

**BAEDOC US GOV****GENERAL PROVISIONS FOR SUBCONTRACTS/PURCHASE ORDERS FOR ITEMS UNDER A U.S. GOVERNMENT  
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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) “BAE SYSTEMS” means the BAE SYSTEMS legal entity as identified on the face of this Contract.
- b) “BAE SYSTEMS’ Data” means BAE SYSTEMS’ Proprietary Information (as defined in the PIA); BAE SYSTEMS’ employees’ Sensitive or Personal Information (as defined below), Technical Data (as defined in 22 CFR § 120.10), Personal Data (as defined below), and any other regulated data.
- c) “BAE SYSTEMS Procurement Representative” means the person authorized by BAE SYSTEMS’ cognizant procurement organization to administer and/or execute this Contract.
- d) “Cloud” means an on-demand network with access to a shared pool of configurable computing resources (e.g., networks, servers, storage, applications, and services) that can be rapidly provisioned and released with minimal management effort or service provider interaction. This includes other commercial terms, such as on-demand self-service, broad network access, resource pooling, rapid elasticity, and measured service. It also includes commercial offerings for software-as-a-service, infrastructure-as-a-service, and platform-as-a-service).
- e) “Contract” means the instrument of contracting, such as “PO”, “Purchase Order”, or other such type designation, including these terms and conditions 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.
- f) “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.
- g) “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.
- h) “FAR” means the Federal Acquisition Regulations, issued as Chapter 1 of Title 48, Code of Federal Regulations.
- 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) “Personal Information” or “PII”: means information that identifies, relates to, describes, is capable of being associated with, or could reasonably be linked, directly or indirectly, with any BAE

SYSTEMS’ employees located in the United States, such as a real name, alias, postal address, unique personal identifier, online identifier Internet Protocol address, email address, account name, social security number, driver’s license number, passport number, financial account number, credit/debit card number, credit report information, security and access codes, personal identification number or password, biometric data, or other similar identifiers as further defined under the California Consumer Privacy Act (CCPA) or the Standards for the Protection of Proprietary Information of Residents of the Commonwealth of Massachusetts, or other applicable laws. **BAE SYSTEMS’ business contact information is not by itself deemed to be Personal Information.**

- k) “Personal Data” means information relating to an identified or identifiable natural person physically located in the European Union (without regard to citizenship), who can be identified directly or indirectly, in particular by reference to an identifier such as a name, identification number, location data, online identifier or one or more factors specific to the physical, physiological, generic, mental, economic, cultural or social identity of that person and as further defined under the European Union’s General Data Protection Regulations (“GDPR”) or other applicable data protection laws worldwide.
- l) “PO” or “Purchase Order” or “Order” as used in any document constituting a part of this Contract shall mean this “Contract.”
- m) “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.
- n) “Sensitive Personal Data” means information that reveals racial or ethnic origin, political opinions, criminal record, religious or philosophical beliefs, trade union membership, generic data or biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person’s sex life or sexual orientation for a person physically located in the European Union (without regard to citizenship).
- o) “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.
- p) “Work” means the 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) Mandatory FAR/DFAR flow down clauses as applicable to this Contract, and as modified within the Contract for the purposes of implementation at the Subcontract tier, (2) face of the Purchase Order, release document or schedule, (which shall include continuation sheets), as applicable, to include any special provisions; (3) any master-type agreement (such as corporate, operating group, or blanket agreements); (4) representations and certifications; (5) any supplemental terms and conditions incorporated by reference under provision 14; (6) these terms and conditions; (7) statement of work; and (8) 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 (for Ship Repair, five (5) calendar days) 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 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, any higher tier contractor(s), or the U. S. Government, as it affects any applicable prime contract, this Contract, and any related contract. Except as required by law, SELLER shall not communicate with the Customer, any higher tier contractor(s), or the U. S. Government, with respect to the applicable prime contract, this Contract, and/or any related contract 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, any higher tier contractor(s), or the U. S. Government, that affects the applicable Prime Contract, this Contract, and/or any related contract.

**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. Where DFARS 252.204-7012 Safeguarding Covered Defense Information and Cyber Incident Reporting applies, SELLER shall additionally rapidly report cyber incidents directly to DoD at <http://dibnet.dod.mil> and BAE SYSTEMS; this includes providing the incident report number, automatically assigned by DoD, to BAE SYSTEMS as soon as practicable. 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. SURVIVAL

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

- a) 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
- b) Corresponding provisions to above as incorporated through Supplemental Terms and Conditions provision.
- c) Those U. S. Government flowdown provisions that by their nature should survive.

## 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. ALLOWABLE COST AND PAYMENT

**To the extent this Contract includes Cost Reimbursable Line Items or is Cost Reimbursable in totality, this Section 9 shall apply. For any other non-cost reimbursable effort(s), this Section 9 shall not apply.**

- a) Invoicing. BAE SYSTEMS shall make payments to SELLER when requested as work progresses, but not more often than once every 2 weeks, in amounts determined to be allowable by BAE SYSTEMS in accordance with the terms of this Contract and Subpart 31.2 of the FAR and agency supplements as appropriate, in effect on the date of this Contract. If this Contract is with an educational institution, FAR Subpart 31.3 shall apply; and if with a non-profit organization other than an educational institution, FAR Subpart 31.7 shall apply. SELLER shall submit to the BAE SYSTEMS Procurement Representative, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this Contract.
- b) Reimbursing Costs
  - i. For the purpose of reimbursing allowable costs (except as provided in subparagraph (b)(2) below, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term "costs" includes only:
    - a. Those recorded costs that, at the time of the request for reimbursement, SELLER have paid by cash, check, electronic funds transfer, or other form of actual payment for items or services purchased directly for this Contract.
    - b. SELLER is not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for:
      - 1) Materials issued from SELLER's inventory and placed in the production process for use on this Contract;
      - 2) Direct labor;
      - 3) Direct travel;
      - 4) Other direct in-house costs; and
      - 5) Properly allocable and allowable indirect costs, as shown in the records maintained by SELLER for purposes of obtaining reimbursement under Government contracts.
  - c. The amount of progress payments that have been paid to SELLER's subcontractors under similar cost standards.
  - ii. SELLER contributions to any pension, profit sharing, or employee stock ownership plan funds that are paid quarterly or more often may be included in indirect costs for payment purposes; provided, that SELLER pays the contribution to the fund within thirty (30) calendar days after the close of the period covered. Payments made 30 days or more after the close of a period shall not be included until SELLER actually makes the payment. Accrued costs for such contributions that are paid less often than quarterly shall be excluded from indirect costs for payment purposes until SELLER actually makes the payment.
  - iii. Notwithstanding the audit and adjustment of invoices or vouchers under subparagraph (h) below, allowable indirect costs under this Contract shall be obtained by applying indirect cost rates established in accordance with subparagraph (c) below.
  - iv. Except as otherwise expressly provided to the contrary in these General Provisions or in the schedule of this Contract, any statements in specifications or other documents incorporated in this Contract by reference designating performance of services or furnishing of materials at SELLER's expense or at no cost to BAE SYSTEMS shall be disregarded for purposes of cost reimbursement under this provision.

- c) Small Business Concerns. A small business concern may be paid as often as every 2 weeks and may invoice and be paid for recorded costs for items or services purchased directly for this Contract, even though the concern has not yet paid for those items or service.
- d) The costs of SELLER procured Counterfeit Electronic Parts, Suspect Counterfeit Electronic Parts and the costs of rework or corrective action that may be required to remedy the use or inclusion of such parts shall be allowable or unallowable as required by law.
- e) Final Indirect Cost Rates. BAE SYSTEMS shall reimburse SELLER on the basis of final annual indirect cost rates and the appropriate bases established by SELLER and the Government in effect for the period covered by the indirect cost rate proposal. Such rates and bases shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this Contract. The rates and bases shall be deemed incorporated into this Contract upon execution.
- f) Billing Rates. There shall be included as allowable indirect costs such overhead rates as may be established by SELLER and the cognizant Government Agency in accordance with the principles of the Federal Acquisition Regulation and applicable FAR Supplement. Pending establishment of final overhead rates for any period, SELLER shall be reimbursed at billing rates approved by the cognizant Government Agency, which billing rates may be revised from time to time subject to such approval and subject to appropriate adjustment when the final rates for that period are established.
- g) Quick Closeout Procedures. When SELLER and BAE SYSTEMS agree, the quick closeout procedures of Subpart 42.7 of the FAR may be used.
- h) Audit. At any time or times before final payment, BAE SYSTEMS or the Government may audit SELLER's invoices or vouchers and statements of cost. Any payment may be (1) reduced by amounts found by BAE SYSTEMS or the Government not to constitute allowable costs or (2) adjusted for prior overpayments or underpayments.
- i) Interim billings. SELLER shall provide interim billings and applicable credits to BAE SYSTEMS to account for any adjustment of indirect rates that are applicable to performance under this Contract.
- j) Final Payment
  - i. SELLER shall submit a completion invoice or voucher, designated as such, promptly upon completion of the Work, but no later than one year (or longer, as BAE SYSTEMS may approve in writing) from the completion date. Upon approval of that invoice or voucher, and upon SELLER's compliance with all terms of this Contract, BAE SYSTEMS shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.
  - ii. SELLER shall pay to BAE SYSTEMS any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by SELLER or any assignee under this Contract, to the extent that those amounts are properly allocable to costs for which SELLER has been reimbursed by BAE SYSTEMS. Reasonable expenses incurred by SELLER for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by BAE SYSTEMS. Before final payment under this Contract, SELLER and each assignee whose assignment is in effect at the time of final payment shall execute and deliver:
    - a. An assignment to BAE SYSTEMS, in form and substance satisfactory to BAE SYSTEMS, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which SELLER has been reimbursed by BAE SYSTEMS under this Contract; and
- b. A release discharging BAE SYSTEMS, its directors, officers, agents, and employees from all liabilities, obligations, and claims arising from or related to this Contract, except for specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known.
  - 1) Claims (including reasonable incidental expenses) based upon liabilities of the SELLER to third parties arising out of the performance of this contract; provided, that the claims are not known to the SELLER on the date of the execution of the release, and that the SELLER gives notice of the claims in writing to the Contracting Officer within 6 years following the release date or notice of final payment date, whichever is earlier; and
  - 2) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by SELLER under the patent clauses of this contract, excluding, however, any expenses arising from the SELLER indemnification of BAE SYSTEM against patent liability.
- c. The SELLER shall give BAE SYSTEMS immediate written notice of any action or suit filed and prompt notice of any claim made against the SELLER by any subcontractor or vendor that, in the opinion of the SELLER, may result in litigation related in any way to this contract, with respect to which the SELLER may be entitled to reimbursement from BAE SYSTEMS.
- k) Subcontracts. No subcontract placed under this Contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in paragraph 15.404-4(c)(4)(i) of the Federal Acquisition Regulation (FAR).

**10. FEE (Applicable To Cost Type Contracts With A Fee Only)**

BAE SYSTEMS shall pay SELLER for performing this Contract the fee as specified in this Contract.

**11. PAYMENTS, TAXES, AND DUTIES**

- 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 receipt of the Work at the ship to address. Invoices received on a Non-scheduled Work Day will be recorded as received on the next business day (a "Non-scheduled Work Day" means a weekend day, bank holiday (bank holidays in Charlotte, NC), or during BAE SYSTEMS' Shared Services Year- End shutdown in December) . 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. Payments due to net terms on Non-scheduled work days will be deemed due on the next business day. 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.
- f. Performance Based Payments (PBP), a.k.a. milestone payments: SELLER will include a certification with each PBP invoice that the total value of all current and prior PBPs do not exceed the total actual costs incurred under the contract. At no time shall cumulative performance-based payments exceed cumulative contract cost incurred under this contract. To ensure compliance with this requirement, the Contractor shall, in addition to providing the information required by FAR 52.232-32, submit supporting information for all payment requests using the format in DFARS 252.232-7012 or a similar format as long as the same data outlined in DFARS 252.232-7012 is provided.

## 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 the responsible Defense Contract Audit Agency (DCAA) representative, or 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

The following supplemental terms and conditions are hereby incorporated by reference, and shall also apply to this Contract: USGOVA "FAR/DFARS/NAVSEA Supplement" or USGOVB "FAR/Other Agencies Supplement". Any additional or supplemental terms and conditions that are required to be flowed down from BAE SYSTEMS' prime contract(s) 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 during business hours.
- 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, except that any provision in this Contract that is (i) incorporated in full text or by reference from the Federal Acquisition Regulations (FAR); and/or (ii) incorporated in full text or by reference from any agency regulation that implements or supplements the FAR; and/or (iii) that is substantially based on any such agency regulation or FAR provision, shall be construed and interpreted according to the U.S. federal common law of government contracts as enunciated and applied by U.S. federal judicial bodies, boards of contract appeals, and quasi-judicial agencies of the U.S. federal Government.
- 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, as amended, Executive Order 13672 of 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 these 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)(7).

(6) Where submission of cost or pricing data is required or requested at any time prior to or during performance of this Contract, if SELLER or its lower-tier subcontractors: (i) submit and/or certify cost or pricing data that are defective; (ii) with notice of applicable cutoff dates and upon BAE SYSTEMS' request to provide cost or pricing data, submit cost or pricing data, whether certified or not certified at the time of submission, as a prospective subcontractor, and any such data are defective as of the applicable cutoff date on BAE SYSTEMS' Certificate of Current Cost or Pricing Data; (iii) claim an exception to a requirement to submit cost or pricing data and such exception is invalid; (iv) furnish data of any description that is inaccurate; and/or (v) if the U.S. Government alleges any of the foregoing, and, as a result: (1) BAE SYSTEMS' contract price or fee is reduced; (2) BAE SYSTEMS' costs are determined to be unallowable; (3) any fines, penalties or interest are assessed on BAE SYSTEMS; and/or (4) then BAE SYSTEMS incurs any other costs or damages; BAE SYSTEMS may proceed as provided for in subparagraph(b)(7).

(7) BAE SYSTEMS may make an offset reduction of corresponding amounts (in whole or in part) due to 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 and warrants that none of its officers, directors, employees, agents, contractors, lower-tier subcontractors, or other related entities will provide to BAE SYSTEMS any information,

which the disclosure or receipt of would violate the Procurement Integrity Act, 41 U.S.C. § 423, as currently amended. This includes third party bid or proposal information and source selection information, as defined by the Procurement Integrity Act and the FAR. Additionally, SELLER agrees to put in place effective controls that will ensure information that would violate the Procurement Integrity Act is not shared with BAE SYSTEMS.

d) 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.

e) California Data Privacy: If as a consequence of this contract the Seller collects, stores or processes Personal Information (e.g. information that identifies, relates to, describes, is capable of being associated with, or could reasonably be linked, directly or indirectly, with any BAE SYSTEMS' employees in California, such as a real name, alias, postal address, unique personal identifier, online identifier Internet Protocol address, email address, account name, social security number, driver's license number, passport number, or other similar identifiers as further defined under the California Consumer Privacy Act (CCPA)), SELLER agrees to comply and be bound by such laws and by the BAE SYSTEMS' Privacy and Data Security Exhibit located at <https://www.baesystems.com/en-us/what-we-do/suppliers/united-states/us-terms-and-conditions#>. BAE SYSTEMS' business contact information is not by itself deemed to be Personal Information.

f) European Union's General Data Protection Regulations ("GDPR"): If the SELLER collects, stores, or processes Personal Data of European Union residents as a consequence of this contract (e.g. any information relating to an identified or identifiable natural person, who can be identified directly or indirectly, in particular by reference to an identifier such as a name, identification number, location data, online identifier or one or more factors specific to the physical, physiological, generic, mental, economic, cultural or social identity of that person and as further defined under the European Union's General Data Protection Regulations ("GDPR") or other applicable data protection laws worldwide), SELLER agrees to comply and be bound by such laws and the European Union General Data Protection Regulation Exhibit located at <https://www.baesystems.com/en-us/what-we-do/suppliers/united-states/us-terms-and-conditions#>. If Seller receives Sensitive Personal Data (e.g. information that reveals racial or ethnic origin, political opinions, criminal record, religious or philosophical beliefs, or trade union membership, and the processing of generic data biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation) or is a Controller (e.g. an entity which determines the purposes and means of the Processing of Personal Data), Seller shall immediately notify BAE SYSTEMS prior to collecting, storing, and/or processing such data, and agrees to enter into a separate agreement with BAE SYSTEMS for the protection of that data as required by the GDPR.

g) Safeguarding BAE SYSTEMS' Data:

i. Seller agrees:

a) To implement, maintain, monitor and update a reasonable, written security program incorporating administrative, technical, organizational and physical safeguards, security measures and security awareness, and (ii) install and implement security hardware and software, in each case, designed to (A) protect the security, availability and integrity of Seller's network, systems and operations, the Goods and Services and the BAE Systems Data from

unauthorized access and use; and (B) guard against security incidents.

b) To only permit "U.S. Person" as defined in the ITAR (22 C.F.R. 120.15), to access BAE Systems' Data unless expressly authorized by a Proprietary Information Agreement and/or export license.

c) To be compliant with all applicable U.S. Government laws, regulations, orders and agency specific regulations, requirements, or otherwise, pertaining to the safeguarding of U.S. Government covered information and/or U.S. Government regulated data, if applicable.

d) To not transfer, store, manage, process or otherwise place any BAE Systems' Data on a Cloud, or on any system external to BAE Systems' or Seller's premise without advance written approval from BAE Systems. If Seller is given access to BAE Systems' networks, Seller shall only access such networks from Seller's or BAE Systems' premises, no other remote access is authorized, without prior written approval from BAE Systems. Such approval(s) shall be at BAE Systems' sole discretion and Seller shall: i) notify BAE SYSTEMS in advance of the intended use; ii) complete a Business Security screening questionnaire to be provided by BAE SYSTEMS, which shall be deemed a part of this Contract, and Seller warrants and represents the accuracy and continued accuracy of such assertions; and (iii) comply with any agreed security protocols set by BAE Systems.

h) 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.

i) 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).

j) Certification Regarding Political Contributions, Fees, and Commissions Paid In Connection with Sales Subject to the Provisions of the Arms Export Control Act: SELLER represents that in accordance with 22 C.F.R. 130, neither SELLER nor its subcontractors at any tier have paid, offered or agreed to pay, or will pay or offer or agree to pay, in respect to the Work which are to be provided to BAE SYSTEMS under any Contract awarded, political contributions, fees, or commissions in amounts as specified in 22 C.F.R. 130.9.

k) 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 if 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.

- l) Unless SELLER provides notification to the contrary, SELLER certifies by acceptance of this contract or purchase order that the deliverable products or services are not "covered telecommunications equipment or services" per FAR 52.204-24 and 52.204-25 (AUG 2019). If the deliverable products or services are "covered telecommunications equipment or services" as defined in the FAR, the SELLER must provide such notification immediately in writing upon receipt of the contract or purchase order. SELLER must identify all such equipment or services and describe the proposed or intended use under the contract.
- m) If this Contract is for a Commercial Item, SELLER represents and warrants that the Work provided under this Contract constitutes a "Commercial Item" as defined in FAR 2.101.
- n) 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. PRIORITY RATING

- a) If so identified, this Contract is a "rated order" certified for national defense use, emergency preparedness, and energy program use, and the SELLER shall follow all the requirements of the Defense Priorities and Allocation System (DPAS) Regulation (15 C.F.R. Part 700).
- b) Levels of priority: There are two levels of priority established by this regulation, identified by the rating symbols "DO" and "DX". All DX rated orders take preference over DO rated orders and unrated orders. Customer notification requirements. (1) A person must accept or reject a rated order and transmit the acceptance or rejection in writing (hard copy), or in electronic format, within fifteen (15) working days after receipt of a DO rated order and within ten (10) working days after receipt of a DX rated order. If the order is rejected, the person must also provide the reasons for the rejection, pursuant to paragraphs (b) and (c) of C.F.R. 15 Part 700 Subpart D, Section 700.13, in writing (hard copy) or electronic format.

#### 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/en/our-company/corporate-responsibility/find-out-more/code-of-conduct>. 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.
- m) **Export Classification (When specifically requested by BAE SYSTEMS)**
  - a. SELLER shall notify BAE SYSTEMS if any deliverable under this Subcontract/PO, for which BAE SYSTEMS is not the design authority, is subject to U.S. export and import control laws and regulations described in Section 20 Export Control. Before providing BAE SYSTEMS any deliverable subject to the EAR or the ITAR, SELLER shall provide in writing to the BAE SYSTEMS's Procurement Representative the export classification
    - i. Dual use goods and technology subject to the EAR, including any embedded ITAR-controlled or EAR 500 or 600 series' item or technology;
    - ii. Defense article, including any technical data, controlled by the ITAR;
    - iii. Item or technology controlled by the EU List of Dual Use Items or by other applicable national export control lists.
  - b. Subsequent to the initial disclosure above, SELLER shall timely notify the BAE SYSTEMS's Procurement

Representative in writing of any changes to the export classification information of the item or controlled data.

- c. SELLER represents that an official authorized to bind the SELLER has determined that the SELLER or the design, manufacturer, supplier or other source of the deliverable has properly determined their export classification.

**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.
- 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.
- d) SELLER AGREES THAT, UNLESS OTHERWISE AGREED IN WRITING BY BAE SYSTEMS AND THE U.S. GOVERNMENT, AND EXCEPT AS MAY BE OTHERWISE PROVIDED BY LAW, SELLER SHALL HAVE NO RECOURSE DIRECTLY WITH THE U.S. GOVERNMENT ON ANY DISPUTE, CLAIM, LAWSUIT OR CAUSE OF ACTION THAT ARISES FROM OR IS RELATED TO THIS CONTRACT.

**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 shall ensure its employees are aware of their contribution to product/service compliance and product safety. 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 and time is of the essence.
- 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, ACCEPTANCE AND RETENDER

- a) BAE SYSTEMS and its Customer may enter SELLER's property to inspect all Work at reasonable times and places, including, when practicable, during manufacture and before shipment.
- b) BAE SYSTEMS shall accept the Work or give SELLER notice of rejection within thirty (30) days after delivery, notwithstanding any payment or prior test or inspection. No inspection, test, delay, approval, or failure to inspect/test or failure to discover any defect or other nonconformance shall relieve SELLER of any of its obligations under any order or impair any rights or remedies of BAE SYSTEMS or BAE SYSTEMS' customers. Final acceptance by BAE SYSTEMS of any Work shall not limit or affect any warranty or right of indemnity.
- c) BAE SYSTEMS may revoke acceptance of Work if the Work is non-conforming and if BAE SYSTEMS' acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the Seller's assurances.
- d) SELLER shall provide all information, facilities, and assistance necessary for safe and convenient inspection without additional charge.
- e) SELLER shall not re-tender rejected Work without disclosing the corrective action taken.
- f) SELLER shall not tender finished goods to BAE SYSTEMS that 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, if SELLER uses an Authorized/Franchised Distributor the Distributor must include acceptance of returned goods for resale as part of its counterfeit/fraudulent parts risk management plan.
- g) All repair, replacement and other correction and redelivery shall be completed within the original delivery schedule or such later time as BAE SYSTEMS' Procurement Representative may reasonably direct.
- h) BAE SYSTEMS may also charge SELLER for any costs of additional inspection and/or transportation when rejection or delay makes re-inspection necessary. SELLER shall not charge, nor include in its Allowable Costs, the cost of re-inspection, return transportation, or redelivery in this Subsection.
- i) **To the extent this Contract includes Cost Reimbursable Line Items or is Cost Reimbursable in totality, this Section 25 g) 1) and 2) shall apply. For any other non-cost reimbursable effort(s), this Section 25 g) 1) and 2) shall not apply:**

1. If Seller delivers nonconforming Goods, BAE SYSTEMS may require SELLER to promptly correct or re-perform the nonconforming Goods. The cost of replacement or correction shall be included in allowable cost, determined as provided in the Allowable Cost and Payment clause, but no additional fee shall be paid.
2. Notwithstanding the Section above of this clause, the Buyer may at any time require the Seller to remedy by correction or replacement, without cost to the Buyer, any failure by the Seller to comply with the requirements of this Order, if the failure is due to (1) Fraud, lack of good faith, or willful misconduct on the part of the Seller's managerial personnel; or (2) The conduct of one or more of the Seller's employees selected or retained by the Seller after any of the Seller's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified. See FAR 52.246-3 "Inspection of Supplies-Cost Reimbursement."

h) **The following clause in this Subsection is applicable to all Work except for Cost Reimbursable Work addressed in Subsection 25 g):** 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.

**26. COUNTERFEIT PARTS: PREVENTION AND NOTIFICATION (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 with the exception of subsections: a) i., b), d), and f))**

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).)

- 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 Electronic 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.

SUPPLIER shall notify BAE SYSTEMS if parts they have supplied contain materials at risk of future obsolescence or supply risk due to

current or proposed regulations and/or standards, either domestic or foreign.

## 29. WARRANTY

- a) **The following Warranty in this Subsection 29 a) shall apply only to Cost Reimbursable Work: For any other non-cost reimbursable Work, this Section 29 a) shall not apply: Seller warrants that: (i) each of its employees assigned to perform the Services hereunder shall have the proper skill, training and background so as to be able to perform in a competent and professional manner and that all Work will be performed in accordance with the applicable Statement of Work; and (ii) Buyer will receive free, good and clear title to all deliverables developed under this Agreement. In addition to the foregoing warranties, any applicable Statement of Work may contain additional warranties that specifically apply to such Statement of Work. If the Goods or any part of the Goods is a commercial item then the commercial warranty shall be transferred to the Buyer.**
- b) **The following Warranty is applicable to all Work except for Cost Reimbursable Work listed in Subsection 29 a): 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, 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 <https://www.baesystems.com/en/our-company/corporate-responsibility/sustainable-solutions>. 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

- a) **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.
- b) **Commercial Computer Software:** As used in this paragraph, "Restricted Software" means Software that has been developed at private expense and either is a trade secret, is commercial or financial and confidential or privileged, or is published and copyrighted, and so marked when delivered or otherwise furnished.

Notwithstanding any provisions to the contrary contained in any SELLER's standard commercial license or lease agreement, SELLER agrees that the Restricted Software delivered under this

Contract shall provide the following rights to BAE SYSTEMS and the U.S. Government.

The Restricted Software may be:

- i. Used or copied for use in or with the computer or computers for which it was acquired, including use at any U.S. Government installation to which such computer or computers may be transferred;
  - ii. Used or copied for use in or with a backup computer if any computer for which it was acquired is inoperative;
  - iii. Reproduced for safekeeping (archives) or backup purposes;
  - iv. Modified, adapted, or combined with other Software, provided that the modified, combined, or adapted portions of the derivative software incorporating any of the delivered, Restricted Software shall be subject to same restrictions set forth in this Contract;
  - v. Disclosed to and reproduced for use by support service contractors or their subcontractors, subject to the same restrictions set forth in this Contract; and
  - vi. Used or copied for use in or transferred to a replacement computer.
- c) Release from liability. SELLER agrees that the U.S. Government and BAE SYSTEMS, and other persons to whom the U.S. Government or BAE SYSTEMS may have released or disclosed Restricted Software delivered or otherwise furnished under this Contract, shall have no liability for any release or disclosure of such Restricted Software that are not marked to indicate that such Restricted Software are licensed data subject to use, modification, reproduction, release, performance, display, or disclosure restrictions.

### **Section 1D: Liability and Indemnification**

#### **32. INDEMNIFICATION**

- a) 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 ATTORNEYS' 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.)**

- b) IN ADDITION TO ANY OTHER LIMITATIONS ON BAE SYSTEMS' LIABILITY SET FORTH HEREIN, IN NO EVENT SHALL BAE SYSTEMS, ITS EMPLOYEES, AGENTS OR REPRESENTATIVES BE LIABLE BY REASON OF BUYER'S BREACH OR TERMINATION OF THIS AGREEMENT OR FOR ANY BAE SYSTEMS' ACTS OR OMISSIONS IN CONNECTION WITH THIS AGREEMENT FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND, HOWEVER CAUSED, INCLUDING LOSS OF PROFITS OR REVENUE,

WHETHER SUCH REMEDY IS SOUGHT IN CONTRACT, TORT, OR OTHERWISE.

#### **33. FURNISHED/ACQUIRED/FABRICATED PROPERTY**

- a) BAE SYSTEMS may provide SELLER with property owned by either BAE SYSTEMS or its Customer (Furnished Property), or require SELLER to acquire (Acquired Property) and/or to fabricate property (Fabricated Property) specifically for Work under this Contract (collectively All Property). BAE SYSTEMS authorizes SELLER to use All Property only for the performance of this Contract, unless authorized in advance, in writing, by the BAE SYSTEMS' Procurement Representative.
- b) Title to All Property shall remain in BAE SYSTEMS or its Customer (as applicable). SELLER shall clearly mark (if not so marked) All Property to show its ownership.
- c) BAE Systems and Customer Furnished Property is provided in "as-is" condition unless otherwise set forth in this Contract. Except for reasonable wear and tear, SELLER shall be responsible for maintaining, managing, preserving, and insuring All Property in accordance with good commercial practice. SELLER shall notify BAE SYSTEMS promptly, but within not more than 30 days of any loss or damage to this property. SELLER shall support all BAE SYSTEMS or Customer investigations relative to the Loss, Damage or Destruction of this property. At BAE SYSTEMS' sole option, SELLER shall immediately replace, reimburse, repair, and/or provide consideration to BAE SYSTEMS for such loss or damage
- d) All Property associated with Work under this Contract shall be received, inspected, inventoried, processed, and reported as required by Federal Acquisition Regulations (FAR) clause 52.245-1 or 52.245-1 Alt 1, unless otherwise stated by this Contract. At BAE SYSTEMS' request, and/or upon completion of this Contract SELLER shall submit, in an acceptable form, inventory lists of All Property and shall deliver or make such other disposal as may be directed by BAE SYSTEMS.
- e) The Government Property clause 52.245-1 contained in the FAR shall apply to all Furnished Property owned by the U.S. Government, or property that the Government may take title to under this Contract unless otherwise stated within this Contract. Government Furnished Property is provided in "As-Is" condition unless otherwise set forth in this Contract. Except for reasonable wear and tear, SELLER is responsible for maintaining, managing, preserving, and insuring All Property (Furnished, Fabricated and Acquired) from loss or damage while in SELLER's care, custody or control, without additional charge, in accordance with good commercial practice and the FAR 52.245-1 clause. SELLER shall provide an initial notification to BAE SYSTEMS within 10 working days of any loss or damage to this Property, and provide a report containing all information required by the FAR Clause within 30 days. SELLER shall support any Government or BAE SYSTEMS investigations relative to the Loss, Damage or Destruction of this property.

#### **34. INTELLECTUAL PROPERTY**

- a) 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.
- b) 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.



- c) SELLER grants and agrees that BAE SYSTEMS shall have a nonexclusive, worldwide, sub-licensable, irrevocable, paid-up, royalty-free license and right, to enable BAE SYSTEMS to satisfy its contractual obligations to its Customer, to make, have made, sell, offer for sale, use, execute, reproduce, display, 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, inventions, discoveries, improvements, technology, designs, works of authorship, mask works, patents, copyrights, technical information, data, databases, Software, business information and other information, conceived, developed, generated or delivered in performance of this Contract. 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.
- d) SELLER agrees that any technical data or computer software furnished to BAE SYSTEMS as a required deliverable under this Contract shall be free from confidential, proprietary or restrictive markings ("Nonconforming Markings") that are either (i) not expressly permitted by applicable FAR, DFARS or NASA FAR supplement clauses incorporated herein or (ii) are violative in rights in ownership of any technical data or computer software owned by BAE SYSTEMS. On behalf of itself or its customer, BAE SYSTEMS will notify SELLER, in writing, of any Nonconforming Markings and SELLER will remove such Nonconforming Markings and resubmit within sixty (60) days after such notification. If SELLER fails to remove or correct such Nonconforming Markings within sixty (60) days after such notification, BAE SYSTEMS may ignore, or at SELLER'S expense remove or modify, as appropriate, any such Nonconforming Markings as may be on such deliverables and SELLER shall not have any recourse nor shall BAE SYSTEMS incur any liability for any such removal or modification.

### 35. TERMINATION

- a) Termination for Convenience
  - i. BAE SYSTEMS may terminate this contract for its convenience in whole or, from time to time, in part if BAE SYSTEMS' Procurement Representative determines that a termination is in BAE SYSTEMS' best interest. BAE SYSTEMS' Procurement Representative shall effect such termination by delivering to SELLER a notice of termination specifying the extent of termination and the effective date. Any such termination shall be in accordance with the procedure set forth in the clause entitled *Termination Any such termination shall be in accordance with the procedures set forth in FAR 52.249-2 (or FAR 52.249-6 for Cost Reimbursable Work only), which clause is incorporated herein by this reference.*, which clause is incorporated herein by this reference. Furthermore, "Government" means "BAE SYSTEMS and the Government" and "Contracting Officer" means "BAE SYSTEMS or the "Contracting Officer." (In paragraph (c) "120 days" is changed to "60 days." In paragraph (d) "15 days" is changed to "30 days," and "45 days" is changed to "60 days." In paragraph (e) "1 year" is changed to "6 months." In paragraph (l) "90 days" is changed to "45 days."). Settlements and payments under this clause may be subject to the approval of the Contracting Officer. In the event that BAE SYSTEMS terminates this Contract pursuant to Government direction, SELLER's recovery of termination costs shall be limited to the extent that BAE SYSTEMS is able to recover such costs from the Government.
- b) Termination for Default
  - i. BAE SYSTEMS may, by written notice, terminate the whole or any part of this contract in any of the following circumstances:
    - a. If SELLER fails to deliver the goods or to perform the services required by this contract within the time specified herein, or any extension thereof granted by BAE SYSTEMS in writing;
    - b. If SELLER fails to perform any material provision of this contract or so fails to make progress as to endanger performance of this contract, and if in either of these two circumstances, SELLER does not cure such failure within a period of eight (8) days after receipt of written notice from BAE SYSTEMS specifying such failure;
    - c. If SELLER fails to deliver goods or to perform services required or fails to perform any material provision of other contracts issued by BAE SYSTEMS and such default causes BAE SYSTEMS to terminate those other contracts;
    - d. SELLER files or declares bankruptcy; or
    - e. In the event of suspension of SELLER'S business, insolvency, liquidation proceedings by or against SELLER, appointment of a trustee or receiver for SELLER's property or business, or any assignment, reorganization or arrangement by SELLER for the benefit of creditors.
      - ii. If BAE SYSTEMS terminates this contract in whole or in part, it may acquire, under the terms and in the manner BAE SYSTEMS considers appropriate, goods or services similar to those terminated, and SELLER will be liable to BAE SYSTEMS for any excess costs for those goods or services. However, SELLER shall continue the work not terminated.
      - iii. BAE SYSTEMS may require SELLER to transfer title and deliver to BAE SYSTEMS in the manner and to the extent directed by BAE SYSTEMS for –
        - a. Any completed goods, and
        - b. Such partially completed goods and such materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights, (hereinafter called manufacturing materials) as SELLER has produced or acquired for the performance of this contract, including the assignment to BAE SYSTEMS of SELLER's subcontracts. SELLER shall protect and preserve property in possession of SELLER in which BAE SYSTEMS has an interest.
        - c. Payment for completed goods delivered to and accepted by BAE SYSTEMS shall be at the contract price. Payment for manufactured materials delivered to and accepted by BAE SYSTEMS, and for the protection and preservation of property, shall be at a price determined in the same manner as provided in the Termination for Convenience subparagraph hereof except that SELLER shall not be entitled to profit. Failure to agree will be a dispute under the "Disputes/Jury Waiver" provision in this document. BAE SYSTEMS may withhold from SELLER moneys otherwise due SELLER for completed goods and/or manufacturing materials in such amounts as BAE SYSTEMS determines necessary to protect BAE SYSTEMS against loss due to outstanding liens or claims against said goods or for any amounts otherwise due from buyer to SELLER.

- d. Except for defaults of subcontractors at any tier, SELLER shall not be liable for any excess costs if the failure to perform the contract is due to fires, floods, strikes, lockouts, epidemics, accidents, industry-wide shortages, or other causes beyond the reasonable control of the parties, which prevent SELLER from performing its obligations hereunder. In each instance, the failure to perform must be beyond the control and without the fault or negligence of SELLER.
- e. If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both SELLER and the subcontractor, and without the fault or negligence of either, SELLER shall not be liable for any excess costs for failure to perform, unless the subcontracted goods or services were obtainable from other sources in sufficient time for SELLER to meet the required delivery schedule.
- f. If after notice of termination for default, it is determined for any reason that SELLER was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued for convenience pursuant to the Termination for Convenience subparagraph hereof.

### 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 in accordance with the terms of any written notice received from BAE SYSTEMS and SELLER shall take all reasonable steps to minimize the incurrence of costs allocable to the Work during the period of Work stoppage.
- b) After the issuance of a Stop Work Order, BAE SYSTEMS shall either terminate or continue the Work by written order to SELLER. In the event of a continuation, SELLER may request an equitable adjustment within twenty (20) days after such continuation, and in accordance with the above "Contract Direction/Changes" provision.

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

### 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
  - iv. Part number(s)
  - v. Description(s) – Complete and detailed, must be in English. see 19 CFR §§ 141.86 (3) and (11)(d)]
  - vi. Quantity per line item
  - vii. Total value of shipment listed in relevant currency (i.e., US, Euro, etc.)
  - viii. Country of origin



- ix. Terms of Sale
  - x. 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 site 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.