

BAEDOC USGOV SERV + GOODS

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

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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 Work. For purposes of the "Furnished Property" and "Independent Contractor Relationship" provisions of this Contract, "Customer" shall include both any higher tier contractor(s) and the U.S. Government.
- 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 Vendor 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) "Vendor" 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, "Vendor" shall also include Vendor'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) "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.
- t) "Work" means the required deliverables, articles, materials, suppliers, goods, and the time and effort of Vendor in performing identifiable labor tasks or services, which are themselves a deliverable under this Contract. Work covers activities performed both by professional and non-professional personnel of Vendor. All services, functions, or responsibilities not specifically described in this Contract, but are required for the performance or provision of the Work, are included within the scope of the Work to the same extent as if specifically described in this Contract.

## 2. VENDOR PORTAL REGISTRATION

In order to conduct business with BAE Systems, Vendor shall register (or update its registration) as a supplier to BAE Systems via <https://baesystems.hicx.net> ("HICX"). Vendor is required to fill out all information requested by BAE Systems in the HICX portal completely and accurately.

## 3. INDEPENDENT CONTRACTOR RELATIONSHIP; VENDOR EMPLOYEES

- a) Vendor'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 Vendor or BAE Systems and Vendor personnel. Vendor personnel engaged in performing Work under this Contract are employees of Vendor and not employees or agents of BAE Systems. Vendor assumes full responsibility for the actions and supervision of such personnel while engaged in Work under this Contract. BAE Systems assumes no liability for Vendor personnel.
- b) The Vendor acknowledges that neither Vendor, nor any personnel of Vendor, has rights under any BAE Systems benefit plan. Vendor shall provide and maintain all insurance and benefits required by law, including but not limited to workers' compensation insurance.
- c) Vendor shall inform BAE Systems if it assigns a former employee of BAE Systems or its parent, subsidiary, or Affiliate to perform Work under this Contract, and any such assignment shall be subject to BAE Systems approval.

- d) Vendor shall provide BAE Systems with any information about Vendor'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).
- e) If BAE Systems hires Vendor employees during the term of this Contract: (i) BAE Systems shall not be responsible or liable for Vendor's payroll or employee benefit obligations; and (ii) Vendor shall not be relieved of any liability for default under this Contract.

#### **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) Vendor's execution and delivery of the Contract or Vendor's acknowledgment of the Contract, acceptance of payment, or commencement of performance, constitutes Vendor's unqualified acceptance of this Contract.
- c) ADDITIONAL OR DIFFERING TERMS OR CONDITIONS PROPOSED BY VENDOR OR INCLUDED IN VENDOR'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) Statement of work or purchase order;  
any master type agreement (such as services, corporate, framework, operating group, or blanket agreements);
- c) Representations and certifications;
- d) Any supplemental terms and conditions incorporated by reference under section 7;
- e) These General Provisions; and
- f) Specifications or drawings.

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

- a) Vendor 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. Vendor shall not implement any changes or modifications to this Contract without first having received written authorization to do so from BAE Systems' Procurement Representative. Vendor shall compensate BAE Systems for any costs incurred by BAE Systems that result from Vendor'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.);
  - iii. Place of performance of the services;
  - iv. Drawings, designs, or specifications when the supplies being furnished are to be specially manufactured for BAE Systems in accordance with same;
  - v. Method of shipment or packing;
  - vi. Place of inspection, delivery, or acceptance;
  - vii. Delivery schedules; and/or

- viii. Any other matters materially affecting this Contract
- c) BAE Systems shall appoint a Technical Representative(s) and Vendor shall appoint a Lead Supervisor. BAE Systems' Technical Representative is responsible for liaising with Vendor's Lead Supervisor. Vendor's Lead Supervisor is responsible for supervising and directing the work of Vendor's personnel. Neither BAE Systems' Technical Representative, nor any program management or engineering personnel, has the authority to make changes in, to amend, or to modify this Contract.
- d) Except as otherwise provided herein, the Vendor 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 Vendor's personnel concerning the Work hereunder. Such actions are not a change under this clause of this Contract and shall not be the basis for equitable adjustment. If Vendor believes the foregoing creates an actual or constructive change, Vendor 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.
- f) BAE Systems' Procurement Representative may elect to attach BAE Systems' internal change documents to the Change Order for clarification purposes. When issued, these forms will be in conjunction with, not in lieu of, a Change Order. The Vendor shall promptly review all changes to the Work as specified in the Change Order and any attachments, if any, and notify BAE Systems of any effect that the change may have on the performance of the Contract.
- 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 Vendor must assert any claim by Vendor for adjustment under this section in writing to BAE Systems' Procurement Representative no later than ten (10) Days after the date of receipt by Vendor 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. Vendor'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, Vendor will diligently proceed with the Contract as modified. BAE Systems shall have the right to examine any of Vendor's pertinent books and records for verifying Vendor'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) 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 prime contract, this Contract, and any related contract. Vendor shall not communicate with the Customer, any higher tier contractor(s), or the U.S. Government, with respect to the applicable prime contract, this Contract, or any related contract without prior written approval from the BAE Systems Procurement Representative, except as required by law. Vendor shall promptly notify the BAE Systems Procurement Representative of any communications initiated by the Customer, any higher tier contractor(s), or the U. S. Government that affects the applicable prime contract, this Contract, or any related contract.
- a) VENDOR AGREES THAT, UNLESS OTHERWISE AGREED IN WRITING BY BAE SYSTEMS AND THE U.S. GOVERNMENT, AND EXCEPT AS MAY BE OTHERWISE PROVIDED BY LAW, VENDOR 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 Vendor's accurate invoice in accordance with proper invoicing instructions as identified in this Contract; or (ii) date of acceptance of the Work 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 or at issue under this Contract or any other contract between BAE Systems and Vendor. BAE Systems will pay any payments owed under this Contract in United States dollars.

- 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, Vendor'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 System's 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. Vendor 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 Vendor 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 Vendor's personnel in performing or providing the Work 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 Vendor 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. Vendor 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 Vendor 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. Vendor 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, Vendor have paid by cash, check, electronic funds transfer, or other form of actual payment for items or services purchased directly for this Contract.
    - 2. Vendor 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 Vendor'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 Vendor for purposes of obtaining reimbursement under U.S. Government contracts, which are properly allocable and allowable.

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

- ii. Vendor 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 Vendor 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 Vendor actually makes the payment. Vendor shall exclude accrued costs for such contributions, which Vendor pays less often than quarterly, from indirect costs for payment purposes until Vendor actually makes the payment.
  - iii. Notwithstanding the audit and adjustment of invoices or vouchers under subsection (g) below, Vendor 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 Work at Vendor'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 Vendor based on final annual indirect cost rates and the appropriate bases established by Vendor 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 Vendor 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 Vendor 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 Vendor 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 Vendor'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. Vendor 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. Vendor shall submit a completion invoice or voucher, designated as such, promptly upon completion of the Work, 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 Vendor'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. Vendor shall pay to BAE Systems any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by Vendor or any assignee under this Contract, to the extent that those amounts are properly allocable to costs for which Vendor has been reimbursed by BAE Systems. Reasonable expenses incurred by Vendor for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by BAE Systems.

- iii. Before final payment under this Contract, Vendor 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 Vendor 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 Vendor to third parties arising out of the performance of this Contract; provided, that the claims are not known to the Vendor on the date of the execution of the release, and that the Vendor 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 Vendor under the patent clauses of this Contract, excluding, however, any expenses arising from the Vendor indemnification of BAE Systems against patent liability.
  - 3. The Vendor shall give BAE Systems immediate written notice of any action or suit filed and prompt notice of any claim made against the Vendor by any subcontractor or vendor that, in the opinion of the Vendor, may result in litigation related in any way to this contract, with respect to which the Vendor may be entitled to reimbursement from BAE Systems.
- j) Subcontracts. Vendor shall not enter into a subcontract under this Contract which provides for payment on a cost-plus-a-percentage-of-cost basis, and Vendor 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 Vendor 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 Vendor 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. 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, Vendor and Vendor’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 Vendor may receive from BAE Systems or come in contact with, including but not limited to, proprietary information of others when in BAE Systems’ possession. Within thirty (30) days of the expiration or termination of this Contract or upon the request of BAE Systems, Vendor shall return or certify the destruction of all BAE Systems Information and any reproductions, and Vendor shall promptly surrender all information or proprietary data developed by Vendor 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 Vendor as necessary to cover the information exchanged under this Contract.
- b) Ownership and Use. BAE Systems Information provided to the Vendor remains the property of BAE Systems (or its Affiliates or third parties as applicable). Vendor shall comply with all proprietary information markings and restrictive legends applied by BAE Systems to anything provided hereunder to Vendor, and Vendor shall not remove any such proprietary markings or restrictive legends. Vendor 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 Vendor a non-exclusive, non-transferable, royalty free, fully paid license to use BAE Systems Information only and strictly in connection with Vendor’s performance of its obligations and exercise of its rights under this Contract.
- c) Information Security. Vendor 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 Vendor's network, systems and operations, and the BAE Systems Information from unauthorized access and use; and (ii) guard against security incidents. Vendor'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, Vendor shall complete the Cyber Security Verification Form ("CSV") and comply with any responses or agreed actions at its own expense. This Contract incorporates all Vendor information security representations on the CSV and in HICX (<https://baesystems.hicx.net>) by reference, as if incorporated in full text and are binding upon Vendor.

d) Hosting and Storage; BAE Systems Network Access.

- i. Vendor 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 Vendor premises, or outside the U.S. without advance written approval from BAE Systems.
- ii. If BAE Systems gives Vendor, or Vendor personnel access to BAE Systems' networks, neither Vendor nor Vendor personnel may access such networks from anywhere other than the U.S. The Vendor may not access a BAE Systems network remotely, unless authorized in advance by BAE Systems. Such authorization is at BAE Systems' sole discretion and Vendor 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. Vendor 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.

f) Records. Vendor will maintain records of any known or suspected incidents in accordance with all applicable laws, regulations, and this Contract. Vendor 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, Vendor 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. Vendor will bear the cost of reproduction or any other remedial steps necessary or advisable to address any such incidents.

g) Compliance. If Vendor is unable to make and comply with the obligations in this section, Vendor shall promptly notify BAE Systems and Vendor agrees to undergo a BAE Systems' cyber-security review to determine whether BAE Systems can enter into or proceed with this Contract.

## 12. MAINTENANCE OF RECORDS

- a) Unless the parties expressly specify a longer period in this Contract or by law or regulation, Vendor shall retain all records related to this Contract for five (5) years from the date of final payment received by Vendor. 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 Vendor 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

Vendor 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. ENTRY ON BAE SYSTEMS OR CUSTOMER PREMISES

- a) Vendor must coordinate access to the premises of either BAE Systems or its Customer in advance with BAE Systems.
- b) If Vendor's personnel are to work at BAE Systems' facility with unescorted access, Vendor is required to have performed pre-employment background screenings at no charge to BAE Systems. BAE Systems will not allow Vendor personnel access to work at BAE Systems facilities until written confirmation from Vendor stating that it has cleared Vendor's personnel to report to work and the BAE Systems Procurement Representative receives such confirmation. If the Vendor personnel in question hold a U.S. Government-granted security clearance or BAE Systems validates access through JPAS (Joint Personnel Adjudication System) or via a visit certification, then a pre-employment background screening is not required. 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 Vendor 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).
- c) If assigned Vendor personnel are on-premises at a BAE Systems or Customer facility, they shall comply with all on-premises guidelines and conduct requirements. Vendor acknowledges that it is solely responsible for any non-compliance with guidelines or conduct requirements by Vendor's personnel.
- d) While at BAE Systems' or its Customer's premises, unless otherwise authorized in writing by BAE Systems, Vendor's personnel shall (i) not bring weapons of any kind; (ii) not manufacture, sell, distribute, possess, use or be under the influence of controlled substances or alcoholic beverages; (iii) not possess hazardous materials of any kind, with the exception of personal computing devices which utilize lithium batteries; (iv) remain in authorized areas only; (v) not solicit BAE Systems' employees for employment during business hours; and (vi) not sell, advertise or market any goods or services (other than the goods or services which may be the subject of this Contract) or memberships, or distribute printed, written or graphic materials without BAE Systems' written permission or as permitted by law.
- e) Vendor personnel: (i) will not remove BAE Systems or its Customer's assets from BAE Systems' or Customer's premises without BAE Systems written authorization; (ii) will use BAE Systems or Customer assets only as authorized in writing by the BAE Systems Procurement Representative for purposes of this Contract; (iii) will only connect with, interact with or use BAE Systems' computer networks and equipment, communications resources, programs, tools or routines as BAE Systems agrees, at Vendor's risk and expense, and then only in compliance with applicable BAE Systems policies; and (iv) will not share or disclose user identifiers, passwords, cipher keys or computer dial port telephone numbers. BAE Systems may monitor any communications made over or data stored in BAE Systems' computer networks and equipment or communications resources.
- f) Vendor acknowledges that BAE Systems and/or BAE Systems' Customer have a zero tolerance policy for harassing behavior. Vendor shall promptly notify BAE Systems and provide a report of any and all physical altercations, assaults or harassment, and accidents or security incidents involving death, personal injury or loss of or misuse of or damage to BAE Systems' or Customer's property, while on BAE Systems' or its Customer's premises.
- g) BAE Systems and/or its Customer may, at its sole discretion, remove or require Vendor to remove any specified personnel of Vendor from BAE Systems' or Customer's premises or worksite 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 Vendor's employee shall be borne solely by Vendor and not charged to this Contract. Exclusion from the worksite under the circumstances described in this clause shall not relieve Vendor from full performance of the Contract, nor will it provide the basis for an excusable delay or any claims against BAE Systems or its Customer.
- h) Unless otherwise specified in this Contract, Vendor shall be responsible for supplying all tools and equipment necessary to perform the Work under this Contract.
- i) All Vendor personnel, property, and vehicles entering or leaving BAE Systems' or Customer's premises are subject to monitoring, reviewing, and or being searched, including but not limited to any devices such as laptops, tablets, cameras, and mobile phones. Vendor and/or Vendor's personnel may request to be present during such a review or search.

## 15. STOP WORK ORDER

- a) Vendor shall stop work in accordance with the terms of any written notice received from BAE Systems and Vendor shall take all reasonable steps to minimize the incurrence of costs allocable to the Work during the period of work stoppage.

- b) After the issuance of a stop work order, BAE Systems shall provide written notice to Vendor either terminating the Contract completely, or in part, or instructing the Vendor to continue provision of the Work. In the event of a continuation, Vendor may request an equitable adjustment in accordance with subsection (g) of the “Contract Direction/Changes” provision of this Contract.

## 16. DISPUTES/JURY WAIVER

- b) BAE Systems and Vendor 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 VENDOR 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 VENDOR 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 U.S. Patent and Trademark Office or the International Trade Commission. Until final resolution of any dispute hereunder, Vendor shall diligently proceed with the performance of this Contract.
- c) TO THE EXTENT PERMITTED BY APPLICABLE LAWS, BAE SYSTEMS AND VENDOR EACH WAIVE THEIR RIGHTS TO TRIAL BEFORE A JURY.

## 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 Vendor, 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, Vendor’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 completely or in part by written notice to Vendor in any of the following circumstances:
- i. If Vendor fails to perform the Work required by this Contract within the time specified herein, or any extension thereof granted by BAE Systems in writing;
  - ii. If Vendor 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, Vendor 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 Vendor 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. Vendor files or declares bankruptcy; or
  - v. In the event of suspension of Vendor’s business, insolvency, liquidation proceedings by or against Vendor, appointment of a trustee or receiver for Vendor’s property or business, or any assignment, reorganization or arrangement by Vendor for the benefit of creditors.
- c) If after notice of termination for default, it is determined for any reason that Vendor 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 completely or in part, it may acquire services similar to those terminated under terms and in the manner BAE Systems considers appropriate, and Vendor will be liable to BAE Systems for any excess costs for those services. However, Vendor shall continue the Work not terminated.
- e) In the event of termination by BAE Systems, BAE Systems may require Vendor 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 Vendor has produced or acquired for the performance of this Contract, including the assignment to BAE Systems of Vendor’s

subcontracts supporting this Contract. Furthermore, Vendor shall protect and preserve any property in Vendor's possession in which BAE Systems or its Customer has an interest.

- f) Payment for Work 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 Vendor 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. Vendor shall cooperate with BAE Systems in the fulfillment of any foreign offset/countertrade obligations.

## **19. BUSINESS CONTINUITY PLANNING**

- a) Vendor shall establish and maintain a disaster recovery and business continuity plan ("BCP"), which includes protection of vital records, and ensures, Vendor can continue to deliver the required Work to BAE Systems, if necessary.
- b) BAE Systems may review the BCP on a periodic basis to ensure its adequacy and completeness.
- c) Vendor 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 Vendor 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, Vendor 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, Vendor may utilize non-targeted recruiting efforts without violating this section.
- b) Vendor 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) By written agreement, Vendor 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 Vendor all the obligations and responsibilities which the Vendor 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 Vendor that the Vendor, under this Contract, has against BAE Systems. Vendor expressly assumes liability for the acts and omissions of its subcontractors arising out of performance of the Work.
- b) When reasonably requested by BAE Systems, Vendor shall provide Vendor 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 this Contract, the Vendor's subcontract/supplier management plans, any BAE Systems programs supported, sub-tier supplier names, the Vendor'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 Vendor's assessment of a sub-tier supplier's capability, including its financial health and any performance issues. BAE Systems may disclose any of the Vendor 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 Vendor disclose competitively sensitive information under this clause.

## 22. ASSIGNMENT

Any assignment of Vendor's contract rights or delegation of duties shall be void, unless BAE Systems gives its prior written consent. A change of control of Vendor shall constitute an impermissible assignment. However, Vendor 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 Vendor. 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 of the state from which this Contract is 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 Vendor agree that if this Contract, or any statement of work, purchase order, other contract document, or correspondence is transmitted electronically neither BAE Systems nor Vendor 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 Vendor from complying with any requirements of this Contract.

## 26. REMEDIES

The rights and remedies of BAE Systems in this Contract, including but not limited to those set forth in Sections 3(e), 9(a)(i), 9(b), 11(f), 11(g), 14(g), 14(i), 16, 17, 20(b), 22, 37(g), 38(d), 40, 41, 43(d), 44(c), 45(a), 45(f), 46, 47, 49(b), 50, and 51 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, Vendor 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) Information of BAE Systems
- i) Intellectual Property
- j) Entry on BAE Systems or Customer Property
- k) Intellectual Property
- l) Maintenance of Records
- m) Non-Solicitation Agreement
- n) Warranty/Representations/Non-Conforming Work
- o) Corresponding provisions to above, as incorporated through Supplemental Terms and Conditions provision

- p) 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 LAWS AND REGULATIONS

- a) Compliance with Laws. Vendor, its directors, officers, employees, agents, suppliers, and subcontractors shall comply with all applicable laws, orders, rules, regulations, and ordinances.
- b) Licenses and Permits. At its own expense, Vendor shall procure all licenses and permits, and pay all fees and other required charges necessary to conduct its business and perform this Contract. Vendor 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 Work.
- c) Vendor's Employer Obligations. Vendor 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.
- d) Human Trafficking and Modern Slavery. Vendor certifies compliance with all applicable laws regarding slavery and human trafficking of the state, province, and country/countries in which they are performing the Work and doing business, including, but not limited to, the California Transparency in Supply Chains Act and the United Kingdom Modern Slavery Act. Vendor shall require its lower-tiered contractors to comply with the California Transparency in Supply Chains Act, when applicable.
- e) Equal Employment. Vendor 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 =>\$150,000).
- f) Procurement Integrity Act. Vendor 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, Vendor agrees to put in place effective controls to ensure compliance with the Procurement Integrity Act.
- g) Hazardous Materials. Vendor 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. Vendor shall not incorporate any goods that contain any asbestos mineral fibers into its performance of the Services.

- h) Data Privacy: If because of this Contract, the Vendor collects, stores or processes Personal Information, Vendor 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 (when effective), Virginia Consumer Data Protection Act, Colorado Privacy Act, and the Massachusetts Data Privacy Law.
- i) European Union's General Data Protection Regulations ("GDPR") and United Kingdom's Data Protection Act ("DPA"): If because of this Contract, the Vendor collects, stores, or processes Personal Data, Vendor agrees to 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 Vendor receives Sensitive Personal Data or is a Controller (as defined under the GDPR and/or DPA), Vendor 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, DPA, or both.
- j) Conflict Minerals: If Vendor is providing products to BAE Systems in the performance of the Work, upon request, Vendor 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. Vendor 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 Vendor provides products to BAE Systems.
- k) Covered Telecommunications and Video Equipment. Vendor 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. Vendor 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.
- l) Service Contract Labor Hour Reporting. If Vendor 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, Vendor 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.

### 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 Vendor shall follow all the requirements of the DPAS Regulation (15 C.F.R. Part 700) in the performance of the Contract.

### 32. GRATUITIES/KICKBACKS/ETHICAL CONDUCT

- a) Vendor, its directors, officers, agents, and employees, or anyone acting on Vendor's behalf, is prohibited from offering or giving a gratuity (in the form of entertainment, gifts or otherwise) or kickback to any employee of BAE Systems with a view toward securing favorable treatment as a supplier.
- b) By accepting this Contract and if this Contract exceeds \$150,000, Vendor 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) BAE Systems maintains an ethics program that includes a written code of conduct, training as well as awareness for all employees, details of which can be found at <http://www.baesystems.com/en/our-company/corporate-responsibility/find-out-more/code-of-conduct>. Failure to comply with the BAE Systems Code of Conduct or Vendor's comparable ethics program and standards is a material breach and is grounds for termination of this Contract.
- d) Certification Regarding Political Contributions, Fees, and Commissions Paid In Connection with Sales Subject to the Provisions of the Arms Export Control Act: Vendor represents that in accordance with 22 C.F.R. 130, neither Vendor 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.

- e) 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 Principles, available on our website at <https://www.baesystems.com/en/sustainability/responsible-supply-chain/suppliers/supplier-principles>. Vendor, its employees, directors, officers, and representatives agree to review and familiarize themselves with the Supplier Principles document.

### 33. EXPORT CONTROL

- a) Vendor shall comply with all applicable United States export control laws and regulations, including, but not limited to, the requirements of the Arms Export Control Act, 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. Vendor shall obtain all required export licenses and agreements necessary to perform the Work, as applicable.
- b) Vendor 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, Vendor shall provide a copy to BAE Systems.
- c) Without limiting the foregoing, Vendor shall not transfer any export-controlled item, data or services, to include transfer to a person who is not a "U.S. Person" as defined in the ITAR (22 C.F.R. §120.62), without the authority of a U.S. Government export license, technical assistance 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 Vendor. Additionally, Vendor will not disclose any export-controlled data furnished to it by BAE Systems, to a non-U.S. Person until Vendor meets all regulatory and contractual requirements. Vendor 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, export agreement, or applicable license exemption or exception shall be obtained by Vendor prior to the Vendor'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. §120.16.
- e) Vendor 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) Vendor 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) Vendor shall immediately notify the BAE Systems Procurement Representative in writing if Vendor is on any Denied Parties List or if Vendor's export privileges are denied, suspended or revoked in whole or in part by any government entity or agency.
- h) Where Vendor is an authorized party under a BAE Systems export license, export agreement (e.g. Technical Assistance Agreement, Manufacturing License Agreement), or other U.S. Government written authorization, Vendor 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 Vendor has diligently pursued obtaining such license and, through no fault of Vendor, such license has been denied, revoked, withdrawn, or terminated, Vendor 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 Vendor and BAE Systems. Such markings are required regardless of the mode of transmittal (e.g., hard copy or electronic).

- k) Under this Contract, the Vendor 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 Vendor is engaged in the business of either selling, exporting, manufacturing, or brokering of (whether exporting or not) defense articles or furnishing defense services, Vendor 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 Directorate of Defense Trade Controls
- l) Vendor shall flow down export compliance requirements by contract to its suppliers, vendors, and subcontractors who support BAE Systems Contracts and purchase orders.
- m) Export Classification (when specifically requested by BAE Systems)
  - i. Vendor 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, Vendor 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 national export control lists.
    - D. Identify uncontrolled classifications, such as EAR99, when applicable.
      - 1. Subsequent to the initial disclosure above, Vendor 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. Vendor represents and certifies that it has properly determined the relevant export classification of the deliverable.

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

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

### **35. FOREIGN CORRUPT PRACTICES PROHIBITION**

- a) Vendor shall comply with all applicable laws and regulations relating to anti-corruption or anti-bribery and the requirements of the Foreign Corrupt Practices Act, as amended ("FCPA") (15 U.S.C. §§ 78dd-1, et., seq.), regardless of whether the Vendor is within the jurisdiction of the U.S.
- b) Vendor certifies and represents that it has not made or solicited and will not make or solicit any offer, payment, promise to pay, or authorization to pay any money, gift, or anything of value to any governmental official or any political party, party official or candidate, either directly or through an intermediary, corruptly for the purpose of influencing any official act, omission, or exercise of influence by the recipient, to assist BAE Systems or Vendor in obtaining or retaining business.
- c) Vendor shall ensure that all lower tier subcontracts include this FCPA provision.

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

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

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

- b) Vendor shall keep records of all quality control inspection work complete and available to BAE Systems and its Customers.
- c) Vendor agrees to notify the BAE Systems Procurement Representative about changes in an item and/or process which affect compliance with applicable Specifications, Technical Data Sheets, or reliability of the item, changes of suppliers, and changes of manufacturing facility locations.
- d) Vendor shall maintain all hardware, data, other documentation, tooling and equipment required by Vendor during the performance of this Contract under configuration control. BAE Systems' approval of a drawing package shall constitute a baseline release for hardware fabrication. BAE Systems' approval of other such documentation shall likewise constitute a baseline release for applicable activities. Upon receipt of such approval, the Vendor shall not implement any change in design, processes, controls, parts or proprietary data released to BAE Systems thereafter to internal functions or second-tier suppliers without BAE Systems' prior written approval.
- e) The Vendor shall submit major engineering change orders ("ECO"s) to BAE Systems for written approval prior to implementing any such changes. BAE Systems' approval shall in no way relieve the Vendor from complying with the requirements of this Contract, nor does approval relieve the Vendor of technical responsibility for the design. The Vendor shall further submit minor ECOs for informational purposes. Vendor shall refer any classification disagreements to BAE Systems for a final decision.
- f) Vendor shall maintain a foreign object debris/damage ("FOD") prevention program. When applicable, Vendor's FOD prevention program shall include:
  - i. The review of design and manufacturing processes to identify areas and paths through which foreign objects can migrate, and eliminate those areas and paths of foreign object entrapment.
  - ii. Vendor shall employ appropriate housekeeping practices to ensure timely removal of residue/debris, if any, generated during manufacturing operations or tasks.
  - iii. Vendor shall determine if sensitive areas that may have a high probability for introduction of foreign objects should have special emphasis controls in place appropriate for the manufacturing environment.
  - iv. By delivering items to BAE Systems, Vendor certifies to BAE Systems that such items are free from any foreign material that could result in FOD.

**37. COUNTERFEIT PARTS: PREVENTION AND NOTIFICATION** (Note: If DFARS 252.246-7007 is applicable to this procurement, it takes precedence for any differing terms and conditions for Electronic Parts (as defined below) within this specific provision with the exception of subsections: a) i., b), d), and f))

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

- vii. "Original Equipment Manufacturer" or "OEM" means an organization that designs, manufactures or engineers product comprised of various parts and is pursuing or has obtained the intellectual property rights to that product.
  - viii. "Suspect Counterfeit Electronic Part" means an Electronic Part for which credible evidence (including, but not limited to, visual inspection or testing) provides reasonable doubt that the Electronic Part is authentic.
- b) Vendor represents and warrants that it uses or will use only new and authentic materials in items delivered to BAE Systems and that the Work delivered contains no Counterfeit Parts. Vendor will not use any material, part, or component that is not a new and authentic part, unless approved in advance in writing by the BAE Systems Procurement Representative. To further mitigate the possibility of the inadvertent use of Counterfeit Parts, Vendor shall only purchase and use authentic parts/components directly from the OEMs/OCMs or through the OEM's/OCM's authorized distribution chain. At BAE Systems' request, Vendor must make available all OEM/OCM documentation that authenticates traceability of the components to that applicable OEM/OCM. This Contract does not authorize Vendor to purchase or use parts/components from Independent Distributors. BAE Systems, at its sole discretion, may approve Vendor's use of an Independent Distributor, but Vendor must present complete and compelling support for its request and include in its request all actions needed to ensure that the parts/components thus procured and used are new and authentic parts, and receive written approval from BAE Systems Procurement Representative. Where BAE Systems must obtain its Customer's approval of Vendor's request, any time attributed to the processing of such requests does not constitute a basis for excusable delay on part of the Vendor. BAE Systems' approval of a Vendor request(s) does not relieve Vendor of its responsibility to comply with all Contract requirements, including the representations and warranties in this provision.
  - c) Vendor shall maintain a documented system (policy, procedure, or other documented approach) that provides for prior notification to and approval from the BAE Systems Procurement Representative before parts/components are procured and used from sources other than OEMs/OCMs or through the OEM's/OCM's authorized distribution chain. Upon BAE Systems' request, Vendor shall provide copies of such documentation for its system for BAE Systems' inspection. Vendor's system shall be consistent with applicable industry standards, AS5553 at a minimum, for the detection and avoidance of Counterfeit Electronic Parts and Suspect Counterfeit Electronic Parts, including policies and procedures for training personnel, designing and maintaining systems to mitigate risks associated with parts obsolescence, making sourcing decisions, prioritizing mission critical and sensitive components, ensuring traceability of parts, developing lists of trusted and non-trusted suppliers, flowing down requirements to subcontractors, inspecting and testing parts, reporting and quarantining Suspect Counterfeit Electronic Parts and Counterfeit Electronic Parts, and taking corrective action.
  - d) If the Vendor is providing electronic components/devices only, or value added services that include the acquisition of components/devices in conjunction with these services, it certifies as follows:

**Certification of Origin of Product:**

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

- e) Vendor shall flow the requirements of this provision to its subcontractors and suppliers at any tier for the performance of this Contract.
- f) Notifications: Vendor shall notify BAE Systems promptly, but in no event later than seven (7) days of discovery in the event that Vendor becomes aware of a Counterfeit Part or Suspect Counterfeit Part that, by any means, has been delivered to BAE Systems, or acquired for this Contract whether or not delivered to BAE Systems. Vendor will request verification of receipt of this notification from BAE Systems. This requirement will survive this Contract.
- g) Vendor shall be liable for the cost of Counterfeit Parts and Suspect Counterfeit Electronic Parts and the cost of rework or corrective action that may be required to remedy the use or inclusion of such parts.

- h) Vendor shall quarantine Suspect Counterfeit Electronic Parts and Counterfeit Electronic Parts, and make them available for investigation by appropriate government authorities. Vendor shall not return Suspect Counterfeit Electronic Parts and Counterfeit Electronic Parts to the supply chain unless and until the parts are determined to be authentic.

### 38. PACKING AND SHIPMENT

- a) Unless otherwise specified, Vendor shall pack all Work in accordance with good commercial practice.
- b) Vendor shall enclose a complete packing list with all shipments. Vendor shall mark containers or packages with necessary lifting, loading, and shipping information, including the BAE Systems Contract number, item number, dates of shipment, and the names and addresses of consignor and consignee. Bills of lading shall include this Contract number.
- c) Unless otherwise specified, delivery shall be in accordance with INCOTERMS 2020 DAP at the place of BAE Systems identified in the order.
- d) Vendor shall not supply Work in excess of quantities specified in this Contract. Vendor shall be liable for handling charges and return shipment costs for any excess quantities.

### 39. TIMELY PERFORMANCE

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

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

- a) Inspection or Observation. BAE Systems and its Customer may inspect and observe the performance of Work at all reasonable times. Vendor 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 Vendor notice of rejection within thirty (30) Days after the date of delivery and completion of the Work, 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 Vendor 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 Work except for Cost Reimbursable Work: (i) If Vendor performs non-conforming Work, BAE Systems may: (A) accept all or part of such Work at an equitable price reduction; or (B) make, or have a third party make all repairs, corrections, or modifications necessary to enable such Work to comply in all respects with Contract requirements and charge the cost incurred to Vendor.
- c) Corrective Action Request ("CAR"). BAE Systems may issue a CAR to Vendor for nonconforming Work, and Vendor 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. Vendor 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. Vendor shall present all corrective actions to BAE Systems for review and approval, and shall not re-perform nonconforming Work 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) Shipment of Non-Conforming Work. Vendor shall notify BAE Systems Procurement Representative of non-conforming items which cannot be reworked to meet the requirements of this Contract. Vendor shall obtain prior written authorization from BAE Systems Procurement Representative prior to Vendor's shipment of such non-conforming items to BAE Systems. Vendor also shall notify BAE Systems Procurement Representative of any previously delivered items which do not meet the requirements of this Contract immediately upon discovery of such non-conformance by Vendor.
- e) 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 Vendor performs nonconforming Work, BAE Systems may require Vendor to promptly correct or re-perform the nonconforming Work. 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 (e)(i) above, BAE Systems may at any time require the Vendor to remedy by correction or re-performance, any failure by the Vendor 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 Vendor's managerial personnel; or (B) the conduct of one or more of the Vendor's employees selected or retained by the Vendor after any of the Vendor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.

#### 41. WARRANTIES/REPRESENTATIONS/NON-CONFORMING WORK

- a) Work. Vendor represents and warrants that:
  - i. it and each of its personnel assigned to perform the Work hereunder have the proper skill, training, and background to be able to perform in a competent and professional manner and that all Work will be performed in accordance with the applicable statement of work and this Contract;
  - ii. it and each of its personnel will perform the Work under this Contract with the highest degree of professional skill and sound practices and judgment exercised by businesses that perform or offer Work of a similar nature;
  - iii. 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 Work to be furnished by Vendor under this Contract;
  - iv. BAE Systems will receive free, good, and clear title to all deliverables developed under this Contract;
  - v. If the any items or any part of the items provided under this Contract are a commercial item, the commercial warranty will be transferred to BAE Systems; and
  - vi. all Work performed pursuant to this Contract shall strictly conform to all specifications, and descriptions, and other requirements of this Contract.
- b) Additional Warranties. In addition to the foregoing warranties, statements of work may contain additional warranties that specifically apply to such statement of work.
- c) Warranty Period. The warranty begins upon acceptance of the Work by BAE Systems or BAE Systems Customer, whichever is later, and extends for a period of one (1) year. If the Work fails to conform to the foregoing warranty, Vendor shall, at BAE Systems' option and without additional charge, promptly repair, replace, or re-perform such Work. If repair, replacement, or re-performance of the Work is not timely or fails to correct the non-conformity, BAE Systems may elect to re-procure or re-perform the Work at Vendor's expense. All warranties run to BAE Systems and its Customers.
- d) Malicious Technology. Vendor warrants that the Work will not: (A) contain any Malicious Technology, (B) monitor BAE Systems' use of the Work; (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 Vendor 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 Vendor for violation of this provision. Vendor will not install, use, or execute any software on any BAE Systems central processing unit without BAE Systems' written approval. Vendor acknowledges that it does not have any right to electronically repossess or use any self-help related to the Work.

#### 42. PARTS OBSOLESCENCE

- a) "Obsolete Electronic Part" means an electronic part that is no longer in production by the original manufacturer or an aftermarket manufacturer that has been provided express written authorization from the current design activity or original manufacturer.
- b) Vendor shall take appropriate actions to mitigate Electronic Parts obsolescence in order to maximize the availability and use of authentic, originally designed, and qualified Electronic Parts throughout the product's lifecycle.
- c) BAE Systems may desire to place additional orders for items purchased hereunder. Vendor shall provide BAE Systems with a "Last Time Buy Notice" at least twelve (12) months prior to any action to discontinue any item purchased under this Contract.
- d) Vendor shall notify BAE Systems if parts they have supplied contain materials at risk of future obsolescence or supply risk due to current or proposed regulations and/or standards, either domestic or foreign.

#### 43. SOFTWARE

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

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

- a) BAE Systems may provide Vendor with property owned by either BAE Systems or its Customer ("Furnished Property") or require Vendor to acquire ("Acquired Property") and/or to fabricate property ("Fabricated Property") specifically for Work under this Contract (collectively "All Property"). BAE Systems authorizes Vendor 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). Vendor 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, Vendor shall be responsible for maintaining, managing, preserving, and insuring All Property from loss or damage while in Vendor'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. Vendor 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, Vendor shall also provide a report containing all information required by FAR 52.245-1 to BAE Systems within 30 Days. Vendor shall support all BAE Systems or Customer investigations relative to the loss, damage or destruction of this property. At BAE Systems' sole option, Vendor shall immediately replace, reimburse, repair, and/or provide consideration to BAE Systems for such loss or damage.
- d) All Property associated with Work under this Contract shall be received, inspected, inventoried, processed, and reported as required by 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 Vendor 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.

## 45. INTELLECTUAL PROPERTY

- a) Warranty. Vendor warrants that the Work 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 Work as a result of infringement or misappropriation of the intellectual property of any third party, Vendor shall either (A) procure for BAE Systems and Customer the right to continue using the deliverable or (B) re-perform or modify the Work so the deliverable becomes non-infringing.
- b) Markings. Vendor 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 Vendor, in writing, of any Nonconforming Markings and Vendor will remove such Nonconforming Markings and resubmit within sixty (60) Days after such notification. If Vendor fails to remove or correct such Nonconforming Markings within sixty (60) Days after such notification, BAE Systems may ignore, or at Vendor's expense remove or modify, as appropriate, any such Nonconforming Markings as may be on such deliverables and Vendor 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 property 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 Vendor Subject Inventions as defined in DFARS 252.227-7038, any intellectual property conceived, developed, or generated in performance of this Contract (whether by Vendor, BAE Systems, jointly by both parties, or by any third party), including any deliverables that are the product of the Work (the "Foreground Intellectual Property). Vendor shall promptly deliver to BAE Systems full disclosures of all intellectual property developed by or on behalf of Vendor in performance of this Contract. Vendor shall provide all assistance reasonably required and execute all documents necessary to perfect the rights granted to BAE Systems. To enable Vendor to comply with the foregoing, each of Vendor's personnel, workers, representatives, agents and subcontractors providing Work under this Contract, shall assign all rights they have in all inventions, works for hire, and the like, to Vendor.
- d) Vendor's Intellectual Property. The parties agree that Vendor shall maintain and have all rights, title and interest in and to (i) any intellectual property which Vendor has at the inception of this Contract ("Vendor Background Intellectual Property"), and (ii) Vendor Subject Inventions (as defined in DFARS 252.227-7038) conceived, developed, or generated by Vendor in performance of this Contract ("Vendor Foreground Intellectual Property").
- e) Vendor Intellectual Property License. Vendor grants and agrees that BAE Systems shall have a nonexclusive, worldwide, sub-licensable, irrevocable, paid-up, royalty-free license and right, to any Vendor Foreground Intellectual Property and 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. Vendor shall provide all assistance reasonably required and execute all documents necessary to perfect the rights granted to BAE Systems herein. To enable Vendor to comply with the foregoing, each of Vendor's personnel, workers, representatives, agents and subcontractors providing services under this Contract, shall assign sufficient rights they have in all inventions, works for hire, project results, and the like, to Vendor.
- f) Subject Invention Disclosures. To the extent the Vendor conceives, develops, generates, or invents any Vendor Subject Inventions under this Contract, Vendor 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. Vendor hereby agrees that BAE Systems will own all physical deliverable items, in whatever medium Vendor delivers those deliverable items to BAE Systems under this Agreement.

### Section D: Indemnification and Liability

## 46. INDEMNIFICATION

- a) VENDOR SHALL INDEMNIFY, HOLD HARMLESS AND AT BAE SYSTEMS' ELECTION, DEFEND BAE SYSTEMS, ITS AFFILIATES, AND ITS AND THEIR DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS FROM AND AGAINST ALL LOSSES, COSTS, CLAIMS, PENALTIES, CAUSES

OF ACTION, DAMAGES, LIABILITIES, FEES, AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES, ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, AND COURT COSTS (HEREINAFTER COLLECTIVELY REFERRED TO AS "CLAIMS"), ARISING FROM OR RELATED TO:

- i. ANY ACT OR OMISSION OF VENDOR, ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, SUPPLIERS, OR SUBCONTRACTORS AT ANY TIER, RELATED TO OR AS PART OF THE EXECUTION OF WORK TO BE PERFORMED OR OTHERWISE IN THE PERFORMANCE OF ANY OF ITS OBLIGATIONS UNDER THIS CONTRACT;
  - 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 WORK 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 VENDOR, 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 WORK UNDER THIS CONTRACT;
  - iv. ANY CLAIMS MADE BY VENDOR'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 VENDOR'S DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, SUPPLIERS OR SUBCONTRACTORS; AND
  - vi. VENDOR'S FAILURE TO PAY ANY OF VENDOR'S EMPLOYEES, AGENTS, SUPPLIERS, OR SUBCONTRACTORS, FOR WORK RENDERED UNDER THIS CONTRACT, AND SUCH OBLIGATION IS PERFORMED BY BAE SYSTEMS.
- b) Vendor shall notify BAE Systems as soon as is practicable of any Claims arising under this section. Vendor 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 Vendor 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 solely to the Vendor or its subcontractors at any tier, the Vendor 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) Vendor 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.

#### **47. 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, OR ITS OR THEIR EMPLOYEES, AGENTS OR REPRESENTATIVES 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 VENDOR'S INCREASED COSTS OF PERFORMANCE RESULTING FROM THE VENDOR'S IMPLEMENTATION OF ANY CHANGES OR MODIFICATIONS IT PERFORMS OR HAS PERFORMED WITHOUT FIRST OBTAINING THE APPROVAL OF BAE SYSTEMS PROCUREMENT REPRESENTATIVE FIRST.

#### **48. INSURANCE**

- a) In the event that Vendor, its employees, agents, or subcontractors enter the site(s) of BAE Systems or its Customer for any reason in connection with this Contract, then Vendor 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 Vendor’s Equipment Insurance and Vendor’s employee owned tools and equipment brought onto BAE Systems/Customer Property

- b) The insurance coverage and limits required of the Vendor under this Contract are the minimum requirements of BAE Systems. These minimum requirements are neither a limit of the Vendor’s liability under this Contract, nor a recommended insurance program for Vendor. The Vendor alone should seek professional assistance if the Vendor 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) Vendor 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 Vendor 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 Work under this Contract, Vendor 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.

**49. MECHANICS AND OTHER LIENS**

- a) TO THE EXTENT PERMITTED BY LAW, VENDOR 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 VENDOR FOR FURNISHING ANY LABOR OR MATERIAL IN PERFORMANCE OF THIS CONTRACT OR FOR PERFORMING ANY WORK ASSOCIATED THEREWITH. VENDOR 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. VENDOR 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 VENDOR’S WAIVER OF LIENS IN ADVANCE, VENDOR AGREES THAT IT SHALL NOT FILE A LIEN UNTIL IT COMPLETES THE WORK REQUIRED BY THE CONTRACT AND WILL PROVIDE A RELEASE AND WAIVER SIMULTANEOUS WITH FINAL PAYMENT UNDER THE CONTRACT.
- b) Vendor agrees to secure releases and waivers of lien in favor of BAE Systems from Vendor’s suppliers and subcontractors coincident with Vendor’s final payments to them. In the event any of Vendor’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 Vendor and/or offset such amounts against payments owed to Vendor.

## **50. DEFECTIVE COST OR PRICING DATA**

If Vendor 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 Vendor under this Contract or any other contract with Vendor, and/or may demand payment (in whole or in part) of the corresponding amounts. Vendor shall promptly pay amounts so demanded.

## **51. 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 Work 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) Vendor agrees that its sole remedy under this Section 51 is schedule relief, and any excusable delay is non-compensable.