in the Purchaser's reasonable opinion, to perform its obligations under the Agreement; or
 - 16.1.9 a breach of clause 26 occurs; or
 - 16.1.10 a breach of security on the part of the Supplier occurs;
 - 16.1.11 an act of theft or criminal activity is committed by the Supplier or its employees, agents or subcontractors which occurred on any of the Purchaser's sites, or the Purchaser's customer's sites, or which is connected with the Supplier's involvement with the Agreement; or
 - 16.1.12 a breach of clause 19.1.8, 19.1.9, 19.1.10 or 19.1.11 occurs.
- 16.2 The Supplier shall immediately notify the Purchaser of the occurrence of an Event of Default. On or at any time after the occurrence of an Event of Default, the Purchaser shall be entitled (without prejudice to any other right or remedy available to it) on giving written notice to the Supplier to exercise any one or more of the following rights or remedies:
- 16.2.1 to require the Supplier to rectify the Event of Default;

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- 16.2.2 to reduce, reschedule or cancel any of the Supplies or to refuse to accept the provision of any further Supplies, in each case without having any liability to the Supplier;
- 16.2.3 to recover any and all liability, loss, claims, costs, expenses or damages of any kind whatsoever suffered or incurred by the Purchaser arising out of or in connection with or as a result of such Event of Default; and/or
- 16.2.4 to terminate the Agreement in whole or in part.
- 16.3 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 15) for each 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 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 has been invoked.
- 16.4 Upon termination, howsoever arising, the Supplier shall return all of the Purchaser's information, tooling and data forthwith to the Purchaser, and remove from HM Naval Base, Portsmouth, any property belonging to the Supplier, its agents or sub-suppliers, 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.
- 16.5 Upon receipt of notice of termination of the Agreement, the Supplier shall:
- 16.5.1 cease provision of the Supplies as directed by the Purchaser; and
- 16.5.2 minimise all its costs associated with the termination of the Agreement.
- 16.6 Termination of the Agreement shall not affect or prejudice the accrued rights of the Parties as at termination or the continuation of any provision which implicitly survives termination.
- 16.7 The terms and conditions of the Agreement do not override any of the Purchaser's statutory and common law rights and are in addition to those rights and not in substitution for them.
- 16.8 A Supplier shall not be considered to be in default where the breach arises as a direct consequence of a Relief Event. The Supplier shall use all reasonable endeavours to remedy the default as soon as reasonably practicable.

17. FORCE MAJEURE EVENT

- 17.1 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:
- 17.1.1 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;
- 17.1.2 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;
- 17.1.3 recommences its full performance as soon as is reasonably possible; and

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- 17.1.4 gives prompt notice of the cessation of any Force Majeure Event previously notified to the other Party.
- 17.2 For the avoidance of doubt, a Party cannot claim relief under this clause 17 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.
- 17.3 If a Force Majeure Event has the effect of preventing or delaying the performance of the Supplier's obligations for a continuous period of six (6) months 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.

18. INTELLECTUAL PROPERTY RIGHTS

- 18.1 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.
- 18.2 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 :
- 18.2.1 the purposes of this Order and the Prime Contract; and
- 18.2.2 the keeping, use, development or disposal of the Foreground IPR.
- 18.3 The Supplier represents and warrants to the Purchaser that the Supplies and any Foreground IPR and anything done by and any use by the Purchaser in relation to the Supplies and any Foreground IPR will not infringe any Intellectual Property Rights of a third party.
- 18.4 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 Foreground IPR.
- 18.5 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.

19. CONFIDENTIALITY

- 19.1 The Receiving Party undertakes:
- 19.1.1 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

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under clause 18 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;

- 19.1.2 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;
- 19.1.3 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 make each such person or party agree to observe terms no less stringent than those contained in this clause 19 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;
- 19.1.4 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 19 prior to any Confidential Information being disclosed to that third party;
- 19.1.5 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 Receiving Party to do so, except as is reasonably necessary for the purpose of the Agreement;
- 19.1.6 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 4);
- 19.1.7 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 19; and
- 19.1.8 to take all reasonable steps to ensure that all Supplier Personnel engaged on any work in connection with this Agreement have notice that the Official Secrets Act 1911-1989 apply to them and will continue so to apply after the completion or termination of this Agreement;
- 19.1.9 that if directed by the Purchaser ensure that any Supplier Personnel sign a statement acknowledging that, both during the duration of this Agreement and after its completion or termination, they are bound by the Official Secrets Acts 1911-1989 (and where applicable other law);
- 19.1.10 to not do or permit to be done anything which it knows or ought reasonably to know may result in a Secret Matter being disclosed to or acquired by a person who does not hold the appropriate authority for access to the Secret Matter; and
- 19.1.11 to ensure that, unless it has the prior written consent of the Purchaser both before and after the date of expiry of this Agreement, that no photograph of, or pertaining to, any Secret Matter shall be taken and no copy of or extract from any Secret Matter shall be made except so far as may be necessary for the proper performance of this

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Agreement; and that any Secret Matter is at all times strictly safeguarded in accordance with the Security Policy Framework and upon request, is delivered to the Purchaser or the Authority (as appropriate) who shall be entitled to retain it.

- 19.2 If the Purchaser acting reasonably considers either that the Supplier or any of the Supplier Personnel, agents or Sub-Suppliers has committed a breach of or failed to comply with 19.1.8 to 19.1.11 above and has committed a breach of any obligations in relation to secrecy or security imposed upon it by this Agreement (each being a "Breach of Security"), and the Purchaser decides that such Breach of Security presents a continuing material threat to the national security of the United Kingdom then, the Purchaser acting by the decision of Her Majesty's Government may notify the Supplier that the Supplier has committed an Event of Default.
- 19.3 On expiry or termination of the Agreement:
- 19.3.1 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, save that the Receiving Party shall not be obliged to erase Confidential Information held in any archived computer system in accordance with its security and/or disaster recovery procedures; and (c) provide to the Disclosing Party a certificate, signed by an officer of the Receiving Party, confirming that the obligations in this clause 19.3.1 have been complied with;
- 19.3.2 if the Disclosing Party has not made a demand under clause 19.3.1 within three (3) calendar months of expiry or 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
- 19.3.3 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.

20. TRANSFERRING &/OR ASSIGNED EMPLOYEES

- 20.1 The following definitions shall apply to this clause 20:
- 20.1.1 "Assigned Employees" means those of the Supplier's employees wholly or mainly assigned to the performance of the Services immediately prior to the Termination Date whose employment transfers to an Incoming Supplier pursuant to the Regulations;
- 20.1.2 "Commencement Date" means the date for the commencement of provision of the Services;
- 20.1.3 "Employee Liabilities" means costs, claims, settlements, damages, payments, liabilities, losses and expenses;
- 20.1.4 "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;
- 20.1.5 "Incoming Supplier" means the company which is to provide the Services to the Purchaser after the Termination Date instead of the Supplier (and such company might be the Purchaser, another member of the BAE Systems Group or a third party

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supplier) **provided that**, where applicable, references in clauses to “Incoming Supplier” shall include the relevant member of the Incoming Supplier’s Group or any sub-contractor;

- 20.1.6 “Non-Disclosed Assigned Employee” means any person employed by the Supplier immediately before the Termination Date (other than an Assigned Employee in respect of whom the Supplier has provided the relevant information to) who is found or alleged to continue with the Incoming Supplier after the Termination Date as a result of the transfer contemplated by the Agreement;
- 20.1.7 “Non-Disclosed Transferring Employee” means any person employed by the Outgoing Supplier immediately before the Commencement Date (other than a Transferring Employee) who is found or alleged to continue with the Supplier after the Commencement Date as a result of the transfer contemplated by the Agreement;
- 20.1.8 “Outgoing Supplier” means the company (if any) 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 sub-contractor;
- 20.1.9 “Regulations” mean the Transfer of Undertakings (Protection of Employment) Regulations 2006;
- 20.1.10 “Termination Date” means 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 the Incoming Supplier; and
- 20.1.11 “Transferring Employees” means those of the Outgoing Supplier’s employees wholly or mainly engaged in the performance of services prior to the Commencement Date.

Start of the Agreement

- 20.2 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 20.3 to 20.9 shall apply.
- 20.3 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.
- 20.4 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.
- 20.5 In respect of any contract with a Non-Disclosed Transferring Employee, then:

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- 20.5.1 the Supplier will notify the Purchaser in writing of that finding or allegation within seven (7) calendar days of the Supplier becoming aware of it;
- 20.5.2 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 him or her 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;
- 20.5.3 at any time after the expiry of fourteen (14) calendar days from a request by the Supplier for the Purchaser to procure that offer, the Supplier shall, subject to giving reasonable prior 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 20.5, 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 the 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 such Employee Liabilities arise out of any act or omission of the Supplier that constitutes unlawful discrimination; and
- 20.5.4 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 20.5, such person shall be deemed to be a Transferring Employee and the indemnity in clause 20.5.3 shall not apply.
- 20.6 Save to the extent falling within the scope of the indemnity set out in clause 20.7 below, the Purchaser shall indemnify the Supplier against any and all Employee Liabilities suffered or incurred by the Supplier arising from:
- 20.6.1 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
- 20.6.2 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.
- 20.7 The Supplier shall indemnify the Indemnified Parties against any and all Employee Liabilities suffered or incurred by any of the Indemnified Parties and the Outgoing Supplier arising from:
- 20.7.1 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;
- 20.7.2 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;

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- 20.7.3 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
- 20.7.4 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 the Outgoing Supplier for the purposes of Regulation 13 of the Regulations.
- 20.8 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 against any and all Employee Liabilities suffered or incurred by Indemnified Parties and 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 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 between the Parties. The party bearing the responsibility for PAYE and NI contributions for the relevant period shall pay the relevant amounts to the appropriate authority.
- 20.9 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

- 20.10 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 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.
- 20.11 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.
- 20.12 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:
- 20.12.1 terminate employment or give notice to terminate employment, other than in relation to that individual's gross misconduct; or
- 20.12.2 vary or offer or promise to vary terms and conditions of employment; or
- 20.12.3 vary duties or the proportion of time spent on the provision of the Services,

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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.

20.13 At any time during the term of the Agreement and subject to the relevant employer's data protection obligations (but using all reasonable endeavours to provide such information), the Supplier shall:

20.13.1 provide details of which of its employees or other personnel (including agency workers or subcontractors) are providing the Services, and details of the terms and conditions of employment or engagement of, and time spent by, such individuals working in the provision of the Services and such other information as the Purchaser may reasonably require;

20.13.2 provide any such information in relation to its employees or other personnel providing the Services as the Purchaser may reasonably require; and

20.13.3 the Purchaser may share any information provided by the Supplier pursuant to clauses 20.13.1 and 20.13.2 with any potential Incoming Supplier, either before, during or after any tendering process.

20.14 In respect of any contract with a Non-Disclosed Assigned Employee, then:

20.14.1 the Purchaser will notify the Supplier of that finding or allegation within seven (7) calendar days of the Purchaser becoming aware of it;

20.14.2 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 him or her under a new contract of employment with the Supplier to take effect upon the Termination Date;

20.14.3 that offer of employment 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;

20.14.4 at any time after the expiry of fourteen (14) calendar days from a request by the Incoming Supplier to make that offer, the Incoming Supplier shall, subject to giving reasonable prior 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 20.14, 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 the 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 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

20.14.5 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

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20.14, such person shall be deemed to be an Assigned Employee and the indemnity at clause 20.14.4 shall not apply.

20.15 The Supplier shall indemnify the Indemnified Parties against any and all Employee Liabilities suffered or incurred by the Indemnified Parties and the Incoming Supplier arising from:

20.15.1 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

20.15.2 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.

20.16 Save to the extent falling within the scope of the indemnity in clause 20.15, the Purchaser shall indemnify the Supplier against any and all Employee Liabilities suffered or incurred by the Supplier arising from:

20.16.1 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

20.16.2 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.

20.17 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 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.

20.18 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.

New Fair Deal

20.19 The Supplier and the Purchaser understand that no individuals who are employed by the Purchaser shall have their employment transferred to the Supplier (whether by virtue of the Transfer of Undertakings (Protection of Employment) Regulations 2006 or otherwise). In the event that the employment of any individual does in fact transfer to the Supplier, the Supplier shall provide access to such pension benefits and on such terms as the Purchaser shall require in order that, where applicable, the requirements of the Fair Deal policy set out in HM Treasury's guidance "Fair Deal for staff pensions: staff transfers from central government" issued in October 2013 are complied with.

21. COUNTERFEIT GOODS

- 21.1 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.
- 21.2 If the Supplier becomes aware of or suspects that it has acquired Counterfeit Goods, the Supplier shall as soon as 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.
- 21.3 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 expense promptly replace such Counterfeit Goods with genuine Goods conforming to the requirements of the Agreement.
- 21.4 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.

Certification of Product Origin

- 21.5 Acceptance of the Order constitutes confirmation by the Supplier that it is either the Original Equipment Manufacturer ("**OEM**"), Original Component Manufacturer ("**OCM**"), or a franchised or authorized distributor of the OEM/OCM for the Goods. The Supplier further warrants that OEM/OCM acquisition documentation that authenticates traceability of all components in the Goods to that applicable OEM/OCM is available upon request. If the Supplier is not the OEM/OCM or a franchised or authorized distributor, the Supplier confirms by acceptance of the Order that the Goods have been procured from the OEM/OCM or a franchised or authorized distributor of the OEM/OCM. The Supplier further warrants that OEM/OCM acquisition traceability documentation is accurate and available to the Purchaser upon the Purchaser's request.
- 21.6 The Supplier represents and warrants that only new and authentic materials are used in the Goods and that the Goods contain no counterfeit parts. No other material, part, or component other than a new and authentic part is to be used unless approved in advance in writing by the Purchaser. To further mitigate the possibility of the inadvertent use of counterfeit parts, the Supplier shall only purchase authentic parts/components directly from the OEMs or OCMs or through the OEM's/OCM's authorized distribution chain. The Supplier must make available to the Purchaser, at the Purchaser's request, OEM/OCM documentation that authenticates traceability of the components to that applicable OEM/OCM. Purchase of parts/components from independent distributors is not authorised unless first approved in writing by the Purchaser's procurement representative. The Supplier must present complete and compelling support for its request and include in its request confirmation of all actions that it will take to ensure that the parts/components thus procured are legitimate parts. The Purchaser's approval of the Supplier's request(s) does not relieve the Supplier of its responsibility to comply with all the requirements of the Agreement including the representations and warranties in this sub-clause.
- 21.7 The Supplier shall maintain a documented system (policy, procedure or other documented approach) that provides for prior notification and Purchaser approval before parts/components are procured from sources other than OEMs/OCMs or through the OEM's/OCM's authorised distribution chain. The Supplier shall provide copies of such documentation for its system for the Purchaser's inspection upon the Purchaser's request.

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21.8 The Supplier shall flow the requirements of this clause to its sub-contractors and suppliers at any tier for the performance of this Agreement.

21.9 A breach of any of the provisions of clauses 21.5 to 21.8 shall be considered a material breach of the Agreement.

22. SPARES & TOOLING

22.1 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.

22.2 If the Supplier has created tooling, moulds, test equipment, circuit boards or other technology specifically in relation to the Goods, the Purchaser shall have the option to purchase such technology and/or any related Intellectual Property Rights from the Supplier.

23. PROPERTY ISSUED BY THE PURCHASER

23.1 If the Purchaser provides any property, such as tools and fixtures, to the Supplier under the terms of the Agreement:

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

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

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

23.1.4 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;

23.1.5 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

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

24. CONTINUITY OF SUPPLY

24.1 If the Purchaser may in the future require goods similar or equivalent to the Goods provided by the Supplier to the Purchaser under the Agreement, 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.

24.2 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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25. OFFSET

- 25.1 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.
- 25.2 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.
- 25.3 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 ITAR brokering requirements and each, as may be appropriate given the nature of the offset transaction, shall promptly apply for any necessary ITAR registration and licensing authorisation.

26. INDUCEMENTS & ETHICS

- 26.1 Whether acting alone or with others, the Supplier undertakes that it will not do, and warrants that prior to accepting the Agreement it has not done, any of the following:
- 26.1.1 induce an employee or sub-contractor of the Purchaser to make any concession to or confer any benefit on the Supplier, refrain or withhold from doing any act or alter any of the requirements of the Agreement in return for any gift, money, benefit or other inducement; nor
- 26.1.2 without the Purchaser's prior written consent, pay money or give any other benefit to any third party (either directly or indirectly) in connection with the negotiation and/or issue of the Agreement or any transaction related thereto; nor
- 26.1.3 encourage or facilitate an employee or sub-contractor of the Purchaser to commit any act of dishonesty against the Purchaser which may benefit the employee or sub-contractor of the Purchaser or be a detriment to the Purchaser, or both; nor
- 26.1.4 any Prohibited Act.
- 26.2 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. The BAE Systems Group expects and encourages all its suppliers to embrace ethical values and legal compliance practices of a comparable standard (including a method for reporting possible violations). The Supplier undertakes that it will abide by and comply with all applicable laws and regulations relating to anti-bribery and anti-corruption, including the UK Bribery Act 2010 and the U.S. Foreign Corrupt Practices Act 1977.
- 26.3 Responsible behaviour is fundamental to how BAE Systems conducts business. Regular assessments of BAE Systems' supply base are a critical part of this commitment. BAE Systems' "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.

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 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 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. E-mails 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.

31. SEVERABILITY

If any of the provisions of the Agreement are found to be invalid, illegal or unenforceable 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 & SUB-CONTRACTING

33.1 Subject to the provisions of clauses 12.4 and 13.3, 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, transfer, sell, assign, sub-contract, novate, create any encumbrance or otherwise dispose of this Agreement or any part thereof, or any benefit, interest or advantage of this Agreement or any part thereof in favour of the Authority, an Incoming Prime Contractor or any member of the BAE Systems Group. The Supplier shall sign, execute and/or deliver any deeds or documents, and perform such acts, that BAE Systems, acting in its sole

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discretion, considers necessary and/or desirable to give effect to the purposes of this clause 33.1.

33.2 The Supplier shall not, without the Purchaser's prior written consent, sub-contract any of its obligations under the Agreement. Written consent to sub-contract shall only be given by the appropriate Supply Chain Buyer once the Supplier has confirmed and provided reasonable evidence that the sub-supplier has satisfied the requirements of the Supplier's Approval Process in the form of:

33.2.1 a supplier approval certificate if this exists, or

33.2.2 such other form of approval which is stated in writing to be acceptable to the appropriate Supply Chain Buyer.

33.3 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 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 & 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 Rules of the London Court of International Arbitration, which Rules are deemed to be incorporated by reference into this clause. The 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.