

BAEDOC USGOVSERV

**GENERAL CLAUSES FOR SUBCONTRACTS/PURCHASE ORDERS FOR SERVICES  
UNDER A U.S. GOVERNMENT PRIME CONTRACT – DOMESTIC AND INTERNATIONAL/COMMERCIAL AND NON-COMMERCIAL SERVICES**

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## General Provisions for All Orders

### Section A: General/Administrative Provisions

#### 1. DEFINITIONS

The following terms shall have the meanings set forth below:

- a) "Affiliate" means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity; and "control" for the purposes of this definition means direct or indirect ownership or control of more than 50% of the voting interest of the subject entity, provided that any such Affiliate shall be deemed an Affiliate only for so long as such control lasts.
- b) "BAE Systems" means the BAE Systems legal entity as identified on the face of this Contract.
- c) "BAE Systems' Information" means proprietary information which may include but is not limited to, trade secrets, specifications, drawings, sketches, models, samples, computer programs, Software, reports, data, techniques, designs, codes, documentation, Personal Information, and financial, statistical or other technical information, technical data, materials, or know-how related to BAE Systems' business, its plans or strategies, potential business and methods of operation, products, services, discoveries, inventions, ideas, techniques, know-how, products and technologies whether or not patentable, designs, drawings, specifications, techniques, formulations, standards, equipment, or finance, in each case of BAE Systems or its Affiliates; BAE Systems' employees' Sensitive Personal Data, Personal Information (as defined below), Technical Data (as defined in 22 CFR § 120.10), Personal Data (as defined below), and any other regulated data.
- d) "BAE Systems Procurement Representative" means the person authorized by BAE Systems' cognizant procurement organization to administer and/or execute this Contract.
- e) "Change Order" means a formal written order describing the change to be made to this Contract, issued and signed by BAE Systems' Procurement Representative.
- f) "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.
- g) "Contract" or "Agreement" means the instrument of contracting, such as master services agreement, purchase order, or statement of work or other such type of agreement, including these General Provisions and any interim/additional terms and conditions (found on <https://www.baesystems.com/en-us/what-we-do/suppliers/united-states/us-terms-and-conditions>), all referenced documents, exhibits and attachments, and any releases against the Contract.
- h) "Customer" means the entity with whom BAE Systems has or anticipates having a contractual relationship to provide the Services. 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.
- i) "Day" means calendar day unless specifically designated otherwise.
- j) "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.
- k) "FAR" means the Federal Acquisition Regulations, issued as Chapter 1 of Title 48, Code of Federal Regulations.
- l) "Malicious Technology" means any software, electronic, mechanical or other means, device or function, e.g. (key, node, lock, time-out, "back door," "trapdoor," "booby trap," "drop dead device," "data scrambling device," "Trojan Horse,") that would allow Supplier or a third party to: (i) monitor or gain unauthorized access to any BAE Systems system, (ii) use any electronic self-help mechanism or (iii) restrict, disable, limit or impair the performance of a BAE Systems system.
- m) "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 or improve the Software but which prohibits the user from: (i) withholding improvements and/or modifications made by the user to the source code when and/if user thereafter distributes the Software; or

(ii) 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.

- n) "Personal Information" 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, California Privacy Rights Act, Virginia Consumer Data Protection Act, Colorado Privacy Act, and the Massachusetts Data Privacy Law, or other applicable laws. BAE Systems' business contact information is not by itself deemed Personal Information.
- o) "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, genetic, 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.
- p) "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.
- q) "Supplier" 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, "Supplier" shall also include Supplier's agents, representatives, subcontractors, and suppliers at any tier.
- r) "Sensitive Personal Data" means information that reveals racial or ethnic origin, political opinions, criminal record, religious or philosophical beliefs, trade union membership, genetic 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).
- s) "Services" means the time and effort of Supplier in performing identifiable labor tasks, which are themselves a deliverable under this Contract. Services covers activities performed both by professional and non-professional personnel of Supplier. All services, functions, or responsibilities not specifically described in this Contract, but are required for the performance or provision of the Services, are included within the scope of the Services to the same extent as if specifically described in this Contract.
- t) "Software" means: (i) computer programs, source code, source code listings, executable code, machine readable code, object code listings, design details, algorithms, processes, flow charts, formulae, firmware, and related material that would enable software to be read, reproduced, recreated, or recompiled; (ii) 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 (iii) derivative works, enhancements, modifications, and copies of those items identified in (i) and (ii) above.

## 2. SUPPLIER PORTAL REGISTRATION

In order to conduct business with BAE Systems, Supplier shall register (or update its registration) as a supplier to BAE Systems via <https://suppliers.us.baesystems.com> ("Ivalua"). Supplier is required to fill out all information requested by BAE Systems in the Ivalua portal completely and accurately. Supplier shall keep all information in Ivalua current and shall not allow the registration to expire during the term of this Agreement. Should information entered into Ivalua by Supplier change or expire prior to completion of Supplier's obligations under this Agreement, Supplier shall immediately correct/update such information. Should Supplier fail to correct/update such information, BAE Systems may withhold payment until such time as the registration is corrected/updated.

## 3. INDEPENDENT CONTRACTOR RELATIONSHIP; SUPPLIER EMPLOYEES

- a) Supplier'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 Supplier or BAE Systems and Supplier personnel. Supplier personnel engaged in performing Services under this Contract are employees of Supplier and not employees or agents of BAE Systems. Supplier assumes full responsibility for the actions and supervision of such personnel while engaged in Services under this Contract. BAE Systems assumes no liability for Supplier personnel.

- b) The Supplier acknowledges that neither Supplier, nor any personnel of Supplier, has rights under any BAE Systems benefit plan. Supplier shall provide and maintain all insurance and benefits required by law, including but not limited to workers' compensation insurance.
- c) Supplier shall inform BAE Systems if it assigns a former employee of BAE Systems or its parent, subsidiary, or Affiliate to perform Services under this Contract, and any such assignment shall be subject to BAE Systems approval.
- d) Supplier shall provide BAE Systems with any information about Supplier's personnel that BAE Systems is required by law to obtain, including, but not limited to, information on "leased employees" and the "service organization" as these terms are used in Sections 414(m), (n) and (o) of the Internal Revenue Code (26 U.S. Code § 414).

#### **4. 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. The parties acknowledge the headings used in this Contract are for convenience only, and will not use them to interpret the scope or intent of that section.
- b) Supplier's execution and delivery of the Contract or Supplier's acknowledgment of the Contract, acceptance of payment, or commencement of performance, constitutes Supplier's unqualified acceptance of this Contract.
- c) ADDITIONAL OR DIFFERING TERMS OR CONDITIONS PROPOSED BY SUPPLIER OR INCLUDED IN SUPPLIER'S ACKNOWLEDGMENT HEREOF ARE HEREBY REJECTED BY BAE SYSTEMS AND HAVE NO EFFECT UNLESS EXPRESSLY ACCEPTED IN WRITING BY A BAE SYSTEMS PROCUREMENT REPRESENTATIVE.

#### **5. ORDER OF PRECEDENCE**

Any inconsistencies in this Contract shall be resolved in accordance with the following descending order of precedence:

- a) Mandatory FAR/DFARS flow down clauses as applicable to this Contract, and as modified within the Contract for the purposes of implementation at the subcontract tier,
- b) Purchase order;
- c) Master Service Agreement or other master type agreement (such as corporate, framework, operating group, or blanket agreements);
- d) Representations and certifications;
- e) Any supplemental terms and conditions incorporated by reference under section 7;
- f) These General Provisions;
- g) Statement of Work; and
- h) Specifications or drawings.

#### **6. CONTRACT DIRECTION/COORDINATION/CHANGES**

- a) Supplier acknowledges that only the BAE Systems Procurement Representative has authority to make changes in, to amend, or to modify this Contract on behalf of BAE Systems. Supplier shall not implement any changes or modifications to this Contract without first having received written authorization to do so from BAE Systems' Procurement Representative. Supplier shall compensate BAE Systems for any costs incurred by BAE Systems that result from Supplier's implementation of any unapproved changes or modifications.
- b) BAE Systems may, at any time by Change Order 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. Description of Services to be performed;
  - ii. Time of performance (i.e., hours of the day, days of the week, etc.); and

- iii. Place of performance of the Services.
- c) BAE Systems shall appoint a Technical Representative(s) and Supplier shall appoint a Lead Supervisor. BAE Systems' Technical Representative is responsible for liaising with Supplier's Lead Supervisor. Supplier's Lead Supervisor is responsible for supervising and directing the work of Supplier's personnel. BAE Systems' Technical Representative, nor any program management or engineering personnel, has no authority to make changes in, to amend, or to modify this Contract.
- d) Except as otherwise provided herein, the Supplier shall send all notices related to this Contract to the BAE Systems Procurement Representative with a copy to the Technical Representative.
- e) BAE Systems program, operations, engineering, technical, or other personnel may from time to time render assistance, give technical advice, discuss, or exchange information with Supplier's personnel concerning the Services hereunder. Such actions are not deemed a change under this clause of this Contract and shall not be the basis for equitable adjustment. If Supplier believes the foregoing creates an actual or constructive change, Supplier shall notify the BAE Systems Procurement Representative and shall not accept such direction or perform said action unless authorized by BAE Systems Procurement Representative in writing.
- g) If a Change Order causes an increase or decrease in the cost of or the time required for performance of this Contract, the parties will make an equitable adjustment in the Contract price, the performance schedule, or both, and the parties will modify the Contract in writing accordingly. The Supplier must assert any claim by Supplier for adjustment under this section in writing to BAE Systems' Procurement Representative no later than ten (10) Days after the date of receipt by Supplier of the Change Order or within such extension as BAE Systems may grant in writing. BAE Systems may consider, in its sole discretion, any such claim regardless of when asserted. Supplier's claim shall be in the form of a complete change proposal fully supported by information necessary to validate the claim. Pending any such adjustment, Supplier will diligently proceed with the Contract as modified. BAE Systems shall have the right to examine any of Supplier's pertinent books and records for verifying Supplier's claim.

## 7. SUPPLEMENTAL TERMS AND CONDITIONS

The following supplemental terms and conditions are hereby incorporated by reference: USGOVA FAR/DFARS Flow Down Provisions for Subcontract/Purchase Orders for Items Under a U.S. Government Prime Contract - Domestic and International/Commercial and Non-Commercial Items (DoD and DoD Support agencies) or USGOVB FAR/Other Agencies Flow Down Provisions for Subcontract/Purchase Order for Items under a U.S. Government Prime Contract – Domestic & International/Commercial & Non-Commercial Items, and all Interim Terms and Conditions Changes, whether on or after the effective date of this Contract, which can be found at <https://www.baesystems.com/en-us/what-we-do/suppliers/united-states/us-terms-and-conditions>.

## 8. CUSTOMER COMMUNICATION; CLAIMS

- a) Customer Communication. BAE Systems is 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 Customer contract, this Contract, and any other related contract. Supplier shall not communicate with the Customer or any higher tier contractor(s) with respect to this Contract or any related contract without prior written approval from the BAE Systems Procurement Representative. Supplier shall promptly notify the BAE Systems Procurement Representative of any communications initiated by the Customer or any higher tier contractor(s) that affects this Contract or any other related contract. This clause does not prohibit Seller from communicating with the Government with respect to (i) matters that Seller is required by law or regulation to communicate to the Government; (ii) fraud, waste or abuse communicated to a designated investigative or enforcement representative of a Federal department or agency authorized to receive such information; or (iii) any matter for which this Order (including any incorporated FAR provision) expressly provides for direct communication by Seller to the Government.
- b) CLAIMS. SUPPLIER AGREES THAT, UNLESS OTHERWISE AGREED IN WRITING BY BAE SYSTEMS AND THE U.S. GOVERNMENT, AND EXCEPT AS MAY BE OTHERWISE PROVIDED BY LAW, SUPPLIER 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.

## 9. PAYMENTS, TAXES, AND EXPENSES; INVOICING

- a) Payments.
  - i. Unless otherwise provided by BAE Systems, payment terms are net forty-five (45) Days from the latest of the following: (i) BAE Systems' receipt of Supplier's accurate invoice in accordance with proper invoicing instructions as identified in this Contract; or (ii) date of acceptance of the Services by BAE Systems. BAE Systems will record any invoices received on a

non-scheduled workday as received on the next business day (a “non-scheduled work day” means a weekend day or U.S. federal holiday as established by the U.S. Office of Personnel Management or during BAE Systems’ Year-End shutdown in December). BAE Systems shall have a right of setoff against payments due dispute under this Contract or any other contract between BAE Systems and Supplier. BAE Systems will pay any payments owed under this Contract in United States dollars. Suppliers electing to be paid via check acknowledge and agree that payments may be delayed up to ten (10) Days from the net forty-five (45) payment date, and that such payment is not a late payment.

- ii. Each payment made is subject to reduction to the extent of amounts, determined by BAE Systems not to have been properly payable and for overpayments.
  - iii. Payments due to net terms on non-scheduled workdays for BAE Systems are 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.
  - iv. Unless otherwise specified, Supplier’s 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.
  - v. BAE Systems reserves the right to withhold payment and dispute invoices that are inaccurate or incomplete. BAE Systems’ dispute of an invoice does not constitute a breach of this Contract. BAE Systems will not pay incomplete or inaccurate invoices, until corrected.
- b) Tax ID. Supplier will provide BAE Systems either with a W-9 Form (Request for Taxpayer Identification Number and Certification) or W-8 form (Certificate of Foreign Status), as applicable, in accordance with IRS regulations. An updated form is required for any name or address change. If Supplier fails to provide a complete and proper W-9 or W-8 Form, BAE Systems is required to subject payments to backup withholdings.
- c) Expenses. BAE Systems shall pay all reasonable travel and living expenses (coach class airfare, no alcohol, per diem rates) incurred by Supplier’s personnel in performing or providing the Services for BAE Systems, as directed and approved in advance by BAE Systems and as supported with receipts for all expenses greater than \$50.00. BAE Systems will not reimburse Supplier or its personnel for alcoholic beverages. BAE Systems will reimburse all travel costs at cost and in accordance with the Federal Travel Regulations available at <http://www.gsa.gov>.
- d) Invoicing. Supplier shall prepare and submit to BAE Systems’ an invoice(s) which meets the requirements of FAR 31.205-33(f) and shall include, where applicable: (i) purchase order number and line item number; (ii) agreement and statement of work name or number; (iii) invoice number; (iv) description of services performed in sufficient detail to enable an evaluation of the services performed; (v) time period over which services were performed; (vi) time spent in performance of the services and the labor rate (if applicable); and (vii) itemized amounts actually paid for travel, if any; and (viii) the following signed certification: "I hereby certify the foregoing to be a true and accurate statement of amounts due and time spent in the performance hereunder, and I recognize this invoice may form the basis for a claim for payment against the U.S. Government by BAE Systems."

#### 10. ALLOWABLE COST AND PAYMENT (Applicable to Cost Type Contracts Only)

To the extent this Contract is in support of a U.S. Government prime contract and includes Cost Reimbursable Line Items or is Cost Reimbursable in totality, this Section 10 shall apply. This Section 10 does not apply to non-cost reimbursable effort(s).

- a) Payments. BAE Systems shall make payments to Supplier 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 and in effect on the date of this Contract when requested, as work progresses, but not more often than once every 2 weeks. If this Contract is with an educational institution, FAR Subpart 31.3 applies; and if with a non-profit organization other than an educational institution, FAR Subpart 31.7 applies. Supplier 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 Allowable Costs
- i. For the purpose of reimbursing allowable costs (except as provided in subparagraph (b)(ii) below, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term “costs” includes only:
    - 1. Those recorded costs that, at the time of the request for reimbursement, Supplier have paid by cash, check, electronic funds transfer, or other form of actual payment for items or services purchased directly for this Contract.

2. Supplier is not delinquent in paying costs of Contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for:

- A. Materials issued from Supplier's inventory and placed in the production process for use on this Contract;
- B. Direct labor;
- C. Direct travel;
- D. Other direct in-house costs; and
- E. Indirect costs, as shown in the records maintained by Supplier for purposes of obtaining reimbursement under U.S. Government contracts, which are properly allocable and allowable.

3. Progress payments paid to Supplier's subcontractors under similar cost standards.

- ii. Supplier 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 Supplier pays the contribution to the fund within thirty (30) Days after the close of the period covered. Payments made thirty (30) Days or more after the close of a period shall not be included until Supplier actually makes the payment. Supplier shall exclude accrued costs for such contributions, which Supplier pays less often than quarterly, from indirect costs for payment purposes until Supplier actually makes the payment.
  - iii. Notwithstanding the audit and adjustment of invoices or vouchers under subsection (g) below, Supplier shall obtain allowable indirect costs under this Contract by applying indirect cost rates established in accordance with subsection (e) below.
  - iv. Except as otherwise expressly provided to the contrary in these General Provisions or in the statement of work of this Contract, any statements in specifications or other documents incorporated in this Contract by reference designating performance of Services at Supplier's expense or at no cost to BAE Systems will 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 two (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) Final Indirect Cost Rates. BAE Systems shall reimburse Supplier based on final annual indirect cost rates and the appropriate bases established by Supplier and the U.S. 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 parties will deem the rates and bases incorporated into this Contract upon execution.
- e) Billing Rates. Costs such as overhead rates as may be established by Supplier and the cognizant government agency in accordance with the principles of the FAR and applicable FAR Supplement, are included as allowable indirect costs. Pending establishment of final overhead rates for any period, BAE Systems will reimburse the Supplier at billing rates approved by the cognizant government agency, revised from time to time, subject to such approval and subject to appropriate adjustment when the final rates for that period are established.
- f) Quick Closeout Procedures. When Supplier and BAE Systems agree, the quick closeout procedures of Subpart 42.7 of the FAR may be used.
- g) Audit. At any time or times before final payment, BAE Systems or the U.S. Government may audit Supplier's invoices or vouchers and statements of cost. BAE Systems may (i) reduce any payment by amounts found by BAE Systems, or the U.S. Government, to be unallowable costs, or (ii) adjust any owed payment for prior overpayments or underpayments.
- h) Interim billings. Supplier 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.
- i) Final Payment
- i. Supplier shall submit a completion invoice or voucher, designated as such, promptly upon completion of the Services, but no later than one year from the completion date (or longer, as BAE Systems may approve in writing). Upon approval of

that invoice or voucher, and upon Supplier'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. Supplier shall pay to BAE Systems any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by Supplier or any assignee under this Contract, to the extent that those amounts are properly allocable to costs for which Supplier has been reimbursed by BAE Systems. Reasonable expenses incurred by Supplier for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by BAE Systems.
- iii. Before final payment under this Contract, Supplier and each assignee whose assignment is in effect at the time of final payment shall execute and deliver:
  - 1. 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 Supplier has been reimbursed by BAE Systems under this Contract; and
  - 2. A release discharging BAE Systems, its Affiliates, and its and their 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.
    - A. Claims (including reasonable incidental expenses) based upon liabilities of the Supplier to third parties arising out of the performance of this Contract; provided, that the claims are not known to the Supplier on the date of the execution of the release, and that the Supplier gives notice of the claims in writing to BAE Systems within 6 years following the release date or notice of final payment date, whichever is earlier; and
    - B. Claims for reimbursement of costs, including reasonable incidental expenses, incurred by Supplier under the patent clauses of this Contract, excluding, however, any expenses arising from the Supplier indemnification of BAE Systems against patent liability.
  - 3. The Supplier shall give BAE Systems immediate written notice of any action or suit filed and prompt notice of any claim made against the Supplier by any subcontractor or vendor that, in the opinion of the Supplier, may result in litigation related in any way to this contract, with respect to which the Supplier may be entitled to reimbursement from BAE Systems.
- j) Subcontracts. Supplier shall not enter into a subcontract under this Contract which provides for payment on a cost-plus-a-percentage-of-cost basis, and Supplier shall not enter into a subcontract under this Contract which provides for a fee under cost-reimbursement type subcontracts which exceeds the fee limitations in FAR 15.404-4(c)(4)(i).
- k) Performance Based Payments. For Performance Based Payments ("PBP"), or milestone payments, the Supplier will include a certification with each PBP invoice that the total value of all current and prior PBPs does 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 Supplier shall, in addition to providing the information required by FAR 52.232-32, submit to BAE Systems 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.

## 11. CONFIDENTIALITY - BAE SYSTEMS INFORMATION

- a) Non-Disclosure and Return/Destruction. Except as permitted in this Contract, for a period of five (5) years from the expiration or termination of this Contract, Supplier and Supplier's employees shall maintain in confidence and shall not use, display, reproduce or disclose to third parties without the prior written consent of BAE Systems, any BAE Systems Information which Supplier may receive from BAE Systems or come in contact with, including but not limited to, proprietary information of others when in BAE System's possession of BAE Systems. Within thirty (30) days of the expiration or termination of this Contract or upon the request of BAE Systems, Supplier shall return or certify the destruction of all BAE Systems Information and any reproductions, and Supplier shall promptly surrender all information or proprietary data developed by Supplier in performance of this Contract, unless its retention is authorized in writing by BAE Systems. This section shall take precedence over any conflicting obligations that may be contained in a proprietary information agreement between BAE Systems or a BAE Systems Affiliate and Supplier as necessary to cover the information exchanged under this Contract.

- b) Ownership and Use. BAE Systems Information provided to the Supplier remains the property of BAE Systems (or its Affiliates or third parties as applicable). Supplier shall comply with all proprietary information markings and restrictive legends applied by BAE Systems to anything provided hereunder to Supplier, and Supplier shall not remove any such proprietary markings or restrictive legends. Supplier shall not use any BAE Systems Information for any purpose except performance under this Contract. Subject to this Contract and to any specific terms in the relevant statement of work, BAE Systems grants to Supplier a non-exclusive, non-transferable, royalty free, fully paid license to use BAE Systems Information only and strictly in connection with Supplier's performance of its obligations and exercise of its rights under this Contract.
- c) Information Security. Supplier agrees to implement, maintain, monitor and update a reasonable, written security program incorporating administrative, technical, organizational and physical safeguards, security measures and security awareness, and install and implement security hardware and software, in each case, designed to (i) protect the security, availability and integrity of Supplier's network, systems and operations, and the BAE Systems Information from unauthorized access and use; and (ii) guard against security incidents. Supplier's security program must be compliant with all 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. Upon BAE Systems' request, Supplier shall complete the Cyber Security Verification Form ("CSV") and comply with any responses or agreed actions at its own expense. This Contract incorporates all Supplier information security representations on the CSV and in <https://suppliers.us.baesystems.com> ) by reference as if incorporated in full text and are binding upon Supplier.
- d) Hosting and Storage; BAE Systems Network Access.
- i. Supplier shall not transfer, store, manage, process or otherwise place any BAE Systems' Information on a Cloud or on any system external to any BAE Systems or Supplier premises, or outside the U.S. without advance written approval from BAE Systems.
  - ii. If BAE Systems gives Supplier, or Supplier personnel access to BAE Systems' networks, neither Supplier nor Supplier personnel may access such networks from anywhere other than the U.S. The Supplier may not access a BAE Systems network remotely, unless authorized in advance by BAE Systems. Such authorization is at BAE Systems' sole discretion and Supplier shall: A) notify BAE Systems in advance of the intended use; B) complete a BAE Systems-provided business security-screening questionnaire, which will be incorporated into this Contract by reference; and (C) comply with any agreed security protocols that are set by BAE Systems.
- e) Incident Notification and Response. Supplier shall notify BAE Systems within forty-eight (48) hours of the following:
- i. unauthorized disclosure or alteration of any BAE Systems Information; and
  - ii. cyber-attacks or information system breaches which may have compromised BAE Systems Information.

Any costs or damages sustained by BAE Systems as a result of Supplier's breach of the forty-eight (48) hour notice requirement in this subsection (e) are considered a direct damage under this Contract.

- f) Records. Supplier will maintain records of any known or suspected incidents in accordance with all applicable laws, regulations, and this Contract. Supplier will make such records pertaining specifically to BAE Systems Information reasonably available to BAE Systems and its affected Customers upon request. Except as required by applicable law or regulation, Supplier agrees that it will not inform any third party of any such security incident or breach affecting BAE Systems Information without BAE Systems' prior written consent. If such disclosure is required by law or regulation, it shall be disclosed only to the extent required by law or regulation and, if so permitted, after a five (5) business day prior written notification to BAE Systems of the requirement for such disclosure. Supplier will bear the cost of reproduction or any other remedial steps necessary or advisable to address any such incidents.
- g) Compliance. If during the performance of this Contract, Supplier becomes unable to comply with the obligations in this section, Supplier shall promptly notify BAE Systems. A breach of this section is a material breach of this Contract.

## 12. MAINTENANCE OF RECORDS

- a) Unless the parties expressly specify a longer period in this Contract or by law or regulation, Supplier shall retain all records related to this Contract for six (6) years from the date of final payment received by Supplier. Records related to this Contract include, but are not limited to, financial, proposal, procurement, specifications, inspection, test, certifications, time records, expense reports, travel receipts, job summaries, employee license, permit, and clearance, and receipt records.

- b) BAE Systems and its Customer shall have access to such records, and any other records Supplier is required to maintain under this Contract, for the purpose of audit during normal business hours, upon reasonable notice for as long as such retention of records is required. BAE Systems has audit rights on all performance related reports and other records, except records pertaining to proprietary indirect cost data. BAE Systems may accomplish any audit of proprietary indirect cost data through the responsible Defense Contract Audit Agency (DCAA) or Defense Contract Management Agency (DCMA) representative, or a mutually agreeable third party auditor from a nationally recognized firm of certified public accountants.

### **13. ASSIGNMENT OF NON-U.S. PERSONNEL**

Supplier shall not assign any persons who are not United States citizens or aliens granted permanent residency in the United States to work on this Contract or have access to any BAE Systems Information without first obtaining BAE Systems written approval, which approval shall not be unreasonably withheld.

### **14. ACCESS TO BAE SYSTEMS AND/OR CUSTOMER SYSTEMS OR FACILITIES**

- a) Supplier's personnel/agents may be granted access to BAE Systems or BAEs Customer systems or facilities. Any such access is subject to full compliance of BAE Systems and BAE Systems Customer's standard administrative and security requirements and policies applicable to such access.
- c) Supplier Staff or representatives accessing BAE Systems or BAE Customers' Facilities with unescorted access, are required to have been subject to preemployment background screenings at no charge to BAE Systems. BAE will not allow Supplier personnel access to BAE Systems facilities until written confirmation from Supplier stating that it has cleared Supplier's personnel to report to work is received by the BAE Systems Procurement Representative. If Supplier personnel in question holds a U.S. Government-granted security clearance or BAE Systems validates access through Defense Information System for Security or current government database of record or via a visit certification, then a pre-employment background screening is not required. For the avoidance of doubt, the Pre-employment background screenings must include the following: (i) Identity and Right to Work Verification (Criteria: A successful I-9 / E-Verify System Check); (ii) 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 Supplier may choose to provide an explanation of the event to BAE Systems. BAE Systems will review the explanation against security requirements); (iii) Education Verification for degreed positions only; and (iv) Minimum of three years of employment history (Criteria: Employment history is confirmed as presented). BAE Systems and/or its Customer may, at its sole discretion, remove or require Supplier to remove any specified personnel of Supplier from BAE Systems' or Customer's premises, worksite or system 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 relating to removal of Supplier's employee shall be borne solely by Supplier and not charged to this Contract. Exclusion from the worksite under the circumstances described in this clause shall not relieve Supplier 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.

### **15. STOP WORK ORDER**

- a) BAE Systems shall have the right to direct Supplier in writing to Suspend all or part of the work for any period deemed necessary by BAE Systems. Upon receipt of the written stop work notice, Supplier shall immediately comply with the terms of the notice and shall take all reasonable measures to mitigate the costs allocable to the suspended portion of the work. At the end of the suspension period, BAE Systems shall either (i) cancel the suspension, or (ii) terminate the work covered by the suspension as provided in the Termination section of this Agreement provided that a suspension may only be cancelled or work terminated by written notice from BAE Systems Procurement Official, regardless of the expiration of the suspension period. If BAE Systems cancels the suspension, Supplier shall immediately commence performance, notwithstanding the fact that there is no agreement as to a revised schedule or the cost of completing the project/order. If work is suspended, an equitable adjustment may be requested in accordance with subsection (g) of the "Contract Direction/Changes" provision of this Contract.

### **16. DISPUTES/JURY WAIVER**

- a) BAE Systems and Supplier agree to timely notify each other of any claim, dispute, or cause of action arising from or relating 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 SUPPLIER AGREE THAT ANY LAWSUIT OR CAUSE OF ACTION ARISING FROM OR RELATING 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. IN ADDITION, BAE SYSTEMS AND SUPPLIER 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 OR VENUE BY ANY SUCH COURT. Notwithstanding the above, patent actions can be initiated at the US Patent and Trademark Office or the International Trade Commission. Until final resolution of any dispute hereunder, Supplier shall diligently proceed with the performance of this Contract.

- b) TO THE EXTENT PERMITTED BY APPLICABLE LAWS, BAE SYSTEMS AND SUPPLIER EACH WAIVE THEIR RIGHTS TO TRIAL BEFORE A JURY.
- c) In addition to providing timely contemporaneous notice as required by other terms herein, Supplier must provide BAE Systems notice of any and all disputes/claims arising under this Agreement no later than the earlier of one year from the accrual of such dispute/claim or within six months of close out of this Agreement, or such claim shall be deemed waived.

## 17. TERMINATION

- a) Termination for Convenience. At any time from and after thirty (30) Days from the effective date of this Contract, by written notice to Supplier, BAE Systems may terminate this Contract for its convenience with immediate effect, in whole or in part including any Statement of Work, if the BAE Systems' Procurement Representative determines that it is in BAE Systems' best interest. BAE Systems' notice of termination will specify the extent of termination and the effective date and be in accordance with the procedures set forth in FAR 52.249-4 (or FAR 52.249-6 for Cost Reimbursable Work only), which clause is incorporated herein by this reference. Furthermore, for purposes of this clause "Government" means "BAE Systems and the Government" and "Contracting Officer" means "BAE Systems or the "Contracting Officer." In the event that BAE Systems terminates this Contract pursuant to U.S. Government direction, Supplier's recovery of termination costs is limited to the extent that BAE Systems is able to recover such costs from the U.S. Government.
- b) Termination for Default. BAE Systems may terminate this Contract for default, completely or in part, by written notice to Supplier in any of the following circumstances:
  - i. If Supplier fails to perform the Services required by this Contract within the time specified herein, or any extension thereof granted by BAE Systems in writing;
  - ii. If Supplier fails to perform any material provision of this Contract or fails to make progress so as to endanger performance of this Contract, and if in either of these two circumstances, Supplier does not cure such failure within a period of eight (8) Days after receipt of written notice from BAE Systems specifying such failure;
  - iii. If Supplier fails to perform any material provision of other contracts issued by BAE Systems and such default causes BAE Systems to terminate those other contracts;
  - iv. Supplier files or declares bankruptcy; or
  - v. In the event of suspension of Supplier's business, insolvency, liquidation proceedings by or against Supplier, appointment of a trustee or receiver for Supplier's property or business, or any assignment, reorganization or arrangement by Supplier for the benefit of creditors.
- c) If after receiving written notice of termination for default, completely or in part, it is determined for any reason that Supplier 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 subsection hereof.
- d) If BAE Systems terminates this Contract for default, completely or in part, it may acquire services similar to those terminated under terms and in the manner BAE Systems considers appropriate, and Supplier will be liable to BAE Systems for any excess costs for those services. However, Supplier shall continue the Services not terminated.
- e) If BAE Systems terminates this Contract for default, completely or in part, it may require Supplier to transfer title and deliver to BAE Systems in the manner and to the extent directed by BAE Systems any materials, parts, tools, plans, drawings, information, and contract rights that Supplier has produced or acquired for the performance of this Contract, including the assignment to BAE Systems of Supplier's subcontracts supporting this Contract. Furthermore, Supplier shall protect and preserve any property in Supplier's possession in which BAE Systems or its Customer has an interest.
- f) Payment for Services performed and accepted by BAE Systems prior to termination shall be at the Contract price. Payment for the protection and preservation of property will be at a price determined in the same manner as provided in the Termination for

Convenience subsection hereof except that Supplier shall not be entitled to profit. Failure to agree is a dispute under the "Disputes/Jury Waiver" section in this Contract.

## **18. 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. Supplier shall cooperate with BAE Systems in the fulfillment of any foreign offset/countertrade obligations.

## **19. BUSINESS CONTINUITY PLANNING**

- a) Supplier shall establish and maintain a disaster recovery and business continuity plan ("BCP"), which includes protection of vital records, and ensures, Supplier can continue to deliver the required Services to BAE Systems, if necessary.
- b) BAE Systems may review the BCP on a periodic basis to ensure its adequacy and completeness.
- c) Supplier shall activate the BCP upon the occurrence of any event where it is necessary or advisable to mitigate any impacts on the performance of its obligations under this Contract. If Supplier is unable to perform its obligations under this Contract for a period of more than ten (10) consecutive Days as a result of such an event, BAE Systems may, without liability or penalty, terminate this Contract or any affected statement of work or purchase order (in part or in whole) for default.

## **20. NON-SOLICITATION AGREEMENT**

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

## **21. SUBCONTRACTORS; SUB-TIER SUPPLIER INFORMATION**

- a) Supplier shall not subcontract an amount of the work/services equal to or greater than seventy percent (70%) of the work/services to be provided under this Subcontract without BAE Systems' prior written consent. This limitation does not apply to Supplier's purchase of standard commercial supplies or raw material.
- b) By written agreement, Supplier shall require each of its lower-tier subcontractors which perform work which supports this Contract to be bound by terms substantially similar to those of this Contract, and to assume toward the Supplier all the obligations and responsibilities which the Supplier pursuant to this Contract assumes toward BAE Systems or others as specified therein. Each such subcontractor agreement shall preserve and protect the rights of BAE Systems or others as specified under this Contract with respect to the work to be performed by the subcontractor so the subcontracting thereof will not prejudice such rights, and shall allow the subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Supplier that the Supplier, under this Contract, has against BAE Systems. Supplier expressly assumes liability for the acts and omissions of its subcontractors arising out of performance of the Services.
- c) When reasonably requested by BAE Systems, Supplier shall provide Supplier and sub-tier supplier information related to identity, supply activity, and performance under the Contract in a format designated by BAE Systems. Such information may include information relating to compliance with the terms of this Contract, the Supplier's subcontract/supplier management plans, any BAE Systems programs supported, sub-tier supplier names, the Supplier's and sub-tier's suppliers' supply or manufacturing locations, sourcing categorization (e.g. single/sole source), supply category/commodity description, product, component, or material description, information relating to the development of Software, and the Supplier's assessment of a sub-tier supplier's capability, including its financial health and any performance issues. BAE Systems may disclose any of the Supplier and sub-tier information supplied to it pursuant to the Contract with a BAE Systems Affiliate solely for the purpose of BAE Systems' risk mitigation and compliance management purposes. BAE Systems will not request that Supplier disclose competitively sensitive information under this clause.

## **22. ASSIGNMENT**

Any assignment of Supplier's contract rights or delegation of duties shall be void, unless BAE Systems gives its prior written consent. A change of control of Supplier shall constitute an impermissible assignment. However, Supplier may assign rights to be paid amounts due, or to become due, to a financing institution only after furnishing 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 Supplier. BAE Systems shall have the right to make settlements or adjustments in price without notice to the assignee. BAE Systems may freely assign this Contract.

### **23. APPLICABLE LAWS**

Unless specifically identified otherwise on a statement of work, purchase order or under a master-type agreement that constitutes part of this Contract, all matters arising from or related to it shall be governed by and construed in accordance with the laws 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 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. Government.

### **24. ELECTRONIC CONTRACTING**

BAE Systems and Supplier agree that if this Contract, or any statement of work, purchase order, other contract document, or correspondence is transmitted electronically neither BAE Systems nor Supplier shall contest the validity thereof, on the basis that this Contract, or the statement of work, purchase order, other contract document, 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.

### **25. WAIVER AND APPROVAL**

- a) Failure by either Party to enforce any provision(s) of this Contract is not a waiver of the requirement(s) of such provision(s), or as a waiver of the right of such Party thereafter to enforce such provision(s).
- b) BAE Systems' approval of technical specifications, drawings, plans, procedures, reports, and other submissions shall not relieve Supplier from complying with any requirements of this Contract.

### **26. REMEDIES**

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.

### **27. SURVIVAL**

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

- a) Applicable Laws
- b) Definitions
- c) Disputes/Jury Waiver
- d) Export Control
- e) Furnished/Acquired/Fabricated Property
- f) Independent Contractor Relationship
- g) Indemnification
- h) Limitation of Liability
- i) Confidentiality - BAE Systems Information
- j) Intellectual Property
- k) Access to BAE Systems and/or Customer Systems or Facilities
- l) Intellectual Property
- m) Maintenance of Records
- n) Non-Solicitation Agreement
- o) Warranty/Representations/Non-Conforming Services

- p) Corresponding provisions to above, as incorporated through Supplemental Terms and Conditions provision.
- q) U.S. Government flow down provisions that by their nature should survive.

## 28. ENGLISH LANGUAGE

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.

## 29. SEVERABILITY

Each paragraph and provision of this Contract is severable, and if a court or recognized governmental authority declares one or more paragraphs or provisions invalid, the remaining provisions of this Contract will remain in full force and effect.

### Section B: Laws and Regulations

## 30. COMPLIANCE WITH ALL APPLICABLE LAWS AND REGULATIONS

- a) Compliance with Laws. Supplier, its directors, officers, employees, agents, suppliers, and subcontractors shall comply with all applicable laws, orders, rules, regulations, and ordinances.
- b) By accepting this Contract and if this Contract exceeds \$150,000, Supplier 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), which are incorporated herein by this specific reference, except that paragraph (c)(1) of FAR 52.203-7 shall not apply.
- c) Certification Regarding Political Contributions, Fees, and Commissions Paid In Connection with Sales Subject to the Provisions of the Arms Export Control Act: Supplier represents that in accordance with 22 C.F.R. 130, neither Supplier 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 performed under any contract awarded, political contributions, fees, or commissions in amounts as specified in 22 C.F.R. 130.6.
- d) Licenses and Permits. At its own expense, Supplier shall procure all licenses and permits, and pay all fees and other required charges necessary to conduct its business and perform this Contract. Supplier also shall ensure that all personnel it assigns to this Contract have all required work permits, appropriate licenses, and security clearances necessary to perform the Services.
- e) Supplier's Employer Obligations. Supplier is 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: payroll, 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.
- f) Human Trafficking and Modern Slavery. Supplier certifies compliance with all applicable laws regarding slavery and human trafficking of the state, province, and country/countries in which they are performing the Services and doing business, including, but not limited to, the California Transparency in Supply Chains Act and the United Kingdom Modern Slavery Act. Supplier shall require its lower-tiered contractors to comply with the California Transparency in Supply Chains Act, when applicable.
- g) Equal Employment. Supplier shall ensure full compliance with all applicable equal employment, non-discrimination, and affirmative action laws and regulations, on its behalf and throughout its subcontracting chain, including but not limited to:
  - 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, which are hereby incorporated by reference into this Contract.
  - ii. 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.)

- iii. 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  $\geq$  \$150,000).
- h) Procurement Integrity Act. Supplier represents and warrants that none of its officers, directors, employees, agents, contractors, lower-tier subcontractors, or other related entities have or will provide to BAE Systems any information, the disclosure or receipt of which 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, Supplier agrees to put in place effective controls to ensure compliance with the Procurement Integrity Act.
- i) Hazardous Materials. Supplier represents and warrants that each chemical substance constituting or contained in any material or part incorporated into performance of the Services 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. Supplier shall not incorporate any goods that contain any asbestos mineral fibers into its performance of the Services, or any other chemical substance prohibited by the EPA in a TSCA Risk Management action, which can be accessed at “Risk Management for Existing Chemicals under TSCA.” Supplier shall follow the procedures set forth in Section 40(d) Shipment of Non-Conforming Work, if Supplier desires to provide Work that contains any chemical substances which fall under proposed bans or phase-outs under the TSCA as of the agreed upon date of shipment. Any notices required must include the chemical Abstract Services Number which can be found here: How to Access the TSCA Inventory | US EPA, and the concentration.
- j) Data Privacy: If because of this Contract, the Supplier collects, stores or processes Personal Information, Supplier agrees to comply and be bound by the BAE Systems’ Privacy and Data Security Addendum located at <https://www.baesystems.com/en-us/what-we-do/suppliers/united-states/us-terms-and-conditions> and all applicable data privacy laws, including but not limited to the California Consumer Privacy Act, California Privacy Rights Act, Virginia Consumer Data Protection Act, Colorado Privacy Act, and the Massachusetts Data Privacy Law.
- k) European Union’s General Data Protection Regulations (“GDPR”) and United Kingdom’s Data Protection Act (“UK DPA”): If because of this Contract, the Supplier collects, stores, or processes Personal Data, Supplier agrees with such laws and the BAE Systems Appendix 1 GDPR Standard Contractual Clauses or Appendix 2 UK International Data Transfer Agreement, as applicable and attached hereto. If Supplier receives Sensitive Personal Data or is a Controller (as defined under the GDPR and/or UK DPA), Supplier 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, UK DPA, or both.
- l) Conflict Minerals: If Supplier is providing products to BAE Systems in the performance of the Services, upon request, Supplier shall provide BAE Systems with a completed Conflict Minerals Reporting Template (a copy of which can be found at [www.responsiblemineralsinitiative.org](http://www.responsiblemineralsinitiative.org)) within thirty (30) Days of acceptance of this Contract. Supplier also shall provide BAE Systems with an updated Conflict Minerals Reporting Template within thirty (30) Days of the end of each calendar year in which Supplier provides products to BAE Systems.
- m) Covered Telecommunications and Video Equipment. Supplier represents and warrants that it does not and will not provide equipment, systems, or services that use covered telecommunications equipment or services (as defined in FAR 52.204-25) as a substantial or essential component of any system, or as critical technology as part of any system supplied to BAE Systems in the performance of this Contract. Supplier further represents and warrants that it does not use any such covered telecommunications equipment or services, or use any equipment, system or service that uses covered telecommunications equipment or services in supplying any systems, products, or services to BAE Systems.
- n) Service Contract Labor Hour Reporting. If Supplier is a first-tier subcontractor and this Contract exceeds \$500,000 (fixed-price contracts), the simplified acquisition threshold (cost-reimbursement, time-and-materials, and labor-hour contracts), or the value set forth in FAR 4.703(a)(2) as of the date of Contract award, Supplier shall provide to BAE Systems the following: (i) subcontract number (including unique entity identifier); and (ii) the number of first-tier subcontractor direct-labor hours expended on the services performed during the previous U.S. Government fiscal year.
- o) Federal Supply Chain Acquisition Security Act Orders (“FASCSA Order”).
- a. Prohibition. Supplier represents and warrants that it does not and will not provide or use as part of the performance of this Contract any covered articles (as defined in FAR 52.204-30), or any products or services produced or provided by a source, if the covered article or the source is prohibited by an applicable FASCSA Order.

- b. Notice. If, during Contract performance, the Supplier identifies, including through any notification by a supplier or subcontractor at any tier, that a covered article or product or service produced or provided by a source was provided to BAE Systems or used during Contract performance and is subject to a FASCSA order, Supplier shall submit a report within twenty-four (24) hours to BAE Systems containing the following information: (A) BAE Systems PO or Contract number, as applicable; (B) name of the product or services provided to BAE Systems or used during the performance of the Contract; (C) name of the covered article or source subject to a FASCSA Order; (D) if applicable, name of the supplier or subcontractor, including the Commercial and Government Entity code (CAGE Code) and unique identifier (if known), that supplied the covered article or the product or service to Supplier; (E) brand; (F) model number (original equipment manufacturer number, manufacturer part number, or wholesaler number; (G) item description; and (H) any information about mitigation actions undertaken or recommended. Within five (5) days of submitting such report, Supplier shall submit a written report to BAE Systems containing the following information: (I) any further information about mitigation actions undertaken or recommended; (II) a description of the efforts Supplier undertook to prevent submission or use of the covered article or the product or service produced or provided by a source subject to an applicable FASCSA Order, and any additional efforts that will be incorporated to prevent future submission or use of the covered article or the product or service produced or provided by a source that is subject to an applicable FASCSA Order.
- c. SAM.gov Review. During the performance of this Contract, Supplier shall review SAM.gov at least once every three months, or as advised by BAE Systems, to check for covered articles subject to FASCSA Orders, or for products or services produced by a source subject to a FASCSA Order not identified in this Contract.
- d. Flow Down. Supplier shall include the substance of this clause in all subcontracts and supplier contracts, including those for the acquisition of commercial products or commercial services.

### 31. PRIORITY RATING

If this Contract is a Defense Priorities and Allocation System (“DPAS”) rated order certified for national defense use, emergency preparedness, or energy program use, it will be stated in the Contract and the Supplier shall follow all the requirements of the DPAS Regulation (15 C.F.R. Part 700) in the performance of the Contract.

### 32. ETHICAL/RESPONSIBLE CONDUCT

- a) Supplier represents that it is committed to conducting its business fairly, impartially and in an ethical and proper manner. Supplier represents that it has (or will develop) and adhere to a code of ethical conduct substantially similar to BAE Systems code of conduct. In the event Supplier does not have a code of ethical conduct, Supplier shall comply with the BAE Systems Code of Conduct which can be found at <https://www.baesystems.com/en/sustainability/responsible-business/ethics-and-compliance/code-of-conduct>. Failure to comply with the BAE Systems Code of Conduct or Supplier’s comparable ethics program and standards is a material breach and is grounds for termination of this Contract. Responsible behavior is fundamental to how we do business at BAE Systems. Regular assessments of BAE Systems’ supply base are a critical part of this commitment. Our ‘best practice’ expectations of all current and proposed suppliers are contained in our Supplier Code of Conduct, available on our website at [Responsible Supply Chain](#). . Supplier, its employees, directors, officers, and representatives agree to review and familiarize themselves with the Supplier Code of Conduct document

### 33. EXPORT CONTROL

- a) Supplier shall comply with all applicable United States export and import control laws and regulations, including, but not limited to, the requirements of the Arms Export Control Act, the International Traffic in Arms Regulation (ITAR), the Export Control Reform Act of 2018, the Export Administration Regulations, and the regulations of the Office of Foreign Assets Control. Supplier shall obtain all required export licenses and agreements necessary to perform the Services, as applicable.
- b) Supplier 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. Within 30 Days of submittal of any anti-boycott report made to the U.S. Government that involves this Contract, Supplier shall provide a copy to BAE Systems.
- c) Without limiting the foregoing, Supplier shall not transfer any export-controlled item, data, or provide a controlled service, to include transfer to a person who is not a “U.S. Person” as defined in the ITAR (22 C.F.R. §120.62), without the authority of a U.S. Government export license, agreement, or other authorization. The restrictions on the transfer of export-controlled data apply equally to data furnished by BAE Systems and to any such export-controlled data incorporated in documents generated by Supplier.

Additionally, Supplier will not disclose any export-controlled data furnished to it by BAE Systems, to a non-U.S. Person until Supplier meets all regulatory and contractual requirements. Supplier will strictly comply with the conditions in any such approval and in the export license or other U.S. Government authorization for such disclosure.

- d) Further, a U.S. Government export license, agreement, or applicable license exemption or exception shall be obtained by Supplier prior to the Supplier's 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. §120.63.
- e) Supplier must make any electronic transmissions of unclassified export-controlled data or technology in accordance with 32 Code of Federal Regulations, Part 2002 and other applicable law. The transmission of classified export-controlled data must adhere concurrently with the applicable export regulation and the requirements outlined in the National Industrial Security Program Operating Manual at 32 Code of Federal Regulations, Part 117.
- f) Supplier shall immediately send written notification to the BAE Systems Procurement Representative, of any limitations that would hinder the use, sale, import, or export, of work, tasks, or deliverables under this Contract due to restrictions imposed by any export control laws or regulations.
- g) Supplier shall immediately notify the BAE Systems Procurement Representative in writing if Supplier is on any Denied Parties List or if Supplier's export privileges are denied, suspended or revoked in whole or in part by any government entity or agency.
- h) Where Supplier is an authorized party under a BAE Systems export license, export agreement (e.g. Technical Assistance Agreement, Manufacturing License Agreement, Distribution Agreement), or other U.S. Government written authorization, Supplier shall provide immediate written notification, to the BAE Systems Procurement Representative, in the event of any changed circumstances affecting said license, agreement, or other authorization.
- i) Failure of the U.S. Government or any other government to issue any required export or import license, or revocation or termination of a required export or import license by the U.S. Government or any other government, relieves BAE Systems of its obligations under this Contract. If Supplier has diligently pursued obtaining such license and, through no fault of Supplier, such license has been denied, revoked, withdrawn, or terminated, Supplier also will be relieved of its obligation under this Contract. In either event, BAE Systems may terminate this Contract without additional cost or other liability.
- j) All export-controlled data or technology must contain markings identifying the relevant regulatory jurisdictions prior to export, transmittal to, and receipt from, the Supplier and BAE Systems. Such markings are required regardless of the mode of transmittal (e.g., hard copy or electronic).
- k) Under this Contract, the Supplier acknowledges and confirms that the sale, manufacture, export, or brokerage of defense articles or provision of defense services, as those articles and services are defined in the ITAR and enumerated on the U.S. Munitions List (22 C.F.R. 121), mandates registration with the Directorate of Defense Trade Controls (DDTC), U.S. Department of State. If Supplier is engaged in the business of either selling, exporting, manufacturing, or brokering of (whether exporting or not) defense articles or furnishing defense services, Supplier represents that it maintains an effective export/import compliance program in accordance with the ITAR and it is registered as such with the United States Department of State's Directorate of Defense Trade Controls
- l) Supplier shall flow down export and import compliance requirements by contract to its suppliers, Suppliers, and subcontractors who support BAE Systems Contracts and purchase orders. Supplier shall, on request, provide information to BAE Systems on the country of origin of any Goods supplied to BAE Systems, including any and all components, subcomponents, and raw materials contained therein.
- m) Export Classification (when specifically requested by BAE Systems)
  - i. Supplier shall notify BAE Systems if any deliverable under this Contract, for which BAE Systems is not the design authority, is subject to export and import control laws and regulations described in the Export Control section of this Contract). Before providing BAE Systems any deliverable, Supplier shall provide, in writing to the BAE Systems' Procurement Representative, the relevant export classification to include the following:
    - A. Dual use goods and technology subject to the EAR, including any embedded or related ITAR-controlled, or EAR 500 or 600 series' item or technology;

- B. Defense article (which includes both hardware and technical data) or defense service, controlled by the ITAR;
  - C. Item or technology controlled by the UK or EU Lists of Dual Use or Military Goods, or by other applicable government published export control lists.
  - D. Identify lower controlled classifications, such as EAR99, when applicable.
    - 1. Subsequent to the initial disclosure above, Supplier shall timely notify the BAE Systems' Procurement Representative, in writing, of any changes to the export classification information of the item or controlled data.
    - 2. Supplier represents and certifies that it has properly determined the relevant export classification of the deliverable.
- n) Supplier warrants that it is not (i) a Specifically Designated National or Blocked Person pursuant to the list published by the U.S. Office of Foreign Asset Control (OFAC Listed Person), or (ii) a Department, Agent, or Instrumentality of, or otherwise controlled by or acting on behalf of any OFAC Listed Person or the Government of a Country subject to comprehensive U.S. economic sanctions administered by OFAC. Supplier further warrants that it will provide immediate written notice to BAE if it becomes subject to either of the foregoing.

### **34. OCCUPATIONAL SAFETY AND HEALTH**

Supplier shall promptly notify BAE Systems in writing of any charge of noncompliance with the Occupational Safety and Health Act of 1970, as amended, against Supplier arising from or related to the Services performed hereunder on premises owned, leased, or operated by BAE Systems or its Customer.

### **35. ANTICORRUPTION**

- a) Supplier shall comply with all applicable laws and regulations relating to anti-corruption or anti-bribery including as applicable any U.S. Federal or State law governing public corruption, and the Foreign Corrupt Practices Act, as amended ("FCPA") (15 U.S.C. §§ 78dd-1, et., seq.), regardless of whether the Supplier is within the jurisdiction of the U.S. Supplier shall immediately notify BAE Systems in writing if it or any of its owners, directors, officers, employees, or agents commits a violation of any such law or regulation.
- b) Supplier 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, or any other person, either directly or through an intermediary, corruptly for the purpose of influencing any act, omission, or exercise of influence by the recipient, to assist BAE Systems or Supplier in obtaining or retaining business or obtaining a business advantage.
- c) Except as otherwise disclosed, none of Supplier's owners, directors, officers, or employees is a government official or is closely related to a government official. Supplier will notify BAE Systems in writing if any of its owners, directors, officers or employees subsequently becomes a government official.
- d) Supplier shall ensure that all lower tier subcontracts include this Anticorruption provision.

### **Section C: Quality/Performance Control Provisions**

### **36. QUALITY CONTROL SYSTEM**

- a) Supplier agrees to provide and maintain a quality control system for the Services to an industry recognized quality standard acceptable to BAE Systems. Supplier shall permit, authorized Customer representatives, and regulatory authorities to review procedures, practices, processes, and related documents to determine such acceptability. Supplier shall ensure its employees are aware of their contribution to and importance of the Services conformity, safety, and ethics requirements. Supplier 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, Supplier shall comply with any other specific quality requirements identified in this Contract.

- b) Supplier shall keep records of all quality control inspection work complete and available to BAE Systems and its Customers.

### 37. TIMELY PERFORMANCE

Supplier's timely performance is a critical element of this Contract and time is of the essence. If Supplier becomes aware of difficulty in performing the Services, Supplier shall timely notify BAE Systems in writing, giving pertinent details. This notification does not change the performance schedule.

### 38. INSPECTION, ACCEPTANCE, AND CORRECTIVE ACTION

- a) Inspection or Observation. BAE Systems and its Customer may inspect and observe the performance of Services at all reasonable times. Supplier shall provide all information and assistance necessary for safe and convenient inspection or observation without additional charge.
- b) Acceptance.
  - i. BAE Systems shall accept the Work or give Supplier notice of rejection within thirty (30) Days after the date of delivery or written notice of completion of the Work, whichever is later, notwithstanding any payment or prior test or inspection. No payment, inspection, test, delay, approval, failure to inspect/test, or failure to discover any defect or other nonconformance shall relieve Supplier of any obligations under this Contract or any order or impair any rights or remedies of BAE Systems or BAE Systems' Customers, including revocation of acceptance. Acceptance by BAE Systems of any Work shall not limit or affect any warranty or right of indemnity.
  - ii. The following clause is applicable to all Services except for Cost Reimbursable Services: (i) If Supplier performs nonconforming Services, BAE Systems may: (A) accept all or part of such Services at an equitable price reduction; or (B) make, or have a third party make all repairs, corrections, or modifications necessary to enable such Services to comply in all respects with Contract requirements and charge the cost incurred to Supplier.
- c) Corrective Action Request ("CAR"). BAE Systems may issue a CAR to Supplier for nonconforming Services, and Supplier shall respond to BAE Systems by the due date listed on the CAR form. Failure to respond in a timely manner may cause BAE Systems to halt subsequent orders until it receives an acceptable CAR response. Supplier shall address all fields in the CAR form, including root cause of the noncompliance using a "root cause methodology tool" and a corrective action addressing the root cause. Supplier shall present all corrective actions to BAE Systems for review and approval, and shall not re-perform nonconforming Services without disclosing the corrective action taken. Any re-performance or other correction shall be completed within the time as BAE Systems' Procurement Representative may reasonably direct.
- d) Cost Reimbursable Line Items/Contracts. To the extent this Contract includes Cost Reimbursable Line Items or is Cost Reimbursable in totality, the subsections below are applicable:
  - i. If Supplier performs nonconforming Services, BAE Systems may require Supplier to promptly correct or re-perform the nonconforming Services. The cost of re-performance or correction will be included in allowable cost, determined as provided in the Allowable Cost and Payment clause, but BAE Systems will pay no additional fee.
  - ii. Notwithstanding subsection (d)(i) above, BAE Systems may at any time require the Supplier to remedy by correction or re-performance, any failure by the Supplier to comply with the requirements of this Contract at no cost to BAE Systems, if the failure is due to (A) fraud, lack of good faith, or willful misconduct on the part of the Supplier's managerial personnel; or (B) the conduct of one or more of the Supplier's employees selected or retained by the Supplier after any of the Supplier's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.

### 39. WARRANTY/REPRESENTATIONS/NON-CONFORMING SERVICES

- a) Services. Supplier represents and warrants that:
  - i. it and each of its personnel assigned to perform the Services hereunder have the proper skill, training, and background to be able to perform in a competent and professional manner with the highest degree of professional skill and all Services will be performed in accordance with the applicable statement of work and this Contract;

- ii. it is and shall remain free of any obligation or restriction which would interfere or be inconsistent with, or present a conflict of interest concerning the Services to be furnished by Supplier under this Contract;
- iii. BAE Systems will receive free, good, and clear title to all deliverables developed under this Contract; and
- iv. all Services performed pursuant to this Contract shall strictly conform to all specifications, and descriptions, and other requirements of this Contract.

In addition to the foregoing warranties, statements of work may contain additional warranties that specifically apply to such statement of work. If the Services include a commercial item then Supplier will transfer the commercial warranty to BAE Systems.

- b) Warranty Period. The warranty begins upon acceptance of the Services by BAE Systems or BAE Systems Customer, whichever is later, and extends for a period of one (1) year unless a longer term is specified in writing in which event the longer term applies. If the Services fail to conform to the foregoing warranty, Supplier shall, at BAE Systems' option and without additional charge, promptly re-perform such Services. If re-performance of the Services is not timely or fails to correct the non-conformity, BAE Systems may elect to re-procure or re-perform the Services at Supplier's expense. All warranties run to BAE Systems and its Customers.
- c) Malicious Technology. Supplier warrants that the Services will not: (A) contain any Malicious Technology, (B) monitor BAE Systems' use of the Services; (C) replicate, transmit or activate itself without control of a person operating the computing equipment on which it resides; or (D) alter, damage or erase any data or computer programs resident on BAE Systems computers or hardware without control of a person operating the computing equipment on which it resides. If Supplier is in breach of this subsection, no "right to cure" period will apply. BAE Systems reserves the right to pursue any available civil or criminal action against Supplier for violation of this provision. Supplier will not install, use, or execute any software on any BAE Systems central processing unit without BAE Systems' written approval. Supplier acknowledges that it does not have any right to electronically repossess or use any self-help related to the Services.

#### 40. SOFTWARE; ARTIFICIAL INTELLIGENCE

- a) Open Source Software: Without the prior written approval of BAE Systems, which BAE Systems may withhold in its sole discretion, Supplier shall not incorporate any Open Source Software, including any source code governed by an Open Source license, into Services to be performed under this Contract. When seeking BAE Systems written approval, Supplier shall identify all Open Source Software proposed to be incorporated into its Services, as well as a complete source code listing of the Software comprising the Services 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) Computer Software: Notwithstanding any provisions to the contrary contained in any Supplier's standard commercial license or lease agreement, Supplier agrees that the Restricted Software delivered under this Contract shall provide the following rights to BAE Systems and the U.S. Government.
- c) 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, if 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.

- d) Release from liability. Supplier 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.
- e) Use of Artificial Intelligence Tools. Supplier is prohibited from using, directly or indirectly, any artificial intelligence tools (e.g., Generative AI, including large language models) in providing the Services under this Contract without prior written authorization from BAE Systems. Such use includes inputting BAE Systems Data (whether as a prompt or files) into any artificial intelligence tools. If and to the extent expressly authorized by BAE Systems pursuant to this paragraph, Supplier agrees that it is wholly-responsible for the accuracy and completeness of any output generated by artificial intelligence tools, and that BAE Systems' rights in the Services otherwise granted under this Contract are unchanged by the use of any artificial intelligence tools. Supplier further agrees to identify the portion(s) of any work generated by artificial intelligence upon request from BAE Systems.

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

- a) BAE Systems may provide Supplier with property owned by either BAE Systems or its Customer ("Furnished Property") or require Supplier to acquire ("Acquired Property") and/or to fabricate property ("Fabricated Property") specifically for Services under this Contract (collectively "All Property"). BAE Systems authorizes Supplier to use All Property only for the performance of this Contract, unless authorized in advance, in writing, by the BAE Systems' Procurement Representative. The U.S. Government property clause FAR 52.245-1 shall apply to all Furnished Property owned by the U.S. Government, or property that the U.S. Government may take title to under this Contract unless otherwise stated within this Contract.
- b) Title to All Property shall remain in BAE Systems or its Customer (as applicable). Supplier 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, Supplier shall be responsible for maintaining, managing, preserving, and insuring All Property from loss or damage while in Supplier's care, custody, or control, without additional charge, in accordance with good commercial practice, and FAR 52.245-1 where the U.S. Government owns the Furnished Property. Supplier shall notify BAE Systems within 10 Days of any loss or damage to All Property. Where the U.S. Government owns the Furnished Property or the Acquired Property, Supplier shall also provide a report containing all information required by FAR 52.245-1 to BAE Systems within 30 Days. Supplier shall support all BAE Systems or Customer investigations relative to the loss, damage or destruction of this property. At BAE Systems' sole option, Supplier shall immediately replace, reimburse, repair, and/or provide consideration to BAE Systems for such loss or damage.
- d) All Property associated with Services under this Contract shall be received, inspected, inventoried, processed, and reported as required by FAR 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 Supplier 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.

#### **42. INTELLECTUAL PROPERTY**

- a) Warranty. Supplier warrants that the Services and deliverables 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 are free and clear of all liens, licenses, claims, and encumbrances. If an injunction is obtained against BAE Systems' use of and deliverables provided in the performance of the Services as a result of infringement or misappropriation of the intellectual property of any third party, Supplier shall either (A) procure for BAE Systems and Customer the right to continue using the deliverable or (B) re-perform or modify the Services so the deliverable becomes non-infringing.
- b) Markings. Supplier 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 regulation or published decision of applicable regulatory bodies or (ii) violate or mischaracterize ownership to any technical data or computer software owned by BAE Systems. On behalf of itself or its Customer, BAE Systems will notify Supplier, in writing, of any Nonconforming Markings and Supplier will remove such Nonconforming Markings and resubmit within sixty (60) Days after such notification. If Supplier fails to remove or correct such Nonconforming Markings within sixty (60) Days after such notification, BAE Systems may ignore, or at Supplier's expense remove or modify, as appropriate, any such Nonconforming Markings as may be on such deliverables and Supplier shall not have any recourse nor shall BAE Systems incur any liability for any such removal or modification.

- c) BAE Systems' Intellectual Property. The parties agree that BAE Systems shall maintain and have all rights, title and interest in and to (i) any intellectual , except intellectual property received from or provided by the US Government or in which the US Government has licensed data rights in BAE Systems' Intellectual Property, to the extent of such rights, which BAE Systems has at the inception of this Contract or subsequently develops outside of this Contract ("BAE Systems Background Intellectual Property"), and (ii) except for Supplier Subject Inventions as defined in DFARS 252.227-7038, any intellectual property conceived, developed, or generated in performance of this Contract (whether by Supplier, BAE Systems, jointly by both parties, or by any third party), including any deliverables that are the product of the Services (the "Foreground Intellectual Property). Supplier shall promptly deliver to BAE Systems full disclosures of all intellectual property developed by or on behalf of Supplier in performance of this Contract. Supplier shall provide all assistance reasonably required and execute all documents necessary to perfect the rights granted to BAE Systems. To enable Supplier to comply with the foregoing, each of Supplier's personnel, workers, representatives, agents and subcontractors providing Services under this Contract, hereby assigns all rights they have in all inventions, works for hire, and the like, to Supplier.
- d) Supplier's Intellectual Property. The parties agree that Supplier shall maintain and have all rights, title and interest in and to (i) any intellectual, except intellectual property received from or provided by the US Government or in which the US Government has licensed data rights in Supplier's Intellectual Property, which Supplier has at the inception of this Contract ("Supplier Background Intellectual Property") and (ii) Supplier Subject Inventions (as defined in DFARS 252.227-7038) conceived, developed, or generated by Supplier in performance of this Contract ("Supplier Foreground Intellectual Property").
- e) Supplier Intellectual Property License. Supplier grants and agrees that BAE Systems shall have a nonexclusive, worldwide, sub-licensable, irrevocable, paid-up, royalty-free license and right, to any Supplier Foreground Intellectual Property and Supplier Background Intellectual Property, to the extent necessary to enable BAE Systems to use the Foreground Intellectual Property or perform all of its obligations under the prime contract, including but not limited to the right to use, execute, reproduce, display, perform, publish, distribute, copy, prepare derivatives or compilations and to authorize others to do so. Supplier shall provide all assistance reasonably required and execute all documents necessary to perfect the rights granted to BAE Systems herein. To enable Supplier to comply with the foregoing, each of Supplier's personnel, workers, representatives, agents and subcontractors providing services under this Contract, hereby assigns sufficient rights they have in all inventions, works for hire, project results, and the like, to Supplier.
- f) Subject Invention Disclosures. To the extent the Supplier conceives, develops, generates, or invents any Supplier Subject Inventions under this Contract, Supplier will complete and provide to BAE Systems all necessary invention disclosures or DD Form 882 (Report of Inventions and Subcontracts), as required by the federal acquisition regulations.
- g) Rights and Ownership. Except as explicitly provided herein, this Contract does not grant or otherwise give either party ownership in or other proprietary rights to use the other party's trademarks and other intellectual property for any purpose.
- h) Deliverables. Supplier hereby agrees that BAE Systems will own all physical deliverable items, in whatever medium Supplier delivers those deliverable items to BAE Systems under this Agreement.

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

#### **43. INDEMNIFICATION**

- a) SUPPLIER SHALL INDEMNIFY, HOLD HARMLESS AND AT BAE SYSTEMS' ELECTION, DEFEND BAE SYSTEMS, ITS AFFILIATES, AND ITS AND THEIR DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, 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 (HEREINAFTER COLLECTIVELY REFERRED TO AS "CLAIMS"), ARISING FROM OR RELATED TO:
  - i. ANY ACT OR OMISSION OF SUPPLIER, ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, SUPPLIERS, OR SUBCONTRACTORS AT ANY TIER, RELATED TO OR AS PART OF THE EXECUTION OF SERVICES TO BE PERFORMED OR OTHERWISE IN THE PERFORMANCE OF ANY OF ITS OBLIGATIONS UNDER THIS CONTRACT;
  - ii. THE ACTUAL OR ALLEGED INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHT OR MISAPPROPRIATION OR WRONGFUL USE OF INFORMATION OR DOCUMENTS, OR THE USE, REPRODUCTION, SALE, IMPORT, OR ANY OTHER DISTRIBUTION OF THE SERVICES OR DELIVERABLES BY BAE SYSTEMS OR ITS CUSTOMER;
  - iii. ANY INJURY, INCLUDING BUT NOT LIMITED TO DEATH, TO ANY PERSON(S), OR DAMAGE TO PROPERTY, ARISING FROM OR RELATED TO OR CAUSED OR CLAIMED TO HAVE BEEN CAUSED BY ACTS OR OMISSIONS OF SUPPLIER, ITS DIRECTORS,

OFFICERS, EMPLOYEES OR AGENTS, OR ANY OTHER PERSON OR ENTITY DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, WITH RESPECT TO OR IN CONNECTION WITH SERVICES UNDER THIS CONTRACT;

- iv. ANY CLAIMS MADE BY SUPPLIER’S DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS (EXCEPT CLAIMS FOR PERSONAL INJURY OR DEATH ARISING FROM GROSS NEGLIGENCE OR INTENTIONAL TORTS ON THE PART OF BAE SYSTEMS) AGAINST BAE SYSTEMS, ITS AFFILIATES AND ITS OR THEIR DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS IN EITHER THEIR OFFICIAL OR INDIVIDUAL CAPACITIES;
  - v. ALLEGED IMPROPER CONDUCT OF ANY NATURE OR TYPE, INCLUDING, BUT NOT LIMITED TO, PHYSICAL, MENTAL OR SEXUAL ABUSE OR HARASSMENT, INVASION OF BODILY INTEGRITY, VIOLATION OF CIVIL RIGHTS, AND/OR DISCRIMINATION, BY OR ATTRIBUTABLE TO ANY OF SUPPLIER’S DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, SUPPLIERS OR SUBCONTRACTORS; AND
  - vi. SUPPLIER’S FAILURE TO PAY ANY OF SUPPLIER’S EMPLOYEES, AGENTS, SUPPLIERS, OR SUBCONTRACTORS, FOR SERVICES RENDERED UNDER THIS CONTRACT, AND SUCH OBLIGATION IS PERFORMED BY BAE SYSTEMS.
- b) BAE Systems shall notify Supplier as soon as is practicable of any Claims arising under this section. Supplier shall not settle, adjust, or compromise any such claim or any action or proceeding arising therefrom without the written approval of BAE SYSTEMS, which shall not be unreasonably withheld. BAE Systems further agrees to cooperate with any investigation of such Claims and to provide Supplier any information reasonably available to BAE Systems (not of a classified, confidential or privileged nature), and reasonably necessary for the investigation or defense of such Claims.
- c) Direct Damages: If BAE Systems is assessed and is required under a contract to pay liquidated damages to any of its Customers for late delivery of a product or service and such late delivery is due primarily to the Supplier or its subcontractors at any tier, the Supplier shall reimburse BAE Systems for the full amount of such liquidated damages, within 30 Days of receipt from BAE SYSTEMS of proof of the assessment of such liquidated damages. For the purposes of this Contract, such liquidated damages from BAE Systems’ Customer are considered a direct damage. Nothing in this section is intended to limit BAE Systems’ right to recover under this Contract, at law, or in equity.
- d) Supplier acknowledges that the indemnity and hold harmless provision of this Contract is not an allowable cost under any provisions of this Contract, except with regard to allowable insurance costs.

**44. LIMITATION OF LIABILITY**

- a) IN ADDITION TO ANY OTHER LIMITATIONS ON BAE SYSTEMS’ LIABILITY SET FORTH HEREIN, IN NO EVENT SHALL BAE SYSTEMS, ITS AFFILIATES, AND ITS AND THEIR DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AND AGENTS BE LIABLE BY REASON OF BAE SYSTEMS’ BREACH OR TERMINATION OF THIS CONTRACT OR FOR ANY BAE SYSTEMS’ ACTS OR OMISSIONS IN CONNECTION WITH THIS CONTRACT 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.
- b) BAE SYSTEMS SHALL NOT BE LIABLE FOR ANY OF SUPPLIER’S INCREASED COSTS OF PERFORMANCE RESULTING FROM THE SUPPLIER’S IMPLEMENTATION OF ANY CHANGES OR MODIFICATIONS IT PERFORMS OR HAS PERFORMED WITHOUT FIRST OBTAINING THE APPROVAL OF BAE SYSTEMS PROCUREMENT REPRESENTATIVE.

**45. INSURANCE**

- a) In the event that Supplier, its employees, agents, or subcontractors enter the site(s) of BAE Systems or its Customer for any reason in connection with this Contract, then Supplier and its subcontractors shall at each of their sole cost and expense obtain and maintain in force throughout the original term, and any extension, of this Contract (to include the warranty period), the following minimum limits of insurance placed with a company reasonably acceptable to BAE Systems, each of which shall be primary to any insurance of BAE Systems:

Automobile General Liability: For Owned, Hired & Non-Owned (bodily injury) (property damage)	\$1,000,000 Combined Single Limits each accident
Commercial General Liability (CGL): Public Liability (bodily injury)	\$1,000,000 each occurrence \$2,000,000 aggregate

Public Liability (property damage)	\$1,000,000 each occurrence \$2,000,000 aggregate
Employer's Liability:	\$1,000,000 each accident/disease each employee/ disease policy limit
Errors & Omissions:	\$1,000,000 each claim \$2,000,000 aggregate
Products Liability:	\$1,000,000 each occurrence \$2,000,000 aggregate
Worker's Compensation:	Statutory
Umbrella/Excess Liability:	\$10,000,000 per occurrence and in the aggregate.
Property and Contractor's Equipment Insurance	Sufficient to cover all Supplier's Equipment Insurance and Supplier's employee owned tools and equipment brought onto BAE Systems/Customer Property

- b) The insurance coverage and limits required of the Supplier under this Contract are the minimum requirements of BAE Systems. These minimum requirements are neither a limit of the Supplier's liability under this Contract, nor a recommended insurance program for Supplier. The Supplier alone should seek professional assistance if the Supplier has any question concerning its exposure to loss under this Contract or the applicable insurance coverage that may be necessary to address such exposure.
- c) Supplier shall name BAE Systems as an additional insured under each of the insurance policies required by this Contract, except Workers Compensation Insurance and Professional Liability/Errors & Omissions insurance. The Supplier acknowledges that each policy maintained pursuant to this paragraph is primary as with respect to the interest of BAE Systems and is not contributory with any insurance that BAE Systems may carry.
- d) All policies, including Workers Compensation, shall contain a Waiver of Subrogation in favor of BAE Systems.
- e) Before commencing Services under this Contract, Supplier shall deliver a Certificate of Insurance and/or actual insurance policies required by this Contract. Any Certificate of Insurance shall contain a provision that the coverage provided under the policies, as well as the policies themselves, will not be canceled or materially changed unless the insurers provide BAE Systems with thirty (30) Days' written notice of the intent to cancel a policy, or materially change the coverage provided under the policy.

**46. MECHANICS AND OTHER LIENS**

- a) TO THE EXTENT PERMITTED BY LAW, SUPPLIER AGREES THAT IT WILL NOT ASSERT ANY MECHANICS LIEN, OR ANY OTHER LABOR OR MATERIAL LIEN, AGAINST ANY PROPERTY OWNED BY OR IN THE CARE, CUSTODY OR CONTROL OF BAE SYSTEMS TO SECURE PAYMENT OF ANY AMOUNTS THAT MAY BECOME DUE TO SUPPLIER FOR FURNISHING ANY LABOR OR MATERIAL IN PERFORMANCE OF THIS CONTRACT OR FOR PERFORMING ANY SERVICES ASSOCIATED THEREWITH. SUPPLIER ACKNOWLEDGES THAT BY ACCEPTING THIS CONTRACT IT WAIVES ITS RIGHTS (IF ANY) TO ASSERT A LIEN AND IS PRECLUDED FROM EXERCISING ANY MECHANICS LIEN RIGHTS IT MAY OTHERWISE BE AFFORDED UNDER APPLICABLE STATE LAW. SUPPLIER SHALL COOPERATE IN PROVIDING AND FILING ANY WAIVER(S) OR RELEASE(S) OF LIEN BAE SYSTEMS MAY REQUIRE. IN THE EVENT THAT APPLICABLE LAW DOES NOT PERMIT THE SUPPLIER'S WAIVER OF LIENS IN ADVANCE, SUPPLIER AGREES THAT IT SHALL NOT FILE A LIEN UNTIL IT COMPLETES THE SERVICES REQUIRED BY THE CONTRACT AND WILL PROVIDE A RELEASE AND WAIVER SIMULTANEOUS WITH FINAL PAYMENT UNDER THE CONTRACT.
- b) Supplier agrees to secure releases and waivers of lien in favor of BAE Systems from Supplier's suppliers and subcontractors coincident with Supplier's final payments to them. In the event any of Supplier's suppliers or subcontractors assert a mechanics lien, or any other labor or material lien, against any property owned by or in the care, custody or control of BAE Systems, BAE Systems at its election may immediately satisfy such lien and charge all amounts (including reasonable attorney's fees) associated with satisfying such lien to Supplier and/or offset such amounts against payments owed to Supplier.

**47. DEFECTIVE COST OR PRICING DATA**

If Supplier and 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; 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; or (4) then BAE Systems incurs any other costs or damages, BAE Systems may make an setoff reduction of corresponding amounts (in whole or in part) due to Supplier under this Contract or any other contract with Supplier, and/or may demand payment (in whole or in part) of the corresponding amounts. Supplier shall promptly pay amounts so demanded.

#### **48. FAILURE TO PERFORM**

- a) Except for defaults of subcontractors at any tier, neither party shall be liable for any excess costs if the failure to perform the Services under the Contract is due to fires, floods, strikes, lockouts, epidemics, pandemics, accidents, or other causes beyond the reasonable control (each a "Force Majeure Event") of the non-performing party. In each instance, the failure to perform must be beyond the reasonable control and without the fault or negligence of the non-performing party.
- b) If the non-performing party's failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is a Force Majeure Event and beyond the control of both the non-performing party and the subcontractor, and without the fault or negligence of either, the non-performing party shall not be liable for any excess costs for failure to perform, unless the subcontracted products or services were obtainable from other sources in sufficient time for such party to meet the required performance schedule.
- c) Supplier agrees that its sole remedy under this Section 51 is schedule relief, and any excusable delay is non-compensable.