

UNITED STATES DEPARTMENT OF STATE  
BUREAU OF POLITICAL MILITARY AFFAIRS  
WASHINGTON, D.C. 20520

In the Matter of:

Meggitt-USA, Inc.

A Delaware Corporation

Respondent

CONSENT AGREEMENT

WHEREAS, the Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State ("Department") has notified Meggitt-USA, Inc., including its subsidiaries, business units, and divisions (collectively "Respondent") of its intent to institute an administrative proceeding pursuant to section 38 of the Arms Export Control Act, as amended ("AECA")(22 U.S.C. §2778), and its implementing regulations, the International Traffic in Arms Regulations ("ITAR")(22 C.F.R. pts. 120-130);

WHEREAS, Meggitt-USA, Inc. is an indirect wholly-owned subsidiary of Meggitt PLC ("Respondent Parent"), headquartered in the United Kingdom;

WHEREAS, the Department acknowledges that Respondent described these matters in Disclosures submitted to the Department, and cooperated with the Department's review of this matter;

WHEREAS, Respondent has reviewed the Proposed Charging Letter and this Consent Agreement, fully understands these documents, and enters into this Consent Agreement voluntarily and with full knowledge of its rights;

WHEREAS, Respondent, without admitting or denying the allegations, wishes to settle and dispose of all potential civil charges, penalties and

sanctions arising from the Proposed Charging Letter, and from the facts that Respondent has disclosed in writing to the Department in its Disclosures by entering into this Consent Agreement;

WHEREAS, Respondent agrees that this Consent Agreement will remain in effect for a period of thirty (30) months from the date of the Order, subject to the terms and conditions set forth below;

WHEREAS, Respondent agrees that if the Department finds that this Consent Agreement was negotiated based on Respondent's knowingly providing materially false or misleading information to the Department, the Department may revoke this Consent Agreement and the related administrative order ("Order"), and bring additional charges against Respondent. Additionally, Respondent understands that a material violation of this Consent Agreement is considered a violation of the Order; and

WHEREAS, the Department and Respondent agree to be bound by this Consent Agreement and the Order to be entered by the Assistant Secretary of State for Political-Military Affairs.

Now, WHEREFORE, the Department and Respondent agree as follows:

Parties

- (1) The Parties to this Consent Agreement are the Department and Respondent, including Respondent's subsidiaries, business units, and divisions, and their assignees and successors, and in the event of reorganization or merger, the terms of this agreement will follow and apply to all affected entities or units.

Jurisdiction

- (2) The Department has jurisdiction over Respondent under the AECA and the ITAR in connection with the matters identified in the Proposed Charging Letter.

General Remedial Measures

- (3) Respondent, reflecting its commitment to conduct its business in full compliance with the AECA and the ITAR, and in order to ensure, in particular, that there are no unauthorized exports, re-exports, or retransfers of ITAR controlled defense articles or technical data, agrees to implement the following remedial measures and such additional measures as may be mutually agreed upon by Respondent and the Director, Office of Defense Trade Controls Compliance ("DTCC"), and agrees further that these measures will remain in effect for thirty (30) months, subject to the terms and conditions below, as part of this Consent Agreement entered into with the Department.
- (4) Respondent Parent, recognizing Respondent's commitment to conduct its business in full compliance with the AECA and the ITAR, and intending to avail itself of the benefits of the Consent Agreement, separately commits to continue to implement remedial measures enumerated in this Agreement throughout all of its subsidiaries, business units, and divisions engaged in ITAR-controlled activities and consistent with the legal obligations imposed upon Respondent Parent by the laws of the United Kingdom, as part of its corporate-wide compliance program.
- (5) Further, Respondent agrees to initiate incorporation of these measures upon the acquisition of any business engaged in the design, manufacture, sale, export, re-export or retransfer or brokering, of ITAR-controlled defense articles, technical data and defense services.
- (6) Further, if Respondent intends to sell any of its subsidiaries, business units, or divisions engaged in ITAR-controlled activities, Respondent agrees to notify DTCC sixty (60) days prior to such sale. Respondent also agrees, in the event of a sale or if Respondent is a party to a corporate merger, to notify the purchaser or merging party in writing that the terms and conditions of this Consent Agreement will apply to the divested

subsidiary, business unit or division, and to require the purchaser or merging party to acknowledge, in writing, prior to the sale or merger, that the purchaser or merging party will be bound by the terms and conditions of this Consent Agreement unless at least sixty (60) days prior to such sale or merger Respondent consults with DTCC regarding whether the terms and conditions of this Consent Agreement shall apply to the divested subsidiary, business unit or division, and DTCC determines prior to the sale or merger that the terms and conditions will not apply.

- (7) Respondent acknowledges and accepts its obligation to maintain effective export control oversight, infrastructure, policies and procedures for its AECA/ITAR-regulated activities.
- (8) Under this Consent Agreement, Respondent shall ensure that adequate resources are dedicated to ITAR compliance throughout the Respondent's ITAR-regulated activities. For all of Respondent's employees with responsibility for AECA and ITAR compliance, Respondent shall establish policies and procedures to address lines of authority, staffing increases, performance evaluations, career paths, promotions and compensation.
- (9) Within one hundred-twenty (120) days from the date of the Order, Respondent, in coordination with the Internal Special Compliance Official ("ISCO"), will conduct an internal review of AECA and ITAR compliance resources throughout its ITAR-regulated business units and establish the necessary actions to ensure that resources are dedicated to compliance, including the use of additional resources from compliance cross-trained employees on a part time basis when needed or other competent, qualified resources as recommended by Respondent's ISCO, and approved by Respondent's Senior Vice President and General Counsel.

Official Designated for Consent Agreement Compliance and Oversight

- (10) Respondent shall appoint, in consultation with and on the approval of the Director, DTCC, a qualified individual to serve as an Internal Special Compliance Official ("ISCO"). The authorities, term, and responsibilities of the ISCO are described below:
- (a) Appointment: Respondent shall nominate a qualified individual to serve as ISCO within sixty (60) days from the date of the Order, and the nomination shall be subject to the written approval of the Director, DTCC. Director, DTCC will provide approval or non-concurrence to Respondent within fifteen (15) days from receipt of nomination. Should the Director, DTCC, disapprove Respondent's nominee for ISCO, Respondent's Senior Vice President and General Counsel shall serve in that position until such time as an ISCO is approved. Respondent shall have thirty (30) days to nominate an alternate ISCO for the Director, DTCC's consideration. The date of approval by the Director, DTCC, of a nominee for ISCO shall be the date of appointment.
- (b) Authorities: Within fifteen (15) days of appointment of an ISCO, Respondent shall empower him/her with a written delegation of authority and statement of work (e.g., a description of responsibilities) approved by DTCC, to permit him/her to monitor and oversee Respondent's AECA and ITAR compliance with the terms of this Consent Agreement in a manner consistent with the purpose of this Consent Agreement and the Order, its specific terms and conditions, and other activities subject to the ITAR and the AECA. Respondent will provide the Director, DTCC with the proposed written delegation of authority and statement of work a minimum of ten (10) days prior to appointment of the ISCO. The ISCO shall report directly to the Director, DTCC, and Respondent's Senior Vice President and General Counsel as set forth

herein. The ISCO shall perform his/her responsibilities in consultation with DTCC.

- (c) Term: The ISCO shall serve for the duration of the Consent Agreement. If for any reason the appointed ISCO is unable to serve the full period of his/her appointment, or temporarily is unable to carry out the responsibilities described herein for greater than thirty (30) days, or if the Director, DTCC and Respondent's Senior Vice President and General Counsel agree that the appointee shall be removed as ISCO for failure to satisfactorily perform his or her duties, Respondent's Senior Vice President and General Counsel shall recommend a successor acceptable to the Director, DTCC. Such recommendation shall be made at least thirty (30) days in advance of a new appointment, unless a shorter period is agreed to by the Director, DTCC. The Director, DTCC will provide approval or non-concurrence to Respondent within fifteen (15) days. If a successor is not appointed within forty-five (45) days of the termination or removal of the appointed ISCO, this Consent Agreement will be extended for the period of time equal to the period of time Respondent was without an approved appointed official. Respondent will not be without an ISCO for more than one-hundred-twenty (120) days unless the Director, DTCC grants an extension. If the ISCO for any reason is unable to carry out the responsibilities described herein on a temporary basis, not to exceed thirty (30) days, then Respondent's Senior Vice President and General Counsel shall assume the duties and authorities of the ISCO in the interim. The written delegation of authority and statement of work described in paragraph (10)(b) above shall make provision for this event.
- (d) The ISCO may also be asked to perform additional export, re-export or retransfer oversight, monitoring and coordination of activities as agreed to by the Respondent and the Director, DTCC.

- (e) In fulfilling the responsibilities set forth in this Consent Agreement, the ISCO may, at his/her sole discretion, present any ITAR compliance-related issue directly to any or all among Respondent's President and/or Chief Executive Officer, and/or Board of Directors, and the Director, DTCC.
- (f) The Respondent's Senior Vice President and General Counsel will brief the Board of Directors at least annually concerning any findings and recommendations by the ISCO, Respondent's response and implementation of the same, and the status of AECA and ITAR compliance generally within Respondent.
- (g) Respondent's President or his designee shall notify the Board of Directors of the appointment of the ISCO and any successor thereto. Such notification shall include a description of the powers, duties, authorities and responsibilities of the ISCO. Respondent shall circulate this notice to Respondent's senior management in the United States and to its trade compliance personnel, stating that the appointment is for the duration of this Consent Agreement.
- (h) With the understanding that nothing in this Consent Agreement shall be interpreted to compel waiver of applicable attorney-client communications or attorney work product privileges, the ISCO shall have full and complete access to all personnel, books, records, documents, audits, reports, facilities and technical information relating to compliance with this Consent Agreement and the Order, and to all munitions authorizations, licenses, and Respondent's guidance relating to the export, re-export or retransfer of defense articles and defense services.

- (i) Respondent and Respondent's ITAR-regulated subsidiaries, business units, and divisions shall cooperate with all reasonable requests of the ISCO, and shall take no action to interfere with or impede the ability of the ISCO to monitor Respondent's compliance with this Consent Agreement, the Order, and the AECA and the ITAR, or to carry out other responsibilities of the ISCO set forth in this Consent Agreement. In the event that the ISCO believes that Respondent or its employees are not cooperating with the ISCO's appropriate requests, the ISCO shall notify Respondent's Senior Vice President and General Counsel, who shall promptly endeavor to resolve any concerns or lack of cooperation. If the Senior Vice President and General Counsel concludes that the ISCO's requests are not reasonable, he/she shall inform the ISCO and the Director DTCC of this conclusion and the circumstances. The ISCO shall notify DTCC directly whenever he/she encounters any other difficulties in exercising the duties and responsibilities under this Consent Agreement.
- (j) The ISCO shall, with the approval of the Director, DTCC and the concurrence of Respondent, have the authority to employ in a support capacity at the expense of Respondent, such assistants and other professional staff as are reasonably necessary for the ISCO to carry out his/her duties and responsibilities.
- (k) The Director, DTCC shall on his/her own initiative or at the request of the ISCO issue such guidance as may be necessary or appropriate to help ensure compliance with the AECA and ITAR and the terms and conditions of authorizations DDTC has provided to Respondent.
- (l) Responsibilities: The ISCO shall have three (3) principal areas of responsibility regarding the future conduct of Respondent:

- (1) Policies and Procedures: The ISCO shall monitor Respondent's AECA and ITAR compliance program with specific attention to the following areas associated with the offenses alleged in the Proposed-Charging Letter:
  - (i) Policies and procedures for the identification and classification of defense articles and defense services;
  - (ii) Policies and procedures for the identification of ITAR technical data, to include the use of derivative drawings or derivative technical data;
  - (iii) Policies and procedures for encouraging Respondent's employees to report ITAR compliance problems without fear of reprisal. These policies and procedures should promote the procedure as a reporting mechanism safe from reprisals and as a means to document the issue to be looked at, management's action, and the result of any action taken by management in resolving the issue;
  - (iv) Policies and procedures for incorporating AECA and ITAR compliance into Respondent's management business plans at the senior executive level;
  - (v) Policies and procedures for preventing, detecting and reporting AECA and ITAR violations;
  - (vi) Policies and procedures for tracking Research and Development work to ensure that all such work on defense articles, including technical data, is in compliance with the AECA and

ITAR from conception to completion of the project; and

- (vii) Meeting and maintaining adequate AECA and ITAR compliance staffing levels at all subsidiaries, business units, and divisions that involve ITAR related activities.

(2) Specific Duties: The ISCO shall oversee the following specific areas:

- (i) Respondent's implementation of the compliance measures required by this Consent Agreement;
- (ii) Respondent's corporate oversight of ITAR compliance for performance of its responsibilities under this Consent Agreement and the Order in a timely and satisfactory manner;
- (iii) The expenditures of the remedial compliance measures account in coordination with Respondent's Controller and Senior Vice President and General Counsel;
- (iv) Implementation of policies and procedures encouraging Respondent's employees to report ITAR compliance problems without fear of reprisal; and
- (v) Enhancing incorporation of ITAR compliance into the Respondent's management business plans at the senior executive level.

(3) Reporting: The ISCO is responsible for the following reporting requirements:

- (i) Tracking, evaluating and reporting to the Director, DTCC and Respondent's Senior Vice President and General Counsel on Respondent's review of ITAR violations and compliance resources;
- (ii) Providing to the Director, DTCC within six (6) months from the date of the Order, and then semi-annually thereafter, status reports on ITAR compliance program enhancements and resource levels and their impact on or benefit to ensuring ITAR compliance;
- (iii) Providing reports to the Board of Directors, or appropriate Committee thereof, President, the Senior Vice President and General Counsel, and the Director, DTCC, concerning Respondent's compliance with this Consent Agreement and the Order, as well as resource allocation, guidance, and the like then in force pertaining to Respondent's ITAR-regulated activities. These reports shall include findings, conclusions and any recommendations necessary to ensure strict compliance with the ITAR, and describe the status of previous recommendations advanced by the ISCO. These reports may, in a separate annex, also include any relevant comments or input by Respondent. Any such reports shall not affect Respondent's use of the Voluntary Disclosure procedures set forth in § 127.12 of the ITAR and any benefits gained therefrom. The reports shall be provided semiannually during the term of the Consent Agreement, beginning on the six (6) month anniversary of the Order; and

- (iv) Ensuring the provision of an initial accounting report as described in Paragraph (17)(c), and any subsequent reports required therein, certified as correct by the Respondent's Controller, of these remedial compliance expenditures to the Director, DTCC.

#### Ombudsman Program

- (11) Respondent will continue to promote and publicize internally the availability of Respondent's program for reporting violations of the AECA and the ITAR to ensure that violations may be readily reported via this channel, without fear of reprimand or retaliation. Complaints or concerns about matters involving compliance with the AECA and the ITAR shall be reported to the Senior Vice President and General Counsel and the ISCO. The Senior Vice President and General Counsel shall be responsible for resolving such matters. If the Senior Vice President and General Counsel is the subject of the complaint or concern involving the AECA and the ITAR, the matter will be referred to Respondent's President for resolution. The Senior Vice President and General Counsel shall submit to the Board of Directors, or the appropriate committee thereof, a semiannual report assessing the effectiveness of the Ombudsman Program relating to export, re-export or retransfer matters, and will provide a copy to the Director, DTCC.

#### Strengthened Compliance Policies, Procedures, Training

- (12) Within twelve (12) months from the date of the Order, Respondent will have instituted strengthened corporate export, re-export and retransfer compliance procedures, where necessary, focused principally on Respondent's business operations such that: (a) all Respondent employees engaged in ITAR-regulated activities are familiar with the AECA and the ITAR, and their own and Respondent's responsibilities thereunder; (b) all persons responsible for supervising those employees, including senior managers of those units, are

knowledgeable about the underlying policies and principles of the AECA and the ITAR; and (c) there are records indicating the names of employees, trainers, and level and area of training received.

#### Automated Export Compliance System

- (13) Respondent agrees to continue to implement its comprehensive automated export compliance system to strengthen Respondent's internal controls for ensuring compliance with the AECA and the ITAR. Respondent will provide to DTCC an update outlining the status of Respondent's automated export compliance system. This system will track the sales order from the initiation of a request for potential export, re-export or retransfer authorizations or clarification of an existing authorization to its conclusion that will reflect Respondent's ability to oversee and monitor export, re-export and retransfer activity. Respondent's existing compliance program for identifying and ensuring required DDTC authorization for exports of ITAR-controlled technical data and the performance of defense services will continue to be implemented and improved during the term of this Consent Agreement. Respondent understands that DTCC may, in its sole discretion, not authorize use of exemptions for shipments of unclassified data in furtherance of a consent agreement. Respondent will ensure the use of a means of alerting recipients to the AECA and ITAR requirements on electronic transmissions of ITAR technical data.

#### Review

- (14) Respondent shall continue with its review of the functional processes involved in exporting, re-exporting and retransferring its products to verify that the processes (to include production and quality control) are effective to comply with export license authorizations and related provisos.

### Classification Review

- (15) Respondent shall review and verify the export control jurisdiction of all Respondent items produced and/or offered for export by Respondent's ITAR controlled subsidiaries, business units, and divisions. Respondent may certify to DTCC that the jurisdiction of certain items was previously and accurately determined and/or verified prior to the date of the Order, in accordance with Respondent's compliance program or through the Department's commodity jurisdiction procedure, and exclude such items from the review. Respondent shall conclude the jurisdiction review no later than twenty-four (24) months from the date of the Order.

### Audit

- (16) Overall effectiveness of Respondent's ITAR compliance programs will be assessed in accordance with the following:
  - (a) Respondent shall provide to the ISCO, and an outside consultant with expertise in AECA/ITAR matters approved by the Director, DTCC, copies of its most recent audit reports<sup>1</sup> and post-audit corrective action plans completed in the past three (3) years for each of Respondent's subsidiaries, business units, and divisions engaged in ITAR-controlled activities. The outside consultant shall review these, limited to AECA/ITAR matters only, and will consolidate those relevant portions of the audit reports and post-corrective action plans into a single, comprehensive report, to be completed within three (3) months from the date of the Order. This report will provide at a minimum (and limited to AECA/ITAR matters): a) an executive summary analysis of AECA/ITAR compliance program efficacy throughout Respondent as measured by the results of the audit reports and post-audit corrective action plans; b) for each of Respondent's subsidiaries, business units, and

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<sup>1</sup> For purposes of paragraphs 16(a) and (16)(b), the term "audit report" shall refer to the results of elements five and six of Meggitt-USA's six element Assessments & Audits Program.

divisions engaged in ITAR-controlled activities, detailed audit reports and post-audit corrective action plans, to include an overview of audit findings; c) identification of any Respondent subsidiaries, business units, and divisions engaged in ITAR-controlled activities for which the overview of audit findings include a systemic area of concern; d) recommendations, if any, for improvements in Respondent's existing audit program specific to analysis of AECA/ITAR compliance program efficacy. The ISCO shall have two (2) months from completion of the report for review. Following that period, the report will be provided to the Director, DTCC, and to Respondent's Senior Vice President and General Counsel, to be accompanied by the ISCO's review findings and recommendations, with particular attention to Consent Agreement measures and compliance problems identified in the Proposed Charging Letter.

- (b) The Director, DTCC, will determine based on the results of the report and the ISCO's findings and recommendations, whether DTCC will require an additional audit for any of Respondent subsidiaries, business units, and divisions, and will provide notice of this determination in writing. Also, for any of Respondent's subsidiaries, business units, and divisions for which an audit report and a post-audit corrective action plan have not been completed in the past three (3) years, or for which the subsequent audit report will not be available to the outside consultant during the three (3) month period from the date of the Order, there shall be an outside audit. All such audits shall be performed by an outside consultant, approved by the Director, DTCC.
- (c) Respondent shall provide a draft audit plan to the Director, DTCC for review and approval within five (5) months from the date of the Order. The draft audit plan will provide for a programmatic review of Respondent's export compliance program for AECA/ITAR matters of those subsidiaries, business units and divisions for which additional audits are

required pursuant to paragraph (16)(b). The planned review shall be sufficient to assess the overall effectiveness of Respondent's ITAR compliance programs and implementation of all measures set forth in this Consent Agreement with focus on those actions undertaken to address the compliance problems identified in the Proposed Charging Letter, the policies, procedures and training established by Respondent, and such other areas as may be identified by the ISCO or the Director, DTCC. Within fourteen (14) months from the date of the Order, any audit required by this paragraph will be completed and a written report containing recommendations for improvements with respect to implementation of Respondent's export compliance assessment program and Consent Agreement measures, or compliance with the AECA or the ITAR more generally completed. The report and audit results will be submitted by Respondent to the Director, DTCC along with Respondent's plan on how it will address those recommendations.

- (d) Respondent shall conduct a second audit of those subsidiaries, business units, and divisions subject to audits pursuant to paragraph (16)(b) to confirm whether Respondent addressed the compliance recommendations from the initial audit report from paragraph (16)(c). The second audit will be conducted by the outside consultant under the supervision of the ISCO. Within seventeen (17) months from the date of the Order, Respondent will submit a draft audit plan to the Director, DTCC for review and comment. Within twenty-five (25) months from the date of the Order, the second audit will be completed, and a written report confirming whether Respondent addressed the compliance recommendations from the initial audit reports as well as his/her recommendations where there were deficiencies. The report, with any comments or observations by Respondent's Senior Vice President and General Counsel, will be submitted by Respondent to the

Director, DTCC along with Respondent's plan on how it will address those recommendations.

Penalty

- (17) Respondent agrees that it shall pay a civil penalty of twenty-five million dollars (\$25,000,000), consisting as further described below of a civil penalty and credit for remedial compliance measures in complete settlement of the alleged civil violations pursuant to Section 38 of the AECA and the ITAR, as set forth in the Proposed Charging Letter. Respondent agrees to waive its rights to raise the defense of Statute of Limitations with regard to the collection of the civil penalty imposed by this Consent Agreement, and that the Statute of Limitations for the collection of the civil penalty shall be tolled until the last payment is made. Respondent also agrees that such civil penalty shall be a nondischargeable debt in accordance with Section 523(a)(7) of the Federal Bankruptcy Code.
- (a) The civil penalty shall be payable as follows: Three million dollars (\$3,000,000) shall be paid through several installments:
- 1) One million dollars (\$1,000,000) is to be paid within ten (10) days from the date of the Order.
  - 2) One million dollars (\$1,000,000) is to be paid within one (1) year from the date of the Order and one million dollars (\$1,000,000) is to be paid on the second anniversary of the date of the Order.
  - 3) The Department and Respondent agree that no interest shall accrue or be due on the unpaid portion of the civil penalty if timely payments are made as set forth in paragraphs (17)(a)(1) and (17)(a)(2) above.

- (b) The remaining civil penalty of twenty-two million dollars (\$22,000,000) is hereby assessed for remedial compliance measures, but this amount will be suspended:
- (1) on the condition that Respondent, or Respondent Parent, has applied this amount to self-initiated, pre-Consent Agreement remedial compliance measures, determined by DTCC as set forth in paragraph (17)(c) below; or
  - (2) on the condition that Respondent, or Respondent Parent, applies this amount to Consent Agreement-authorized remedial compliance costs, determined by DTCC as set forth in paragraph (17)(c) below, over the term of this Consent Agreement for the purpose of defraying a portion of the costs associated with the remedial compliance measures specified in this Consent Agreement.
- (c) In accordance with paragraph (17)(b), Respondent's Controller, in consultation with the ISCO and Senior Vice President and General Counsel, will conduct a review of Respondent's expenditures for the compliance measures referenced in paragraphs (17)(b)(1) and (2), and provide the results of the review, no later than twelve (12) months from the date of the Order, certified as correct by Respondent's Controller, to DTCC. DTCC will determine from that review if the expenditures claimed by Respondent to date were spent for self-initiated, pre-Consent Agreement remedial compliance measures or Consent Agreement-authorized remedial compliance costs.

To the extent that DTCC determines that expenditures claimed or any portion thereof were utilized for self-initiated, pre-Consent Agreement remedial compliance measures or Consent Agreement-authorized remedial compliance costs, that amount will be credited against the

suspended penalty amounts outlined in paragraph (17)(b). If, subsequent to this report, there remains any portion of the suspended penalty amounts outlined in paragraphs (17)(b), that has not been credited, Respondent's Controller, in consultation with the ISCO and Senior Vice President and General Counsel, will provide to DTCC no later than one (1) year from the date of this Consent Agreement, and then annually thereafter, for verification and approval, an itemized accounting, certified as correct by the Respondent's Controller, of all Consent Agreement-authorized remedial compliance costs, to include those expenditures claimed against suspended penalties, showing specifics of how money was used to strengthen compliance within the terms of the Consent Agreement. To the extent that DTCC determines that expenditures claimed or any portion thereof were utilized for Consent Agreement-authorized remedial compliance costs, that amount will be credited against the suspended penalty amount outlined in paragraph (17)(b)(2).

- (18) Any remaining portion of the suspended penalty unutilized at the conclusion of the term of the Consent Agreement will no longer be suspended and shall be paid within thirty (30) days.
- (19) From the date of the Order, Respondent is precluded from applying any portion of the twenty-five million dollar (\$25,000,000) penalty set forth in paragraph (17) as costs in any contract with any agency of the U.S. Government or any other contract where the result would be the application of any portion of the penalty as costs in any contract with any agency of the U.S. Government. In accordance with this paragraph, Respondent agrees and shall certify in each written accounting report that the civil penalty payable under paragraph (17), or any portion thereof: (a) will be treated as expressly unallowable costs under the Federal Acquisition Regulations; (b) will not be recovered or sought to be recovered as allowable costs, either directly or indirectly under any federal prime contract, grant or

subcontract; and (c) will not be taken as a federal tax deduction for any year following the date of the Order. In the event Respondent violates these prohibitions, the Department will deem it a "failure to apply funds appropriately for the required purpose."

- (20) Any failure to apply funds appropriately for the required purpose, or to provide a satisfactory accounting, shall result in a lifting of the suspension, in which case Respondent shall be required to pay immediately to the Department the amount of the suspended portion of the penalty, less any amounts the Department deems to have been properly applied and accounted for expenditures in compliance with this Consent Agreement.

#### Defense Services and Defense Articles

- (21) Respondent, its subsidiaries, and other affiliates acknowledge and accept the authority of the Department to designate what is a defense article, and that the ITAR requires written authorization before such articles are exported, re-exported or retransferred, regardless of whether the underlying defense article is used in a commercial system or product. Respondent further acknowledges that the Commodity Jurisdiction process, set forth in §120.4 of the ITAR, is the only official mechanism by which questions regarding jurisdiction and categorization may be addressed. Respondent, its subsidiaries, and other affiliates acknowledge and accept that, unless and until there is an amendment to the ITAR regarding defense services: (1) the definition of "defense services" in the ITAR is well established and clearly understood by them as setting out responsibilities and requirements which are binding as a matter of law and regulation on them; (2) the furnishing of defense services to foreign persons – regardless of whether the underlying defense article(s) is of U.S. or foreign origin – is appropriately subject to the Department's control under the ITAR, even when no technical data is involved (e.g., all the information relied upon in furnishing defense services to a foreign government or foreign person is in the public domain); (3) the law and

regulations governing "defense services" to foreign persons are sufficiently clear and specific as to be enforceable by the U.S. Government on civil grounds; and (4) Respondent is responsible and obligated as a matter of law and regulation to comply with the requirements of such laws and regulations as they pertain to "defense services" and related matters.

#### Debarment

- (22) Respondent has acknowledged the seriousness of the violations cited in the Proposed Charging Letter. Respondent has cooperated with the Department's review, expressed regret, and taken steps to improve its compliance programs. It has also undertaken to make amends by paying a cash penalty and implementing the significant additional remedial compliance actions specified in this Consent Agreement. For these reasons, the Department has determined not to impose an administrative debarment of Respondent based on the civil charges in the Proposed Charging Letter at this time. The Department reserves all rights to impose additional sanctions, including debarment under the ITAR, against Respondent, any subsidiary or other affiliate over which Respondent exercises control, if it does not fulfill the provisions of the Consent Agreement or is responsible for other compliance or law enforcement issues under the AECA, or under other statutes enumerated in § 120.27 of the ITAR.

#### Material Facts in a Commodity Jurisdiction Request

- (23) Respondent acknowledges that the Commodity Jurisdiction ("CJ") process under § 120.4 of the ITAR is the only official mechanism for resolving questions as to whether an item is a defense article subject to the Department's jurisdiction under the ITAR. Respondent further acknowledges that the incorporation of a defense article into an item subject to a CJ request is a material fact within the meaning of § 127.2 of the ITAR, which must be disclosed in a CJ request, and that such

request and any related documents are export control documents under the ITAR.

#### Legal Department Support

- (24) Respondent's Senior Vice President and General Counsel's office will provide support to Respondent for matters involving the AECA and the ITAR. This support will be structured to achieve consistent application of the AECA and the ITAR by Respondent. Additionally, Respondent's Senior Vice President and General Counsel's office shall ensure that in each business unit appropriate legal support is made available as needed by the principal personnel responsible for compliance with the AECA and the ITAR.

#### On-site Reviews by the Department

- (25) For the purpose of assessing compliance with the provisions of the AECA, the ITAR and future munitions licenses and other authorizations, Respondent agrees to arrange and facilitate, with a minimum of five (5) days advance notice, on-site reviews by DTCC while this Consent Agreement remains in effect.

#### Understandings:

- (26) No agreement, understanding, representation or interpretation not contained in this Consent Agreement may be used to vary or otherwise affect the terms of this Consent Agreement or the Order, when entered, nor shall this Consent Agreement serve to bind, constrain, or otherwise limit any action by any other agency or department of the United States Government with respect to the facts and circumstances addressed in the Proposed Charging Letter. Respondent acknowledges and accepts that there is no understanding expressed or implied through this Consent Agreement with respect to a final decision by the Department of State concerning export licenses or other U.S. Government authorizations.

- (27) Respondent acknowledges the nature and seriousness of the offenses charged in the Proposed Charging Letter. If this Consent Agreement is not approved pursuant to an Order entered by the Assistant Secretary for Political-Military Affairs, the Department and Respondent agree that they may not use this Consent Agreement in any administrative or judicial proceeding, and that the parties shall not be bound by the terms contained in this Consent Agreement.
- (28) The Department agrees that, upon signing of the Order, this Consent Agreement resolves with respect to Respondent the civil penalties or administrative sanctions with respect to violations of § 38 of the AECA or the ITAR arising from facts Respondent has disclosed in writing to the Department in its disclosures assigned DTCC Case Number(s): 06-0000089; 06-0000298; 06-0000569; 07-0000137; 07-0000594; 07-0000909; 08-0000165; 08-0000176; 08-0000330; 08-0000792; 09-0000082; 09-0000455; 09-0000533; 09-0000677; 09-0000678; 09-0000783; 09-0000821; 09-0000822; 09-0000836; 09-0001044; 10-0000040; and 10-0000706.

Waiver

- (29) Respondent waives, upon the signing of the Order, all rights to seek any further steps in this matter, including an administrative hearing pursuant to Part 128 of the ITAR. Respondent also waives any such rights with respect to any additional monetary penalty assessed by the Director, DTCC in connection with an alleged material violation of this Consent Agreement (any such additional monetary penalty imposed will be limited to three million dollars (\$3,000,000.00)) except as follows: In the event that the Director, DTCC determines that Respondent has materially violated this Consent Agreement and imposes such additional monetary penalty, and Respondent disputes such determination, Respondent may appeal such determination to the Under Secretary of State for Arms Control and International Security, and the decision of the Under Secretary of State for

Arms Control and International Security shall be the final determination in the matter, which may not be appealed. Respondent also agrees that any such additional monetary penalty shall be nondischargeable under Section 523(a)(7) of the Federal Bankruptcy Code, and subject to the conditions of paragraph nineteen (19). Respondent also waives the right to contest the validity of this Consent Agreement or the Order, including in any action that may be brought for the enforcement of any civil fine, penalty or forfeiture in connection with this Consent Agreement or Order.

#### Certification

- (30) Three (3) months prior to the thirty (30) month anniversary of the date of the Order, Respondent shall submit to the Director, DTCC, a written certification as to whether all aspects of this Consent Agreement have been implemented and Respondent's export compliance program has been assessed, and whether Respondent's export compliance program is adequate to identify, prevent, detect, correct and report violations of the AECA and the ITAR. The Consent Agreement shall remain in force beyond the thirty (30) month term until such certification is submitted and the Director, DTCC, determines based on this certification and other factors that all compliance measures set forth in this Consent Agreement have been implemented, and that Respondent's ITAR compliance program appears to be adequate to identify, prevent, detect, correct and report violations of the AECA and the ITAR. DTCC shall provide written response to Respondent within ten (10) days of the completion of the thirty (30) month term whether the Respondent has satisfied the terms of this Consent Agreement and the Consent Agreement has been terminated.

#### Documents to be Made Public

- (31) Respondent understands that the Department will make this Consent Agreement, the Proposed Charging Letter and the Order, when entered, available to the public.

When Order Becomes Effective

- (32) This Consent Agreement shall become binding on the Department only when the Assistant Secretary for Political-Military Affairs approves it by entering the Order, which will have the same force and effect as a decision and Order issued after a full administrative hearing on the record.

U.S. Department of State

  
\_\_\_\_\_  
Tom Kelly  
Acting Assistant Secretary for  
Political-Military Affairs

August 23, 2013  
Date

Respondent: Meggitt-USA, Inc.

  
\_\_\_\_\_  
Eric G. Lardiere  
Senior Vice President, Secretary  
& General Counsel

August 19, 2013  
Date