

**BAEDOC NONUSGOV****GENERAL PROVISIONS FOR COMMERCIAL SUBCONTRACTS/PURCHASE ORDERS****SECTION I: General Provisions for All Orders****Section 1A: General/Administrative Provisions**

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## **SECTION I: General Provisions for All Orders**

### **Section 1A: General/Administrative Provisions**

#### **1. DEFINITIONS**

The following terms shall have the meanings set forth below:

- a) "Background Intellectual Property" shall mean Intellectual Property owned, controlled or used under license by the SELLER prior to the Effective Date of this Contract (unless delivered as Foreground Intellectual Property to BAE SYSTEMS under a previous contract). Background Intellectual Property includes, without limitation, Software and related documentation.
- b) "BAE SYSTEMS" means the BAE SYSTEMS legal entity as identified on the face of this Contract.
- c) "BAE SYSTEMS Procurement Representative" means the person authorized by BAE SYSTEMS' cognizant procurement organization to administer and/or execute this Contract.
- d) "Contract" means the instrument of contracting, such as "PO", "Purchase Order", or other such type designation, including all referenced documents, exhibits and attachments. If these terms and conditions are incorporated into a "master" agreement that provides for releases, (in the form of a purchase order or other such document) the term "Contract" shall also mean the release document for the Work to be performed.
- e) "Customer" means the entity with whom BAE SYSTEMS has or anticipates having a contractual relationship to provide services or goods that utilize or incorporate the Work. For purposes of the "FURNISHED PROPERTY" and "INDEPENDENT CONTRACTOR RELATIONSHIP" provisions of this Contract, "Customer" shall include both any higher tier contractor(s) and the U.S. Government.
- f) "Electronic Signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.
- g) "Foreground Intellectual Property" means Intellectual Property conceived, developed or otherwise generated in the performance of this Contract by or on behalf of SELLER. Foreground Intellectual Property shall be used by SELLER solely in work for BAE SYSTEMS. Foreground Intellectual Property includes, without limitation Software and related documentation.
- h) "Intellectual Property" shall mean any legally enforceable rights, worldwide under statute or common law in respect of inventive subject matter or original works of authorship, including, but not limited to, inventions, designs, whether registered or not, patents, copyrights (including mask works), trademarks and trade secrets, discoveries, improvements, technology, designs mask works, technical information, data, Software, business information and other information.
- i) "Open Source" means with respect to Software and any licenses of same, that Software provided under a license which permits the user to run, copy, distribute, study, change, modify and/or improve the Software but which prohibits the user from: (a) withholding improvements and/or modifications made by the user to the source code when and/if user thereafter distributes the Software; and/or (b) adding restrictions on use when redistributing or transferring the Software to third parties. For purposes of this Contract, "Open Source" Software shall also include "Free Software" as defined by the Free Software Foundation Inc. By way of example and not limitation, "Open Source" licenses shall include such licenses as the GNU General Public License, the Mozilla Public License 1.1, Apache Software License Version 2.0, the Academic Free License 2.0, and Open Software License 2.0.
- j) "PO" or "Purchase Order" as used in any document constituting a part of this Contract shall mean this "Contract."

k) "SELLER" means the party identified on the face of this Contract with whom BAE SYSTEMS is contracting. For the purposes of the "CUSTOMER COMMUNICATION" and "INDEPENDENT CONTRACTOR RELATIONSHIP" provisions only, "SELLER" shall also include SELLER's agents, representatives, subcontractors, and suppliers at any tier.

l) "Software" means: (1) computer programs, source code, source code listings, executable code, machine readable code, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable software to be read, reproduced, recreated, or recompiled; (2) associated documentation such as operating manuals, application manuals, and installation and operating instructions that explain the capabilities of software and provide instructions on using the software; and (3) derivative works, enhancements, modifications, and copies of those items identified in (1) and (2) above.

m) "Work" means all required deliverables, articles, materials, supplies, goods and services, including, but not limited to, technical data and Software, constituting the subject matter of this Contract.

#### **2. ACCEPTANCE OF CONTRACT/TERMS AND CONDITIONS**

a) This Contract integrates, merges, and supersedes any contemporaneous and prior offers, understandings, negotiations, and agreements concerning the subject matter hereof and constitutes the entire agreement between the parties.

b) SELLER's acknowledgment, acceptance of payment, or commencement of performance, shall constitute SELLER's unqualified acceptance of this Contract.

c) **ADDITIONAL OR DIFFERING TERMS OR CONDITIONS PROPOSED BY SELLER OR INCLUDED IN SELLER'S ACKNOWLEDGMENT HEREOF ARE HEREBY OBJECTED TO BY BAE SYSTEMS AND HAVE NO EFFECT UNLESS EXPRESSLY ACCEPTED IN WRITING BY A BAE SYSTEMS PROCUREMENT REPRESENTATIVE.**

d) Any assignment of SELLER's contract rights or delegation of duties shall be void, unless prior written consent is given by BAE SYSTEMS. A change of control of SELLER shall constitute an impermissible assignment. However, SELLER may assign rights to be paid amounts due, or to become due, to a financing institution if BAE SYSTEMS is promptly furnished a signed copy of such assignment reasonably in advance of the due date for payment of any such amounts. Amounts assigned to an assignee shall be subject to setoffs or recoupment for any present or future claims of BAE SYSTEMS against SELLER. BAE SYSTEMS shall have the right to make settlements and/or adjustments in price without notice to the assignee. BAE SYSTEMS may freely assign this contract.

#### **3. PRECEDENCE**

Any inconsistencies in this Contract shall be resolved in accordance with the following descending order of precedence: (1) face of the Purchase Order, release document or schedule, (which shall include continuation sheets), as applicable, to include any special terms and conditions; (2) any master-type agreement (such as corporate, operating group, or blanket agreements); (3) representations and certifications; (4) these terms and conditions; (5) statement of work; and (6) specifications or drawings.

#### **4. CONTRACT DIRECTION/CHANGES**

a) Only the BAE SYSTEMS Procurement Representative has authority to make changes in, to amend, or to modify this Contract on behalf of BAE SYSTEMS. SELLER shall not implement any changes or modifications to this contract (including contract specifications and quality control provisions) without first having received written authorization to do so from BAE SYSTEMS' Procurement Representative.

- b) BAE SYSTEMS program, operations, engineering, technical, or other personnel may from time to time render assistance, give technical advice, discuss, or exchange information with SELLER's personnel concerning the Work hereunder. Such actions shall not be deemed to be a change under this clause of this Contract and shall not be the basis for equitable adjustment. If SELLER believes the foregoing creates an actual or constructive change, SELLER shall notify the BAE SYSTEMS Procurement Representative and shall not accept such direction or perform said action unless authorized by BAE SYSTEMS Procurement Representative.
- c) Except as otherwise provided herein, all notices to be furnished by the SELLER shall be sent to the BAE SYSTEMS Procurement Representative.
- d) BAE SYSTEMS may, at any time, exclusively by a written order signed by its Procurement Representative, and without notice to sureties, if any, make changes within the general scope of this contract in any one or more of the following:
  - i. Drawings, designs, or specifications when the supplies being furnished are to be specially manufactured for BAE SYSTEMS in accordance with the drawings, designs, or specifications;
  - ii. Method of shipment or packing;
  - iii. Place of inspection, delivery or acceptance;
  - iv. Delivery schedules; and/or
  - v. Any other matters affecting this contract.
- e) BAE SYSTEMS' Procurement Representative may sometimes elect to attach BAE SYSTEMS' own internal change documents to the Change Order for clarification purposes. When issued, these forms will be in conjunction with, not in lieu of, a Change Order. The SELLER shall promptly review all changes to the part and/or service as specified in the Change Order and any Attachments, if any, and notify BAE SYSTEMS of any effect that the change may have on the performance of the contract.
- f) If any such change causes an increase or decrease in the cost of or the time required for performance of this contract, an equitable adjustment shall be made in the contract price, the delivery schedule, or both, and the contract shall be modified in writing accordingly. Any claim by SELLER for adjustment under this article must be asserted in writing to BAE SYSTEMS' Procurement Representative no later than thirty (30) calendar days (five (5) calendar days for Ship Repair) after the date of receipt by SELLER of the written change authorization or within such extension as BAE SYSTEMS may grant in writing; BAE SYSTEMS may, in its sole discretion, consider any such claim regardless of when asserted. Such claim shall be in the form of a complete change proposal fully supported by factual information. Pending any such adjustment, SELLER will diligently proceed with the contract as modified. Where the cost of property made excess or obsolete as a result of a change is included in SELLER's claim for adjustment, BAE SYSTEMS shall have the right to direct the manner of disposition of such property. BAE SYSTEMS shall have the right to examine any of SELLER's pertinent books and records for the purpose of verifying SELLER's claim.

NOTE: Only BAE SYSTEMS' Procurement Representative shall have the authority to direct or authorize changes or modifications to this contract. BAE SYSTEMS' PROGRAM MANAGEMENT AND ENGINEERING PERSONNEL HAVE *NO* AUTHORITY TO MODIFY OR OTHERWISE TO DIRECT OR AUTHORIZE CHANGES TO THIS CONTRACT.

- g) BAE SYSTEMS SHALL NOT BE LIABLE FOR ANY OF SELLER'S INCREASED COSTS OF PERFORMANCE THAT RESULT FROM SELLER'S IMPLEMENTATION OF CHANGES OR MODIFICATIONS THAT BAE SYSTEMS'

PROCUREMENT REPRESENTATIVE DID NOT FIRST APPROVE IN WRITING.

- h) BAE SYSTEMS and SELLER agree that if this Contract, or any order, ancillary agreement, or correspondence is transmitted electronically neither BAE SYSTEMS nor SELLER shall contest the validity thereof, on the basis that this Contract, or the order, acknowledgement, ancillary agreement, or correspondence exists only in electronic form, an electronic record was used in its creation or formation, or it contains only an Electronic Signature or it was generated automatically, without human intervention by a system intended for the purposes of generating same.

## 5. CUSTOMER COMMUNICATION

BAE SYSTEMS shall be solely responsible for all liaison and coordination with the Customer or any higher tier contractor(s) as it affects this Contract or any Work thereunder or related thereto. Except as required by law, SELLER shall not communicate with the Customer, and any higher tier contractor(s), with respect to this Contract or any Work thereunder or related thereto, without prior written approval from the BAE SYSTEMS Procurement Representative. SELLER shall promptly notify the BAE SYSTEMS Procurement Representative of any communications, initiated by the Customer or any higher tier contractor(s) that affects this Contract or any Work thereunder or related thereto.

## 6. INFORMATION

- a) Information provided by BAE SYSTEMS to SELLER remains the property of BAE SYSTEMS. SELLER shall comply with all proprietary information markings and restrictive legends applied by BAE SYSTEMS to anything provided hereunder to SELLER. SELLER shall not use any BAE SYSTEMS provided information for any purpose except to perform this Contract and shall not disclose such information to third parties without the prior written consent of BAE SYSTEMS.
- b) If the parties have entered into a Proprietary Information Agreement pertaining to the Work of this Contract, the terms and conditions of such Proprietary Information Agreement shall govern the protection and exchange of proprietary information between the Parties.
- c) SELLER shall not provide any proprietary information to BAE SYSTEMS without prior execution by BAE SYSTEMS of a Proprietary Information or Non-Disclosure Agreement that expressly covers the performance of Work under this Contract.
- d) Except as required by law, no public release of any information, or confirmation or denial of same, with respect to this Contract or the subject matter hereof, shall be made by SELLER without the prior written approval of BAE SYSTEMS Procurement Representative.
- e) As BAE Systems and other Defense Prime Contractors have enhanced their cyber security defenses, attackers have expanded their targets to include the supply base, searching for weaknesses that they can exploit. SELLER will employ appropriate tools and practices to protect BAE SYSTEMS' provided data and advise BAE SYSTEMS within 2 days if a cyber-attack has been detected which may have compromised BAE SYSTEMS' data. BAE Systems is launching a Supplier Cyber Security process to help us understand the risk, raise awareness and develop proportionate and effective cyber defenses across our supply base. The process is one element of BAE Systems wider cyber security strategy and is linked to our involvement in the Defense Cyber Protection Partnership. SELLER agrees, if solicited, to complete the Cyber Security Supplier Questionnaire.

## 7. SURVIVABILITY

If this Contract expires, is completed or is terminated, SELLER shall not be relieved of those obligations contained in the following provisions:

Applicable Laws

Counterfeit Parts: Prevention and Notification  
Definitions  
Disputes/Jury Waiver  
Export Control  
Furnished Property  
Independent Contractor Relationship  
Information  
Entry on BAE SYSTEMS or Customer Property  
Intellectual Property  
Maintenance of Records  
Parts Obsolescence  
Warranty

## 8. SEVERABILITY

Each paragraph and provision of this Contract is severable, and if one or more paragraphs or provisions are declared invalid, the remaining provisions of this Contract will remain in full force and effect.

## 9. RESERVED

## 10. RESERVED

## 11. PAYMENTS, TAXES, AND DUTIES

- a) Unless otherwise provided, terms of payment shall be net sixty (60) days or 2% 10 NET 60 if so agreed between the parties and so indicate on the face of the order from the latest of the following: (i) BAE SYSTEMS' receipt of SELLER's accurate invoice in accordance with proper invoicing instructions as identified on the PO, or other master-type agreement; (ii) scheduled delivery date of the Work; or (iii) actual delivery of the Work. BAE SYSTEMS shall have a right of setoff against payments due or at issue under this Contract or any other contract between BAE SYSTEMS and SELLER.
- b) Each payment made shall be subject to reduction to the extent of amounts which are found by BAE SYSTEMS not to have been properly payable and shall also be subject to reduction for overpayments.
- c) Payment shall be deemed to have been made as of the date of mailing BAE SYSTEMS' payment or electronic funds transfer.
- d) Unless otherwise specified, prices include all applicable federal, state and local taxes, duties, tariffs, and similar fees imposed by any government, all of which shall be listed separately on the invoice.
- e) SELLER will provide BAE SYSTEMS with a W-9 Form (Request for Taxpayer Identification Number and Certification) in accordance with IRS regulations. An updated form is required for any Name or address change. If SELLER fails to provide a complete and proper W-9 Form, BAE SYSTEMS is required to subject payments to Backup Withholdings.

## 12. MAINTENANCE OF RECORDS

- a) Unless a longer period is specified in this Contract or by law or regulation, SELLER shall retain all records related to this Contract for five (5) years from the date of final payment received by SELLER. Records related to this Contract include, but are not limited to, financial, proposal, procurement, specifications, production, inspection, test, quality, quality processes and procedures, shipping and export, certifications, and receipt records.
- b) BAE SYSTEMS and its customer shall have access to such records, and any other records SELLER is required to maintain under this Contract, for the purpose of audit during normal business hours, upon reasonable notice for as long as such records are required to be retained. Audit rights shall be available to BAE SYSTEMS on all performance related reports and other records, except records pertaining to proprietary indirect cost data. Audit of any proprietary indirect cost data may be accomplished through a mutually agreeable third party auditor from a nationally recognized firm of certified public accountants.

## 13. OFFSET CREDIT/COOPERATION

All offset or countertrade credit value resulting from this Contract, and any lower tier subcontracts, shall accrue solely to the benefit of BAE SYSTEMS. SELLER shall cooperate with BAE SYSTEMS in the fulfillment of any foreign offset/countertrade obligations.

## 14. SUPPLEMENTAL TERMS AND CONDITIONS

Any additional or supplemental terms and conditions that are required by BAE SYSTEMS' shall be provided as a note on the face of this Contract or as Special or Additional Provisions to the Contract.

## 15. ENTRY ON BAE SYSTEMS OR CUSTOMER PROPERTY

- a) If SELLER's personnel are to work at BAE SYSTEMS' facility with unescorted access, SELLER is required to have performed pre-employment background screenings at no charge to BAE SYSTEMS. SELLER employees will not be allowed access to work at BAE SYSTEMS facilities until written confirmation from SELLER has been received by the BAE SYSTEMS Procurement Representative stating that SELLER'S employees are cleared by SELLER to report to work. If the SELLER personnel in question holds a U.S. Government-granted Security clearance or access that has been validated by BAE SYSTEMS through JPAS (Joint Personnel Adjudication System) or via a visit certification, then a pre-employment background screening for that SELLER personnel is not required. Pre-employment background screenings must include the following: (a) Identity and Right to Work Verification (Criteria: A successful I-9 / E-Verify System Check) (b) Criminal Conviction Check, to the extent permitted by applicable law, for a minimum of previous seven years for each county lived in (Criteria: No record or if misdemeanors, occurrence greater than seven years prior, then the SELLER may choose to provide an explanation of the event to BAE SYSTEMS. BAE SYSTEMS will review the explanation against security requirements) (c) Education Verification for degreed positions only; and (d) Minimum of three years of employment history (Criteria: Employment history is confirmed as presented).
- b) SELLER shall ensure that personnel assigned to work at BAE SYSTEMS' or Customer's premises comply with any on-premises guidelines. Unless otherwise authorized in writing by BAE SYSTEMS, SELLER's personnel assigned to work at BAE SYSTEMS' or Customer's premises shall while at BAE SYSTEMS' or Customer's premises (i) not bring weapons of any kind; (ii) not manufacture, sell, distribute, possess, use or be under the influence of controlled substances or alcoholic beverages; (iii) not possess hazardous materials of any kind; (iv) remain in authorized areas only; and/or (v) not solicit BAE SYSTEMS' employees for employment.
- c) All SELLER personnel, property, and vehicles entering or leaving BAE SYSTEMS' or Customer's premises are subject to search.
- d) SELLER shall promptly notify BAE SYSTEMS and provide a report of any and all physical altercations, assaults or harassment, and accidents or security incidents involving death, personal injury or loss of or misuse of or damage to BAE SYSTEMS' or Customer's property, while on BAE SYSTEMS' or its Customer's premises.
- e) BAE SYSTEMS may, at its sole discretion, remove or require SELLER to remove any specified personnel of SELLER from BAE SYSTEMS' or Customer's premises and request that such personnel not be reassigned to any BAE SYSTEMS premises under this Contract or any other contract. Any costs arising from or related to removal of SELLER's employee shall be borne solely by SELLER and not charged to this Contract.
- f) SELLER shall not assign any persons to work at BAE SYSTEMS facilities who are not a "U.S. Person" per 22 C.F.R. 120.15 {lawful permanent resident as defined by 8 U.S.C. 1101(a)(20)}.
- g) SELLER acknowledges that BAE SYSTEMS and/or BAE SYSTEMS' customer have a zero tolerance policy for harassing behavior. SELLER, its employees, and its lower-tier subcontractors

(when permitted) shall comply with the conduct requirements in effect at a worksite of BAE SYSTEMS or its Customer. BAE SYSTEMS and its Customer reserve the right to exclude or remove from any worksite, any individual who has been deemed careless, uncooperative, or whose continued employment has been determined by BAE SYSTEMS or its Customer to be contrary to the BAE SYSTEMS', the Customer's, or the public's interest. Exclusion from the worksite under the circumstances described in this clause shall not relieve SELLER from full performance of the Contract, nor will it provide the basis for an excusable delay or any claims against BAE SYSTEMS or its Customer.

- h) If this Contract was issued by BAE SYSTEMS Ship Repair Inc. or one of its subsidiaries, the Indemnity Agreement executed by SELLER in connection with becoming an approved subcontractor to BAE SYSTEMS shall apply.

#### 16. INDEPENDENT CONTRACTOR RELATIONSHIP

- a) SELLER's relationship to BAE SYSTEMS shall be that of an independent contractor and this Contract does not create an agency, partnership, or joint venture relationship between BAE SYSTEMS and SELLER or BAE SYSTEMS and SELLER personnel. SELLER personnel engaged in performing Work under this Contract shall be deemed employees of SELLER and shall not for any purposes be considered employees or agents of BAE SYSTEMS. SELLER assumes full responsibility for the actions and supervision of such personnel while engaged in Work under this Contract. BAE SYSTEMS assumes no liability for SELLER personnel.
- b) Nothing contained in this Contract shall be construed as granting to SELLER or any personnel of SELLER rights under any BAE SYSTEMS benefit plan. SELLER shall provide and maintain all insurance and benefits required by law, including but not limited to workers' compensation insurance.
- c) SELLER personnel: (i) will not remove BAE SYSTEMS or its Customer's assets from BAE SYSTEMS' or Customer's premises without BAE SYSTEMS written authorization; (ii) will use BAE SYSTEMS or Customer assets only as authorized in writing by the BAE SYSTEMS Procurement Representative for purposes of this Contract; (iii) will only connect with, interact with or use BAE SYSTEMS' computer networks and equipment, communications resources, programs, tools or routines as BAE SYSTEMS agrees, all at SELLER's risk and expense, and then only in compliance with applicable BAE SYSTEMS policies; and (iv) will not share or disclose user identifiers, passwords, cipher keys or computer dial port telephone numbers. BAE SYSTEMS may monitor any communications made over or data stored in BAE SYSTEMS computer networks and equipment or communications resources.

#### Section 1B: Laws and Regulations

##### 17. APPLICABLE LAWS

- a) Unless specifically identified otherwise on a PO or under a master-type agreement, which is part of this Contract, all matters arising from or related to it shall be governed by and construed in accordance with the law of the State from which this Contract was issued, excluding its choice of law rules.
- b) (1) SELLER shall comply with all applicable laws, orders, rules, regulations, and ordinances. SELLER shall procure all licenses and permits, and pay all fees and other required charges necessary to conduct its business, all at SELLER's expense.  
  
(2) SELLER shall be responsible for compliance with all requirements and obligations relating to its employees under all applicable local, state, and federal statutes, ordinances, rules, and obligations including, but not limited to, employer's obligations under laws relating to: income tax withholding and reporting; civil rights; equal employment opportunity; discrimination on the basis of age, sex, race, color, religion, disability, national origin, or veteran status; overtime; minimum wage; social security contribution and withholding; unemployment insurance; employer's

liability insurance; worker's compensation; veteran's rights; and all other employment, labor, or benefits related laws.

(3) SELLER certifies compliance that materials incorporated into the product comply with the laws regarding slavery and human trafficking of the country or countries in which they are doing business. Further, when applicable SELLER shall comply with the California Civil Code 1714.43, and SELLER shall require its lower-tiered contractors to comply with California Civil Code 1714.43.

(4) BAE SYSTEMS is a federal government contractor subject to the nondiscrimination and affirmative action compliance requirements of Executive Order 11246, Executive Order 13672, , as amended, the Rehabilitation Act of 1973, as amended, and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended. BAE SYSTEMS is committed to compliance with these nondiscrimination and affirmative action requirements. As part of our efforts to comply with these laws and their implementing regulations, we have developed and implemented equal employment opportunity and affirmative action policies and programs, which are designed to ensure that all qualified applicants and employees are treated without regard to such factors as race, color, religion, sex, national origin, disability, veteran status, sexual orientation, gender identity, or any other reason prohibited by law.

In accordance with the implementing regulations of these laws BAE Systems' General Provisions serves as notification to SELLER about our nondiscrimination and affirmative action policies, and also "requests appropriate action" of SELLER to ensure full compliance throughout the subcontracting chain under related federal contract(s).

- i. To the extent applicable, the equal employment opportunity and affirmative action requirements set forth in 41 C.F.R. Part 60-1.4(a) (women and minorities) (if > \$10,000), 41 C.F.R. Part 60-250.5(a) (if > \$25,000) and Part 60-300.5(a) (covered veterans), and the employee notice requirements set forth in 29 C.F.R. Part 471, Appendix A to Subpart A, are hereby incorporated by reference into this Contract.
- ii. **This contractor and subcontractor shall abide by the requirements of 41 CFR 60 741.5(a) (if >\$15,000). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities (If this procurement is =>\$10,000.) Additionally, this contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans (if this procurement is =>\$150,000).**

(5) If: (i) BAE SYSTEMS' contract price or fee is reduced; (ii) BAE SYSTEMS' costs are determined to be unallowable; (iii) any fines, penalties or interest are assessed on BAE SYSTEMS; or (iv) BAE SYSTEMS incurs any other costs or damages as a result of any violation of applicable laws, orders, rules, regulations, or ordinances by SELLER, its directors, officers, employees, agents, suppliers, or subcontractors at any tier, BAE SYSTEMS may proceed as provided for in subparagraph (b)(6).

(6) Upon the occurrence of any of the circumstances identified in subparagraph (b)(5) above, BAE SYSTEMS may make an offset reduction of corresponding amounts (in whole or in part) due SELLER under this Contract or any other contract with SELLER, and/or may demand payment (in whole or in part) of the corresponding amounts. SELLER shall promptly pay amounts so demanded.

- c) SELLER represents that each chemical substance constituting or contained in Work sold or otherwise transferred to BAE SYSTEMS hereunder is on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Agency pursuant to the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.) as amended. Seller shall not deliver goods that contain any asbestos mineral fibers.
- d) SELLER shall provide to BAE SYSTEMS with each delivery any Safety Data Sheets (SDSs) (formerly known as Material Safety Data Sheets or MSDSs) (29 C.F.R. 1910.1200) applicable to the Work in conformance with and containing such information as required by the Occupational Safety and Health Act of 1970 and regulations promulgated thereunder, or its state approved counterpart.
- e) For orders \$500,000 and above to be substantially performed outside of the United States: SELLER shall comply with the policy, controls, and reporting requirements as defined in U.S. Executive Order, 25 September 2012, Strengthen Protections Against Trafficking In Persons In Federal Contracts; Sec. 2. Anti-Trafficking Provisions subsection (2).
- f) Conflict Minerals:
  - i. Products delivered to BAE SYSTEMS shall be free of any known Conflict Minerals which are: columbite-tantalite (coltan), cassiterite, wolframite, and gold, to include derivatives (tantalum, tin, and tungsten, which are known as the "3Ts") which are used to finance conflict in the Democratic Republic of Congo or adjoining country.
  - ii. In compliance with **SECURITIES AND EXCHANGE COMMISSION, 17 CFR PARTS 240 and 249b, [Release No. 34-67716; File No. S7-40-10] RIN 3235-AK84:CONFLICT MINERALS** (Dodd-Frank Act Section 1502); SELLER agrees to: 1) Disclose if any of the minerals listed in (i) above are necessary to the functionality or production of the product(s) delivered under this contract 2) identify if such conflict minerals did not originate in the Covered Countries or did come from recycled or scrap sources, or 3) identify of such minerals did originate in the Democratic Republic of Congo or adjoining country. For products manufactured in calendar years 2013 and 2014 if the origins of such minerals cannot be determined by reasonable means the SELLER may report the origins as undeterminable. SELLER will include in the disclosure a description of the measures it took to exercise due diligence on the conflict minerals' source and chain of custody.
- g) In accordance with 10 USC 2330a, if this Contract is for services, the SELLER shall report all labor hours required for performance under this Contract via a secure data collection site. Specific instructions will be provided by the Procurement Representative if applicable.

**18. RESERVED**

**19. GRATUITIES/KICKBACKS/ETHICAL CONDUCT**

- a) No gratuities (in the form of entertainment, gifts or otherwise) or kickbacks shall be offered or given by SELLER, or anyone acting on SELLER's behalf, to any employee of BAE SYSTEMS with a view toward securing favorable treatment as a supplier.
- b) By accepting this Contract, SELLER certifies and represents that it has not made or solicited and will not make or solicit kickbacks in violation of FAR 52.203-7 or the Anti-Kickback Act of 1986 (41 U.S.C. Sec. 51-58), incorporated herein by this specific reference if this Contract exceeds \$150,000, except that paragraph (c)(1) of FAR 52.203-7 shall not apply.
- c) BAE SYSTEMS maintains an ethics program that includes a written code of conduct, training and awareness for all employees, details of which can be found at [http://www.baesystems.com/article/BAES\\_020436/code-of-](http://www.baesystems.com/article/BAES_020436/code-of-)

conduct-and-key-policies. Failure to comply with the Global Code of Conduct or SELLER'S comparable ethics program and standards shall be considered a material breach and shall be grounds for termination of this Contract.

- d) SUPPLIER PRINCIPLES. Responsible behavior is fundamental to how we do business at BAE Systems. Regular assessments of BAE Systems' supply base is a critical part of this commitment. Our 'best practice' expectations of all current and proposed suppliers are contained in our Supplier Principles, available on our website at <http://www.baesystems.com>.

**20. EXPORT CONTROL**

- a) SELLER shall comply with all applicable United States export control laws and regulations, including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C. 2751-2799aa-2, the International Traffic in Arms Regulation (ITAR), 22 C.F.R. 120 et seq., the Export Administration Act, 50 U.S.C. app. 2401-2420, the Export Administration Regulations, 15 C.F.R. 730-774, and the regulations of the Office of Foreign Assets Control (31 C.F.R. Parts 500-595). SELLER shall obtain all required export licenses and agreements necessary to perform SELLER's Work, as applicable.
- b) SELLER shall comply with all applicable United States anti-boycott laws and regulations, including but not limited to, the requirements of the Export Administration Regulations, 15 C.F.R. 760, and the Internal Revenue Code, 26 U.S.C. 999, including the requirements on reporting anti-boycott requests to the U.S. Government. SELLER shall provide to BAE SYSTEMS within 30 days of submittal a copy of any anti-boycott report made to the U.S. Government that involves this Contract.
- c) Without limiting the foregoing, SELLER shall not transfer any export-controlled item, data or services, to include transfer to a person who is not a "U.S. Person" as defined in the ITAR (22 C.F.R. 120.15), without the authority of a United States Government export license, technical assistance agreement, or other authority. The restrictions on the transfer of export controlled data apply equally to data furnished by BAE SYSTEMS and to any such data incorporated in documents generated by SELLER. Additionally, no disclosure of data furnished by BAE SYSTEMS can be made unless and until BAE SYSTEMS has considered the request and provided its written approval through contractually authorized channels. SELLER will strictly comply with the conditions in any such approval and in the export license or other Government authorization for such disclosure.
- d) Further, a United States Government export license, export agreement, or applicable license exemption or exception shall be obtained by SELLER prior to the transfer of any export-controlled item, data or services to any U.S. Person that is employed by any "Foreign person" within the meaning of 22 C.F.R. 120.16.
- e) SELLER shall notify in writing the BAE SYSTEMS Procurement Representative if any use, sale, import or export by BAE SYSTEMS of Work to be delivered under this Contract is restricted by any export control laws or regulations applicable to SELLER.
- f) SELLER shall immediately notify in writing the BAE SYSTEMS Procurement Representative if SELLER is listed in any Denied Parties List or if SELLER's export privileges are otherwise denied, suspended or revoked in whole or in part by any government entity or agency.
- g) If SELLER is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services, SELLER represents that it maintains an effective export/import compliance program in accordance with the ITAR and it is registered with the United States Office of Defense Trade Controls (unless covered by one of the exemptions set forth in 22 C.F.R. 122.1) as required by the ITAR.
- h) Where SELLER is a signatory under a BAE SYSTEMS export license or export agreement (e.g. Technical Assistance Agreement,

Manufacturing License Agreement), SELLER shall provide immediate written notification to the BAE SYSTEMS Procurement Representative in the event of changed circumstances affecting said license or agreement.

- i) Failure of the United States Government or any other government to issue any required export or import license, or withdrawal/termination of a required export or import license by the United States Government or any other government, shall relieve BAE SYSTEMS of its obligations under this Contract. Provided that SELLER has diligently pursued obtaining such license and, through no fault of SELLER, such license has been denied, withdrawn, or terminated, SELLER shall also be relieved of its obligation under this Contract. In either event, this Contract may be terminated by BAE SYSTEMS without additional cost or other liability.
- j) If the technical data required to perform this Contract is subject to the United States International Traffic in Arms Regulations (ITAR), SELLER shall comply with all export licenses, and the following:
  - i. The technical data shall be used only in performance of Work required by this Contract; and
  - ii. The data shall not be disclosed to any Non-U.S. Person, including lower-tier subcontractors within the same country, unless said person is expressly authorized pursuant to an export license or export agreement. The restrictions on the disclosure of export-controlled data apply to both data furnished by BAE SYSTEMS and to any such data incorporated in documents generated by SELLER; and
  - iii. Any rights in the data may not be acquired by SELLER or any other Non-U.S. Person; and
  - iv. SELLER shall return, or at BAE SYSTEMS' direction, destroy all of the technical data exported to SELLER pursuant to this Contract upon fulfillment of its terms; and
  - v. Unless otherwise expressly directed by BAE SYSTEMS, SELLER shall deliver the Work only to BAE SYSTEMS or to an agency of the U.S. Government.
- k) SELLER acknowledges and confirms that if under this contract SELLER manufactures, exports, or brokers defense articles, related technical data or defense services as defined on the United States Munitions List (Part 121 of the ITAR), SELLER is so registered with the Directorate of Defense Trade Controls (DDTC), Department of State. (applicable to companies operating in the U.S. only).
- l) See BAE SYSTEMS Ship Repair Inc. Addendum for additional terms applicable to this EXPORT CONTROL section for work performed for BAE SYSTEMS Ship Repair Inc. and its subsidiaries.

**21. DISPUTES/JURY WAIVER (See BAE SYSTEMS Ship Repair Inc. Addendum for additional terms applicable to this Disputes/Jury Waiver section for work performed for BAE SYSTEMS Ship Repair Inc. and its subsidiaries.)**

- a) All disputes arising from or related to this Contract, which are not disposed of by mutual agreement may be decided by recourse to an action at law or in equity in accordance with subparagraph (b) of this provision. Until final resolution of any dispute hereunder, SELLER shall diligently proceed with the performance of this Contract as directed by the BAE SYSTEMS Procurement Representative.
- b) BAE SYSTEMS and SELLER agree to timely notify each other of any claim, dispute or cause of action arising from or related to this Contract, and to negotiate in good faith to resolve any such claim, dispute or cause of action. To the extent that such negotiations fail, BAE SYSTEMS AND SELLER AGREE THAT ANY LAWSUIT OR CAUSE OF ACTION THAT ARISES FROM OR IS RELATED TO THIS CONTRACT SHALL BE FILED WITH AND LITIGATED ONLY IN A COURT OF COMPETENT JURISDICTION WITHIN THE STATE FROM WHICH THIS

CONTRACT WAS ISSUED; AND BAE SYSTEMS AND SELLER EACH HEREBY CONSENT AND AGREE TO THE PERSONAL JURISDICTION AND VENUE OF ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION LOCATED WITHIN THE STATE FROM WHICH THIS CONTRACT WAS ISSUED WITH RESPECT TO ANY SUCH CLAIM, DISPUTE OR CAUSE OF ACTION AND WAIVE ANY DEFENSE OR OBJECTION TO THE EXERCISE OF PERSONAL JURISDICTION AND/OR VENUE BY ANY SUCH COURT. (For BAE SYSTEMS Ship Repair Inc. (and its subsidiaries) orders originating in California, please see the BAE SYSTEMS Ship Repair Inc. Addendum for further Disputes language.)

- c) TO THE EXTENT PERMITTED BY APPLICABLE LAWS, BAE SYSTEMS AND SELLER EACH WAIVE ANY RIGHTS WHICH EITHER MAY HAVE TO TRIAL BEFORE A JURY OF ANY DISPUTE ARISING FROM, OR RELATED TO, THIS CONTRACT. SELLER AND BAE SYSTEMS FURTHER STIPULATE AND CONSENT THAT ANY SUCH LITIGATION BEFORE A COURT OF COMPETENT JURISDICTION SHALL BE NON-JURY.

**22. WAIVER, APPROVAL AND REMEDIES**

- a) Failure by BAE SYSTEMS to enforce any provision(s) of this Contract shall not be construed as a waiver of the requirement(s) of such provision(s), or as a waiver of the right of BAE SYSTEMS thereafter to enforce each and every such provision(s).
- b) BAE SYSTEMS' approval of documents shall not relieve SELLER from complying with any requirements of this Contract.
- c) The rights and remedies of BAE SYSTEMS in this Contract are cumulative and in addition to any other rights and remedies provided by law or in equity.

**Section 1C: Quality/Product Control Provisions**

**23. QUALITY CONTROL SYSTEM**

- a) SELLER agrees to provide and maintain a quality control system to an industry recognized Quality Standard and to provide access to SELLER's facilities at all reasonable times by BAE SYSTEMS, authorized Customer representatives, and Regulatory Authorities. SELLER agrees to include, and to require its subcontractors to include, the substance of this provision, including this sentence, in each of its subcontracts under this Contract. Further, SELLER shall be in compliance with any other specific quality requirements identified in this Contract.
- b) Records of all quality control inspection work by SELLER shall be kept complete and available to BAE SYSTEMS and its Customers.
- c) SELLER agrees to notify BAE SYSTEMS Procurement Representative of product that does not meet the requirements of this order that cannot be reworked to compliance. Written Approval will be required by BAE SYSTEMS Procurement Representative prior to SELLER's shipment of nonconforming material to BAE SYSTEMS. Additionally, SELLER shall notify BAE SYSTEMS Procurement Representative if SELLER discovers that previously delivered product does not meet the requirements of this order.
- d) SELLER agrees to notify BAE SYSTEMS Procurement Representative with changes in product and/or process which affect compliance with applicable Specifications, technical Data Sheets, or reliability of the product, changes of suppliers, and changes of manufacturing facility locations.
- e) All hardware, data, other documentation, tooling and equipment required by SELLER during the performance of this order shall be maintained under configuration control. BAE SYSTEMS' approval of the drawing package shall constitute a baseline release for hardware fabrication. BAE SYSTEMS' approval of other such documentation shall likewise constitute a baseline release for applicable activities. Upon receipt of such approval, the SELLER

shall not implement any change in design, processes, controls, parts or proprietary data released to BAE SYSTEMS thereafter to internal functions or second-tier suppliers without BAE SYSTEMS' prior written approval.

- f) The SELLER shall submit Major Engineering Change Orders (ECO's) to BAE SYSTEMS for written approval prior to implementing any such changes. BAE SYSTEMS' approval shall in no way relieve the SELLER from complying with the requirements of the order, nor shall approval relieve the SELLER's technical responsibility for the design. The SELLER shall further submit Minor ECO's for informational purposes. Any SELLER classification disagreements shall be referred to BAE SYSTEMS for a final decision.
- g) SELLER shall maintain a Foreign Object Debris/Damage (FOD) prevention program. When applicable, SELLER's FOD prevention program shall include:
  - i. The review of design and manufacturing processes to identify and eliminate foreign object entrapment areas and paths through which foreign objects can migrate.
  - ii. SELLER shall employ appropriate housekeeping practices to ensure timely removal of residue/debris, if any, generated during manufacturing operations or tasks.
  - iii. SELLER shall determine if sensitive areas that may have a high probability for introduction of foreign objects should have special emphasis controls in place appropriate for the manufacturing environment.
  - iv. By delivering items to BAE SYSTEMS, SELLER shall be deemed to have certified to BAE SYSTEMS that such items are free from any foreign material that could result in FOD.

## 24. TIMELY PERFORMANCE

- a) SELLER's timely performance is a critical element of this Contract.
- b) Unless advance shipment has been authorized in writing by the BAE SYSTEMS Procurement Representative, BAE SYSTEMS may store at SELLER's expense, or return, shipping charges collect, all Work received in advance of the scheduled delivery date.
- c) If SELLER becomes aware of difficulty in performing the Work, SELLER shall timely notify BAE SYSTEMS, in writing, giving pertinent details. This notification shall not change any delivery schedule.
- d) In the event of a termination or change, no claim will be allowed for any manufacture or procurement in advance of SELLER's normal flow time unless there has been prior written consent by BAE SYSTEMS' Procurement Representative.

## 25. INSPECTION AND ACCEPTANCE

- a) BAE SYSTEMS and its Customer may inspect all Work at reasonable times and places, including, when practicable, during manufacture and before shipment. BAE SYSTEMS shall perform such inspections in a manner that will not unduly delay the Work. SELLER shall provide all information, facilities, and assistance necessary for safe and convenient inspection without additional charge.
- b) No such inspection (or election not to inspect) shall relieve SELLER of its obligations to furnish all Work in strict accordance with the requirements of this Contract. BAE SYSTEMS' final inspection and acceptance shall be at destination.
- c) If SELLER delivers non-conforming Work, BAE SYSTEMS may:
  - (i) accept all or part of such Work at an equitable price reduction;
  - (ii) reject such Work; or
  - (iii) make, or have a third party make all repairs, modifications, or replacements necessary to enable such Work to comply in all respects with Contract requirements and charge the cost incurred to SELLER.

- d) When Work is not ready at the time specified by SELLER for inspection, BAE SYSTEMS may charge to SELLER the additional cost of inspection.
- e) BAE SYSTEMS may also charge SELLER for any costs of additional inspection and/or transportation when rejection makes re-inspection necessary.
- f) SELLER shall not re-tender rejected Work without disclosing the corrective action taken.
- g) SELLER shall not tender finished goods to BAE SYSTEMS which have been returned from another customer without prior written approval from BAE SYSTEMS Procurement Representative. Such approval requests shall include a full explanation of SELLER's verification process for those goods. For returned goods to be considered for acceptance by BAE SYSTEMS, an Authorized/Franchised Distributor must include acceptance of returned goods for resale as part of its counterfeit/fraudulent parts risk management plan.

## 26. COUNTERFEIT PARTS: PREVENTION AND NOTIFICATION

- a) Definitions for purposes of this Contract:
  - i. "Counterfeit Part" is one that is (1) an unauthorized copy or substitute that has been identified, marked, and/or altered by a source other than the item's legally authorized source and has been misrepresented to be an authorized item of the legally authorized source and/or (2) previously used parts provided as "new." A part is a "Suspect Counterfeit Electronic Part" if visual inspection, testing, or other information provides reason to believe that the part may be a counterfeit part.
  - ii. "Counterfeit Electronic Part" means an unlawful or unauthorized reproduction, substitution, or alteration that has been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified electronic part from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used electronic parts represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.
  - iii. As used herein, "authentic" shall mean (A) from the legitimate source claimed or implied by the marking and design of the product offered; and (B) manufactured by, or at the behest and to the standards of, the manufacturer that has lawfully applied its name and trademark for that model/version of the material.
  - iv. "Independent Distributors" are persons and businesses that are not part of an OCM's authorized distribution chain. These also may be referred to as non-franchised distributors, unauthorized distributors or brokers.
  - v. "Electronic Part" means an integrated circuit, a discrete electronic component (including, but not limited to, a transistor, capacitor, resistor, or diode), or a circuit assembly (section 818(f)(2) of Pub. L. 112-81).. The term "Electronic Part" includes any embedded software or firmware.
  - vi. "Original Component Manufacturer" (OCM) is an organization that designs and/or engineers a part and is pursuing or has obtained the intellectual property rights to that part.
  - vii. "Original Equipment Manufacturer" (OEM) is an organization that designs, manufactures and/or engineers an



end product comprised of various parts and is pursuing or has obtained the intellectual property rights to that end product.

viii. "Suspect Counterfeit Electronic Part" means an Electronic Part for which credible evidence (including, but not limited to, visual inspection or testing) provides reasonable doubt that the Electronic Part is authentic.

- b) SELLER represents and warrants that only new and authentic materials are used in products required to be delivered to BAE SYSTEMS and that the Work delivered contains no Counterfeit Parts. No other material, part, or component other than a new and authentic part shall be used unless approved in advance in writing by the BAE SYSTEMS Procurement Representative. To further mitigate the possibility of the inadvertent use of Counterfeit Parts, SELLER shall only purchase authentic parts/components directly from the OEMs/OCMs or through the OEM's/OCM's authorized distribution chain. SELLER must make available to BAE SYSTEMS, at BAE SYSTEMS' request, OEM/OCM documentation that authenticates traceability of the components to that applicable OEM/OCM. Purchase of parts/components from Independent Distributors is not authorized unless first approved in writing by BAE SYSTEMS Procurement Representative. SELLER must present complete and compelling support for its request and include in its request all actions needed to ensure that the parts/components thus procured are legitimate parts. BAE SYSTEMS may additionally need to get its customer's approval of SELLER's request. Awaiting the processing of such requests shall not constitute a basis for excusable delay on part of the SELLER. BAE SYSTEMS' approval of SELLER request(s) does not relieve SELLER's responsibility to comply with all Contract requirements, including the representations and warranties in this provision.
- c) SELLER shall maintain a documented system (policy, procedure, or other documented approach) that provides for prior notification to the BAE SYSTEMS Procurement Representative and his/her written approval before parts/components are procured from sources other than OEMs/OCMs or through the OEM's/OCM's authorized distribution chain. SELLER shall provide copies of such documentation for its system for BAE SYSTEMS' inspection upon BAE SYSTEMS' request. SELLER's system shall be consistent with applicable industry standards, AS5553 as minimum, for the detection and avoidance of Counterfeit Electronic Parts and Suspect Counterfeit Electronic Parts, including policies and procedures for training personnel, designing and maintaining systems to mitigate risks associated with parts obsolescence, making sourcing decisions, prioritizing mission critical and sensitive components, ensuring traceability of parts, developing lists of trusted and non-trusted suppliers, flowing down requirements to subcontractors, inspecting and testing parts, reporting and quarantining Suspect Counterfeit Electronic Parts and Counterfeit Electronic Parts, and taking corrective action.
- d) If the SELLER is providing electronic components/devices only, the following certification applies:

Certification of Origin of Product:

Acceptance of this Contract constitutes confirmation by the SELLER that it is the Original Equipment Manufacturer (OEM)/Original Component Manufacturer (OCM), or a franchised or authorized distributor of the OEM/OCM for the product herein procured. SELLER further warrants that OEM/OCM acquisition documentation that authenticates traceability of the components to that applicable OEM/OCM is available upon request. If the SELLER is not the OEM/OCM or a franchised or authorized distributor, the SELLER confirms by acceptance of this Contract that it has been authorized in writing by BAE SYSTEMS to act on BAE SYSTEMS behalf to procure from the OCM or a franchised or authorized distributor of the OEM/OCM. The SELLER further warrants that OEM/OCM acquisition traceability documentation is accurate and available to BAE SYSTEMS upon BAE SYSTEMS' request and is retained as a quality record in accordance with the "Maintenance of Records" provision contained herein.

- e) SELLER shall flow the requirements of this provision to its subcontractors and suppliers at any tier for the performance of this Contract.
- f) Notifications: Should SELLER become aware of a Counterfeit Part or Suspect Counterfeit Part that, by any means, has been delivered to BAE SYSTEMS, or acquired for this Contract whether or not delivered to BAE SYSTEMS. SELLER shall notify BAE SYSTEMS as soon as possible but not later than 7 days of discovery.. SELLER will verify receipt of this notification by BAE SYSTEMS. This requirement will survive this Contract.
- g) SELLER shall be liable for cost of Counterfeit Parts and Suspect Counterfeit Parts and the cost of rework or corrective action that may be required to remedy the use or inclusion of such parts.
- h) SELLER shall quarantine Suspect Counterfeit Electronic Parts and Counterfeit Electronic Parts, and make them available for investigation by appropriate government authorities. Suspect Counterfeit Electronic Parts and Counterfeit Electronic Parts shall not be returned to the supply chain unless and until such time that the parts are determined to be authentic.

## 27. PACKING AND SHIPMENT

- a) Unless otherwise specified, all Work is to be packed in accordance with good commercial practice.
- b) A complete packing list shall be enclosed with all shipments. SELLER shall mark containers or packages with necessary lifting, loading, and shipping information, including the BAE SYSTEMS Contract number, item number, dates of shipment, and the names and addresses of consignor and consignee. Bills of lading shall include this Contract number.
- c) Unless otherwise specified, delivery shall be in accordance with INCOTERMS 2010 DAP at the place of BAE SYSTEMS identified in the order
- d) Work shall not be supplied in excess of quantities specified in this Contract. SELLER shall be liable for handling charges and return shipment costs for any excess quantities.

## 28. PARTS OBSOLESCENCE

"Obsolete Electronic Part" means an electronic part that is no longer in production by the original manufacturer or an aftermarket manufacturer that has been provided express written authorization from the current design activity or original manufacturer.

SUPPLIER shall take appropriate actions to mitigate Electronic Parts obsolescence in order to maximize the availability and use of authentic, originally designed, and qualified Electronic Parts throughout the product's lifecycle.

BAE SYSTEMS may desire to place additional orders for items purchased hereunder. SELLER shall provide BAE SYSTEMS with a "Last Time Buy Notice" at least twelve (12) months prior to any action to discontinue any item purchased under this Contract.

## 29. WARRANTY

SELLER warrants that all Work furnished pursuant to this Contract shall strictly conform to all specifications, drawings, samples, and descriptions, and other requirements of this Contract and be free from defects in design, material and workmanship. The warranty shall begin upon final acceptance and extend for a period of one (1) year. If any non-conformity with Work appears within that time, SELLER shall promptly repair, replace, or re-perform the Work. Transportation of replacement Work and return of non-conforming Work and repeat performance of Work shall be at SELLER's expense. If repair or replacement or re-performance of Work is not timely, BAE SYSTEMS may elect to return the nonconforming Work or repair or replace Work or re-procure the Work at SELLER's expense. All warranties shall run to the benefit of BAE SYSTEMS and its successors and Customer(s).

### 30. SUSTAINABLE DEVELOPMENT

BAE SYSTEMS operates a Sustainable Development Policy. The details of our Sustainable Development Policy can be found at (<http://www.baesystems.com/en/search?searchQuery=sustainable+development>). We expect and encourage all our suppliers to embrace similar standards to our own and will work with them to share best practice and stimulate improved performance where needed.

### 31. SOFTWARE

Open Source Software: Without the prior written approval of BAE SYSTEMS, which BAE SYSTEMS may withhold in its sole discretion, SELLER shall not incorporate any Open Source Software, including any source code governed by an Open Source license, into Work to be performed and/or delivered under this Contract. Before BAE SYSTEMS will consider providing written approval for the incorporation of such Open Source Software, SELLER shall first identify all Open Source Software proposed to be incorporated into Work to be performed and/or delivered under this Contract, including a complete source code listing of the Software comprising the Work with a description of the operation of the Software in English and machine-readable form, together with copies of any license agreements required to be accepted.

### Section 1D: Liability and Indemnification

### 32. INDEMNIFICATION

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, PENALTIES, CAUSES OF ACTION, DAMAGES, LIABILITIES, FEES, AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEY FEES, ALL EXPENSES 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, RELATED TO OR AS PART OF THE EXECUTION OF WORK TO BE PERFORMED OR OTHERWISE IN THE PERFORMANCE OF ANY OF ITS OBLIGATIONS UNDER THIS CONTRACT.

**(FOR PURCHASE ORDERS UNDER BAE SYSTEMS Ship Repair Inc. and its subsidiaries, the above is superseded by the Indemnity Agreement executed by SELLER in connection with becoming an approved SUBCONTRACTOR of BAE SYSTEMS SHIP REPAIR INC and its subsidiaries.)**

### 33. FURNISHED PROPERTY

- a) BAE SYSTEMS may provide to SELLER property owned by either BAE SYSTEMS or its Customer (Furnished Property), or require SELLER to acquire property to be used specifically for Work under this Contract (Acquired Property). Unless previously authorized in writing by the BAE SYSTEMS Procurement Representative, Furnished Property and/or Acquired Property shall be used only for the performance of this Contract.
- b) Title to Furnished Property and/or Acquired Property shall remain in BAE SYSTEMS or its Customer as applicable. SELLER shall clearly mark (if not so marked) all Furnished Property and/or Acquired Property to show its ownership.
- c) The Furnished Property shall be supplied in "as-is" condition unless otherwise set forth in this Contract. Except for reasonable wear and tear, SELLER shall be responsible for, and shall promptly notify BAE SYSTEMS of, any loss or damage to Furnished Property and/or Acquired Property while in SELLER's care, custody, or control. Without additional charge, SELLER shall manage, maintain, preserve, and insure Furnished Property and/or Acquired Property in accordance with good commercial practice. In the event of such loss or damage, SELLER shall immediately replace, reimburse, repair, and/or provide consideration to BAE SYSTEMS

for such loss or damage as BAE SYSTEMS may require, at its sole option.

- d) At BAE SYSTEMS' request, and/or upon completion of this Contract SELLER shall submit, in an acceptable form, inventory lists of Furnished Property and/or Acquired Property and shall deliver or make such other disposal as may be directed by BAE SYSTEMS.

### 34. INTELLECTUAL PROPERTY

Subparagraphs (a) and (b) of this paragraph are NOT applicable for commercial off-the-shelf purchases unless such off-the-shelf Work is modified or redesigned pursuant to this Contract.

- a) Foreground Intellectual Property: SELLER agrees that BAE SYSTEMS shall be the sole owner of all Foreground Intellectual Property, including any modification of SELLER'S existing Intellectual Property. SELLER hereby assigns, conveys, transfers, and agrees to assign, convey or transfer all right, title, and interest in the foregoing to BAE SYSTEMS, including without limitation all copyrights, patent rights and other intellectual property rights therein and further agrees to execute, at BAE SYSTEMS' request and expense, all assistance reasonably required and documentation necessary to perfect title therein in BAE SYSTEMS. SELLER shall maintain and disclose to BAE SYSTEMS written records of, and otherwise provide BAE SYSTEMS with full access to, the subject matter covered by this paragraph and that all such subject matter shall be deemed information of BAE SYSTEMS and be subject to the protection provisions of the provision entitled "Information." SELLER shall assist BAE SYSTEMS, at BAE SYSTEMS' request and expense, in every reasonable way, in obtaining, maintaining, and enforcing patent and other intellectual property protection on the subject matter covered by this paragraph.
- b) Background Intellectual Property: SELLER grants and agrees that BAE SYSTEMS shall have a nonexclusive, worldwide, sub licensable, perpetual, irrevocable, paid-up, royalty-free license and right to make, have made, sell, offer for sale, use, execute, reproduce, display, modify, perform, publish, distribute, copy, prepare derivatives or compilations, and authorize others to do any, some or all of the foregoing, with respect to any and all Background Intellectual Property necessary for BAE SYSTEMS to practice or otherwise exercise its rights to Foreground Intellectual Property. SELLER shall provide all assistance reasonably required and execute all documents necessary to perfect the rights granted to BAE SYSTEMS herein. To enable SELLER to comply with the foregoing, SELLER shall ensure that each of its personnel, workers, representatives, agents and subcontractors providing services under this Contract, assign sufficient rights they have in all inventions, works for hire, project results, and the like, to SELLER.
- c) SELLER warrants that the Work performed and delivered under this Contract will not infringe or otherwise violate the intellectual property rights of any third party in the United States or any foreign country and is free and clear of all liens, licenses, claims, and encumbrances.
- d) If an injunction is obtained against BAE SYSTEMS' use of the Work or a portion thereof as a result of infringement or misappropriation of the intellectual property of any third party, SELLER shall either (i) procure for BAE SYSTEMS and Customer the right to continue using the Work or (ii) replace or modify the Work so it becomes non-infringing. The indemnity and hold harmless provision of this Contract shall not be considered an allowable cost under any provisions of this Contract except with regard to allowable insurance costs.
- e) SELLER agrees that BAE SYSTEMS is the sole owner of any intellectual property developed under this contract, and that SELLER shall have no right in such intellectual property except as specifically authorized by BAE SYSTEMS.

### 35. TERMINATION

- a) Termination for Convenience

- i. For specially performed Work: BAE SYSTEMS may terminate part or this entire Contract for its convenience by giving written notice to SELLER. Upon receipt of such notice SELLER shall immediately: (i) cease work; (ii) prepare and submit to BAE SYSTEMS an itemization of all completed and partially completed deliverables and services; (iii) deliver to BAE SYSTEMS deliverables satisfactorily completed up to the date of termination at the agreed upon prices in this Contract; and (iv) deliver upon request any Work in process. SELLER shall use reasonable efforts to mitigate BAE SYSTEMS' liability under this paragraph by, among other actions, accepting the return of, returning to its suppliers, selling to others, or otherwise using the canceled deliverables (including raw materials or work in process) and provided such expenses do not exceed the prices set forth in this Contract. BAE SYSTEMS' only obligation shall be to pay SELLER a percentage of the price reflecting the percentage of the Work performed in accordance with the Contract schedule prior to the notice of termination, plus reasonable charges that SELLER can demonstrate to the satisfaction of BAE SYSTEMS, using generally accepted accounting principles, have resulted from the termination. SELLER shall not be paid for any Work performed or costs incurred which reasonably could have been avoided.
- ii. For other than specially performed Work: BAE SYSTEMS may terminate part or this entire Contract for its convenience by giving written notice to SELLER and BAE SYSTEMS' only obligation to SELLER shall be payment of SELLER's standard re-stocking or service charge, not to exceed ten (10) percent of the price of the terminated Work.
- iii. In either case, SELLER shall continue all Work not terminated.
- iv. In no event shall BAE SYSTEMS be liable for lost or anticipated profits, or unabsorbed indirect costs or overhead, or for any sum in excess of the total Contract price. SELLER's termination claim shall be submitted within sixty (60) days from the effective date of the termination.

b) Termination for Default

- i. BAE SYSTEMS, by written notice, may terminate this Contract for default, in whole or in part, if SELLER fails to comply with any of the terms of this Contract, fails to make progress as to endanger performance of this Contract, or fails to provide adequate assurance of future performance. SELLER shall have ten (10) days (or such longer period as BAE SYSTEMS may authorize in writing) to cure any such failure after receipt of written notice from BAE SYSTEMS. Default involving delivery schedule delays shall not be subject to the cure provision.
- ii. BAE SYSTEMS shall not be liable to pay for any Work not accepted; however, BAE SYSTEMS may require SELLER to deliver to BAE SYSTEMS any supplies and materials, and drawings that SELLER has specifically produced or acquired for the terminated portion of this Contract. BAE SYSTEMS and SELLER shall agree on the amount of payment for these other deliverables.
- iii. SELLER shall continue all Work not terminated.
- iv. If after termination for default it is later determined that SELLER was not in default, such termination shall be deemed a Termination for Convenience.

**36. INSURANCE**

In the event that SELLER, its employees, agents, or subcontractors enter the site(s) of BAE SYSTEMS or its Customer for any reason in connection with this Contract, then SELLER and its subcontractors shall

procure and maintain worker's compensation (with a waiver of subrogation in favor of BAE SYSTEMS), automobile liability, comprehensive general liability (bodily injury and property damage) insurance in amounts reasonably acceptable to BAE SYSTEMS, and such other insurance as BAE SYSTEMS may reasonably require. With respect to any injury, including, but not limited to, death, to employees of SELLER or SELLER's agents, subcontractors or suppliers, SELLER's obligation to indemnify and defend in accordance with this paragraph shall apply regardless of cause. SELLER shall provide to the BAE SYSTEMS Procurement Representative thirty (30) days advance written notice prior to the effective date of any cancellation or change in the term or coverage of any of SELLER's required insurance, provided however such notice shall not relieve SELLER of its obligations to procure and maintain the required insurance. If requested, SELLER shall send a "Certificate of Insurance" showing SELLER's compliance with these requirements. SELLER shall name BAE SYSTEMS as an additional insured for the duration of this Contract. Property and Contractor's Equipment Insurance maintained pursuant to this paragraph shall be considered primary as respects the interest of BAE SYSTEMS and is not contributory with any insurance that BAE SYSTEMS may carry. "Subcontractor" as used in this subparagraph shall include SELLER's subcontractors at any tier.

**37. STOP WORK ORDER**

- a) SELLER shall stop Work for up to ninety (90) days in accordance with the terms of any written notice received from BAE SYSTEMS, or for such longer period of time as BAE SYSTEMS and SELLER may agree and shall take all reasonable steps to minimize the incurrence of costs allocable to the Work during the period of Work stoppage.
- b) Within such period, BAE SYSTEMS shall either terminate or continue the Work by written order to SELLER. In the event of a continuation, an equitable adjustment in accordance with provision "Contract Direction/Changes" shall be made to the price, delivery schedule, or other provision affected by the Work stoppage, if applicable, provided that the claim for equitable adjustment is made within thirty (30) days after such continuation.

**SECTION II: Additional General Provisions for Foreign Subcontracts/Purchase Orders**

**38. FOREIGN CORRUPT PRACTICES PROHIBITION**

- a) By accepting this Contract, SELLER certifies and represents that it has not made or solicited and will not make or solicit any offer, payment, promise to pay, or authorization to pay any money, gift, or anything of value to any governmental official or any political party, party official or candidate, either directly or through an intermediary, corruptly for the purpose of influencing any official act, omission, or exercise of influence by the recipient, to assist BAE SYSTEMS or SELLER in obtaining or retaining business.
- b) SELLER shall ensure that all lower tier subcontracts include this provision.

**39. LANGUAGE AND STANDARDS**

All reports, correspondence, drawings, notices, marking, documentation, and other communications shall be in the English language. In the event of any inconsistency with any translation into another language, the American Standard English meaning of this Contract shall prevail. Unless otherwise provided in writing, all documentation and Work shall employ the units of United States standard weights and measures as published by the United States National Institute of Standards and Technology.

**40. PACKING/SHIPMENT/IMPORTER OF RECORD (Replace "Packing and Shipment" provision in Section I)**

- a) This provision applies if this Contract involves importation of Work into the United States.
- b) Unless otherwise specified, delivery shall be Carriage and Insurance Paid (CIP) BAE SYSTEMS' facility, in accordance with INCOTERMS 2010. The minimum insurance shall cover the price provided in this Contract plus ten percent (i.e. 110%) and shall be provided in the currency of this Contract.
- c) When BAE SYSTEMS is importer of record, SELLER warrants that all sales hereunder are or will be made at not less than fair value under the United States Anti-Dumping Laws (19 U. S.C. Sec. 1673 et seq.).
- d) Bills of Lading shall include:
  - i. This Contract number;
  - ii. Applicable Harmonized Tariff Schedule number(s) (HTS# to the 8<sup>th</sup> or 10<sup>th</sup> digit) for all items shipped; and
  - iii. Marks and number as specified in the Contract
- e) Commercial Shipping Invoice shall include, pursuant to 19 CFR §§ 141.86 to 141.89:
  - i. This Contract number;
  - ii. Applicable Harmonized Tariff Schedule number(s) (HTS# to the 8<sup>th</sup> or 10<sup>th</sup> digit) for all items shipped;
  - iii. Total valuation of the shipment:
    - a. For initial shipment against this Contract: SELLER shall declare unit price and extended price on each line of the shipped Work, plus if applicable
      - 1) Total value of line items on this Contract for other than deliverable hardware (e.g. engineering, tooling, special packaging) and/or
      - 2) The value of other assists provided at no cost to SELLER (e.g. BAE SYSTEMS provided tooling, material, test equipment, etc. required for the manufacture of the deliverable hardware)
    - b. For subsequent shipments against this Contract: SELLER shall declare unit price and extended price on each line of the shipped Work
  - c. For items returned for repair and reshipment: SELLER shall declare repair value also noting the original value of repaired items:
    - 1) Part number(s)
    - 2) Description(s) – Complete and detailed, must be in English. see 19 CFR §§ 141.86 (3) and (11)(d)]
    - 3) Quantity per line item
    - 4) Total value of shipment listed in relevant currency (i.e., US, Euro, etc.)
    - 5) Country of origin
    - 6) Terms of Sale
    - 7) Invoice should also identify Shipper, if shipped by a third party the shipper and SELLER, and BAE SYSTEMS as the sold to party (in case of drop shipment to third party, that party is the “shipped to” and BAE SYSTEMS is still identified as “sold to”).
- f) Packing:
  - i. Unless otherwise specified, all Work is to be packed in accordance with good commercial practice designed to protect the integrity of the shipped contents consistent with international shipping practices.
  - ii. Wooden Packaging from International Suppliers: Wooden packaging from SELLER must conform to INTERNATIONAL STANDARDS FOR PHYTOSANITARY MEASURES ISPM 15 REGULATION OF WOOD PACKAGING MATERIAL IN INTERNATIONAL TRADE (2009) revised Aug 2011. Additional information on this requirement can be found at the following site: [http://www.aphis.usda.gov/import\\_export/plants/plant\\_imports/wood\\_packaging\\_materials.shtml](http://www.aphis.usda.gov/import_export/plants/plant_imports/wood_packaging_materials.shtml)
- iii. Shipments not conforming to this international standard will be returned to the shipper by U.S. Customs and Border Protection. Expenses related to non-conformance with this requirement and attendant delay and disruption to BAE SYSTEMS will be charged back to the SELLER.
- iv. A complete packing list shall be prepared in accordance with 19CFR § 141.86 (11)(e), enclosed with all shipments, and include the following:
  - a. BAE SYSTEMS purchase order/contract number
  - b. Part number
  - c. Description of shipped items
  - d. Quantity per line item
  - e. The box number that each line item is in
  - f. Total number of boxes in shipment
  - g. Dimensions of shipment
  - h. Final delivery address
  - i. The packing slip shall be put inside the package and a copy affixed to the outside of the package
- v. SELLER shall mark containers or packages with necessary lifting, loading, and shipping information, including the BAE SYSTEMS Contract number, item number, dates of shipment, and the names and addresses of consignor and consignee.
- g) If elsewhere in this Contract BAE SYSTEMS is not indicated as importer of record, then SELLER agrees that:
  - i. BAE SYSTEMS shall not be a party to the importation of Work, the transaction(s) represented by this Contract will be consummated after importation, and SELLER will neither cause nor permit BAE SYSTEMS' name to be shown as “Importer of Record” on any Customs declaration; and
  - ii. Upon request and where applicable, SELLER will provide to BAE SYSTEMS and United States Customs and Border Protection (CBP) Form 7501 entitled “Entry Summary” properly executed.
- h) SELLER shall provide to BAE SYSTEMS Procurement Representative, in writing, five business days advance notification of shipments. Such notification shall include submission of a copy of the Commercial invoice and packing list required by this provision and such other information as BAE SYSTEMS may reasonably request.
- i) SELLER shall forward copies of its shipping documents via email or facsimile, to Import/Traffic department identified in the International Routing Instructions provided with this Contract so that BAE SYSTEMS may facilitate Customs clearance. These documents shall include:
  - i. Commercial Shipping Invoice
  - ii. Any applicable Free Trade Agreement or Special Trade Program Certifications/Statements, examples include NAFTA and IFTA certificates of origin.
  - iii. If using Ocean Transport: Ocean ISF details according to Customs Publication, dated August 2009 – Importer Security Filing and Additional Carrier Requirements (10+2)
  - iv. For Articles returned to BAE SYSTEMS after repair, SELLER shall include a Foreign Repairer Certificate attesting to the work performed abroad in accordance with 19 CFR § 10.8.
- j) For Articles returned to BAE SYSTEMS after repair:
  - i. SELLER shall include a Foreign Repairer Certificate attesting to the work performed abroad in accordance with 19 CFR § 10.8.

- ii. Seller should reference the return instructions as provided BAE SYSTEMS
- iii. SELLER is required to include a commercial invoice stating the reason for RETURN. Products being returned to BAE SYSTEMS after repair must include the hardware value from the original sale of the item.
  - a. Example: "Original hardware for Customs purposes only: \_"
- iv. Seller must include the cost of the repair as a separate line item on the commercial invoice.
- v. For repair work done under warranty, the SELLER is required to include the estimated cost of repair.
- vi. Articles being returned with a Department of State license, SELLER is required to indicate the license number on the commercial invoice.
- vii. Article being returned under any ITAR exemption citation, SELLER is required to include the exemption on the commercial invoice.
- viii. SELLER is required to cite 48 CFR 252.225 -7013 (e) (2) (iv.) (A) For any Duty Free Entries against a US Prime Contract.

**41. PAYMENTS, TAXES, AND DUTIES (Replace "Payments, Taxes, and Duties" provision in Section I)**

- a) Unless otherwise provided, terms of payment shall be net forty-five (45) days from the latest of the following: (i) BAE SYSTEMS' receipt of SELLER's accurate invoice in accordance with proper invoicing instructions as identified on the PO or other master-type agreement; (ii) scheduled delivery date of the Work; or (iii) actual delivery of the Work. BAE SYSTEMS shall have a right of setoff against payments due or at issue under this Contract or any other contract between BAE SYSTEMS and SELLER.
- b) Each payment made shall be subject to reduction to the extent of amounts which are found by BAE SYSTEMS not to have been properly payable and shall also be subject to reduction for overpayments.
- c) Payment shall be deemed to have been made as of the date of mailing BAE SYSTEMS' payment or electronic funds transfer.
- d) Unless otherwise specified, prices include all applicable federal, state, local and foreign taxes. All duties, taxes, and other official charges as well as the costs of carrying out customs formalities shall be payable in accordance with the Incoterm called out in this Contract. Each of the foregoing shall be listed separately on the invoice.
- e) The prices stated in this Contract are firm, fixed prices in United States dollars.
- f) SELLER will provide BAE SYSTEMS with a current W-8 form (Certificate of Foreign Status). In accordance with IRS regulations, if SELLER fails to provide a complete and proper W-8 Form, BAE SYSTEMS is required to subject payments to Backup Withholding.