

BAE SYSTEMS SHIP REPAIR INC.
ADDENDUM TO ALL SUBCONTRACTS AND PURCHASE ORDERS

201. ACCESS TO SHIPYARD BY NON-U.S. CITIZENS

Seller is hereby placed on notice that, at any given time, BAE SYSTEMS may have a United States Navy vessel in its shipyard and, in accordance with BAE SYSTEMS' prime contracts, only U.S. citizens are eligible for access to U.S. Navy vessels, work sites and adjacent areas, and shops where work in the naval vessel's equipment is being performed, unless prior approval is obtained for non-U.S. citizens. Seller warrants that, unless prior approval is obtained for non-U.S. citizens, only U.S. citizens shall have access to BAE SYSTEMS' shipyard.

202. DISPUTES

If this Subcontract/Purchase Order is issued by BAE SYSTEMS San Diego Ship Repair Inc. or BAE SYSTEMS San Francisco Ship Repair Inc., the following section supersedes conflicting terms in the Disputes/Jury Waiver section of the BAE SYSTEMS Inc. Subcontract Terms and Conditions.

Any and all other disputes arising from the making, performance, or termination of this Agreement shall be settled by binding Arbitration. The American Arbitration Association (AAA) Commercial Arbitration Rules (most recent edition) are to govern this Arbitration. The Arbitration shall take place in the State of California. The dispute will be heard by a single Arbitrator. The Arbitrator shall be bound to follow the applicable subcontract provisions and the laws of the State of California in adjudicating the dispute. It is agreed by both parties that the Arbitrator's decision is final, and that no party may take any action, judicial or administrative, to overturn this decision. The judgment rendered by the Arbitrator may be entered in any court having jurisdiction thereof. The Arbitrator shall not have the authority to award punitive damages.

203. ENVIRONMENTAL

- (a) Hazardous Material Identification and Material Safety Data: Without regard to whether BAE SYSTEMS' prime contract is for the federal Government, Seller agrees to identify hazardous material as defined by FAR Clause 52.223-3 subparagraphs (a), (b), and (c), to submit a Material Safety Data Sheet as provided by subparagraph (d) of that clause, and otherwise agrees to comply with the provisions of that clause as though Seller were in the position of "offeror" and "contractor" and BAE SYSTEMS were in the position of "contracting officer" as those terms are used in that clause.
- (b) Seller shall comply with all federal, state and local laws and regulations regarding the use of any "hazardous substances" (both terms as defined by both federal and state law) generated in the performance of this Order. Seller shall inform BAE SYSTEMS in writing of all hazardous waste expected to be so generated. Seller shall be solely responsible for the consequences of its failure to perform the foregoing obligations and shall defend and indemnify BAE SYSTEMS for all claims and liability, including penalties, resulting from BAE

SYSTEMS' failure to so perform, negligent or otherwise.

If Seller causes, to any extent, the actual or potential release, spill, discharge or other loss of control of a hazardous substance or hazardous waste (an "incident"), such that BAE SYSTEMS' On-Scene Emergency Coordinator is notified to respond through BAE SYSTEMS' existing Environmental Incident Communications Policy and Procedure, BAE SYSTEMS will incur response costs which are extremely difficult and impractical to ascertain. BAE SYSTEMS and Seller agree that the sums set forth herein represent the minimum amount of cost and expenses incurred by BAE SYSTEMS to respond to each Incident. Accordingly, Seller agrees to pay to BAE SYSTEMS for each incident caused by Seller, BAE SYSTEMS' actual response costs, which are agreed to be not less than the sum of twenty-five hundred dollars (\$2,500.00). Such payment shall not relieve Seller of the responsibility to pay BAE SYSTEMS the actual costs of BAE SYSTEMS' remediation of an incident caused by Seller, if any, resulting from the incident, and shall not impair or waive BAE SYSTEMS' indemnification rights as set forth herein.

204. EXPORT CONTROL

The following paragraphs are added to the BAE Systems, Inc. Terms and Conditions EXPORT CONTROL section:

- (a) In compliance with the ITAR, consultants, independent contractors and suppliers, who deliver material or provide services to the BAE SYSTEMS' site will confirm in writing that they or their agents or employees meet one of the following criteria:
 - (1) A citizen of the United States, or
 - (2) A lawful permanent residents as defined by U.S.C. 1101(b)(20), (i.e. Green Card Holders"), or
 - (3) A Protected Individual as defined by 8 USC 1324b(a)(3), or
 - (4) A foreign national for whom a current and directly relevant license or approval has been obtained from the U.S. Department of State. Further information is available at <http://www.uscis.gov>.

NOTE: Foreign residents with special work privileges equivalent to a work visa do not qualify as U.S. Persons under this provision.

- (b) (i) Seller shall indemnify, hold harmless and, at BAE SYSTEMS' election, defend BAE SYSTEMS, its directors, officers, employees, and agents from and against all losses, costs, claims, causes of action, damages, liabilities and expense, including, but not limited to, reasonable attorneys' fees, all expense of litigation and/or settlement, and court costs, arising from or related to any act or omission of Seller, its directors, officers, employees, agents, suppliers, or subcontractors at any tier in the performance of any of its obligations under this Section. Seller shall include the requirements

of this Section in all agreements with lower tier subcontractors.

(ii) Further, if Seller causes, to any extent, an actual or potential violation of the International Traffic in Arms Regulations or the Export Administration Regulations, or any other regulation governing the export of materials, technology, technical data, or the provision of defense services such that the BAE SYSTEMS is obligated by law to investigate and/or report the incident in the form of a State Department Voluntary Disclosure, or otherwise, BAE SYSTEMS will incur investigation and reporting costs which are extremely difficult and impractical to ascertain. BAE SYSTEMS and Seller agree that the sums set forth herein represent the minimum amount of cost and expenses incurred by BAE SYSTEMS to respond to each actual or potential violation. Accordingly, Seller agrees to pay to BAE SYSTEMS for each actual or potential violation caused by Seller, to any extent, BAE SYSTEMS' actual investigation and reporting costs, which are agreed to be not less than the sum of twenty-five hundred dollars (\$2,500.00). Such payment shall not relieve Seller of the responsibility to pay BAE SYSTEMS the actual costs of BAE SYSTEMS' investigation and reporting, if any, resulting from the actual or potential violation, and shall not impair or waive BAE SYSTEMS' indemnification rights or Seller's indemnification obligations as set forth herein.

- (c) BAE SYSTEMS reserves the right to periodically audit Seller's records for compliance with this Article.

205. LABOR DISPUTES

Whenever an actual or potential labor dispute delays or threatens to delay Seller's performance of this Order, the Seller shall immediately give notice thereof to BAE SYSTEMS. Such notice shall be confirmed in writing and shall contain all information relevant to the dispute. Seller agrees to include this paragraph in all subcontracts or purchase orders issued by Seller in connection with this Order.

206. LIABILITY, INSURANCE, INDEMNITY

Seller shall exercise due care to prevent accidents, injury, or damage to persons or property in or about the property of BAE SYSTEMS or BAE SYSTEMS' prime contract customer, and to any vessel or part thereof upon which Work is done or to which goods are furnished hereunder. If an Order requires the presence of any personnel of Seller or Seller's subcontractors or suppliers at BAE SYSTEMS' plant or on any property of BAE SYSTEMS' customer, including any ship on which Work is to be performed under BAE SYSTEMS' prime contract, Seller, Seller's employees, and much of Seller's subcontractors and suppliers as may be on such property shall strictly comply with all BAE SYSTEMS' regulations and procedures governing the conduct of BAE SYSTEMS' work, including, without limitation, BAE SYSTEMS' safety procedures. Without limitation of the foregoing, in connection with any Work performed on the property of BAE SYSTEMS or BAE SYSTEMS' customer, Seller shall comply with all requirements of any applicable federal, state, or local statutes and regulations, including, without limitation, the applicable rules and regulations of the Occupational Safety and Health Act of 1970 (29 U.S.C. §651-678), and the Safety and Health Regulations for Ship Repairing (29 CFR 1915) promulgated under Public Law 85-742 amending §41 of the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. §941) and adopted by the Department of Labor under §6(a)

of the Occupational Safety and Health Act of 1970 (See 29 CFR 1910.13).

207. LICENSE AND PATENT RIGHTS

Where the Order calls for any research or development work, BAE SYSTEMS shall be granted a nonexclusive, royalty-free license to manufacture, use and sell any articles, compositions, devices, processes or the like in accordance with any patent application, invention, improvement or discovery (whether or not patentable), whenever such articles, compositions, devices, processes or the like were conceived or first reduced to practice, either in the performance of the Order or in the performance of any Work relating to the Order which was done upon the understanding that the Order would be awarded. Seller shall, to the fullest extent permitted by law, defend, indemnify, and hold harmless BAE SYSTEMS, its officers, agents, employees and indemnitees from and against any and all claims, losses, suits, damages, legal and otherwise, arising out of or in any way connected with any claim, action or proceeding for infringement of any United States or foreign patent, copyright, or trademark arising out of the Work under the Order, or out of use of disposal of said Work. If any claim or demand is made against BAE SYSTEMS for any matter enumerated herein, any payment due or thereafter to become due to Seller shall be held by BAE SYSTEMS to cover such losses and expenses, including attorney's fees.

208. LIMITATION OF LIABILITY

In no event shall BAE SYSTEMS be liable for any claims of consequential, indirect, incidental or special damages of any nature whatsoever.

209. NOTICE

When BAE SYSTEMS' prime contract requires BAE SYSTEMS to give notice to the customer upon the occurrence of specified events, and the Seller knows or has reason to know a specified event has occurred, the Seller shall promptly give BAE SYSTEMS written notice of that event and, in any case, sufficient time to allow BAE SYSTEMS to timely give the customer any required notice. The Seller's notice shall contain all information it has or can reasonably obtain to enable BAE SYSTEMS to comply fully with the informational requirements imposed by the customer. The Seller's failure to meet the requirements of this clause shall bar any adjustment of time or amount to the Order to the extent BAE SYSTEMS' adjustment of time or amount to the prime contract is so barred.

210. PERFORMANCE AND DELIVERY

It is agreed that time is of the essence in performance of any Order incorporating these terms and conditions. Commencement and completion of Work or delivery of the goods ordered shall be strictly in accordance with the times set forth on the face of the Order, or, if no time is there set forth, in accordance with the requirements of BAE SYSTEMS' prime contract. If requested by BAE SYSTEMS, Seller shall submit to BAE SYSTEMS, in the form acceptable to BAE SYSTEMS, a detailed schedule for performance of the Order which schedule will comply with all schedule requirements of BAE SYSTEMS' prime contract. If the Order requires shipboard Work, Seller shall, at no additional cost to BAE SYSTEMS, coordinate its Work with that being performed by BAE SYSTEMS, other subcontractors of BAE SYSTEMS, and by BAE SYSTEMS' customer.

Seller shall furnish forces, supervision, equipment, and materials sufficient to complete the Order within the time required. If Seller falls behind schedule or if it otherwise appears that Seller will not complete Work or deliver goods within the time required, BAE SYSTEMS may, in accordance with the clause "TERMINATION FOR DEFAULT" hereof, terminate Seller's right to proceed with the Work or with such part thereof as is behind schedule. The Seller agrees, upon THREE CALENDAR DAYS written notice from BAE SYSTEMS, at Seller's expense, to provide the necessary personnel and supply such equipment, materials, overtime workers and other devices and facilities as necessary so as to expedite the Order and meet or recover schedule. Such notice, once given, shall continue in effect until Work specified therein has been fully completed. The Seller shall work overtime at the direction of BAE SYSTEMS. If such overtime work is necessary to cure delinquency in maintaining the progress schedule, and such delinquency is directly or indirectly attributable to Seller, such effort shall be without additional cost to BAE SYSTEMS.

Should the Seller fail or neglect to complete all or any part of the Order, including any change order, within the time or times specified or otherwise delay BAE SYSTEMS by reason of Seller's failure or neglect to perform its obligations under the Order, including any change order, and if as a result BAE SYSTEMS shall incur damages or expenses, or become obligated to pay damages under the prime contract or shall otherwise incur additional expenses, including costs of acceleration or premium costs, the Seller agrees to pay BAE SYSTEMS as actual damages, and not as a penalty, all damages (including liquidated damages) or expenses (including attorney's fees) so incurred by BAE SYSTEMS.

211. PRICE WARRANTY

Seller warrants that the prices for goods covered by this Order shall not be greater than those quoted or last charged to BAE SYSTEMS unless so specified on the face of the Order.

Seller further warrants that the prices are the lowest prices charged by Seller to BAE SYSTEMSs of a class similar to BAE SYSTEMS under conditions similar to those specified under this Order and do not exceed the prices allowed by law. Seller warrants that all discounts and allowances are as favorable as those then offered by Seller to BAE SYSTEMSs of a class similar to BAE SYSTEMS. Seller further warrants that any price reduction made with respect to goods or services covered by this Order subsequent to the placement of this Order will be applicable to this Order.

212. PRIME CONTRACT

The prime contract together with all documents described therein and appurtenant thereto are incorporated by reference and made a part of the Order. Except as modified herein, the Seller assumes the same obligations to BAE SYSTEMS under the Order that BAE SYSTEMS assumes to the customer under the prime contract, and the Seller shall comply with all conditions of the prime contract as they apply to the Work under the Order. By accepting the Order, the Seller acknowledges that it has had an opportunity to make a site visit to review conditions which may relate to its performance under the Order, and also acknowledges that it has reviewed the prime contract and all documents made a part thereof, including the drawings and specifications as they relate to its Work under the Order as well as other work which may interface with its Work.

213. PROGRESS PAYMENTS

If expressly so provided on the face of an Order, Seller shall receive progress payments in the same percentages and calculated in the

same fashion as those provided in BAE SYSTEMS' prime contract. Determination of the percentage of completion of Seller's Work shall be made by BAE SYSTEMS and BAE SYSTEMS' prime contract customer; their decision shall be final and not subject to dispute by Seller. Seller shall submit invoices for such progress payments in a form acceptable to BAE SYSTEMS including such substantiation of costs incurred or progress made, or both, as BAE SYSTEMS may require. Such progress payments as are justified by suitable invoices and substantiation will be made within ten (10) days of BAE SYSTEMS' receipt of progress payments for the same period as the progress covered in Seller's invoices as are made under BAE SYSTEMS' prime contract. If BAE SYSTEMS' prime contract so provides, title to all Work in process, materials, equipment, or other property covered by progress payments shall vest in BAE SYSTEMS' prime contract customer, but this provision shall not be construed as effecting any acceptance or in any other way relieving Seller of its obligations of strict and timely performance, warranties, or any and all other obligations hereunder.

214. PROTECTION OF WORK

All loss of damage to the Work resulting from any cause whatsoever shall be borne and sustained by Seller and shall be solely at its risk until final acceptance by BAE SYSTEMS and BAE SYSTEMS' customer. Seller shall take necessary precautions to properly protect the Work and the work of others from damage caused by Seller's operations. Should Seller cause damage to the work or property of BAE SYSTEMS' customer or BAE SYSTEMS, or others, Seller shall promptly remedy such damage to the satisfaction of BAE SYSTEMS, or BAE SYSTEMS may so remedy and deduct the cost thereof from any amounts due or to become due Seller. Nothing herein shall limit any additional rights BAE SYSTEMS may have pursuant to this Order or law.

215. RIGHTS AND REMEDIES

The rights and remedies herein reserved to BAE SYSTEMS shall not be exclusive and shall be cumulative and additional to any other or further rights and remedies provided in law or in equity. If any provision of any Order is or becomes void and unenforceable by force or operation of law, the other provisions shall remain valid and enforceable.

The failure of BAE SYSTEMS to enforce at any time any of these terms and conditions or any other provisions of any Order, or to exercise any option provided therein, or to require at any time performance by Seller of any provisions thereof, shall in no way be construed to be a waiver of such provisions nor in any way to affect the validity of this agreement or any part thereof or the right of BAE SYSTEMS thereafter to enforce each and every such provision.

216. SAFETY

Seller shall be solely responsible for the safe conduct of its employees and subcontractors while performing the Work required under this Order. Seller shall comply with all applicable federal, state, and local health, safety and fire protection laws and regulations. Seller shall also comply with BAE SYSTEMS' safety policies and procedures. Seller shall inform BAE SYSTEMS in writing of all safety related problems or incidents immediately upon such occurrence.

Seller shall be solely responsible for the consequences of its failure to perform the foregoing safety obligations and shall defend and indemnify BAE SYSTEMS for all claims and liability, including penalties, resulting from Seller's failure to so perform such safety obligations, negligent or otherwise. Seller shall also be responsible

for all costs, including attorney's fees associated with any federal or state citation issued against BAE SYSTEMS resulting from the failure of Seller to comply with the safety obligations as stated in this Order.

Seller may be terminated under the clause "TERMINATION FOR DEFAULT" for significant or persistent safety or environmental issues.

217. SECOND TIER SUBCONTRACTING

No Work may be subcontracted by Seller without the express written consent of BAE SYSTEMS. If Seller intends to subcontract Work, BAE SYSTEMS must be furnished, in writing, a description of the specific Work to be subcontracted, the name of the company to be utilized, and a copy of the second tier subcontract or purchase order for approval. All of the applicable Order terms must be made part of the subcontract or purchase order to the second tier subcontractor.

218. SELLERS OF TEMPORARY LABOR

In addition to the terms herein, Seller warrants that temporary workers sent to BAE SYSTEMS are fit to perform the normal duties of a worker in the trade and at the skill level requested. BAE SYSTEMS reserves the right, at its sole, unfettered discretion, to order any worker supplied by Seller to cease work and exit the premises. BAE SYSTEMS shall not be responsible for paying Seller for the day on which any such worker is expelled. BAE SYSTEMS shall use its best efforts to promptly notify Seller of any such expulsion.

219. TOOLING

If the order includes jigs, dies, fixtures, patterns, or special test equipment and manufacturing aids (hereinafter referred to as tooling) used in the manufacture of the articles, such tooling and drawings thereof become the property of BAE SYSTEMS or its customer immediately upon payment therefore. Tooling shall be used only for production for BAE SYSTEMS and shall be kept in good condition, including necessary replacement, without expense to BAE SYSTEMS, except that the cost of changes due to BAE SYSTEMS' change of design shall be paid for by BAE SYSTEMS.

Seller shall maintain property control records for such tooling and shall promptly furnish BAE SYSTEMS a list thereof upon request. Following completion or termination of this order, Seller shall hold all such tooling free of charge for six months following its furnishing of said inventory to BAE SYSTEMS, and any such tooling BAE SYSTEMS orders returned to it shall be delivered f.o.b. Seller's plant, properly crated for U.S. shipment. No crating charge is to be included in Seller's quotations unless expressly requested by BAE SYSTEMS.

220. TOOLS AND SUPPLIES

Seller shall furnish all required tools to complete the Work. Seller will not be permitted to use any BAE SYSTEMS tools unless specified in the Order. Seller shall indemnify and hold harmless BAE SYSTEMS, its officers, agents, and employees from and against any and all claims, notices, orders, losses, suits, damages (including consequential or punitive damages) legal and otherwise, and liabilities incurred by or asserted against BAE SYSTEMS which in any way arise out of or are related to the use of BAE SYSTEMS' tools or supplies by Seller. **Seller acknowledges that BAE SYSTEMS makes no warranty with regard to the**

merchantability or fitness for a particular purpose of the tools supplies, nor makes any other warranty, express or implied, with regard to said tools and acknowledges that the tools are being tendered to Seller "as is".

221. WORKMANSHIP AND MATERIALS

Work performed and goods supplied pursuant to any Order shall be in strict accordance with the specifications set forth or referenced in such Order, including all applicable plans and specifications of BAE SYSTEMS' prime contract. Unless otherwise specifically provided in any Order, or in BAE SYSTEMS' prime contract, all operational practices of Seller and all workmanship and materials shall be in accordance with the latest rules and requirements of the American Bureau of Shipping, United States Coast Guard and the American Institute of Electrical and Electronic Engineers, and with the best commercial marine practice; where BAE SYSTEMS' prime contract shall specify U.S. Navy specifications, Navy standards of material and workmanship shall be followed.

222. CONTRACT DIRECTION/CHANGES

If any change shall have resulted or derived in any way from an act or omission or formal or constructive order by Buyer's prime contract customer, Seller's right to equitable adjustment shall be contingent on, and the amount thereof shall be determined in accordance with the following:

- (a) Seller shall have provided to Buyer written notice of the facts giving rise to such change and shall have done so in time and in form sufficient to enable Buyer to provide to Buyer's customer notice sufficient to protect Buyer's right to equitable adjustment under Buyer's prime contract;
- (b) Buyer shall be liable to Seller only to the extent that Buyer's prime contract customer accepts liability or is determined to be liable therefore;
- (c) The amount of Seller's equitable adjustment, if any, shall not exceed that allowed or awarded to Buyer from its prime contract customer, less any profit or costs, or both, to which Buyer is entitled.

223. MECHANICS AND OTHER LIENS

- (a) TO THE EXTENT PERMITTED BY LAW, SELLER AGREES THAT IT WILL NOT ASSERT ANY MECHANICS LIEN, OR ANY OTHER LABOR OR MATERIAL LIEN, AGAINST ANY PROPERTY OWNED BY OR IN THE CARE, CUSTODY OR CONTROL OF BAE SYSTEMS TO SECURE PAYMENT OF ANY AMOUNTS THAT MAY BECOME DUE TO SELLER FOR FURNISHING ANY LABOR OR MATERIAL IN PERFORMANCE OF THIS CONTRACT OR FOR PERFORMING ANY WORK ASSOCIATED THEREWITH. SELLER UNDERSTANDS THAT BY ACCEPTING THIS CONTRACT IT HAS WAIVED ITS RIGHTS (IF ANY) TO ASSERT A LIEN AND IT WILL BE PRECLUDED FROM EXERCISING THE MECHANICS LIEN RIGHTS IT MAY OTHERWISE BE AFFORDED UNDER APPLICABLE STATE LAW. SELLER SHALL COOPERATE IN PROVIDING AND FILING ANY WAIVERS AND/OR RELEASES OF LIEN THAT BAE SYSTEMS MAY REQUIRE. IN THE EVENT THAT APPLICABLE LAW DOES NOT PERMIT THE SELLER'S WAIVER OF LIENS IN ADVANCE, SELLER AGREES THAT IT SHALL FOREBEAR

FROM FILING A LIEN UNLESS AND UNTIL IT COMPLETES THE WORK REQUIRED BY THE CONTRACT AND WILL PROVIDE A RELEASE AND WAIVER SIMULTANEOUS WITH FINAL PAYMENT UNDER THE CONTRACT.

- (b) SELLER agrees to secure releases and waivers of lien in favor of BAE SYSTEMS from SELLER's suppliers and subcontractors coincident with SELLER's final payments to them. In the event any of SELLER's suppliers or subcontractors assert a mechanics lien, or any other labor or material lien, against any property owned by or in the care, custody or control of BAE SYSTEMS, BAE SYSTEMS at its election may immediately satisfy such lien and charge all amounts (including reasonable attorney's fees) associated with satisfying such lien to SELLER and/or offset such amounts against payments owed to SELLER.

224. FAILURE TO MEET PAYROLL

If SELLER fails to meet its payroll or employee benefit obligations and such failure disrupts, delays, or otherwise hinders delivery and/or performance of Work under this Agreement and/or BAE SYSTEMS' prime contract, BAE SYSTEMS may, without accepting responsibility or liability for SELLER's payroll or employee benefit obligations, solicit, recruit, hire, or otherwise employ or retain SELLER's employees who are deemed by BAE SYSTEMS to be necessary for delivery and performance of the Work being provided under this Contract. Any action taken by BAE SYSTEMS under this Article shall not relieve the SELLER of any liability for default under this Contract.

225. NON-SOLICITATION AGREEMENT

- (a) During the Contract and for one (1) year after expiration or termination of this Contract, SELLER agrees that neither it, nor its employees directly supporting this Contract or the BAE SYSTEMS' prime contract shall recruit, solicit, or assist in the recruiting or soliciting for employment, including as a consultant, any technical or professional employees of BAE SYSTEMS who are supporting this Agreement or BAE SYSTEMS' prime contract, without prior written approval from BAE SYSTEMS. Notwithstanding the foregoing, SELLER may utilize non-targeted recruiting efforts without violating this Article.
- (b) SELLER acknowledges and agrees that in the event of a violation of this Article, there are no adequate remedies at law and BAE SYSTEMS will suffer irreparable harm entitling it to seek immediate injunctive relief in addition to any and all other available
- (c) Legal remedies it may have.