

**GENERAL PROVISIONS AND FAR FLOWDOWN PROVISIONS FOR SUBCONTRACTS/PURCHASE ORDERS
(ALL AGENCIES) FOR NON-COMMERCIAL ITEMS UNDER A U.S. GOVERNMENT PRIME CONTRACT**

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SECTION I: GENERAL PROVISIONS

1. ACCEPTANCE OF CONTRACT/TERMS AND CONDITIONS

- (a) This Contract integrates, merges, and supersedes any prior offers, negotiations, and agreements concerning the subject matter hereof and constitutes the entire agreement between the parties.
- (b) SELLER's acknowledgment, acceptance of payment, or commencement of performance, shall constitute SELLER's unqualified acceptance of this Contract.
- (c) **ADDITIONAL OR DIFFERING TERMS OR CONDITIONS PROPOSED BY SELLER OR INCLUDED IN SELLER'S ACKNOWLEDGMENT HEREOF ARE HEREBY OBJECTED TO BY BAE SYSTEMS AND HAVE NO EFFECT UNLESS EXPRESSLY ACCEPTED IN WRITING BY BAE SYSTEMS.**

2. APPLICABLE LAWS

- (a) This Contract and all matters arising from or related to it shall be governed by and construed in accordance with the law of the State from which this Contract was issued, excluding its choice of law rules, except that any provision in this Contract that is (i) incorporated in full text or by reference from the Federal Acquisition Regulations (FAR); or (ii) incorporated in full text or by reference from any agency regulation that implements or supplements the FAR; or (iii) that is substantially based on any such agency regulation or FAR provision, shall be construed and interpreted according to the federal common law of government contracts as enunciated and applied by federal judicial bodies, boards of contract appeals, and quasi-judicial agencies of the federal Government.
- (b) (1) SELLER shall comply with all applicable laws, orders, rules, regulations, and ordinances. SELLER shall procure all licenses and permits, and pay all fees and other required charges necessary to conduct its business, all at SELLER's expense.

- (2) SELLER shall be responsible for compliance with all requirements and obligations relating to its employees under all applicable local, state, and federal statutes, ordinances, rules, and obligations including, but not limited to, employer's obligations under laws relating to: income tax withholding and reporting; civil rights; equal employment opportunity; discrimination on the basis of age, sex, race, color, religion, disability, national origin, or veteran status; overtime; minimum wage; social security contribution and withholding; unemployment insurance; employer's liability insurance; worker's compensation; veteran's rights; and all other employment, labor, or benefits related laws.
- (3) If: (i) BAE SYSTEMS' contract price or fee is reduced; (ii) BAE SYSTEMS' costs are determined to be unallowable; (iii) any fines, penalties or interest are assessed on BAE SYSTEMS; or (iv) BAE SYSTEMS incurs any other costs or damages as a result of any violation of applicable laws, orders, rules, regulations, or ordinances by SELLER, its directors, officers, employees, agents, suppliers, or subcontractors at any tier, BAE SYSTEMS may proceed as provided for in subparagraph 2(b)(5) below.
- (4) Where submission of cost or pricing data is required or requested at any time prior to or during performance of this Contract, if SELLER or its lower-tier subcontractors: (i) submit and/or certify cost or pricing data that are defective; (ii) with notice of applicable cutoff dates and upon BAE SYSTEMS' request to provide cost or pricing data, submit cost or pricing data, whether certified or not certified at the time of submission, as a prospective subcontractor, and any such data are defective as of the applicable cutoff date on BAE SYSTEMS' Certificate of Current Cost or Pricing Data; (iii) claim an exception to a requirement to submit cost or pricing data and such exception is invalid; or (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) BAE SYSTEMS incurs any other costs or

damages; BAE SYSTEMS may proceed as provided for in subparagraph 2(b)(5) below.

- (5) Upon the occurrence of any of the circumstances identified in subparagraphs 2(b)(3) and 2(b)(4) above, BAE SYSTEMS may make a reduction of corresponding amounts (in whole or in part) in the price, or in the costs and fee, of this Contract or any other contract with SELLER, and/or may demand payment (in whole or in part) of the corresponding amounts. SELLER shall promptly pay amounts so demanded.
- (c) SELLER represents that each chemical substance constituting or contained in Work sold or otherwise transferred to BAE SYSTEMS hereunder is on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Agency pursuant to the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.) as amended.
- (d) SELLER shall provide to BAE SYSTEMS with each delivery any Material Safety Data Sheet (29 C.F.R. 1910.1200) applicable to the Work in conformance with and containing such information as required by the Occupational Safety and Health Act of 1970 and regulations promulgated thereunder, or its state approved counterpart.

3. ASSIGNMENT

Any assignment of SELLER's contract rights or delegation of duties shall be void, unless prior written consent is given by BAE SYSTEMS. However, SELLER may assign rights to be paid amounts due, or to become due, to a financing institution if BAE SYSTEMS is promptly furnished a signed copy of such assignment reasonably in advance of the due date for payment of any such amounts. Amounts assigned to an assignee shall be subject to setoffs or recoupment for any present or future claims of BAE SYSTEMS against SELLER. BAE SYSTEMS shall have the right to make settlements and/or adjustments in price without notice to the assignee.

4. CONTRACT DIRECTION

- (a) Only the BAE SYSTEMS Procurement Representative has authority to make changes in, to amend, or to modify this Contract. Such changes, amendments or modifications must be in writing.
- (b) BAE SYSTEMS program, operations, engineering, technical, or other personnel may from time to time render assistance, give technical advice, discuss, or exchange information with SELLER's personnel concerning the Work hereunder. Such actions shall not be deemed to be a change under the "Changes" clause of this Contract and shall not be the basis for equitable adjustment. If SELLER believes the foregoing creates an actual or constructive change, SELLER shall notify the BAE SYSTEMS Procurement Representative and shall not accept such direction or perform said action unless authorized under subparagraph 4(a).
- (c) Except as otherwise provided herein, all notices to be furnished by the SELLER shall be sent to the BAE SYSTEMS Procurement Representative.

5. COUNTERFEIT PARTS PREVENTION

- (a) Definitions for purposes of this Contract:
 - (i) "Counterfeit Parts" shall mean a part, component, module, or assembly whose origin, material, source of manufacture, performance, or characteristics are misrepresented. This term includes, but is not limited to, (A) parts that have been (re)marked to disguise them or falsely represent the identity of the manufacturer, (B) defective parts and/or surplus material scrapped

by the original manufacturer, and (C) previously used parts pulled or reclaimed and provided as "new".

- (ii) As used herein, "authentic" shall mean (A) genuine; (B) from the legitimate source claimed or implied by the marking and design of the product offered; and (C) 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.
- (iii) "Independent Distributor" shall mean a person, business, or firm that is neither authorized nor franchised by an Original Component Manufacturer ("OCM") to sell or distribute the OCM's products but which purports to sell, broker, and/or distribute such OCM products. Independent Distributors are also referred to as unfranchised distributors, unauthorized distributors, and/or brokers.
- (b) SELLER represents and warrants that only new and authentic materials are used in products required to be delivered to BAE SYSTEMS and that the Work delivered contains no Counterfeit Parts. No other material, part, or component other than a new and authentic part is to be used unless approved in advance in writing by BAE SYSTEMS. To further mitigate the possibility of the inadvertent use of Counterfeit Parts, SELLER shall only purchase authentic parts/components directly from the Original Equipment Manufacturers ("OEMs")/OCMs or through the OEM's/OCM's authorized distribution chain. SELLER must make available to BAE SYSTEMS, at BAE SYSTEMS' request, OEM/OCM documentation that authenticates traceability of the components to that applicable OEM/OCM. Purchase of parts/components from Independent Distributors is not authorized unless first approved in writing by BAE SYSTEMS Procurement Representative. SELLER must present complete and compelling support for its request and include in its request all actions to ensure the parts/components thus procured are legitimate parts. BAE SYSTEMS' approval of SELLER request(s) does not relieve SELLER's responsibility to comply with all Contract requirements, including the representations and warranties in this paragraph.
- (c) SELLER shall maintain a documented system (policy, procedure, or other documented approach) that provides for prior notification and BAE SYSTEMS approval before parts/components are procured from sources other than OEMs/OCMs or through the OEM's/OCM's authorized distribution chain. SELLER shall provide copies of such documentation for its system for BAE SYSTEMS' inspection upon BAE SYSTEMS' request.
- (d) If the SELLER is providing electronic components/devices only, the following certification applies:

Certification of Origin of Product:

Acceptance of this Contract constitutes confirmation by the SELLER that it is either the Original Equipment Manufacturer (OEM), Original Component Manufacturer (OCM), or a franchised or authorized distributor of the OEM/OCM for the product herein procured. SELLER further warrants that OEM/OCM acquisition documentation that authenticates traceability of the components to that applicable OEM is available upon request. If the SELLER is not the OEM/OCM or a franchised or authorized distributor, the SELLER confirms by acceptance of this Contract that each product supplied to BAE SYSTEMS has been procured from the OEM/OCM or a franchised or authorized distributor of the OEM/OCM. The supplier further warrants that OEM/OCM acquisition traceability documentation is accurate and available to BAE SYSTEMS upon BAE SYSTEMS' request.

- (e) SELLER shall flow the requirements of this paragraph 5 to its subcontractors and suppliers at any tier for the performance of this Contract.

6. CUSTOMER COMMUNICATION

BAE SYSTEMS shall be solely responsible for all liaison and coordination with the Customer, any higher tier contractor(s), or the U. S. Government, as it affects the applicable Prime Contract, this Contract, and any related contract. Except as required by law, SELLER shall not communicate with the Customer, any higher tier contractor(s), or the U. S. Government, with respect to the applicable Prime Contract, this Contract, and/or any related contract without prior approval of the BAE SYSTEMS Procurement Representative. SELLER shall promptly notify BAE SYSTEMS of any communications initiated by the Customer, any higher tier contractor(s), or the U. S. Government, that affects the applicable Prime Contract, this Contract, and/or any related contract.

7. DEFINITIONS

The following terms shall have the meanings set forth below:

- (a) "BAE SYSTEMS" means the BAE SYSTEMS legal entity as identified on the face of this Contract.
- (b) "BAE SYSTEMS Procurement Representative" means the person authorized by BAE SYSTEMS' cognizant procurement organization to administer and/or execute this Contract.
- (c) "Contract" means the instrument of contracting, such as "PO", "Purchase Order", or other such type designation, including all referenced documents, exhibits and attachments. If these terms and conditions are incorporated into a "master" agreement that provides for releases, (in the form of a purchase order or other such document) the term "Contract" shall also mean the release document for the Work to be performed.
- (d) "Customer" means the entity with whom BAE SYSTEMS has or anticipates having a contractual relationship to provide services or goods that utilize or incorporate the Work. For purposes of paragraphs 12 (FURNISHED PROPERTY) and 14 (INDEPENDENT CONTRACTOR RELATIONSHIP), "Customer" shall include both any higher tier contractor(s) and the U.S. Government.
- (e) "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.
- (f) "FAR" means the Federal Acquisition Regulations, issued as Chapter 1 of Title 48, Code of Federal Regulations.
- (g) "Open Source" means with respect to Software and any licenses of same, that Software provided under a license which permits the user to run, copy, distribute, study, change, modify and/or improve the Software but which prohibits the user from: (a) withholding improvements and/or modifications made by the user to the source code when and/if user thereafter distributes the Software; and/or (b) adding restrictions on use when redistributing or transferring the Software to third parties. For purposes of this Contract, "Open Source" Software shall also include "Free Software" as defined by the Free Software Foundation Inc. By way of example and not limitation, "Open Source" licenses shall include such licenses as the GNU General Public License, the Mozilla Public License 1.1, Apache Software License Version 2.0, the Academic Free License 2.0, and Open Software License 2.0.
- (h) "PO" or "Purchase Order" as used in any document constituting a part of this Contract shall mean this "Contract."

- (i) "SELLER" means the party identified on the face of this Contract with whom BAE SYSTEMS is contracting. For the purposes of paragraphs 6 (CUSTOMER COMMUNICATION) and 14 (INDEPENDENT CONTRACTOR RELATIONSHIP) only, "SELLER" shall also include SELLER's agents, representatives, subcontractors, and suppliers at any tier.

- (j) "Software" means: (1) computer programs, source code, source code listings, executable code, machine readable code, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable software to be read, reproduced, recreated, or recompiled; (2) associated documentation such as operating manuals, application manuals, and installation and operating instructions that explain the capabilities of software and provide instructions on using the software; and (3) derivative works, enhancements, modifications, and copies of those items identified in (1) and (2) above.

- (k) "Work" means all required articles, materials, supplies, goods and services, including, but not limited to, technical data and Software, constituting the subject matter of this Contract.

8. DISPUTES/JURY WAIVER

- (a) All disputes arising from or related to this Contract, which are not disposed of by mutual agreement may be decided by recourse to an action at law or in equity in accordance with subparagraph 8(b). Until final resolution of any dispute hereunder, SELLER shall diligently proceed with the performance of this Contract as directed by BAE SYSTEMS.
- (b) BAE SYSTEMS and SELLER agree to timely notify each other of any claim, dispute or cause of action arising from or related to this Contract, and to negotiate in good faith to resolve any such claim, dispute or cause of action. To the extent that such negotiations fail, **BAE SYSTEMS AND SELLER AGREE THAT ANY LAWSUIT OR CAUSE OF ACTION THAT ARISES FROM OR IS RELATED TO THIS CONTRACT SHALL BE FILED WITH AND LITIGATED ONLY IN A COURT OF COMPETENT JURISDICTION WITHIN THE STATE FROM WHICH THIS CONTRACT WAS ISSUED; AND BAE SYSTEMS AND SELLER EACH HEREBY CONSENT AND AGREE TO THE PERSONAL JURISDICTION AND VENUE OF ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION LOCATED WITHIN THE STATE FROM WHICH THIS CONTRACT WAS ISSUED WITH RESPECT TO ANY SUCH CLAIM, DISPUTE OR CAUSE OF ACTION AND WAIVE ANY DEFENSE OR OBJECTION TO THE EXERCISE OF PERSONAL JURISDICTION AND/OR VENUE BY ANY SUCH COURT.**
- (c) **TO THE EXTENT PERMITTED BY APPLICABLE LAWS, BAE SYSTEMS AND SELLER EACH WAIVE ANY RIGHTS WHICH EITHER MAY HAVE TO TRIAL BEFORE A JURY OF ANY DISPUTE ARISING FROM, OR RELATED TO, THIS CONTRACT. SELLER AND BAE SYSTEMS FURTHER STIPULATE AND CONSENT THAT ANY SUCH LITIGATION BEFORE A COURT OF COMPETENT JURISDICTION SHALL BE NON-JURY.**

9. ELECTRONIC CONTRACTING

BAE SYSTEMS and SELLER agree that if this Contract, or any order, ancillary agreement, or correspondence is transmitted electronically neither BAE SYSTEMS nor SELLER shall contest the validity thereof, on the basis that this Contract, or the order, acknowledgement, ancillary agreement, or correspondence exists only in electronic form, an electronic record was used in its creation or formation, or it contains only an Electronic Signature or it was generated automatically, without

human intervention by a system intended for the purposes of generating same.

10. EXPORT CONTROL

- (a) **SELLER shall comply with all applicable United States export control laws and regulations, including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C. 2751-2794, the International Traffic in Arms Regulation (ITAR), 22 C.F.R. 120 et seq., the Export Administration Act, 50 U.S.C. app. 2401-2420, and the Export Administration Regulations, 15 C.F.R. 730-774. SELLER shall obtain all required export licenses or agreements necessary to perform SELLER's Work, as applicable.**
- (b) Without limiting the foregoing, SELLER shall not transfer any export controlled item, data or services, to include transfer to "Foreign Persons" employed by or associated with, or under contract to SELLER or SELLER's lower-tier suppliers, without the authority of a United States Government export license, export agreement, or applicable license exemption or exception. For purposes of this paragraph 10, "Foreign Persons" shall mean any natural person who is not a lawful permanent resident as defined by 8 U.S.C. 1101(a)(20) or who is not a protected individual as defined by 8 U.S.C. 1324b(a)(3). It also means any foreign corporation, business association, partnership, trust, society or any other entity or group that is not incorporated or organized to do business in the United States, as well as international organizations, foreign governments and any agency or subdivision of foreign governments (e.g. diplomatic missions).
- (c) SELLER shall notify BAE SYSTEMS if any use, sale, import or export by BAE SYSTEMS of Work to be delivered under this Contract is restricted by any export control laws or regulations applicable to SELLER.
- (d) SELLER shall immediately notify the BAE SYSTEMS Procurement Representative if SELLER is listed in any Denied Parties List or if SELLER's export privileges are otherwise denied, suspended or revoked in whole or in part by any government entity or agency.
- (e) If SELLER is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services, SELLER represents that it maintains an effective export/import compliance program in accordance with the ITAR and it is registered with the United States Office of Defense Trade Controls (unless covered by one of the exemptions set forth in 22 C.F.R. 122.1) as required by the ITAR.
- (f) Where SELLER is a signatory under a BAE SYSTEMS export license or export agreement (e.g., TAA, MLA), SELLER shall provide prompt notification to the BAE SYSTEMS Procurement Representative in the event of changed circumstances affecting said license or agreement.
- (g) SELLER shall indemnify, hold harmless and, at BAE SYSTEMS' election, defend BAE SYSTEMS, its directors, officers, employees, and agents from and against all losses, costs, claims, causes of action, damages, liabilities and expense, including, but not limited to, reasonable attorneys' fees, all expense of litigation and/or settlement, and court costs, arising from or related to any act or omission of SELLER, its directors, officers, employees, agents, suppliers, or subcontractors at any tier in the performance of any of its obligations under this paragraph 10. SELLER shall include the requirements of this paragraph 10 in all agreements with lower tier subcontractors.

11. EXTRAS

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Work shall not be supplied in excess of quantities specified in this Contract. SELLER shall be liable for handling charges and return shipment costs for any excess quantities.

12. FURNISHED PROPERTY

- (a) BAE SYSTEMS may provide to SELLER property owned by either BAE SYSTEMS or its Customer (Furnished Property). Unless previously authorized in writing by the BAE SYSTEMS Procurement Representative, Furnished Property shall be used only for the performance of this Contract.
- (b) Title to Furnished Property shall remain in BAE SYSTEMS or its Customer as applicable. SELLER shall clearly mark (if not so marked) all Furnished Property to show its ownership.
- (c) The Furnished Property shall be supplied in "as-is" condition unless otherwise expressly agreed in writing. Except for reasonable wear and tear, SELLER shall be responsible for, and shall promptly notify BAE SYSTEMS of, any loss or damage to Furnished Property while in SELLER's care, custody, or control. Without additional charge, SELLER shall manage, maintain, preserve, and insure Furnished Property in accordance with good commercial practice.
- (d) At BAE SYSTEMS' request, and/or upon completion of this Contract SELLER shall submit, in an acceptable form, inventory lists of Furnished Property and shall deliver or make such other disposal as may be directed by BAE SYSTEMS.
- (e) The Government Property clause contained in Section II shall apply in lieu of subparagraphs 12(a) through 12(d) above with respect to Government-furnished property, or property to which the Government may take title under this Contract.

13. GRATUITIES/KICKBACKS PROHIBITION

- (a) No gratuities (in the form of entertainment, gifts or otherwise) or kickbacks shall be offered or given by SELLER, or anyone acting on SELLER's behalf, to any employee of BAE SYSTEMS with a view toward securing favorable treatment as a supplier.
- (b) **By accepting this Contract, SELLER certifies and represents that it has not made or solicited and will not make or solicit kickbacks in violation of FAR 52.203-7 or the Anti-Kickback Act of 1986 (41 U.S.C. Sec. 51-58), both of which are incorporated herein by this specific reference, except that paragraph (c)(1) of FAR 52.203-7 shall not apply.**

14. INDEPENDENT CONTRACTOR RELATIONSHIP

- (a) SELLER's relationship to BAE SYSTEMS shall be that of an independent contractor and this Contract does not create an agency, partnership, or joint venture relationship between BAE SYSTEMS and SELLER or BAE SYSTEMS and SELLER personnel. SELLER personnel engaged in performing Work under this Contract shall be deemed employees of SELLER and shall not for any purposes be considered employees or agents of BAE SYSTEMS. SELLER assumes full responsibility for the actions and supervision of such personnel while engaged in Work under this Contract. BAE SYSTEMS assumes no liability for SELLER personnel.
- (b) Nothing contained in this Contract shall be construed as granting to SELLER or any personnel of SELLER rights under any BAE SYSTEMS benefit plan.
- (c) SELLER personnel: (i) will not remove BAE SYSTEMS or its Customer's assets from BAE SYSTEMS' or Customer's premises without BAE SYSTEMS authorization; (ii) will use BAE

SYSTEMS or Customer assets only for purposes of this Contract; (iii) will only connect with, interact with or use BAE SYSTEMS' computer networks and equipment, communications resources, programs, tools or routines as BAE SYSTEMS agrees, all at SELLER's risk and expense, and then only in compliance with applicable BAE SYSTEMS policies; and (iv) will not share or disclose user identifiers, passwords, cipher keys or computer dial port telephone numbers. BAE SYSTEMS may monitor any communications made over or data stored in BAE SYSTEMS computer networks and equipment or communications resources.

- (d) **SELLER SHALL INDEMNIFY, HOLD HARMLESS AND, AT BAE SYSTEMS' ELECTION, DEFEND BAE SYSTEMS, ITS DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS FROM AND AGAINST ALL LOSSES, COSTS, CLAIMS, PENALTIES, CAUSES OF ACTION, DAMAGES, LIABILITIES, FEES, AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES, ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, AND COURT COSTS, ARISING FROM RELATED TO ANY ACT OR OMISSION OF SELLER, ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, SUPPLIERS, OR SUBCONTRACTORS AT ANY TIER, IN THE PERFORMANCE OF ANY OF ITS OBLIGATIONS UNDER THIS CONTRACT.**

15. INFORMATION OF BAE SYSTEMS

Information provided by BAE SYSTEMS to SELLER remains the property of BAE SYSTEMS. SELLER shall comply with all proprietary information markings and restrictive legends applied by BAE SYSTEMS to anything provided hereunder to SELLER. SELLER shall not use any BAE SYSTEMS provided information for any purpose except to perform this Contract and shall not disclose such information to third parties without the prior written consent of BAE SYSTEMS.

16. INFORMATION OF SELLER

SELLER shall not provide any proprietary information to BAE SYSTEMS without prior execution by BAE SYSTEMS of a Proprietary Information or Non-Disclosure Agreement that expressly covers the performance of Work under this Contract.

17. INSURANCE/ENTRY ON BAE SYSTEMS OR CUSTOMER PROPERTY

- (a) In the event that SELLER, its employees, agents, or subcontractors enter the site(s) of BAE SYSTEMS or its Customer for any reason in connection with this Contract, then SELLER and its subcontractors shall procure and maintain worker's compensation (with a waiver of subrogation in favor of BAE SYSTEMS), automobile liability, comprehensive general liability (bodily injury and property damage) insurance in amounts reasonably acceptable to BAE SYSTEMS, and such other insurance as BAE SYSTEMS may reasonably require. SELLER shall indemnify, hold harmless and, at BAE SYSTEMS' election, defend BAE SYSTEMS, its directors, officers, employees, and agents from and against all losses, costs, claims, penalties, causes of action, damages, liabilities, fees, and expenses, including, but not limited to, reasonable attorneys' fees, all expenses of litigation and/or settlement, and court costs, by reason of property damage or loss or personal injury or death to any person arising from or related to the actions or omissions of SELLER, its directors, officers, employees, agents, suppliers, or subcontractors while on the site(s) of BAE SYSTEMS or its Customers. With respect to any injury, including, but not limited to, death, to employees of SELLER or SELLER's agents, subcontractors or suppliers, SELLER's obligation to indemnify and defend in accordance with this paragraph 17 shall apply regardless of cause. SELLER shall provide BAE SYSTEMS thirty (30) days advance written notice prior to the effective date of

any cancellation or change in the term or coverage of any of SELLER's required insurance, provided however such notice shall not relieve SELLER of its obligations to procure and maintain the required insurance. If requested, SELLER shall send a "Certificate of Insurance" showing SELLER's compliance with these requirements. SELLER shall name BAE SYSTEMS as an additional insured for the duration of this Contract. Insurance maintained pursuant to this paragraph 17 shall be considered primary as respects the interest of BAE SYSTEMS and is not contributory with any insurance that BAE SYSTEMS may carry. "Subcontractor" as used in this subparagraph 17(a) shall include SELLER's subcontractors at any tier.

- (b) SELLER shall ensure that personnel assigned to work on BAE SYSTEMS' or Customer's premises comply with any on-premises guidelines. Unless otherwise authorized in writing by BAE SYSTEMS, SELLER's personnel assigned to work on BAE SYSTEMS' or Customer's premises shall while on BAE SYSTEMS' or Customer's premises (i) not bring weapons of any kind; (ii) not manufacture, sell, distribute, possess, use or be under the influence of controlled substances or alcoholic beverages; (iii) not possess hazardous materials of any kind; (iv) remain in authorized areas only; and/or (v) not solicit BAE SYSTEMS' employees for employment during business hours.
- (c) All SELLER personnel, property, and vehicles entering or leaving BAE SYSTEMS' or Customer's premises are subject to search.
- (d) SELLER shall promptly notify BAE SYSTEMS and provide a report of any and all physical altercations, assaults or harassment, and accidents or security incidents involving death, personal injury or loss of or misuse of or damage to BAE SYSTEMS' or Customer's property, while on BAE SYSTEMS' or its Customer's premises.
- (e) BAE SYSTEMS may, at its sole discretion, remove or require SELLER to remove any specified employee of SELLER from BAE SYSTEMS' or Customer's premises and request that such employee not be reassigned to any BAE SYSTEMS premises under this Contract. Any costs arising from or related to removal of SELLER's employee shall be borne solely by SELLER and not charged to this Contract.

18. INTELLECTUAL PROPERTY

- (a) SELLER warrants that the Work performed and delivered under this Contract will not infringe or otherwise violate the intellectual property rights of any third party in the United States or any foreign country and is free and clear of all liens, licenses, claims, and encumbrances.
- (b) SELLER shall indemnify, hold harmless and, at BAE SYSTEMS' election, defend BAE SYSTEMS and its Customer from and against all losses, costs, claims, penalties, causes of action, damages, liabilities, fees, and expenses, including, but not limited to, reasonable attorneys' fees, arising from or related to any action by a third party that is based upon a claim that the Work performed or delivered under this Contract infringes or otherwise violates the intellectual property rights of any person or entity. If an injunction is obtained against BAE SYSTEMS' use of the Work or a portion thereof as a result of infringement or misappropriation of the intellectual property of any third party, SELLER shall either (i) procure for BAE SYSTEMS and Customer the right to continue using the Work or (ii) replace or modify the Work so it becomes non-infringing. This indemnity and hold harmless provision shall not be considered an allowable cost under any provisions of this Contract except with regard to allowable insurance costs.
- (c) SELLER grants and agrees that BAE SYSTEMS shall have a nonexclusive, worldwide, irrevocable, paid-up, royalty-free license

and right, to enable BAE SYSTEMS to satisfy its contractual obligations to its Customer, to make, have made, sell, offer for sale, use, execute, reproduce, display, perform, publish, distribute, copy, prepare derivatives or compilations, and authorize others to do any, some or all of the foregoing, with respect to any and all, inventions, discoveries, improvements, technology, designs, works of authorship, mask works, patents, copyrights, technical information, data, databases, Software, business information and other information, conceived, developed, generated or delivered in performance of this Contract. SELLER shall provide all assistance reasonably required and execute all documents necessary to perfect the rights granted to BAE SYSTEMS herein.

19. MAINTENANCE OF RECORDS

- (a) SELLER shall maintain complete and accurate records in accordance with generally accepted accounting principles and good commercial practices to substantiate SELLER's charges hereunder. SELLER shall retain such records for three (3) years from final payment of this Contract, unless another period is specified by FAR Part 4.7.
- (b) BAE SYSTEMS shall have access to such records, and any other records SELLER is required to maintain under this Contract, for the purpose of audit during normal business hours, upon reasonable notice for so long as such records are required to be retained. Audit rights shall be available to BAE SYSTEMS on all performance related reports and other records, except records pertaining to proprietary indirect cost data. Audit of any proprietary indirect cost data may be accomplished through the responsible DCAA representative, or a mutually agreeable third party auditor from a nationally recognized firm of certified public accountants.

20. OFFSET CREDIT/COOPERATION

All offset or countertrade credit value resulting from this Contract, and any lower tier subcontracts, shall accrue solely to the benefit of BAE SYSTEMS. SELLER shall cooperate with BAE SYSTEMS in the fulfillment of any foreign offset/countertrade obligations.

21. OPEN SOURCE SOFTWARE

Without the prior written approval of BAE SYSTEMS, which BAE SYSTEMS may withhold in its sole discretion, SELLER shall not incorporate any Open Source Software, including any source code governed by an Open Source license, into Work to be performed and/or delivered under this Contract. Before BAE SYSTEMS will consider providing written approval for the incorporation of such Open Source Software, SELLER shall first identify all Open Source Software incorporated into Work to be performed and/or delivered under this Contract, including a complete source code listing of the Software comprising the Work with a description of the operation of the Software in English and machine-readable form, together with copies of any licenses required to be accepted.

22. PACKING AND SHIPMENT

- (a) Unless otherwise specified, all Work is to be packed in accordance with good commercial practice.
- (b) A complete packing list shall be enclosed with all shipments. SELLER shall mark containers or packages with necessary lifting, loading, and shipping information, including the BAE SYSTEMS Contract number, item number, dates of shipment, and the names and addresses of consignor and consignee. Bills of lading shall include this Contract number.
- (c) Unless otherwise specified, delivery shall be FOB Destination.

23. PARTS OBSOLESCENCE

BAE SYSTEMS may desire to place additional orders for items purchased hereunder. SELLER shall provide BAE SYSTEMS with a "Last Time Buy Notice" at least twelve (12) months prior to any action to discontinue any item purchased under this Contract.

24. PAYMENTS, TAXES, AND DUTIES

- (a) Unless otherwise provided, terms of payment shall be net forty-five (45) days from the latest of the following: (i) BAE SYSTEMS' receipt of SELLER's proper invoice; (ii) scheduled delivery date of the Work; or (iii) actual delivery of the Work. BAE SYSTEMS shall have a right of setoff against payments due or at issue under this Contract or any other contract between BAE SYSTEMS and SELLER.
- (b) Each payment made shall be subject to reduction to the extent of amounts which are found by BAE SYSTEMS not to have been properly payable and shall also be subject to reduction for overpayments.
- (c) Payment shall be deemed to have been made as of the date of mailing BAE SYSTEMS' payment or electronic funds transfer.
- (d) Unless otherwise specified, prices include all applicable federal, state and local taxes, duties, tariffs, and similar fees imposed by any government, all of which shall be listed separately on the invoice.

25. PRECEDENCE

Any inconsistencies in this Contract shall be resolved in accordance with the following descending order of precedence: (1) face of the Purchase Order, release document or schedule, (which shall include continuation sheets), as applicable, to include any special provisions; (2) any master-type agreement (such as corporate, operating group, or blanket agreements); (3) representations and certifications; (4) any supplemental terms and conditions incorporated by reference under paragraph 30; (5) these terms and conditions; (6) statement of work; and (7) specifications or drawings.

26. PRIORITY RATING

If so identified, this Contract is a "rated order" certified for national defense use, and SELLER shall follow all the requirements of the Defense Priorities and Allocation System (DPAS) Regulation (15 C.F.R. Part 700). Under DPAS regulations, if this Contract supports the U.S. Government, is DX or DO Rated, and exceeds \$50,000.00, the SELLER must acknowledge acceptance of DX-Rated orders within ten (10) days, and DO-Rated orders within fifteen (15) days of receipt hereof. Commencement of performance of the Work called for by this Contract in the absence of SELLER's written acknowledgement thereof shall be deemed acceptance of this Contract as written.

27. QUALITY CONTROL SYSTEM

- (a) SELLER agrees to provide and maintain a quality control system to an industry recognized Quality Standard and to provide access to SELLER's facilities at all reasonable times for surveillance periodically by BAE SYSTEMS and authorized Customer representatives. SELLER agrees to include, and to require its subcontractors to include, the substance of this paragraph, including this sentence, in each of its subcontracts under this Contract. Further, SELLER shall be in compliance with any other specific quality requirements identified in this Contract.
- (b) Records of all quality control inspection work by SELLER shall be kept complete and available to BAE SYSTEMS and its Customer.

28. **RELEASE OF INFORMATION**

Except as required by law, no public release of any information, or confirmation or denial of same, with respect to this Contract or the subject matter hereof, shall be made by SELLER without the prior written approval of BAE SYSTEMS Procurement Representative.

29. **SEVERABILITY**

Each paragraph and provision of this Contract is severable, and if one or more paragraphs or provisions are declared invalid, the remaining provisions of this Contract will remain in full force and effect.

30. **SUPPLEMENTAL TERMS AND CONDITIONS**

The following supplemental terms and conditions are hereby incorporated by reference, and shall also apply to this Contract: (i) for Contracts issued in support of a Department of Defense Prime Contract BAEDOC 3A applies, (ii) for Contracts issued in support of a National Aeronautics and Space Administration Prime Contract BAEDOC 3B applies, (iii) for Contracts issued in support of a Department of Energy Prime Contract BAEDOC 3C applies, or (iv) for Contracts issued in support of a Department of Homeland Security Prime Contract BAEDOC 3D applies.

31. **SURVIVABILITY**

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

- (a) Applicable Laws
Disputes/Jury Waiver
Electronic Contracting
Export Control
Furnished Property
Independent Contractor Relationship
Information of BAE SYSTEMS
Insurance/Entry on BAE SYSTEMS or Customer Property
Intellectual Property
Maintenance of Records
Parts Obsolescence
Release of Information
Warranty
- (b) Those U. S. Government flowdown provisions that by their nature should survive.

32. **TIMELY PERFORMANCE**

- (a) SELLER's timely performance is a critical element of this Contract.
- (b) Unless advance shipment has been authorized in writing by BAE SYSTEMS, BAE SYSTEMS may store at SELLER's expense, or return, shipping charges collect, all Work received in advance of the scheduled delivery date.
- (c) If SELLER becomes aware of difficulty in performing the Work, SELLER shall timely notify BAE SYSTEMS, in writing, giving pertinent details. This notification shall not change any delivery schedule.
- (d) In the event of a termination or change, no claim will be allowed for any manufacture or procurement in advance of SELLER's normal flow time unless there has been prior written consent by BAE SYSTEMS' Procurement Representative.

33. **WAIVER, APPROVAL AND REMEDIES**

- (a) Failure by BAE SYSTEMS to enforce any provision(s) of this Contract shall not be construed as a waiver of the requirement(s) of such provision(s), or as a waiver of the right of BAE SYSTEMS thereafter to enforce each and every such provision(s).
- (b) BAE SYSTEMS' approval of documents shall not relieve SELLER from complying with any requirements of this Contract.
- (c) The rights and remedies of BAE SYSTEMS in this Contract are cumulative and in addition to any other rights and remedies provided by law or in equity.

34. **WARRANTY**

SELLER warrants that all Work furnished pursuant to this Contract shall strictly conform to all specifications, drawings, samples, and descriptions, and other requirements of this Contract and be free from defects in design, material and workmanship. The warranty shall begin upon final acceptance and extend for a period of one (1) year. If any non-conformity with Work appears within that time, SELLER shall promptly repair, replace, or reperform the Work. Transportation of replacement Work and return of non-conforming Work and repeat performance of Work shall be at SELLER's expense. If repair or replacement or reperformance of Work is not timely, BAE SYSTEMS may elect to return the nonconforming Work or repair or replace Work or reprocur the Work at SELLER's expense. All warranties shall run to BAE SYSTEMS and its Customer(s). **Any implied warranty of merchantability and fitness for a particular purpose is hereby disclaimed.**

SECTION II: FAR FLOWDOWN PROVISIONS

A. **INCORPORATION OF FAR CLAUSES**

The Federal Acquisition Regulation (FAR) clauses referenced below are incorporated herein by reference, with the same force and effect as if they were given in full text, and are applicable, including any notes following the clause citation, during the performance of this Contract. When a FAR clause uses a word or term that is defined in the FAR, the word or term shall have the same meaning as in the definition in FAR 2.101 in effect on the date of this Contract unless (i) a different definition is expressly set forth in this Contract; or (ii) the part, subpart, or section of the FAR where the clause is prescribed provides a different meaning; or (iii) the word or term is defined in FAR Part 31, for use in the cost principles and procedures. If the date or substance of any of the clauses listed below is different than the date or substance of the clause actually incorporated in the Prime Contract referenced by number herein, the date or substance of the clause incorporated by said Prime Contract shall apply instead. The Contracts Disputes Act of 1978, as amended, shall have no application to this Contract. Any reference to "Disputes" clause shall mean paragraph 8 "Disputes/Jury Waiver" in Section I of these terms and conditions.

B. **GOVERNMENT SUBCONTRACT**

This Contract is entered into by BAE SYSTEMS and SELLER in support of a U.S. Government Contract.

As used in the clauses referenced below and otherwise in this Contract:

- 1. "Commercial Item" means a commercial item as defined in FAR 2.101.
- 2. "Contract" means this Contract.
- 3. "Contractor" means SELLER, as defined in this BAEDOC 3, acting as the immediate (first-tier) subcontractor to BAE SYSTEMS.
- 4. "Prime Contract" means the contract between BAE SYSTEMS and the U.S. Government or between BAE SYSTEMS and its higher-tier contractor in support of a contract with the U.S. Government.

5. "Subcontract" means any contract placed by Contractor or lower-tier subcontractors under this Contract. \$100,000 the Contractor must include this clause in all lower tier subcontracts that offer subcontracting opportunities.)

C. NOTES

1. Substitute "BAE SYSTEMS" for "Government" or "United States" throughout this clause.
2. Substitute "BAE SYSTEMS Procurement Representative" for "Contracting Officer", "Administrative Contracting Officer", and "ACO" throughout this clause.
3. Insert "and BAE SYSTEMS" after "Government" or "Contracting Officer", as appropriate, throughout this clause.
4. Insert "or BAE SYSTEMS" after "Government" throughout this clause.
5. Communication/notification required under this clause from/to SELLER to/from the Contracting Officer shall be through the BAE SYSTEMS Procurement Representative.
6. "Contracting Officer" shall mean the U.S. Government Contracting Officer for BAE SYSTEMS' government prime contract under which this Contract is entered.

- (e) 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)
- (f) 52.222-26 EQUAL OPPORTUNITY (MAR 2007) (Only subparagraphs (b)(1)-(11) applies.)
- (g) 52.222-50 COMBATING TRAFFICKING IN PERSONS (AUG 2007) (Note 2 applies. In paragraph (e) Note 3 applies.)
- (h) 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (FEB 2006) (Note 5 applies.)
- (i) 52.227-14 RIGHTS IN DATA - GENERAL (DEC 2007)
- (j) 52.234-1 INDUSTRIAL RESOURCES DEVELOPED UNDER DEFENSE PRODUCTION ACT TITLE III (DEC 1994) (Note 2 applies.)
- (k) 52.242-13 BANKRUPTCY (JUL 1995) (Note 2 applies.)
- (l) 52.242-15 STOP-WORK ORDER (AUG 1989) (In paragraph (a) "90 days" is changed to "100 days," in paragraph (b) "30 days" is changed to "20 days." Notes 1 and 2 apply.)

D. AMENDMENTS REQUIRED BY PRIME CONTRACT

SELLER shall, at the request of BAE SYSTEMS, accept amendments to this Contract to incorporate additional provisions herein or to change provisions hereof, as BAE SYSTEMS may reasonably deem necessary in order to comply with the provisions of the applicable Prime Contract or with the provisions of amendments to such Prime Contract. If any such amendment to this Contract causes an increase or decrease in the estimated price of, or the time required for, performance of any part of the Work under this Contract, an equitable adjustment shall be made pursuant to the "Changes" clause of this Contract.

- (m) 52.243-1 CHANGES - FIXED PRICE (AUG 1987) Replace paragraph (a) with the following: BAE SYSTEMS Procurement Representative may at any time, by written order, and without notice to sureties, if any, direct changes within the general scope of this Contract in any one or more of the following: (i) technical requirements and descriptions, specifications, statement of work ("SOW"), drawings or designs; (ii) shipment or packing methods; (iii) place of delivery, inspection or acceptance; (iv) reasonable adjustments in quantities or delivery schedules or both; (v) amount of BAE SYSTEMS furnished property; and (vi) if this Contract includes services: (x) description of services to be performed; (y) time of performance (e.g., hours of the day, days of the week, etc.); and (z) place of performance. Contractor shall comply immediately with such direction. Notes 1 and 2 apply.)

E. PRESERVATION OF THE GOVERNMENT'S RIGHTS

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

- (n) 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (MAR 2007)
- (o) 52.246-2 INSPECTION OF SUPPLIES - FIXED PRICE (AUG 1996) (Note 2 applies. Note 3 applies, except in paragraphs (f), (j) and (l) where Note 1 applies.)
- (p) 52.246-4 INSPECTION OF SERVICES - FIXED PRICE (AUG 1996) (Note 2 applies. Note 3 applies, except in paragraphs (e) and (f) where Note 1 applies.)
- (q) 52.247-64 PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS (FEB 2006) (Note 2 applies.)
- (r) 52.249-2 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (MAY 2004) (Notes 1 and 2 apply, except in paragraph (n) "Government" means "BAE SYSTEMS and the Government" and "Contracting Officer" means "BAE SYSTEMS or the Contracting Officer." In paragraph (c) "120 days" is changed to "60 days." In paragraph

F. FAR FLOWDOWN CLAUSES

REFERENCE TITLE

1. The following FAR clauses apply to this Contract:

- (a) 52.211-5 MATERIAL REQUIREMENTS (AUG 2000) (Note 2 applies.)
- (b) 52.215-20 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA (OCT 1997) (Note 2 applies.)
- (c) 52.215-21 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA - MODIFICATIONS (OCT 1997) (Note 2 applies.)
- (d) 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (APR 2008) (If this Contract, except contracts to small business concerns, exceeds

(d) "15 days" is changed to "30 days," and "45 days" is changed to "60 days." In paragraph (e) "1 year" is changed to "6 months." In paragraph (l) "90 days" is changed to "45 days." Settlements and payments under this clause may be subject to the approval of the Contracting Officer.)

- (s) 52.249-8 DEFAULT (FIXED PRICE SUPPLY AND SERVICE) (APR 1984) (Timely performance is a material element of this Contract. Notes 1 and 2 apply, except Note 1 is not applicable to paragraph (c). Note 4 applies the second and third time "Government" appears in paragraph (e).)

2. The following FAR clauses apply to this Contract if the value of this Contract equals or exceeds \$10,000:

- (a) 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUNE 1998)

3. The following FAR clauses apply to this Contract if the value of this Contract equals or exceeds \$100,000:

- (a) 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (SEP 2006)
- (b) 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEP 2007) (Applies only if Contract value is expected to exceed \$100,000.)
- (c) 52.215-2 AUDIT AND RECORDS-NEGOTIATION (JUN 1999) (Applicable if (1) Contractor was required to furnish cost or pricing data, or (2) this Contract requires Contractor to furnish cost, funding or performance reports. Note 3 applies.)
- (d) 52.215-14 INTEGRITY OF UNIT PRICES (OCT 1997) (Delete paragraph (b) of the clause.)
- (e) 52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT -OVERTIME COMPENSATION (JUL 2005)
- (f) 52.222-35 EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEP 2006)
- (g) 52.222-37 EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEP 2006)
- (h) 52.222-39 NOTIFICATION OF EMPLOYEE RIGHTS CONCERNING PAYMENT OF UNION DUES OR FEES (DEC 2004)
- (i) 52.223-14 TOXIC CHEMICAL RELEASE REPORTING (AUG 2003) (Delete subparagraph (e). Note 2 applies.)
- (j) 52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (DEC 2007) (Applicable if Contract value exceeds \$100,000. Notes 2 and 4 apply.)
- (k) 52.248-1 VALUE ENGINEERING (FEB 2000) (Note 1 applies, except in subparagraphs (c)(5) and (m), where Note 3 applies.)

4. The following FAR clauses apply to this Contract if the value of this Contract equals or exceeds \$550,000:

- (a) 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (APR 2008) (Applicable if the Contractor is not a small business. Note 2 is applicable to subparagraph (c) only. The Contractor's subcontracting plan is incorporated herein by reference.)
- (b) 52.219-16 LIQUIDATED DAMAGES – SUBCONTRACTING PLAN (JAN 1999) (Delete subparagraphs (d) and (e). Note 2 applies. Note 3 applies to subparagraph (f) only.)

5. The following FAR clauses apply to this Contract if the value of this Contract equals or exceeds \$650,000:

- (a) 52.215-12 SUBCONTRACTOR COST OR PRICING DATA (OCT 1997) (Applicable if not otherwise exempt under FAR 15.403.)
- (b) 52.215-13 SUBCONTRACTOR COST OR PRICING DATA - MODIFICATIONS (OCT 1997) (Applicable for modifications if not otherwise exempt under FAR 15.403.)

6. The following FAR clauses apply to this Contract if the value of this Contract exceeds \$5,000,000:

- (a) 52.203-13 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (DEC 2008) (Note 2 applies.)
- (b) 52.203-14 DISPLAY OF HOTLINE POSTERS (DEC 2007) (Contact BAE SYSTEMS Procurement Representative if assistance is required obtaining any required posters.)

7. The following FAR clauses apply to this Contract only if the stipulation in the relevant parenthetical applies:

- (a) 52.204-2 SECURITY REQUIREMENTS (AUG 1996) (Applicable if the Work requires access to classified information.)
- (b) 52.204-9 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (SEP 2007) (Applicable where the Contractor will have physical access to a federally-controlled facility or access to a federal information systems.)
- (c) 52.208-8 REQUIRED SOURCES FOR HELIUM AND HELIUM USAGE DATA (APR 2002) (Applicable to Contracts involving a "major helium requirement." Note 2 applies.)
- (d) 52.214-26 AUDIT AND RECORDS- SEALED BIDDING (OCT 1997) (Applicable if Contract is awarded based upon Sealed Bidding and expected to exceed the threshold of FAR 15.403-4(a)(1) for submission of cost or pricing data. Note 2 applies.)
- (e) 52.214-27 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA – MODIFICATIONS – SEALED BIDDING (OCT 1997) (Applicable if Contract is awarded based upon Sealed Bidding and expected to exceed the threshold of FAR 15.403-4(a)(1) for submission of cost or pricing data. Notes 1 and 2 apply except for subparagraph (d)(2)(ii)(B) to which note 4 applies.)

- (f) 52.214-28 SUBCONTRACTOR COST OR PRICING DATA – MODIFICATIONS – SEALED BIDDING (OCT 1997) (Applicable if Contract is awarded based upon Sealed Bidding and expected to exceed the threshold of FAR 15.403-4(a)(1) for submission of cost or pricing data.)
- (g) 52.215-10 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (OCT 1997) (Applicable if submission of cost or pricing data is required. Rights and obligations under this clause shall survive completion of the Work and final payment under this Contract. Notes 2 and 4 apply.)
- (h) 52.215-11 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA - MODIFICATIONS (OCT 1997) (Applicable if submission of cost or pricing data is required for modifications. Rights and obligations under this clause shall survive completion of the work and final payment under this Contract. Notes 2 and 4 apply.)
- (i) 52.215-15 PENSION ADJUSTMENTS AND ASSET REVERSIONS (OCT 2004) (Applicable if this Contract meets the applicability requirements of FAR 15.408(g). Note 5 applies.)
- (j) 52.215-16 FACILITIES CAPITAL COST OF MONEY (JUNE 2003) (Applicable only if this Contract is subject to the Cost Principles of FAR Subpart 31.2 and the Contractor proposed facilities capital cost of money in its offer.)
- (k) 52.215-17 WAIVER OF FACILITIES CAPITAL COST OF MONEY (OCT 1997) (Applicable only if this Contract is subject to the cost principles of FAR Subpart 31.2 and the Contractor did not propose facilities capital cost of money in its offer.)
- (l) 52.215-18 REVERSION OR ADJUSTMENT OF PLANS FOR POST-RETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS (JUL 2005) (Applicable if this Contract meets the applicability requirements of FAR 15.408(j). Note 5 applies.)
- (m) 52.215-19 NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997) (Applicable if this Contract meets the applicability requirements of FAR 15.408(k). In paragraph (a)(1) and (a)(2) “30 days” is changed to “25 days.” Note 2 applies.)
- (n) 52.216-5 PRICE REDETERMINATION - PROSPECTIVE (OCT 1997) (Applicable if the requirements of FAR 16.205-2 and FAR 16.205-3(a) through (d) have been met and this clause is expressly incorporated in this Contract. In subparagraph (j) change “the Contracting Officer shall promptly issue a decision in accordance with the Disputes clause” to “BAE SYSTEMS shall promptly issue a decision, which decision may be appealed by Contractor pursuant to the Disputes/Jury Waiver clause of this Contract.” Notes 1 and 2 apply.)
- (o) 52.216-6 PRICE REDETERMINATION-RETROACTIVE (OCT 1997) (Applicable if the requirements of FAR 16.206-2 and FAR 16.206-3(a) through (d) have been met and this clause is expressly incorporated in this Contract. In subparagraph (i) change “the Contracting Officer shall promptly issue a decision in accordance with the Disputes clause” to “BAE SYSTEMS shall promptly issue a decision, which decision may be appealed by Contractor pursuant to the Disputes/Jury Waiver clause of this Contract.” Notes 1 and 2 apply.)
- (p) 52.216-16 INCENTIVE PRICE REVISION-FIRM TARGET (OCT 1997) ALTERNATE I (APR 1984) (Applicable if a Fixed-Price Incentive (Firm Target) Contract is contemplated and this clause is expressly incorporated in this Contract. In subparagraph (i) change “the Contracting Officer shall promptly issue a decision in accordance with the Disputes clause” to “BAE SYSTEMS shall promptly issue a decision, which decision may be appealed by Contractor pursuant to the Disputes/Jury Waiver clause of this Contract.” Notes 1 and 2 apply.)
- (q) 52.216-17 INCENTIVE PRICE REVISION – SUCCESSIVE TARGETS (OCT 1997) (Applicable if a Fixed-Price Incentive (Successive Target) Contract is contemplated and this clause is expressly incorporated in this Contract. In subparagraph (k) change “the Contracting Officer shall promptly issue a decision in accordance with the Disputes clause” to “BAE SYSTEMS shall promptly issue a decision, which decision may be appealed by Contractor pursuant to the Disputes/Jury Waiver clause of this Contract.” Notes 1 and 2 apply.)
- (r) 52.222-39 NOTIFICATION OF EMPLOYEE RIGHTS CONCERNING PAYMENT OF UNION DUES OR FEES (DEC 2004) (Applicable if Contract exceeds \$100,000.)
- (s) 52.222-41 SERVICE CONTRACT ACT OF 1965 (NOV 2007) (Applicable if this Contract is for services covered by the Service Contract Act of 1965. Note 2 applies.)
- (t) 52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION (JAN 2009) (Applicable if this Contract has a value of more than \$3000 unless an exception contained in FAR 52.222-54(e)(1) applies. Note 4 applies to paragraph (a)(1)(iii).)
- (u) 52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997) (Applicable if this Contract involves hazardous material. Notes 2 and 3 apply.)
- (v) 52.223-7 NOTICE OF RADIOACTIVE MATERIALS (JAN 1997) (Applicable to Work containing covered radioactive material. In the blank insert “30.” Notes 1 and 2 apply.)
- (w) 52.223-11 OZONE-DEPLETING SUBSTANCES (MAY 2001) (Applicable if the Work was manufactured with or contains ozone-depleting substances.)
- (x) 52.224-2 PRIVACY ACT (APR 1984) (Applicable if the Work involves the design, development, or operation of a system of records on individuals to accomplish an agency function.)
- (y) 52.225-1 BUY AMERICAN ACT–BALANCE OF PAYMENTS PROGRAM–SUPPLIES (JUNE 2003) (Applicable if this Contract requires furnishing of Work containing other than domestic components.)
- (z) 52.225-5 TRADE AGREEMENTS (NOV 2007) (Applicable if the Work contains other than domestic components.)

- (aa) 52.225-8 DUTY FREE ENTRY (FEB 2000) (Applicable if supplies will be imported into the Customs Territory of the United States. In paragraph (b)(1) the notice provision shall be 20 days. Notes 3 and 5 apply.)
- (bb) 52.227-1 AUTHORIZATION AND CONSENT (DEC 2007) (Not applicable when both complete performance and delivery are outside the United States..)
- (cc) 52.227-9 REFUND OF ROYALTIES (APR 1984) (Applicable when reported royalty exceeds \$250. Notes 1 and 2 apply.)
- (dd) 52.227-10 FILING OF PATENT APPLICATIONS-CLASSIFIED SUBJECT MATTER (DEC 2007) (Applicable if the Work or any patent application may cover classified subject matter.)
- (ee) 52.227-11 PATENT RIGHTS-OWNERSHIP BY THE CONTRACTOR (DEC 2007) (Applicable if this Contract is for experimental, developmental, or research Work and Contractor is a small business concern or domestic non-profit organization and made applicable by FAR 27.303 (a)(1) or BAE SYSTEMS' Prime Contract. Refer also to DFAR 252.227-7034. Reports required by this clause shall be filed with the agency identified in this Contract. If no agency is identified, contact the BAE SYSTEMS Procurement Representative identified on the face of this Contract.)
- (ff) 52.227-13 PATENT RIGHTS-OWNERSHIP BY THE GOVERNMENT (DEC 2007) (Applicable if this Contract is for experimental, developmental, or research Work and made applicable by FAR 27.303 (c)(1) or BAE SYSTEMS' Prime Contract. Reports required by this clause shall be filed with the agency identified in this Contract. If no agency is identified, contact the BAE SYSTEMS Procurement Representative identified on the face of this Contract.)
- (gg) 52.228-3 WORKERS' COMPENSATION INSURANCE (DEFENSE BASE ACT) (APR 1984) (Applicable to public works contracts performed outside the U.S. or contracts approved or financed under the Foreign Assistance Act of 1961, unless an exception applies. The Contractor shall insert, in all subcontracts under this Contract to which the Defense Base Act applies, a clause similar to this clause (including this sentence) imposing upon those subcontractors this requirement to comply with the Defense Base Act.)
- (hh) 52.228-4 WORKERS' COMPENSATION AND WAR-HAZARD INSURANCE OVERSEAS (APR 1984) (Applicable to public works contracts performed outside the U.S. and the Secretary of Labor waives the applicability of the Defense Base Act. The Contractor shall insert, in all subcontracts under this Contract (i) to which the Defense Base Act would apply but for the waiver and (ii) to which the War Hazards Compensation Act would apply unless the Contractor elects to assume directly the liability to subcontractor employees, a clause similar to this clause (including this sentence) imposing upon those subcontractors this requirement to provide workers' compensation insurance coverage and/or war-hazard benefits.)
- (ii) 52.228-5 INSURANCE – WORK ON A GOVERNMENT INSTALLATION (JAN 1997) (Applicable if Work is performed on a Government installation. Note 2 applies.)
- (jj) 52.229-6 TAXES – FOREIGN FIXED PRICE CONTRACTS (JUNE 2003) (Applicable if this Contract is to be performed wholly or partly in a foreign country, unless Contractor is a foreign government. Note 6 applies.)
- (kk) 52.229-7 TAXES – FIXED PRICE CONTRACTS WITH FOREIGN GOVERNMENTS (JAN 1991) (Applicable if Contractor is a foreign government.)
- (ll) 52.229-10 STATE OF NEW MEXICO GROSS RECEIPTS AND COMPENSATING TAX (APR 2003) (Applicable to Contracts issued by agencies cited in FAR 29.401-4(c) and which involve the purchase of tangible personal property to be used in performing services in whole or in part in New Mexico.)
- (mm) 52.230-2 COST ACCOUNTING STANDARDS (APR 1998) (When referenced in this Contract, full CAS Coverage applies. In subparagraph (a)(4)(ii) and (a)(5), Note 1 applies. Delete paragraph (b) of the clause.)
- (nn) 52.230-3 DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES (APR 1998) (When referenced in this Contract, Modified CAS Coverage applies. In subparagraphs (a)(3)(ii) and (a)(4), Note 1 applies. Delete paragraph (b) of the clause.)
- (oo) 52.230-5 COST ACCOUNTING STANDARDS-EDUCATIONAL INSTITUTION (APR 1998) (When referenced in this Contract, full CAS Coverage applies. In subparagraph (a)(4)(ii) and (a)(5), Note 1 applies. Delete paragraph (b) of the clause.)
- (pp) 52.230-6 ADMINISTRATION OF COST ACCOUNTING STANDARDS (MAR 2008) (Applicable if FAR 52.230-2 or FAR 52.230-3 applies.)
- (qq) 52.233-3 PROTEST AFTER AWARD (AUG 1996) (In the event BAE SYSTEMS' Customer has directed BAE SYSTEMS to stop performance of the Work under the Prime Contract under which this Contract is issued pursuant to FAR 33.1, BAE SYSTEMS may, by written order to Contractor, direct Contractor to stop performance of the Work called for by this Contract. "30 days" means "20 days" in paragraph (b)(2). Note 1 applies, except the first time it appears in paragraph (f); in paragraph (f) add after "33.104(h)(1)" "and recovers those costs from BAE SYSTEMS." Note 2 applies.)
- (rr) 52.237-2 PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT AND VEGETATION (APR 1984) (Applicable if Work is performed on a Government installation. Note 2 applies.)
- (ss) 52.239-1 PRIVACY OR SECURITY SAFEGUARDS (AUG 1996) (Applicable if Work involves information technology which require security of information technology, and/or are for the design, development or operation of a system or records using commercial information technology services or support services.)
- (tt) 52.243-6 CHANGE ORDER ACCOUNTING (APR 1984) (Applicable only if the Prime Contract requires Change Order Accounting. Note 2 applies.)

(uu) 52.245-1 GOVERNMENT PROPERTY (JUN 2007)
(Applicable if Government property is furnished in the performance of this Contract. "Contracting Officer" means "BAE SYSTEMS" except in the definition of Property Administrator and in paragraphs (h)(1)(iii) and where it is unchanged, and in paragraphs (c) and (h)(4) where it includes BAE SYSTEMS. "Government" is unchanged in the phrases "Government property" and "Government furnished property" and where elsewhere used except in paragraph (d)(1) where it means "BAE SYSTEMS" and except in paragraphs (d)(2) and (g) where the term includes BAESYSTEMS." The following is added as paragraph (n) "Contractor shall provide to BAE SYSTEMS immediate notice of any disapproval, withdrawal of approval, or nonacceptance by the Government of Contractor's property control system.")

(vv) 52.247-63 PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JUN 2003) (Applicable if this Contract involves international air transportation.)

G. CERTIFICATIONS AND REPRESENTATIONS

(1) **This Subsection II(G) contains certifications and representations that are material representations of fact upon which BAE SYSTEMS will rely in making awards to Contractor. By submitting its written offer, or providing oral offers/quotations at the request of BAE SYSTEMS, or accepting any Contract, Contractor certifies to the representations and certifications as set forth below in this Subsection II(G). These certifications and representations shall apply whenever these terms and conditions are incorporated by reference in any Contract, agreement, other contractual document or any quotation, request for quotation (oral or written), request for proposal or solicitation (oral or written), issued by BAE SYSTEMS. Contractor shall immediately notify BAE SYSTEMS of any change of status with regard to these certifications and representations.**

(2) The following clauses of the Federal Acquisition Regulation (FAR) are incorporated herein by reference, with the same force and effect as if they were given in full text, and are applicable to this Contract. In each clause incorporated below, substitute "BAE SYSTEMS" for "Government" and "Contracting Agency," and "BAE SYSTEMS Procurement Representative" for "Contracting Officer" throughout.

(a) **FAR 52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions** (Applicable to solicitations and contracts exceeding \$100,000)

(i) Definitions. As used in this provision—"Lobbying contact" has the meaning provided at 2 U.S.C. 1602(8).

The terms "agency," "influencing or attempting to influence," "officer or employee of an agency," "person," "reasonable compensation," and "regularly employed" are defined in the FAR clause of this solicitation entitled "Limitation on Payments to Influence Certain Federal Transactions" (52.203-12).

(ii) Prohibition. The prohibition and exceptions contained in the FAR clause of this solicitation entitled "Limitation on Payments to Influence Certain Federal Transactions" (52.203-12) are hereby incorporated by reference in this provision.

(iii) Certification. Contractor hereby certifies to the best of its knowledge and belief that no Federal appropriated

funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on its behalf in connection with the awarding of this contract.

(iv) Disclosure. If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the offeror with respect to this contract, Contractor shall complete and submit, with its offer, to BAE SYSTEMS, OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. Contractor need not report regularly employed officers or employees of the offeror to whom payments of reasonable compensation were made.

(v) Penalty. Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by 31 U.S.C. 1352. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure required to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

(b) **FAR 52.209-5 -- Certification Regarding Responsibility Matters (DEC 2008)(Applies to Contracts that exceed \$100,000)**

(1) The SELLER certifies, to the best of its knowledge and belief, that --

(i) The SELLER and/or any of its Principals --

(A) Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have not , within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property; and

(C) Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision; and

(D) Have not within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds \$3,000 for which the liability remains unsatisfied.

(1) Federal taxes are considered delinquent if both of the following criteria apply:

(i) *The tax liability is finally determined.* The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

(ii) *The taxpayer is delinquent in making payment.* A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

(ii) The SELLER has not within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions). This Certification Concerns a Matter Within the Jurisdiction of an Agency of the United States and the Making of a False, Fictitious, or Fraudulent Certification May Render the Maker Subject to Prosecution Under Section 1001, Title 18, United States Code.

(b) The SELLER shall provide immediate written notice to the BAE SYSTEMS Procurement Representative if, at any time prior to contract award, the SELLER learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the SELLER's responsibility. Failure of the SELLER to furnish a certification or provide such additional information as requested by the BAE SYSTEMS Procurement Representative may render the SELLER nonresponsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of a SELLER is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the SELLER knowingly rendered an erroneous certification, in addition to other remedies available to the BAE SYSTEMS, BAE SYSTEMS may terminate the contract resulting from this solicitation for default.

(c) **FAR 52.209-6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (Sep 2006)**

(1) Contractor certifies that, to the best of its knowledge and belief, that Contractor and/or any of its Principals, (as defined in FAR 52.209-6) are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency.

(2) Contractor shall provide immediate written notice to BAE SYSTEMS if, any time prior to award of any Contract, it learns that its certification was erroneous when submitted

or has become erroneous by reason of changed circumstances.

(d) **FAR 52.222-22 Previous Contracts and Compliance Reports.**

Contractor represents that if Contractor has participated in a previous contract or subcontract subject to the Equal Opportunity clause (FAR 52.222-26) (i) Contractor has filed all required compliance reports and: (ii) that representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

(e) **FAR 52.222-25 Affirmative Action Compliance.**

Contractor represents (1) that Contractor has developed and has on file at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 C.F.R. 60-1 and 60-2), or (2) that in the event such a program does not presently exist, Contractor will develop and place in operation such a written Affirmative Action Compliance Program within 120 days from the award of this Contract.

(f) **FAR 52.223-13 Certification Of Toxic Chemical Release Reporting** (Applicable to competitive solicitations/contracts which exceed \$100,000.)

(1) Executive Order 13148, of April 21, 2000. Greening the Government through Leadership in Environmental Management, requires submission of this certification as a prerequisite for contract award.

(2) Contractor certifies that—

(a) As the owner or operator of facilities that will be used in the performance of this Contract that are subject to the filing and reporting requirements described in section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023) and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106), the offeror will file and continue to file for such facilities for the life of this Contract the Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of EPCRA and section 6607 of PPA; or

(b) None of its owned or operated facilities to be used in the performance of this Contract is subject to the Form R filing and reporting requirements because each such facility is exempt for at least one of the following reasons:

(i) The facility does not manufacture, process or otherwise use any toxic chemicals listed under 40 CFR 372.65;

(ii) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA 42 U.S.C. 11023(b)(1)(A);

(iii) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 C.F.R. 372.27, provided an appropriate certification form has been filed with EPA);

- (iv) The facility does not fall within Standard Industrial Classification Code (SIC) codes or their corresponding North American Industry Classification Systems sectors:
 - (A) Major group code 10 (except 1011, 1081, and 1094.)
 - (B) Major group code 12 (except 1241).
 - (C) Major group codes 20 through 39.
 - (D) Industry code 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce).
 - (E) Industry code 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, Subtitle C (42 U.S.C. 6921, et seq.)< 5169, 5171, or 7389 (limited to facilities primarily engaged in solvent recovery on a contract or fee basis): or
 - (v) The facility is not located in the United States or its outlying areas.
- (g) **Certification Regarding Political Contributions, Fees, and Commissions Paid In Connection with Sales Subject to the Provisions of the Arms Export Control Act.** In compliance with 22 C.F.R. 130, neither Contractor 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 is to be provided to BAE SYSTEMS under any Contract awarded, political contributions, fees, or commissions in amounts as specified in 22 C.F.R. 130.9.