

CAGE SOFTWARE LICENCE AGREEMENT

CONTRACT REFERENCE NUMBER: 700004461

This Agreement is made this 20th day of MARCH in the year 2019

BETWEEN

The Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland, a corporation sole, (afterwards referred to as the **AUTHORITY**) as represented by the Merlin Project Team, Centenary House, Building 100, Box 146, Leonardo Helicopters, Lysander Road, Yeovil, BS20 2YB

AND

BAE SYSTEMS (OPERATIONS) LIMITED a company registered in England and Wales (Company registered number [REDACTED] whose registered office is at Warwick House, PO Box 87, Farnborough Aerospace Centre, Farnborough, Hants, GU14 6YU, UK (BAE Systems)

Background

- I. BAE Systems is the owner or the licensee of the Licensed Software (as defined below).
- II. BAE Systems is willing to licence the **AUTHORITY** to use the Licensed Software on the terms and conditions set out in this Agreement.

Agreed Conditions

1 DEFINITIONS

- 1.1 In this Agreement, unless the context otherwise requires, the following words and expressions shall have the following meanings:

"Affiliated Companies" means in relation to BAE Systems, its Subsidiaries, its Holding Companies and every Subsidiary of each such Holding Company from time to time.

"Agreement" means this software licence agreement including schedule(s).

"Approved Sub-Licensee" means Leonardo MW Ltd and any other contractor to the AUTHORITY that is required by the AUTHORITY to Use the Licensed Software for the Purpose pursuant to an AUTHORITY Contract.

"AUTHORITY" shall mean the Secretary of State for Defence.

"Documentation" means the operating manuals, user instructions, technical literature and all other related materials in hard or electronic format relating to the Program supplied by BAE Systems to the AUTHORITY.

"Intellectual Property Rights" means patents, registered designs, trade marks, domain names, copyright, design rights, database rights, moral rights, utility models and any other intellectual or industrial property rights of any similar or equivalent nature or forms of protection (whether registered or unregistered and whether or not such rights are capable of registration) including without limitation those subsisting in or relating to inventions, designs, drawings, computer programs, business names, goodwill, trade dress and including all applications (or rights to apply) for and renewals or extensions of such rights and any rights existing or arising in law or equity in relation to the same which may exist before, on or after the date of this Agreement in any part of the World; and the term "Intellectual Property" shall be construed accordingly.

"Licence" means the licence granted by BAE Systems to the AUTHORITY pursuant to clause 2.1.

"Licence Fee" means the fees set out in Part V of the Schedule and payable by the AUTHORITY to BAE Systems in consideration of the licence of the Licensed Software in accordance with this Agreement.

"Licensed Software" means the Program together with any user Documentation, Modifications and anything else furnished to the AUTHORITY by the BAE Systems under the Licence in connection with those listed Programs, and any portion and copy of any of them.

"Major Release" means any new version of the Program which is offered by BAE Systems, being a version which contains significant differences from the previous versions as to be generally accepted as constituting a new product.

"Minor Release" means a release of the Program which corrects faults, adds functionality or otherwise amends or updates the Program but which does not constitute a Major Release.

"Modifications" mean BAE Systems generated improvements, substitutions or enhancements to any part of the Licensed Software including Minor Releases and Major Releases.

"Object Code" means the computer programming code of the Program in machine readable form.

"Program" means the Software and any Third Party Software together forming the computer programs identified in Part I of the Schedule.

"Purpose" means the purpose set out in Part II of the Schedule.

"Software" means the software programs developed, created, written and owned by BAE Systems or its Affiliated Companies provided to the AUTHORITY under this Agreement as part of the Program and as more particularly described in the Specification.

"Source Code" means the computer programming code of the Program in human readable form.

"Specification" means the specification of the Program describing its facilities and functions as set out in Part II of the Schedule.

"Standard Conditions" means the conditions set out in this Agreement, comprising all Clauses.

"Special Conditions" means those conditions specified in Part VIII of the Schedule.

"Subsidiary and Holding Company" are to be construed in accordance with section 1159 of the Companies Act 2006.

"Term" means the term of this Agreement as set out in Clause 9.

"Third Party Licence" means the licences of Third Party Software, copies of which are attached to the Schedule.

"Third Party Software" means any computer program or programming code provided by BAE Systems but owned by any party other than BAE Systems or its Affiliated Companies that forms part of and/or the use of which is necessary to facilitate the Use of the Program including the computer programs and programming code identified in the Schedule.

"Use" (or **"to Use"**) in relation to the Licensed Software means the right to read, load, execute, store, transmit, display and copy the Program as set out in Clause 2 and the expression Using shall be construed accordingly.

1.2 In this Agreement, unless the context otherwise requires, references to:

- a. **Clauses and Schedules** are to the clauses of and schedules to this Agreement;
- b. **a particular law or statutory provision** is a reference to it as amended, extended or re-enacted from time to time;
- c. **writing or written** includes faxes but not e-mail;
- d. **a person** includes a corporate or unincorporated body;
- e. **any gender** include all genders;
- f. **including, include, in particular or any similar expression** shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- g. **words in the singular** include the plural and vice versa.

1.3 The Schedule to this Agreement forms part of (and is incorporated into) this Agreement. In the event of a conflict between the Schedule and the Clauses of this Agreement, the Clauses of this Agreement shall prevail.

1.4 Clause and schedule headings have been included for convenience only and shall not be used in construing or interpreting any condition of the Licence.

2 LICENCE GRANT

- 2.1** In consideration of the Licence Fee and commencing on the later of the date of execution of this Agreement or the actual date of receipt of the Licensed Software by the AUTHORITY, BAE Systems hereby grants to the AUTHORITY a non-exclusive, non-sub-licensable (except to the extent specified in Clause 2.2 below) perpetual, worldwide unlimited in quantity licence to Use the Licensed Software for the Purpose only.
- 2.2** The AUTHORITY may allow the Approved Sub-Licensees to Use the Licensed Software for the Purpose on AUTHORITY contracts only, provided that the AUTHORITY ensures or procures that those Approved Sub-Licensees are bound by the conditions of the Licence and by terms no less restrictive than those set out in this Agreement, and that, unless prevented by security considerations, the Authority shall notify in writing to BAE Systems their identity as soon as reasonably practical. The AUTHORITY shall not charge for that Use.
- 2.3** The AUTHORITY shall be responsible for the acts and omissions of its directors, employees, contractors or agents and the Approved Sub-licensee with respect to their use of the Licensed Software, and all such acts or omissions shall be deemed acts or omissions on the AUTHORITY's part. The AUTHORITY shall indemnify BAE Systems on an after tax basis against any loss, damage and expenses (including legal costs) which BAE Systems may incur as a result of any use of the Licensed Software or Confidential Information by the Approved Sub-Licensee beyond the scope of this Agreement.
- 2.4** The AUTHORITY or the Approved Sub-Licensee shall have the right to Use the Third Party Software for the Purpose in accordance with this Agreement only.
- 2.5** The Licence is subject to the following restrictions:
- a. the AUTHORITY's Use of the Program shall be restricted to the Program in Object Code form only;
 - b. the AUTHORITY may use the Licensed Software for the Purpose.
 - c. save as expressly provided in Clause 2.6 below, the AUTHORITY shall have no right to copy, adapt, reverse engineer, decompile, disassemble or modify the Program in whole or in part except:
 - i. as permitted by law; or
 - ii. to the extent that such action is legitimately required for the purposes of integrating the operation of the Program with the operation of other software or systems used by the AUTHORITY; and
- provided that any information obtained by the AUTHORITY during such decompilation is only used pursuant to the terms of this Agreement and is not disclosed or communicated to any third party without BAE Systems' prior written consent and is not used to create any software that is substantially similar to the expression of the Program nor used in any manner that would be restricted by copyright;
- d. the Licence does not and shall not be deemed to extend to any other programs, materials or Intellectual Property Rights of BAE Systems and its Affiliated Companies except the Licensed Software unless specifically otherwise agreed in writing in advance by BAE Systems.
- 2.6** Notwithstanding the above, the AUTHORITY may copy the Licensed Software in machine-readable form for Use and for back-up purposes of the Licensed Software. The AUTHORITY may also create eye readable copies of documentation solely for utilisation by operating personnel of the Licensed Software. All copyright in such copies shall remain the property of BAE Systems and the AUTHORITY shall ensure that the Licensed Software and any copies clearly and conspicuously bear BAE Systems' proprietary notices.

3 DELIVERY AND ACCEPTANCE

- 3.1 BAE Systems shall deliver the Licensed Software at a time and to a place agreed with the AUTHORITY.**
- 3.2 The AUTHORITY shall be responsible for installation of the Licensed Software and the installation of any Major Releases or Minor Releases and to test it against acceptance tests if agreed between BAE Systems and the AUTHORITY and will run such commissioning tests as it considers necessary to ensure that the installation has been performed correctly.**
- 3.3 The AUTHORITY may reject the Licensed Software within the acceptance period specified in Part IV of the Schedule only (which period starts on receipt of the Licensed Software by the AUTHORITY) if it fails an agreed acceptance test or if it does not perform in accordance with the functionality set out in an agreed Specification statement (where specified) or user document provided by BAE Systems. The AUTHORITY and the BAE Systems may mutually agree to extend the acceptance period, or to amend the Schedule appropriately, for any Licensed Software that would otherwise have been rejected under this Clause.**
- 3.4 The AUTHORITY shall be understood to have accepted the Licensed Software if thirty (30) working days have lapsed and the AUTHORITY has not notified BAE Systems in writing of its rejection of the Licensed Software or if the AUTHORITY commences operational use of the Program.**
- 3.5 If the AUTHORITY rejects the Licensed Software in accordance with Clause 3.3 the Licence for it shall terminate and the AUTHORITY shall be entitled to reimbursement of any fees paid in respect of the Licensed Software.**

4 PAYMENT

- 4.1** BAE Systems will invoice the AUTHORITY for the agreed Licence Fee in the amount and in accordance with the invoice arrangements set out respectively in Parts V and VI of the Schedule on or after receipt by the AUTHORITY of the Licensed Software.
- 4.2** The AUTHORITY shall pay the invoice value within 30 days from the later of delivery of the Licensed Software or the date of receipt of a valid invoice related to that Licensed Software. Payment does not constitute acceptance of the Licensed Software.
- 4.3** Notwithstanding any interest payable for late payment in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 , if the AUTHORITY fails to make any payment properly due pursuant to the terms of this Agreement, BAE Systems may at its option any time after payment has become due, and without prejudice to any other remedy available, terminate or temporarily suspend the performance of its obligations under this Agreement (and revoke or suspend the Licence where the non-payment relates to the Licence Fee).
- 4.4** The AUTHORITY may not deduct or set-off any sums which are due under this Agreement. If BAE Systems becomes entitled to terminate this Agreement for any reason, any sums then due to BAE Systems shall immediately become payable in full.
- 4.5** All fees and payments to be made under this Agreement are stated exclusive of any applicable VAT or its equivalent in the relevant jurisdiction applicable to an invoice, which shall be paid by the AUTHORITY at the rate and in the manner prescribed by the law of that jurisdiction at the relevant tax point date.

5A CONFIDENTIALITY

5.1 Subject to Clause 5.2 and except as otherwise agreed in writing, the AUTHORITY and BAE Systems shall each hold in confidence and shall not use, disclose or otherwise make available, except in accordance with the Licence, all the following information received from the other under or in connection with the Licence, including:

- a. the Licensed Software;
- b. details of the AUTHORITY's use and application of the Licensed Software;
- c. trade secrets, technical or commercial information, know-how, techniques, ideas, principles and concepts of any kind;
- d. any other information which is identified as being disclosed in confidence at the time of disclosure

provided that:

the obligation for b. – d. relates only to information received in writing or other material form which is marked as confidential or which should reasonably be considered as confidential given the nature of the information; or if such information is disclosed orally, the obligation shall apply for 30 days unless the discloser confirms such information in writing or other material form within 30 days when the obligation of confidence shall apply thereafter. The above shall constitute Confidential Information.

5.2 The obligations under Clause 5.1 shall not require the receiving Party to maintain confidence in, or refrain from using, any part of the information to the extent that the receiving Party can show that such part of the information:

- a. was already known to that Party, without restraint on use or disclosure, prior to the date of receipt or acquisition under or in connection with the Licence; or
- b. has been received by that Party, without restraint on use or disclosure, from a third party having the right to disclose it; or
- c. has entered the public domain otherwise than in breach of the Licence or any other agreement between the Parties; or
- d. was generated by that Party independently of the information which is subject to Clause 5.1;

provided that the relationship of such part of the information to the remainder of the information which is subject to Clause 5.1 is not revealed.

5.3 The obligations under Clause 5.1 shall be perpetual.

5.4 The AUTHORITY shall ensure or procure that any individual to whom the Licensed Software is made available is made aware of, and complies with, the obligations as to confidentiality and other relevant conditions of the Licence.

5.5 The AUTHORITY shall reproduce and maintain any copyright notices and trade marks on or in any of the copies of the Licensed Software made in accordance with the Licence, including partial copies, and on any software changed under the terms of the Licence.

5.6 The AUTHORITY shall not use the Confidential Information for any industrial, commercial or other purpose other than in accordance with this Agreement.

5.7 The Parties shall promptly notify each other in writing if they become aware of any breach of confidence by any person to whom they divulge all or any part of the Confidential Information and shall give each other all reasonable assistance in connection with any proceedings which either party may institute against such person for breach of confidence.

5.8 Where the AUTHORITY is required to disclose or becomes aware that it is required to disclose any of the Confidential Information of BAE Systems pursuant to any consent order, relevant law or government or regulatory requirement, the AUTHORITY shall promptly notify BAE Systems (so far as it is legally able to do so) of the nature and extent of the Confidential Information required to be disclosed to enable BAE Systems to take measures to minimise or avoid the disclosure to the extent possible and in any event the AUTHORITY shall limit the Confidential Information disclosed to the minimum requested by such consent order or government of regulatory requirement.

5B REPORTING

5.9 The AUTHORITY shall during the Term:

- a. effect and maintain adequate security measures to safeguard the Licensed Software from unauthorised copying, access or use by any unauthorised person;**
- b. maintain a full and accurate record of the AUTHORITY's, equipment upon which the Licensed Software is installed and a list of any Approved Sub-Licensee's subject to Clause 2.2 and to promptly produce such records to BAE Systems on BAE Systems' request from time to time.**

5.10 If BAE Systems has reason to suspect that the AUTHORITY has breached the terms of this Agreement in its use of the Licensed Software, BAE Systems shall, at its own expense and upon reasonable notice, be entitled to check its use of the Licensed Software and the AUTHORITY shall provide all reasonable support to such audit in accordance with clause 5.9 (b).

5.11 Where any audit discloses any use of the Licensed Software beyond the terms of the Licence granted, the AUTHORITY shall pay BAE Systems such fees calculated in accordance with its then current price list applicable to such usage from the date such usage commenced, and shall also bear the cost of the audit.

6 IPR ACTIONS AND LIABILITIES FOR IPR INFRINGEMENT

- 6.1** BAE Systems declares that he is entitled as either owner or licensee to provide the Licensed Software to the AUTHORITY on the terms and conditions of the Licence. All title, interest and Intellectual Property Rights in the Software, Documentation and Modifications belong and shall belong to BAE Systems, or its third party suppliers as applicable, and the AUTHORITY shall have no rights in or to the Licensed Software other than the right to use them in accordance with the terms of this Agreement. Subject to clause 14, the AUTHORITY acknowledges that it has no right to have access to the Program in Source Code or in unlocked coding or with comments.
- 6.2** Subject to the limitations imposed in Clauses 6.3 and 6.4, BAE Systems shall assume all liability and indemnify the AUTHORITY against all reasonable direct costs or liabilities arising under any valid claim or action brought by a third party against either the Authority or the Approved Sub-Licensee alleging that the supply of the Licensed Software or the Use of the Licensed Software in accordance with the Agreement by the AUTHORITY infringes any third party Intellectual Property Right, including a patent, registered or unregistered design right or trade mark effective as of the date of this Agreement or any copyright of a third party, then:
- a. If the claim or action is brought against BAE Systems he shall take full responsibility for dealing with settling or defending the claim or action;
 - b. If any claim is made against the AUTHORITY then BAE Systems shall be given full responsibility for dealing with settling or defending the claim as appropriate in his judgement;
 - c. If legal action is taken against the AUTHORITY they shall be entitled to join BAE Systems in the action.
- 6.3** Clause 6.2 shall not apply, and the AUTHORITY shall assume all liability for and indemnify BAE Systems, against all costs and liabilities under a claim or action brought by a third party against BAE Systems or its contractors in the event that it arises as a consequence of any of:
- a. Use of the Licensed Software by the AUTHORITY, or by a contractor permitted to use the Licensed Software pursuant to Clause 2.2, outside the Specification or user documentation or outside the Purpose;
 - b. Use of modifications to the Licensed Software, or any development, maintenance or modification of the Software not provided or not approved in writing by BAE Systems;
 - c. infringement by BAE Systems of any third party Intellectual Property Right by reason only of use of any material provided by the AUTHORITY for the purposes of the Licence, but only to the extent that this material is held and used within the terms under which it was provided and used solely for the purposes of the Licence;
 - d. use of any release of the Software other than the most current unaltered release of the Software made available to the AUTHORITY under the terms of this Agreement.
- 6.4** In no circumstances shall BAE Systems be liable for any costs or expenses incurred by the AUTHORITY in relation to a claim without BAE Systems' prior written authorisation and Clause 6.2 shall not apply in the event that, without the consent of BAE Systems (which shall not be unreasonably withheld) the AUTHORITY:
- a. has made or makes an admission of any sort to the third party relevant to the claim or action;
 - b. the AUTHORITY has entered or enters into negotiations with the third party relevant to the claim or action;
 - c. the AUTHORITY has made or makes an offer to the third party for settlement of the claim or action.
- 6.5** Each Party undertakes to notify and consult the other promptly in the event of any enquiry, claim or action brought or likely to be brought against it or its contractor or the Parties jointly, which relates to infringement of any third party Intellectual Property Right in connection with the supply or Use of the Licensed Software under the Licence. In accordance with Clause 6.2, BAE Systems shall normally assume full control and conduct of the defence, negotiations or settlement of any claim, but by joint agreement, the AUTHORITY may take the lead in dealing with settling and defending any such enquiry claim or action made against it directly in consultation with BAE Systems and, subject to BAE Systems' agreement as to the terms of any settlement, this shall not displace any liability of BAE Systems arising under Clause 6.2. If any claim is made against the AUTHORITY under Section 55 of the Patents Act 1977 as a result of the AUTHORITY's use of the Software, and if the AUTHORITY offers a settlement of the claim, otherwise than as a result of a Court

order and without the agreement of BAE Systems, then BAE Systems shall be relieved of any liability which might otherwise arise under Clause 6.2.

- 6.6 The Indemnity in Clause 6.2 and 6.3 is conditional on the other party giving the indemnifying party complete and accurate information and all reasonable and timely assistance as may be required or requested in connection with any defence, negotiations or settlement of a claim; and using all reasonable endeavours to mitigate its loss.
- 6.7 In the event that any claim or action is made which is subject to Clause 6.2 or if in BAE Systems' reasonable opinion such claim or action is likely to be made, the BAE Systems shall promptly utilise all reasonable endeavours to:
- a. establish or secure the AUTHORITY's right to continue to Use the Licensed Software or, failing to do so,
 - b. avoid that claim or action by, and after consultation with the AUTHORITY as to how to minimise the AUTHORITY's loss of Use of the Licensed Software, replacing or modifying the Licensed Software without significant change to the specification of the Licensed Software all at BAE Systems' expense, including installation and testing,
- failing which BAE Systems may require the AUTHORITY to return the Licensed Software and all copies thereof and shall refund any of the Licence Fees paid by the AUTHORITY (subject to a reasonable reduction for depreciation) and this Agreement shall terminate immediately.
- 6.8 In the event of BAE Systems being unable to satisfy the requirements of sub-Clauses 6.7a. or 6.7b. BAE Systems may terminate the Licence relating to the Licensed Software upon not less than three months written notice unless a lesser period is determined by any court order, and BAE Systems shall make a refund of the licence fee to the AUTHORITY, either in full or with the agreement of the AUTHORITY (which shall not be unreasonably withheld) of a portion of the licence fee representing the lost portion of the Licence.
- 6.9 The AUTHORITY shall ensure that the operating system, third party software (other than the Third Party Software) and any other software with which the Program will be used is either the property of the AUTHORITY or is legally licensed to the AUTHORITY for use with the Program and as such the AUTHORITY shall indemnify BAE Systems in respect of any associated claims by third parties and all related costs, expenses or damages suffered or incurred by BAE Systems in the event of any alleged violation of any third party Intellectual Property Rights or other proprietary rights by the AUTHORITY that results in any claims or allegations being made or alleged against BAE Systems.
- 6.10 The conditions set forth in clauses 6.2 to 6.9 represents the total liability and responsibility of each Party to the other under a Licence in respect of any actual or alleged infringement of any Intellectual Property Right owned by a third party, and takes precedence over any other liability condition in the Licence.

7 WARRANTY

7.1 BAE Systems warrants that:

- a. it has the right to enter into this Agreement and to grant to the AUTHORITY a licence to use the Licensed Software as contemplated by this Agreement;
- b. It has taken reasonable precautions to ensure that no known viruses for which detection and antidote software is generally available are coded or introduced into the Program; and
- c. the Documentation will provide adequate instructions to enable a reasonably skilled and computer literate person to make proper use of the Program.

7.2 BAE Systems does not give any warranty that:

- a. the Licensed Software is error free or that the AUTHORITY's use of the Licensed Software will be uninterrupted and the AUTHORITY acknowledges and agrees that the existence of such errors and occurrence of such interruptions shall not constitute a breach of this Agreement or give rise to any liability other than as set out in Clause 7.1 and 7.5; and
- b. the Program will work on or in conjunction with any of the AUTHORITY's equipment or any other hardware or software (unless this is set out in the Specification) and BAE Systems' liability is hereby excluded for any claims which relate to the impairment of any of the AUTHORITY's equipment other hardware or software.

7.3 All warranties in the Licensed Software and its user Documentation other than that given under Clause 7.1 are hereby excluded to the fullest extent permitted by law including, without limitation, the implied warranty and conditions of satisfactory quality and fitness for a particular purpose, but this shall not prejudice the right of the AUTHORITY to reject the Licensed Software in accordance with Clause 3.3.

7.4 No oral or written information or advice given by BAE Systems, its agents or employees shall create a warranty or extend the scope of the warranty given under Clause 7.1.

7.5 BAE Systems shall utilise all reasonable endeavours to ensure that any Licensed Software supplied, irrespective of the mode of delivery, is free from any published computer virus. In the event that it can be shown that, at the time of delivery, the Licensed Software incorporated such a virus then the AUTHORITY shall notify BAE Systems in writing as soon as practicable and give BAE Systems a reasonable opportunity to correct any such breach by repairing or replacing the relevant part of the Licensed Software. If successfully completed within 120 days this shall constitute the AUTHORITY's sole remedy for this defect. The AUTHORITY may also require BAE Systems to use reasonable endeavours within the limits of backup data provided by the AUTHORITY to restore any computer systems to their pre-infected state.

7.6 The AUTHORITY shall report to BAE Systems any bugs, errors or problems encountered with the Program in accordance with Part VII of the Schedule.

8 GENERAL LIABILITY CONDITIONS

- 8.1** The limitations and exclusions set out in this clause 8 shall not apply with respect to the liability of either Party (a) for death or personal injury caused by the negligence of a Party or its directors, employees, agents or subcontractors; or (b) for fraud or fraudulent misrepresentation; or (c) to the extent such limitation or exclusion is not permitted by law.
- 8.2** Subject to clause 8.1, BAE Systems shall have no liability to the AUTHORITY for any indirect or consequential damages or losses which might arise by reason of Use of the Licensed Software by or for the AUTHORITY or for any loss of profit, loss of revenue, loss of use, loss of or damage to business information or data produced by Use of the Licensed Software whether arising directly or indirectly.
- 8.3** The exclusion provided under Clause 8.2 shall not apply where the AUTHORITY suffers loss because of a defect within the Licensed Software which defect is known to BAE Systems at the time the Licensed Software is furnished to the AUTHORITY unless the AUTHORITY has previously been made aware of and accepted the presence of the defect and its relevance to the AUTHORITY's application of the Licensed Software.
- 8.4** The total aggregate liability of BAE Systems under or in connection with this Agreement (whether arising from contract, negligence or any other basis) is limited to 5 Million Sterling pounds.
- 8.5** BAE Systems shall have no liability to the AUTHORITY for any losses arising out of or in connection with any same event, originating cause or breach of contract for which the AUTHORITY has commenced or is entitled to commence proceedings under the sub-licence agreement between Leonardo MW Ltd and the AUTHORITY in relation to the Program.
- 8.6** BAE Systems shall not be liable under or in connection with this Agreement (whether for breach of the above warranties or otherwise) in relation to any defect or other problem with or in relation to the Licensed Software if:
- a. the AUTHORITY fails to make all reasonable endeavours to provide all the information that may be necessary to assist BAE Systems in resolving the defect or fault, including sufficient information to enable BAE Systems to re-create the defect or fault;
 - b. the AUTHORITY has failed to:
 - i. comply with its obligations under this Agreement either in whole or in part; or
 - ii. use the Licensed Software in accordance with this Agreement any authorised operating instructions, any operating conditions that have been notified to the AUTHORITY by BAE Systems, the Documentation and/or normal good industry practice;
 - c. there have been abnormal or incorrect operating conditions (including without limitation interruption of or any abnormality in the electrical supply or the Program is incorrectly configured or used in a defective operating environment);
 - d. any third party products or software have been connected to the Program unless such connection or operation has been expressly authorised and approved by BAE Systems in advance in writing;
 - e. any alterations, modifications, repairs or any other work have been made to the Program by any person other than BAE Systems;
 - f. the defect or problem occurs as a result of any other act, cause or omission (whether accidental or deliberate) outside the control of BAE Systems; or
 - g. the AUTHORITY has acted outside the scope of this Agreement.

9 TERM AND TERMINATION OF THE LICENCE

- 9.1** This Agreement shall commence on the last date of execution of this Agreement and shall continue until terminated by mutual agreement or it is terminated pursuant to Clauses 3.5, 4.3, 6.7 & 6.8 or BAE Systems may terminate this Agreement no earlier than 30 working days from receipt of written notice to the AUTHORITY if:
- a. the AUTHORITY gives written notice to BAE Systems that it has permanently discontinued its use of the Licensed Software;
- 9.2** Upon termination of this Agreement:
- a. the Licence and all rights granted under this Agreement shall immediately cease and the AUTHORITY shall immediately stop Using the Licensed Software; and
 - b. the AUTHORITY shall within thirty days of termination of a Licence, through all reasonable endeavours and to the best of its knowledge, return or destroy, at BAE System's option, all originals and destroy all copies of the Licensed Software including partial copies and modifications except that the AUTHORITY may on prior written authorisation from BAE Systems retain one copy for archival purposes only. The AUTHORITY shall promptly certify in writing once it has so done.
- 9.3** In the event of BAE Systems drawing the attention of the AUTHORITY to a breach of any condition of the Licence then:
- a. where the breach is of a nature that cannot be remedied, or where the AUTHORITY fails to remedy the breach in accordance with 9.3(b) below, the AUTHORITY undertakes to settle with BAE Systems on fair and reasonable terms as determined by an independent expert mutually agreed between the Parties, failing which by an expert appointed by the London Court of International Arbitration (LCIA), and to utilise all reasonable endeavours to ensure that a further breach does not occur,
 - b. where the breach is capable of being remedied, the AUTHORITY shall promptly remedy the breach and where appropriate put in place measures to ensure that a further breach does not occur. If the AUTHORITY fails to remedy such breach, the AUTHORITY shall indemnify the BAE Systems for all loss and damage incurred by him as a result of the breach.
- 9.4** Termination or expiry of this Agreement in whole or in part for any reason shall be without prejudice to any rights, remedies or obligations which may have accrued as at the date of expiry or termination of this Agreement.
- 9.5** The provisions of Clauses 5A,6,8,9 together with all other clauses the survival of which is necessary for the interpretation or enforcement of this Agreement or to give effect to its terms or as may be expressed to survive shall survive the expiry or termination of this Agreement and shall continue in force in accordance with their terms.

10 SOFTWARE MODIFICATIONS

- 10.1** BAE Systems reserves the right to make improvements, substitutions or enhancements to any part of the Licensed Software.
- 10.2** Unless agreed otherwise by the Parties as part of any additional maintenance and support terms if applicable, BAE Systems shall:
- a.** inform the AUTHORITY of any Major Releases and shall offer to sell such Major Releases to the AUTHORITY on reasonable commercial terms to be agreed between the Parties; and
 - b.** issue Minor Releases which are required to maintain the Software in accordance with the Specification at no cost to the AUTHORITY and deliver such Minor Releases by such means and at such times as notified by BAE Systems to the AUTHORITY from time to time and the AUTHORITY shall install any such Minor Release as soon as reasonably practicable after receipt.
- 10.3** Any additional functionality not covered by BAE Systems Major or Minor Releases required by the AUTHORITY to comply with any policy, rules, legislation updates or otherwise, will be subject to reasonable commercial terms to be agreed between the Parties.
- 10.4** The AUTHORITY shall not be obliged to implement any Modifications that are made available to it by BAE Systems. However, the AUTHORITY shall install and implement any Modification that is required to ensure that the Licensed Software comply with any applicable law. All Modifications that are implemented by the AUTHORITY will be subject to this Agreement.
- 10.5** A failure by the AUTHORITY to implement any Modification which is made available to it by BAE Systems under clause 10.2 (b), will invalidate the indemnity in Clause 8.

11 OUTPUT

- 11.1 The AUTHORITY may freely copy and utilise any output resulting from Use in accordance with BAE Systems supplied documentation of the Licensed Software.**

12 DISPUTES

- 12.1** Other than for any claim arising from non-payment of a valid invoice should any question, dispute or difference whatsoever arise between the AUTHORITY and BAE Systems in relation to or in connection with this Agreement or the Schedule of any Licence granted under it, the AUTHORITY or BAE Systems may give notice to the other in writing of the existence of that question, dispute or difference and both Parties will attempt to reach a solution. If no mutually acceptable solution is found the AUTHORITY or BAE Systems may give notice to the other in writing (the ADR notice) that the matter is to be referred to Alternative Dispute Resolution (ADR).
- 12.2** Upon receipt of the ADR notice and subject to sub-Clause 12.3, the Parties shall define the type of ADR to be adopted and the rules for its implementation. Failing agreement to adopt, or to achieve, resolution by one such type, the Parties may decide to adopt a second type of ADR. The Parties agree that after a period of two (2) months from the date of receipt of the ADR notice, or such other date as may be agreed by the Parties, and provided that the dispute remains unresolved, it shall finally be settled by arbitration by a sole arbitrator at the request in writing by either party to the other under the Rules of the London Court of International Arbitration, which Rules are deemed to be incorporated by reference into this clause. The seat of arbitration shall be London and the language English. Failing agreement on the appointment of the arbitrator within 14 days of receipt of such request, the arbitrator shall be appointed by the President for the time being of the Law Society, in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment of it. The costs of any ADR (other than arbitration) shall be shared equally by the AUTHORITY and BAE Systems, however, the costs of arbitration shall be settled by the arbitrator.
- 12.3** Where a Party rejects the referral of the matter to ADR he shall promptly notify the other Party in writing of that rejection and the reasons for it.

13 TRANSFER

- 13.1 Unless prevented by law or national regulation the AUTHORITY shall have the right to novate this Agreement to a separate legal entity, without charge to itself or the legal entity, upon two months written notice to BAE Systems, as provided below:**

- 13.1.1 following a transfer from the AUTHORITY to the legal entity of any function of the AUTHORITY for which the Licensed Software has been obtained; or**
- 13.1.2 on disposal to the legal entity of surplus equipment where the Licensed Software is essential to the running of that equipment, whether or not it is embedded in the equipment, provided that all warranties (whether express or implied) and all indemnities shall be void, the Licensed Software shall be supplied "as is", and the liability referred to in Clause 8.4 shall be ten pounds sterling only.**

PROVIDED THAT the Licensed Software novated in accordance with this sub-Clause may only be used for the same purposes for which the Authority was licensed in accordance with Clause 2 and wider use shall require the written approval of, and the grant of a further licence by, BAE Systems.

- 13.2 BAE Systems may transfer, assign, sub-contract or otherwise dispose of any its rights or obligations under this Agreement at any time provided that it provides for the continuance of the AUTHORITY'S rights under the Licence and notifies the AUTHORITY in writing of the identity of the new licensor.**

14 DISCONTINUANCE OF BUSINESS

- 14.1** The AUTHORITY shall have the right to secure from BAE Systems, or from the authorised trustees or receivers acting on behalf of BAE Systems, in the event of BAE Systems permanently ceasing to maintain the Licensed Software or BAE Systems permanently discontinuing in business because of bankruptcy, receivership, dissolution, or other form of permanent business disruption and that business is not continued by a successor in interest to BAE Systems to whom the benefits and obligations of this Agreement and any licence granted under it have been assigned, Licensed Software documentation including program source code in the possession and control of BAE Systems, but no more than BAE Systems uses himself, as the AUTHORITY shall consider necessary for it to maintain and continue its normal Use of the Licensed Software for the duration of the Licence but for no other purpose.
- 14.2** If so required by a Special Condition, BAE Systems shall compile and maintain, at a price or in accordance with a price formula identified in the Special Condition, an up to date copy of the Licensed Software documentation to which the AUTHORITY is entitled under Clause 14.1 which copy shall be held by BAE Systems as a bailee without lien for the AUTHORITY and be made available to the AUTHORITY without additional charge. In the absence of such a Special Condition, the copy shall be prepared on the AUTHORITY's demand and it shall be made available to the AUTHORITY at a fair and reasonable price based on the cost of compilation, reproduction and dispatch.
- 14.3** The AUTHORITY shall have the right to utilise the Licensed Software documentation to which it is entitled under Clause 14.1 for the purpose of maintaining its Use of the Licensed Software for the duration of the Licence but for no other purpose. The AUTHORITY shall hold in confidence all information in the documentation.

15 GENERAL

- 15.1** If any provision of this Agreement is held to be invalid, illegal or unenforceable to any extent then:
- a. that provision shall (to the extent it is invalid, illegal or unenforceable) be given no effect and shall be understood not to be included in the Agreement but without invalidating any of the remaining provisions of the Agreement; and
 - b. the Parties shall use all reasonable endeavours to replace the invalid, illegal or unenforceable provision by a valid, legal and enforceable provision the effect of which is as close as possible to the effect of the invalid, illegal or unenforceable provision.
- 15.2** The waiver by either Party of a breach or default of any of the provisions of this Agreement by the other Party shall not be construed as a waiver of any subsequent breach of the same or any other provisions of this Agreement. No act or omission of either Party shall by itself amount to a waiver of any right or remedy unless expressly stated by that Party in writing. In particular, no reasonable delay in exercising any right or remedy, shall by itself constitute a waiver of that right or remedy.
- 15.3** No waiver of any right or remedy shall operate as a waiver in respect of any other right or power or of any breach or default by the other Party.
- 15.4** Neither BAE Systems nor the AUTHORITY shall be liable for delay or failure to perform any of its obligations under the Licence if that delay or failure results from circumstances beyond its reasonable control including (without limitation) fire, flood, industrial dispute, government act, natural catastrophic disaster, war (declared or undeclared) (Force Majeure Event).
- 15.5** In the event of either Party being so delayed or prevented from performing its obligations, such Party shall:
- a. give notice in writing of such delay or prevention to the other Party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;
 - b. use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this Agreement; and
 - c. resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
- 15.6** This Licence Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be subject to and construed and interpreted in accordance with the Laws of England & Wales and shall be subject to the non-exclusive jurisdiction of the Courts of England for the enforcement of any arbitral decision.
- 15.7** This Licence Agreement including its Schedules shall constitute the entire agreement and understanding between the Parties with relating to the Licensed Software and supersedes any previous agreement, understanding or arrangement between the Parties, whether oral or in writing. Each Party acknowledges and agrees that in entering into this Agreement it has not relied on any statement, representation, warranty, undertaking, promise or assurance of any person (whether a Party to this Agreement or not) other than as expressly set out in this Agreement.
- 15.8** No right is granted under the Contract (Rights of Third Parties) Act 1999 to any person who is not a Party to the Licence, save for the Affiliated Companies of BAE Systems, to enforce any term of the Licence in his own right and the Parties declare that they have no intention to grant any such right. This shall not affect any right or remedy of a third party that exists or is available apart from that Act.
- 15.9** No provision of this Agreement may be amended, modified, varied, discharged or terminated otherwise than by the express written agreement of both Parties.
- 15.10** This Agreement may be signed and exchanged in any number of counterparts, which together will constitute the same instrument.
- 15.11** Any notice to be given under this Agreement shall be in writing and may be delivered personally or sent by first class mail, courier, air mail, or transmitted by fax (confirmed by first class mail) to the address of the

relevant Party set out at the head of this Agreement, or to the relevant fax number set out below, or such other address or fax number as that Party may from time to time notify to the other Party in accordance with this Clause 18.

15.12 The fax numbers of the Parties are as follows

- a. BAE Systems – [REDACTED]
- b. The AUTHORITY – [TBA]

15.13 Any notices sent as above shall be deemed to have been received three (3) working days after the day of posting (in the case of inland first class mail); or on the date and at the time that the courier's delivery receipt is signed (in the case of delivery by a commercial courier); or five working days after posting (in the case of airmail); or on the next working day after transmission (in the case of fax messages, but only if a transmission report is generated by the sender's fax machine recording a message from the recipient's fax machine, confirming that the fax was sent to the number indicated above and confirming that all pages were successfully transmitted).

16 EXPORT REGULATIONS

- 16.1 BAE Systems shall be responsible for complying with all export regulations necessary to fulfil Use of the Licensed Software for the Purpose in accordance with this Agreement and shall ensure any applicable restriction is conveyed in writing to the Authority at the effective date of this agreement.**
- 16.2 Following acceptance of the Licensed Software the Authority shall be responsible at its own expense for complying with any additional applicable laws and regulations to that described under 16.1, and for obtaining any applicable licenses and consents relating to the Use of the Licensed Software worldwide.**

SCHEDULE II TO THE AGREEMENT BETWEEN THE AUTHORITY AND BAE SYSTEMS (OPERATIONS) LTD
DATED ...20...3...2019... Version Number: ...1... ..

PART I - LICENSED SOFTWARE PROGRAMS

CAGE II
Media – DVD ROM

Third Party Software:

Third Party Software Licences (as provided by BAE Systems to the AUTHORITY at the date of this agreement):

Item	Version	Licence
TBC		

PART II – PURPOSE AND SPECIFICATION

Purpose:

The Purpose is using the Licensed Software in support of the design, development, operation, delivery, modification, support or disposal of the Merlin Mk4/4A Mission Support System for the AUTHORITY's aircraft fleet of Merlin Mk4/4A aircraft, and any other activities incidental thereto, such as associated ground stations and Computer equipment.

Specification:

Reference	Title	Version
	CAGE Merlin SSS	4
	CAGE Product SSS	14

PART III – TERRITORY

Worldwide – The Program can be used in any location provided it remains under the custody and control of the Licensee or the Approved Sub-licensee.

PART IV – ACCEPTANCE PERIOD & TEST

The software licensed under this Enterprise Licence Agreement is delivered under a separate development contract which details acceptance and test. This agreement offers no change to Acceptance and Test.

PART V - LICENCE FEES

Supply of an Enterprise Licence Agreement for the CAGE Product for use in the Merlin Mk4/4A Mission Support System, exclusive of VAT, is [REDACTED]

PART VI - INVOICE ARRANGEMENTS

Execution of the Licence is assumed to take place no later than 31 March 2019.

The AUTHORITY and BAE Systems shall comply with the Electronic Transactions Agreement comprised in the completed DEFFORM 30 (Edn 01/07) reference DEPS/BAES Systems Operations/Deff 30 Corp 01/07 signed 9 February 2007. The sending by BAE Systems of an "Acknowledgement of Receipt" message is to be regarded as acceptance of the Purchase Order Message to which it refers, unless the Purchase Order Message itself constitutes acceptance in accordance with the terms and conditions of the Contract. Messages under DEFFORM 30 (Edn 01/07) received by BAE Systems shall be regarded as having been authorised by the AUTHORITY.

All orders placed under this Agreement shall be transacted through the AUTHORITY's Contracting, Purchasing and Finance (CP&F) electronic procurement tool, in accordance with the DEFFORM 30 agreement detailed below. All claims for payment shall be made in accordance with DEFCON 129J (Edn 07/08) and DEFCON 522J (Edn 05/03) procedures.

To claim payment BAE Systems shall raise electronic invoice message via the CP&F System and also submit a completed Delivery Label/Form, DEFFORM 129J (Edn 07/08), to the AUTHORITY's Project Manager, for verification. If satisfied, the AUTHORITY's Project Manager shall electronically "receipt" the invoice message, thus giving authority electronically for payment by the Defence Business Services Finance.

PART VII - WARRANTY PERIOD

No further warranty is offered under the Enterprise Licence Agreement.

PART VIII - SPECIAL CONDITIONS

None.

PART VIII – EXPORT RESTRICTIONS

When supplied by BAE Systems, the CAGE Software will contain no data subject to United States International Traffic in Arms Regulations (ITAR) and there are no ITAR restrictions imposed on the Use of the Licenced Software for the Purpose. It is the Authority's responsibility to ensure that any data subject to ITAR control entered into, created within, or otherwise dynamically linked to the delivered CAGE software is appropriately controlled.

**FOR BAE SYSTEMS
(OPERATIONS) LTD**

Signed

Name ...

[Print Name]

Appointment

Date 20/3/19

**FOR AND ON BEHALF OF THE
SECRETARY OF STATE FOR DEFENCE**

Signed

Name ..

[Print Name]

Appointment

Date 18/3/19