

SURVEILLANCE AUSTRALIA PTY LTD (t/a Leidos Australia – Airborne Solutions)
TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS AND SERVICES (Purchase Order Terms & Conditions)

This Agreement (the “**Agreement**”) shall become effective upon the acceptance of an Order by the Supplier (the “**Effective Date**”). The terms and conditions contained in this Agreement shall form part of and shall apply to the Order, unless expressly agreed to in writing by the Parties, in lieu of all other terms and conditions stated or referred to in any Order acknowledgement or other documentation issued by the Supplier, and is made between:

Surveillance Australia Pty Ltd (ABN 20 050 021 308) a company incorporated in Australia, whose address is 1 National Drive, Adelaide Airport, 5950, South Australia, Australia (“**Buyer**”);

And

the company, as detailed in the Order, that is supplying the Buyer with goods and/or services (“**Supplier**”).

The Supplier and the Buyer shall be known individually as “**Party**” and collectively as the “**Parties**”.

1. Buyer Definitions

- “**Affiliate**” means a company or corporation under common control with or effectively controlled by or controlling a Party directly or indirectly either through the ownership or control of shares or other controlling agreements.
- “**Background Intellectual Property**” means intellectual property in existence at the Effective Date or is subsequently brought into existence other than as a result of the performance of this Agreement and is embodied in, or attaches to, the Products or is otherwise necessarily related to the functioning or operation of the Product.
- “**Buyer’s Property**” means any dies, tools, patterns, plates, artwork, designs, drawings, specifications, free issue materials or other documents or items in the possession or under the control of Supplier which have either been supplied by the Buyer to Supplier, or in respect of which the Buyer (subject always to Buyer’s rights under this Agreement) has paid Supplier the entire NRE Items price.
- “**Change in Control**” means:
- (a) the ability to exercise, or control the exercise of, the right to vote in respect of more than 30% of the voting shares or other form of voting or other equity in Supplier;
 - (b) the ability to dispose of, or to exercise control over the disposal of, more than 30% of the shares or other form of equity in the Supplier;
 - (c) the ability to appoint, or to remove, a majority of the directors of Supplier;
 - (d) the ability to exercise, or to control the exercise of, the casting of a majority of the votes at the meeting of the board of directors of the Supplier; or
 - (e) any other means, direct or indirect, of dominating the decision making and financial and operating policies of the Supplier.
- “**Confidential Information**” means any information received by one Party (the “receiving Party”) from the other Party (the “disclosing Party”) and which the receiving Party has been informed, or has a reasonable basis to believe, is confidential to the disclosing Party, unless such information: (i) was known to the receiving Party prior to receipt from the disclosing Party; (ii) was lawfully available to the public prior to receipt from the disclosing Party; (iii) becomes lawfully available to the public after receipt from the disclosing Party, through no act or omission on the part of the receiving Party; (iv) was rightfully communicated by a third party to a receiving Party free of any obligation of confidence subsequent to the time of the originating Party’s communication thereof to the receiving Party; or (v) is independently developed by an employee or agent of the receiving Party who has not received or had access to such information.
- “**Developments**” means any Product, development documentation, information, materials, plans, drawings, reports, or the like conceived during the course of the performance of an Order.
- “**Documentation**” means the user guides and user manuals (as appropriate) for the Products, regardless of whether in printed and/or machine-readable format.
- “**GST**” has the meaning set out in GST Law.
- “**GST Law**” means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- “**Intellectual Property Rights**” means in any jurisdiction, any industrial and intellectual property and/or proprietary rights whether registered or unregistered, legal or beneficial, including but not limited to; copyrights, patent rights (including

Leidos Proprietary

applications for patent protection), publicity rights, trade secret rights, registered or otherwise protected trade marks, trade names and service marks and protections from trade mark dilution, database rights and semiconductor topography rights.

"Non-Recurring Expense Items" or "NRE Items"	means any unique labour, tooling, jigs, fixtures, stencils, or other items utilized for the manufacture of a Product that are separately priced in an Order for the Product or detailed in a separate NRE Items Order related to a Product.
"Order"	means a purchase order placed by the Buyer with the Supplier for Products.
"PPSA"	means the <i>Personal Property Securities Act 2009</i> (Cth).
"PPSR"	means the Personal Property Securities Register established pursuant to the PPSA.
"Product(s)"	means hardware (meaning the tangible materials, sub-assemblies, assemblies and equipment, or any modified form thereof); software (meaning the computer object programs, procedures, statements, screen layouts, machine readable instructions and definitions, or any modified form thereof, supplied separately or along with or as part of any hardware); and services; and, for the avoidance of doubt, shall include the Developments.
"Tax Invoice"	has the meaning set out in GST Law.
"Third Party Intellectual Property"	means intellectual property which is owned by a party other than the Buyer, and is embodied in, or attaches to, the Products or is otherwise necessarily related to the functioning or operation of the Products.
"Tools" or "Tooling"	means tools funded or provided by the Buyer.
"Traceable"	means that all the Products, sub-assemblies and components supplied by the Supplier shall be accompanied with original authentic certificates of conformity from the manufacturer of the original component or if not accompanying the component delivered to the Buyer are in the possession of the Supplier as specified by the Buyer's specification.

2. Agreement

- 2.1 The Supplier shall provide the Products to the Buyer as agreed to from time to time by the Parties pursuant to Orders on the negotiated terms set out herein. Each Order shall include a reference and be subject to the terms and conditions contained in this Agreement and, subject to clause 2.4.4, shall constitute an Agreement separate from all other Orders. This Agreement and any documents expressly incorporated herein by reference comprise the entire Agreement between the Parties in relation to the matters referred to herein and supersede any previous agreement, arrangement, communication and negotiation (whether written or oral) between the Parties relating thereto.
- 2.2 The Supplier will procure all components necessary to fulfil Orders issued in accordance with this Agreement and to reasonably ensure sufficient capacity is available to achieve the quantities and delivery dates specified in such Orders, at lead-times reasonably consistent with the lead-times of such components at the time of order.
- 2.3 The Buyer will issue, and the Supplier will accept or reject in writing in accordance with clause 2.4 below, Orders for all Products covered by this Agreement. Each Order shall contain the following information:
 - 2.3.1 a description of the Product by part number;
 - 2.3.2 the quantity of the Product (with the exception of blanket Orders);
 - 2.3.3 the scheduled delivery date or delivery schedule;
 - 2.3.4 the location to which the Product is to be delivered; and transportation instructions if other than defined by this Agreement;
 - 2.3.5 price, including unit, extended and Order total prices; and
 - 2.3.6 any other special terms or requirements.
- 2.4 The Order process is as follows:
 - 2.4.1 each Order shall be issued by the Buyer by email postal mail to Supplier. The Order will be deemed as received by Supplier on the day issued if by email or fax and two days after issue in the event of posted mail;
 - 2.4.2 the Order will be checked by Supplier; and
 - 2.4.3 all Orders shall be confirmed or acknowledged in writing as accepted or rejected by the Supplier **within seventy-two (72) hours of receipt**. If the Supplier does not accept or reject the Order within the said seventy-two (72) hours, the Order shall be deemed accepted by Supplier on the terms and conditions contained in this Agreement, the Buyer's specification and the Order on an unqualified basis and should the Supplier commence work under the Order, it shall be deemed to have accepted the Order by performance on the terms and conditions contained in this Agreement on an unqualified basis.
 - 2.4.4 if there is a conflict of terms the order of precedence shall be:
 - a. the typewritten provisions on the face of the applicable accepted Order;
 - b. this Agreement;
 - c. any Appendices, program schedules or other written Agreements attached to this Agreement as agreed by both Parties; and
 - d. the Buyer's specification.
- 2.5 The Supplier will supply Products strictly in accordance with
 - 2.5.1 the Buyer's requirements as detailed in this Agreement;
 - 2.5.2 the Buyer's specification;
 - 2.5.3 the Buyer's quality plans, manuals and procedures, as from time to time amended; and
 - 2.5.4 the Order.
- 2.6 The Supplier, at no additional cost to the Buyer, shall:
 - 2.6.1 comply with all of the Buyer's standard policies that are relevant to the supply of the Products and any other on-site regulations specified by the Buyer for personnel working at the Buyer's premises or relating to accessing any Buyer's computer systems. The Buyer shall provide the Supplier with a copy of such policies and standards as they exist at the Order date, and, whenever they are updated, promptly following issue of the updated versions;

Leidos Proprietary

- 2.6.2 provide the Products in compliance with all requirements of all applicable legislation from time to time in force and which is or may become applicable to the Products. The Supplier shall promptly notify the Buyer if the Supplier is required to make any change to the Products for the purposes of complying with its obligations under this clause; and
- 2.7 promptly notify the Buyer of any health and safety hazards that exist or may arise in connection with the supply of the Products. The Parties acknowledge that the pre-printed provisions or terms and conditions of supply appearing on the reverse of, or attached to an Order acknowledgment, or invoice of the Supplier shall be deemed deleted and of no effect whatsoever.

3. General

- 3.1 Any notice to be given hereunder shall be in writing and sent to the relevant Party's address, email or number contained above (or such other address or email as shall have been notified to the other Party), and shall **be delivered or sent:**
- 3.1.1 by email or fax, provided that a transmission note shall be retained for proof of delivery, or either;
- 3.1.2 in the case of a notice between Parties whose respective addresses for service are in the same country, by registered or recorded delivery post or local equivalent postal service which provides written evidence of delivery; or
- 3.1.3 in the case of a notice between Parties whose respective addresses for service are in different countries, by courier provided that such courier obtains a signature on behalf of the recipient by way of:
- a. acknowledgment of receipt and
- b. evidence of the date and time of receipt.
- 3.2 Such notice shall be deemed to have been given:
- 3.2.1 in the case of a notice sent by email or fax, at the start of the first normal business day in the country of receipt following the date of transmission as such date is evidenced by a transmission receipt;
- 3.2.2 in the case of a notice sent by post in accordance with clause 3.1.2, five (5) days after the date on which the registered or recorded delivery letter including such notice is posted; and
- 3.2.3 in the case of a notice which is delivered by courier in accordance with clause 3.1.3, when it is delivered to the appropriate address, as evidenced by the signature referred to in clause 3.1.3.
- 3.2.4 Neither Party shall in any manner assume or create any obligation or responsibility, express or implied, on behalf of or in the name of the other Party, or act for or bind one another in any respect except as expressly permitted under the terms of this Agreement.
- 3.3 The relationship of Buyer and Supplier under this Agreement and the Order is intended to be that of independent contractors. Nothing contained in this Agreement or the Order shall be construed as creating a partnership, joint venture, agency, trust, or other legal association of any kind between the Parties. Except as specifically provided in this Agreement, neither Party shall act or represent or hold itself out as having authority to act as an agent or partner of the other Party or in any way to bind or commit the other Party to any obligations. The rights, duties, obligations and liabilities of the Parties shall be several and not joint or collective, each Party being individually responsible only for its actions and the obligations as set forth in this Agreement and the Order.
- 3.4 A person who is not a Party to this Agreement may not enforce any of its terms.
- 3.5 If any provision of this Agreement or an Order is found invalid or unenforceable, the remaining provisions will be given effect as if the invalid or unenforceable provision were not a part of this Agreement or the Order (as the case may be).
- 3.6 Neither this Agreement nor an Order may be varied or amended except in writing and signed by a duly authorised officer of each Party.
- 3.7 The headings contained in this Agreement and an Order are for reference only and shall not be used in its construction or interpretation. The provisions of this Agreement and the Order shall be construed and interpreted fairly and in good faith to both Parties without regard to which Party drafted the same.
- 3.8 Reference to any gender includes any other gender and the plural shall include the singular and bodies corporate shall include unincorporated bodies and (in each case) vice versa.
- 3.9 Reference to any statute, enactment, ordinance, order, regulation or other similar instrument shall be construed to include a reference to the statute, enactment, ordinance, order, regulation or instrument as from time to time amended, extended, re-enacted or consolidated and all statutory instruments, orders, regulations or instruments made pursuant to it.
- 3.10 The failure of either Party to enforce any provision of this Agreement or an Order shall not constitute or be construed as a waiver of such provision or of the right to enforce it at a later time.
- 3.11 This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.
- 3.12 The applicable terms in clauses 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 20 shall survive termination or expiration of this Agreement.
- 3.13 The Supplier shall at all times comply with all laws and regulations applicable to the proposed sale of the Products to the Buyer and any other laws pertaining to compliance with this Agreement and the Order and obtain all permits, registrations and approvals of governmental authorities and/or standard setting agencies that are necessary or advisable (in the reasonable judgment of Buyer or Supplier) in respect of the Products.

4. Change in Control

The Buyer may terminate the Agreement or Order under clause 16 if the Supplier fails to notify the Buyer of any Change in Control.

5. Law

This Agreement is governed by the laws for the time being prevailing in the State of South Australia, Australia and the Parties hereby submit to the jurisdiction of the Courts of that State and Country.

6. Disputes

- 6.1 The intent of the Parties is to identify and resolve disputes promptly. Each Party agrees to perform as follows:
- 6.1.1 to notify the other Party of any dispute in reasonable detail as soon as possible after any dispute arises;
- 6.1.2 to negotiate in good faith to seek to resolve the dispute within fourteen (14) days from the date notified of the dispute.
- 6.1.3 If the parties are unable to resolve the dispute within the time specified in clause 6.1.2, the parties shall refer the dispute to their respective General Managers for resolution within seven (7) days.
- 6.1.4 Should the parties subsequently fail to resolve the dispute within the time frame specified in clause 6.1.3, the parties reserve their rights to issue proceedings in accordance with clause 5 above. For the avoidance of doubt, nothing in this clause precludes either Party from applying to any relevant court for an injunction or restraint relating to any breach or threatened breach of this Agreement.

7. Import/Export

The Supplier shall promptly notify the Buyer of any export restrictions that may apply to the Products supplied under the Order, which shall include but not be limited to United States export controls administered by the U.S. Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control and other United States agencies, and the export control regulations of the European Union, including without limitation the U.S. Export Administration Regulations, 15 C.F.R. Parts 730-774 and Council Regulation (EC) No. 1334/2000. The Supplier, at its own expense, agrees to comply with all laws and regulations of the United States related to exports, imports, and foreign transactions, including, but not limited to, the International Traffic in Arms Regulations (ITAR) (22 C.F.R. §§ 120-130), the Export Administration Regulations (EAR) (15 C.F.R. §§ 730-774), and the National Industrial Security Program Operating Manual (NISPOM) (DoD 5220.22-M). The Supplier also agrees to obtain, at its sole expense, any export licenses or other official authorizations and to carry out any customs or immigration formalities or similar requirements for the export of any Products covered by the Order. The Supplier specifically shall obtain all required authorizations from the U.S. Government before transferring or otherwise disclosing technical data or technology (as those terms are defined in 22 C.F.R. § 120.10 and 15 C.F.R. § 722, respectively), to any Foreign Person (as defined in 22 C.F.R. § 120.16). The Supplier shall provide written notification to the Buyer before assigning or granting access to a Foreign Person to technical data related to the Order. The Supplier agrees to bear sole responsibility for all regulatory record keeping associated with the use of licenses and license exceptions/exemptions. The Supplier's failure to comply with the requirements of this clause shall be deemed a substantial breach of a material term of the Order that shall subject Supplier to the termination provisions of clause 16.

8. Products

- 8.1 The Supplier represents and warrants that it shall provide the Products to the Buyer precisely in accordance with this Agreement and the Orders. The Supplier further represents and warrants that:
- 8.1.1 it shall use all reasonable skill and care in such provision and shall perform its obligations in accordance with the Order and all applicable laws and Australian Standards;
 - 8.1.2 title to the Products (including software unless expressly agreed) ordered under the Order shall transfer free from any security interest or other lien or encumbrance;
 - 8.1.3 it has the rights to grant the licence rights set out in this Agreement and in the Order;
 - 8.1.4 that the Products are of good quality, material and workmanship in accordance with best industry practice;
 - 8.1.5 the Products are and will be fit for their intended purpose and use;
 - 8.1.6 the Products are free from defects and hazards to health;
 - 8.1.7 as applicable, Products are new and not used, refurbished, repaired or reconditioned and not of an age that deteriorates or impairs their usefulness, safety or operation;
 - 8.1.8 the Products do not infringe the rights of any third party; and
 - 8.1.9 as applicable, any Product which are aircraft components or materials will be accompanied by either CASA Form 1, FAA 8130-3, EASA Form 1 or equivalent, or as per CASR Part 42 MOS Chapter 12.
- 8.2 As applicable, the Supplier must ensure that Products of a thermal/acoustic insulation material meet propagation requirements of FAR25-856 and be accompanied with the appropriate documentation. Burn test results for materials must be shipped with goods.
- 8.3 As applicable, the Supplier must ensure that Material Safety Data sheets accompany Products.
- 8.4 All Products' wooden packaging provided by the Supplier must be treated in accordance with ISPM15 Standard and marked accordingly.
- 8.5 The Buyer reserves the right to return, and receive immediately from the Supplier a full refund for, any Products received with less than 75% shelf life remaining or that do not otherwise meet the Supplier's representations and warranties under clause 8.1.
- 8.6 For standard parts and raw materials forming part of the Products, a Certificate of Conformance from the manufacturer must be supplied by the Supplier with the parts and or raw materials.
- 8.7 As applicable, to comply with Australian quarantine requirements all shipping invoices issued by the Supplier must state and be signed as either "New Items: These goods are clean and not field tested", or "Used Items: Repaired/Refurbished to as new standard and are clean and free of all quarantine risk material prior to arrival in Australia".
- 8.8 The Products will be delivered carriage paid to the address stated as the address for delivery on the Order unless otherwise specified in the Order. The Supplier shall bear the risk of loss and damage to the Products until they are delivered (and off loaded) in conformity to the Order at the Buyer's destination specified in the Order. This shall not affect or waive any of Supplier's warranties or other obligations under this Agreement or the applicable Order for, or in relation to, the Product. Upon delivery of the Products by the Supplier to the Buyer, the Buyer (or the Supplier at the request of the Buyer) may perform an acceptance test upon such Products. The Products shall be deemed to have been accepted when notified by the Buyer in writing, including where applicable that the Supplier has overcome any defects.
- 8.9 The Supplier:
- 8.9.1 agrees that title to the Products and associated Documentation provided to the Buyer under the Order shall pass to; and
 - 8.9.2 grants a worldwide, royalty free, perpetual, irrevocable, transferable right to use, modify, adapt, distribute and onward develop the Products (including any software contained in the Products) and utilisation rights thereof to the Buyer (or its Affiliate) upon delivery of the Products to the Buyer or payment, whichever is earlier.
- 8.10 When delivering a Product that contains software to the Buyer, the Supplier shall deliver all of the following, unless mutually agreed otherwise:
- 8.10.1 copies of all applications and tools used in the creation or development of the software;
 - 8.10.2 any password and encryption details necessary to access the software; and
 - 8.10.3 full details of the software, including full name and version details, design information including module names and functionality, the type of media on which the software is provided, details of any commands required to install and make a backup copy of the software, any compression used in packaging the software, and details of operating systems on which the software runs.
- 8.11 The Supplier may not deliver the Products by separate instalments unless agreed in writing by the Buyer.
- 8.12 Time for the performance of all obligations of the Supplier under this Agreement and Orders is of the essence.

9. Developments

- 9.1 Subject to clause 9.3, title in ownership of all intellectual property associated with any deliverable, document, design, software or material first developed by the Supplier in connection with this Agreement ("Foreground IP") shall immediately vest creation and is assigned to the Buyer.
- 9.2 The Supplier agrees to execute all documents and to do all acts and things reasonably necessary to give effect to clause 9.1.
- 9.3 The Buyer acknowledges that the vesting of ownership in all Foreground IP does not apply to any Background IP belonging to the Supplier.
- 9.4 The Supplier grants to the Buyer a royalty free, irrevocable, non-exclusive, perpetual worldwide licence (including the right to sub-licence) to use the Background IP and Third Party Intellectual Property, without further consideration.
- 9.5 The Supplier shall immediately notify the Buyer if any Products and/or Intellectual Property Right or part thereof, shall infringe or breach any law. In the event that any such Products and/or Intellectual Property Right or part thereof shall infringe or breach any law, the Supplier shall at no additional cost to the Buyer and as soon as is reasonably practicable provide to the Buyer replacement Products and/or Intellectual Property Right which do not infringe or breach the law and which shall perform in a manner identical in all material respects to the Products and/or Intellectual Property Right as it was prior to such replacement.

10. Quality

The Supplier's quality system shall be compliant with the requirements of ISO9001.

11. Excusable Delay

- 11.1 If the Supplier is prevented from performing its obligations under the Agreement, it shall promptly notify the Buyer of the Delay. In the event that the delay is caused by one of the items below ("Excusable Delay"), then the delivery time will be extended:
- 11.1.1 force majeure;
 - 11.1.2 war, warlike operations, act of the enemy, armed aggression, civil commotion, insurrection, terrorism, riot or embargo;
 - 11.1.3 fire, explosion, earthquake, lightning, flood, drought, windstorm or other action of the elements, or weather conditions or other catastrophic or serious accidents;
 - 11.1.4 epidemic or quarantine restrictions;
 - 11.1.5 any legislation, act, order, directive or regulation of any governmental or other duly constituted authority;
 - 11.1.6 strikes, lock-out, walk-out, and/or other labour troubles causing cessation, slow-down or interruption of work which are beyond the reasonable control of the Supplier;
 - 11.1.7 delay in obtaining any airworthiness approval or certificate, or any equivalent approval or certification, by reason of any law or governmental order, directive or regulation or any change thereto, or interpretation thereof, by a governmental agency, the Effective Date of which is subsequent to the date of this Agreement;

- 11.1.8 any act of the Buyer, its employees, agents, representatives or subcontractors; or
- 11.1.9 any other cause beyond control or without the fault or negligence of the Supplier, including industry wide shortages of parts. Supplier shall not be liable for, not be deemed to be in default for the performance of its obligations or responsibilities under this Agreement at all times during the existence of an Excusable Delay, provided the Supplier shall use commercially reasonable efforts to mitigate the impact of the same upon the Supplier's obligations or responsibilities under this Agreement.

12. Traceability

- 12.1 Under the terms of this Agreement, the Supplier shall have and operate a process to ensure that all Products, sub-assemblies and the components contained therein supplied to the Buyer are completely Traceable back to manufacturer by batch or lot or date code.
- 12.2 Further the Supplier hereby agrees, unless directed otherwise by the Buyer, to procure components through franchised distributors or direct component suppliers. The Supplier agrees to indemnify and hold the Buyer harmless from and against all costs and expenses for the removal, repair or replacement and reinstallation of counterfeit components incorporated into a Product sold by the Supplier to the Buyer where the counterfeit component was procured by the Supplier from a person or entity other than a franchised distributor or direct component Supplier or other person or entity pre-approved by the Buyer in writing.
- 12.3 The Supplier will:
 - 12.3.1 require that its suppliers provide a Certificate of Conformance with each component shipment;
 - 12.3.2 perform incoming inspections of components and paperwork to ensure conformity to the relevant specification; and
 - 12.3.3 maintain and document incoming inspection specifications used for each component used in manufacturing Products. The foregoing obligations of this clause shall not apply to components consigned or sold to the Supplier from the Buyer.
- 12.4 If components are not purchased from an original equipment manufacturer, franchised distributor or without full traceability and manufacturers certificates, the Supplier will ensure that prior written approval has been obtained from the Buyer before using such components and that the approving permit number shall be cross referenced on the Supplier's release certification. To obtain the Buyer's approval the Supplier may have to, at the Buyer's sole option and at the Supplier's cost, perform the following:
 - 12.4.1 check with the original equipment manufacturer that the date and batch codes identified on the Certificate of Conformity are genuine; and
 - 12.4.2 complete or arrange for actual component testing on a representative sample of the components to verify their conformance to specification.
- 12.5 For components purchased from the Buyer, the Supplier shall maintain the traceability back to the paperwork provided by the Buyer as part of the components transfer.
- 12.6 The Supplier will maintain detailed quality control and manufacturing sub-assembly and component Traceability records for the period of at least twelve (12) years from the date of last supply of the Products. After twelve (12) years, the Supplier shall either agree to continue holding the records or shall offer the Buyer, at no charge, the option to transfer them for archiving or provide electronic copies to the Buyer. No record shall be destroyed without the Buyer's written approval.

13. Buyer's Property

- 13.1 Any Buyer's Property provided to the Supplier, shall become and/or remain the exclusive property of the Buyer, and as such, the Buyer may demand repossession at any time without notice. If such repossession affects the Supplier's costs of performing the Order(s) and/or affects the Supplier satisfying the delivery date of the Order(s), then the Supplier shall promptly notify the Buyer of any additional cost or amendment required to the delivery time. The Buyer will bear the cost and/or the extended delivery time agreed should the Buyer decide to proceed with the repossession.
- 13.2 The Supplier shall maintain and keep the Buyer's Property in good condition. The Buyer will compensate the Supplier at its normal hourly rates for all calibration, maintenance or repair services to the Buyer's equipment or tooling (other than normal preventative maintenance services or services to correct defects caused by Supplier's act or omissions negligence or willful misconduct), provided that the Buyer approves such services and rate in advance and in writing. The Buyer is not required to compensate the Supplier for any such services associated with equipment or tooling owned by the Supplier and not intended to be assigned to the Buyer.
- 13.3 The Buyer's Property shall not be removed from the Supplier's premises except on the prior written permission of the Buyer. The Supplier may remove the Buyer's Property from the Supplier's premises for purposes of repair provided that the Supplier provides advance notice to, and the consent of, the Buyer of the anticipated removal and repair.
- 13.4 The Supplier shall keep the Buyer's Property separate and apart from its own property and that of other persons and shall clearly mark the Buyer's Property as being the Buyer's property.
- 13.5 The Buyer's Property shall not be used by Supplier for any purpose other than for the supply of Product to the Buyer.
- 13.6 The Supplier will compile and submit reports on the status of the Buyer's Property as reasonably requested by the Buyer including details on any repairs and maintenance necessary to maintain supply of Product to specification.
- 13.7 The Supplier shall be liable to the Buyer for any loss of or damage to the Buyer's Property during the time it is in the Supplier's possession, custody or control. During such time the Supplier shall insure the Buyer's Property at full replacement value in the name of and for the benefit of the Buyer at Supplier's expense with a reputable insurance provider and shall provide to the Buyer on demand certificates of insurance evidencing such insurance and the receipts for premiums paid thereon.
- 13.8 The Supplier waives any lien which it might otherwise have (whether at the date hereof or subsequently) on any of the Buyer's Property for work done thereon or otherwise. This condition shall not be construed as a waiver of any other right of recovery of any other charges that may be due to Supplier for such work.
- 13.9 The Supplier shall keep the Buyer's Property free of all mortgages, charges or other encumbrances and will procure that any lien over the Buyer's Property is discharged forthwith.
- 13.10 The Supplier shall promptly pay the Buyer on demand the full replacement value of any of the Buyer's Property, which is not returned or satisfactorily accounted for by the Supplier.
- 13.11 This Agreement creates a security interest in the Buyer's Property which is furnished to the Supplier, for the purposes of the PPSA. The Supplier consents to the Buyer registering the security interest and maintaining registration on the PPSR, waives its rights to receive any notice under the PPSA and, if requested by the Buyer, agrees to do all things necessary or desirable to assist the Buyer with registering and maintaining registration of the security interest on the PPSR.

14. LIABILITY AND INDEMNITY

- 14.1 THE SUPPLIER REPRESENTS AND WARRANTS THAT IT HAS THE AUTHORITY TO PERFORM ALL ITS OBLIGATIONS AND GRANT THE RIGHTS GRANTED PURSUANT TO THIS AGREEMENT OR THE ORDER AND THAT SUCH PERFORMANCE OR THE GRANTING OF SUCH RIGHTS IS NOT IN BREACH OF ANY AGREEMENT TO WHICH IT IS A PARTY OR OTHERWISE BOUND.
- 14.2 THE SUPPLIER SHALL BE LIABLE TO BUYER FOR ALL DAMAGES, COSTS, EXPENSES AND ANY OTHER SUMS INCURRED OR CHARGED THAT THE BUYER OR ITS AFFILIATES MAY SUFFER IN CONNECTION WITH ANY ACTS OR OMISSIONS OF SUPPLIER UNDER THIS AGREEMENT OR THE ORDER.
- 14.3 THE SUPPLIER SHALL INDEMNIFY, KEEP INDEMNIFIED AND HOLD HARMLESS THE BUYER FROM AND AGAINST ANY CLAIMS BY THIRD PARTIES WHICH ARE CAUSED BY OR ARISE OUT OF OR IN CONNECTION WITH:
 - 14.3.1 ANY ACT OR OMISSION OF THE SUPPLIER; OR
 - 14.3.2 ANY BREACH BY THE SUPPLIER OF ANY TERMS OF THIS AGREEMENT.
- 14.4 NOTWITHSTANDING ANYTHING STATED HEREIN NOTHING SHALL EXCLUDE OR LIMIT THE LIABILITY OF EITHER PARTY:
 - 14.4.1 FOR DEATH OR PERSONAL INJURY ARISING AS A RESULT OF THE NEGLIGENCE OF THE OTHER OR ITS EMPLOYEES; OR
 - 14.4.2 FOR FRAUD; OR
 - 14.4.3 FOR LIABILITY ARISING PURSUANT TO CLAUSE 8, CLAUSE 9, CLAUSE 14.7 OR CLAUSE 15; OR
 - 14.4.4 FOR GROSS NEGLIGENCE, DELIBERATE OR WILFUL ACTS; OR
 - 14.4.5 FOR ANY MATTER FOR WHICH IT WOULD BE ILLEGAL FOR THE RELEVANT PARTY TO EXCLUDE OR LIMIT OR TO ATTEMPT TO EXCLUDE OR LIMIT ITS LIABILITY.
- 14.5 SUBJECT TO CLAUSE 14.4, THE BUYER AND ITS AFFILIATES AGGREGATE LIABILITY UNDER THIS AGREEMENT IS LIMITED TO 100% (ONE HUNDRED PERCENT) OF THE TOTAL AMOUNT OF FEES WHICH HAVE BEEN PAID UNDER THIS AGREEMENT.

Leidos Proprietary

- 14.6 THE BUYER AND ITS AFFILIATES WILL HAVE NO LIABILITY UNDER OR IN CONNECTION WITH THIS AGREEMENT IN RESPECT OF:
- 14.6.1 LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF REVENUE, LOSS OF CONTRACTS, LOSS OF GOODWILL, LOSS OF ANTICIPATED EARNINGS OR SAVINGS (IN EACH CASE WHETHER DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL); OR
- 14.6.2 LOSS OF USE OR VALUE OR DAMAGE OF ANY DATA OR EQUIPMENT (INCLUDING SOFTWARE), WASTED MANAGEMENT, OPERATION OR OTHER TIME (IN EACH CASE WHETHER DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL); OR
- 14.6.3 ANY SPECIAL, INDIRECT, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL LOSS, HOWSOEVER ARISING.
- 14.7 THE SUPPLIER WARRANTS THAT THE PRODUCTS WILL NOT INFRINGE A THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS. THE SUPPLIER WILL INDEMNIFY, KEEP INDEMNIFIED AND HOLD HARMLESS THE BUYER AND THE BUYER'S AFFILIATES AND CUSTOMERS FROM, AND AT ITS OWN COST DEFEND ANY ACTION BROUGHT AGAINST THE BUYER OR ITS AFFILIATES OR CUSTOMERS BASED UPON, A CLAIM, LEGAL ACTION OR ALLEGATION THAT THE PRODUCTS AND/OR INTELLECTUAL PROPERTY RIGHT CREATED BY SUPPLIER PURSUANT TO THIS AGREEMENT OR THE ORDER (WHETHER CREATED USING BUYER'S SOFTWARE OR CREATED BY ANY OTHER MEANS WHATSOEVER) INFRINGE THE INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY AND WILL PAY THE AMOUNT OF ANY SETTLEMENT OR THE COSTS AND DAMAGES AWARDED INCLUDING REASONABLE LEGAL FEES (IF ANY) IN SUCH ACTION. FOLLOWING NOTICE OF A CLAIM OR A THREATENED OR ACTUAL ACTION SUPPLIER SHALL (WITHOUT PREJUDICE TO THE BUYER'S OTHER RIGHTS):
- 14.7.1 PROVIDE FOR THE BUYER AND THE BUYER'S AFFILIATES AND CUSTOMERS THE RIGHT TO CONTINUE TO USE THE PRODUCT AND/OR INTELLECTUAL PROPERTY RIGHT; OR
- 14.7.2 REPLACE OR MODIFY THE PRODUCT AND/OR INTELLECTUAL PROPERTY RIGHT SO AS TO MAKE IT NON-INFRINGEMENT OF ANY THIRD PARTY RIGHTS AND THE SUPPLIER SHALL ENSURE THAT SUCH REPLACEMENT OR MODIFICATION SHALL PERFORM IN A MANNER IDENTICAL IN ALL MATERIAL RESPECTS TO THE, PRODUCT AND/OR INTELLECTUAL PROPERTY RIGHT AS IT WAS PRIOR TO SUCH REPLACEMENT OR MODIFICATION.
- 14.8 THE SUPPLIER SHALL PURCHASE, RENEW AND MAINTAIN AS NECESSARY, SUFFICIENT PUBLIC LIABILITY, TANGIBLE PROPERTY AND PROFESSIONAL INDEMNITY INSURANCE COVER TO SATISFY THE BUYER THAT IT IS INSURED TO SUCH AN EXTENT TO ENABLE IT TO SATISFY ANY INDEMNITIES AND LIABILITIES INCURRED UNDER THIS AGREEMENT. THE SUPPLIER SHALL PROVIDE TO THE BUYER A COPY OF THE RELEVANT INSURANCE POLICIES ON THE EFFECTIVE DATE AND SHALL ALSO PROVIDE THE BUYER WITH A COPY OF THE SAME AT ANY TIME DURING THE CONTINUANCE OF THIS AGREEMENT UPON THE REQUEST OF THE BUYER AND UPON EACH RENEWAL OF SUCH INSURANCE. FOR THE AVOIDANCE OF DOUBT, EACH SAID INSURANCE POLICY FOR THE ABOVE MUST PROVIDE THE SUPPLIER WITH COVER OF AT LEAST \$50,000,000 (FIFTY MILLION AUSTRALIAN DOLLARS) PER EVENT OR SERIES OF RELATED EVENTS.

15. Intellectual Property Rights in Buyer's Products

- 15.1 The Supplier acknowledges that any and all of the Buyer's Background Intellectual Property is and shall remain the sole property of the Buyer.
- 15.2 The Supplier undertakes not to:
- 15.2.1 copy the Buyer's Intellectual Property Rights (other than as authorized under this Agreement) nor otherwise reproduce the same;
- 15.2.2 utilize, customize, modify or create derivative works of, translate, adapt or vary the Buyer's Intellectual Property Rights except as expressly permitted in this Agreement or otherwise agreed in writing between the Parties;
- 15.2.3 disassemble, decompile or reverse engineer Buyer's Intellectual Property Rights, except if and to the extent permitted by applicable law; and
- 15.2.4 license or sell any Buyer's Intellectual Property Rights, or any part thereof, to any third party.

16. Termination

- 16.1 If the Buyer is in breach of a material clause within this Agreement, the Supplier may, without prejudice to any other rights herein, serve the Buyer with a show cause notice requiring the Buyer to rectify the breach within thirty (30) days or such other period as agreed. If the Buyer has failed to remedy the breach within the relevant time period, the Supplier may terminate this Agreement.
- 16.2 Without prejudice to any of its accrued rights, whether arising out of or in connection with this Agreement, either Party shall be entitled to immediately terminate this Agreement by notice in writing if the other Party:
- 16.2.1 becomes an *externally administered body corporate* or *insolvent under administration* or has a *controller* appointed over its property (all within the meaning of section 9 of the *Corporations Act 2001* (Cth));
- 16.2.2 has a resolution passed for its winding up or liquidation;
- 16.2.3 becomes insolvent or bankrupt;
- 16.2.4 cannot pay its debts when they fall due;
- 16.2.5 has proceedings brought against it under any bankruptcy or insolvency law and such proceedings are not discharged or stayed within fourteen (14) business days;
- 16.2.6 becomes subject to the appointment of an administrator, provisional liquidator, trustee, receiver or similar official; or
- 16.2.7 causes or is subject to any event that has analogous effect to any of the causes 16.2.1 to 16.2.6 above.
- 16.3 If the Supplier is in breach of a material clause within this Agreement, the Supplier may, without prejudice to any other rights herein, serve the Buyer with a show cause notice requiring the Buyer to rectify the breach within thirty (30) days or such other period as agreed. If the Buyer has failed to remedy the breach within the relevant time period, the Buyer may terminate this Agreement.
- 16.4 This Agreement may be terminate by the Buyer serving one (1) months' notice in writing on the Supplier in which event the Buyer's sole liability will be to pay to the Supplier fair and reasonable compensation for work-in-progress at the time of cancellation but such compensation will not include loss of profits (whether direct or indirect and whether actual or anticipated) or any indirect consequential loss.
- 16.5 The Supplier shall provide or return, as applicable, to the Buyer all the Developments and the Buyer's Property and any other material relating to the Developments and all copies of any of them by no later than thirty (30) days from the date of expiration or termination of this Agreement for any cause whatsoever.

17. Confidentiality Obligations

- 17.1 Each Party agrees to maintain Confidential Information received from the other in confidence and not to use or disclose such Confidential Information, without the prior written approval of the disclosing Party, except as required to comply with any order of a court or any applicable rule, regulation or law of any jurisdiction.
- 17.2 Each Party agrees that the Confidential Information shall be disclosed only on a need-to-know basis to their employees, officers, directors, Affiliates, agents, professional advisors or others that are likewise subject to a confidentiality obligation. Each Party shall protect the Confidential Information of the other by using the same degree of care, but not less than a reasonable degree of care, to prevent the unauthorized disclosure or use thereof that such Party uses to protect its own confidential information of like nature. The Parties hereby acknowledge that damages may not be an adequate remedy for any breach of this clause 17.1 and that either Party will therefore be entitled to apply for injunctive relief from any court of competent jurisdiction to restrain any breach or threatened breach of this clause 17.1.
- 17.3 The Supplier shall keep confidential all Buyer proprietary information including, but not limited to, designs, processes, drawings, specifications, reports, data, and other technical or business information and the features of all parts, equipment, tools, gauges, patterns, and other items furnished or disclosed to the Supplier by the Buyer and the Supplier shall use such information and items, and the features thereof, only in the performance of this Agreement for the Buyer.
- 17.4 Return of Confidential Information:
Upon termination or expiration of this Agreement, each Party agrees at the request of the other Party to destroy and certify destruction thereof of all Confidential Information in its possession received from the other save insofar as the receiving Party needs such Confidential Information to fulfil its post-termination obligations to the other Party or to Customers.

18. Assignment

The Supplier shall not assign the benefit or delegate the burden of this Agreement or any Order (whether in whole or in part) without the prior written consent of Buyer.

19. ITAR (Export Control)

- 19.1 The Supplier shall comply with all applicable domestic and foreign import and export control laws and regulations and shall provide all information necessary for the Buyer's compliance with all applicable import and export control laws and regulations.
- 19.2 The Supplier shall:
- 19.2.1 notify the Buyer in writing at the time the Order is accepted when any changes occur and when subsequent information is received by the Supplier of the export control status of controlled materials;
 - 19.2.2 provide the Buyer a signed statement within thirty (30) calendar days of the date of issue of the order and in any event in advance of receipt by the Buyer of such controlled material included in the Order;
 - 19.2.3 engage with the Buyer in order to organize relevant export authorisations by:
 - a. consulting with the Buyer about the relevant form of export authorisations required from Government and regulatory authorities; and
 - b. requesting from the Buyer all information necessary to make the Supplier's export authorisations complete and accurate, and to fulfil all the Buyer's requirements for compliance with all applicable export control laws and regulations.
 - 19.2.4 obtain all required export authorisations or jurisdiction classification necessary to ensure delivery of the supplies to the Buyer in accordance with the delivery dates required under the order; and
 - 19.2.5 provide the following further information and documentation in writing at the time the Order is accepted if available or otherwise before delivery of supplies:
 - a. details of the relevant jurisdiction classification of the goods/technologies; and/or
 - b. details of the relevant export authorisations, including reference numbers and dates, authorised parties, approved end use, and any limitations/provisos; and
 - c. full copies of such export authorisations including any correspondence with the relevant Government authority consenting to or giving guidance on the use of exemptions or exceptions or listing limitations/provisos and transmittal letters.
- 19.3 Definitions in this section:
- "Controlled Material"** means any physical items and items such as drawings, blueprints, instructions, photographs, documentation, plans, diagrams, models, manuals, schematics and any other form of technical data or hardware, that is the subject of export and import restrictions as to their use and disclosure.
- "Export Authorisations"** means all required export licenses, agreements, other Governmental authorisation, or exception or exemption necessary relied upon for lawful export of supplies.