



**U.S. Department of Justice**

Criminal Division

Fraud Section

February 4, 2010

Lawrence Byrne, Esq.  
Linklaters LLP  
1345 Avenue of the Americas  
New York, New York 10105

RE: United States v. BAE Systems plc

Dear Mr. Byrne:

1. This letter sets forth the full and complete plea offer to your client, BAE Systems plc (referred to herein as "BAES" or the "defendant"). This offer is by the Criminal Division and the National Security Division of the U.S. Department of Justice (collectively referred to as the "Department") and is binding upon both. It does not bind any other foreign, state or local prosecuting, administrative, or regulatory authority. However, the Department will bring this agreement to the attention of other foreign, state or local prosecuting, administrative or regulatory authorities or other government agencies, if requested by BAES. Upon receipt and execution by or on behalf of BAES, the executed letter will itself become the plea agreement. The terms of the offer are as follows:

2. **Charges:** Pursuant to Fed. R. Crim. P. 11(c)(1)(C), BAES agrees to waive its right to grand jury indictment and its right to challenge venue in the District Court for the District of Columbia, and to plead guilty to a one count Information charging BAES with conspiring to commit offenses against the United States, in violation of 18 U.S.C. § 371, that is, conspiring to impair and impede the lawful government functions of the United States of America, to make false statements in violation of 18 U.S.C. § 1001 and to violate the Arms

CRIM No. 10-35  
(JDB)

**FILED**

MAR 01 2010

~~NANCY MAYER WHITTINGTON, CLERK~~  
U.S. DISTRICT COURT

Export Control Act, ("AECA") 22 U.S.C. §§ 2751, *et seq.*, and the International Traffic in Arms Regulations ("ITAR"), 22 C.F.R. §§ 120, *et seq.* It is understood that the guilty plea will be based on a factual admission of guilt to the offense charged and will be entered in accordance with Rule 11 of the Federal Rules of Criminal Procedure. This agreement does not apply to any charges other than those specifically mentioned herein. An authorized representative of BAES will admit that BAES is in fact guilty. By virtue of corporate resolution dated February 5, 2010, Appendix A, the defendant has authorized this plea and has empowered its Group General Counsel, and/or its outside counsel, Linklaters LLP, to act on its behalf for purposes of this plea. BAES agrees that it has the full legal right, power and authority to enter into and perform all of its obligations under this agreement and it agrees to abide by all terms and obligations of this agreement as described herein. The attached "Statement of the Offense," Appendix B, is a fair and accurate description of the facts the Department and BAE accept as a fair and accurate description of the facts underlying the offense. BAES is pleading guilty because it is guilty of the charge contained in the accompanying Information and admits and accepts responsibility for the conduct described in the Statement of the Offense. Prior to the Rule 11 plea hearing, the defendant, through counsel, will adopt and sign the Statement of the Offense.

3. **Potential penalties, assessments, and restitution:** The statutory maximum sentence that the Court can impose for each violation of 18 U.S.C. § 371 is a fine not exceeding \$500,000 or twice the pecuniary gain derived from the offense or twice the pecuniary loss from the offense suffered by a person other than defendant (18 U.S.C. § 3571), whichever is greater; five years' probation, 18 U.S.C. § 3561(c)(1); and a mandatory special assessment of \$400, 18 U.S.C. § 3013(a)(2)(B). The parties agree that restitution is not required in this matter. The parties agree that a period of three years of corporate probation is appropriate.

4. **United States Sentencing Guidelines:** The parties agree that pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the Court must determine an advisory sentencing guideline range pursuant to the United States Sentencing Guidelines. The Court will then determine a reasonable sentence within the statutory range after considering the advisory sentencing guideline range and the factors listed in 18 U.S.C. § 3553(a). The parties agree that for purposes of determining an advisory sentencing guideline range, the 2009 Sentencing Guidelines apply as follows:

a. **Calculation of Offense Level:**

§ 2C1.1(a)(2)	Base Offense Level	12
§ 2C1.1(b)(2)	Benefit Received Over \$200,000,000	+28
§ 2C1.1(b)(3)	High Level Decision Maker	<u>+ 4</u>
	<b>TOTAL</b>	<b>44</b>

b. **Calculation of Culpability Score:**

§ 8C2.5(a)	Base Score	5
§ 8C2.5(b)	5,000 or More Employees and High-Level Personnel Involvement/ Pervasive Tolerance	5
§ 8C2.5(g)(3)	Acceptance of Responsibility <sup>1</sup>	<u>-1</u>
	<b>TOTAL</b>	<b>9</b>

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<sup>1</sup> The compliance and remediation efforts of BAES are described in more detail in the Department's Sentencing Memorandum.

c. **Calculation of Fine Range:**

Base Fine: Greater of the amount from table in U.S.S.G. § 8C2.4(a)(1) & (d) corresponding to offense level of 44 (\$72,500,000), or the pecuniary loss/gain from the offense (\$200,000,000) (U.S.S.G. § 8C2.4(a)(2)):	\$72,500,000 or \$200,000,000
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Multipliers, culpability score of 9 (U.S.S.G. § 8C2.6)	1.8 – 3.6
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**Fine Range (U.S.S.G. § 8C2.7):**

<b>Using Offense Level 44 (\$72,500,000)</b>	<b>\$130,500,000 to \$261,000,000</b>
<b>Using gain/loss (\$200,000,000)</b>	<b>\$360,000,000 to \$720,000,000</b>

The parties agree and stipulate that for purposes of applying U.S.S.G. § 2B1.1(b)(1)(O), as directed by U.S.S.G. § 2C1.1(b)(2), the value of the gain is at least \$200,000,000. The parties agree that the objects of the conspiracy should be grouped together for purposes of sentencing pursuant to U.S.S.G. § 3D1.2. The parties agree that pursuant to 18 U.S.C. § 3571 the maximum fine is \$400,000,000. The parties further agree that the final effective Sentencing Guideline range is \$360,000,000 to \$400,000,000.

5. **Penalties and Assessments:** Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the Department and defendant agree that the appropriate sentence in this case, after consideration of (a) the Sentencing Guidelines, and (b) the factors set forth in 18 U.S.C. § 3553(a), is a criminal fine in the amount of \$400,000,000 and a special assessment of \$400. This \$400,000,000 fine and the \$400 special assessment shall be paid to the Clerk of Court, United States District Court for the District of Columbia, within ten (10) days of sentencing. Defendant acknowledges that

no tax deduction may be sought in connection with the payment of this \$400,000,000 penalty.

6. **Court is Not Bound:** The defendant understands that, if the Court rejects this agreement, the Court must: (a) inform the parties that the Court rejects the agreement, (b) advise the defendant's counsel that the Court is not required to follow the agreement and afford the defendant the opportunity to withdraw its plea, and (c) advise the defendant that if the plea is not withdrawn, the Court may dispose of the case less favorably toward the defendant than the agreement contemplated. The defendant further understands that if the Court refuses to accept any provision of this plea agreement, neither party shall be bound by the provisions of the agreement, and either party can withdraw from this plea agreement in that event.

7. **Waiver of Rights:** Federal Rule of Criminal Procedure 11(f) and Federal Rule of Evidence 410 limit the admissibility of statements made in the course of plea proceedings or plea discussions in both civil and criminal proceedings, if the guilty plea is later withdrawn. The defendant expressly warrants that it has discussed these rules with its counsel and understands them. Solely to the extent set forth below, the defendant voluntarily waives and gives up the rights enumerated in Federal Rule of Criminal Procedure 11(f) and Federal Rule of Evidence 410. Specifically, the defendant understands and agrees that any statements that it makes in the course of its guilty plea or in connection with this plea agreement are admissible against it for any purpose in any U.S. federal criminal proceeding if, even though the Department has fulfilled all of its obligations under this agreement and the Court has imposed the agreed-upon sentence, BAES nevertheless withdraws its guilty plea.

The parties further agree, with the permission of the Court, to waive the requirement for a pre-sentence report pursuant to Federal Rule of Criminal Procedure 32(c)(1)(A), based on a finding by the Court that the record contains information sufficient to enable the Court to

meaningfully exercise its sentencing power. The parties agree, however, that in the event the Court orders the preparation of a pre-sentence report prior to sentencing, such order will not affect the agreement set forth herein.

The parties further agree to ask the Court's permission to combine the entry of the plea and sentencing into one proceeding. However, the parties agree that in the event the Court orders that the entry of the guilty plea and sentencing hearing occur at separate proceedings, such an order will not affect the agreement set forth herein.

If the Court orders a pre-sentence investigation report or a separate sentencing date, the parties agree to waive the time requirements for disclosure of and objections to the pre-sentence investigation report under Fed. R. Crim. P. 32(e), so as to accommodate a sentencing hearing prior to the date that would otherwise apply. At the time of the plea hearing, the parties will suggest mutually agreeable and convenient dates for the sentencing hearing with adequate time for (a) any objections to the pre-sentence report, and (b) consideration by the Court of the pre-sentence report and the parties sentencing submissions.

8. **Press Releases:** BAES agrees that if it or any of its direct or indirect affiliates or subsidiaries issue a press release in connection with this agreement, the defendant shall first consult the Department to determine whether (a) the text of the release is true and accurate with respect to matters between the Department and the defendant; and (b) the Department has no objection to the release. Statements made by BAES at any press conference or other public speaking event shall be consistent with the approved press release.

9. **Sales, Mergers or Transfers:** Except as may otherwise be agreed by the parties hereto in connection with a particular transaction, the defendant agrees that in the event it sells, merges or transfers all or substantially all of its business operations as they exist as of the date of

this agreement, whether such sale(s) is/are structured as a stock or asset sale, merger, or transfer, BAES shall include in any such contract for sale, merger or transfer, a provision fully binding the purchaser(s) or any successor(s) in interest thereto to the obligations described in this agreement, subject to U.K. law and BAES's corporate governance charter. The foregoing requirement shall not apply to the sale, merger or transfer of any of BAES's U.S. operations. Moreover, the foregoing requirement shall only apply if, after consultation between the Department and the U.K. Government (Her Majesty's Government ("HMG")), HMG and the Department approve inclusion of such a provision in such contract for sale, merger or transfer. Notwithstanding the foregoing, such provision shall be included in any such contract for sale, merger or transfer where the purchaser(s) or successor(s) in interest is affiliated with, controlled by or is a successor entity to BAES.

10. **Continuing Cooperation**: BAES shall: (a) plead guilty as set forth in this agreement; (b) abide by all sentencing stipulations contained in this agreement; (c) appear, through its duly appointed representatives, as ordered for all court appearances and obey any other ongoing court order in this matter, consistent with all applicable U.S. and foreign laws, procedures and regulations; (d) commit no further crimes under U.S. federal law, foreign laws implementing the OECD Anti-bribery Convention, or any other applicable anti-corruption laws; (e) be truthful at all times with the Court; (f) pay the applicable fine and special assessment; and (g) cooperate fully, as set forth specifically below, with the Department, the Federal Bureau of Investigation, Immigration and Customs Enforcement, Defense Criminal Investigative Service, and the General Services Administration Office of Inspector General, consistent with and subject to all applicable U.S. law and foreign laws and regulations including state secrets, the information being classified by HMG in accordance with its national laws and procedures ("U.K. classified

information”), labor, data protection, and privacy laws, upon request by the Department in any investigation or prosecution being conducted by the Department. BAES will inform the Department when any otherwise relevant information is withheld on the grounds that it is U.K. classified information. The Department may then decide to raise any issues regarding information withheld on this basis with HMG. BAES shall truthfully disclose upon request by the Department for any investigation or prosecution being conducted by the Department (consistent with and subject to all applicable U.S. and foreign laws and regulations including state secrets, U.K. classified information, labor, data protection and privacy laws) all non-privileged information relating to any conduct or events or other matters occurring prior to the date of the signing of this agreement and after the date of signing of this agreement for the agreed three year period of corporate probation with respect to the activities of BAES and its subsidiaries, its present and former directors, officers, employees, agents, consultants, contractors and subcontractors, concerning all matters relating to any undisclosed payments paid to third parties for assistance in the solicitation or promotion or otherwise to secure the conclusion of the sale of defense articles that should have been disclosed under the AECA or ITAR in connection with their operations, about which BAES has any knowledge. This obligation of truthful disclosure includes the obligation, consistent with and subject to all applicable U.S. and foreign laws and regulations including state secrets, U.K. classified information, labor, data protection, and privacy laws, to provide upon request by the Department in any investigation or prosecution by the Department, any non-privileged document, record, or other tangible evidence in the custody and control of BAES relating to such undisclosed payments paid to third parties for assistance in the solicitation or promotion or otherwise to secure the conclusion of the sale of defense articles that should have been disclosed under the



AECA or ITAR occurring prior to the date of the signing of this agreement-and after the date of signing of this agreement for the agreed three year period of corporate probation. Nothing in this agreement shall be construed to require BAES to conduct any further investigation other than as necessary to identify and produce relevant non-privileged documents, records or other tangible evidence within the custody and control of BAES related to the foregoing.

11. **Remediation:** BAES agrees, for itself and its non-U.S. subsidiaries, to maintain a compliance program that includes, at a minimum, the basic components set forth in Appendix D, which are hereby incorporated herein. BAES's program must be reasonably designed to detect and deter violations of the Foreign Corrupt Practices Act, Title 15 U.S.C. Sections 78dd-1 *et seq.*, foreign laws implementing the OECD Anti-bribery Convention, or any other applicable anti-corruption laws, both domestic and foreign, and designed to detect and deter violations of the AECA and ITAR, and similar export control laws. The foregoing agreement does not extend to BAES's U.S. operations subject to the Special Security Agreement because the Special Security Agreement restricts the exercise by BAES of influence and control over the day to day activities and management of those U.S. operations.

12. **Corporate Monitor:** Subject to the approval of the Court, BAES agrees that as part of its continuing cooperation obligations and to ensure that BAES implements and continues to implement an effective system of compliance with applicable anti-corruption and export control laws and regulations going forward, an individual, a U.K. citizen who is eligible for the appropriate national security clearances and acceptable to BAES and the Department, will serve as an independent monitor (the "Monitor") for a period not to exceed three (3) years from the date of acceptance of this agreement by the Court. The term of the monitorship and the Monitor's powers, duties and responsibilities will be as set forth in Appendix C. BAES agrees to

engage the Monitor within ninety (90) calendar days from the date of the acceptance of this agreement by the Court. If the Monitor resigns or is otherwise unable to fulfill his obligations as set out herein, including obtaining the appropriate national security clearances, BAES, or its successor, shall within thirty (30) calendar days recommend a pool of three qualified monitors from which to choose a potential replacement. BAES and the Department shall use mutual best efforts to agree on a replacement for the Monitor. If the Department, in its sole discretion, is not satisfied with the candidates proposed, the Department reserves the right to seek additional nominations from BAES. Any successor monitor will also be a U.K. citizen who is eligible for the appropriate national security clearances.

13. **Department Concessions:** In exchange for the defendant's guilty plea and the complete fulfillment of all of the defendant's obligations under this agreement, the Department agrees not to use any information related to the conduct described in the accompanying Information and Statement of the Offense, or any other conduct disclosed to the Department prior to the date of this agreement, against the defendant or any of its present or former subsidiaries or affiliates in any criminal case except in a prosecution for perjury or obstruction of justice, in a prosecution for making a false statement after the date of this agreement, or in a prosecution or other proceeding relating to any crime of violence. In addition, the Department agrees that it will not bring any additional criminal charge against the defendant, or any of its present or former subsidiaries or affiliates, for conduct that (i) arises from or relates in any way to the conduct of the defendant or its present and former employees, consultants and agents alleged in the accompanying Information and Statement of the Offense, or (ii) that arises from or relates in any way to information disclosed by the defendant to the Department prior to the date of this agreement or otherwise known to the Department prior to the date of this agreement. This

paragraph does not provide any protection against prosecution for any violations of U.S. criminal law if made in the future by the defendant, or any of its then officers, directors, employees, agents or consultants, whether or not disclosed by the defendant pursuant to the terms of this agreement. This agreement will not close or preclude the investigation or prosecution of any natural persons, including any current or former officers, directors, employees, stockholders, consultants or agents of the defendant, who may have been involved in any of the matters set forth in the accompanying Statement of the Offense or in any other matters. Finally, the Department agrees that it will file a Sentencing Memorandum in support of the proposed agreed-upon sentence that will include a description of (a) relevant facts, (b) the nature of the offense, and (c) BAES's compliance and remediation measures including the fact that the Department is aware of no evidence that any present member of the BAES Board of Directors or any present members of the BAES Executive Committee had knowledge of or involvement in the offense charged in the criminal Information. The Department further agrees to cooperate with BAES, in a form and manner to be agreed, in bringing facts relating to the nature of the charge and to BAES's remediation and its present reliability and responsibility as a government contractor to the attention of other U.S. and foreign governmental authorities as requested.

14. **Full Disclosure/Reservation of Rights:** In the event the Court directs the preparation of a pre-sentence report, the Department will fully inform the preparer of the pre-sentence report and the Court of the facts and law related to the defendant's case. Except as set forth in this agreement, the parties reserve all other rights to make sentencing recommendations and to respond to motions and arguments by the opposition.

15. **Waiver of Appeal Rights:** The defendant knowingly, intelligently, and voluntarily waives its right to appeal the conviction in this case. The defendant similarly

knowingly, intelligently, and voluntarily waives its right to appeal the sentence imposed by the Court, provided such sentence is consistent with the terms of this plea agreement. The defendant waives all defenses based on the statute of limitations and venue with respect to any prosecution that is not time-barred on the date this agreement is signed in the event that: (a) the conviction is later vacated for any reason; (b) the defendant violates this agreement; or (c) the plea is later withdrawn. The Department is free to take any position on appeal or any other post-judgment matter.

16. **Breach of Agreement:** The defendant agrees that if it fails to comply with any of the provisions of this plea agreement, makes false or misleading statements before the Court, commits any further crimes, or attempts to withdraw the plea after sentencing even though the Department has fulfilled all of its obligations under this agreement and the Court has imposed the sentence (and only the sentence) provided in this agreement, the Department will have the right to characterize such conduct as a breach of this plea agreement. In the event of such a breach, (a) the Department will be free from its obligations under the agreement and may take whatever position it believes appropriate as to the sentence (for example, should the defendant commit any conduct after the date of this agreement – examples of which include but are not limited to, obstruction of justice and false statements to law enforcement agents, the probation office, or the Court – the Department is free under this agreement to seek an increase in the sentence based on that post-agreement conduct); (b) the defendant will not have the right to withdraw the guilty plea; (c) the defendant shall be fully subject to criminal prosecution for any other crimes which it has committed or might commit, if any, including perjury and obstruction of justice; and (d) the Department will be free to use against the defendant, directly and


indirectly, in any criminal or civil proceeding any of the information or materials provided by the defendant pursuant to this agreement, as well as the admitted Statement of the Offense.

In the event of such breach, any such prosecutions of the defendant not time-barred by the applicable statute of limitations on the date of the signing of this agreement may be commenced against the defendant in accordance with this paragraph, notwithstanding the running of the applicable statute of limitations in the interval between now and the commencement of such prosecutions. The defendant knowingly and voluntarily agrees to waive any and all defenses based on the statute of limitations for any prosecutions commenced pursuant to the provisions of this paragraph.

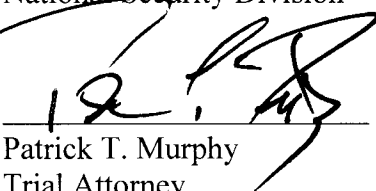
17. **Complete Agreement:** No agreements, promises, understandings, or representations have been made by the parties or their counsel other than those contained in writing herein. Nor will any such agreements, promises, understandings, or representations be made unless committed to in writing and signed by defendant, defendant's counsel, an attorney for the U.S. Department of Justice, Criminal Division, Fraud Section and an attorney for the U.S. Department of Justice, National Security Division, Counterespionage Section. If the foregoing terms and

conditions are satisfactory, BAES may indicate its assent by signing the agreement in the space indicated below and returning the original once it has been signed by BAES and its counsel.

PAUL E. PELLETIER  
Acting Chief  
MARK F. MENDELSON  
Deputy Chief  
Criminal Division, Fraud Section


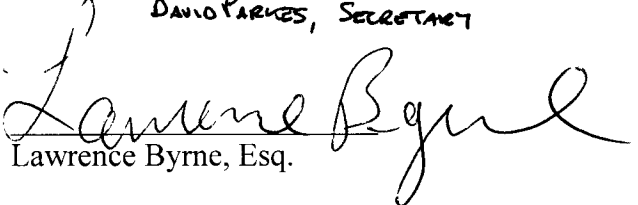
By:   
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JOHN J. DION  
Chief, Counterespionage Section  
National Security Division

By:   
Patrick T. Murphy  
Trial Attorney  
United States Department of Justice

For BAE Systems plc

Counsel for BAE Systems plc

  
\_\_\_\_\_  
DAVID PARKES, SECRETARY  
  
Lawrence Byrne, Esq.

**OFFICER'S CERTIFICATE**

I have read this Agreement and carefully reviewed every part of it with counsel for BAES Systems plc ("BAES"). I understand the terms of this Agreement and voluntarily agree, on behalf of BAES, to each of its terms. Before signing this Agreement on behalf of BAES, I consulted with the attorney for BAES. The attorney fully advised me of the rights of BAES, of possible defenses, and of the consequences of entering into this Agreement.

I have carefully reviewed this Agreement with the Board of Directors of BAES. I have advised, and caused outside counsel for BAES to advise, the Board fully of the rights of BAES, of possible defenses, and of the consequences of entering into the Agreement.

No promises or inducements have been made other than those contained in this Agreement. Furthermore, no one has threatened or forced me to enter into this Agreement. I am also satisfied with the attorney's representation in this matter.

I certify that I am an officer of BAES and that I have been duly authorized by BAES to execute this Agreement on behalf of BAES.

Date: February 5, 2010

BAE Systems plc

By:



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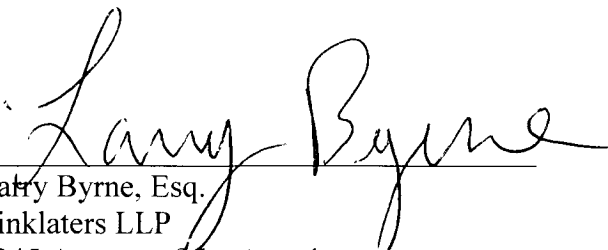
DAVID PARNES, SECRETARY

**CERTIFICATE OF COUNSEL**

I am counsel for BAE Systems plc ("BAES") in the matter covered by this Agreement. In connection with such representation, I have discussed this Agreement with the Board of Directors of BAES. Further, I have carefully reviewed every part of this Agreement with the Board of Directors and General Counsel of BAES. We have fully advised them of BAES' rights, of possible defenses, and of the consequences of entering into this Agreement. Based on my review of the foregoing materials and discussions, I am of the opinion that BAES' representative has been duly authorized to enter into this Agreement on behalf of BAES. This Agreement has been duly and validly authorized, executed, and delivered on behalf of BAES and is a valid and binding obligation of BAES. To our knowledge, BAES' decision to enter into this Agreement is an informed and voluntary one.

Date:

2-5-10

  
Larry Byrne, Esq.  
Linklaters LLP  
1345 Avenue of the Americas  
New York, NY 10105-0249



10-35 (JDB)

**APPENDIX A**

**CERTIFICATE OF CORPORATE RESOLUTIONS**

A copy of the executed Certificate of Corporate Resolutions is annexed hereto as "Appendix A."

10-35 (JDB)

### CERTIFICATE OF RESOLUTION

The undersigned, the Secretary of the Board of Directors of BAE Systems plc, does hereby certify that at a meeting of said Board of Directors held on the 5<sup>th</sup> day of February 2010, at which a quorum was present and acting throughout, resolutions were duly and regularly adopted, which are in full force and effect, and have not been rescinded, as follows:

RESOLVED, that the draft Plea Agreement between BAE Systems plc ("BAES") and the United States Department of Justice, as well as the Statement of Offense and Information, alleging a violation of Title 18 U.S.C. Section 371 were considered to promote the success of BAES for the benefit of its members as a whole and thereby be approved;

RESOLVED, that any one or more of any of the Directors, General Counsel or Secretary of BAES be and they hereby are authorized to: (1) execute and enter into on behalf of BAES the Plea Agreement, with such modifications as such person may approve, such approval to be conclusively evidenced by their execution of such Agreement; and (2) enter a guilty plea on behalf of BAES before the United States District Court for the District of Columbia;

and further

RESOLVED, that any one or more of such persons be and they hereby are authorized and directed to execute and deliver (whether as a deed or otherwise) in the name and on behalf of BAES any and all additional documents or agreements and to take such further action as to any of them appears necessary or desirable, including the payment of forfeitures and fees and including the power to delegate to or authorize any other person, to carry into effect the intent and purpose of the foregoing resolution;

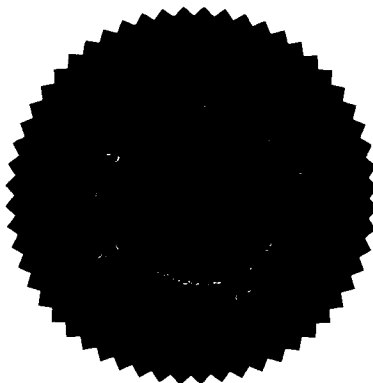
and further

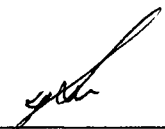
RESOLVED, that any and all action of any of such persons in connection with the Plea Agreement as aforesaid taken prior to the date hereof be, and they hereby are, approved, ratified and adopted in all respects as fully as if such actions had been presented to the Board of Directors for its approval prior to any such action being taken;

and further

RESOLVED, that external counsel to BAES, Lawrence Byrne of Linklaters LLP, be and hereby is authorized to execute said Plea Agreement as counsel to BAES with such modifications as he may approve, such approval to be conclusively evidenced by their execution of such Agreement, and to take such further action as to either of them appears necessary or desirable to carry into effect the intent and purpose of the foregoing resolutions.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of BAE Systems plc, this 5<sup>th</sup> day of February 2010.



  
\_\_\_\_\_  
Secretary

10-35 (JDB)

# APPENDIX B

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA :	Criminal No. <b>10-35 (JDB)</b>
v.	:
	:
BAE SYSTEMS plc,	VIOLATION:
	Title 18, United States Code,
Defendant.	Section 371
	(Conspiracy)
	:
	:.....

**STATEMENT OF OFFENSE**

The United States of America and defendant BAE SYSTEMS plc (“BAES”) stipulate and agree that the following facts are true and correct:

**PART I: Background**

1. At all relevant times, BAES, formerly known as British Aerospace, was a multi-national defense contractor with its headquarters in the United Kingdom (“U.K.”). In 2008, BAES was the largest defense contractor in Europe and the fifth largest in the United States (“U.S.”), as measured by sales.
  
2. BAES’s principal wholly-owned U.S. subsidiary is BAE Systems, Inc., headquartered in Rockville, Maryland. BAE Systems, Inc. is comprised of various defense and technology businesses and was created largely as a result of BAES’s acquisitions of Marconi Electronic Systems in 1999, Lockheed Martin Aerospace Electronic Systems in 2000, and other U.S.-based defense contractors. This Statement of Offense and the facts set out herein do not relate to or represent any conduct of BAE Systems, Inc. BAE Systems, Inc. was and is subject to a Special Security Agreement (“SSA”) with the United States government which, for U.S. national security reasons, restricts the exercise by BAES of influence and control over the day to day activities and management of BAE Systems, Inc.

**PART II: False, Inaccurate and Incomplete Statements to the U.S. Government, and Failure to Honor Undertakings to the U.S. Government**

3. From 2000, BAES agreed to and did knowingly and willfully make certain false, inaccurate and incomplete statements to the U.S. government and failed to honor certain undertakings given to the U.S. government. These statements and undertakings included that BAES would, within an agreed upon time frame, create and implement policies and procedures to ensure compliance with provisions of the Foreign Corrupt Practices Act (“FCPA”), 15 U.S.C. §§ 78dd-1, *et seq.*, and the relevant provisions of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (“OECD Convention”). Certain of the statements were false because they were inaccurate or incomplete. BAES also failed to comply with certain of the undertakings in some material respects and failed to inform properly the U.S. government of those failures. BAES’s failures to comply and inform the U.S. government constituted breaches of the representations and constituted a knowing and willful misleading of the U.S. government that impaired and impeded the activities and lawful functions of the U.S. government. BAES also made certain false, inaccurate and incomplete statements and failed to make required disclosures to the U.S. government in connection with the administration of certain regulatory functions, including in applications for arms export licenses, as required by the Arms Export Control Act (“AECA”), 22 U.S.C. §§ 2751, *et seq.*, and the International Traffic in Arms Regulations (“ITAR”), 22 C.F.R. §§ 120, *et seq.*

**Part II.A: False Statements to the U.S. Department of Defense**

4. The U.S. Department of Defense (the “Defense Department”) is part of the Executive Branch of the U.S. government and is charged with coordinating and

supervising agencies and functions of the government relating to national security and the military. The Defense Department is administered by the Secretary of Defense, who is appointed by the President of the United States, with the approval of the U.S. Senate.

5. Beginning in 2000 and continuing to at least 2002, BAES made certain false, inaccurate and incomplete statements to the Defense Department and failed to honor certain undertakings given to the Defense Department regarding certain payments and undisclosed commissions, discussed below, and its FCPA compliance policies and procedures.

**Part II.A.1: November 18, 2000 Letter to Secretary of Defense**

6. On November 18, 2000, BAES made false statements in correspondence to the then-Secretary of Defense, a copy of which is included as Exhibit A.
7. BAES's statements to the Secretary of Defense in the November 18, 2000 letter regarding BAES's anti-corruption compliance measures were also transmitted directly and indirectly to the U.S. Department of Justice.
8. In or about November 2000, BAES did not have and was not committed to the practices and standards represented to the U.S. government and referred to in paragraph 6 above and Exhibit A.

**Part II.A.2: Additional False Statements to the Defense Department**

9. On May 28, 2002, BAES made statements in correspondence to the then-U.S. Under Secretary of Defense that BAES had complied with the spirit and the letter of the statements made in BAES's November 18, 2000 letter.

10. Contrary to its previous assertions, in May 2002, BAES still had not created and was not intending to create sufficient mechanisms for its non-U.S. business to ensure compliance with the FCPA and laws implementing the OECD Convention.
11. Although BAES introduced enhanced compliance policies and procedures in 2001, such policies and procedures were not of themselves sufficient to satisfy all the statements made to the Defense Department. BAES therefore failed to honor certain of its undertakings made in the November 18, 2000 letter within the agreed periods and such undertakings remained unfulfilled at the time of the May 28, 2002 correspondence.
12. If, in May 2002, BAES had communicated its actual and intended FCPA compliance policies and procedures, the Defense Department and the Department of Justice could have commissioned further investigations and could have imposed appropriate remedies to satisfy their concerns.
13. BAES's false statements and failure to honor certain of its undertakings impaired and impeded the activities and lawful functions of the Defense Department.

**Part II.B: False Statements to the U.S. Department of State**

14. The U.S. Department of State (the "State Department") is part of the Executive Branch of the U.S. government and is the lead U.S. foreign affairs agency that advances U.S. objectives and interests in the world in developing and implementing the President's foreign policy.

**Part II.B.1: Arms Export Control Act Statutory Background**

15. The President has delegated authority to the State Department to review and grant export licenses for the transfer or retransfer of controlled U.S. technology identified on the United States Munitions List ("USML"). The export of USML defense

materials is governed by the AECA and the ITAR. While 22 U.S.C. § 2778(g)(3) provides that the President has the power to approve an export license, the President, through Executive Order 11958 and other regulations, including 22 C.F.R. § 120.1, has delegated the power to the State Department. Within the State Department, the Directorate of Defense Trade Controls (“DDTC”) reviews the suitability of applications and can grant or reject the license application.

16. As part of the application process for an export license, pursuant to 22 C.F.R. § 130.9, each applicant is required to inform DDTC whether the applicant or its vendors have paid, or offered or agreed to pay fees or commissions in an aggregate amount of \$100,000 or more for the solicitation or promotion or otherwise to secure the conclusion of a sale of defense articles. Additionally, all applicants and vendors have an ongoing obligation to correct any false statements or omissions on previous arms export license applications.
17. DDTC is also required to conduct a review pursuant to Section 38(g)(3) of the AECA (22 U.S.C. § 2778(g)(3)) to determine if the applicant is prohibited from receiving an export license. The reasons to prohibit an entity from receiving an export license for USML components include if there is reasonable cause to believe that the requesting entity has violated particular statutes, including the FCPA or the AECA.

**Part II.B.2: False Statements by BAES in Arms Export License Applications**

18. Beginning in 1993, BAES knowingly and willfully failed to identify commissions paid to third parties for assistance in the solicitation or promotion or otherwise to secure the conclusion of the sale of defense articles, in violation of its legal obligations under the AECA to disclose these commissions to DDTC. BAES made



(or caused to be made) these false, inaccurate or incomplete statements to the State Department both directly and indirectly through third parties. BAES failed to identify the commission payments in order to keep the fact and scope of its external advisors from public disclosure.

19. With respect to the lease of Gripen fighter jets to the Czech Republic and Hungary, discussed more fully below, and sales of other defense materials to other countries, BAES caused the filing, by the applicant, of false applications for export licenses of USML defense materials and the making of false statements to DDTC by failing to inform the applicant or DDTC of commissions paid as aforesaid.
20. If the State Department knew of the payments and undisclosed commissions, they could have considered that in deciding whether the export licenses should have been granted and the lease of the Gripen fighter jets to the Czech Republic and Hungary and sales of other defense articles might not have proceeded.
21. BAES's false, inaccurate and incomplete statements impaired and impeded the activities and lawful functions of the State Department.

**PART III: BAES's Acts Demonstrating the Falsity, Inaccuracy and Incompleteness of BAES's Statements to the U.S. Government and BAES's Failure to Honor Undertakings to the U.S. Government**

22. Both before and after BAES made the foregoing representations and undertakings, BAES agreed to make payments to third parties that were not subject to the degree of scrutiny and review required by the FCPA. Despite BAES's foregoing representations and undertakings, its systems of internal controls did not comply with the requirements of the FCPA.

**Part III.A: BAES's Structure of Shell Companies and Intermediaries**

23. After May and November 2001, BAES regularly retained what it referred to as "marketing advisors" to assist in securing sales of defense articles. In that connection, BAES made substantial payments which were not subjected to the type of internal scrutiny and review that BAES had represented they were or would be subjected to in the foregoing statements made to the U.S. government.
24. BAES took steps to conceal its relationships with certain such advisors and its undisclosed payments to them. For example, BAES contracted with and paid certain of its advisors through various offshore shell entities beneficially owned by BAES. BAES also encouraged certain of its advisors to establish their own offshore shell entities to receive payments while disguising the origins and recipients of such payments. In connection with certain sales of defense articles, BAES retained and paid the same marketing advisor both using the offshore structure and without using the offshore structure.
25. Although instructions were given within BAES during 2001 to discontinue the use of offshore structures in connection with marketing advisors, such instructions were not of themselves sufficient to satisfy the foregoing representations and undertakings made to the U.S. government.
26. After May and November 2001, BAES made payments to certain advisors through offshore shell companies even though in certain situations there was a high probability that part of the payments would be used in order to ensure that BAES was favored in the foreign government decisions regarding the sales of defense articles. BAES made these payments, ostensibly for advice, through several different routes and, consequently, were not subjected to the type of internal

scrutiny and review that BAES had represented that they would be subject to in the foregoing statements made to the U.S. government. BAES established one entity in the British Virgin Islands (the "Offshore Entity") to conceal BAES's marketing advisor relationships, including who the agent was and how much it was paid; to create obstacles for investigating authorities to penetrate the arrangements; to circumvent laws in countries that did not allow agency relationships; and to assist advisors in avoiding tax liability for payments from BAES.

27. After May and November 2001, BAES maintained inadequate information related to who its advisors were and what work the advisors were doing to advance the business interests of BAES, and at times avoided communicating with its advisors in writing. BAES also at times obfuscated and failed to record the key reasons for the suitability of an advisor or to document any work performed by the advisor. Often, the contracts with advisors and other relevant materials were maintained by secretive legal trusts in offshore locations. BAES's conduct thus served to conceal the existence of certain of its payments to and through its advisors.
28. After May and November 2001 in most cases, BAES did not take adequate steps to ensure that its marketing advisors' and agents' conduct complied with the standards of the FCPA. FCPA due diligence and compliance were significantly neglected by BAES. In many instances, BAES possessed no adequate evidence that its advisors performed legitimate activities to justify the receipt of substantial payments. In other cases, the material that was purportedly produced by the advisors was not useful to BAES, but instead was designed to give the appearance that legitimate services were being provided for the significant sums paid.

29. After May and November 2001, BAES made payments of over £135,000,000 and over \$14,000,000 to certain of its marketing advisors and agents through the Offshore Entity. BAES did not subject these payments to the type of internal scrutiny and review that BAES had represented they were or would be subjected to in the foregoing statements made to the U.S. government.

**Part III.B: Undisclosed Payments Associated With the Lease of Gripen Fighters to the Czech Republic and Hungary**

30. Beginning in the late 1990s, BAES provided marketing services in connection with the lease by the government of Sweden of fighter aircraft to the Czech Republic and Hungary.
31. BAES made payments of more than £19,000,000 to entities associated with an individual, "Person A," at least some of which were in connection with the solicitation, promotion or otherwise to secure the conclusion of the leases of Gripen fighter jets as aforementioned. BAES made these payments even though there was a high probability that part of the payments would be used in the tender process to favor BAES. BAES made these payments, ostensibly for advice, through several different routes and, consequently, they were not subjected to the type of internal scrutiny and review that BAES had represented that they would be subject to in the foregoing statements made to the U.S. government.

**Czech Republic - Gripen Fighter Jets**

32. In May 1999, the government of the Czech Republic contacted the governments of the U.S., U.K., France and Sweden in relation to bids by major defense contractors to supply the Czech Republic with fighter aircraft. On May 25, 2001, U.S. and various European defense contractors withdrew from the tender process based on concerns about the integrity of the process. On May 31, 2001, the Czech Ministry

of Defense accepted the tender offer from the government of Sweden for the sale of Gripen fighters manufactured by a Swedish company. However, continued concerns about the integrity of the process contributed to the failed passage through the Czech Republic's legislature of the finance bill which was funding the purchase. After the collapse of the purchase deal, the Czech government invited tenders to lease fighter aircraft. Eventually, the Czech government decided to lease 14 Gripen fighter jets from the government of Sweden.

33. The relevant portions of the payments to entities associated with Person A were not publicly disclosed as related to the lease of the Gripen fighter jets to the Czech Republic. Further, BAES did not subject the payments to entities associated with Person A to the type of internal scrutiny and review that BAES had represented they were or would be subjected to in the foregoing statements made to the U.S. government.
34. The Gripen fighter jets that were leased to the Czech Republic contained U.S. controlled defense materials, for which the lessor (the government of Sweden) was required under U.S. law to apply for and obtain an arms export license from the U.S. Department of State. The payments to entities associated with Person A were not disclosed in the applications made for these licenses because BAES did not inform the applicant of the existence of the payments.

#### Hungary - Gripen Fighter Jets

35. In 1999, the Hungarian Cabinet published a tender to purchase used fighter aircraft. In June 2001, the Hungarian government announced that a U.S. defense contractor had won the tender. A few days later, the Hungarian government reversed the decision and chose instead to lease Gripen fighter jets from the Swedish

government. On February 3, 2003, Hungary agreed to lease 14 Gripen fighter jets from the Swedish government.

36. The relevant portions of the payments to entities associated with Person A were not publicly disclosed as related to the lease of the Gripen fighter jets to Hungary. Further, BAES did not subject the payments to entities associated with Person A to the type of internal scrutiny and review that BAES had represented they were or would be subjected to in the foregoing statements made to the U.S. government.
37. The Gripen fighter jets leased to Hungary contained U.S. controlled defense materials, for which the lessor (the government of Sweden) was required under U.S. law to apply for and obtain an arms export license from the U.S. Department of State. The payments to entities associated with Person A were not disclosed in the applications made for these licenses because BAES did not inform the applicant of the existence of the payments.

**Part III.C: Undisclosed Payments Associated with the Sale of Tornado Aircraft and Other Defense Materials to the Kingdom of Saudi Arabia**

38. Beginning in the mid-1980s, BAES began serving as the prime contractor to the U.K. government following the conclusion of a Formal Understanding between the U.K. and the Kingdom of Saudi Arabia (“KSA”). Under the Formal Understanding and related documents, BAES sold to the U.K. government, which then sold to KSA, several Tornado and Hawk aircraft, along with other military hardware, training and services. Using the same contractual structure, further Tornado aircraft were sold to KSA in 1998, and additional equipment, parts and services have continued to be sold to KSA since then. Collectively, these arrangements will be referred to herein as the “KSA Fighter Deals.”

39. Underlying the Formal Understanding and related framework, the U.K., KSA and BAES had certain operational written agreements for specific component provisions of the KSA Fighter Deals. The written agreements under the Formal Understanding and related framework, therefore, were divided into numerous Letters of Offer and Acceptance (“LOAs”) that were added and revised over the years by the parties. The LOAs identified the principal types of expenditures, work to be undertaken, services to be provided, prices and terms and conditions.
40. At least one of the LOAs identified “support services” that BAES was obliged to provide. In the discharge of what it regarded as its obligations under the relevant LOA, BAE provided substantial benefits to one KSA public official, who was in a position of influence regarding the KSA Fighter Deals (the “KSA Official”), and to the KSA Official’s associates. BAES provided these benefits through various payment mechanisms both in the territorial jurisdiction of the U.S. and elsewhere. BAES did not subject these payments and benefits to the type of internal scrutiny and review that BAES had represented it would subject them to in the foregoing statements to the U.S. government.
41. BAES provided support services to that KSA Official while in the territory of the U.S. BAES provided certain of those support services through travel agents retained by a BAES employee, who was also a trusted confidant of the KSA Official. These benefits, which were provided in the U.S. and elsewhere, included the purchase of travel and accommodations, security services, real estate, automobiles and personal items.
42. BAES undertook no or no adequate review or verification of benefits provided to the KSA Official, including the review or verification of over \$5,000,000 of

invoices submitted by the BAES employee from May 2001 to early 2002, to determine whether those invoiced expenses were costs which met the standards of review to which BAES was committed by virtue of the foregoing statements made to the U.S. government. BAES's provision of these benefits, and its lack of diligence and review in connection with such benefits, constituted a failure to comply with the foregoing representations made to the Department of Defense.

43. BAES also used intermediaries and shell entities to conceal payments to certain advisors who were assisting in the solicitation, promotion and otherwise endeavoring to secure the conclusion or maintenance of the KSA Fighter Deals.
44. After May and November 2001, and until early 2002, in connection with the KSA Fighter Deals, BAES agreed to transfer sums totaling more than £10,000,000 and more than \$9,000,000 to a bank account in Switzerland controlled by an intermediary. BAES was aware that there was a high probability that the intermediary would transfer part of these payments to the KSA Official. BAES undertook no or no adequate review or verification of the purpose of these payments, and therefore BAES failed to comply with the foregoing representations made to the Department of Defense.

**PART IV: Gain to BAES from False Statements to the U.S. Government**

45. The gain to BAES from the various false statements to the U.S. government exceeded \$200,000,000.



# EXHIBIT A

11/17/00 FRI 18:58 FAX [REDACTED]

BAE SYSTEMS-GOV RELATION

ig:na:

**BAE SYSTEMS**

*Chief Executive*

Our ref. JPW/DS/2126

16 November 2000

Honorable William S Cohen  
Secretary of Defense  
Department of Defense  
1000 Defense Pentagon  
Washington D.C  
20301-1000  
USA

Privileged and Confidential  
May not be disclosed under FOIA

I am pleased to reaffirm BAE SYSTEMS plc's commitment to adhering to the highest ethical standards in the conduct of its business throughout the world. We have recently undertaken significant new steps in this regard and I am delighted to share them with you.

Our affiliates in the United States -- BAE SYSTEMS Holdings, Inc., BAE SYSTEMS, North America, and entities wholly owned or controlled by them (collectively "BAE US Affiliates") -- are, and have long been, strongly committed to operating in full compliance with the Foreign Corrupt Practices Act ("FCPA"). As Chief Executive Officer of BAE SYSTEMS plc, I commit that the BAE US Affiliates will not knowingly offer, pay, promise to pay, or authorize the payment of anything of value, directly or indirectly, to a foreign public official for the purpose of influencing any official act or omission in order to obtain or retain business in violation of the FCPA. The BAE US Affiliates will not use BAE SYSTEMS plc, a non-US affiliate or any third party to undertake such activities on their behalf.

In addition, I am pleased to inform you that our Board of Directors recently voted to adopt a proposal for all of the Company's non-US businesses to comply with the anti-bribery provisions of the FCPA, as if those provisions applied to us. The Board resolved that because of "the size of the Company's presence in the US following the MES US merger, the importance of the US to the Company's long term strategic objectives and the prospective convergence of the English law of corruption with the FCPA, it was agreed that the Company should develop an FCPA compliance program for its non-US businesses to operate as if these businesses were, in fact, subject to the FCPA."

We are also aware of the recent signing and ratification of the Convention on Combating Bribery of Foreign Public Officials In International Business Transactions ("OECD Anti-Bribery Convention") by member states of the Organisation for Economic Co-operation and Development, including the United Kingdom and the United States, and of the importance of full compliance with these provisions.

BAE SYSTEMS plc, Stirling Square, 8 Carlton Gardens, London, SW1Y 5AD, United Kingdom  
Telephone 01252 373232 Fax 01252 383981 Direct Line +44 (0) 1252 384820 Direct Fax +44 (0) 1252 384807

Registered in England & Wales No. 1470151, Warwick House, PO Box 87, Farnborough Aerospace Centre, Farnborough, Hampshire, GU14 6YU

11/17/00 FRI 18:59 FAX [REDACTED]

BAE SYSTEMS-GOV RELATION

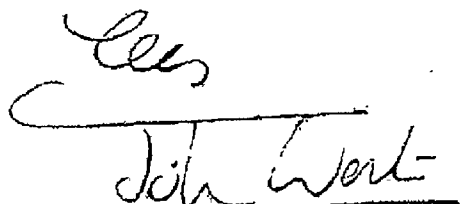
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- 2 -

Accordingly, I confirm that BAE SYSTEMS plc and other non-US entities wholly owned or controlled by it ("BAE Affiliates") are committed to conducting business in compliance with the anti-bribery standards in the OECD Anti-Bribery Convention. In order to raise the level of awareness of our BAE Affiliates with regard to these obligations, I commit that BAE Affiliates will use best efforts to adopt within six months, and in any event within twelve months, compliance programs to ensure that the BAE Affiliates meet these standards. These programs will include training for employees, internal procedures and controls concerning payments to government officials and the use of agents, consultants and other third parties, and a program of internal audits.

BAE SYSTEMS plc is committed to exemplary business practices and the highest ethical standards. We believe that these steps will enhance our ability to fulfil those goals.

Yours sincerely,

A handwritten signature in cursive script, appearing to read "John Weston", is written over a horizontal line.

JOHN WESTON

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# APPENDIX C

**APPENDIX C**

**INDEPENDENT CORPORATE MONITOR**

1. Within ninety (90) calendar days from the date of acceptance of this agreement by the Court, BAE Systems plc (“BAES” or the “Company”) agrees to engage an independent corporate monitor (the “Monitor”) for a period not to exceed three (3) years from the date of acceptance of this agreement by the Court. The Monitor’s primary responsibility is to assess and monitor the Company’s compliance with the terms of this agreement so as to specifically address and reduce the risk of any recurrence of the Company’s misconduct, including evaluating the Company’s corporate compliance program with respect to the Foreign Corrupt Practices Act of 1977 (“FCPA”), as amended, 15 U.S.C. §§ 78dd-1, *et seq.*, other relevant anti-corruption laws, the Arms Export Control Act (“AECA”) and International Traffic in Arms Regulations (“ITAR”), and other relevant export control laws, and making recommendations for improvement. Within thirty (30) calendar days after the signing of this agreement, and after consultation with the Department, the Company will propose to the Department three candidates to serve as the Monitor. The Monitor candidates shall have:
  - a. at a minimum, the qualifications and experience sufficient in the opinion of the Department to properly discharge the Monitor’s duties;
  - b. the ability to access and deploy, in consultation with the Group General Counsel of BAES, appropriate internal BAES resources as necessary to discharge the Monitor’s duties as described in the agreement; and
  - c. sufficient independence from the Company to ensure effective and impartial performance of the Monitor’s duties as described in the agreement.

2. The Monitor shall be (a) a U.K. citizen, (b) approved by the U.K. Government (Her Majesty's Government ("HMG")), and (c) security cleared to a level agreed by HMG.

3. The Department retains the right, in its sole discretion, to accept or reject the Monitor candidates proposed by the Company. The Monitor's term shall be three (3) years from the date of acceptance of this agreement by the Court. The Monitor's duties and authority, and the obligations of the Company with respect to the Monitor and the Department, are set forth below.

4. The Company agrees that it will not employ or be affiliated with the Monitor for a period of not less than one year from the date the Monitor's work has ended.

5. The Monitor will review and evaluate the effectiveness of the Company's internal controls, record-keeping, and existing or new financial reporting policies and procedures as they relate to the Company's compliance with the books and records, internal accounting controls and anti-bribery provisions of the FCPA, and other applicable anti-corruption laws (the "Anti-bribery Policies and Procedures"). The Monitor will also review and evaluate the effectiveness of the Company's internal controls, record-keeping, and existing or new procedures as they relate to the Company's compliance with the AECA, ITAR, and other applicable export control laws (the "Export Control Policies and Procedures"). This review and evaluation shall include an assessment of the Anti-bribery and Export Control Policies and Procedures as actually implemented. The retention agreement between the Company and the Monitor will reference this agreement and include this agreement as an attachment so the Monitor is fully apprised of his or her duties and responsibilities.

6. The Company shall cooperate fully with the Monitor and the Monitor shall have the authority to take such reasonable steps as, in his or her view, may be necessary to be fully

informed about the compliance program of the Company within the scope of his or her responsibilities under this Agreement. Any disclosure by the Company to the Monitor concerning corrupt payments or export control violations shall not relieve the Company of its obligation truthfully to disclose such matters to the Department. To that end, the Company shall provide the Monitor with access to all information, documents, records, facilities and/or employees that fall within the scope of responsibilities of the Monitor under this Agreement, subject to the following limitations:

a. In the event that the Company seeks to withhold from the Monitor access to information, documents, records, facilities, and/or employees of BAES that may be subject to a claim of applicable state secrets, the information being classified by HMG in accordance with its national laws and procedures (“U.K. classified information”), labor, data protection, or privacy laws, the Company shall work cooperatively with the Monitor to resolve the matter to the satisfaction of the Monitor.

b. If the matter cannot be resolved, at the request of the Monitor, the Company shall promptly provide written notice to the Monitor and to the appropriate foreign government authority (the “Foreign Authority”). Such notice shall include a non-classified description of the nature of the information, documents, records, facilities and/or employees that are being withheld, as well as the basis for the claim.

c. If the matter cannot be resolved, the Monitor shall inform the Department that there is a conflict with the Company and identify the relevant Foreign Authority so that the Department can communicate directly with the Foreign Authority.

d. The Monitor shall not disclose U.K. classified information to the Department or any person outside the Company without prior notice to and approval of HMG.

7. The parties agree that the Monitor is an independent third-party, not an employee or agent of the Company or the Department, and that no attorney-client relationship shall be formed between the Company and the Monitor.

8. The Company agrees that:

a. The Monitor shall assess whether the Company's existing policies and procedures are reasonably designed to detect and prevent violations of the FCPA, other applicable anti-corruption laws, the AECA and ITAR, and other applicable export control laws.

b. The Monitor shall evaluate the Company's compliance with this agreement.

c. The Monitor shall oversee the Company's implementation of and adherence to all existing, modified or new policies and procedures relating to compliance with the FCPA, other applicable anti-corruption laws, the AECA and ITAR, and other applicable export control laws, including the minimum policies and procedures set forth in Appendix C.

d. The Monitor shall ensure that the Anti-bribery and Export Control Policies and Procedures are appropriately designed to accomplish their goals.

e. The Monitor shall serve as an ex-officio non-voting member of the BAES External Review Panel (the "Panel"), which the Company had previously established to review applications for marketing advisors. BAES agrees to expand the mandate of the Panel to include review of proposals in other areas of corruption risk, including, but not limited to, technical advisors, indirect offset arrangements, and any direct or indirect offset arrangements involving third parties, including marketing advisors and technical advisors, and to evaluate the



effectiveness of the policies and procedures in other areas of corruption risk, including any gifts, hospitality, travel and entertainment provided to third parties, and charitable contributions and political contributions in countries outside the U.K. and the U.S.

f. The Monitor will also have access to an annual corporate responsibility review by Deloitte LLP (“Deloitte”), which BAES agrees to continue to employ to review its corporate responsibility performance. Before Deloitte’s annual review, the Monitor will meet with Deloitte and the Corporate Responsibility subcommittee of BAES’s Board of Directors to ensure the scope of the review includes the topics identified in paragraph five (5) of this Appendix.

g. In fulfilling his other responsibilities as described in this Appendix and solely because of the unique nature of BAES’s business structure, the Monitor will rely primarily upon the findings and analysis of the Panel and the findings and analysis of Deloitte.

h. If the Monitor, in his sole discretion, is unable to fulfill his responsibilities described in this Appendix using only the analysis of the Panel and Deloitte, BAES agrees to provide the Monitor with additional internal BAES personnel to assist the Monitor. BAES agrees to make available to the Monitor a sufficient number of the Company’s professionally qualified staff (the “Support Staff”), specializing in internal audit, compliance and legal review, to assist the Monitor. As a group, the Support Staff will have all the necessary security clearances to assist the Monitor in performing his or her duties. The Support Staff will transmit information to the Monitor to the fullest extent permissible under applicable state secrets, U.K. classified information, labor, data protection, and privacy laws.

i. During the three (3) year term, the Monitor shall conduct an initial review and prepare an initial report, followed by two follow-up reviews and reports as described below:

(i) With respect to each of the three (3) reviews, after initial consultations with the Company and the Department, the Monitor shall prepare a written work plan for each review, which shall be submitted in advance to the Company and the Department for comment. In order to conduct an effective initial review of the Anti-bribery and Export Control Policies and Procedures, the Monitor's initial work plan shall include such steps as are reasonably necessary to develop an understanding of the facts and circumstances surrounding any violations that may have occurred, but the parties do not intend that the Monitor will conduct his or her own inquiry into those historical events. Any disputes between the Company and the Monitor with respect to the work plan shall be decided by the Department after discussion amongst the Panel, the Monitor and the Department.

(ii) In connection with the initial review, the Monitor shall issue a written report within one hundred twenty (120) calendar days of the approval of the Monitor by the Department setting forth the Monitor's assessment and, if appropriate and necessary, making recommendations reasonably designed to improve the Anti-bribery and Export Control Policies and Procedures. The Monitor shall provide the report to the Board of Directors of the Company and contemporaneously transmit copies to Mark F. Mendelsohn (or his successor), Deputy Chief, Fraud Section, Criminal Division, U.S. Department of Justice, 1400 New York Ave., N.W., Bond Building, Fourth Floor, Washington, DC 20005, unless in the Monitor's view, transmittal of any part of the report would violate applicable laws, in which case it shall be redacted to omit those parts of

the report and then transmitted to the Department in redacted form. In such event, the Monitor shall provide the redacted parts of the report to the Company and the relevant Foreign Authority, and inform the Department of the redactions so that the Department may communicate directly with the Foreign Authority. The Monitor may extend the time period for issuance of the report with prior written approval of the Department.

(iii) Within one hundred twenty (120) calendar days after receiving the Monitor's report, the Company shall consider, in good faith, adopting the recommendations set forth in the report. Within sixty (60) calendar days after receiving the report, the Company shall advise the Monitor and the Department in writing of any recommendations that the Company considers unduly burdensome, impractical, costly or otherwise inadvisable. As to any recommendation on which the Company and the Monitor ultimately do not agree, the views of the Company and the Monitor shall promptly be brought to the attention of the Department. The Department may consider the Monitor's recommendation and the Company's reasons for not adopting the recommendation in determining whether to bring relevant facts to the attention of other parts of the U.S. government.

(iv) The Monitor shall undertake two follow-up reviews to further monitor and assess whether the Anti-bribery and Export Control Policies and Procedures of the Company are reasonably designed to detect and prevent violations of the FCPA, other applicable anti-corruption laws, the AECA and ITAR, and other applicable export control laws.

(v) Within sixty (60) calendar days of initiating each follow-up review, the Monitor shall: (a) complete the review; (b) certify whether the anti-bribery compliance program of the Company, including the Anti-bribery and Export Control Policies and Procedures, is appropriately designed and implemented to ensure compliance with the FCPA, other applicable anti-corruption laws, the AECA and ITAR, and other applicable export control laws; and (c) report on the Monitor's findings in the same fashion as with respect to the initial review, including with regard to the redaction and treatment of parts of the report, the disclosure of which would violate applicable laws.

(vi) The first follow-up review and report shall be completed by one year after the initial review. The second follow-up review and report shall be completed by one year after the completion of the first follow-up review.

(vii) The Monitor may extend the time period for submission of the follow-up reports with prior written approval of the Department.

9. In undertaking the assessments and reviews described above, the Monitor shall formulate conclusions based primarily on the analysis and conclusions of the Panel and Deloitte, including, but not limited to the Panel's and Deloitte's, and, if appropriate, the Support Staff's: (a) inspection of relevant documents, including the policies and procedures relating to the Company's anti-corruption and export controls compliance programs; (b) on-site observation of the Company's systems and procedures, including its internal controls, record-keeping and internal audit procedures; (c) meetings with, and interviews of, relevant employees, directors and other persons at mutually convenient times and places; and (d) analyses, studies and testing of the Company's anti-corruption and export controls compliance programs. Because of the unique

nature of the defense industry and the Company's organization structure, the Panel, Deloitte and the Support Staff may, when appropriate, provide the Monitor not with complete details of their review, but only with conclusions regarding observations and testing of the Company's programs and procedures, as well as recommendations derived therefrom.

10. Should the Monitor, during the course of his or her engagement, discover credible evidence that questionable or corrupt payments or questionable or corrupt transfers of property or interests may have been offered, promised, paid or authorized by any Company entity or person, or any entity or person working directly or indirectly for the Company, or payments were failed to be disclosed under applicable export control laws, the Monitor shall promptly report such conduct to the Company's Group General Counsel for further investigation, unless the Monitor believes, in the exercise of his or her discretion, that such disclosure should be made directly to the Department. If the Monitor refers the matter only to the Company's Group General Counsel, the Group General Counsel shall promptly report the same to the Department and contemporaneously notify the Monitor that such report has been made. If the Company fails to make disclosure to the Department within ten (10) calendar days of the Monitor's report of such conduct to the Company, the Monitor shall independently disclose his or her findings to the Department at the address listed in Paragraph 8(i)(ii) above. In the event that the Company seeks to prevent the Monitor from disclosing that information to the Department, the Company shall work cooperatively with the Monitor to resolve the matter to the satisfaction of the Monitor. If the matter cannot be resolved, at the request of the Monitor, the Company shall promptly provide written notice to the Monitor and to the relevant Foreign Authority. Such notice shall include a description of the nature of the information, documents, records, facilities and/or employees that are being withheld, as well as the basis for the claim. The Monitor shall inform the Department

of the disagreement so that the Department may communicate directly with the relevant Foreign Authority. Further, in the event that the Company, or any entity or person working directly or indirectly for the Company, refuses to provide information necessary for the performance of the Monitor's responsibilities, the Monitor shall promptly disclose that fact to the Department. The Company shall not take any action to retaliate against the Monitor for any such disclosures or for any other reason. The Monitor may report other criminal or regulatory violations discovered in the course of performing his or her duties, in the same manner as described above.

11. At least annually, and more frequently if appropriate, representatives of the Company and the Department will meet together to discuss the monitorship and any suggestions, comments or proposals for improvement the Company may wish to discuss with the Department.

# APPENDIX D

**APPENDIX D****CORPORATE COMPLIANCE PROGRAM**

In order to ensure the present and future effective operation of BAE Systems plc's ("BAES" or the "Company") internal controls, policies and procedures regarding compliance with the Foreign Corrupt Practices Act ("FCPA"), 15 U.S.C. §§ 78dd-1, *et seq.*, other applicable anti-corruption laws, Arms Export Control Act ("AECA") and International Traffic in Arms Regulations ("ITAR"), and other applicable export control laws, BAE Systems plc (referred to as BAES or the "Company"), on behalf of itself and its wholly-owned subsidiaries, agrees to continue to conduct, in a manner consistent with all of the obligations under this agreement, appropriate reviews of existing internal controls, policies, and procedures.

Where necessary and appropriate, the Company agrees to adopt new or modify existing internal controls, policies and procedures in order to ensure that it maintains: (a) a system of internal accounting controls designed to ensure that the Company makes and keeps fair and accurate books, records and accounts; (b) a rigorous anti-corruption compliance code, standards and procedures designed to detect and deter violations of the FCPA and other applicable anti-corruption laws; and (c) a rigorous export control code, standards and procedures designed to detect and deter violations of the AECA and ITAR, and other applicable export control laws. At a minimum, this should include, but ought not be limited to, the following elements:

1. A clearly articulated corporate policy against violations of the FCPA, other applicable anti-corruption laws, the AECA, ITAR and other applicable export control laws.
2. A system of financial and accounting procedures, including a system of internal accounting controls, designed to ensure the maintenance of fair and accurate books, records and accounts.



3. Promulgation of a compliance code, standards and procedures designed to reduce the prospect of violations of the FCPA, other applicable anti-corruption laws, the AECA and ITAR, and other applicable export control laws. These standards and procedures should apply to all directors, officers, and employees and, where necessary and appropriate, outside parties acting on behalf of the Company in a foreign jurisdiction, including advisors, consultants, representatives, distributors, teaming partners, and joint venture partners (collectively referred to as “advisors and business partners”).

4. Promulgation of compliance policies and procedures regarding direct and indirect offset arrangements in light of the unique corruption risks presented by such arrangements. With respect to all indirect offset arrangements and all direct offset arrangements involving third parties, including marketing advisors and technical advisors, BAES’s compliance policies and procedures shall include, but not be limited to, effective anti-corruption review and approval by BAES’s External Review Panel. All direct offset arrangements, whether involving third parties or not, shall be subjected to effective anti-corruption review and approval by BAES’s Chief Compliance Officer, Group General Counsel, and Chief Executive Officer. In addition, the Group General Counsel shall ensure that the relevant committees of BAES’s Board of Directors shall be appropriately informed of all direct offset arrangements and the review and approval of these arrangements.

5. The assignment of one or more senior corporate officials of BAES to the implementation and oversight of compliance with policies, standards and procedures regarding the FCPA, other applicable anti-corruption laws, the AECA and ITAR, and other applicable export control laws. Such corporate official(s) shall have the authority to report matters directly to the Audit Committee of the Board of Directors of BAES.

6. Mechanisms designed to ensure that BAES's policies, standards and procedures regarding the FCPA and other applicable anti-corruption laws are effectively communicated to all directors, officers, employees and, where necessary and appropriate, advisors and business partners. This should include: (a) periodic training for all directors and officers and, where necessary and appropriate, employees, advisors and business partners; and (b) annual certifications with regard to this training by all directors and officers and, where necessary and appropriate, employees, advisors and business partners.

7. An effective system for reporting suspected criminal conduct and/or violations of the compliance policies, standards, and procedures regarding the FCPA, other applicable anti-corruption laws, the AECA and ITAR, and other applicable export control laws, for directors, officers, employees, and, where necessary and appropriate, advisors and business partners.

8. Appropriate disciplinary procedures to address, among other things, violations of the FCPA, other applicable anti-corruption laws, the AECA and ITAR, and other applicable export control laws and BAES's compliance code, standards and procedures by the Company's directors, officers, and employees.

9. Appropriate due diligence requirements pertaining to the retention and oversight of advisors and business partners.

10. Where necessary and appropriate, standard provisions in agreements, contracts, and renewals thereof with all advisors and business partners that are reasonably calculated to prevent violations of the FCPA, other applicable anti-corruption laws, the AECA, ITAR and other export control laws, which may, depending upon the circumstances, include: (a) anti-corruption representations and undertakings relating to compliance with the FCPA and other applicable anti-corruption laws; (b) rights to conduct audits of the books and records of the agent

or business partner to ensure compliance with the foregoing; and (c) rights to terminate an agent or business partner as a result of any violation of anti-corruption laws or breach of representations and undertakings related to such matters.

11. Periodic testing of the compliance system, policies, and procedures designed to evaluate their effectiveness in detecting and reducing violations of anti-corruption laws, export control laws, and the Company's compliance code, policies, and procedures.