

Agreed form

Enterprise Act 2002 Undertakings

**ANTICIPATED ACQUISITION BY COBHAM ULTRA ACQUISITIONS LIMITED OF
ULTRA ELECTRONICS HOLDINGS PLC**

**UNDERTAKINGS GIVEN TO THE SECRETARY OF STATE FOR BUSINESS, ENERGY &
INDUSTRIAL STRATEGY**

BY

**COBHAM ULTRA LIMITED, A PRIVATE LIMITED COMPANY INCORPORATED AND
REGISTERED IN ENGLAND AND WALES WITH COMPANY NUMBER 13552009 WHOSE
REGISTERED OFFICE IS AT TRINGHAM HOUSE, 580 DEANSLEIGH ROAD,
BOURNEMOUTH, UK, BH7 7DT (“COBHAM”);**

AND

**ULTRA ELECTRONICS HOLDINGS PLC, A PUBLIC LIMITED COMPANY
INCORPORATED AND REGISTERED IN ENGLAND AND WALES WITH COMPANY
NUMBER 02830397 WHOSE REGISTERED OFFICE IS AT 35 PORTMAN SQUARE,
LONDON, UK, W1H 6LR**

WHEREAS:

- (A) Cobham is indirectly owned by funds managed by Advent International Corporation and/or any of its Affiliates (“**Advent**”);
- (B) On 16 August 2021, the boards of Cobham and Ultra announced that they had reached an agreement on the terms of a recommended cash acquisition of the entire issued and to be issued ordinary share capital of Ultra (the “**Transaction**”) to be implemented by means of a scheme of arrangement under Part 26 of the Companies Act (the “**Cobham Scheme**”). If, and to the extent that, the Scheme becomes effective in accordance with its terms, it is anticipated that Ultra, which will then be a subsidiary of Cobham, will be re-registered as a private limited company;
- (C) On 18 August 2021, the Secretary of State issued a Public Interest Intervention Notice in relation to the Transaction to the UK Competition and Markets Authority (the “**CMA**”) on the public interest ground of national security in accordance with sections 42 and 58 of the Enterprise Act 2002 (the “**Act**”);
- (D) On 13 January 2022, the CMA reported to the Secretary of State in accordance with article 44 of the Enterprise Act 2002, and included in this report a summary of representations received by it relating to national security matters;
- (E) The Secretary of State has the power to refer the Transaction under section 45 of the Act to the chair of the CMA for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 or may, instead of making such a reference, accept undertakings in lieu under paragraph 3 of Schedule 7; and
- (F) The Secretary of State considers that the undertakings given below are appropriate to remedy, mitigate or prevent any of the effects adverse to the public interest within the meaning of section 58(1) of the Act which may be expected to result from the creation of the relevant merger situation, and the Secretary of State shall in consequence not make a reference to the chair of the CMA for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013.

Cobham and Ultra therefore give to the Secretary of State the following undertakings for the purpose of remedying, mitigating or preventing any of the effects adverse to the public interest within the meaning of section 58(1) of the Act, which may be expected to result from the creation of this relevant merger situation.

1. INTERPRETATION AND DEFINITIONS

1.1. In these undertakings:

“**Act**” has the meaning given to it in Recital C;

“**Advent**” has the meaning given to it in Recital A;

“**Affiliate**” means, in respect of a person, any other person Controlled by, Controlling or under common Control with that first person;

“**Approved Articles of Association**” means the memorandum and articles of association in the agreed form as between the Transaction Parties and the relevant Departments, as set out in Appendix 4;

“**Board**” means, in respect of any company, its board of directors;

“**Business Day**” means a day (excluding Saturdays) on which banks generally are open in London for the transaction of normal banking business;

“**Business Unit**” means an Ultra UK Operating Company or a component, subsidiary or business of an Ultra UK Operating Company, comprising assets, liabilities, information and know how concerning the production of Controlled Items or concerning Relevant Activities;

“**Classified**” means protectively marked in accordance with the system of protective marking defined in the Cabinet Office ‘Government Security Classifications’ document as updated from time to time¹;

“**Classified Appendix 1**” means the first appendix to these undertakings containing Classified information relating to the Sensitive Contracts and Sensitive Capabilities which shall be made available only to and accessible only by persons with DV level UK security clearance;

“**Confidential Appendix 2**” means the second appendix to these undertakings containing confidential details of the products and services provided pursuant to the Relevant Activities;

“**CMA**” has the meaning given to it in Recital C;

“**Cobham Scheme**” has the meaning given to it in Recital B;

“**Control**” has the same meaning as in section 26 of the Act, and “**Controlled**” and “**Controlling**” shall have equivalent meanings;

“**Controlled Items**” means all military and/or dual-use goods, software, technology and technical data which are subject to applicable UK export control regulations from time to time;

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/715778/May-2018_Government-Security-Classifications-2.pdf

“**Current Sensitive Contracts**” means the contracts described in the Classified Appendix 1 (each, a “**Current Sensitive Contract**”);

“**Customer**” refers to a situation where the relevant Department is either a direct purchaser of products or services from a company within the Ultra UK Group or is specified under the applicable contract as the ultimate user of products or services procured from a company within the Ultra UK Group by a third party;

“**Departments**” means the Ministry of Defence and [REDACTED];

“**Director**” means a director of a company who has voting or decision-making rights in respect of any resolution of its Board, irrespective of whether the individual is in an executive position or not;

“**DV**” means Developed Vetting, as issued by the relevant government authority;

“**Effective Date**” means the date on which the Scheme becomes effective (or, in the case of a Takeover Offer, the date on which Cobham or Advent, and/or any of their respective Affiliates acquire(s) Control of Cobham pursuant to that Takeover Offer) in accordance with its terms;

“**Enhanced Oversight Board**” has the meaning given to it in clause 3.5;

“**Future Sensitive Contract**” means any amended and restated Current Sensitive Contract, any successor or replacement agreement in respect of a Current Sensitive Contract, any other agreement between the parties to a Current Sensitive Contract (or between the relevant Department and another member of the Ultra UK Group from time to time) covering substantially the same subject matter as a Current Sensitive Contract and/or any other contracts which may be entered into from time to time between any relevant Department and any SecureCo in relation to the Relevant Activities;

[REDACTED]

“**Government Contractor**” means a government contractor within the meaning of section 12 of the Official Secrets Act 1989 which provides, or is employed in the provision of, goods or services to any of the Departments under a Security Aspects Arrangement and includes any sub-contractor in a chain of sub-contractors and provision of goods or services as a member of a consortium arrangement;

“**ITAR**” means the United States International Traffic in Arms Regulations;

“**List X Area**” means any secure area that has been approved to hold Sensitive Material or is, subsequent to the Effective Date, granted List X status by the Defence Security and Assurance Services in accordance with the Security Requirements for List X Contractors;

“**List X Contractor**” means a government contractor granted List X status by the Defence Security and Assurance Services in accordance with the Security Requirements for List X Contractors;

“**Ministry of Defence**” means the UK Secretary of State for Defence;

“**Notice**” means the notice period required for the withdrawal of a Relevant Activity from operation, which will be 12 months, or such other period provided for in the relevant contractual arrangement, whichever is the longer;

“**Relevant Activities**” means the provision by the Ultra UK Operating Companies of the products and services listed in the Confidential Appendix 2 as a Government Contractor;

“**Relevant Services**” means those Relevant Activities which are services;

“**Reorganisation**” has the meaning given to it in clause 3.1;

“**Reorganisation Longstop Date**” has the meaning given to it in clause 3.1;

“**Restricted Information**” means Sensitive Material or information property rights owned or partially owned by any relevant Department;

“**Scheme**” means the Cobham Scheme and any new, revised or replacement scheme of arrangement which would (if it became effective) result in Cobham, Advent and/or any of their respective Affiliates acquiring Control of Ultra on the terms and subject to the conditions of the Transaction, or any Takeover Offer;

“**Secretary of State**” means the UK Secretary of State for Business, Energy & Industrial Strategy;

“**SecureCo**” has the meaning given to it in clause 3.1;

“**SecureCo Board**” has the meaning given to it in clause 3.8.1;

“**SecureCo Inside Directors**” has the meaning given to it in clause 3.8.3;

“**SecureCo Outside Directors**” has the meaning given to it in clause 3.8.2;

“**Security Aspects Arrangement**” means any contractual arrangement entered into between the Ministry of Defence and a member of the Ultra UK Group which incorporates DEFCON 659/A – Security Measures or any specific, enhanced arrangement which concerns assets and/or information marked “Official-Sensitive” or Classified as “Secret” or “Top Secret” by an authorised UK government representative, and/or the Security Requirements for List X Contractors and/or any other contractual security arrangement with any relevant Department;

“**Security Controller**” has the meaning given in clause 4.1 of these undertakings;

“**Security Requirements for List X Contractors**” means the Security Requirements for List X Contractors v10.0² or any updated version published by the UK Cabinet Office;

“**Sensitive Capabilities**” means from time to time (i) all assets of the Ultra UK Group which are used exclusively from time to time in connection with the performance by the Ultra UK Group of its obligations under any Sensitive Contract (the “**Dedicated Sensitive Capabilities**”) and (ii) all other assets which are required to be used from time to time in connection with the performance by the Ultra UK Group of its obligations under any Sensitive Contract on a non-exclusive basis (the “**Non-Dedicated Sensitive Capabilities**”) and, for the purposes of this definition, “assets” shall include, without limitation, any plant and equipment, machinery, leases, intellectual property of whatever kind, whether registered or unregistered and including all know-how, employees, contractors, supply contracts and books and records. By way of illustration, as at 1 January 2022, the Sensitive Capabilities would include the assets present or utilised in connection with the Sensitive Contracts at: (1) the Rugeley site within the Maritime strategic

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/367514/Security_Requirements_for_List_X_Contractors.pdf

business unit located at Ultra Maritime (formerly PMES), Towers Business Park, Wheelhouse Road, Rugeley, Staffordshire, WS15 1UZ; and (2) the Greenford site located at 419 Bridport Road, Greenford, Middlesex UB6 8UA, the Gloucester site located at Unit 1142 Regent Court, Brockworth, Gloucester, GL3 4AD, United Kingdom and the Farnborough site located at Classified Office, Cody Technology Park, Ively Rd, Farnborough GU14 0LX, in each case, within the Cyber operating business unit of the Intelligence & Communications strategic business unit, and any reference to such Sensitive Capabilities shall include such assets held at any successor site(s) from time to time;

“**Sensitive Contract**” means (i) any Current Sensitive Contract and (ii) any Future Sensitive Contract;

“**Sensitive Material**” means any UK government software, information, thing or documentation provided pursuant to a Security Aspects Arrangement;

“**Strategic Objectives**” means the strategic objectives of each SecureCo as set out in the Approved Articles of Association;

“**Takeover Offer**” has the meaning given to it in Cobham’s scheme document published in respect of the Transaction dated 8 September 2021;

“**Transaction Parties**” means Ultra and Cobham;

“**UK**” means the United Kingdom of Great Britain and Northern Ireland;

“**Ultra**” means Ultra Electronics Holdings plc (No. 02830397) and/or its successor operating company incorporated in the UK of which the Board represents the most senior UK strategic decision-making body in respect of the Ultra UK Group;

“**Ultra UK Group**” means Ultra, the Ultra UK Operating Companies and any other subsidiaries of Ultra which are subject to the Security Aspects Arrangement from time to time;

“**Ultra UK Operating Companies**” means Ultra Electronics Limited (No. 02830644) and any other subsidiaries of Ultra which are government contractors in respect of the Relevant Activities from time to time;

“**working day**” has the meaning given to it in section 1173(1) of the Companies Act 2006;

- 1.2. where reference is made to any company then in the event of any merger, joint venture or acquisition or internal re-organisation or sale either private or to the public, such reference shall be interpreted as applying to the equivalent or successor organisation in the new structure and for the avoidance of doubt these undertakings shall apply to any SecureCo and any other subsidiary undertaking of the Ultra UK Group;
- 1.3. except where the context does not allow, the singular shall include the plural and the plural shall include the singular;
- 1.4. reference to a clause is a reference to a clause within these undertakings;
- 1.5. reference to a law or statute or any of their provisions is to be construed as a reference to that law or statute or such provision as the same may have been amended or re-enacted before the date of these undertakings; and
- 1.6. any obligation on a party to “procure” a certain outcome shall mean an obligation for that party to exercise, lawfully and in a manner that does not otherwise put such party in breach of any

fiduciary duty or contractual obligation, any voting rights and use any and all powers vested in it from time to time as a holder of securities, shareholder, director, officer and/or employee and attorney, or through any contractual arrangements, to ensure compliance with that obligation so far as it is reasonably able to do so, whether acting alone or (to the extent that he or it is lawfully able to contribute to ensuring such compliance collectively) acting with others, provided that such obligation shall not require the relevant party to take any action which would be materially or disproportionately prejudicial to the interests of that party or its subsidiaries nor shall it require that party to incur unreasonable or disproportionate costs to procure the relevant outcome.

2. SECURITY UNDERTAKINGS

Strategic Capability

Maintenance

- 2.1. The Transaction Parties undertake to ensure that the Ultra UK Operating Companies continue to meet any and all of their contractual obligations concerning Relevant Activities (and, for the purpose of procuring compliance with this clause 2.1, the Transaction Parties will procure that the Ultra UK Operating Companies continue to have sufficient capability (including the necessary UK strategic capabilities) to meet such obligations).
- 2.2. The Transaction Parties will ensure continuity of supply of each of the Relevant Services to the Departments by the Ultra UK Operating Companies either directly or indirectly for the operational life of service of such Relevant Service, and provided that a relevant Department wishes to be a Customer, subject to: (a) the relevant Department acting reasonably in negotiating and offering to place contracts in the future; and (b) applicable third party dependencies (as determined by the relevant Departments and the Transaction Parties acting reasonably).
- 2.3. Provided that the Departments continue to be a Customer, the Ultra UK Operating Companies will not issue a Notice withdrawing any Relevant Service (except where entitled to terminate a contract otherwise than for convenience) for the operational life of service of the Relevant Service.
- 2.4. The Relevant Activities will continue to be directly controlled by a company or companies incorporated in the UK under the laws of England and registered at Companies House.
- 2.5. The Transaction Parties undertake not to restructure the Ultra UK Operating Companies' capacity in a way that would result in some, or all, of the Relevant Activities being developed and/or supplied from outside the UK without the written approval of the relevant Departments.

Sale or disposal

- 2.6. In order to inform the exercise of the public interest intervention powers within the Enterprise Act 2002, or any superseding legislation, having particular regard to the specified consideration of national security (including but not limited to the National Security and Investment Act 2021), in connection with the potential sale or transfer of a Business Unit (which shall, for the purposes of this clause 2.6, clause 2.7 and clause 2.8 include (prior to completion of the Reorganisation) any Business Unit involved in the performance of any Sensitive Contract or otherwise containing any Sensitive Capabilities from time to time and (following completion of the Reorganisation) any SecureCo), Cobham will notify the relevant Departments as soon as is reasonably practicable and, in any event, within five working days of the earlier of:

2.6.1 any decision to commence a sale or transfer process;

2.6.2 receipt of an offer to acquire a Business Unit which is intended to be pursued further

with the offeror; or

2.6.3 subject to clause 2.11, any decision to provide due diligence material to any potential purchaser.

2.7. Cobham will in the notice provided under clause 2.6 provide the details of the assets and activities of any Business Unit to be offered for sale or transfer and will specify, in particular:

2.7.1 any activities which concern the production of Controlled Items or Relevant Activities;

2.7.2 the UK revenues derived from the Business Unit;

2.7.3 any Relevant Activity in which the Business Unit to be offered for sale or transfer is acting as a Government Contractor;

2.7.4 any Restricted Information held by the Business Unit to be offered for sale or transfer; and

2.7.5 any security arrangements that are in place in relation to the Relevant Activities of the Business Unit to be offered for sale or transfer.

2.8. As soon as reasonably practicable after a decision concerning the granting of substantive due diligence rights to a potential purchaser of the relevant Business Unit, before the exercise of those rights, Cobham will provide to the relevant Departments the following information:

2.8.1 the name, company number and place of incorporation of the potential purchaser (to be provided at least ten Business Days before the exercise of the potential purchaser's substantive due diligence rights);

2.8.2 the company structure and office holders of the potential purchaser;

2.8.3 where the potential purchaser is a consortium, details as to all members of the consortium, the structure of the consortium, decision-making arrangements of the consortium, and structure and office holders of each member of the consortium; and

2.8.4 details of any people with Control over the potential purchaser or where the potential purchaser is a consortium any people with Control over members of the consortium.

Protection of Information

2.9. The Transaction Parties will ensure that the Ultra UK Group will comply with, and maintain certification pursuant to, the Security Requirements for List X Contractors in respect of areas where Sensitive Material is used or stored and the security requirements of any other relevant Departments and will continue to operate a consolidated set of security controls which are accredited under ISO 27001 and the Cyber Essentials scheme and otherwise in accordance with any Security Aspects Arrangement.

2.10. The Transaction Parties will ensure that the Ultra UK Group will maintain necessary security controls in respect of all areas and all matters relating to Sensitive Material and in respect of any other services provided by the Ultra UK Group as Government Contractors.

2.11. The Transaction Parties undertake that no transfer or disclosure of any Restricted Information will be made outside of the Ultra UK Group, including to Advent, or to locations outside of the UK without prior written approval of the relevant Departments.

- 2.12. The Transaction Parties will ensure that only personnel with the relevant clearance will have access to Sensitive Material or a List X Area, unless the relevant Departments have granted prior written approval for the relevant individual.
- 2.13. The Transaction Parties will ensure that individuals with clearance and access to Sensitive Material will be required to maintain the security controls in place and required to excuse themselves from Board matters which may give rise to a conflict.
- 2.14. The Transaction Parties will notify the relevant Departments in writing upon the appointment of any person with clearance and access to Sensitive Material to any Board and shall procure the removal of any such person upon receipt of a written request to do so from the relevant Departments to be delivered within a reasonable period of time following notification of such person's appointment.
- 2.15. The Transaction Parties will ensure that the Ultra UK Group members comply, as far as relevant to their activities, with the Cabinet Office guidance "Industrial Security – Departmental Responsibilities Version 10.1 May 2018" and will take such steps as the relevant Departments may require in order to be satisfied that arrangements within the company meet UK national security requirements.
- 2.16. In particular, the Transaction Parties will ensure that for so long as any of the Ultra UK Operating Companies operate as a Government Contractor:
 - 2.16.1 at least 50% of the Directors on the Board of Ultra and each of the relevant Ultra UK Operating Companies (as applicable but excluding the SecureCo Boards, in relation to which clause 3.8.1 shall apply) will be both British citizens and resident in the UK, except insofar as the relevant Departments have separately agreed in writing;
 - 2.16.2 the Chairman of the Board of Ultra will be a British citizen;
 - 2.16.3 a sufficient number of the Directors of Ultra and each of the relevant Ultra UK Operating Companies will be British citizens with the appropriate level of UK security clearance as determined by the relevant Departments to enable security sensitive issues to be resolved at Board level should the need arise; and
 - 2.16.4 Ultra will have a Board-level contact who is a British citizen and who has overall responsibility for security in accordance with the Security Requirements for List X Contractors and any other Security Aspects Arrangement, as applicable.

3. SENSITIVE CONTRACTS AND SENSITIVE CAPABILITIES

Reorganisation

- 3.1. Subject to clause 3.4 below, the Transaction Parties and, once incorporated, the SecureCos (as defined below) shall ensure that, as soon as reasonably practicable following (and, in any event, by no later than the date falling three months after) the Effective Date (the "**Reorganisation Longstop Date**"), all Sensitive Contracts and Sensitive Capabilities shall be assigned, novated, licensed, sub-licensed, sub-contracted or otherwise transferred to one or more wholly-owned subsidiaries of Ultra incorporated in the UK (each, a "**SecureCo**") (the "**Reorganisation**").
- 3.2. For a period of three months following the Reorganisation Longstop Date, if any relevant Department, the Transaction Parties or the SecureCos (acting reasonably and in good faith) identify any Sensitive Capabilities comprised of intellectual property and/or any ancillary intellectual property used in connection with the Sensitive Capabilities (including but not limited to all rights in know-how, trade secrets, training manuals and other confidential business

information) that were not transferred pursuant to clause 3.1 above, the Transaction Parties and the SecureCos shall ensure that such Sensitive Capabilities and/or intellectual property shall be assigned, novated, licensed, sub-licensed, sub-contracted or otherwise transferred to the relevant SecureCo as soon as reasonably practicable and at fair value (as determined by the parties each acting reasonably).

- 3.3. The Transaction Parties shall ensure that: (i) each SecureCo is incorporated with the Approved Articles of Association; and (ii) no amendments are made to the Approved Articles of Association to the extent that such amendments relate to the Strategic Objectives, the composition of the relevant SecureCo Board and/or the board-level governance of the relevant SecureCo, without the prior written approval of the relevant Departments.
- 3.4. The Transaction Parties, the relevant Departments and, once incorporated, the SecureCos shall cooperate in good faith in relation to the taking of such steps as may be required to obtain the necessary consents, permits and clearances required to effect the assignment, novation, licensing, sub-licensing, sub-contracting or other transfer of any contract or capability (including but not limited to any Sensitive Contract or Sensitive Capability) to the relevant SecureCo, provided that if any required consent, permit or clearance has not been provided by any Department or other third party by the Reorganisation Longstop Date, the Reorganisation Longstop Date shall be extended accordingly to provide sufficient time for such consent, permit or clearance to be obtained.

Transitional arrangements

- 3.5. The Transaction Parties shall ensure that, immediately following the Effective Date, all decision-making authority and sole and exclusive oversight for performance of the Ultra UK Group's obligations under any Sensitive Contract and the Sensitive Capabilities relating thereto shall be delegated by the relevant members of the Ultra UK Group to a sub-committee of the Board of Ultra (the "**Enhanced Oversight Board**") until completion of the Reorganisation.
- 3.6. The composition requirements, duties, powers, rights and obligations of each SecureCo Board (as defined below) as set out in this clause 3 shall apply *mutatis mutandis* in respect of the Enhanced Oversight Board and the Transaction Parties shall procure that their respective obligations and the rights of any relevant Department are performed and observed (as applicable) in full during the period from the Effective Date prior to completion of the Reorganisation, provided that, notwithstanding any other provision of these undertakings, it is agreed and acknowledged that for a period of 12 months from the Effective Date, the Enhanced Oversight Board, any SecureCo Board and the security sub-committee of any SecureCo Board shall be required to have at least one member with the appropriate level of UK security clearance as determined by the relevant Departments to enable him or her to discuss with the relevant Departments and resolve any concerns in relation to the performance, security and continued assurance of the relevant Sensitive Contracts and/or Sensitive Capabilities.

Obligations of Transaction Parties

- 3.7. The Transaction Parties and, once incorporated, the SecureCos shall procure the compliance of the Enhanced Oversight Board and, following completion of the Reorganisation, each SecureCo and SecureCo Board with their respective obligations under this clause 3.

SecureCo Board composition

- 3.8. Subject to clause 3.6, the Transaction Parties and, once incorporated, the SecureCos will ensure that:

- 3.8.1 the Board of each SecureCo (each, a “**SecureCo Board**”) shall be comprised exclusively of British citizens who are resident in the UK;
- 3.8.2 the chairperson and a majority of the members of each SecureCo Board shall be independent Directors who shall, in each case, (i) have no prior commercial relationship with Advent, Cobham or any of their respective Affiliates, (ii) be UK nationals from birth and not dual citizens; and (iii) must hold full UK DV security clearance and, for the avoidance of doubt, only SecureCo Board members with such level of UK security clearance shall be able to access Classified information in Classified Appendix 1 relating to the relevant Sensitive Contracts and/or Sensitive Capabilities (as applicable) (the “**SecureCo Outside Directors**”);
- 3.8.3 in the event that the DV security clearance of any SecureCo Outside Director is revoked during their term and/or if any conflict arises in respect of such SecureCo Outside Director which would have resulted in such SecureCo Outside Director not being granted DV security clearance had it come to light prior to the grant of such security clearance, the relevant SecureCo shall terminate their appointment as soon as reasonably practicable following notification by the relevant Departments of such revocation and/or conflict to the relevant SecureCo;
- 3.8.4 a minority of the members of each SecureCo Board shall be appointed by or on behalf of Cobham (or an Affiliate thereof) (the “**SecureCo Inside Directors**”) and, for the avoidance of doubt, Cobham and/or any relevant Affiliate thereof (as applicable) shall have the right at any time to remove and replace any SecureCo Inside Director;
- 3.8.5 one member of each SecureCo Board shall be appointed by any relevant Department (the “**HMG Director**”) and any relevant Department shall be able to change the HMG Director at any time by notice to the relevant SecureCo. Subject to clauses 3.8.6 and 3.8.7, the HMG Director of each SecureCo Board shall:
- 3.8.5.1 have a duty to report to the relevant Departments as soon as reasonably practicable and in any event within two business days if a matter arises that the HMG Director reasonably considers could be relevant to UK national security or otherwise of interest or concern to any relevant Department which relates to the relevant Sensitive Contracts and/or Sensitive Capabilities, save to the extent prohibited by applicable law and/or regulation;
- 3.8.5.2 liaise with any relevant Department as frequently as any relevant Department may require in order to discuss and resolve any concerns in relation to the performance, security and continued assurance of the relevant Sensitive Contracts and/or Sensitive Capabilities; and
- 3.8.5.3 be permitted to disclose all papers, notices, books, records and information (including but not limited to such which relates to commercial and business information, intellectual property or knowhow) which relate to the relevant Sensitive Contracts and/or Sensitive Capabilities, received in their role as the HMG Director to any relevant Department notwithstanding any duties of confidentiality owed to the relevant SecureCo, save to the extent prohibited by applicable law and/or regulation,
- provided that the relevant Department shall establish and at all times maintain information barriers between, on one side, any persons responsible for or involved with negotiating or taking decisions in relation to any Sensitive Contracts and/or other agreements to which the relevant SecureCo is party from time to time (the “**Restricted HMG Persons**”) and, on the other side, the HMG Directors and any persons to whom a HMG Director discloses information pursuant to this clause 3.8.5 (such information being the “**Confidential**”

Information") and each relevant Department shall ensure that the Confidential Information may not be accessed by any Restricted HMG Persons at any time without the prior written agreement of a SecureCo Inside Director;

3.8.6 the overriding responsibility of each HMG Director shall be to comply with the fiduciary and other general duties they owe to the relevant SecureCo and, subject to compliance with such duties, to ensure (so far as they are able through the exercise of their rights (including voting rights) as members of the relevant SecureCo Board) that the relevant SecureCo will continue to meet, and have proper capability (including the necessary UK strategic capabilities) to meet, its contractual obligations and all applicable security requirements, in respect of the relevant SecureCo's Sensitive Contracts and Sensitive Capabilities, having full regard to UK national security interests and, in the event of a conflict of interest between each HMG Director's duties to the relevant SecureCo and their duties to any relevant Department, their duties to the relevant SecureCo shall prevail save for where any conflict of interest arises directly in relation to the HMG Directors' common law duty of confidentiality to the relevant SecureCo, in which case the HMG's Director's obligations under clause 3.8.5 shall prevail;

3.8.7 each HMG Director shall disclose any conflict of interest to the relevant SecureCo Board (giving reasonable details of such conflict) in accordance with the articles of the relevant SecureCo and, in respect of any conflict so disclosed or where a majority of the SecureCo Outside Directors otherwise determine (acting reasonably) a conflict to have arisen in respect of such HMG Director, a majority of the SecureCo Outside Directors (acting reasonably) may determine that:

3.8.7.1 such HMG Director may not count as part of the quorum in respect of any decision relating to the relevant matter;

3.8.7.2 such HMG Director's information rights shall be suspended in respect of the relevant matter; and/or

3.8.7.3 the HMG Director shall (at the request of the chairperson of the relevant SecureCo Board) recuse themselves from any portion of any meeting of the SecureCo Board at which the relevant matter is to be discussed; and

3.8.8 each SecureCo and each SecureCo Board shall not take any action or pass any resolution in respect of any of the following matters unless the action or resolution has been approved by SecureCo Outside Directors that together hold more than 50 per cent. of the total voting rights of all the SecureCo Outside Directors (and, for the purposes of this clause 3.8.8 only, the HMG Director of each SecureCo shall be deemed to be a SecureCo Outside Director) and any such approval must include approval by the HMG Director:

3.8.8.1 the adoption of, or any subsequent amendment to, any security plans, policies or budget for the relevant SecureCo and/or any subsequent departure from such security plans, policies or budget, in each case, to the extent reasonably likely to have a material adverse effect on the performance of the relevant SecureCo's obligations under the Sensitive Contracts to which it is a party and/or the maintenance of the relevant SecureCo's Sensitive Capabilities, to materially impact UK national security interests in relation to the Sensitive Contracts and/or the Sensitive Capabilities and/or to materially affect the relevant SecureCo's ability to meet the Strategic Objectives;

3.8.8.2 any matter relating to the relevant SecureCo's security operations and/or infrastructure, including any material reduction in the resources allocated to such operations and/or infrastructure, that could reasonably be expected to have a material adverse effect on the performance of the relevant SecureCo's obligations under the

Sensitive Contracts to which it is a party and/or the maintenance of the relevant SecureCo's Sensitive Capabilities, to materially impact UK national security interests in relation to the Sensitive Contracts and/or the Sensitive Capabilities and/or to materially affect the relevant SecureCo's ability to meet the Strategic Objectives; and

3.8.8.3 any other matter that could reasonably be expected to have a material adverse effect on the performance of the relevant SecureCo's obligations under the Sensitive Contracts to which it is a party and/or the maintenance of the relevant SecureCo's Sensitive Capabilities, to materially impact UK national security interests in relation to the Sensitive Contracts and/or the Sensitive Capabilities and/or to materially affect the relevant SecureCo's ability to meet the Strategic Objectives;

3.8.9 each SecureCo Board shall be entitled to remove any HMG Director appointed to that SecureCo Board immediately at any time if the HMG Director:

3.8.9.1 is guilty of any gross misconduct affecting the business of the relevant SecureCo;

3.8.9.2 commits any serious or repeated breach or non-observance of any material provision of the service contract entered into between the HMG Director and the relevant SecureCo; or

3.8.9.3 is guilty of any fraud or dishonesty or acts in any manner which in the SecureCo Board's reasonable opinion brings or is reasonably likely to bring the relevant SecureCo into disrepute,

provided that, following such removal, any relevant Department shall be entitled to appoint a replacement HMG Director in accordance with clause 3.8.5; and

3.8.10 without prejudice to clause 3.8.9, each SecureCo Board shall be entitled at any time to request the replacement of any HMG Director appointed to that SecureCo Board by notice in writing to the relevant Departments (specifying in reasonable detail the explanation and grounds for such request) and the relevant Departments shall consider granting any such request reasonably and in good faith and shall not unreasonably decline or delay satisfaction of such request, provided that the relevant Departments shall identify a replacement HMG Director with DV security clearance prior to granting any such request. Upon the relevant Departments granting such request, the relevant SecureCo Board shall be entitled to remove such HMG Director and appoint the replacement HMG immediately.

SecureCo Board purpose and function

3.9. Each SecureCo Board shall ensure each SecureCo's strategy, and execution thereof, aligns with the Strategic Objectives and shall have responsibility for oversight and control in respect of the relevant Sensitive Capabilities, including but not limited to the strategy, investment, training programme(s) and resource allocation of the Sensitive Capabilities from time to time, in order to ensure the performance and delivery by the relevant SecureCo of its obligations under the relevant Sensitive Contracts.

3.10. Subject to subject to clause 3.6, each SecureCo Board shall form a security sub-committee comprised exclusively of SecureCo Outside Directors which shall (i) have overall responsibility for security in accordance with the Security Requirements for List X Contractors and in accordance with any relevant Security Aspects Arrangement, in each case in respect of the relevant Sensitive Contracts and Sensitive Capabilities, (ii) nominate one member to have specific responsibility for security arrangements in respect of the relevant Sensitive Contracts and Sensitive Capabilities, (iii) procure that the independent security controller appointed for each

secure site which is a Sensitive Capability from time to time is duly authorised and provided with such support and resources at all times as may be required to ensure the proper performance of his or her duties and (iv) be responsible for monitoring and maintaining compliance with all other applicable security requirements by the relevant SecureCo in respect of the relevant Sensitive Contracts and Sensitive Capabilities from time to time; and, for the avoidance of doubt, each member of the security sub-committee of each SecureCo Board shall undertake in writing not to disclose any information regarding the proceedings of or any sensitive information or matters confidentially discussed within the security sub-committee to any SecureCo Inside Director.

Reporting lines and dedicated project teams

3.11. The Transaction Parties and, once incorporated, the SecureCos shall ensure that:

3.11.1 all employees and contractors of the each SecureCo shall be directly accountable to that SecureCo Board or to a managing director (or equivalent senior executive) appointed by that SecureCo Board who shall be a British citizen (and not a dual citizen) with DV level security clearance; and

3.11.2 all employees and contractors of the relevant SecureCo working on projects in respect of the relevant Sensitive Contracts and Sensitive Capabilities shall be (i) British citizens who are security cleared to DV level and (ii) allocated exclusively to perform functions in respect of contracts (including but not limited to Sensitive Contracts) to which the relevant SecureCo is party and/or in respect of which the relevant SecureCo performs activities and/or provides services and/or any other contracts of the Ultra UK Group.

Resourcing and further assurance

3.12. Each SecureCo Board shall be responsible for monitoring the performance of the relevant SecureCo in respect of the relevant Sensitive Contracts and for assessing the resources required by the relevant SecureCo to perform its obligations under the relevant Sensitive Contracts from time to time (including but not limited to any such resources as may be required (i) for future investment in capability modernisation and research and development, (ii) to maintain appropriate staffing levels and skillsets and/or (iii) to maintain and/or renovate its sites within the UK) to ensure the maintenance of the relevant Sensitive Capabilities (to the extent required for the relevant SecureCo to comply with its obligations under any Sensitive Contract from time to time) and the continued performance of the relevant SecureCo's obligations under any Sensitive Contract.

3.13. Each SecureCo Board shall procure that (i) the relevant SecureCo shall remain available to any relevant Departments as a potential provider of commercially viable long-term Sensitive Contracts and (ii) that the Sensitive Capabilities from time to time of the relevant SecureCo in relation to the relevant Sensitive Contracts are maintained, in each case, for so long as its services are required to be provided under any Sensitive Contract from time to time.

3.14. Subject to clause 3.16, for so long as a Sensitive Capability is maintained by a SecureCo in accordance with clause 3.12 above, the Transaction Parties and the SecureCos shall not, without prior written approval from the relevant Departments, directly do or refrain from doing anything that would be expected to cause any such Sensitive Capability to become subject to ITAR.

3.15. In order to comply with the requirements of clause 3.14 above, each SecureCo shall maintain an ITAR internal control plan in the same or substantially similar form to the plan set out in the confidential Appendix 5. The ITAR internal control plan shall be provided to all staff members working on any Sensitive Capability.

- 3.16. In the event that a Sensitive Capability becomes subject to ITAR as a result of a change in the scope, interpretation or application of ITAR arising after the Effective Date, this shall not be deemed a breach of these undertakings. The Transaction Parties shall notify the relevant Departments as soon as reasonably practicable after they become aware of any such change in scope or application affecting any Sensitive Capability and shall discuss and agree with the relevant Departments a reasonable response plan, with both the Transaction Parties and the relevant Departments acting in good faith.
- 3.17. In the event that (i) any Sensitive Contract entered into between a member of the Ultra UK Group (including, for the avoidance of doubt, any SecureCo) and a relevant Department expires in accordance with its terms or is terminated in circumstances involving non-performance or default by the relevant member of the Ultra UK Group of its obligations under the relevant Sensitive Contract, (ii) a material breach of the undertakings in clause 3 is committed or (iii) any relevant Department reasonably considers that the continued control of the relevant Sensitive Capabilities by Cobham, Advent and/or their respective Affiliates is reasonably likely to have a material adverse effect on the UK's national security interests (for reasons disclosed in writing to the Transaction Parties and the relevant SecureCo Board (to the extent permitted by applicable law and regulation), any Department in respect of which the relevant SecureCo operates as a Government Contractor from time to time shall be permitted to:
- 3.17.1. require, by notice in writing to the Transaction Parties, that the relevant SecureCo provide such access to and use of that SecureCo's Sensitive Capabilities (including, for the avoidance of doubt, all Sensitive Capabilities comprised of intellectual property and any ancillary intellectual property used in connection with the Sensitive Capabilities, including but not limited to all rights in know-how, trade secrets, source code, training manuals and other confidential business information) relating to the relevant Sensitive Contract as soon as reasonably practicable in order to ensure the continued support for and availability of such Sensitive Capabilities from time to time;
- 3.17.2. require, by notice in writing to the Transaction Parties, that the Transaction Parties and the relevant SecureCo initiate a sale process in order to procure (i) the disposal of the relevant SecureCo as a standalone entity capable of operating the Sensitive Capabilities of that SecureCo (and performing that SecureCo's obligations under the Sensitive Contracts to which it is a party) immediately following completion of such disposal as carried on immediately prior to receipt of such notice or (ii) the disposal by the relevant SecureCo of the relevant Sensitive Capabilities, in each case to an independent third party or, at the direction of any relevant Department in writing, to such person as the relevant Department may nominate (including, for the avoidance of doubt, any Department), as soon as reasonably practicable upon receipt of such notice and at fair market value as determined by the parties (each acting reasonably) and clause 2.8 shall apply to any sale to an independent third party pursuant to this clause 3.17.2; and
- 3.17.3. require, by notice in writing to the Transaction Parties, that the Transaction Parties and the relevant SecureCo initiate, develop and implement a knowledge transfer project (including the provision of all necessary training) as soon as reasonably practicable at the Transaction Parties' (or, as applicable, the relevant SecureCo's) cost with the intention of ensuring that the relevant Departments and/or the independent third party (as applicable) have the appropriate skills, qualifications, experience and people and full access to all intellectual property in each such case as is required in order to ensure the effective exercise of the rights pursuant to clause 3.17.1 and clause 3.17.2 above (as applicable), provided that the relevant Departments and/or independent third party (as applicable) shall provide reasonable assistance in relation thereto.

Monitoring and compliance

3.18. In addition to the annual compliance notice to be provided pursuant to clause 4 of these undertakings, for so long as any Department is party to a Sensitive Contract with a SecureCo, the relevant Departments shall be entitled on reasonable notice in writing to the Transaction Parties (who shall procure such rights from the SecureCos):

3.18.1 to access and inspect all books and records (including but not limited to those books and records relating to intellectual property, know-how and other commercial and business information) relating to the relevant Sensitive Capabilities in respect of that Sensitive Contract; and

3.18.2 without prejudice to its rights under any applicable contract, (i) to conduct a periodic audit of the relevant Sensitive Capabilities relating to that Sensitive Contract; and/or (ii) to require the relevant SecureCo to conduct an audit of the relevant Sensitive Capabilities relating to that Sensitive Contract and provide a detailed report of the results of such audit to the relevant Departments and the relevant SecureCo shall remedy any default identified in any such audit as soon as reasonably practicable, provided that the relevant Departments shall not be permitted to exercise their rights pursuant to this clause 3.18.2 more than once in any 12-month period unless it has reasonable grounds for the suspicion of non-compliance by the Transaction Parties with the undertakings contained in this clause 3.

Supremacy

3.19. In the event of any inconsistency between the provisions of this clause 3 and any other provision of these undertakings in relation to the Enhanced Oversight Board, any SecureCo Board, any SecureCo, any Sensitive Contract and/or any Sensitive Capabilities, the provisions of this clause 3 shall prevail.

Separation

3.20. At any time following completion of the Reorganisation, the Transaction Parties and/or the relevant SecureCo shall be entitled (but not required) to take any such steps as they see fit in their sole discretion to replace any Non-Dedicated Sensitive Capability with a Dedicated Sensitive Capability, including by effecting the separation of the portion of the Non-Dedicated Sensitive Capability which is used exclusively in connection with the performance of the Sensitive Contacts from time to time from the remainder of the relevant Non-Dedicated Sensitive Capability such that the separated portion becomes a Dedicated Sensitive Capability and the remainder ceases to be a Sensitive Capability, and each SecureCo shall provide any assistance and take any action reasonably considered necessary or desirable by the Transaction Parties in connection therewith.

3.21. For the avoidance of doubt, the Transaction Parties and/or the relevant SecureCo shall be entitled to procure the transfer of any former portion of a Non-Dedicated Sensitive Capability which has ceased to be a Sensitive Capability from the relevant SecureCo to another member of the Ultra UK Group at any time.

3.22. Notwithstanding the above, the Transaction Parties and the SecureCos shall procure that the replacement of a Non-Dedicated Sensitive Capability or transfer of a former portion of a Non-Dedicated Sensitive Capability pursuant to clauses 3.20 and 3.21 above shall only be permitted to the extent that the SecureCo Board reasonably believes that such replacement or transfer shall not result in any breach by the relevant SecureCo of any Sensitive Contract from time to time.

Subsequent reorganisations

3.23. The Transaction Parties and any SecureCo shall be entitled to effect the assignment, novation, licensing, sub-licensing, sub-contracting or other transfer of any Sensitive Contract and/or

Sensitive Capability from one SecureCo to another SecureCo (including a new SecureCo formed following completion of the Reorganisation) and/or to dissolve any SecureCo which has ceased to hold any Sensitive Contracts and/or Sensitive Capabilities from time to time pursuant to any internal reorganisation of the Ultra UK Group, in order to rationalise the delivery of services of the SecureCos under the Sensitive Contracts or for any other purpose, provided in each case that the obligations upon the SecureCos pursuant to these undertakings shall apply *mutatis mutandis* in respect of any new SecureCo from time to time.

Notification

- 3.24. The Transaction Parties shall notify the relevant Departments in writing as soon as reasonably practicable following the implementation of any separation measures pursuant to clause 3.20 and/or any subsequent reorganisation pursuant to clause 3.23.

4. COMPLIANCE UNDERTAKINGS

- 4.1. The Transaction Parties will appoint an independent security controller, with appropriate AS9100 expertise (noting that the Board-level contact can also constitute the independent security controller), responsible for facilitating and overseeing compliance with the Security Requirements for List X Contractors, any other relevant Security Aspects Arrangement and these undertakings (the “**Security Controller**”). The Security Controller shall be a British citizen with DV security clearance.
- 4.2. If the Transaction Parties are unable to comply with any of these undertakings, or become aware of any material non-compliance (including by notice from a relevant Department), they will (and without prejudice to any rights or obligations under any applicable contract): (i) (if applicable) notify the relevant Departments immediately; (ii) provide to the relevant Departments full reasons for the inability to comply or the non-compliance within two months of becoming so aware; and (iii) use their best endeavours to remedy any non-compliance as soon as possible, and without prejudice to the rights under clause 3.17 which may be exercised at any time, provided further that the Transaction Parties shall not be deemed to be in breach of these undertakings in respect of any non-compliance notified to the relevant Departments pursuant to this clause 4.2 which is remedied within two months of such notification.
- 4.3. The Security Controller will provide an annual compliance notice to the Departments confirming that the Transaction Parties have undertaken and maintained all commitments within these undertakings and providing further details and the outcome of any non-compliance notice issued in accordance with clause 4.2.
- 4.4. For the purposes of monitoring compliance with these undertakings, the relevant Departments, or their authorised representative, shall (without prejudice to any rights under any contract) be entitled to enter and inspect any premises used by the Ultra UK Group which are in any way connected with Sensitive Material and inspect any document or thing in such premises which is concerned with such Sensitive Material, whether the visit is announced or unannounced. Such representatives shall be entitled to access all such information as they may reasonably require and may remove from any premises any Sensitive Material relevant to that Department that is being used or stored in breach of these undertakings.
- 4.5. The Transaction Parties will take or refrain from taking such action as is reasonably necessary, in order to enable Ultra to comply with these undertakings.

5. INFORMATION UNDERTAKINGS

- 5.1. The Transaction Parties will co-operate with the CMA and provide it with such information as it may reasonably require for the purpose of any of its functions under section 92 of the Act in relation to these undertakings.
- 5.2. The Transaction Parties will provide the Secretary of State or the relevant Departments with such information as it may from time to time reasonably require to ascertain that they are fulfilling these undertakings.

6. DIRECTIONS FROM THE CMA

The Transaction Parties will comply with such written directions as the CMA may from time to time give to take such steps within their competence as may be specified or described in the directions for the purpose of carrying out or securing compliance with these undertakings. The Transaction Parties will do or refrain from doing anything so specified or described in such written directions which they might be required by these undertakings to refrain from doing or to do.

7. IMPLEMENTATION OF UNDERTAKINGS

The Transaction Parties will implement these undertakings as soon as possible and in any event within five working days of the Effective Date.

8. TERM OF UNDERTAKINGS

- 8.1. Subject to Clause 6, these undertakings shall take effect upon the Effective Date and shall continue in force until they are released by the Secretary of State or as provided for in clause 8.2.
- 8.2. The obligations of the Transaction Parties under these undertakings shall terminate:
 - 8.2.1 in full, when the Ultra UK Group ceases to be Controlled by Advent and/or any of its Affiliates pursuant to a bona fide transaction or series of transactions; and
 - 8.2.2 in respect of any Ultra UK Operating Company, Relevant Activity, Relevant Service, production of Controlled Item and/or member of the Ultra UK Group, when that Ultra UK Operating Company, Relevant Activity, Relevant Service, production of Controlled Item and/or member of the Ultra UK Group ceases to be Controlled by Advent and/or any of its Affiliates pursuant to a bona fide transaction or series of transactions,

provided that, in the event of any sale of any part of the Ultra UK Group that operates as a Government Contractor, the Transaction Parties shall require that the relevant acquirer contractually agrees to give equivalent undertakings to these undertakings as a condition precedent to completion of such sale if and to the extent required by any Department.

9. NOTICES

- 9.1. Any notice, demand or other communication given or made under or in connection with the matters contemplated by these undertakings shall be sent by email:
 - in the case of Ultra to: [●]
 - in the case of Cobham to: [●]
 - in the case of the Ministry of Defence [●]
to:
 - In the case of the [REDACTED] to: [●]

and shall be deemed to have been duly given or made at the time of transmission unless the sender receives an automated message that the email has not been delivered, provided that if any such notice, demand or other communication would otherwise be deemed to be given or made after 5.00 p.m. on a Business Day such notice, demand or other communication shall be deemed to be given or made at 9.00 a.m. on the next Business Day.

- 9.2. A party may notify the other parties of a change to its name or email address for the purposes of clause 9.1 provided that such notification shall only be effective on:
- (a) the date specified in the notification as the date on which the change is to take place; or
 - (b) if no date is specified or the date specified is less than five Business Days after the date on which notice is given, the date falling five Business Days after notice of any such change has been given.

10. GOVERNING LAW

These undertakings shall be governed by and construed in accordance with the laws of England and each party hereby irrevocably submits to the exclusive jurisdiction of the English courts.

**SIGNED for and on behalf of
COBHAM ULTRA
LIMITED**

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Michael Ristaino
Director

Donald Whitt
Director

**SIGNED for and on behalf of
ULTRA ELECTRONICS HOLDINGS
PLC**

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[Name]
Director

[Name]
Director

CLASSIFIED APPENDIX 1



[To be inserted]

CONFIDENTIAL APPENDIX 2



[To be inserted]

APPENDIX 3

