

EXHIBIT TO THE TERMS AND CONDITIONS FOR COMMERCIAL OFF THE SHELF (COTS) GOODS AT A FIRM FIXED PRICE FOR PURCHASE ORDERS WITH U.S. DOMESTIC COMPANIES UNDER \$35,000 ONLY.

ELECTRONIC COUNTERFEIT PARTS

Note: If DFARS 252.246-7007 is applicable to this procurement, it shall take precedence for any differing terms and conditions for Electronic Parts within this specific provision except: a) 1; b); d); and e)). All terms defined in the Terms and Conditions have the same meaning in this Exhibit.

a) Definitions:

- a. 1 “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.
- a. 2 “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.
- a. 3 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.
- a. 4 “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.
- a. 5 “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).
- a. 6 “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.
- a. 7 “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.
- a. 8 “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’ AR. 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 upon 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’ AR. 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 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’ AR 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 system documentation for BAE Systems’ inspection upon 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 of Origin of Product applies: *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 Exhibit to its subcontractors and suppliers at any tier for the performance of this Contract. Seller shall notify BAE Systems as soon as possible but not later than 7 days of discovery 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 will verify receipt of this notification by BAE Systems. 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. 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. This requirement shall survive this Contract.