

**LOCKHEED MARTIN – UNITED KINGDOM**

**CORPDOC 21UK**

**SUBCONTRACTS/PURCHASE ORDERS IN SUPPORT OF UNITED KINGDOM  
MINISTRY OF DEFENCE (MOD) PRIME CONTRACTS**

**SECTION I: STANDARD PROVISIONS**

**1. ACCEPTANCE OF CONTRACT/TERMS AND CONDITIONS**

(a) This Contract integrates, merges, and supersedes any prior offers, negotiations, and agreements concerning the subject matter hereof and constitutes the entire agreement between the parties. Neither of the Parties has entered into this Contract in reliance upon any representation, warranty or undertaking of any other party which is not set out or referred to in this Contract and, in the absence of fraud neither party shall be liable to the other for or shall seek to rely upon any such representations. The parties agree that any Non Disclosure Agreement or Proprietary Information Agreement shall not be superseded by this Contract.

(b) SELLER's acknowledgment, acceptance of payment, or commencement of performance, shall constitute SELLER's unqualified acceptance of this Contract.

(c) Unless expressly accepted in writing by LOCKHEED MARTIN, additional or differing terms or conditions proposed by SELLER or included in SELLER's acknowledgment are rejected by LOCKHEED MARTIN and have no effect.

(d) The headings used in this Contract are inserted for the convenience of the parties and shall not define, limit, or describe the scope or the intent of the provisions of this Contract.

**2. APPLICABLE LAWS**

(a) This Contract shall be considered a contract made in England and any matter, contractual or non-contractual arising out of or related to this Contract shall be governed by the laws of England. The provisions of the "United Nations Convention on Contracts for International Sale of Goods" shall not apply to this Contract.

(b) SELLER, in the performance of this Contract, shall comply at all times with all applicable laws including without limitation common law, statute, regulation, directive, rule, order or delegated legislation of any other requirement of any local state or European Union (EU) body, in relation to the Work. SELLER shall at its own expense procure all licences consents, registrations and permits necessary to perform this Contract and furnish the Work and shall ensure that all such permissions are valid and subsisting and that all conditions (whether express or implied) are at all times complied with. SELLER, at its expense, shall provide reasonable cooperation to LOCKHEED MARTIN in conducting any investigation regarding the nature and scope of any failure by SELLER or its personnel to comply with applicable local, state, and federal laws, orders, rules, regulations, and ordinances that may affect the performance of SELLER's obligations under this Contract.

### **3. ASSIGNMENT/SUBCONTRACTS**

Any assignment of SELLER's Contract rights or delegation of SELLER's duties shall be void, unless prior written consent is given by LOCKHEED MARTIN. SELLER shall be responsible for all Work performed/supplied by sub-contractors under this Contract.

### **4. CHANGE IN CONTROL OF SELLER**

Prior to a potential change of control of SELLER and at least ninety (90) days prior to the proposed effectiveness of such change of control, SELLER will promptly notify LOCKHEED MARTIN in writing thereof, and provide the identity of the potential new controlling party and information on such party and the transaction as LOCKHEED MARTIN may request, consistent with applicable law and confidentiality restrictions.

### **5. CHANGES**

(a) The LOCKHEED MARTIN Procurement Representative may at any time, by written notice, and without notice to sureties or assignees, make changes within the general scope of this Contract in any one or more of the following: (i) drawings, designs, or specifications; (ii) method of shipping or packing; (iii) place of inspection, acceptance, or point of delivery; and (iv) delivery schedule.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of this Contract, LOCKHEED MARTIN shall make an equitable adjustment in the Contract price and/or delivery schedule, and modify this Contract accordingly. Changes to the delivery schedule will be subject to a price adjustment only.

(c) SELLER must assert its right to an equitable adjustment under this clause within thirty (30) days from the date of receipt of the written change order from LOCKHEED MARTIN. If SELLER's proposed equitable adjustment includes the cost of property made obsolete or excess by the change, LOCKHEED MARTIN shall have the right to prescribe the manner of disposition of the property.

(d) Failure to agree to any adjustment shall be resolved in accordance with the "Disputes" clause of this Contract. However, nothing contained in this "Changes" clause shall excuse SELLER from proceeding without delay in the performance of this Contract as changed.

### **6. COMPLIANCE WITH THE BRIBERY ACT AND OTHER ANTICORRUPTION LAWS AND REGULATIONS**

(a) SELLER shall comply with applicable laws and regulations relating to anti-corruption, including, without limitation, (i) the UK Bribery Act 2010 irrespective of the place of performance, and (ii) laws and regulations implementing the Organization for Economic Cooperation and Development's Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the U.N. Convention Against Corruption, in SELLER's country or any country where performance of this Contract will occur. Compliance with the requirements of this clause is a material requirement of this Contract.

(b) In carrying out its responsibilities under this Contract, SELLER represents that:

- (1) SELLER has not paid, offered, promised to pay or authorized and will not pay, offer, promise to pay, or authorize the payment directly or indirectly of any monies or anything of value (in the form of entertainment, gifts, gratuities, kickbacks or otherwise) for the purpose of obtaining or rewarding favourable treatment as a LOCKHEED MARTIN supplier.
  - (2) SELLER has not paid, offered, promised to pay or authorized and will not pay, offer, promise to pay, or authorize the payment directly or indirectly of any monies or anything of value to (i) any person or firm employed by or acting for or on behalf of any customer, whether private or governmental, or (ii) any government official or employee or any political party or candidate for political office for the purpose of influencing any act or decision or inducing or rewarding any action by the customer in any commercial transaction or in any governmental matter or securing any improper advantage to assist LOCKHEED MARTIN or SELLER in obtaining or retaining business or directing business to any person.
  - (3) SELLER has an effective policy for detecting and preventing conflicts of interest and requires any owner, partner, officer, director or employee currently or previously holding political office or a role in government or with any supplier/customer to avoid any actual or perceived conflict and to recuse themselves from participation where such a conflict may arise.
  - (4) To SELLER's knowledge, no owner, partner, officer, director or employee of SELLER or of any Affiliate of SELLER who will be involved in or benefit from the performance of this Contract or the LOCKHEED MARTIN Prime Contract to which this Contract relates is or will become an official or employee of LOCKHEED MARTIN's customer under the Prime Contract or of any agency or instrumentality of government that may have an influence with respect to the Prime Contract. Nothing in the foregoing is intended to prevent SELLER's employees being members of one of the Reserve Forces provided SELLER complies with paragraph (b)(3) of this clause.
  - (5) SELLER has not made and will not make, either directly or indirectly, any improper payments, including but not limited to facilitation payments, gratuities or kickbacks.
  - (6) SELLER has established and will maintain an effective business ethics and compliance program and procedures to prevent corruption and ensure compliance with the Bribery Act. SELLER's program and procedures shall implement guidance published by the United Kingdom Ministry of Justice relative to compliance with the Bribery Act.
  - (7) SELLER shall promptly disclose to LOCKHEED MARTIN together with all pertinent facts any violation, or alleged violation of this clause in connection with the performance of this Contract, and further notify LOCKHEED MARTIN of any subsequent disposition related to the foregoing.
- (c) SELLER shall include this clause or equivalent provisions in lower tier subcontracts under this Contract.

## **7. CONTRACT DIRECTION**

- (a) Only the LOCKHEED MARTIN Procurement Representative has authority on behalf of LOCKHEED MARTIN to make changes to this Contract. All amendments must be identified as such in writing and executed by the parties.

(b) LOCKHEED MARTIN engineering and technical personnel may from time to time render assistance or give technical advice or discuss or effect an exchange of information with SELLER's personnel concerning the Work hereunder. No such action shall be deemed to be a change under the "Changes" clause of this Contract and shall not be the basis for equitable adjustment.

(c) Except as otherwise provided herein, all notices to be furnished by SELLER shall be in writing and sent to the LOCKHEED MARTIN Procurement Representative.

## **8. COUNTERFEIT WORK**

"Counterfeit Work" means Work that is or contains unlawful or unauthorised reproductions, substitutions, or alterations that have been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified part from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorised aftermarket manufacturer. Unlawful or unauthorised substitution includes used Work represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics. Work shall also be considered "Counterfeit Work" if it falls within the definition of "Counterfeit Material" set out at Paragraph 5.2 of DEF STAN 05-135.

"Suspect Counterfeit Work" means Work for which credible evidence (including, but not limited to, visual inspection or testing) provides reasonable doubt that the Work part is authentic.

(b) SELLER shall not deliver Counterfeit Work or Suspect Counterfeit Work to LOCKHEED MARTIN under this Contract.

(c) SELLER shall only purchase products to be delivered or incorporated as Work to LOCKHEED MARTIN directly from the Original Component Manufacturer (OCM)/Original Equipment Manufacturer (OEM), or through an OCM/OEM authorised distributor chain. SELLER may use another source only if (i) the foregoing sources are unavailable, (ii) SELLER's inspection and other counterfeit risk mitigation processes will be employed to ensure the authenticity of the Work, and (iii) SELLER obtains the advance written approval of LOCKHEED MARTIN.

(d) SELLER shall maintain counterfeit risk mitigation processes in accordance with industry recognised standards and with any other specific requirements identified in this Contract.

(e) SELLER shall immediately notify LOCKHEED MARTIN with the pertinent facts if SELLER becomes aware that it has delivered Counterfeit Work or Suspect Counterfeit Work. When requested by LOCKHEED MARTIN, SELLER shall provide OCM/OEM documentation that authenticates traceability of the affected items to the applicable OCM/OEM. SELLER, at its expense, shall provide reasonable cooperation to LOCKHEED MARTIN in conducting any investigation regarding the delivery of Counterfeit Work or Suspect Counterfeit Work under this Contract.

(f) This clause applies in addition to and is not altered, changed, or superseded by any quality provision, specification, statement of work, regulatory flowdown, or other provision included in this Contract addressing the authenticity of Work.

(g) In the event that Work delivered under this Contract constitutes or includes Counterfeit Work, SELLER shall, at its expense, promptly replace such Counterfeit Work with genuine Work conforming to the requirements of this Contract. Notwithstanding any other provision in this Contract, SELLER shall be liable for all costs relating to the removal and replacement of Counterfeit Work, including without limitation LOCKHEED MARTIN's costs of removing Counterfeit Work, of installing replacement Work and of any testing necessitated by the reinstallation of Work after Counterfeit Work has been exchanged. The remedies contained in this paragraph are in addition to any remedies LOCKHEED MARTIN may have at law, equity or under other provisions of this Contract.

(h) SELLER shall include paragraphs (a) through (f) and this paragraph (h) of this clause or equivalent provisions in lower tier subcontracts for the delivery of items that will be included in or furnished as Work to LOCKHEED MARTIN.

(i) SELLER shall comply with DEFSTAN 05-135 Issue 1. In the event of any incompatibility or conflict the provisions of DEFSTAN 05-135 shall prevail over paragraphs (b) to (h) of this clause.

## **9. DATA PROTECTION ACT**

(a) Data Controllers and Data Processor Identities. (1) SELLER shall (and shall procure that any of its personnel and its subcontractors involved in the performance of this Contract) comply with any notification requirements under the Data Protection Act 1998 ("Act") and both parties will duly observe all their obligations under the Act, which arise in connection with this Contract.

(2) Notwithstanding the general obligation in paragraph (a)(1) of this Clause, where the Work requires SELLER to process Personal Data as a Data Processor for LOCKHEED MARTIN, SELLER shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the Data Protection Act 1998; and

(i) Provide LOCKHEED MARTIN with such information as LOCKHEED MARTIN may reasonably require to satisfy itself that the SELLER is complying with its obligations under the Act;

(ii) Promptly notify LOCKHEED MARTIN of any breach of the technical and contractual measures required to be put in place pursuant to paragraph (a)(2) of this clause; and

(iii) Ensure it does not knowingly or negligently do or omit to do anything which places LOCKHEED MARTIN in breach of LOCKHEED MARTIN's obligations under the Data Protection Legislation.

(3) The provisions of this Clause shall continue to apply after the expiry or termination of this Contract.

(4) Paragraphs (b) through (h) of this clause shall apply where the Work requires SELLER to process Personal Data as a Data Processor for LOCKHEED MARTIN.

(b) Privacy Notice. (1) All SELLER web sites, portals etc. to be used by LOCKHEED MARTIN personnel for the purpose of this Contract and that collect personal data other than a user name and password shall include a privacy notice. This privacy notice shall identify the Data Controller and the purpose of its processing.

(2) SELLER shall submit the privacy notice for Lockheed Martin's approval before its use or amendment.

(c) Cookies use on web sites. (1) In relation to all SELLER web sites, portals etc. to be used by LOCKHEED MARTIN personnel for the purpose of this Contract the SELLER shall:

(i) Minimise the use of cookies placed on the user/subscriber's computer to that necessary for the effective functioning of the Work.

(ii) Configure a dedicated page that clearly defines what cookies are set and what they are used for. There shall be a prominent link to this page on the website landing page.

(2) Where it is reasonable for SELLER to expect that users will be permitted and able to access the Work from their personal computers, SELLER shall also configure the website to display a pop-up message requiring consent to setting cookies before allowing the user to proceed: where a user does not consent a message shall be displayed that the user cannot proceed.

(d) Subcontracting and Outsourcing. SELLER shall not subcontract any personal data processing without written authority of LOCKHEED MARTIN, whether this processing is to be performed within or outside of the UK.

(e) Data Retention and Destruction. SELLER shall, immediately upon request by LOCKHEED MARTIN return or securely destroy any Personal Data relating to Data Subjects in its control or possession other than where it is required by law to retain such information.

(f) Data Transfers. (1) Personal Data transfers to other organisations are not permitted, except where subcontracting is permitted by Lockheed Martin in accordance with Clause 8(4) above.

(2) Personal Data transfers outside EEA, including for subcontracting (out-sourcing) data processing, shall be done only with specific permission of LOCKHEED MARTIN and will be subject to additional requirements.

(g) Confidentiality and Information Security. (1) SELLER shall keep confidential and secure at all times Personal Data relating to the Data Subjects.

(2) SELLER shall take reasonable steps to ensure the reliability of any SELLER personnel who have access to the Personal Data.

(3) SELLER shall ensure that all SELLER personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Contract.

(4) SELLER shall ensure that none of the its personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by LOCKHEED MARTIN.

(h) Audits. SELLER shall support audits, by LOCKHEED MARTIN of its service operations and information security, and/or those of its agents, subsidiaries and Subcontractors, at a frequency of once every 24 months or where a significant change in the service implementation has occurred. SELLER shall at no cost to LOCKHEED MARTIN implement any remediation actions identified by the audits in an agreed time plan.

## 10. DEFAULT

(a) In the event that SELLER: (1) becomes bankrupt or insolvent, makes an arrangement with its creditors, has a receiver appointed over any of its assets or commences to be wound-up (not being a member's voluntary winding up for the purpose of amalgamation or reconstruction); or (2) fails to perform or observe any of the conditions of this Contract and fails to remedy the same within ten (10) days after receipt of notice from LOCKHEED MARTIN requiring the same to be remedied, then LOCKHEED MARTIN may by written notice to SELLER forthwith terminate this Contract or any specified part thereof.

(b) Upon termination, and with respect to that part of this Contract terminated: (1) no further sums shall become due to SELLER save in respect to Work delivered and accepted prior to termination, payment for which shall be postponed at LOCKHEED MARTIN's election, until such time as LOCKHEED MARTIN's claims against SELLER under this Contract shall have been finally established and quantified, and (2) LOCKHEED MARTIN shall be entitled to procure from any alternative source the supply of Work in replacement of Work not delivered prior to the termination. Any additional costs incurred by LOCKHEED MARTIN in finding and arranging such alternative source shall be sums due and owing by SELLER to LOCKHEED MARTIN.

(c) The provisions of this clause shall be without prejudice to any other remedy LOCKHEED MARTIN may have under this Contract or any applicable law.

## 11. DEFINITIONS

(a) The following terms shall have the meanings set forth below:

(1) "Affiliate" in relation to an entity shall mean a parent undertaking of that entity (whether direct or an ultimate holding company) or a subsidiary undertaking of a parent undertaking or an ultimate holding company of that entity, at any level, as the terms "parent undertaking" and "subsidiary undertaking" are defined within Section 1162 of the Companies Act 2006.

(2) "the Authority" means the Secretary of State for Defence.

(3) "Contract" means the instrument of contracting, such as "Purchase Order", "PO", "Subcontract" "Task Order", or other such type designation, including these General Provisions, all referenced documents, exhibits, and attachments. If these terms and conditions are incorporated into a "master" agreement that provides for releases, (in the form of a Purchase Order or other such document) the term "Contract" shall also mean the release document for the Work to be performed.

(4) "LOCKHEED MARTIN" means LOCKHEED MARTIN CORPORATION or the LOCKHEED MARTIN CORPORATION subsidiary identified on the face of this Contract. If a subsidiary or affiliate of LOCKHEED MARTIN CORPORATION is identified on the face of this Contract, then "LOCKHEED MARTIN" means that subsidiary or affiliate.

(5) "LOCKHEED MARTIN Procurement Representative" means a person authorized by LOCKHEED MARTIN's cognisant procurement organisation to administer and/or execute this Contract.

(6) "SELLER" means the party identified on the face of this Contract with whom LOCKHEED MARTIN is contracting.

(7) "Task Order" means a separate order issued under this Contract.

(8) "Work" means all required labour, articles, materials, supplies, goods, and services constituting the subject matter of this Contract.

(b) In this Contract:

(1) The singular shall include the plural and vice versa, the words "include" and "including" shall be construed without limitation; and

(2) References to any statute or statutory provision include references to that statute or statutory provision as amended, consolidated or replaced from time to time.

## **12. DISPUTES**

(a) All disputes under this Contract that are not disposed of by mutual agreement may be decided by recourse to an action at law or in equity. Any dispute not resolved between the parties shall be subject to the exclusive jurisdiction of the English Courts. Disputes under this Contract which involve a matter in dispute between LOCKHEED MARTIN and the Authority, may at LOCKHEED MARTIN's election, be resolved in accordance with DEFCON 530.

(b) Until final resolution of any dispute hereunder, SELLER shall diligently proceed with the performance of this Contract as directed by LOCKHEED MARTIN.

## **13. ELECTRONIC CONTRACTING**

The parties agree that if this Contract is transmitted electronically neither party shall contest the validity of this Contract, or any acknowledgement thereof, on the basis that this Contract or acknowledgement contains an electronic signature.

## **14. ENVIRONMENTAL, HEALTH AND SAFETY REQUIREMENTS**

(a) "Environmental and Health and Safety Law" means any and all laws, by-laws, common laws or other laws or legislation made by a competent authority and rules, regulations, ordinances, orders, notices, directives, practices, guidance notes, circulars, and codes issued pursuant to the same and any authoritative judicial or administrative interpretation of each of the foregoing which have as a purpose or effect or which relate to the protection of employees, the public and the environment or responsibility for health and safety including without limitation:



(1) The Directive on the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (RoHS) Directive 2011/65/EU (RoHS 2);

(2) The Directive on Waste Electrical and Electronic Equipment (WEEE) 2012/19/EU;

(3) Regulation (EC) No 1907/2006 concerning the Registration, Evaluation, Authorization and Restriction of Chemicals (REACH);

(4) Regulation (EC) No 1272/2008 on classification, labelling and packaging of substances and mixtures;

(5) Any National legislation implementing RoHS, WEEE or REACH;

(6) CE Marking and any related product safety requirements pursuant to any applicable New Approach and Global Approach Directives; and

(7) Section 6 of the Health and Safety at Work etc. Act 1974.

(b) Notwithstanding any other provision of this Contract, SELLER warrants and undertakes to LOCKHEED MARTIN that:

(1) All Work furnished under this Contract shall at all times comply with Environmental and Health and Safety Law;

(2) All Work furnished under this shall be marked with a CE Marking where applicable;

(3) It shall not supply or use any asbestos or materials or equipment containing asbestos in the provision of Work;

(4) It shall not supply or use any products or materials containing Chlorofluorocarbons (CFCs) in the provision of Work without the prior written approval (entirely at its discretion) of LOCKHEED MARTIN;

(5) It shall not specify, or permit use of, in Work, any materials or components containing such retardants, including but not limited to Polybrominated Biphenyls (PBBs) and Polybrominated Biphenyl Ethers (PBBEs), also known as Polybrominated Biphenyl Oxides (PBBOs) and shall provide LOCKHEED MARTIN with certification of compliance as required or for the avoidance of doubt containing any other substance to the extent that it is or would reasonably be expected to be subject to any restriction or other limitation on its use under Environmental and Health and Safety Laws; and

(6) It shall not seek to or have any right to rely upon any derogation or exception that may apply to LOCKHEED MARTIN or its customer by virtue of the identity of its ultimate customer in complying with Environmental and Health and Safety Law or any other law applicable to the Work.

(c) If the Work or any portion thereof is to be shipped to or performed in the United States:

(1) SELLER represents that each chemical substance constituting or contained in Work sold or otherwise transferred to LOCKHEED MARTIN hereunder is on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Administration pursuant to the US Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.) as amended.

(2) SELLER shall provide to LOCKHEED MARTIN with each delivery any Material Safety Data Sheet applicable to the Work in conformance with and containing such information as required by the US Occupational Safety and Health Act of 1970 and regulations promulgated thereunder, or its State approved counterpart.

(d) In addition to its obligations to provide a Safety Date Sheet (SDS) in accordance with Environmental and Health and Safety Law, for all Work to be supplied under the Contract, (including for finished or semi-finished articles, any replaceable part of such articles), SELLER shall provide a declaration in relation to:

(1) Any substance in an individual concentration in the Work (or replaceable part) of at least 0.1% weight by weight (w/w) that is persistent, bioaccumulative and toxic (PBT) or very persistent and very bioaccumulative (vPvB) as defined in Annex XIII of REACH or that is on the REACH 'Candidate List' of substances of very high concern;

(2) Any other substance posing human health or environmental hazards in an individual concentration in the Work (or replaceable part) of at least 0.2% weight by weight (w/w); and

(3) Any other substance for which there are Europe-wide or UK specific workplace exposure limits.

(e) Any declaration made in accordance with paragraph (d) of this clause shall state each substance by name and Chemical Abstracts Service No (or CASN) and the w/w content within the Work (or replacement part) and shall provide safe usage information. The SDS shall be provided in accordance with the requirements for the compilation of SDSs set out in Annex II to REACH.

(f) SELLER shall inform LOCKHEED MARTIN if at any time the Work's chemical composition or the status of the chemicals it contains changes such that an initial or modified declaration is required under paragraph (d) of this clause providing such information update to LOCKHEED MARTIN within 45 calendar days of any such changes. LOCKHEED MARTIN reserves the right to refuse/reject Work that requires a declaration pursuant to paragraph (d) of this Clause unless this has been agreed before contract award. LOCKHEED MARTIN shall have no liability to SELLER where Work is refused/rejected in accordance with this paragraph.

## 15. EXPORT CONTROL

(a) SELLER shall comply with all applicable United Kingdom, European Union (EU), U.S. and other sanctions and export control laws, rules and regulations, specifically including, but not limited to, the International Traffic in Arms Regulation ("ITAR"), 22 C.F.R. 120 et seq., the Export Administration Regulations ("EAR"), 15 C.F.R. 730-774, the Foreign Assets Control Regulations, 31 C.F.R. 500-598, E.U. controls on exports of dual-use items and technology implemented pursuant to Council Regulation (EC) No. 428/2009 and U.K. controls on exports of strategic items and technology implemented pursuant to the Export Control Act 2002 and the Export Control Order 2008 (SI 2008/3231) (collectively, "Trade Control Laws") and any re-enactment or modification thereof. Items, technical data and services controlled by Trade Control Laws are referred to in this clause respectively as "export controlled" items, technical data and services. Without limiting the foregoing, SELLER agrees that it will not transfer any export controlled item or technical data, or provide any export controlled service, including transfers or provision of services to any non-UK national employed by or associated with, or under contract to SELLER or to any third party including SELLER's lower tier subcontractors, unless

authorised in advance by an export authorization, licence, licence exception or licence exemption (collectively, “Export Authorisation”), as required.

(b) SELLER shall notify LOCKHEED MARTIN if any deliverable under this Contract including any service to be provided is restricted by applicable Trade Control Laws. Before providing LOCKHEED MARTIN any export controlled item, technical data or service SELLER shall provide in writing to the LOCKHEED MARTIN Procurement Representative the export classification of any such item, technical data or service under the applicable Trade Control Laws and will notify the LOCKHEED MARTIN Procurement Representative in writing of any changes to the export classification information regarding the item, technical data or service. SELLER represents that an official authorised to bind the SELLER has determined that the SELLER or the designer, manufacturer, supplier or other source of the items or services has properly determined their export classification.

(c) Where SELLER is a signatory under a LOCKHEED MARTIN Export Authorisation, SELLER shall provide prompt notification to the LOCKHEED MARTIN Procurement Representative in the event of (i) changed circumstances including, but not limited to, ineligibility, a violation or potential violation of export or other applicable governmental restrictions, and the initiation or existence of a government investigation, that could affect SELLER's performance under this Contract; or (ii) any change by SELLER that might require LOCKHEED MARTIN to submit an amendment to an existing Export Authorisation or request a new or replacement Export Authorisation. SELLER shall provide to LOCKHEED MARTIN all information and documentation as may reasonably be required for LOCKHEED MARTIN to prepare and submit any required Export Authorisation applications. Delays on SELLER's part to submit the relevant information for Export Authorisations shall not constitute an excusable delay under the Excusable Delay clause of this Contract.

(d) SELLER represents that neither SELLER nor any parent, subsidiary or affiliate of SELLER is included on any of the restricted party lists maintained by the U.S. Government, including the Specially Designated Nationals List administered by the U.S. Treasury Department’s Office of Foreign Assets Control (“OFAC”), Denied Parties List, Unverified List or Entity List maintained by the U.S. Commerce Department’s Bureau of Industry and Security (“BIS”) or the List of Statutorily Debarred Parties maintained by the U.S. State Department’s Directorate of Defense Trade Controls, or the consolidated list of asset freeze targets designated by the United Nations, European Union, and United Kingdom (collectively, “Restricted Party Lists”). SELLER shall immediately notify the LOCKHEED MARTIN Procurement Representative if SELLER or any parent, subsidiary or affiliate of SELLER is, or becomes, listed on any Restricted Party List or if SELLER's export privileges are otherwise denied, suspended or revoked in whole or in part by any United Kingdom, or other relevant governmental entity or agency.

(e) SELLER shall immediately notify LOCKHEED MARTIN upon learning that any subcontractor or lower-tier supplier with which it engages or the country in which it or such subcontractor or supplier is based has become listed on the Restricted Party Lists.

(f) Where SELLER is to use technical data controlled under applicable Trade Control Laws for the performance of the Work SELLER shall comply with the following:

(1) The technical data shall be used only to perform the Work required by this Contract; and

- (2) The data shall not be disclosed to any person not authorized for receipt of the data under an applicable Export Authorization; and
- (3) Any rights in the data may not be acquired by any foreign person; and
- (4) SELLER, including lower tier subcontractors, shall return, or at LOCKHEED MARTIN's direction, destroy, all of the technical data exported to SELLER pursuant to this Contract upon fulfillment of its terms; and
- (5) Unless otherwise directed by LOCKHEED MARTIN, SELLER shall deliver the Work only to LOCKHEED MARTIN; and
- (6) SELLER shall include the terms of this paragraph (e) in all lower tier subcontracts issued under which technical data is provided to a lower tier subcontractor.
- (7) LOCKHEED MARTIN ITAR Controlled Technical Data can be provided only to nationals of the same country in which SELLER is located. SELLER shall not permit third country national employees and/or employees with dual country nationality to access LOCKHEED MARTIN ITAR Controlled Technical Data without separate authorisation and approval by LOCKHEED MARTIN and the U.S. Government.
- (g) SELLER shall include paragraphs (a) to (b) inclusive and (d) to this paragraph (g) inclusive of this clause or equivalent provisions in lower tier subcontracts for the delivery of items that will be included in or furnished as Work to LOCKHEED MARTIN.
- (h) SELLER shall be responsible for all losses, costs, claims, causes of action, damages, liabilities and expense, including attorney's fees, all expense of litigation and/or settlement, and court costs, arising from any act or omission of SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this clause.

## **16. EXTRAS**

Work shall not be supplied in excess of quantities specified in this Contract. SELLER shall be liable for handling charges and return shipment costs for any excess quantities.

## **17. FURNISHED/ISSUED PROPERTY**

- (a) LOCKHEED MARTIN may, by written authorization, provide to SELLER property owned by either LOCKHEED MARTIN or its customer (Furnished Property). Furnished Property shall be used only for the performance of this Contract.
- (b) Title to Furnished Property shall remain in LOCKHEED MARTIN or its customer. SELLER shall clearly mark (if not so marked) all Furnished Property to show its ownership.
- (c) Except for reasonable wear and tear, SELLER shall be responsible for, and shall promptly notify LOCKHEED MARTIN of, any loss or damage to Furnished Property. Without additional charge, SELLER shall manage, maintain, and preserve Furnished Property in accordance with applicable law, the requirements of this Contract and good commercial practice.

(d) At LOCKHEED MARTIN's request, and/or upon completion of this Contract, SELLER shall submit, in an acceptable form, inventory lists of Furnished Property and shall deliver or make such other disposal as may be directed by LOCKHEED MARTIN.

(e) Property furnished or issued by the Authority, or that the Authority takes title under this Contract shall be subject to the DEFCONs included in this Contract in lieu of paragraphs (a) through (d) above.

(f) SELLER shall have no lien over Furnished Property and shall ensure that no lower tier subcontractor at any level shall have or purport to have any lien over Furnished Property and SELLER shall procure that the exclusion of any such lien is brought to the attention of all lower tier subcontractors and any other persons who might deal with Furnished Property or otherwise claim to have a lien over it.

## **18. INDEMNITY**

SELLER shall defend, indemnify, and hold harmless LOCKHEED MARTIN, its officers, directors, employees, consultants, agents, affiliates, successors, permitted assigns and customers from and against all losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorney's fees, all expenses of litigation and/or settlement, and court costs, arising from any act or omission of SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this Contract.

## **19. INDEPENDENT CONTRACTOR RELATIONSHIP**

SELLER is an independent contractor in all its operations and activities hereunder. The employees used by SELLER to perform Work under this Contract shall be SELLER's employees exclusively without any relation whatsoever to LOCKHEED MARTIN.

## **20. INELIGIBILITY FOR AWARD**

(a) SELLER certifies that, to the best of its knowledge and belief, that:

(1) SELLER and/or any of its principals, are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any government agency, including, without limitation, any US Government agency;

(2) A contracting authority would not be required or permitted to treat SELLER as ineligible pursuant to Regulation 23(1) and 23(4) of the Defence and Security Public Contracts Regulations 2011; and

(3) A contracting authority would not be required or permitted to exclude SELLER from participation in a procurement procedure pursuant to Regulation 57(1), 57(3) and 57(4) of the Public Contracts Regulations 2015.

(b) SELLER shall provide immediate written notice to LOCKHEED MARTIN if, at any time it learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

**21. INFORMATION ASSURANCE**

(a) Information provided by LOCKHEED MARTIN to SELLER remains the property of LOCKHEED MARTIN. SELLER shall comply with the terms of any proprietary information agreement with LOCKHEED MARTIN and comply with all proprietary information markings and restrictive legends applied by LOCKHEED MARTIN to anything provided hereunder to SELLER. SELLER shall not use any LOCKHEED MARTIN provided information for any purpose except to perform this Contract and shall not disclose such information to third parties without the prior written consent of LOCKHEED MARTIN. SELLER shall maintain data protection processes and systems sufficient to adequately protect LOCKHEED MARTIN provided information and comply with any law or regulation applicable to such information.

(b) If SELLER becomes aware of any compromise of information used in the performance of this Contract or provided by LOCKHEED MARTIN to SELLER, its officers, employees, agents, suppliers, or subcontractors (an “Incident”), SELLER shall take appropriate immediate actions to investigate and contain the Incident and any associated risks, including notification within seventy-two (72) hours to LOCKHEED MARTIN after learning of the Incident. As used in this clause, “compromise” means that information has been exposed to unauthorized access, inadvertent disclosure, known misuse, loss, destruction, or alteration other than as required to perform the Work. SELLER shall provide reasonable cooperation to LOCKHEED MARTIN in conducting any investigation regarding the nature and scope of any Incident. Any costs incurred in investigating or remedying Incidents shall be borne by SELLER.

(c) Any LOCKHEED MARTIN provided information identified as proprietary or subject to restrictions on public disclosure by law or regulation shall be encrypted (i) if transmitted via the Internet, or (ii) during electronic storage if potentially accessible by the Internet or otherwise by non-authorized users.

(d) (1) SELLER warrants that any data provided in support of this Contract that is identified by LOCKHEED MARTIN as sensitive data shall only be stored on electronic system(s) that have been accredited to the HMG Standard Cyber Essentials Scheme (CES), or alternative certification approved by LOCKHEED MARTIN. Furthermore, SELLER warrants that it will maintain the retention of CES or equivalent certification for the period that said data is retained including any statutory period of records beyond the contract cessation date. SELLER shall identify where the information technology system processing, storing or allowing access to the information covered by this Contract is outsourced (to another organisation) or ‘off-shored’ outside of the United Kingdom. In such cases LOCKHEED MARTIN may request additional information, and impose additional requirements or constraints. SELLER shall inform LOCKHEED MARTIN of any changes to the information technology services that impact this Contract.

(2) Any Authority Sensitive Data or data that shall be developed by SELLER or in collaboration between LOCKHEED MARTIN and SELLER shall be handled in accordance with DEFCON 658 (Edn 10/17) and with the Cyber Risk Profile defined in the Statement of Work. Any further procurement or re-subcontracting that requires the sharing of Authority Sensitive information as described in DEFCON 658 (Edn 10/17) current edition shall be flowed down by SELLER, and SELLER shall warrant that it will procure that the same requirements are procured from their subcontractors until such time as there is no longer a need to share Authority Sensitive data. In all cases the requirements of DEFCON 658 (Edn 10/17) and DEFSTAN 05-138 shall be maintained.

(e) The provisions set forth above are in addition to and do not alter, change or supersede any obligations contained in a proprietary information agreement between the parties.

## **22. INFORMATION OF SELLER**

SELLER shall not provide any proprietary information to LOCKHEED MARTIN without prior execution of a proprietary information agreement by the parties.

## **23. INSPECTION, ACCEPTANCE AND TEST**

(a) LOCKHEED MARTIN and its customer may inspect all Work at reasonable times and places, including, when practicable, during manufacture and before shipment. SELLER shall provide all information, facilities, and assistance necessary for safe and convenient inspection without additional charge.

(b) No such inspection shall relieve SELLER of its obligations to furnish and warrant all Work in accordance with the requirements of this Contract. LOCKHEED MARTIN's final inspection and acceptance shall be at destination.

(c) If SELLER delivers non-conforming Work, LOCKHEED MARTIN may, in addition to any other remedies available at law or at equity: (i) accept all or part of such Work at an equitable price reduction; or (ii) reject such Work; or (iii) require SELLER, at SELLER's cost, to make all repairs, modifications, or replacements at the direction of LOCKHEED MARTIN necessary to enable such Work to comply in all respects with Contract requirements.

(d) SELLER shall not re-tender rejected Work without disclosing the corrective action taken.

(e) Unless this Contract expressly provides otherwise, title to Work shall pass to LOCKHEED MARTIN upon final acceptance. If under this Contract any part of the price is payable before delivery, the ownership of all material allocated for the Contract shall vest in LOCKHEED MARTIN when it is so allocated and SELLER shall mark the material accordingly but it shall be at SELLER's risk until delivered to LOCKHEED MARTIN.

## **24. INSURANCE**

(a) SELLER and its subcontractors shall maintain for the performance of this Contract the following insurances:

(1) Employers liability insurance in the amount of £10 million per occurrence;

(2) Public liability insurance in the amount of £5 million per occurrence;

(3) Products liability insurance in the amount of £5 million per occurrence;

(4) Professional indemnity (as applicable) in the amount of £5 million per claim;

(5) All such other insurance that is required by law; and

(6) Such other insurance as LOCKHEED MARTIN may require.

(b) SELLER shall provide LOCKHEED MARTIN thirty (30) days advance written notice prior to the effective date of any cancellation or change in the term or coverage of any of SELLER's required insurance, provided however such notice shall not relieve SELLER of its obligations to procure and maintain the required insurance. SELLER's insurance will include an "Indemnity to Principals" clause in favor of LOCKHEED MARTIN, or will name LOCKHEED MARTIN as additional insured. If requested, SELLER shall send a "Certificate of Insurance" showing SELLER's compliance with these requirements. Insurance maintained pursuant to this clause shall be considered primary as respects the interest of LOCKHEED MARTIN and is not contributory with any insurance, which LOCKHEED MARTIN may carry. "Subcontractor" as used in this clause shall include SELLER's subcontractors at any tier. SELLER's obligations for procuring and maintaining insurance coverages are freestanding and are not affected by any other language in this Contract.

## 25. INTELLECTUAL PROPERTY

(a) In this clause, "Foreground Information" means inventions, technology, designs, works of authorship, mask works, technical information, computer software, business information and other information conceived, developed or otherwise generated in the performance of this Contract by or on behalf of SELLER; and "Background Information" means inventions, technology, designs, works of authorship, mask works, technical information, computer software, business information and other information conceived, developed or otherwise generated by or on behalf of SELLER otherwise than under this Contract.

(b) SELLER agrees that LOCKHEED MARTIN shall be the owner of all Foreground Information. SELLER hereby assigns and shall assign all right, title, and interest in the foregoing to LOCKHEED MARTIN, including without limitation all copyrights, patent rights and other intellectual property rights therein and further shall execute, at LOCKHEED MARTIN's request and expense, all documentation necessary to perfect title therein in LOCKHEED MARTIN. SELLER shall maintain and disclose to LOCKHEED MARTIN written records of, and otherwise provide LOCKHEED MARTIN with full access to, the subject matter covered by this clause and that all such subject matter will be deemed information of LOCKHEED MARTIN and subject to the protection provisions of the clause entitled "Information Assurance". SELLER shall assist LOCKHEED MARTIN, at LOCKHEED MARTIN's request and expense, in every reasonable way, in obtaining, maintaining, and enforcing patent and other intellectual property protection on the subject matter covered by this clause.

(c) SELLER warrants that the Work performed or delivered under this Contract and the use by LOCKHEED MARTIN or its customers of any such Work will not infringe or otherwise violate the intellectual property rights of any third party in the United Kingdom or any foreign country. SELLER shall defend, indemnify, and hold harmless LOCKHEED MARTIN, its officers, directors, employees, consultants, agents, affiliates, successors, permitted assigns and customers from and against all losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorney's fees, all expenses of litigation and/or settlement, and court costs, arising out of any action by a third party that is based upon a claim that the Work performed or delivered under this Contract infringes or otherwise violates the intellectual property rights of any person or entity.

(d) To the extent that any Background Information used, included, or contained in the Work or deliverable items and not owned by LOCKHEED MARTIN pursuant to this or a previous agreement with SELLER, SELLER grants to LOCKHEED MARTIN an irrevocable, non-exclusive, world-wide, royalty-free licence to: (i) make, have made, sell, offer for sale, use,



execute, reproduce, display, perform, distribute (internally or externally) copies of, transfer computer software, and prepare derivative works based upon, such Background Information and (ii) authorize others to do any, some or all of the foregoing.

(e) The tangible medium storing copies of all reports, memoranda or other materials in written form including machine readable form, prepared by SELLER and furnished to LOCKHEED MARTIN pursuant to this Contract shall become the sole property of LOCKHEED MARTIN.

(f) Clauses (b) and (d) above shall not apply to any Contract in which SELLER has signed a Design Rights and Patents (Subcontractors) Agreement set out in DEFFORM 177 with the Ministry of Defence. In relation to any such Contract, LOCKHEED MARTIN is hereby granted by the Seller a non-exclusive, world-wide, perpetual, irrevocable, royalty-free licence (with a right to sub-licence) to use and to have used on its behalf in the performance of LOCKHEED MARTIN's obligations under the Prime Contract and any other contract with the UK Ministry of Defence or any other UK Government department all Foreground Information including all copyrights, patent rights and other intellectual property rights therein, This licence includes a licence under any Background Information, and intellectual property rights therein, required to enable LOCKHEED MARTIN to exercise the licence granted under this clause (f).

(g) No other provision in this Contract, including but not limited to the Indemnity clause, shall be construed to limit the liabilities or remedies of the parties under this clause.

## **26. LANGUAGE AND STANDARDS**

All reports, correspondence, drawings, notices, marking, and other communications shall be in the English language. The English version of the Contract shall prevail. Unless otherwise provided in writing all documentation and work shall employ the units of weights and measures called for by the Statement of Work, Technical Specifications, etc., applicable to this Contract.

## **27. NEW MATERIALS**

The Work to be delivered hereunder shall consist of new materials, not used, or reconditioned, remanufactured, or of such age as to impair its usefulness or safety.

## **28. OFFSET CREDIT/COOPERATION**

This Contract has been entered into in consideration of LOCKHEED MARTIN's international offset programs. All offset benefit credits resulting from this Contract are the sole property of LOCKHEED MARTIN to be applied to the offset program of its choice. SELLER shall assist LOCKHEED MARTIN in securing appropriate offset credits from the respective country government authorities. SELLER agrees to make fair and reasonable representations to the pertinent Offset authority to help LOCKHEED MARTIN secure the award of said credits.

## **29. PACKING AND SHIPMENT**

(a) Unless otherwise specified, all Work is to be packed in accordance with good commercial practice.

(b) A complete packing list shall be enclosed with all shipments. SELLER shall mark containers or packages with necessary lifting, loading, and shipping information, including the LOCKHEED MARTIN Contract number, item number, dates of shipment, and the names and addresses of consignor and consignee. Bills of lading shall include this Contract number.

(c) Unless otherwise specified, delivery shall be Delivery Duty Paid (INCOTERMS 2010 DDP) to the destination identified in this Contract.

### **30. PAYMENTS, TAXES, AND DUTIES**

(a) Unless otherwise provided, terms of payment shall be net thirty (30) days from the latest of the following: (1) LOCKHEED MARTIN's receipt of SELLER's proper invoice; (2) scheduled delivery date of the Work; or (3) actual delivery of the Work.

(b) Each payment made shall be subject to reduction to the extent of amounts which are found by LOCKHEED MARTIN or SELLER not to have been properly payable, and shall also be subject to reduction for overpayments. SELLER shall promptly notify LOCKHEED MARTIN of any such overpayments and remit the amount of the overpayment except as otherwise directed by LOCKHEED MARTIN.

(c) LOCKHEED MARTIN shall have a right to recoup or setoff, as the case may be, against payments due or at issue under this Contract or any other contract between the parties.

(d) Payment shall be deemed to have been made as of the date of mailing LOCKHEED MARTIN's payment or electronic funds transfer.

(e) The prices stated in the Contract shall be in pounds Sterling and firm i.e., not subject to variation for any reason whatsoever and include all royalties, licences and taxes (other than United Kingdom Value Added Tax and Customs Duty) which may be payable. The prices also include any cost of embodiment, packaging, handling and cost of compliance with all conditions of the Contract, unless otherwise stated elsewhere herein.

### **31. PLACE OF PERFORMANCE**

If SELLER intends to change the place of performance of Work under this Contract from the place(s) identified in SELLER's proposal, SELLER shall provide prior advance notice to LOCKHEED MARTIN. Notification of changes to the place of performance from within the United Kingdom to a location outside the United Kingdom shall be provided by SELLER to LOCKHEED MARTIN at least six months in advance.

### **32. PRECEDENCE**

Any inconsistencies in this Contract shall be resolved in accordance with the following descending order of precedence:

(1) Face of the Purchase Order and/or Task Order, release document, or schedule, (including any continuation sheets), as applicable, including any special terms and conditions; (2) this CorpDoc; and (3) the Statement of Work.

### **33. QUALITY MANAGEMENT SYSTEM AND PLANS**

(a) SELLER shall provide a plan and maintain a quality management system to an industry recognised Quality Standard and in compliance with any other specific quality requirements identified in this Contract. As a minimum this should meet the requirements of ISO 9001: 2008.

(b) In the event that the SELLER is providing Work for aerospace the SELLER's quality management system shall be fully compliant with the requirements of the Aerospace standard AS 9100 C & ISO 9001:2008.

(c) All quality records produced by the SELLER shall be kept complete and access available to LOCKHEED MARTIN and its Customer for seven (7) years from the date final payment is received by SELLER.

(d) This Contract may be subject to quality assurance surveillance at SELLER's facility on behalf of the Authority. SELLER shall provide any assistance needed by the quality assurance representative of the Authority to enable conduct of such QA surveillance. Where work is to be undertaken outside of the UK as the result of the Contract or lower tier subcontract(s)/order(s), the Authority's QA surveillance may be conducted directly by the Authority or requested from the National Quality Assurance Assessor (QAA) in the relevant countries in accordance with STANAG 4107, and/or relevant Memoranda of Understanding (MOUs) agreed between the governments concerned, or other agreed arrangements. The Authority or National QAA shall be entitled to undertake QA surveillance on behalf of the Authority at the SELLER'S or lower tier subcontractors' premises.

### **34. RELEASE OF INFORMATION**

Except as required by law, no public release of any information, or confirmation or denial of same, with respect to this Contract or the subject matter hereof, will be made by SELLER or its subcontractors without the prior written approval of LOCKHEED MARTIN. SELLER shall not use "Lockheed Martin," "Lockheed Martin Corporation," or any other trademark or logo owned by LOCKHEED MARTIN, in whatever shape or form, without the prior written consent of LOCKHEED MARTIN.

### **35. RETENTION OF RECORDS**

Unless a longer period is specified in this Contract or by law or regulation, SELLER shall retain all records related to this Contract for three (3) years from the date of final payment received by SELLER. Records related to this Contract include, but are not limited to, financial, proposal, procurement, specifications, production, inspection, test, quality, shipping and export, and certification records. At no additional cost, SELLER shall timely provide access to such records to the UK Government and/or LOCKHEED MARTIN upon request.

### **36. RIGHTS OF THIRD PARTIES**

A person who is not a party to this Contract may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

### **37. SEVERABILITY**

Each clause, paragraph and subparagraph of this Contract is severable, and if one or more of them are declared invalid, the remaining provisions of this Contract will remain in full force and effect.

### **38. STOP WORK**

(a) SELLER shall stop Work for up to ninety (90) days in accordance with any written notice received from LOCKHEED MARTIN, or for such longer period of time as the parties may agree and shall take all reasonable steps to minimize the incurrence of costs allocable to the Work during the period of Work stoppage.

(b) Within such period, LOCKHEED MARTIN shall either terminate in accordance with the provisions of this Contract or continue the Work by written notice to SELLER. In the event of a continuation, an equitable adjustment in accordance with the principles of the "Changes" clause shall be made to the price, delivery schedule, or other provision(s) affected by the Work stoppage, if applicable, provided that the claim for equitable adjustment is made within thirty (30) days after date of notice to continue.

### **39. SURVIVABILITY**

All rights, obligations, and duties hereunder, which by their nature or by their express terms extend beyond the expiration or termination of this Contract, including but not limited to warranties, indemnifications, intellectual property (including rights to and protection of intellectual property and proprietary information), and product support obligations shall survive the expiration or termination of this Contract.

### **40. TERMINATION FOR CONVENIENCE**

(a) LOCKHEED MARTIN may terminate part or all of this Contract for its convenience by giving written notice to SELLER.

(b) Upon termination, in accordance with LOCKHEED MARTIN written direction, SELLER will immediately: (i) Cease work; (ii) Prepare and submit to LOCKHEED MARTIN an itemization of all completed and partially completed deliverables and services; (iii) Deliver to LOCKHEED MARTIN any and all Work completed up to the date of termination at the agreed upon prices; and (iv) Deliver upon request any Work in process.

(c) In the event LOCKHEED MARTIN terminates for its convenience after performance has commenced and the parties cannot agree upon a reasonable restocking or service charge, LOCKHEED MARTIN will compensate SELLER for the actual and reasonable expenses incurred by SELLER for Work in process up to and including the date of termination provided SELLER uses reasonable efforts to mitigate LOCKHEED MARTIN's liability under this clause.

(d) In no event shall LOCKHEED MARTIN be liable for lost or anticipated profits, or unabsorbed indirect costs or overhead, or for any sum in excess of the total Contract price. SELLER's termination claim shall be submitted within ninety (90) days from the effective date of the termination.

(e) SELLER shall continue all Work not terminated.

#### 41. TIMELY PERFORMANCE

- (a) SELLER's timely performance is a critical element of this Contract.
- (b) Unless advance shipment has been authorized in writing by LOCKHEED MARTIN, LOCKHEED MARTIN may store at SELLER's expense, or return, shipping charges collect, all Work received in advance of the scheduled delivery date.
- (c) SELLER shall provide LOCKHEED MARTIN status of performance of this Contract when requested. In addition, if SELLER becomes aware of an impending labor dispute involving SELLER or any lower tier subcontractor, or any other difficulty in performing the Work, SELLER shall timely notify LOCKHEED MARTIN, in writing, giving pertinent details. These notifications shall not change any delivery schedule.
- (d) In the event of a termination for convenience or change, no claim will be allowed for any manufacture or procurement in advance of SELLER's normal flow time unless there has been prior written consent by LOCKHEED MARTIN.

#### 42. USE OF FREE, LIBRE AND OPEN SOURCE SOFTWARE (FLOSS)/HARMFUL CODE

- (a) This clause only applies to Work that includes the delivery of software (including software residing on hardware).
- (b) SELLER shall disclose to LOCKHEED MARTIN in writing any FLOSS that will be used or delivered in connection with this Contract and shall obtain LOCKHEED MARTIN's prior written consent before using or delivering such FLOSS in connection with this Contract. LOCKHEED MARTIN may withhold such consent in its sole discretion. SELLER warrants all FLOSS used or delivered in connection with this Contract complies with any applicable FLOSS License.
- (c) SELLER represents and warrants that any code provided in the Work shall not contain any Harmful Code. SELLER shall have written procedures designed to prevent any code provided in the Work from being contaminated by Harmful Code, and will, upon request, make such procedures available to LOCKHEED MARTIN for review. SELLER shall notify LOCKHEED MARTIN immediately of any suspected or known contamination, remove any Harmful Code, and restore the code to meet contract specifications.
- (d) As used herein,
  - (1) "FLOSS Licence" means the General Public Licence ("GPL"), Lesser/Library GPL, (LGPL), the Affero GPL (APL), the Apache licence, the Berkeley Software Distribution ("BSD") licence, the MIT licence, the Artistic Licence (e.g., PERL), the Mozilla Public Licence(MPL), or variations thereof, including without limitation licences referred to as "Free Software Licence", "Open Source Licence", "Public Licence", or "GPL Compatible Licence."
  - (2) "FLOSS" means software that incorporates or embeds software in, or uses software in connection with, as part of, bundled with, or alongside any (i) open source, publicly available, or "free" software, library or documentation, or (ii) software that is licenced under a FLOSS Licence, or (iii) software provided under a licence that (A) subjects the delivered software to any FLOSS Licence, or (B) requires the delivered software to be licenced for the purpose of making derivative works or be redistributable at no charge, or (C) obligates LOCKHEED MARTIN to sell, loan, distribute, disclose or

otherwise make available or accessible to any third party (a) the delivered software, or any portion thereof, in object code and/or source code formats, or (b) any products incorporating the delivered software, or any portion thereof, in object code and/or source code formats.

(3) "Harmful Code" means any computer code or programming instructions that are intentionally constructed with the ability to damage or otherwise adversely affect computer programs, data files or hardware or gather information without the agreement or consent of the user.

#### **43. WAIVERS, APPROVALS, AND REMEDIES**

(a) Failure by either party to enforce any of the provisions of this Contract or applicable law shall not constitute a waiver of the requirements of such provisions or law, or as a waiver of the right of a party thereafter to enforce such provision or law.

(b) LOCKHEED MARTIN's approval of documents shall not relieve SELLER of its obligation to comply with the requirements of this Contract.

(c) The rights and remedies of either party in this Contract are cumulative and in addition to any other rights and remedies provided by law or in equity.

#### **44. WARRANTY**

SELLER warrants that all Work furnished pursuant to this Contract shall strictly conform to applicable specifications, drawings, samples, descriptions, and other requirements of this Contract and be free from defects in design, material, and workmanship and shall be fit for purpose and of satisfactory quality. This warranty shall begin upon final acceptance and extend for a period of one (1) year. If any nonconforming Work is identified by LOCKHEED MARTIN then without prejudice to any other remedy of LOCKHEED MARTIN, SELLER, at LOCKHEED MARTIN's option, shall promptly repair, replace, or re-perform the Work. Transportation of replacement Work, return of nonconforming Work, and re-performance of Work shall be at SELLER's expense. If repair, or replacement, or re-performance of Work is not carried out promptly, LOCKHEED MARTIN may elect to return, re-perform, repair, replace, or reprocur the non-conforming Work at SELLER's expense. All warranties shall enure to the benefit of both LOCKHEED MARTIN and its customers.

#### **45. WORK ON LOCKHEED MARTIN AND THIRD PARTY PREMISES**

(a) "Premises" as used in this clause means premises of LOCKHEED MARTIN, its customers, or other third parties where Work is being performed.

(b) SELLER shall ensure that SELLER personnel working on Premises comply with any on-premises policies and: (i) do not bring weapons of any kind onto Premises; (ii) do not manufacture, sell, distribute, possess, use or be under the influence of controlled substances or alcoholic beverages while on Premises; (iii) do not possess hazardous materials of any kind on Premises without LOCKHEED MARTIN's authorisation; (iv) remain in authorised areas only; (v) do not conduct any non-LOCKHEED MARTIN related business activities (such as interviews, hirings, dismissals or personal solicitations) on Premises, (vi) do not send or receive non-LOCKHEED MARTIN related mail through LOCKHEED MARTIN's or third party's

mail systems; (vii) do not sell, advertise or market any products or memberships, distribute printed, written or graphic materials on Premises without LOCKHEED MARTIN's written permission or as permitted by law; and (viii) follow instruction from LOCKHEED MARTIN in the event of an actual or imminent safety or environmental hazard on Premises.

(c) All persons, property, and vehicles entering or leaving Premises are subject to search.

(d) SELLER shall promptly notify LOCKHEED MARTIN and provide a report of any accidents or security incidents involving loss of or misuse or damage to LOCKHEED MARTIN, customer, or third party intellectual or physical assets, and all physical altercations, assaults, or harassment.

(e) SELLER'S personnel, including SELLER's subcontractors, shall comply with all LOCKHEED MARTIN security, safety, rules of conduct, badging and personal identity, and related requirements while on LOCKHEED MARTIN Premises. Prior to entry on Premises, SELLER shall coordinate with LOCKHEED MARTIN to gain access. SELLER shall provide information reasonably required by LOCKHEED MARTIN to ensure proper identification of personnel, including, but not limited to verification of citizenship, lawful permanent resident status, protected individual or other status.

(f) SELLER shall ensure that SELLER personnel: (i) do not remove LOCKHEED MARTIN, customer, or third party assets from Premises without LOCKHEED MARTIN authorisation; (ii) use LOCKHEED MARTIN, customer, or third party assets only for purposes of this Contract; (iii) only connect with, interact with or use computer resources, networks, programs, tools or routines authorised by LOCKHEED MARTIN; and (iv) do not share or disclose user identifiers, passwords, cipher keys or computer dial port telephone numbers. LOCKHEED MARTIN may periodically audit SELLER's data residing on LOCKHEED MARTIN, customer, or third party assets on Premises.

(g) LOCKHEED MARTIN may, at its sole discretion, have SELLER remove any specified employee of SELLER from Premises and require that such employee not be reassigned to any Premises under this Contract.

(h) Violation of this clause may result in termination of this Contract in addition to any other remedy available to LOCKHEED MARTIN at law or in equity. SELLER shall reimburse LOCKHEED MARTIN, customer, or third party for any unauthorised use of LOCKHEED MARTIN, customer, or third party assets.

(i) SELLER shall advise the LOCKHEED MARTIN Procurement Representative of any unauthorised direction or course of conduct.

(j) SELLER shall immediately report to LOCKHEED MARTIN all emergencies (e.g., medical, fire, spills or release of any hazardous material) and non-emergency incidents (e.g., job-related injuries or illnesses) affecting the Work. SELLER shall provide LOCKHEED MARTIN with a copy of any reports of such incidents SELLER makes to governmental authorities.

## **SECTION II: DEFCON FLOWDOWN PROVISIONS**

### **A. INCORPORATION OF DEFCON CLAUSES**

The United Kingdom Ministry of Defence Conditions ("DEFCON") clauses referenced below are incorporated herein by reference, with the same force and effect as if they were given in full text, and shall apply to this Contract in the

circumstances stated below, and subject to any notes following the clause citation. Where, prior to the date of this Contract the DEFCON recited below has been superseded by a later version or edition of the DEFCON, then the later version or edition shall be deemed to form part of this Contract in place of the edition or version cited below.

**B. NOTES**

(a) As used in the DEFCON clauses referenced below and otherwise in this Contract:

1. The term "Contractor," mean "SELLER" as defined in Section I, Standard Provisions.
2. "Contract" means this contract.
3. "Prime Contract" means the contract between LOCKHEED MARTIN and the UK Ministry of Defence or between LOCKHEED MARTIN and its customer who has a contract with the UK Ministry of Defence.
4. "Sub-contract" means any contract placed by SELLER or lower-tier sub-contractors under this Contract.

(b) DEFCON 501 Definitions and Interpretations (Edn 11/18) shall apply to the extent that any of the DEFCONs included in the Contract contain any of the defined terms therein. The provisions of DEFCON 501 are in addition to any definitions included in the Contract. In the event of a conflict between a definition contained at DEFCON 501 and a definition contained elsewhere in the Contract, the definition in the Contract shall take precedence unless otherwise noted.

**C. AMENDMENTS REQUIRED BY PRIME CONTRACT**

SELLER agrees that upon the request of LOCKHEED MARTIN it will negotiate in good faith with LOCKHEED MARTIN relative to amendments to this Contract to incorporate additional provisions herein or to change provisions hereof, as LOCKHEED MARTIN may reasonably deem necessary in order to comply with the provisions of the applicable Prime Contract or with the provisions of amendments to such Prime Contract. If any such amendment to this Contract causes an increase or decrease in the cost of, or the time required for, performance of any part of the Work under this Contract, an equitable adjustment shall be made pursuant to the "Changes" clause of this Contract.

**D. DEFCON FLOWDOWN CLAUSES INCORPORATED BY REFERENCE**

1. The following DEFCON clauses are incorporated into this Contract:

DEFCON 23 Special Jigs, Tooling And Test Equipment (Edn 08/09) (Applies if special jigs, tooling and/or test equipment are acquired under the Contract. Communications between SELLER and the Authority under this clause shall be made through LOCKHEED MARTIN. In paragraph 3, "other Government funds" is changed to "from under contracts with LOCKHEED MARTIN contracts or UK Government funds." In paragraphs 7 and 8, "Authority" means "LOCKHEED MARTIN and the Authority.")

DEFCON 68 Supply Of Hazardous Articles And Substances (Edn 02/17) (Applies if the Contract involves the delivery of, or requires interaction with, hazardous substances.) (Information furnished under this clause shall be submitted by SELLER to LOCKHEED MARTIN.)



DEFCON 76 Contractor's Personnel At Government Establishments (Edn 12/06) (Applies if SELLER will access UK Government establishments during the term of this Contract.)

DEFCON 113 Diversion Orders (Edn 02/17) (SELLER shall promptly comply with any instructions to divert orders given to it by LOCKHEED MARTIN where such instructions arise from LOCKHEED MARTIN's receipt of instructions from the UK Ministry of Defence under and in accordance with DEFCON 113.)

DEFCON 117 Supply of Documentation for NATO Codification and Defence Inventory Purposes (Edn 10/13) (Communications between SELLER and the Authority under this clause shall be made through LOCKHEED MARTIN.)

DEFCON 127 Price Fixing Condition For Contracts Of Lesser Value (Edn 12/14) (Applies if the contract exceeds £250,000 and the Contract is awarded by other than competitive tender. "Authority" means "LOCKHEED MARTIN" except in paragraph 5 where it means "Authority and LOCKHEED MARTIN.")

DEFCON 129 Packaging (For Articles Other than Munitions) (Edn 18/11/16) (Applicable if SELLER will make direct shipments to the Authority.)

DEFCON 513 Value Added Tax (Edn 11/16)

DEFCON 516 Equality (Edn 04/12)

DEFCON 520 Corrupt Gifts And Payments Of Commission (Edn 02/17) (In paragraph 4 delete "DEFCON 614" and replace with "the clause entitled "Default" of the Contract.")

DEFCON 528 Import and Export Licenses (Edn 07/17)

DEFCON 531 Disclosure of Information (Edn 11/14) (Applies unless the parties have entered into a separate Non-Disclosure Agreement.)

DEFCON 550 Child Labour and Employment Law (Edn 02/14)

DEFCON 595 General Purpose Automatic Test Equipment Data Requirements (Edn 02/16) (Applies if SELLER generates test data specified in the Annex to this DEFCON.)

DEFCON 601 Redundant Material (Edn 04/14) (Applies if redundant material, will be provided to SELLER under the Contract.) "Authority" means "LOCKHEED MARTIN" except in paragraph 1 where it means "Authority or LOCKHEED MARTIN.")

DEFCON 607 Radio Transmissions (Edn 05/08) (Applies if SELLER will be required to make radio transmissions in connection with testing and developing electronic equipment.)

DEFCON 608 Access And Facilities To Be Provided By The Contractor (Edn 10/14) (Clauses 1 and 2 apply if SELLER is identified in LOCKHEED MARTIN's Prime Contract. The term "Authority" includes LOCKHEED MARTIN.)

DEFCON 611 Issued Property (Edn 02/16) (Applies if SELLER will be provided Customer Issued Property.) Applies to United Kingdom Issued Property in the possession of SELLER. Communications between SELLER and the Authority under this clause shall be made through LOCKHEED MARTIN.)

DEFCON 624 Use of Asbestos (Edn 11/13) (Applies if SELLER will be furnishing parts or material under this Contract.)

DEFCON 627 Quality Assurance – Requirement for a Certificate of Conformity (Edn 12/10) ("Authority means "LOCKHEED MARTIN.")

DEFCON 632 Third Party Intellectual Property - Rights and Restrictions (Edn 08/12)

DEFCON 637 Defect Investigation and Liability (Edn 05/17) ("Authority" and "IPT Project Manager/Equipment Support Manager" means LOCKHEED MARTIN.)

DEFCON 643 Price Fixing (Edn 12/14) (Applies if this Contract exceeds £250,000. Only the Appendix to this DEFCON applies. "Contractor means "LOCKHEED MARTIN" and "subcontractor" means "SELLER.")

DEFCON 644 Marking of Articles (Edn 05/17) (Applies if SELLER will make direct shipments to the Authority.)

DEFCON 645 Export Potential (Edn. 07/99)

DEFCON 649 Vesting (Edn 12/16) ("Authority" means "LOCKHEED MARTIN." "DEFCON 525" means "the acceptance provisions of this Contract." Nothing in this paragraph shall prejudice the Authority's rights under the Vesting provision in the Prime Contract.)

DEFCON 653 Pricing On Ascertained Costs (Edn 12/14) (Applies if this Contract exceeds \$100,000. Only the Appendix to this DEFCON applies. "Subcontractor" means "SELLER." "Authority" includes "LOCKHEED MARTIN.")

DEFCON 656A Termination for Convenience (Contracts Under £5m) (Edn 08/16) (Applies provided that this right is not exercised unless the main contract, or relevant part, has been terminated by the Secretary of State for Defence in accordance with the provisions of DEFCON 656A. DEFCON 656B applies in lieu of this clause if the prime contract contains that clause."Authority" means "LOCKHEED MARTIN.")

DEFCON 656B Termination for Convenience (Contracts £5m and Over) (Edn 08/16) (Applies provided that this right is not exercised unless the main contract, or relevant part, has been terminated by the Secretary of State for Defence in accordance with the provisions of DEFCON 656A. DEFCON 656A applies in lieu of this clause if the prime contract contains that clause. "Authority" means "LOCKHEED MARTIN" except in Sub-Clause 3.a.)

DEFCON 658 Cyber (Edn 10/17)

DEFCON 659A Security Measures (Edn 02/17) (Only the Appendix applies. Applies if SELLER will require access to material marked as Confidential or above. "Second Party" means SELLER. "Subcontractor" means SELLER's lower tier subcontractor.)

DEFCON 660 Official-Sensitive Security Requirements (Edn 12/15)

DEFCON 691 Timber and Wood - Derived Products (Edn 03/15) ("Authority" means "LOCKHEED MARTIN and the Authority.")

DEFCON 694 Accounting For Property Of The Authority (Edn 03/16) (Clauses 1, 2, 4 and 7 apply if SELLER will have responsibility in its Public Store Account for the Authority's property.) SELLER shall provide LOCKHEED MARTIN copies of all communications with the Authority under this clause.)

DEFCON 695 Interim Summary Cost Statement – Post Costing (Edn 02/15) (Applies if this Contract exceeds £5,000,000 and has been placed without competition. Only the Appendix to this DEFCON is incorporated into this Contract. "Subcontractor" means SELLER.)

DEFCON 802 QDC: Open Book on Sub-contracts that are not Qualifying Sub-contracts (Edn 12/14) (Only the Appendix to this DEFCON Applies and then only where this Contract is a Material Single Source Sub-contract as defined in DEFCON 802.)

DEFCON 804 QDC: Confidentiality of Single Source Contract Regulations Information (Edn 03/15) (Applies if this Contract is a Qualifying Sub-contract for the purpose of the Defence Reform Act 2014 and the Single Source Contract Regulations 2014. Only the Appendix to this DEFCON applies. "As used therein, "Contractor" means "Lockheed Martin" and "sub-contractor" means "Seller." "Sub-contract" means this Contract except in paragraph 8 where it means "lower tier sub-contract.")

DEFCON 811 Single Source: Profit and Loss Sharing on Firm / Fixed Price Contracts (Edn 12/14) (Applies if this Contract is a Material Single Source Sub-contract (Non-Qualifying). Only the Appendix to this DEFCON applies. As used therein, "Contractor" means "Lockheed Martin" and "sub-contractor" means "Seller." "Sub-contract" has the meaning given to it in Clause 1.j. of the Appendix to DEFCON 811)

DEFCON 812 Single Source Open Book (Edn 04/15) (Applies if this Contract is a Material Single Source Sub-contract (Non-Qualifying) as defined in DEFCON 812. Only the Appendix to this DEFCON applies. As used therein, "Contractor" means "Lockheed Martin" and "sub-contractor" means "Seller." "Sub-contract" means "this Contract" except in the phrase "Material Single Source Sub-contract (Non-Qualifying)" which phrase shall have the meaning ascribed to it in Clause 1.f. of the Appendix to DEFCON 812.)

DEFCON 813 Single Source Contract Reports and Notifications (Edn 12/14) (Applies if this Contract is a Material Single Source Sub-contract (Non-Qualifying). Only the Appendix to this DEFCON applies. "As used therein, "Contractor" means "Lockheed Martin" and "sub-contractor" means "Seller." "Sub-contract" means "this Contract" except in paragraph 6 where the phrase "any Material Single Source Sub-contract (Non-Qualifying)" means "any lower tier Material Single Source Sub-contract (Non-Qualifying).")

DEFCON 814 Single Source Confidentiality of Open Book and Reporting Information (Edn 12/14) (Applies when the Appendices to DEFCONs 812 and 813 apply to this Contract. Only the Appendix to this DEFCON applies. "As used therein,

"Contractor" means "Lockheed Martin" and "sub-contractor" means "Seller." "Sub-contract" means "this Contract" except in paragraph 7 where the phrase "any sub-contract" means "any lower tier sub-contract.")

2. The following intellectual property and related DEFCON clauses are to be included as indicated below in any Design Rights and Patents (Subcontractors) Agreement in the form set out in DEFFORM 177 to be signed by SELLER with the UK Ministry of Defence.

(a) For Research and Technology Contracts.

DEFCON 703 Intellectual Property Rights – Vesting in the Authority (Edn 08/13) (Applies to fully funded Contracts where the UK Ministry of Defence requires ownership of the rights in the results to be vested in the Secretary of State for Defence.)

DEFCON 705 Intellectual Property Rights – Research And Technology (Edn 11/02) (Applies if SELLER will be performing fully funded Research and Technology Work under the Contract.)

(b) For Contracts for the design and development of, or the provision of post-design services in relation to, equipment and/or software.

DEFCON 14 Inventions And Designs – Crown Rights And Ownership Of Patents and Registered Designs (Edn 11/05) (Applies if this Contract is for research, design or development.)

DEFCON 14A Collaboration - Ownership of Patents And Registered Designs (Edn 11/05) (Applies if this Contract is for research, design or development work.)

DEFCON 15 Design Rights and Rights to Use Design Information (Edn 02/98)

DEFCON 16 Repair And Maintenance Information (Edn 10/04) (Applies if this Contract requires SELLER to provide operating manuals, repair and maintenance manuals or other standard repair and maintenance documentation.)

DEFCON 21 Retention of Records (Edn 10/04). (Applies to all Contracts that include DEFCON 15 or DEFCON 16.)

DEFCON 90 Copyright (Edn 11/06) (Applies to all copyright works generated under this Contract except those the subject of DEFCONs 15 and 91.)

DEFCON 91 Intellectual Property Rights In Software (Edn 11/06) (Applies if this Contract requires the generation or delivery of computer software.)

DEFCON 126 International Collaboration (Edn 11/06)