

# Terms and Conditions – Other Transactional Authority (OTA) Commercial

## General Provisions

### DEFINITIONS

As used in this Subcontract, the following terms shall have the meanings set forth below:

“**Buyer**” means BAE Systems Space & Mission Systems Inc. (SMS) as represented by an authorized representative.

“**Buyer’s Customer**” means Buyer’s customer(s) under the Prime Contract, as applicable.

“**Government**” means the United States of America (“U.S.”) or its authorized representative.

“**Parties**” means Buyer and Seller collectively, as referred to herein.

“**Party**” means Buyer or Seller individually, as referred to herein.

“**Prime Contract**” means the contract, if any, between Buyer and the Government or between Buyer and a higher-tier customer.

“**Seller**” means the party identified on the face of this Subcontract with whom Buyer is contracting, including any applicable Seller personnel (e.g., Seller’s officers, employees, agents, and suppliers and other Subcontractors).

“**Subcontract**” means the purchase order or subcontract or other such type designation, including all referenced documents, exhibits, and attachments, under which these terms and conditions are incorporated by reference.

“**Subcontractor**” means any supplier or other company, at any tier, utilized by Seller to perform Work required by this Subcontract.

“**Work**” means all required labor, articles, materials, supplies, goods, and/or services constituting the subject matter of this Subcontract.

### SECTION I – GENERAL PROVISIONS

#### ACCEPTANCE OF SUBCONTRACT TERMS AND CONDITIONS

- (a) This Subcontract, including any and all attachments, documents, and clauses incorporated by reference, constitutes the entire agreement between the Parties and integrates, merges, and supersedes any prior offers, negotiations, representations, communications, understandings, and agreements (including any letter contract, if applicable) concerning the subject matter of this Subcontract. Notwithstanding the foregoing, any representations and certifications which Seller made in advance of this Subcontract, such as through its proposal to the Subcontract and/or contained in the System for Award Management prior to or on the date of the Subcontract award to Seller, are incorporated into the Subcontract. Additionally, Seller through the performance of any work associated with this subcontract verifies that any written size and socioeconomic status representations submitted are current, accurate, and complete as of the date of the offer for subcontract in accordance with FAR 52.219-9(c)(2)(i), or Sellers representation contained in SAM.gov are current, accurate and complete as of the date of the offer for subcontract per FAR 52.219-9(c)(2)(ii).”
- (b) Seller’s acknowledgment (in hard copy or electronically), acceptance of payment, or notice or actual commencement of performance shall constitute Seller’s unqualified acceptance of both the terms and conditions of this Subcontract and any terms and conditions incorporated into this Subcontract by reference.

**BAE Systems, Inc. Proprietary Information**

*The information contained herein is the private property of BAE Systems, Inc. that is being made available to the recipient under the terms of a nondisclosure agreement or by other special arrangement. It may not be used, in whole or in part, except for the limited purpose for which it has been furnished. It may not be distributed or reproduced, except as specifically authorized by BAE Systems, Inc. and with this legend conspicuously attached. This information is exempt from public disclosure under 5 U.S.C. 552(b)(4), and its use by Government personnel is subject to the restrictions imposed by 18 U.S.C. 1905*

**Copies are uncontrolled. Reference the Business Process Library (BPL) for the correct version.**

# Terms and Conditions – Other Transactional Authority (OTA) Commercial

## General Provisions

- (c) Unless expressly accepted in writing, additional or differing terms or conditions proposed by Seller, or included in Seller's acknowledgment, are objected to and shall have no binding effect upon either Party.

### APPLICABLE LAWS

- (a) Seller warrants that all Work performed under this Subcontract will comply with: (1) all applicable Federal, State, local, and municipal laws, including, but not limited to, any statute, regulation, rule, ordinance, judgment, decree, order, license requirements, or permit requirements applicable to Seller's performance of this Subcontract; and (2) Buyer's "Supplier Guiding Principles," which are contained in Section III of this document. Seller shall execute and deliver all documents as may be required to effect or evidence such compliance.
- (b) Seller shall comply with all requirements and obligations relating to its employees under all Federal, State, local, and municipal laws including, but not limited to, employers' obligations under laws relating to: income tax withholding and reporting; civil rights; equal employment opportunity; discrimination on the basis of age, sex, race, color, religion, disability, national origin, or veteran status; overtime; minimum wage; social security contribution and withholding; unemployment insurance; employer's liability insurance; workers' compensation; veteran's rights; and all other employment, labor, or benefits related laws, including those specific to government contractors (e.g., 41 CFR 60-300.5 and 41 CFR 60-741.5).
- (c) Seller shall pay any fines or penalties imposed for any violations based on Seller's failure to comply with any Federal, State, local, and municipal laws and Seller agrees to indemnify Buyer against all damages, costs, losses, charges, expenses or liabilities caused by or arising out of any breach by Seller of any applicable provision of any Federal, State, local, and municipal laws.
- (d) Buyer may make a reduction of corresponding amounts (in whole or in part) in the price of this Subcontract or any other contract between Buyer and Seller, and/or may demand from Seller payment (in whole or in part) of corresponding amounts if:
  - (1) Buyer's contract price or fee is reduced;
  - (2) Buyer's costs are determined to be unallowable;
  - (3) any fines, penalties, withholdings, or interest are assessed against Buyer; or
  - (4) Buyer incurs any other costs or damages, as a result of any violation of applicable Federal, State, local and municipal laws by Seller, its officers, employees, agents, or subcontractors at any tier. Seller shall promptly pay amounts to Buyer so demanded.

### ASSIGNMENT AND SUBCONTRACTING

- (a) Seller shall not assign its rights or obligations under this Subcontract without Buyer's prior written consent. Any purported assignment without Buyer's written consent shall be void. Buyer's consent shall not be deemed to relieve Seller of its obligations to comply fully with the requirements of this Subcontract.
- (b) Seller shall neither subcontract: (1) all or substantially all of this Subcontract; or (2) for the design, development, manufacture, or procurement of any portion of the Work to be performed under this Subcontract without Buyer's prior written consent. This limitation does not apply to Seller's purchase of standard commercial supplies or raw material.
- (c) Seller shall promptly replace any Subcontractor whose performance is unsatisfactory. Further, Seller's subcontracts shall incorporate applicable terms and conditions, including appropriate flowdown clauses from: The Federal Acquisition Regulation ("FAR"); any agency regulation that implements or supplements the FAR (e.g., the Department of Defense FAR Supplement ("DFARS")); and agency specific clauses. Seller further agrees to select, if applicable, Subcontractors (including vendors or suppliers) on a competitive basis to the maximum extent practicable. Seller shall not enter into any subcontract under this Subcontract that provides for payment on a cost-plus-a-percentage-of-cost basis.

# Terms and Conditions – Other Transactional Authority (OTA) Commercial

## General Provisions

- (d) Notwithstanding the foregoing, Seller may, without Buyer's written consent, assign rights to be paid amounts due, or to become due, under this Subcontract to a financing institution if Buyer is promptly furnished a signed copy of such assignment reasonably in advance of the due date for payment of any such amounts. Amounts assigned shall be subject to setoff or recoupment for any present or future claims of Buyer against Seller. Buyer shall have the right to make settlements and/or adjustments in the price of this Subcontract without notice to any assignee financing institution.

### CHANGES

- (a) Changes in the terms and conditions of this contract may be made only by written agreement of the Parties.
- (b) Buyer's Supply Management Representative ("SMR") for this Subcontract (as indicated on the face of this Subcontract) has the sole authority to make changes in or modifications to this Subcontract and to affect any and all deviations (by way of addition or deletion) from Work specified herein. All contractual direction, in order to be valid, must be written and signed by the SMR, or, if expressly authorized in writing from the SMR, their authorized representative. Any work deviating from the Work specified in the Subcontract performed by Seller without written contractual direction from the SMR or, if expressly authorized in writing from the SMR, their authorized representative shall be at the Seller's cost and risk. Buyer reserves the right to substitute or change the SMR or their contact information at any time and notification will be sent to Seller.
- (c) Buyer engineering and technical personnel may from time-to-time render assistance or give technical advice or discuss or effect an exchange of information with Seller's personnel concerning the Work performed in support of this Subcontract. No such action shall be deemed to be a change in or modifications to this Subcontract.
- (d) Except as otherwise provided herein, all notices to be furnished by Seller to Buyer shall be in writing and sent to Buyer's SMR. The preferred method of delivery for any notices under this Subcontract shall be via electronic mail sent to the SMR in this Subcontract.

### CHANGE IN CONTROL OF SELLER / PLACE OF PERFORMANCE

- (a) Prior to a potential change of control of Seller, and at least ninety (90) days prior to the proposed effectiveness of such change of control, Seller shall promptly notify Buyer in writing thereof, and provide Buyer with information on the potential new controlling party, including information on such party and the transaction as Buyer may request, subject to applicable law and confidentiality requirements.
- (b) If Seller enters into a proceeding related to bankruptcy, whether voluntary or involuntary, Seller shall promptly furnish written notice of the bankruptcy to Buyer. This notification shall include the date on which the bankruptcy petition was filed and the identity of the court where the bankruptcy petition was filed.
- (c) If Seller intends to or does change the place of performance of Work under this Subcontract from a location in the United States to a location outside the United States, Seller shall provide to Buyer a notice of such intent to change the place of performance at least six months in advance of the occurrence of any such change.

### CHOICE OF LAW

This Subcontract shall be governed by, construed, and enforced in accordance with the laws of the State of Delaware, without regard to its conflict of law's provisions. The 1980 United Nations Convention on Contracts for the International Sale of Goods and its related instruments shall not apply to this Subcontract. Notwithstanding the foregoing, any provision in this Subcontract that is:

- (a) Incorporated in full text or by reference from FAR,
- (b) Incorporated in full text or by reference from any agency regulation that implements or supplements the FAR, or

# Terms and Conditions – Other Transactional Authority (OTA) Commercial

## General Provisions

- (c) Substantially based on any such agency regulation or FAR provision, shall be interpreted according to the federal common law of government contracts as construed and interpreted by federal judicial bodies, boards of contract appeals, and quasi-judicial agencies of the federal Government.

### CLASSIFIED INFORMATION

In the event this Subcontract requires access to classified information, Seller, at its sole expense, agrees to comply with all laws and regulations of the United States related to such classified requirements, including obtaining all required authorizations from the U.S. pursuant to, among other requirements, those set forth in the National Industrial Security Program Operating Manual (“NISPOM”) and any specific agency supplements to the NISPOM or other classified requirements as directed by Buyer.

### COMMUNICATION WITH BUYER’S CUSTOMER

Buyer shall be solely responsible for all liaison and communication with Buyer’s Customer, including the Government, as it affects the applicable Prime Contract, this Subcontract, and any related contract or agreement. Seller shall not act upon directions given to it by Buyer’s Customer. If Seller receives directions from Buyer’s Customer, Seller will immediately notify Buyer, provide all material information regarding the directions received, and obtain written authorization from Buyer prior to taking any action based on Buyer’s Customer’s directions. This section does not restrict Seller from communicating with the Government with respect to:

- (a) Matters Seller is required by law or regulation to communicate to the Government;
- (b) Fraud, waste, or abuse communicated to a designated investigative or law enforcement representative of a federal department or agency authorized to receive such information;
- (c) Any matter for which this Subcontract expressly provides for direct communication by Seller with Buyer’s Customer; or
- (d) Any material matter pertaining to payment or utilization. It is further understood that both Parties may have prior or future relationships with Buyer’s Customer and, therefore, neither Party will be restricted hereunder from initiating communications with Buyer’s Customer with respect to any matter that is unrelated to this Subcontract.

### COUNTERFEIT WORK

- (a) The following definitions apply to this section:

- (1) “Counterfeit Work” means Work that:

- (A) is or contains unlawful or unauthorized reproductions, substitutions, or alterations that have been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified part from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer;
- (B) is or contains items misrepresented as having been designed and/or produced under an approved system or other acceptable method; or
- (C) has reached a design life limit or has been damaged beyond possible repair, but is altered and misrepresented as acceptable. Unlawful or unauthorized substitution includes used Work represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.

- (2) “Suspected Counterfeit Work” means Work by which credible evidence provides reasonable doubt regarding the authenticity of the Work. Credible evidence includes, without limitation, visual inspection, testing, or evaluation of the Work.

- (b) Seller shall not deliver Counterfeit Work or Suspected Counterfeit Work to Buyer under this Subcontract.

# Terms and Conditions – Other Transactional Authority (OTA) Commercial

## General Provisions

- (c) Seller shall only purchase products to be delivered or incorporated as Work to Buyer directly from the Original Component Manufacturer (“OCM”)/Original Equipment Manufacturer (“OEM”), or through an OCM/OEM authorized distributor chain. Such products shall not be acquired from independent distributors or brokers unless approved in advance in writing by Buyer.
- (d) Seller shall immediately notify Buyer with the pertinent facts if Seller becomes aware or suspects that it has delivered any Counterfeit Work or Suspected Counterfeit Work. Seller shall quarantine Counterfeit Work or Suspected Counterfeit Work and make them available for investigation by Buyer and/or the Government. When requested by Buyer, Seller shall provide Buyer with OCM/OEM documentation that authenticates traceability of the parts, components, or equipment to the applicable OCM/OEM. Seller, at its own expense, shall provide reasonable cooperation to Buyer in conducting any investigation regarding the delivery of Counterfeit Work or Suspected Counterfeit Work under this Subcontract.
- (e) In the event Work delivered under this Subcontract constitutes or includes Counterfeit Work, Seller shall promptly replace such Counterfeit Work with genuine and authentic Work conforming to all requirements of this Subcontract. Seller shall be solely liable for all costs relating to the inclusion, removal, and replacement of the Counterfeit Work, including without limitation Buyer’s costs of removing the Counterfeit Work, reinserting or installing replacement components, and any testing necessitated by the reinsertion or reinstallation of components after the Counterfeit Work has been exchanged. Buyer shall be under no obligation to return suspect or confirmed Counterfeit Work. The remedies contained in this paragraph are in addition to any other remedies Buyer may have at law, equity, or under other provisions of this Subcontract.
- (f) Seller shall maintain counterfeit risk mitigation processes in accordance with industry recognized standards. Seller shall comply with the requirements set forth in DFARS 252.246-7007, “Contractor Counterfeit Electronic Part Detection and Avoidance System,” and DFARS 252.246-7008, “Sources of Electronic Parts,” if: (1) this Subcontract is in support of a prime contract with the Department of Defense or any subcomponent thereof; and (2) this Subcontract is for electronic parts or assemblies containing electronic parts, regardless of whether those parts or assemblies are commercial in nature. DFARS 252.246-7008 shall not apply if the Seller is the original manufacturer of the electronic part. Buyer may audit and/or inspect, Seller’s counterfeit part processes and supporting documentation at any time before or after delivery of the Work ordered hereunder.
- (g) This section applies in addition to, and is not altered, changed, or superseded by, any quality provision, specification, statement of work, or other provision included in this Subcontract addressing the authenticity of Work. To the extent such provisions conflict with this section, this section prevails.
- (h) Seller shall include this section in its entirety, or an equivalent provision, in all lower-tier subcontracts for the delivery of items that will be furnished to, or included in Work furnished to, Buyer under this Subcontract.

## CYBERSECURITY

Seller shall comply with DFARS 252.204-7012(DEC 2019), Safeguarding Covered Defense Information and Cyber Incident Reporting, and any other cybersecurity requirements applicable to this Subcontract. Buyer reserves the right to audit and assess, including through an independent third-party auditor, Seller’s compliance with DFARS 252.204-7012, the Cybersecurity Maturity Model Certification levels, NIST SP 800-171(NOV 2020) requirements, and/or any other cybersecurity requirements applicable to this Subcontract. Seller, upon Buyer’s request, shall certify its cybersecurity level. Failures by Seller to comply with these requirements shall be grounds for termination for default. Unless otherwise stated herein, the contractor will comply with, and flow down to its subcontractors, the requirements of DoDI 5200.48, for the designation, marking, protection, processing, and dissemination of controlled unclassified information when generating or receiving CUI data or information.

## DIMINISHING MANUFACTURING SOURCES AND MATERIAL SHORTAGES/LIFETIME BUY

- (a) At any time during the life of this Subcontract, if Seller becomes aware of diminishing manufacturing sources or material shortages related to any Work to be provided under this Subcontract, Seller shall immediately notify Buyer in writing.
- (b) Seller shall provide Buyer with a “Last Buy Notice” at least twelve (12) months prior to any action to stop production of, or discontinue, any Work purchased under this Subcontract. Buyer may place additional orders for such Work.

# Terms and Conditions – Other Transactional Authority (OTA) Commercial

## General Provisions

### DISPUTES

- (a) Any dispute that arises under or is related to this Subcontract and which relates to a matter that gives Buyer recourse against the Government may be resolved, by agreement of the parties, in accordance with the Disputes clause of the Prime Contract as follows:
- (1) Seller will give Buyer a fully supported written claim concerning any such dispute within five (5) years after the claim accrues or a shorter period if mandated for a claim under the Disputes clause of the Prime Contract, but in no event later than final payment under this Subcontract, or Seller shall be barred from any remedy for such claim;
  - (2) Seller will cooperate fully with Buyer in prosecuting any such dispute and will be bound by the outcome unless:
    - (A) Buyer does not afford Seller a reasonable opportunity to participate in the resolution of the dispute,
    - (B) without Seller's written consent, Buyer settles or takes other action to prejudice Seller's rights concerning the dispute, or
    - (C) Buyer, having determined to discontinue its own prosecution of the dispute, does not afford Seller an opportunity to continue to prosecute the dispute in Buyer's name.
  - (3) If the Parties agree to prosecute Seller's claim under this paragraph (a), for any such claim of more than \$100,000, Seller shall submit with the claim a certification to Buyer and, through Buyer, to the contracting officer for the Prime Contract that:
    - (A) the claim is made in good faith,
    - (B) the supporting data are accurate and complete to the best of Seller's knowledge and belief, and
    - (C) the amount requested accurately reflects the contract adjustment for which Seller believes it is entitled under the Subcontract, and underlying Prime Contract; furthermore, such certification shall be executed by a person duly authorized to bind Seller with respect to the claim, and Seller shall indemnify and hold Buyer harmless from damages, judgments, costs (including reasonable attorneys' fees), and other liabilities arising from any breach of such certification or any violation of the Contract Disputes Act of 1978 (41 U.S.C. § 7103(c)(2)) or any violation of common law or statutory prohibitions against misrepresentations, fraud or false statements.
  - (4) Buyer and Seller will each bear its own costs of prosecuting any such dispute;
  - (5) If the Parties do not agree to proceed in accordance with this paragraph (a), the dispute will be decided in accordance with paragraph (b); and
  - (6) Nothing in this Subcontract grants Seller a direct right of action against the United States under the Disputes clause of the Prime Contract.
- (b) All other disputes, controversies, or claims ("Disputes") arising out of or in connection with this Subcontract, or the breach, termination, or invalidity thereof, shall be subject to this paragraph:
- (1) First, the Dispute shall be submitted in writing to the other Party. The Parties, at the senior management level or other such ascending levels of management of the respective Parties, agree to enter into good faith negotiations to resolve Disputes.
  - (2) If a Dispute cannot be resolved to both Parties' mutual satisfaction, after good faith negotiations, either Party may bring suit only in the state or federal court located in the State of Colorado. Both Parties hereby irrevocably consent to the personal jurisdiction of the state and federal courts located in the State of Colorado for any Dispute arising out of or in connection with this Subcontract.

# Terms and Conditions – Other Transactional Authority (OTA) Commercial

## General Provisions

- (3) To the maximum extent permitted by applicable law, each Party hereby irrevocably waives any right it may have to a trial by jury in respect to any Dispute arising out of or in connection with this Subcontract.
- (4) No lawsuit or action may be brought by Seller with respect to any Dispute arising out of or in connection with this Subcontract unless such lawsuit or action is initiated within the earlier of final payment under this Subcontract or one (1) year following the date of the occurrence of the event or facts giving rise to the Dispute. If any lawsuit or action is initiated after final payment or more than one (1) year following the date of the occurrence of the event or facts giving rise to the Dispute it shall be considered waived, time-barred, and precluded by operation of this clause.
- (c) Pending final resolution or settlement of any Dispute arising under this Subcontract, Seller shall proceed diligently with performance as directed by Buyer.

## ELECTRONIC CONTRACTING

The Parties agree that if this Subcontract is transmitted electronically neither Party shall contest the validity of this Subcontract, or any acknowledgment thereof, on the basis that this Subcontract or the acknowledgment contains an electronic signature.

## EXPORT CONTROL

- (a) Seller shall comply with all applicable U.S. export control and economic sanctions laws and regulations including, but not limited to, the requirements of:
  - (1) the International Traffic in Arms Regulations (“ITAR”) (22 C.F.R. 120-130) as amended;
  - (2) the Export Administration Regulations (“EAR”) (15 C.F.R. 730-774) as amended;
  - (3) the Office of Foreign Assets Control Regulations (31 C.F.R. 501-598) as amended; and (4) Department of Defense Directive 5230.25, Withholding of Unclassified Technical Data from Public Disclosure (collectively, the “Export Control Laws”). Seller’s responsibility to comply with all applicable Export Control Laws exists independent of, and is not established or limited by, this section.
- (b) Seller shall not export, re-export, transfer, disclose, or otherwise make accessible any export controlled technical data and/or hardware, to include transfer to foreign persons employed by, associated with, or under contract to Seller or Seller’s Subcontractors, without the authority of an export license, agreement, or exemption or exception in accordance with applicable Export Control Laws. Seller shall not provide a defense service, as that term is defined by the Export Control Laws, using any or all of Buyer’s technical data and/or hardware.
- (c) Seller shall notify Buyer if any deliverable under this Subcontract is restricted by any applicable Export Control Law. Before providing Buyer any such deliverable, Seller shall notify Buyer in writing of the correct export jurisdiction and classification of the controlled technical data and/or hardware (e.g., whether the deliverable is subject to the ITAR or EAR) and shall notify Buyer in writing of any changes to the export jurisdiction or classification of the controlled technical data and/or hardware. Seller represents that an official authorized to bind the Seller has determined that the Seller, or the designer, manufacturer, supplier, or other source, has properly determined the export jurisdiction and classification of the controlled item, data, or service.
- (d) If Seller is engaged in the business of exporting, manufacturing (whether exporting or not), or furnishing an/a item, data, or service subject to the ITAR, Seller represents that it is registered with the U.S. Department of State, Directorate of Defense Trade Controls, as required by the ITAR, and it maintains an effective export/import compliance program in accordance with the ITAR. If Seller is engaged in the business of exporting, manufacturing (whether exporting or not), or furnishing an/a item, data, or service subject to the EAR, Seller represents that it maintains an effective export/import compliance program in accordance with the EAR. Upon Buyer’s request, Seller shall promptly provide Buyer with copies of policy and procedure documentation evidencing Seller’s effective export/import compliance program in accordance with the ITAR and/or EAR, as relevant.

# Terms and Conditions – Other Transactional Authority (OTA) Commercial

## General Provisions

- (e) Where Seller is party to or a signatory under a Buyer export license or agreement, Seller shall comply with such license or agreement and immediately notify Buyer in writing of any changed circumstances relating to Seller's export/import activities that could affect Seller's performance of this Subcontract including, but not limited to, ineligibility to export/import, a violation or potential violation of the Export Control Laws, or the initiation or existence of a U.S. or non-U.S. government investigation into Seller's export/import practices. Seller shall provide Buyer, at Seller's expense, all information and documentation as may reasonably be required by Buyer for Buyer to prepare and submit any export license or agreement application relevant to this Subcontract.
- (f) Upon completion of performance of this Subcontract, Seller or its Subcontractors shall, as directed by Buyer, return or destroy all export controlled technical data, technology, hardware or other items. Seller shall provide a certificate of destruction for all destroyed items.
- (g) Seller shall include paragraphs (a) through (f), and this paragraph (g), of this section or equivalent provisions in all lower-tier subcontracts entered into by Seller to perform Work required by this Subcontract.
- (h) Seller shall indemnify and hold Buyer harmless from and against any and all penalties, fines, losses, costs, claims, causes of action, damages, liabilities, and expenses, including, but not limited to, attorneys' fees, all expenses of litigation and/or settlement, and court costs, arising from any failure of Seller, including its lower-tier subcontractors, to comply with this section.

### EXTRAS

Work shall not be supplied in excess of quantities specified in this Subcontract. Seller shall be liable for handling charges and return shipment costs for any excess quantities, unless agreed to in writing by Buyer.

### FORCE MAJEURE/EXCUSABLE DELAY

- (a) Neither Party shall be liable for damages for delay in delivery arising out of causes beyond its reasonable control and without its fault or negligence including acts of God or of the public enemy, acts of any U.S. or foreign governmental authority, fires, floods, epidemics, quarantine restrictions, strikes, embargoes, or unusually severe weather.
- (b) If the delay in delivery is caused by the delay of a Subcontractor of Seller and if such delay arises out of causes beyond the reasonable control of both Seller and the Subcontractor, and without fault or negligence of either of them, Seller shall not be liable to Buyer in damages unless the articles or services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit Seller to meet the required delivery schedule. Seller shall notify Buyer in writing within ten (10) days after the beginning of any such delay.

### FURNISHED PROPERTY

- (a) Buyer may provide to Seller property owned by either Buyer or Buyer's Customer ("Furnished Property"). Furnished Property shall be used only for the performance of this Subcontract.
- (b) Title to Furnished Property shall remain in Buyer or Buyer's Customer. Seller shall clearly mark (if not so marked) Furnished Property to show ownership.
- (c) Except for reasonable wear and tear, Seller assumes all risk of loss, destruction, or damage to Furnished Property, except reasonable wear and tear, while in Seller's possession, custody, or control. Seller shall inventory, manage, maintain, and preserve Furnished Property in accordance with good commercial practices. Seller shall immediately notify Buyer if Furnished Property is lost, damaged, or destroyed.
- (d) As directed by Buyer and/or upon completion, termination, or cancellation of this Subcontract, Seller shall submit, in an acceptable form, an inventory list of Furnished Property in Seller's possession and shall promptly deliver Furnished Property in Seller's possession, to the extent such property has not been incorporated into Work delivered to Buyer, to Buyer or make such other disposal as may be directed by Buyer. Particularly, Seller shall promptly return to Buyer all drawings,

# Terms and Conditions – Other Transactional Authority (OTA) Commercial

## General Provisions

specifications, and other data furnished by Buyer in connection herewith, together with all copies or reprints then in Seller's possession and control. Further, Seller shall thereafter make no further use of nor disclose to others any such drawings, specifications, data, or documents, or any information derived therefrom, without Buyer's prior written consent.

- (e) Buyer shall have the right to enter Seller's premises at reasonable times to inspect Furnished Property and Seller's records pertaining to such property. At the request of Buyer, Seller shall execute any documents including, but not limited to, financial statements, required by Buyer to protect Buyer's and/or Buyer's Customer's interest in Furnished Property.
- (f) Seller's obligations under this section shall survive termination or completion of this Subcontract until such time that Seller shall deliver Furnished Property to Buyer or be relieved of this responsibility as directed in writing from Buyer.
- (g) The Government Property clause, if contained in Section II of this document, shall apply in lieu of this section with respect to Government-furnished property, or other property to which the Government may take title under this Subcontract. Seller shall provide Buyer immediate notice of any disapproval, withdrawal of approval, or nonacceptance by the Government of its property control system.

### GRATUITIES/KICKBACKS/BRIBERY/ANTI-BOYCOTT

- (a) Seller warrants and certifies that neither Seller (including any parent, subsidiary, or affiliate of Seller) nor any of Seller's employees, agents, or representatives (including any other person or entity working for or on behalf of any of the foregoing) (collectively, "Seller Parties") has offered or given any kickback or gratuity to Buyer's employees, agents, or representatives with a view toward securing this Subcontract or securing favorable treatment with respect thereto.
- (b) Seller warrants and certifies that Seller and Seller Parties will comply with the provisions and requirements of the U.S. Foreign Corrupt Practices Act of 1977 as amended, and all other anti-corruption and/or anti-bribery laws, regulations, and requirements of any jurisdiction applicable to Seller.
- (c) By accepting this Subcontract, Seller certifies and represents that Seller and Seller Parties have 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. 51-58) as amended, both of which are incorporated herein by reference, except that paragraph (c)(1) of FAR 52.203-7 shall not apply.
- (d) Seller shall comply, to the extent applicable, with U.S. laws regarding boycotts, embargoes, and economic sanctions against certain countries, entities, and individuals.

### HAZARDOUS MATERIALS AND DANGEROUS GOODS

Packaging, packing, marking, labeling, shipping paper designations and certifications, handling, and movement of materials ordered herein shall be in accordance with all relevant and applicable U.S. laws and regulations, including 49 C.F.R., Subt. B, Ch. I, Subch. C, and all international regulations (e.g., International Air Transport Association ("IATA") or International Maritime Dangerous Goods ("IMDG")) covering shipments of dangerous goods or hazardous materials.

#### (a) Chemical Substances

Seller represents that each chemical substance constituting or contained in Work sold or otherwise transferred to Buyer hereunder is on the list of chemical substances compiled and published by the U.S. Environmental Protection Agency ("EPA") pursuant to the Toxic Substances Control Act (15 U.S.C. 2601-2692) as amended.

#### (b) Material Safety Data Sheet

- (1) Prior to shipping hazardous materials (solids, liquids, cryogenic liquids, gases) hereunder, Seller shall provide Buyer with a copy (electronic submittal preferred) of the Material Safety Data Sheet ("MSDS") for each material, inclusive of all required information as described in 29 C.F.R. 1910.1200 as amended. Seller also shall include one (1) hard copy of the MSDS with the shipment of the material(s).

# Terms and Conditions – Other Transactional Authority (OTA) Commercial

## General Provisions

- (2) Definitions - A hazardous material is a material which: (A) is defined as a hazardous material by the Occupational Safety and Health Act of 1970, U.S. Department of Transportation, EPA, IATA, IMDG, or any other federal, state, or local environmental, health, or safety agency; (B) in the course of normal operations or foreseeable emergencies, may produce dusts, gases, vapors, mists, fumes, or smoke; or (C) if used without special precautions, would constitute a health or physical hazard to humans.
- (3) Where two (2) or more hazardous materials are supplied separately or in kit form for the purpose of combining such materials to form an end compound, which is the result, in whole or in part, of a chemical reaction, Seller shall provide an MSDS for the end compound as well as for each component part.
- (4) Proprietary or trade secret information about products containing a hazardous material, as defined above, shall be disclosed as required by 42 U.S.C. 11043, 40 C.F.R. 372.45, and 29 C.F.R. 1910.1200(i), as amended.
- (5) Mandatory resubmission of an MSDS is required with each change in:
  - (A) formulation of the material that affects its hazardous characteristics;
  - (B) information regarding the material's hazardous characteristics; and
  - (C) information regarding handling procedures for the material.

### (c) Hazardous Materials Incorporated into Work

For materials that do not require an MSDS, Seller agrees to submit a list, as well as any other information requested, to Buyer of the hazardous materials, including those considered as ingredients, with their common chemical names and percentage of content of each to be incorporated into Work provided under this Subcontract. A statement shall be made to the effect that the degree of toxicity will not be increased by making any change in the composition without first advising Buyer. All shipments CONTAINING hazardous materials shall be clearly marked in accordance with all applicable federal, state, and local regulations.

### (d) Ozone Depleting Substances

Seller shall label products which contain or are manufactured with ozone depleting substances in the manner and to the extent required by 40 C.F.R. Part 82, Subpart E, as follows:

**WARNING:** Contains (or manufactured with, if applicable) \* \_\_\_\_\_, a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere.

\*Seller shall insert the name of the substance(s).

### (e) Radioactive Materials

Seller shall notify Buyer, in writing, sixty (60) days prior to the delivery of, or prior to completion of any servicing required by this Subcontract of, items containing either:

- (1) radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954 as amended, as set forth in Title 10 of the Code of Federal Regulations, in effect on the date of this Subcontract; or
- (2) other radioactive material not requiring specific licensing in which the specific activity is greater than .002 microcuries per gram or the activity per item equals or exceeds .01 microcuries. Such notice shall specify the part or parts of the items which contain radioactive materials, a description of the materials, the name and activity of the isotope, the manufacturer of the materials, and any other information known to Seller which will put users of the items on notice as to the hazards involved (OMB No. 9000-0107).

# Terms and Conditions – Other Transactional Authority (OTA) Commercial

## General Provisions

If there has been no change affecting the quantity of activity, or the characteristics and composition of the radioactive material from deliveries under this Subcontract or prior subcontracts, Seller may request that Buyer waive this notice requirement. Any such request shall:

- (1) be submitted in writing;
- (2) state that the quantity of activity, characteristics, and composition of the radioactive material have not changed; and
- (3) cite the subcontract number on which the prior notification was submitted and the Buyer party to which it was submitted. All items, parts, or subassemblies which contain radioactive materials in which the specific activity is greater than 0.002 microcuries per gram or the activity per item equals or exceeds 0.01 microcuries, and all containers in which such items, parts, or subassemblies are delivered to Buyer, shall be clearly marked and labeled as required by the latest revision of MIL-STD 129 in effect on the date of this Subcontract. This paragraph (e) shall be inserted in all Buyer subcontracts for radioactive materials meeting the criteria in the first sentence of this paragraph.

### HEADINGS/SUBHEADINGS

The headings and subheadings used in this Subcontract are inserted for the convenience of the Parties and shall not define, limit, or describe the scope or the intent of the provisions of this Subcontract.

### INDEMNIFICATION

Seller shall be responsible for, and indemnify, defend, and hold harmless Buyer from and against, any costs or expenses, including attorney's fees, as a result of:

- (a) death or bodily or personal injury to any person or destruction or damage to any property (including loss of use);
- (b) contamination of, or adverse effects on the environment; or
- (c) any actual or alleged violation of any law, statute, ordinance, rule, regulation or order, caused by Seller's or Seller Parties' negligent or willful acts or omissions in the performance of Work or by the breach of any term or provision set forth in the Subcontract. This indemnification shall not include such injuries to any person(s) or damage to or destruction of any property due to the sole negligence or omission of Buyer or its employees.

### INDEPENDENT CONTRACTOR RELATIONSHIP

Seller is an independent contractor in all its operations and activities under this Subcontract, and this Subcontract does not create an employment, agency, representative, partnership, or joint venture relationship between the Parties. The employees used by Seller to perform Work under this Subcontract shall be Seller's employees exclusively without any relation whatsoever to Buyer. Seller shall be solely responsible for all employment-related wages, benefits, FICA, federal and state unemployment and other taxes and payments as require by law, for itself and any persons it employs. Seller shall be solely responsible for its own financial obligations to third parties and to its employees and contractors. Seller agrees that it shall not be covered by any Buyer insurance or benefits.

### INFORMATION OF BUYER

- (a) Information provided by Buyer to Seller remains the property of Buyer. Seller agrees to keep confidential and otherwise protect from disclosure all information obtained by Seller from Buyer in connection with this Subcontract and identified by Buyer as confidential or proprietary including, but not limited to, equipment, tools, gauges, patterns, designs, drawings, engineering data, and computer programs and software, as well as information subject to a non-disclosure agreement between the Parties. Unless otherwise expressly authorized by Buyer, Seller shall use such information, and any other information provided by Buyer to Seller, only in the performance and for the purposes of this Subcontract. Seller shall maintain data protection processes and systems sufficient to adequately protect Buyer's information, including but not

# Terms and Conditions – Other Transactional Authority (OTA) Commercial

## General Provisions

limited to encryption if transmitted via the Internet or during electronic storage if potentially accessible by the Internet or otherwise by non-authorized users, and shall comply with any law or regulation applicable to such information.

- (b) If Seller becomes aware of any compromise of information provided by Buyer to Seller (an “Incident”), Seller shall take appropriate immediate actions to investigate and contain the Incident and any associated risks and shall promptly notify Buyer of the Incident. As used in this section “compromise” means that any information provided by Buyer has been exposed to unauthorized access, inadvertent disclosure, known misuse, loss, destruction, or alteration other than as required to perform Work. Seller shall additionally provide its reasonable cooperation to Buyer in any investigation Buyer may conduct regarding the nature and scope of an Incident. Any costs that may be incurred by Buyer or Seller for investigative or remedial actions related to an Incident shall be borne by Seller.
- (c) Upon Buyer’s request, and in any event upon the completion or cancellation of this Subcontract, Seller shall return to Buyer in good condition (reasonable wear only excepted) all confidential or proprietary information provided by Buyer to Seller or make such other disposition as may be directed by Buyer. In all subcontracts issued by Seller for performing Work, Seller shall, only with Buyer’s prior written consent, be permitted to disclose Buyer’s information under the same obligations as are contained in this section.
- (d) Failure to comply with the provisions of this section may be cause for Termination for default of this Subcontract and Seller shall be liable to Buyer for any loss of Buyer’s confidential or proprietary information provided by Buyer to Seller. Additionally, Seller expressly agrees that, upon Seller’s breach or threatened breach of this section, there is no adequate remedy at law and that Buyer shall be entitled to injunctive relief, but such relief shall not be the exclusive remedy.
- (e) Prior to commencement of Work, Seller shall have a written agreement with all Seller personnel performing services hereunder sufficient to enable Seller to comply with this section.
- (f) The provisions in this section are in addition to and do not alter, change, or supersede any obligations contained in any non-disclosure agreement between the Parties.

### INFORMATION OF SELLER

Seller shall not provide any confidential or proprietary information to Buyer without prior execution of a non-disclosure agreement by the Parties. Buyer agrees to comply with all proprietary information markings and restrictive legends applied by Seller to anything provided under the non-disclosure agreement by the Parties. Buyer agrees not to use such information provided by Seller for any purposes except as provided under this Subcontract and agrees to keep confidential and otherwise protect from disclosure all information identified as confidential or proprietary and provided under the non-disclosure agreement by the Parties.

### INSPECTION OF WORK

- (a) Seller shall have and maintain a quality control and inspection system covering the Work. Buyer, its agents, and its customers reserve the right to inspect and test the Work at all times and places, including during the period of performance, and in any event before acceptance, but Buyer assumes no contractual obligation to perform any such inspection or test for the benefit of Seller. Buyer, its agents, and its customers also shall have the right to inspect the plant or plants of the Seller or any subcontractor of the Seller engaged in performance of Seller’s duties of the Subcontract. Seller shall provide all reasonable facilities and assistance for the safe and convenient performance of inspections or tests.
- (b) Any Work rejected by Buyer shall not thereafter be tendered for acceptance unless both the former rejection and Seller’s correction is disclosed. Buyer may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. When the defects in materials or services cannot be corrected by reperformance, Buyer may: (1) require Seller to take necessary action to ensure that future performance conforms to the Subcontract’s requirements; and (2) reduce the Subcontract price to reflect the reduced value of the Work. If the Seller fails to proceed with reasonable promptness to perform required replacement or correction at no additional cost to Buyer, Buyer may terminate the Subcontract for default and/or self-perform or contract the replacement or correction work and charge to the Seller or setoff any costs incurred that is directly related to the performance of such work.

# Terms and Conditions – Other Transactional Authority (OTA) Commercial General Provisions

## INSURANCE

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:<br>For Owned, Hired & Non-Owned<br>(bodily injury)<br>(property damage) | \$1,000,000 Combined Single Limits each accident  |
| Commercial General Liability (CGL):<br>Public Liability<br>(bodily injury)                            | \$1,000,000 each occurrence<br>\$2,000,000 aggregate  |
| Public Liability<br>(property damage)   | \$1,000,000 each occurrence<br>\$2,000,000 aggregate  |
| Employer's Liability:   | \$1,000,000 each accident/disease each employee/<br>disease policy limit  |
| Errors & Omissions:   | \$1,000,000 each claim<br>\$2,000,000 aggregate   |
| Products Liability:   | \$1,000,000 each occurrence<br>\$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<br>and Supplier's employee owned tools and equipment<br>brought onto BAE Systems/Customer Property |

- (a) 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.
- (b) 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.
- (c) All policies, including Workers Compensation, shall contain a Waiver of Subrogation in favor of BAE Systems.
- (d) Before commencing performance 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.

## INTELLECTUAL PROPERTY

- (a) Seller warrants that Work performed or delivered under this Subcontract shall not infringe or otherwise violate the intellectual property rights of any third-party in the U.S. or any foreign country. Except to the extent that the Government assumes liability therefore, Seller agrees to defend, indemnify, and hold harmless Buyer (and Buyer's affiliates and their respective directors, officers, employees, and agents) and Buyer's Customer or any subsequent owner from and against any claims, damages, losses, costs, and expenses, including attorneys' fees, arising out of any action by a third-party that is based

# Terms and Conditions – Other Transactional Authority (OTA) Commercial

## General Provisions

upon a claim that Work performed or delivered under this Subcontract infringes or otherwise violates the intellectual property rights of any third-party.

- (b) Seller's obligation to defend, indemnify, and hold harmless Buyer (and Buyer's affiliates and their respective directors, officers, employees, and agents) and Buyer's Customer or any subsequent owner under paragraph (a) of this section shall not apply to the extent FAR 52.227-1, "Authorization and Consent," applies to Buyer's Prime Contract for infringement of a U.S. patent, and Buyer and Buyer's Customer are not subject to any actions for claims, damages, losses, costs, and expenses, including attorneys' fees, by a third-party.
- (c) In addition to the Government's rights in data and inventions, Seller agrees that Buyer in the performance of its Prime Contract (or higher Tier Contract) obligation shall have an unlimited, irrevocable, paid-up, royalty-free right to make, have made, sell, offer for sale, use, execute, reproduce, display, perform, distribute (internally or externally) copies of, and prepare derivative works based upon, and authorize others to do any, some, or all of the foregoing, any and all inventions, discoveries, improvements, mask works, and patents as well as any and all data, copyrights, reports, and works of authorship conceived, developed, generated, or delivered in performance of this Subcontract.
- (d) All reports, memoranda, or other materials in written form, including machine readable form, prepared by Seller pursuant to this Subcontract and furnished to Buyer by Seller hereunder shall become the sole property of Buyer.
- (e) No other provision of this Subcontract, including but not limited to indemnity provisions herein, shall be construed to limit the liabilities or remedies of the parties under this section.

### NEW MATERIALS

Work to be delivered under this Subcontract shall consist of new materials, not used, reconditioned, remanufactured, or of such age as to impair such materials' usefulness or safety.

### NOTICE OF SUSPENSION OR DEBARMENT

Seller represents and warrants that as of the date of award of this Subcontract neither Seller nor Seller Parties have been suspended, debarred, or declared ineligible by any agency or Department of the Government. Seller further agrees to provide immediate notice to Buyer in the event of being suspended, debarred, or declared ineligible by any agency or Department of the Government, or upon receipt of a notice of proposed suspension or debarment from any agency or Department of the Government during performance of this Subcontract.

### ORGANIZATIONAL CONFLICT OF INTEREST

- (a) Seller warrants that, to the best of Seller's knowledge and belief, there are no relevant facts or circumstances which could give rise to an actual or potential organizational conflict of interest ("OCI"), as defined in FAR subpart 9.5, and that Seller has disclosed all such relevant information to Buyer. Seller agrees that if an actual or potential OCI is discovered after award of this Subcontract, Seller shall make a full disclosure in writing to the SMR or their authorized representative. Any such disclosure shall include a description of the actions which Seller has taken or proposes to take to avoid, mitigate, or neutralize the actual or potential OCI.
- (b) Buyer, in its sole discretion, may terminate this Subcontract for Convenience, in whole or in part, if it deems such termination necessary to avoid an actual or potential OCI. If Seller was aware of an actual or potential OCI prior to award, or discovered an actual or potential OCI after award, and did not disclose or misrepresented relevant information to Buyer, Buyer may terminate the Subcontract for default and/or pursue such other remedies as may be permitted by law, regulation or this Subcontract.
- (c) Seller shall include this section in its entirety, or an equivalent provision, in all lower-tier subcontracts.

### PACKAGING AND SHIPMENT

# Terms and Conditions – Other Transactional Authority (OTA) Commercial

## General Provisions

- (a) Unless otherwise specified, all Work shall be packed in accordance with the best available commercial practices and in compliance with applicable federal, state, and local transportation regulations. Seller shall reimburse Buyer for any expense incurred by Buyer as a result of improper preservation, packaging, packing, or marking. Unless otherwise specified, prices include all charges for packing, shipping, hauling, storage, and transportation to the point of delivery.
- (b) Seller shall ship all Work to the destination specified by Buyer in this Subcontract. Buyer reserves the right to specify the mode of shipment.
- (c) A complete packing list shall be enclosed with all shipments and, if a shipment completes the Subcontract, the packing list shall state “This shipment completes this Subcontract.” All shipping documents, shipping labels, packing sheets and lists, and Bills of Lading, as well as any interior and exterior containers, shall show full and complete information, where applicable, as to the names and addresses of consignor and consignee, Subcontract number, Subcontract line item number, dates of shipment, serial number of the item being shipped, and quantity.
- (d) Unless otherwise specified, if any transportation charges paid by Seller are subject to reimbursement, Seller shall show such charges on its invoice as a separate line item with the freight bill receipt attached accordingly.

## PAYMENTS, PRICES, AND TAXES

- (a) Invoices shall be submitted to Buyer not more frequently than once per month; notwithstanding the preceding, Seller shall issue separate invoices for each shipment of goods. Invoices shall be identified by a unique number on each invoice, contain the invoice date, be supported by documents in such form as Buyer may reasonably request, be signed and dated by Seller’s authorized representative verifying the amount claimed is consistent with the Subcontract prices and the Work for which payment is requested, and bear such other certification as may be required by law, regulation, or this Subcontract. Draft invoices will not be accepted. All invoices shall include full and complete information, where applicable, as to the amount of material shipped/description of the Work performed, Subcontract number, Subcontract line item number, dates of shipment, serial number of the item being shipped, and quantity. All invoices should further include the name and address of the Subcontractor, invoice date, amount previously billed, the amount of the new invoice, the Seller withheld amount (if any), and the total amount invoiced to date.
- (b) Payment terms as set forth in the Subcontract. Each payment made shall be subject to reduction for amounts which are found by Buyer or Seller not to have been properly payable, including based on a Buyer or Government audit of Seller’s invoices and other relevant substantiating documents and materials, and shall also be subject to reduction for overpayments. Seller shall promptly notify Buyer of any such overpayments and remit the amount of the overpayment, except as otherwise directed by Buyer. All payments are contingent on acceptance of Work by Buyer and Buyer’s Customer; however, no payment by Buyer under this Subcontract shall be construed to be an acceptance of improper, defective or unsuitable work.
- (c) Buyer shall have a right to recoup or setoff, as the case may be, against payments due or at issue under this Subcontract or any other agreement between the Parties.
- (d) Payment shall be deemed to have been made as of the date of mailing of Buyer’s payment or electronic funds transfer.
- (e) Unless otherwise specified, the Subcontract price includes, and Seller shall exclude the cost of, all federal, state, and local taxes, duties, tariffs, and similar fees imposed by any government. Seller’s prices further shall not include taxes, impositions, charges, and exactions for which Buyer has furnished an exemption certificate. Any taxes included in an invoice shall be itemized separately.
- (f) No adjustments to the prices, payments, or value of Work shall be made based on the fluctuation in currencies or rates of exchange, unless the Parties agree otherwise.

## PRECEDENCE

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

# Terms and Conditions – Other Transactional Authority (OTA) Commercial

## General Provisions

- (a) face of this Subcontract;
- (b) special terms and conditions for either time and material/labor hour type subcontracts or cost-reimbursement type subcontract (if applicable);
- (c) this document, including general provisions and the flowdown provisions incorporated and made a part of this Subcontract; and
- (d) other documents incorporated and made a part of this Subcontract, with such precedence as indicated on the face of this Subcontract.
- (e) any non-disclosure agreement between the Parties;

### PRIORITY RATING

If so identified, this Subcontract is a “rated order” certified for national defense use, and Seller shall follow all the requirements of the Defense Priorities and Allocation System Regulation (15 C.F.R. Part 700) as amended.

### PROHIBITED SOFTWARE

- (a) This section only applies to Work that includes the delivery of software (including software residing on hardware).
- (b) As used herein, “Prohibited License” means the General Public License (“GPL”), Lesser/Library GPL, Artistic License (e.g., PERL), Affero GPL, Apache license, Berkeley Software Distribution (“BSD”) license, MIT license, Mozilla Public License, Netscape Public License, Sun Community Source License, Sun Industry Standards License, or variations thereof including, without limitation, licenses referred to as “Free Software License,” “Open Source License,” “Public License,” or “GPL Compatible License.”
- (c) As used herein, “Prohibited Software” means software that incorporates or embeds in, or uses in connection with, as part of, bundled with, or alongside any:
  - (1) open source, publicly available, or “free” software, library, or documentation;
  - (2) software that is licensed under a Prohibited License; or
  - (3) software provided under a license that:
    - (A) subjects the delivered software to any Prohibited License,
    - (B) requires the delivered software to be licensed for the purpose of making derivative works or be redistributable at no charge, or
    - (C) obligates Buyer/Seller to sell, loan, license, sublicense, distribute, disclose, or otherwise make available or accessible to any third-party (i) the delivered software, or any portion thereof, in object code and/or source code formats, or (ii) any products incorporating the delivered software, or any portion thereof, in object code and/or source code formats.
- (d) Seller shall disclose to Buyer in writing all Prohibited Software that Seller intends to use or deliver in connection with this Subcontract, including a complete source code listing with a description of the operation of the software in English and machine-readable form together with complete copies of any licenses required to be accepted, and shall obtain Buyer’s prior written consent, which Buyer may withhold in its sole discretion, before using or delivering such Prohibited Software in connection with this Subcontract.

# Terms and Conditions – Other Transactional Authority (OTA) Commercial

## General Provisions

- (e) Seller agrees to defend, indemnify, and hold harmless Buyer (and Buyer's affiliates and their respective directors, officers, employees, and agents), Buyer's Customer, and Buyer's suppliers from and against any claims, damages, losses, costs, and expenses, including attorneys' fees, relating to use in connection with this Subcontract of, or the delivery of, Prohibited Software.

### RELEASE OF INFORMATION

Except as required by law, regulation or court order, or the terms elsewhere specified in this Subcontract, no public release of any information, or confirmation or denial of same, with respect to this Subcontract or the subject matter hereof, will be made by either party without the prior written consent of the other party, which consent shall not be unreasonably withheld. Seller shall not use "BAE Systems Space & Mission Systems Inc. (SMS)," "Space & Mission Systems," or any other trademark or logo owned by Buyer (or Buyer's affiliates), in whatever shape or form, without Buyer's prior written consent.

### RETENTION OF RECORDS

- (a) Unless a longer period is specified in this Subcontract or by law or regulation, Seller shall retain all records related to this Subcontract for a minimum of four (4) years from the date of final payment under this Subcontract, or as agreed upon by the Parties. Records related to this Subcontract include, but are not limited to, financial, proposal, procurement, specifications, production, inspection, test, quality, shipping and export, and certification records. At no additional cost and upon request, Seller shall timely provide access to such records to Buyer and/or Buyer's Customer.
- (b) At no additional cost and upon request, Seller shall provide information to Buyer to assist Buyer with its reporting requirements to Buyer's Customer (e.g., reporting requirements under FAR 52.204-10, Reporting Executive Compensation and First-Tier Subcontract Awards). In addition, Buyer has the obligation to report to the Government where there is credible evidence of waste fraud or abuse, or violations of law as noted in certain clauses in this Subcontract. Accordingly, the Seller acknowledges and agrees to abide by all reporting obligations under FAR 3.1003 and notify Buyer where the clause provides for such notification. This obligation does not prevent Seller from directly reporting any credible evidence it receives of waste, fraud, or abuse, or other violations of law, relating to the Subcontract directly to the Government.

### SEVERABILITY

The terms and conditions of this Subcontract are severable, and should any term or provision of this Subcontract be declared invalid or become inoperative for any reason such invalidity or failure shall not affect the validity of any other term or provision of this Subcontract.

### SELLER'S EMPLOYEES

All of Seller's employees shall have the requisite skill and experience, and any other certificates, licenses, or other qualifications required to perform the work assigned to them. Seller must provide, at Buyer's request, documentation to support the skill and experience or other requirements / qualifications of Seller's employees. If Buyer reasonably determines that any person employed by Seller is not performing the work in a proper and skillful manner, then at the written request of Buyer, Seller shall remove such person, and such person shall not be re-assigned to the work or this Subcontract without the prior written approval of Buyer. If Seller fails to remove such person or fails to furnish skilled and experienced personnel for the proper performance of the Work, Buyer may terminate this Subcontract for default.

### STOP WORK

Buyer may, at any time, by written notice to Seller, require Seller to stop all or part of the Work called for by this Subcontract for a period of up to ninety (90) days and for any additional period corresponding to a work stoppage directed by Buyer's Customer under the Prime Contract (the "Time Period"). Upon receiving such notice, Seller shall immediately comply with its terms and take all reasonable steps to avoid incurring any additional costs associated with the stopped work during the Time Period. Buyer will, prior to the end of the Time Period, either cancel the stop work order or terminate the Subcontract in whole or in part as permitted by this Subcontract. If a stop work order is issued, Buyer may consider an adjustment to the delivery schedule and/or price, provided Seller requests and provides justification for such adjustment within ten (10) days of the end of the Time Period.

# Terms and Conditions – Other Transactional Authority (OTA) Commercial

## General Provisions

### SURVIVABILITY

- (a) If this Subcontract expires, is completed, or is terminated, Seller shall not be relieved of those obligations contained in the following sections:

|                                     |                                     |                        |
|-------------------------------------|-------------------------------------|------------------------|
| Applicable Laws                     | Furnished Property                  | Prohibited Software    |
| Classified Information              | Indemnification                     | Release of Information |
| Communication with Buyer's Customer | Independent Contractor Relationship | Retention of Records   |
| Counterfeit Work                    | Information of Buyer                | Warranty               |
| Electronic Contracting              | Insurance                           |                        |
| Export Control                      | Intellectual Property               |                        |

- (b) Seller also shall not be relieved of those obligations contained in those Government flowdown provisions that by their nature should survive.

### TERMINATION FOR CONVENIENCE

- (a) Termination for Convenience of Buyer. Buyer may terminate this Subcontract, or any part hereof, for its convenience at any time and without cause. Upon notice from Buyer of such termination, Seller shall immediately stop all work terminated hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease such work. Subject to the terms of this Subcontract, the Seller shall be paid a percentage of the Subcontract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Seller can demonstrate to the satisfaction of Buyer, using its standard record keeping system, have resulted from the termination. Seller shall deliver to Buyer all data, drawings, specifications, reports, estimates, summaries, and other information and materials that have been completed or are in process on the date of termination for convenience. Seller shall not be paid for any work performed or costs incurred which reasonably could have been avoided. Seller shall continue to perform all work not terminated.
- (b) Termination for Convenience of Buyer's Customer. Buyer may terminate this Subcontract upon written notice to the Seller in the event Buyer's Prime Contract is terminated for convenience, in whole or in part, by Buyer's Customer. In the event Buyer's Customer terminates for convenience the Prime Contract, or a portion of the Prime Contract relating to the work of the Seller, Buyer will issue a termination notice to Seller. In the event of such termination, Seller shall immediately stop all work terminated hereunder and shall immediately cause any and all its suppliers and subcontractors to cease work. Subject to the terms of this Subcontract, the Seller shall be paid a percentage of the Subcontract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Seller can demonstrate to the satisfaction of Buyer, using its standard record keeping system, have resulted from the termination. The Seller shall not be paid for any work performed or costs incurred which reasonably could have been avoided. Seller shall continue to perform all work not terminated. As a condition precedent to Seller's recovery of payment, Buyer must first obtain payment from Buyer's Customer (i.e., Seller may recover against Buyer only to the extent that Buyer is paid by Buyer's Customer for Seller's termination settlement proposal) and Seller bears the risk of Buyer's Customer's nonpayment.

### TERMINATION FOR DEFAULT

- (a) Buyer, by written notice to Seller, may terminate the whole or any part of this Subcontract if Seller:
- (1) fails to comply with any of the terms of this Subcontract, including the delivery schedule;
  - (2) fails to make progress so as to endanger performance of this Subcontract;
  - (3) fails to provide adequate assurance of future performance;
  - (4) files or has filed against it a petition in bankruptcy; or

# Terms and Conditions – Other Transactional Authority (OTA) Commercial

## General Provisions

- (5) becomes insolvent or suffers a material adverse change in financial condition.
- (b) Seller shall have five (5) days (or such longer period as Buyer may authorize in writing) to cure any such failure after receipt of notice from Buyer. Seller, however, shall not have the opportunity to cure default relating to delivery schedule delays (i.e., any failure to meet the delivery schedule), bankruptcy, or an adverse change in financial condition.
- (c) If this Subcontract is terminated in whole or in part as provided in this section, Buyer may procure, upon such terms and in such manner as Buyer may deem appropriate, work similar to that terminated, and Seller shall be liable to Buyer for any incidental and also for direct damages (i.e., excess or re-procurement costs and consequential damages) incurred for such similar work.
- (d) If this Subcontract is terminated in whole or in part as provided in this section, Seller shall be compensated only for Work actually delivered and accepted. Buyer, however, may withhold from amounts otherwise due Seller such sum, as Buyer determines to be necessary, to protect Buyer against loss because of outstanding liens, claims of former lien holders, and/or damages incurred by Buyer. Buyer also may require Seller to deliver to Buyer any supplies and materials, manufacturing materials, and manufacturing drawings that Seller has produced or acquired for the terminated portion of this Subcontract. The Parties shall agree on the amount of payment for these other deliverables.
- (e) If, after notice of termination of this Subcontract as provided in this section, it is determined for any reason that Seller was not in default or that the default was excusable, the rights and obligations of the Parties shall be the same as if the notice of termination had been issued pursuant to the “Termination for Convenience” section of this Subcontract.
- (f) The rights and remedies of Buyer provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity or under this Subcontract including, without limitation, cancellation of this Subcontract.
- (g) Seller shall continue all Work not terminated or cancelled.

### TIMELY PERFORMANCE

- (a) Seller’s timely performance is of the essence and is a critical element of this Subcontract.
- (b) Unless advance shipment has been authorized in writing by Buyer, Buyer may store at Seller’s expense, or return, with shipping charges paid by Seller, all Work received in advance of the scheduled delivery date. Alternatively, if Seller’s Work is not timely received, Buyer, without limiting its other rights or remedies, may direct expedited performance or delivery and any excess cost incurred will be the sole responsibility of Seller.
- (c) If Seller becomes aware of difficulty in performing Work, including meeting the delivery schedule, Seller shall notify Buyer within five (5) days of any such difficulty, in writing, giving pertinent details. This notification shall not change any delivery schedule.
- (d) In the event of a termination pursuant to the “Termination for Convenience” section of this Subcontract or a Buyer-directed change pursuant to the “Changes” section of this Subcontract, no claim shall be allowed for any manufacture or procurement in advance of Seller’s normal flow time unless Buyer has provided prior written consent.

### TITLE AND RISK OF LOSS

Unless otherwise specified in this Subcontract, where applicable, title to any Work covered by this Subcontract shall pass to Buyer upon Buyer’s final acceptance of such Work, regardless of when or where Buyer takes physical possession. Risk of loss or damage to Work shall remain with Seller until: (a) delivery of Work to an authorized carrier, if delivery is F.O.B. Origin; or (b) final acceptance by Buyer or receipt of Work by Buyer at the destination specified in this Subcontract, whichever is later, if transportation is F.O.B. Destination, regardless of the point of inspection. Notwithstanding the above, the risk of loss or damage to Work that fails to conform, so as to give rise to Buyer’s right of rejection, shall remain with Seller until cure and final acceptance.

# Terms and Conditions – Other Transactional Authority (OTA) Commercial

## General Provisions

### WAIVER, REVIEWS, APPROVALS, AND REMEDIES

- (a) Failure or delay by either Party to:
  - (1) insist on performance of any provision of this Subcontract;
  - (2) enforce any of the provisions of this Subcontract or applicable laws; or
  - (3) exercise any right or remedy available under this Subcontract

shall not constitute a waiver of such provisions, laws, rights, or remedies, or a waiver of the right of a Party thereafter to enforce such provisions or laws.

- (b) Buyer's review or approval of any Work hereunder, or of any designs, drawings, specifications, or documents prepared hereunder, shall not relieve Seller of any of its obligations under this Subcontract, nor excuse or constitute a waiver of any defects or nonconformities in any Work furnished under this Subcontract, nor change, modify, or otherwise affect any of the provisions of this Subcontract including, but not limited to, the prices, reliability, quality, rate of output, performance, and/or delivery schedules contained herein.
- (c) The rights and remedies of the Parties set forth in this Subcontract are cumulative and in addition to any other rights or remedies that they may have at law or in equity.

### WARRANTY

- (a) Goods. Seller warrants that all goods furnished pursuant to this Subcontract shall strictly conform to applicable specifications, drawings, samples, descriptions, and other requirements of this Subcontract, shall be fit and sufficient for the purposes intended, and shall be free from defects in design (to the extent the Subcontract does not call for manufacture pursuant to designs furnished by Buyer), material, and workmanship. This warranty shall begin upon final acceptance by Buyer's Customer and extend for a period of one (1) year or for the standard warranty period provided by Seller, whichever is longer. Seller agrees to notify Buyer immediately upon becoming aware of a potential problem with goods previously delivered to Buyer. Such notification shall include a recommended course of action.
- (b) Services. Seller warrants that all services performed under this Subcontract shall be performed with the standard of a fully qualified professional, shall strictly conform to applicable specifications, drawings, samples, descriptions, and other requirements of this Subcontract, and shall be performed in strict compliance with any regulatory or international standards applicable to this Subcontract. Any services corrected or re-performed will be covered by this warranty.
- (c) If any nonconforming Work is identified within the warranty period, Seller, at Buyer's option, shall promptly repair, replace, or reperform such Work. Transportation of replacement Work, return of nonconforming Work, and reperformance of Work shall be at Seller's expense. If repair, replacement, or reperformance of Work is not timely, Buyer may elect to return, reperform, repair, replace, or reprocur the non-conforming Work at Seller's expense. All warranties run to Buyer and Buyer's Customer.
- (d) No inspection, test, or approval of any kind, including approval of designs, shall affect Seller's obligation under this section. Repaired, replaced, or reperformed Work shall be subject to the provisions of this section to the same extent as the original Work, except that the warranty shall run from the later of final acceptance by Buyer's Customer or the last delivery date.

### WORK ON AND ACCESS TO BUYER'S PREMISES

- (a) The term "Premises," as used in this section, shall mean the premises of Buyer, its customers, or other third parties where Work under this Subcontract is performed.

# Terms and Conditions – Other Transactional Authority (OTA) Commercial

## General Provisions

- (b) Seller shall comply with all the rules and regulations regarding conduct, security, and safety established by Buyer or Buyer's Customer for access to and activities in and around the Premises. Seller agrees that any Seller employee that will access the Premises will execute, upon request, an access agreement permitting access to the Premises.
- (c) Government-issued assets (Badges, CAC Cards, etc.) are the property of the Government. Upon voluntary or involuntary termination, Seller shall surrender such assets to Buyer or Buyer's Customer. Possession and attempted use of such assets, or other credentials related to the Premises, after separation from the Work may be considered a security violation or violation of criminal law.

### **AMENDMENTS REQUIRED BY PRIME CONTRACT**

Seller agrees that upon Buyer's request Seller shall negotiate in good faith with Buyer relative to amendments to this Subcontract to incorporate additional provisions herein or to change provisions hereof, as Buyer may reasonably deem necessary in order to comply with the provisions of the applicable Prime Contract, or with the provisions of amendments to the Prime Contract. If any such amendment to this Subcontract causes an increase or decrease in the cost of, or the time required for, performance of any part of Work under this Subcontract, an equitable adjustment shall be made pursuant to the "Changes" clause of this Subcontract.

### **PRESERVATION OF THE GOVERNMENT'S RIGHTS**

If Buyer furnishes designs, drawings, special tooling, equipment, engineering data, or other technical or proprietary information ("Furnished Items") which the Government owns or has the right to authorize the use of, nothing herein shall be construed to mean that Buyer, acting on its own behalf, may modify or limit any rights the Government may have to authorize Seller's use of such Furnished Items in support of other Government prime contracts.

# Terms and Conditions – Other Transactional Authority (OTA) Commercial

## General Provisions

### SECTION II – SUPPLIER GUIDING PRINCIPLES

#### SUSTAINABILITY VISION

By balancing economic, environmental, and social impacts in our decision making and activities, Space & Mission Systems (“SMS”) strives to create long-term, shared value for SMS and our stakeholders. This is our sustainability vision. Whether it is developing sustainable products, working to reduce our environmental footprint, respecting human rights, or investing in local communities where we operate facilities, we are committed to making SMS a more sustainable enterprise and maintaining sound business ethics.

#### PURPOSE

Our Supplier Guiding Principles set forth the business conduct standards to which SMS expects its suppliers to adhere. In keeping with our values, SMS prefers to do business with companies that share our belief in the importance of economic, social, and environmental sustainability.

#### SCOPE

Our Supplier Guiding Principles apply to all suppliers with whom SMS, its subsidiaries, including BAE Systems Space & Mission Systems Inc. (SMS), and affiliates worldwide have a contractual relationship, including contractors and suppliers of goods and services.

As part of the implementation of our Supplier Guiding Principles, these principles will be incorporated into all new or renewed commercial agreements between suppliers and SMS, its subsidiaries, and affiliates worldwide.

Suppliers must be able to demonstrate compliance with SMS’s Supplier Guiding Principles at the request and satisfaction of SMS. When SMS becomes aware that a supplier is not in compliance with our Supplier Guiding Principles, the actions, or inaction, of the supplier will be reviewed, and appropriate corrective measures will be implemented.

#### PRINCIPLES

All suppliers must adhere to the following principles:

##### 1.) LAWS AND REGULATIONS

Suppliers will comply with all applicable laws, rules, and regulations and requirements in managing their business and in providing goods and services to SMS.

##### 2. EMPLOYMENT PRACTICES/HUMAN RIGHTS

We expect our suppliers to provide an equitable and safe work environment and to adhere to, among others, the following principles:

- Suppliers shall not employ anyone under the legal working age, nor condone physical or other unlawful abuse or harassment in any of their businesses;
- Suppliers shall ensure that there is no forced labor, slavery, or human trafficking within their operations and their supply chain;
- Suppliers shall judge their employees upon their abilities and not discriminate on the basis of any condition or characteristic which is protected by applicable law or regulation;
- Suppliers shall respect each employee’s right to associate with any legally sanctioned organization; and

# Terms and Conditions – Other Transactional Authority (OTA) Commercial

## General Provisions

- Work hours, wages, and benefits shall be in compliance with all applicable laws.

### 3. ENVIRONMENT

SMS's suppliers are expected to maintain compliance with all applicable environmental laws and regulations in their operations and to develop and implement plans to correct any non-compliant practices or conditions.

### 4. HEALTH AND SAFETY

We expect our suppliers to provide a safe work environment in compliance with local, state, federal, and international laws and to implement policies and regulations in order to minimize accidents or injuries.

### 5. ANTITRUST

SMS is committed to free competition in the marketplace. Conduct intended to limit competitive forces is inconsistent with that commitment and may violate antitrust laws. Suppliers shall not communicate with competitors regarding current or future prices, pricing policy, sales volumes or terms, production levels, or any other information that relates to the marketplace.

### 6. BRIBERY AND CORRUPTION

SMS has a strict policy against bribery and corruption. Suppliers shall not make payments or provide entertainment and gifts or anything of value directly or indirectly to government officials or others so as to influence them in the performance or non-performance of their duties or induce them to use their influence or secure any improper advantage or to obtain or retain business for SMS.

### 7. DEMONSTRATION OF COMPLIANCE

Suppliers will be expected to certify and demonstrate compliance with these Supplier Guiding Principles at SMS's request.