

NON DISCLOSURE AGREEMENT

THIS AGREEMENT is made this day of June 2018

BETWEEN

LOCKHEED MARTIN AUSTRALIA PTY LIMITED (ABN 30 008 425 509) a company incorporated in the ACT and having its registered office at 8 Brisbane Avenue Barton ACT 2600 (hereinafter referred to as "LMA").

AND

<INSERT COMPANY NAME> (ABN <INSERT>) a company incorporated in the xxxxxxxxx and having its registered office at <Insert Details> (hereinafter called "The Company").

RECITALS

- A. LMA is part of a global enterprise principally engaged in the conception, research, design, development, manufacture and integration of advanced-technology products and services.
- B. The Company is in the business of <Insert details>.
- C. LMA and The Company desire to exchange "Proprietary Information" relating to the Combat System Integrator (CSI) Program, as part of Australia's Future Submarine Program (FSP), ("the Purpose").

NOW IT IS HEREBY AGREED AS FOLLOWS:

- 1. This Agreement shall not be construed as a teaming, joint venture or other such arrangement; rather the parties hereto expressly agree that this Agreement is intended for the protection of Proprietary Information only.
- 2. As used herein the term "Proprietary Information" shall mean any information disclosed by one party (the Disclosing Party) to the other party (the Receiving Party) under this Agreement, whether in writing, orally, visually, in the form of samples, computer software, regardless of media, models or otherwise provided that such written information is clearly and conspicuously marked as Proprietary Information or that such oral, visual or other non-written information is designated as Proprietary Information at the time of disclosure. It is acknowledged that the term Proprietary Information may also include information made available to the Disclosing Party by a third party where the third party has required the Disclosing Party to obligate a person receiving that information to maintain the confidentiality of that information.

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3. In addition the foregoing definition of Proprietary Information it is hereby expressly agreed that any and all information which can be obtained by examination, testing or analysis of computer software, drawings, sketches or any other form of communication including any samples of hardware, or component parts thereof, provided by one party to the other shall be regarded and treated by the other party as Proprietary Information.
4. The protections and restrictions in this Agreement as to the use and disclosure of Proprietary Information shall not apply to any information that the Receiving Party can show:
 - a) is at the time of disclosure hereunder already published or otherwise publicly available;
 - b) is after disclosure hereunder published or becomes available to the public other than by breach of this Agreement;
 - c) is rightfully in the Receiving Party's possession without restriction as to use and disclosure;
 - d) is independently developed by the Receiving Party without reference to Proprietary Information disclosed hereunder as demonstrated by written or other tangible evidence; or
 - e) is rightfully known to the Receiving Party prior to disclosure by the Disclosing Party.

Specific information shall not be deemed to be within the exception of this Clause merely because such specific information may be construed as being within broader, non-confidential information which is either in the public domain or the possession of the Receiving Party at the time of its disclosure, nor shall a combination of features which form confidential information, be deemed to be non-confidential merely because the individual features, without being combined, are non-confidential.

5. Such Proprietary Information as may be disclosed shall be limited to that which is necessary for the Purpose identified in the Recitals hereof.
6. Each Receiving Party agrees:
 - a) Subject to clause 7, to keep confidential and not to disclose to any third party any part or the whole of any Proprietary Information made available to it under this Agreement;
 - b) not to copy Proprietary Information disclosed to it under this Agreement nor to use it for any purpose other than the Purpose mentioned in the Recitals hereof;
 - c) to restrict access to Proprietary Information to such of its officers, directors and employees who have a need for knowledge thereof for the Purpose mentioned in the Recitals hereof; and

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- d) to ensure that all officers and employees of the Receiving Party to whom information is disclosed are made aware of and shall observe and comply with all the protections and restrictions in this Agreement as to disclosure of Proprietary Information; and
 - e) not otherwise use or disclose Proprietary Information without authorisation in writing by the furnishing party.
7. For the Purpose mentioned in Recital C, the Company agrees that LMA may disclose the Proprietary Information to officers, employees and agents of:
- a) its customer the Commonwealth of Australia;
 - b) Lockheed Martin Corporation;
 - c) Lockheed Martin Global, Inc; and
 - d) Third parties (other than those parties referred to in clauses 7(a) to (c), including but not limited to LMA's Subcontractors Electric Boat Corporation and SAAB Australia Pty Limited) directly involved in the CSI Program provided that Third Party is under an obligation of confidentiality on substantially the same terms as this Deed,

who have a need to know in relation to the FSP.

8. The Company acknowledges that The Commonwealth of Australia may disclose Proprietary Information provided by the Company to LMA (and disclosed by LMA to the Commonwealth of Australia pursuant to clause 7(a) above) to third parties in relation to the FSP, including but not limited to Naval Group S.A. and Naval Group Australia Pty Limited. Except in relation to a:
- a) disclosure by the Commonwealth of Australia as authorised or required by law; or
 - b) a disclosure by the Commonwealth of Australia to an official of the United States or United Kingdom governments (as the bilateral security obligations between Australia and those countries and laws of those countries will apply to protect against any unauthorised use or disclosure of the Confidential Information and will not allow any disclosure to another third party),

LMA shall use reasonable endeavours to ensure that the Commonwealth of Australia procures from the third party a deed of confidentiality in respect of the protection of the Proprietary Information.

9. All software, hardware, samples and models furnished hereunder, and all drawings, other documents or copies thereof embodying Proprietary Information disclosed or furnished hereunder and all information obtained by examination testing or analysis as per Clause 3 above shall be promptly returned or certified as having been destroyed by the Receiving Party on receipt of the Disclosing Party's written request therefore, or if this Agreement is not superseded by another written agreement between the parties, on termination of this Agreement.

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10. Export Control - Each Party hereby agrees that it will comply fully with all applicable export control and economic sanctions laws, rules, and regulations as they apply to Proprietary Information disclosed under this Agreement and the direct product of such Proprietary Information, such as those implemented by the U.S. Government (e.g., the International Traffic in Arms Regulations (“ITAR”) (22 C.F.R. Parts 120-130), Export Administration Regulations (“EAR”) 15 CFR Parts 730-774, and Foreign Assets Control Regulations (31 C.F.R. Parts 500-598), European Union (e.g., controls on exports of dual-use items and technology implemented pursuant to Council Regulation (EC) No. 428/2009), the Australian Customs Act 1901 (Cth), the Australian Defence Trade Controls Act 2012 (Cth), and other applicable government authorities (collectively, “Trade Control Laws”).

Each Party acknowledges that Proprietary Information may constitute or include technical data or technology that is subject to the Trade Control Laws and that the disclosure, export or transfer of such information, including to each Parties subsidiaries, foreign national employees, suppliers, or sub-tier suppliers, without valid export license authorization or other prior written government approval, may violate one or more of the Trade Control Laws. Each Party agrees that Proprietary Information constituting or including technical data or technology subject to any of the Trade Control Laws will not be further disclosed, exported or transferred, in any manner, including to any affiliate, foreign national employee, supplier, or sub-tier supplier, regardless of location, without having first obtained any required export authorization or other prior written government approval that may be required by law. If any Party discloses or transfers Proprietary Information in a manner not consistent with applicable Trade Control Laws, the disclosing Party shall indemnify and hold harmless the other Party(ies) from all claims, demands, damages, costs, fines, penalties, attorneys’ fees, and all other expenses resulting from the disclosure or transfer. This provision shall survive expiration of this Agreement.

11. Nothing contained in this Agreement shall be construed as conferring on the Receiving Party any right of use in or title to Proprietary Information received by it from the Disclosing Party, other than as expressly provided herein.
12. This Agreement shall be deemed to have come into force as of the date first above written and shall remain in force for a period of five (5) years when it will automatically terminate except to the extent which it is renewed or superseded by another agreement or contract between the parties hereto. The obligations and restrictions relating to all and every disclosure of Proprietary Information shall survive the termination of this Agreement.
13. The execution, existence and performance of this Agreement shall be kept confidential by the Parties and shall not be disclosed by a Party without the prior written approval of all the Parties.
14. This Agreement represents the entire existing agreement between the parties concerning the exchange or Proprietary Information relating to the Purpose mentioned in the Recitals, and this Agreement supersedes all other agreements written, oral or otherwise concerning such an exchange.

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15. The Company or LMA shall assign neither the whole nor any part of the benefit of this Agreement to a third party.
16. The laws of the State of South Australia in force shall govern this Agreement and all disputes arising under or in connection with it.
17. If any provision of this undertaking should be held to be invalid in any way or unenforceable it shall be severed and the remaining provisions shall not in any way be effected or impaired and this undertaking shall be construed so as to most nearly give effect to the intent of the parties as it was originally executed.
18. All notices for correspondence in connection with this Agreement shall be sent to: if given by LMA, addressed and forwarded to:

<Insert Contact Person>
<Insert Company Name>
<Insert Address>
<Insert Address>
Ph: <Insert>
Fax: <Insert>
Email: <Insert>

if given by The Company, addressed and forwarded to:

Lockheed Martin Australia Pty Limited
Natasha Heughan
PO Box 5216, Pinewood, VIC 3149
Ph: +61 3 9538 3730
Email: Natasha.Heughan@lmco.com

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IN WITNESS WHEREOF, the parties hereto have executed or caused this Agreement to be executed by their respective officers or representatives thereto duly authorised, all in place and of the date first written above.

Lockheed Martin Australia Pty Limited

The Company

Name _____

Name _____

Signature _____

Signature _____

Title _____

Title _____

Date _____

Date _____