

CUSTOMER CONTRACT REQUIREMENTS
(Ground-Based Midcourse Defense (GMD) [Through Mod. P00130]
CUSTOMER CONTRACT HQ0006-01-C-0001

CUSTOMER CONTRACT REQUIREMENTS

If Form GP1 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 29. If Form GP2 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 28. If Form GP3 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 41. If Form GP4 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 31. If this contract is for the procurement of commercial items, as defined in FAR Part 2.101, see Section 3 below.

1 a. The following contract clauses are incorporated by reference from the Federal Acquisition Regulation and apply to the extent indicated. In all of the following clauses, “Contractor” and “Offeror” mean Seller.

52.203-6 Restrictions on Subcontractor Sales to the Government (JUL 1995). This clause applies only if this contract exceeds \$100,000.

52.203-7 Anti-Kickback Procedures (excluding subparagraph (c)(1)) (JUL 1995). Buyer may withhold sums owed Seller the amount of any kickback paid by Seller or its subcontractors at any tier if (a) the Contracting Officer so directs, or (b) the Contracting Officer has offset the amount of such kickback against money owed Buyer under the prime contract. This clause applies only if this contract exceeds \$100,000.

52.203-8 Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (JAN 1997). This clause applies to this contract if the Seller, its employees, officers, directors or agents participated personally and substantially in any part of the preparation of a proposal for this contract. The Seller shall indemnify Buyer for any and all losses suffered by the Buyer due to violations of the Act (as set forth in this clause) by Seller or its subcontractors at any tier.

52.203-10 Price or Fee Adjustment for Illegal or Improper Activity (JAN 1997). This clause applies only if this contract exceeds \$100,000. If the Government reduces Buyer’s price or fee for violations of the Act by Seller or its subcontractors at any tier, Buyer may withhold from sums owed Seller the amount of the reduction.

52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (APR 1991). This clause applies only if this contract exceeds \$100,000.

52.203-12 Limitation on Payments to Influence Certain Federal Transactions (JUN 1997). This clause applies only if this Contract exceeds \$100,000. Paragraph (c)(4) is modified to read as follows: "(c)(4) Seller will promptly submit any disclosure required (with written notice to Boeing) directly to the PCO for the prime contract. Boeing will identify the cognizant Government PCO at Seller's request. Each subcontractor certification will be retained in the subcontract file of the awarding contractor.

52.204-2 Security Requirements (AUG 1996). “Changes clause” means the changes clause of this contract. This clause applies only if access to classified material is required.

52.211-5 Material Requirements (AUG 2000). Any notice will be given to Buyer rather than the Contracting Officer.

52.211-15 Defense Priority and Allocation Requirements (SEP 1990). This clause is applicable if a priority rating is noted in this contract.

52.215-2 Audit and Records - Negotiation (JUN 1999). This clause applies only if this contract exceeds \$100,000 and (i) is cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these types: (ii) Seller was required to provide cost or pricing data, or (iii) Seller is required to furnish reports as discussed in paragraph (e) of the referenced clause.

52.215-10 Price Reduction For Defective Cost or Pricing Data (OCT 1997). This clause applies only if this contract exceeds \$550,000 and is not otherwise exempt. In subparagraph (3) of paragraph (a), insert "of this contract" after "price or cost." In Paragraph (c), "Contracting Officer" shall mean "Contracting Officer or Buyer." In Paragraphs (c)(1), (c)(1)(ii), and (c)(2)(i), "Contracting Officer" shall mean "Contracting Officer or Buyer." In Subparagraph (c)(2)(i)(A), delete "to the Contracting Officer." In Subparagraph (c)(2)(ii)(B), "Government" shall mean "Government or Buyer." In Paragraph (d), "United States" shall mean "United States or Buyer."

52.215-11 Price Reduction For Defective Cost or Pricing Data - Modifications (OCT 1997). This clause applies only if this contract exceeds \$550,000 and is not otherwise exempt. "Contracting Officer" shall mean "Contracting Officer or Buyer." In subparagraph (d)(2)(i)(A), delete "to the Contracting Officer." In subparagraph (d)(2)(ii)(B), "Government" means "Government" or "Buyer." In Paragraph (e), "United States" shall mean "United States or Buyer."

52.215-12 Subcontractor Cost or Pricing Data (OCT 1997). This clause applies only if this contract exceeds \$550,000 and is not otherwise exempt. The certificate required by paragraph (b) of the referenced clause shall be modified as follows: delete "to the Contracting Officer or the Contracting Officer's representative" and substitute in lieu thereof "The Boeing Company or any of its wholly owned subsidiaries."

52.215-13 Subcontractor Cost or Pricing Data – Modifications (OCT 1997). This clause applies only if this contract exceeds \$550,000 and is not otherwise exempt. The certificate required by paragraph (b) of the referenced clause shall be modified as follows: delete "to the Contracting Officer or the Contracting Officer's."

52.215-14 Integrity of Unit Prices [including Alternate I –OCT 1997] (excluding subparagraph (b)) (OCT 1997). This clause applies except for contracts at or below \$100,000; construction or architect-engineer services under FAR Part 36; utility services under FAR Part 41; services where supplies are not required; commercial items; and petroleum products.

52.215-15 Pension Adjustments and Asset Reversions (DEC 1998). This Clause applies to this contract if it meets the requirements of FAR 15.408(g).

52.215-18 Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions (OCT 1997). This Clause applies to this contract if it meets the requirements of FAR 15.408(j).

52.215-19 Notification of Ownership Changes (OCT 1997). This Clause applies to this contract if it meets the requirements of FAR 15.408(k).

52.215-21 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data - Modifications [including Alternate II - OCT 1997] (OCT 1997). This clause applies only if this contract exceeds the threshold set forth in FAR 15.403-4. The term "Contracting Officer" shall mean Buyer.

52.216-7 Allowable Cost and Payment (MAR 2000) This clause only applies if this is a cost reimbursement contract.

52.219-8 Utilization of Small Business Concerns (OCT 2000).

52.219-9 Small Business Subcontracting Plan (JAN 2002). In paragraph (c), "Contracting Officer" shall mean Buyer. This clause applies only if this contract exceeds \$500,000. and Seller is not a small business concern.

52.222-1 Notice to Government of Labor Disputes (FEB 1997). "Contracting Officer" shall mean Buyer.

52.222-2 Payment for Overtime Premiums (JUL 1990) [Insert "\$ zero" in paragraph (a)]

52.222-4 Contract Work Hours and Safety Standards Act — Overtime Compensation (SEP 2000). This clause applies only if this contract exceeds \$100,000. Buyer may withhold or recover from Seller the amount of any sums the Contracting Officer withholds or recovers from Buyer because of liabilities of Seller or its subcontractors under this clause.

52.222-20 Walsh-Healy Public Contracts Act (DEC 1996) [Applicable to CLIN 0401 and CLIN 02xx Series Only]. This clause applies only if this contract exceeds \$10,000.

52.222-21 Prohibition of Segregated Facilities (FEB 1999).

52.222-26 Equal Opportunity (subparagraph (b)(1) through (11)) (FEB 1999).

52.222-27 Affirmative Action Compliance Requirements for Construction (FEB 1999). This clause applies only if this contract exceeds \$10,000.

52.222-35 Equal Opportunity for Special Disabled, Veterans of the Vietnam Era, and Other Eligible Veterans (APR 1998). This clause applies only if this contract exceeds \$10,000.

52.222-36 Affirmative Action for Workers With Disabilities (JUN 1998). This clause applies only if this contract exceeds \$ 10,000.

52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (JAN 1999). This clause applies only if this contract exceeds \$10,000.

52.223-3 Hazardous Material Identification and Material Safety Data (JAN 1997). This clause applies only if Seller delivers hazardous material under this contract.

52.223-7 Notice of Radioactive Materials (JAN 1997). This clause applies only if this contract involves (i) radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954, as amended, as set forth in Title 10 of the Code of Federal Regulations, in effect on the date of this contract, or (ii) other radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcuries per gram or the activity per item equals or exceeds 0.01 microcuries. "Contracting Officer" shall mean Buyer. In the blank in paragraph (a), insert "60 days."

52.223-11 Ozone Depleting Substances (JUN 1996).

52.223-14 Toxic Chemical Release Reporting (excluding subparagraph (e)) (OCT 1996). This clause applies only if this contract exceeds \$100,000 (including all options).

52.225-8 Duty-Free Entry (FEB 2000). This clause applies only if this contract identifies supplies to be afforded duty-free entry or if foreign supplies in excess of \$10,000 may be imported into the customs territory of the United States. For the purposes of this clause, the blanks in paragraph (g)(3) are completed as follows: UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE, Duty-free entry is claimed pursuant Section XXII, Chapter 98, Subchapter VIII, Item No. 9808.00.30 of the Harmonized Tariff Schedule of the United States. Upon arrival of shipment at port of entry, the importer or authorized agent will notify Commander, Defense Contract Management Area Operations (DCMAO, New York, 201 Varick Street, New York, New York, 10014-4811, Attention DCRN-NCT) for execution of Customs Forms 7501, 7501-A, or 7506 and required duty free entry certificates.

52.225-13 Restrictions on Certain Foreign Purchases (JUL 2000).

52.227-1 Authorization and Consent (JUL 1995).

52.227-1 Alternate I (APR 1984). [Applicable to the CLIN 01xx and 04xx Series Only]

52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (AUG 1996). A copy of each notice sent to the Government will be sent to Buyer. "Contracting Officer" shall mean "Buyer". This clause applies only if this contract exceeds \$100,000.

52.227-10 Filing of Patent Applications - Classified Subject Matter (APR 1984). This clause applies only if this contract will involve access to classified information.

52.227-11 Patent Rights - Retention by the Contractor (Short Form) (JUN 1997). This clause only applies if this Contract is for experimental, developmental, or research work and Seller is a small business firm or nonprofit organization.

52.227-12 Patent Rights - Retention by the Contractor (Long Form) (JUN 1997). This clause only applies if this Contract is for experimental, developmental, or research work and Seller is other than a small business firm or nonprofit organization.

52.229-8 Taxes - Foreign Cost-Reimbursement Contracts (MAR 1990) [Insert "the United Kingdom" twice in paragraph a.) [Applicable to the CLIN 04xx Series Only].

52.230-6 Administration of Cost Accounting Standards (NOV 1999). Add "Buyer and the" before "Contracting Officer in paragraph (f). This provision applies if Clause H002 is included in Buyer's contract.

52.232-22 Limitation of Funds (APR 1984) [Applicable to the CLIN 01xx and 04xx Series Only]

52.234-1 Industrial Resources Developed Under Defense Production Act Title III (DEC 1994).

52.237-2 Protection of Government Buildings, Equipment, and Vegetation (APR 1984). This clause applies only if work will be performed on a Government installation. "Contracting Officer" shall mean Buyer.

52.244-5 Competition in Subcontracting (DEC 1996)

52.244-6 Subcontracts for Commercial Items and Commercial components (OCT 1998)

52.245-18 Special Test Equipment (FEB 1993). Change "30 days" to "45 days" in paragraph (b) and (c). The notice of intent to procure special test equipment required by this clause shall be forwarded to the Buyer.

52.247-63 Preference for U.S.-Flag Air Carriers (JAN 1997). This clause only applies if this contract involves international air transportation.

52.247-67 Submission of Commercial Transportation Bills to the General Services Administration for Audit (JUN 1997).

b. The following contract clauses are incorporated by reference from the Federal Acquisition Regulation and apply to the extent indicated for CLIN 0113 and CLIN 0403 Only. In all of the following clauses, "Contractor" and "Offeror" mean Seller.

52.204-2 Security Requirements (AUG 1996) [Alternate II] (APR 1984). "Changes clause" means the changes clause of this contract. This clause applies only if access to classified material is required.

52.215-2 Audit and Records – Negotiation (1999) [Alternate I] (JAN 1997). This clause applies only if this contract exceeds \$100,000 and (i) is cost-reimbursement, incentive, time and materials, labor-hour, or price-

redeterminable type or any combination of these types; (ii) Seller was required to provide cost or pricing data; or (iii) Seller is required to furnish reports as discussed in paragraph (e) of the referenced clause.

52.216-7 Allowable Cost and Payment (FEB 1997) [Alternate I] (FEB 1997).

52.222-6 Davis Bacon Act (FEB 1995).

52.222-7 Withholding of Funds (FEB 1988).

52.222-8 Payrolls and Basic Records (FEB 1988).

52.222-9 Apprentices and Trainees (FEB 1988).

52.222-10 Compliance with Copeland Act Requirements (FEB 1988).

52.222-11 Subcontracts (Labor Standards) (FEB 1988). Seller shall include this clause in its subcontracts and shall require such subcontractors to flow this clause to all lower-tier subcontractors.

52.222-12 Contract Termination – Debarment (FEB 1988).

52.222-13 Compliance with Davis-Bacon and Related Act Regulations. (FEB 1988)

52.222-14 Disputes Concerning Labor Standards (FEB 1988).

52.222-15 Certification of Eligibility (FEB 1988).

52.222-16 Approval of Wage Rates (FEB 1988).

52.222-17 Labor Standards for Construction Work – Facilities Contracts (FEB 1988).

52.222-23 Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity for Construction (FEB 1999). This clause applies at \$10,000 or more.

52.222-27 Affirmative Action Compliance Requirements for Construction (FEB 1999). This clause applies at \$10,000 or more.

52.228-2 Additional Bond Security (OCT 1997).

52.228-3 Worker’s Compensation Insurance (Defense Base Act) (Apr1984). [Applicable to CLIN 0403 Only]

52.228-11 Pledges of Assets (FEB 1992).

52.228-15 Performance and Payment Bonds – Construction (JUL 2000).`

2 a. DoD Contracts. If this Contract is placed under a Department of Defense Contract, the following contract clauses are incorporated by reference from the Department of Defense Federal Acquisition Regulation Supplement and apply to the extent indicated. In all of the following clauses, “Contractor” and “Offeror” mean Seller except as otherwise noted. Unless otherwise provided, the clauses are those in effect as of the date of this contract.

252.203-7001 Prohibition on Persons Convicted of Fraud or Other Defense-Contract Related Felonies (excluding paragraph (g)) (MAR 1999). This clause applies only if this contract exceeds \$100,000 and does not apply to the purchase of commercial items or commercial components. “Contractor” and “contract” are not changed in paragraphs (a) and (b). In paragraph (e), "Government" shall mean Government or Buyer. In

paragraph (f), "through the Buyer" is inserted after "Contracting Officer". Paragraph (g) is deleted and "Contracting Officer" shall mean Contracting Officer.

252.204-7000 Disclosure of Information (DEC 1991). Seller will submit requests for authorization to release through Buyer.

252.208-7000 Intent To Furnish Precious Metals As Government-Furnished Material (DEC 1991). This clause applies if item purchased contains precious metals. Insert in Paragraph (b) "The Seller shall identify its requirements when the need is known". "Contractor" is not changed in paragraph (d).

252.209-7000 Acquisition From Subcontractors Subject To On-Site Inspection Under the Intermediate-Range Nuclear Forces Treaty (NOV 1995). This clause applies only if this contract exceeds \$100,000 and does not apply to the purchase of commercial items or commercial components.

252.211-7000 Acquisition Streamlining (DEC 1991). This clause applies only if this contract exceeds \$1 million.

252.215-7000 Pricing Adjustments (DEC 1991). This clause applies only if this contract exceeds \$500,000.

252.223-7001 Hazard Warning Labels (DEC 1991). This clause applies only if Seller delivers hazardous material under this contract.

252.223-7002 Safety Precautions for Ammunition and Explosives (MAY 1994). This clause applies only if this contract involves ammunition or explosives. "Government" means Government or Buyer in paragraph (b)(2), each time it appears in (e), (f)(1), (f)(2), the first time it appears in (g)(1)(i), and in (g)(3). "Government" means Buyer in paragraphs (c)(3), (c)(4), (c)(5), and the second time it appears in (g)(1)(i). "Contracting Officer" means Contracting Officer and Buyer in paragraph (g)(4). "Contracting Officer" means Buyer in paragraphs (c)(1), (c)(2), (c)(3), (c)(4), (c)(5), and each time it appears in (d).

252.223-7003 Changes in Place of Performance – Ammunition and Explosives (DEC 1991). This clause applies only if DFARS 252.223-7002 is applicable to this contract. The term "Contracting Officer" means Buyer.

252.223-7006 Prohibition on Storage and Disposal of Toxic and Hazardous Materials (APR 1993). This clause applies to this contract if it requires, may require, or permits Seller to treat or dispose of non-DoD-owned toxic or hazardous materials as defined in this clause.

252.223-7007 Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives (SEP 1999).

252.225-7009 Duty-free Entry — Qualifying Country Supplies (End Products and Components) (MAR 1998).

252.225-7010 Duty-Free Entry — Additional Provisions (MAR 1998).

ACO	William R. Ammons
Activity Address	DCMA Huntsville -Boeing 950 Explorer Blvd. Rm 12A10 Huntsville, AL 35806
Activity Address Number	S0107A
Prime Contractor	The Boeing Company - MDS
Prime Contractor's Address	P.O. Box 240002; M/S JW-15 499 Boeing Boulevard Huntsville, AL 35824-6402
Cage Code	21794
Prime Contract Number	HQ0006-01-C-0001
Prime Contract Dollar Value	\$11,459,050,978.00

252.225-7012 Preference for Certain Domestic Commodities (MAY 1999).

252.225-7014 Preference for Domestic Specialty Metals (MAR 1998), Alternate I (MAR 1998).

252.225-7016 Restriction on Acquisition of Ball and Roller Bearings (AUG 1998). This clause does not apply to the purchase of commercial items other than ball or roller bearings or to items which contain no ball or roller bearings.

252.225-7022 Restriction on Acquisition of Polyacrylonitrile (PAN) Based Carbon Fiber (JUN 1997). "Contracting Officer" means Buyer. This clause applies only if the product furnished under this contract contains polyacrylonitrile carbon fibers (alternatively referred to as PAN-based carbon fibers or PAN-based graphite fibers).

252.225-7026 Reporting of Contract Performance Outside the United States (JUN 2000). This clause applies only if this contract exceeds \$500,000 and is not for commercial items, construction, ores, natural gases, utilities, petroleum products and crudes, timber (logs), or subsistence.

252.227-7013 Rights in Technical Data - Noncommercial Items (NOV 1995). This clause applies only if the delivery of data is required for noncommercial items under this contract.

252.227-7014 Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation (JUN 1995). This clause applies only if the delivery of noncommercial computer software or noncommercial computer documentation may be originated, developed or delivered under this contract.

252.227-7016 Rights in Bid or Proposal Information (JUN 1995).

252.227-7019 Validation of Asserted Restrictions - Computer Software (JUN 1995). This clause applies only if computer software may be originated, developed, or delivered under this contract.

252.227-7027 Deferred Ordering of Technical Data or Computer Software (APR 1988). This clause applies only if technical data or computer software may be generated as part of the performance of this contract.

252.227-7030 Technical Data - Withholding of Payment (MAR 2000). [Replace "10%" with "1%"] In this clause, "Government" and "Contracting Officer" shall mean Buyer. This clause applies only if the delivery of technical data is required under this contract.

252.227-7036 Declaration of Technical Data Conformity (JAN 1997). This clause applies only if the delivery of data is required by this contract.

252.227-7037 Validation of Restrictive Markings on Technical Data (SEP 1999). This clause applies only if the delivery of data is required by this contract.

252.228-7005 Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles (DEC 1991).

252.229-7006 Value Added Tax Exclusion (United Kingdom) (JUN 1997).

252.229-7008 Relief From Import Duty (United Kingdom) (JUN 1997).

252.231-7000 Supplemental Cost Principles (DEC 1991)

252.234-7001 Earned Value Management System (MAR 1998). This clause is applicable only if this contract states that the Earned Value Management System criteria applies to Seller. [Insert the following subcontractors

in paragraph (f): Northrop Grumman; Raytheon Company; Teledyne Brown Engineering; TRW Strategic Systems Division; United Technologies Corp.; and Xon Tech, Inc.]

252.235-7003 Frequency Authorization (DEC 1991) Alternate I (DEC 1991). This clause applies only if this contract requires the development, production, construction, testing, or operation of a device for which a radio frequency authorization is required.

252.244-7000 Subcontracts for Commercial Items and Commercial Components (DoD Contracts) (MAR 2000).

252.245-7001 Reports of Government Property (MAY 1994). Seller will provide information that the Buyer may require to complete Buyer's annual report.

252.247-7023 Transportation of Supplies by Sea (MAR 2000). This clause applies only if the supplies are of a type described in paragraph (b)(2) of this clause. In paragraph (d), "45 days" is changed to "60 days." In paragraph (g) "Government" means Buyer. If this contract is at or below \$100,000, paragraphs (f) and (g) are excluded.

252.247-7024 Notification of Transportation of Supplies by Sea (MAR 2000). "Contracting Officer" and, in the first sentence of paragraph (a), "Contractor" mean Buyer. This clause applies only if the supplies being transported are noncommercial items or commercial items that (i) Seller is reselling or distributing to the Government without adding value (generally, Seller does not add value to items that it contracts for f.o.b. destination shipment); (ii) are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or (iii) are commissary or exchange cargoes transported outside the Defense Transportation System in accordance with 10 U.S.C. 2643.

252.249-7002 Notification of Proposed Program Termination or Reduction (DEC 1996). This clause applies only if this contract is \$500,000 or more. Seller will comply with the notice and flowdown requirements of paragraph (d)(2) of the referenced clause.

252.251-7000 Ordering From Government Supply Sources (MAY 1995). This clause applies only if Seller is notified by Buyer that Seller is authorized to purchase from Government supply sources in the performance of this contract.

b. The following clauses are incorporated by reference from the Department of Defense Federal Acquisition Regulation and apply to the extent indicated for CLIN 0113 and 0403 Only. In all of the following clauses, "Contractor" and "Offeror" mean Seller. Unless otherwise provided, the clauses are those in effect as of the date of this contract.

252.227-7023 Drawings and Other Data to Become Property of Government (MAR 1979). This clause applies only to subcontracted drawings or other data.

252.227-7024 Notice and Approval of Restricted Designs (APR 1984). This clause applies only to subcontracted drawings and other data.

252.227-7026 Deferred Delivery of Technical Data or Computer Software (APR 1988). This clause applies only if the delivery of data is required or if computer software may be originated, developed or delivered under this contract.

252.227-7033 Rights in Shop Drawings (APR 1966)

- 3. If goods or services being procured under this contract are for commercial items and Clause H203 is set forth in the purchase order, the foregoing Government clauses in Sections 1 and 2 above are deleted and the following FAR/DFARS clauses are inserted in lieu thereof:**

52.219-8 Utilization of Small Business Concerns (OCT 2000). Include in all subcontracts that offer further subcontracting opportunities. If a subcontract (except subcontracts to small business concerns) exceeds \$500,000 (\$1,000,000 for construction of any public facility), Seller and any lower tier subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

52.222-26 Equal Opportunity (subparagraph (b)(1) through (11)) (APR 2002).

52.222-35 Affirmative Action for Special Disabled and Vietnam Era Veterans (Dec 2001). This clause applies only if this contract exceeds \$25,000.

52.222-36 Affirmative Action for Handicapped Workers (JUN 1998). This clause applies only if this contract exceeds \$10,000.

52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels (APR 2003). This clause only applies if this contract is (i) a contract or agreement for ocean transportation services; or a construction contract; or (ii) the supplies being transported are (a) Items the Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to the items when it subcontracts items for f.o.b. destination shipment); or (b) shipped in direct support of U.S. military (1) contingency operations; (2) exercises; or (3) forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.

252.225-7014, Preference for Domestic Specialty Metals (MAR 1998), Alternate I (MAR 1998).

252.247-7023 Transportation of Supplies by Sea (MAR 2000). This clause applies only if this contract exceeds \$100,000 and are a type of supplies described in paragraph (b)(2) of this clause. In paragraph (c), "45 days" is changed to "60 days". In paragraph (g) "Government" means Buyer.

252.247-7024 Notification of Transportation of Supplies by Sea (MAR 2000). "Contracting Officer" and, in the first sentence of paragraph (a), "Contractor" mean Buyer. This clause applies only if the supplies being transported are noncommercial items or commercial items that (i) Seller is reselling or distributing to the Government without adding value (generally, Seller does not add value to items that it contracts for f.o.b. destination shipment); (ii) are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or (iii) are commissary or exchange cargoes transported outside the Defense Transportation System in accordance with 10 U.S.C. 2643.

4. Cost Accounting Standards

- (1) (Applicable if this contract incorporates clause H001). The version of FAR 52.230-2, Cost Accounting Standards, incorporated by clause H001 is the version dated APRIL 1998.
- (2) (Applicable if this contract incorporates clause H002). The version of FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, incorporated by clause H002 is the version dated APRIL 1998.
- (3) (Applicable if this contract incorporates clause H003). The version of FAR 52.230-4, Consistency in Cost Accounting Practices, incorporated by clause H003 is the version dated August 1992.
- (4) (Applicable if this contract incorporates clause H004). The version of FAR 52.230-5, Cost Accounting Standards – Educational Institution, incorporated by clause H004 is the version dated April 1998.

5. Additional Information and Requirements:

A. NOTIFICATION OF DEBARMENT/SUSPENSION STATUS

Seller shall provide immediate notice to Buyer in the event of being suspended, debarred or declared ineligible by any Department or other Federal Agency, or upon receipt of a notice of proposed debarment from any DoD Agency, during the performance of this Contract.

B. FOREIGN NATIONALS - FOREIGN SOURCES

(1) For the purposes of this clause,

(A) Foreign nationals are those persons not citizens of, not nationals of, or resident/immigrant aliens to, the United States;

(B) Foreign representative is anyone, regardless of nationality or citizenship, acting as an agent, representative, official, or employee of a foreign government, a foreign-owned or influenced firm, corporation, or person; and

(C) Foreign sources are those sources (vendors, subcontractors, and suppliers) not owned and controlled by citizens or immigrant aliens of the United States.

(2) Nothing in this clause is intended to waive any requirement imposed by any other U.S. Government agency with respect to employment of foreign nationals or export-controlled data and information.

(3) Seller acknowledges that equipment and technical data generated or delivered in the performance of this contract is controlled by the International Traffic in Arms Regulation (ITAR), 22 CFR Sections 121 through 128, and require an export license before assigning any foreign national to perform work under this contract or before granting access to foreign nationals to any equipment and technical data generated or delivered in performance of this contract (see 22 CFR Section 125). Seller agrees to notify and obtain the written approval of Buyer prior to assigning or granting access to any work, equipment, or technical data generated or delivered in the performance of this contract to foreign nationals or their representatives. This notification will include the name and country of origin of the foreign national or representative, the specific work, equipment, or data to which the person will have access, and whether the foreign national is cleared to have access to technical data (DoD 5220.22-M, National Industrial Security Program Operating Manual (NISPOM)).

C. EXPORT CONTROLLED DATA RESTRICTIONS

(1) For the purpose of this clause,

(A) Foreign person is any person who is not a citizen of the U.S. or lawfully admitted to the U.S. for permanent residence under the Immigration and Nationality Act, and includes foreign corporations, foreign organizations, and foreign governments;

(B) Foreign representative is anyone, regardless of nationality or citizenship, acting as an agent, representative, official, or employee of a foreign government, a foreign-owned or influenced firm, corporation, or person; and

(C) Foreign sources are those sources (vendors, subcontractors, and suppliers) owned and controlled by a foreign person.

(2) Seller shall place a clause in subcontracts containing appropriate export control restrictions, set forth in this clause.

(3) Nothing in this clause waives any requirement imposed by any other U.S. Government agency with respect to employment of foreign nationals or export-controlled data and information.

(4) Equipment and technical data generated or delivered in the performance of this contract are controlled by the International Traffic in Arms Regulation (ITAR), 22 CFR Sections 121 through 128. An export license is required before assigning any foreign source to perform work under this contract or before granting access to foreign persons to any equipment and technical data generated or delivered during performance (see 22 CFR Section 125). Seller shall notify Buyer and obtain the written approval of Buyer prior to assigning or granting access to any work, equipment, or technical data generated or delivered in the

performance of this contract to foreign persons or their representatives. This notification shall include the name and country of origin of the foreign person or representative, the specific work, equipment, or data to which the person will have access, and whether the foreign person is cleared to have access to technical data

(DoD 5220.22-M, National Industrial Security Program Operating Manual (NISPOM)).

6. ADDITIONAL FULL-TEXT FAR AND DFARS CLAUSES

(Applicable to CLINs 0113 and 0403 Only)

52.222-23 NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY FOR CONSTRUCTION (FEB 1999)

(This clause is applicable only if the contract is for \$10,000 or more.)

(b) The goals for minority and female participation, expressed to percentage terms from the Seller's aggregate workforce in each trade on all construction work in the covered area, are as follows:

(1) Goals for Minority Participation for Each Trade: 15.1%; and

(2) Goals for Female Participation for Each Trade: 6.9%

These goals are applicable to all the Seller's construction work performed in the covered area. If the Seller performs construction work in a geographical area located outside of the covered area, the Seller shall apply the goals established for the geographical area where the work is actually performed. Goals are published periodically in the Federal Register in notice form, and these notices may be obtained from any Office of Federal Contract Compliance Programs office.

(e) As used in this Notice, and in any subcontract, the "covered area" is Alaska.

252.222-7000 RESTRICTIONS ON EMPLOYMENT OF PERSONNEL (MAR 2000)

(a) The Seller shall employ, for the purpose of performing that portion of the contract work in Alaska, individuals who are residents there of and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills to perform the contract.

(b) The Seller shall insert the substance of this clause, including this paragraph (b), in each subcontract awarded under this contract.

7. ADDITIONAL SPECIAL PROVISIONS:

A. PUBLIC RELEASE OF INFORMATION. All public information materials prepared by Seller shall be submitted to Buyer for clearance prior to release. These materials include, but are not limited to, technical papers and responses to news queries, which relate to work under this contract. However, once work has been cleared for public release, it need not be cleared again for later use. The information shall be used in its originally cleared context. All materials to be cleared must be sent to Buyer.

Seller shall submit the material proposed for release to the above address via a letter of transmittal setting forth: 1) to whom the material is to be released; 2) the desired date for public release; 3) a statement that the material has been approved by Seller officials for public release; 4) the order number and prime contract number. Three copies of each item, including written material, photographs, drawings, "dummy layouts" and the like shall be submitted at least two months in advance of the proposed release date. The items submitted must be complete. Photographs shall have captions. Final approval for release or disclosure of the material cannot be given on the basis of abstracts; outlines or rough drafts will not be cleared. Materials submitted to Buyer for release purposes shall be void of all Seller logos or other attributions to the Seller.

- B. ORGANIZATIONAL CONFLICT OF INTEREST.** Purpose. This clause is to aid in ensuring that: Seller's scientific objectivity and judgment are not biased because of present or planned interests (financial, contractual, organizational or otherwise) which relate to work under this order; Seller does not obtain an unfair competitive advantage by virtue of its access to non-public Government information regarding Government program plans and actual or anticipated resources; and Seller does not obtain any unfair competitive advantage by virtue of its access to proprietary information belonging to others. Restrictions described herein shall apply to performance or participation by Seller and any of its affiliates or their successors in interest in the activities covered by this clause as subcontractor, co-sponsor, joint venture, consultant or in any similar capacity. Information furnished voluntarily by the owner without limitations on its use, or which is available without restrictions from other sources, is not considered proprietary.
1. Certification Restriction: the Seller shall be restricted from performing validation, verification, accreditation, or certification of any products developed or delivered under this contract. Additionally the Seller shall not serve as a software independent validation and verification (IV&V) contactor for any software developed or delivered under this contract.
 2. Access To & Use Of Government Information. If in the performance of this order, Seller obtains access to information such as plans, policies, reports, studies, financial plans, or data which has not been released or otherwise made available to the public, Seller agrees that without prior written approval of Buyer it shall not use such information for any private purpose unless the information has been released or otherwise made available to the public; compete for work, other than the Boeing contract, based on such information after the completion of this order, or until such information is released or otherwise made available to the public, whichever occurs first; submit an unsolicited proposal to the Government which is based on such information after such information is released or otherwise made available to the public; or release such information unless such information has previously been released or otherwise made available to the public by the Government.
 3. Access To & Protection Of Proprietary Information. Seller agrees that, to the extent it receives or is given access to proprietary data, trade secrets, or other confidential or privileged technical, business, or financial information (hereinafter referred to as "proprietary data") under this order, it shall treat such information in accordance with any restrictions imposed on such information. Seller further agrees to enter into a written agreement for the protection of the proprietary data of others and to exercise diligent effort to protect such proprietary data from unauthorized use or disclosure. In addition, Seller shall obtain from each employee who has access to proprietary data under this order a written agreement which shall in substance provide that such employee shall not, during his/her employment by Seller or thereafter, disclose to others or use for their benefit proprietary data received in connection with work under this order. Seller will educate its employees regarding the philosophy of Part 9.505-4 of the Federal Acquisition Regulation so that they will not use or disclose proprietary information or data generated or acquired in the performance of this order except as provided herein.
 4. Subcontracts: The Seller shall include this or substantially the same clause, including this paragraph, in consulting agreements and subcontracts at all tiers. The terms "Contract", "Contractor", and "Contracting Officer" will be appropriately modified to preserve the Government's rights.
 5. Disclosures. If Seller discovers an organizational conflict of interest or potential conflict of interest after award, a prompt and full disclosure shall be made in writing to the Buyer. This

disclosure shall include a description of the action the Seller has taken or proposes to take in order to avoid or mitigate such conflicts.

6. Remedies & Waiver. For breach of any of the above restrictions or for non-disclosure or misrepresentation of any relevant facts required to be disclosed concerning this order, Buyer may terminate this order for default, disqualify Seller for subsequent related contractual efforts, and pursue such other remedies as may be permitted by law or this order. If, however, in compliance with this clause, the Seller discovers and promptly reports an actual or potential organizational conflict of interest subsequent to award of the order, Buyer may terminate this order for convenience if such termination is determined to be in Buyer's best interest. Seller recognizes that this clause has potential effects which will survive performance of this order and that it is impossible to foresee each circumstance to which it might be applied in the future. Accordingly, Seller may at any time seek a waiver from the Boeing Director of Supplier Management and Procurement, via Buyer by submitting a full written description of requested waiver and reasons in support thereof.
7. Modifications. Prior to order modification, when the statement of work is changed to add new work or the period of performance is significantly increased, Buyer may require Seller to submit to the Government through Buyer either an organizational conflict of interest disclosure or an update of the previously submitted disclosure or representation.

C. ENABLING CLAUSE FOR BOEING INTERFACE SUPPORT.

1. It is anticipated that during the performance of this contract, Seller may be required to support meetings with other Sellers and other Government agencies. The Seller as needed to protect the rights of Seller and Buyer will negotiate appropriate organizational conflict of interest agreements.
2. The Seller further agrees to include a clause in each subcontract requiring compliance with the provisions of paragraph 1. above, subject to coordination with the Buyer. This agreement is not intended to establish privity of contract between Seller and the Government, nor is it intended to relieve Seller of any of its responsibility to manage its subcontracts effectively.
3. Personnel from other Sellers or from any Government agency are not authorized to direct Seller in any way.

D. INSURANCE. Seller shall maintain Workmen's Compensation and all occupational disease insurance as required by state law. Seller's liability insurance (including occupational disease not covered by Workmen's Compensation) shall provide for a minimum of \$100,000 per accident. Seller's comprehensive general Bodily Injury liability insurance shall provide for a minimum of \$500,000 per occurrence. Seller's automobile liability insurance shall provide for a minimum of \$200,000 per person; \$500,000 per accident; and \$20,000 for property damage. In the event that other coverages of higher minimum amounts are required by any Treaty or DoD Post, Base Camp, or Station regulations, such other coverage(s) or higher minimum amount(s) shall apply to that installation.

E. IDENTIFICATION OF TECHNICAL DATA, COMPUTER SOFTWARE & SOFTWARE DOCUMENTATION TO BE DELIVERED WITH LESS THAN UNLIMITED RIGHTS. Except for data and software specifically identified in this contract as being delivered with less than unlimited rights, all technical data, computer software, and software documentation required to be delivered under this contract will be provided with unlimited rights.

F. HARDWARE, SOFTWARE, GOVERNMENT PROPERTY & END ITEMS. For any hardware, software, Government property, and end items delivered under this contract or shipped to Buyer or direct to the Government, use best commercial practices in packing the items to ensure they are

adequately protected during shipment and handling, unless specifically instructed otherwise in this contract.

- G. TRAVEL & TRAVEL COSTS.** Costs for transportation may be based on mileage rates, actual costs incurred, or on a combination thereof, provided the method used results in a reasonable charge. Costs for lodging, meals, and incidental expenses may be based on per diem, actual expenses, or a combination thereof, provided the method used results in a reasonable charge. Except as provided in FAR 31.205-46(a)(3), costs incurred for lodging, meals, and incidental expenses shall be considered reasonable and allowable to the extent that they do not exceed on a daily basis the maximum per diem rates in effect at the time of travel as set forth in: Federal Travel Regulations, prescribed by the General Services Administration for travel in the contiguous 48 United States; Joint Travel Regulations, Volume 2, DoD Civilian Personnel (Appendix A), for travel in Alaska, Hawaii, and territories and possessions of the United States; and Standardized Regulations (Government Civilians, Foreign Areas) Section 925, prescribed by the Department of State, for all other areas. The maximum per diem rates referenced above generally would not constitute a reasonable daily charge when no lodging costs are incurred, and/or on partial travel days (appropriate downward adjustments from the maximum per diem rates would normally be required under these circumstances). Costs shall be allowable only if the following information is documented: date and place of the expense; purpose of the trip; and name of the person on the trip and that person's title. Travel costs directly attributable to specific contract performance are allowable and may be charged to the contract under FAR 31.202. Airfare and rail costs in excess of the lowest customary standard, coach or equivalent fare offered during normal business hours are unallowable, except where such accommodations require circuitous routing, require travel during unreasonable hours, excessively prolong travel, result in increased cost that would offset transportation savings, are not reasonably adequate for the physical or medical needs of the traveler, or are not reasonably available to meet mission requirements. The costs of travel by Seller-owned, leased or chartered aircraft and automobiles will be governed in accordance with FAR 31.205-46(e) and (f).

Applicable to labor hour support contracts only:

Seller shall obtain prior written authorization for all travel from the responsible Integrated Product Team Leader or Cost Account Manager where expenses will be invoiced. The Seller shall furnish copies of approved travel authorization upon request of The Boeing Company. Travel expenses without prior written approval shall be deemed unallowable and not paid, or if paid will be debited back to The Boeing Company.

- H. YEAR 2000 COMPLIANCE.** Seller represents that any hardware, software, and firmware product delivered under this order shall be able to accurately process date/time data (including, but not limited to, calculating, comparing and sequencing) from, into and between the twentieth and twenty-first centuries, and the years 1999 and 2000) and leap year calculations to the extent that other information technology, used in combination with the information technology being acquired, properly exchanges date/time data with it. The remedies available to Buyer under this clause shall include repair or replacement of any non-compliant product discovered and made known to Seller in writing. Nothing in this clause shall be construed to limit any rights or remedies Buyer may otherwise have under this order with respect to defects other than Year 2000 performance.
- I. FIRST TIER SUBCONTRACTS.** Seller agrees, upon request, to render to Buyer a report listing all of Seller's first tier subcontracts, as defined in FAR 52.244-2, paragraph (a), relating to this order. This report shall include for each subcontract, the name of the supplier, a brief statement of the general scope of work contemplated there under, the estimated cost or price, the form of contract and

the current status and progress thereof. Seller further agrees to furnish, upon request of the Buyer, a copy of all such subcontracts.

J. EXPORT OF TECHNICAL DATA AND DEFENSE SERVICES.

1. It is acknowledged that conduct of GMD contract and subcontract activities (the “Program”) will involve the export of technical data and defense services. When in the performance of the Program, the need arises to export technical data, including classified data, defense services, and/or program-related information all such exports shall be made in accordance with applicable U.S. export control laws and regulations. All such exports will be made pursuant to a valid export license or as otherwise authorized by applicable U.S. Government export regulations.
2. When directed in writing by the Buyer, the subcontractor shall export technical data to a named foreign entity or persons in the manner and under the conditions provided for in the direction.
3. As soon as practicable, and preferably seven months in advance of a specific need, the Seller will identify the need to export technical data or defense services to the Buyer. In the event that the timing of coordination required by the Buyer before the release by the Seller of data or the performance of services (including, but not limited to “Program related information”) unreasonably impacts contractor performance, and such untimely coordination is determined to have been without the fault or negligence of the Seller, the parties agree that the cost impact shall be considered for an equitable adjustment to the contract under the “Changes” clause.
4. The Subcontractor shall include this clause in all subcontracts (suitably modified to reflect the relationship of the parties), the performance of which may require the export of technical data and/or defense services.

K. COMPLIANCE WITH ENVIRONMENTAL SAFETY AND HEALTH PROGRAM PROTECTION

The Contractor and Subcontractors shall maintain accurate accident and injury/illness records for the NMD System. For Contractor or Subcontractor work performed on Government installations, the Contractor shall notify DoD installation Commander, or designee, immediately of all accidents, injuries, environmental illness, or other unusual occurrence.

1. The Contractor shall conduct accident investigations and provide documentation to the host installation.
2. On an annual basis, the Contractor shall provide OSHA 200 logs prepared by the Contractor or Subcontractors for the NMD Program and copies of all accident investigations to Boeing along with a listing of all other accidents/incidents related to this contract.

L. GOVERNMENT PROPERTY

1. **Property on Existing Contracts.** The Contractor or its Subcontractors are authorized use of Government Property from the following contracts on a no cost (i.e., without assessment of rental charges), non-interference basis:

<u>Contract Number</u>	<u>Program or Effort</u>	<u>Remarks</u>
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HQ0006-98-C-0003	NMD LSI*	NMD Basic Contract
HQ0006-95-C-0018	BMC3/SE&I **	TRW Subcontract
DASG60-92-C-0184	GBR-P	Raytheon Subcontract
DASG60-86-C-0014	PLV	LMMS Subcontract
DASG60-98-C-0011	PLV-X	LMMS Subcontract

* All material and work-in-progress under Contract HQ0006-98-C-0003 shall be transferred “as is” to Contract HQ0006-01-C-0001.

** Refers to Government Property used for CLIN 0007 (BMC3).

- 2. Government Owned-Contractor Operated (GOCO) Property.** The Contractor its subcontractors are authorized use of the following GOCO facilities on a rent-free, non-interference basis:

<u>Contract Number</u>	<u>Program or Effort</u>	<u>Remarks</u>
DAAH01-97-E-0003	THAAD	XBR Raytheon Subcontract Performance
DAAH01-00-E-0001	THAAD	XBR Raytheon Subcontract Performance

(Remainder of list TBD – will contain list of contracts for which permission has been granted to use the Government property.)

- 3. Models and Simulations.** The Contractor has requested the use of the following software models and simulations in the performance of this contract. To the extent that approval has not been received from the cognizant activity as of the award of this contract, BMDO will work with the Contractor to obtain such approval. Given the nature of models and simulations, they are being furnished on an “as is” and “as available from the cognizant activity” basis.

(List of models and simulations: TBD)

- M. SEGREGATION OF COSTS** (applicable only to cost-reimbursement, flexibly-priced (e.g. fixed-price incentive) or letter subcontracts, involving subcontract line items funded by both RDT&E and Procurement appropriations)

The prime Government contract contains items funded by Research, Development, Test & Evaluation (RDT&E) appropriations and Procurement appropriations. Separate Contract Line Item Numbers (CLINs) and Subordinate Contract Work Breakdown Structure (CWBS) designations apply to the work funded by RDT&E and work funded by Procurement appropriations. The Contractor shall segregate costs for the RDT&E-funded CLINs from the Procurement-funded CLINs. The Contractor shall emphasize to its direct labor employees that are likely to charge time under this contract the fact that work is funded from different appropriations and that separate work accounting charge numbers have been established and are to be used pursuant to the Contractor’s established labor charging and accounting systems. Similar action shall be taken to emphasize the need for segregating costs to subcontractors holding subcontracts involving both RDT&E-funded and CLINs and Procurement-funded CLINs.

- N. SURVEILLANCE AND WRITTEN TECHNICAL DIRECTION**

1. The work to be performed by the Seller under this Order is subject to surveillance and written technical direction from the Buyer under the conditions set out herein. Technical direction is defined as a directive to the Seller within the definitions and requirements of the Statement of Work hereof which approves approaches, solutions, designs, or refinements; fills in details or otherwise completes the general description of work or information items; shifts emphasis among work areas or tasks; or otherwise furnishes guidance to the Seller. Technical direction includes the process of conducting inquiries, requesting studies, or transmitting information or advice by the Buyer regarding matters within the definitions and requirements of the Statement of Work. Technical direction and management surveillance shall not impose tasks or requirements upon the Seller additional to or different from the general tasks and requirements stated in the Statement of Work hereof.

Technical direction to be valid:

- Must be issued in writing consistent with the general scope of the work set forth in this Order;
 - Shall not commit the Buyer to any adjustment of the price or other provisions of this Order; and
 - Shall be contained on Buyer's Form and signed by an authorized member of Buyer's Engineering staff.
2. In the event any such technical direction is interpreted by Seller to fall within the clause hereof entitled "Changes" the Seller shall not implement such direction, but shall notify the Buyer in writing of such interpretation within ten working days after the receipt of such direction. Such notice shall (i) include the reasons upon which the Seller bases its belief that the technical direction falls within the purview of the "Changes" clause; and (ii) include the Seller's best estimate as to revision in price, performance time, delivery schedules and other contractual provisions that would result from implementing the technical direction.

If, after reviewing the information presented pursuant to Paragraph 2 above, the Buyer is of the opinion that such direction is within the purview of the "Changes" clause and considers such change desirable, unilateral direction to proceed pursuant to the "Changes" clause shall be issued by duly executed Change Notice to this Order. If Buyer determines that such direction is technical direction authorized by this clause, Seller will be directed by Buyer to proceed with the implementation of such technical direction.

In the event the Buyer determines that it is necessary to avoid a delay in performance of this Order, the Seller may be directed, in writing, to proceed with the implementation of the technical direction pending receipt of the information to be submitted under Paragraph 2 above. Should the Buyer later determine that change direction is appropriate, written direction pursuant to the "Changes" clause hereof will be issued.

3. Failure of the Buyer and Seller to agree on whether such direction is technical direction or a Change within the purview of the "Changes" clause shall be a dispute concerning a question of fact within the meaning of the clause hereof entitled "Disputes."

The procedure set out in this clause is the only means authorized to give technical direction to the Seller under this Order. Any action taken by the Seller in response to any technical direction given by any other means or by any person other than the cognizant Buyer shall be at the Seller's own risk.

O. THE FOLLOWING "DISPUTES" PROVISION APPLIES ONLY TO THE CLAUSES OF THIS CONTRACT LISTED BELOW:

- PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA
 - PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA - MODIFICATIONS
 - COST ACCOUNTING STANDARDS
 - DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES
1. Any dispute that arises under or is related to this contract concerning the above named clauses that cannot be settled by mutual agreement of the parties may be decided by a court of competent jurisdiction. Pending final resolution of any dispute, Seller shall proceed with performance of this contract according to Buyer's instructions so long as Buyer continues to pay amounts not in dispute.
 2. If a decision arising under the prime contract is made by the Contracting Officer and such decision is also related to the above named clauses of this order, said decision, if binding upon Buyer under the prime contract, shall in turn be binding upon Buyer and Seller with respect to such decision insofar as it relates to this order; provided, however, that if Seller is adversely affected by any such decision made by the Contracting Officer, and if Buyer elects not to appeal such decision pursuant to the "Disputes" clause of the prime contract, Buyer shall promptly notify Seller. If Seller thereafter timely requests Buyer to appeal such decision, Buyer shall do so. If Buyer appeals such decision, whether at its election or at Seller's request, any decision upon such an appeal, if binding upon Buyer under the prime contract, shall in turn be binding upon Buyer and Seller under this order with respect to such decision insofar as it relates to this order.
 3. If any such appeal is denied or otherwise decided adversely to Seller's interest, or if Seller is otherwise adversely affected by any decision made by any representative of the Government on any decision arising under the prime contract which is also related to this order, from which an appeal under the "Disputes" clause in the prime contract is not available, said decision, if binding upon Buyer under the prime contract, shall in turn be binding upon Buyer and Seller with respect to such decision insofar as it relates to this order; provided, however, that if Seller is adversely affected by any such decision, and if Buyer elects not to bring suit against the Government with respect to such decision, Buyer shall notify Seller with reasonable promptness. If Seller timely requests Buyer to bring suit against the Government, Buyer shall do so. If Buyer brings suit against the Government with respect to any such decision, whether at its election or at Seller's request, a final judgment in any such suit, if binding upon Buyer under the prime contract shall in turn be binding upon Seller and Buyer under this order with respect to the decision insofar as it relates to this order.
 4. If necessary for jurisdiction under the Contract Disputes Act, Buyer shall certify Seller's claim and proceed with the appeal only if Buyer is satisfied that the Seller's claim is in good faith, that the supporting data are accurate and complete to the best of its knowledge and belief, and that the amount requested accurately reflects the contract adjustment for which the Buyer believes the Government is liable. Buyer's position on whether or not it is satisfied shall be reasonable and shall not be used to arbitrarily deny Seller certification. Seller shall indemnify Buyer against any liability incurred as a result of acting hereunder at Seller's request, including furnishing such certification.

5. If any such appeal or suit is taken or brought by Buyer, whether at its election or at Seller's request, Seller shall assist Buyer in its prosecution thereof in every reasonable manner and Seller shall be afforded reasonable opportunity to participate in the prosecution thereof to the extent Seller's interest may be affected. To the extent requested by Buyer, Seller shall prosecute for Buyer any appeal or suit taken or brought at Seller's request and, in such event, Buyer shall assist Seller in every reasonable manner. All costs and expenses incurred by Seller and Buyer in prosecuting any appeal or suit taken or brought at Seller's request shall be paid by Seller. Where possible, Buyer shall in good faith consult with Seller concerning the presentation to the Contracting Officer or other cognizant representatives of the Government of the matters referred to in Paragraphs 2 and 3 above to the extent they may affect Seller's interest.
6. If as a result of any decision or judgment which is binding upon Seller and Buyer, as above provided, Buyer is unable to obtain reimbursement from the Government under the prime contract for, or is required to refund or credit to the Government, any amount with respect to any item of cost or fee for which Buyer has reimbursed Seller, Seller shall, on demand, promptly repay such amount to Buyer.
7. The rights and obligations described herein shall survive completion of and final payment under this order.

P. PLANT RULES AND GOVERNMENT CLEARANCE

Employees and agents of Buyer and Seller will, while on premises of the other, comply with all plant rules and regulations, including, where required by Government regulations, submission of appropriate clearance from the U.S. Department of Defense or other concerned federal agency.

For contractor or subcontractor work performed on Government installations, the Contractor shall comply with all applicable DoD, Federal, State, local and host installation regulations and requirements relating to the safety and health of contractor/subcontractor employees and the host installation.

Q. PRIME CONTRACT FLOWDOWN PROVISIONS

The contract may be amended to the extent necessary to incorporate additional provisions required to meet Buyer's obligations under the prime contract to which this contract is charged.

R. ETHICAL BUSINESS CONDUCT

Seller will ensure that its employees performing under this contract comply with Boeing's Ethical Business Conduct Guidelines. The Guidelines are available at the following Internet address:

<http://www.boeing.com/companyoffices/aboutus/ethics/epolicy.htm>

S. FOREIGN SUPPLIER REPORTING

In accordance with the Offset Credits article of Buyer's General Provisions, Seller shall:

1. Immediately notify Buyer's authorized purchasing representative of potential foreign procurements where a request for quotation has been issued to a foreign supplier or a proposal has been received from a foreign supplier.

2. Submit a quarterly report identifying awards and pending awards to foreign suppliers.
3. Include the following information for each award and pending award in the quarterly report:
 - a. The Boeing Company's purchase contract number and a point of contact within your company (name and telephone number)
 - b. Name of foreign company
 - c. Address of foreign company
 - d. Foreign company point of contact (name, telephone, and FAX number)
 - e. Part number(s) or description of product(s) and service(s) to be provided
 - f. Your order number
 - g. Anticipated award date (upon receipt of offer or issuance of solicitation to foreign firm)
 - h. Estimated US dollar value for awarded contracts
 - i. Date of award (if a contract change, indicate change number, and date change was issued)
 - j. Actual US dollar value of the awarded contracts
 - k. Quantity and unit of measure
 - l. Comments, if any
4. Negative reports are required.

T. COMMUNICATION WITH BOEING CUSTOMER

1. Boeing shall be solely responsible for all liaison, coordination, status requests, and other communication with, and deliveries to, the Boeing Customer (*i.e.*, the Ballistic Missile Defense Organization, the BMDO NMD supporting contractors, and the U.S. Government "user" commands are referred to herein as the "Boeing Customer"), concerning the NMD prime contract (HQ0006-01-C-0001), this subcontract, and any related lower-tier subcontract. Subcontractor and its lower-tier subcontractors shall not contact the Boeing Customer, or otherwise attempt to lobby, intervene in or status contract actions, negotiations or discussions, or otherwise release information to such Boeing Customer(s), either directly or indirectly (except through Boeing), without Boeing's written direction. Subcontractor agrees that no public announcement will be made except through, or as approved in writing by Boeing.
2. Exceptions to the general rule stated in paragraph 1., above, shall be made: (i) when an authorized Boeing person is present at a face-to-face meeting, or when an authorized Boeing person is involved as a participant in the telephone conversation, and consents to the communication; or, (ii) when a release relates solely to Subcontractor's internal processes, proprietary rates expressly excluded from release to Boeing under subcontract terms and conditions, or Government allegations of the Subcontractor's or a lower-tier subcontractor's misconduct, or (iii) pursuant to a properly issued subpoena or other order of a court of competent jurisdiction, or (iv) as is required to respond to questions initiated by a Federal auditor in the course of a Program audit. In the event an exception applies, written notice of any statement and/or the questions and answers will be provided by the Subcontractor to the cognizant authorized Boeing Procurement Agent within two business days of the communication.
3. Further, except as required by law, no release of information, or confirmation or denial of same, with respect to the prime contract, this subcontract or a related lower-tier subcontract, or the subject matters thereof, will be made by Subcontractor without the prior written approval of Boeing.

4. Subcontractor agrees to incorporate the substance of this clause, suitably adjusted, in all lower-tier subcontracts under this subcontract.

U. ADVANCE CHANGE ADJUSTMENT AGREEMENT

(Applies only when a cost plus fixed fee order over \$5,000,000 is placed.)

1. Purpose. This Special Provision establishes a procedure by which the parties agree to change this contract according to the clause entitled "Changes - Cost Reimbursement" without equitable adjustments to the contract price as specified in this subparagraph. The parties agree that each change not exceeding \$250,000 which also does not affect the contract delivery, or performance schedules or any other contract provision shall be a change having no effect on the contract price. There will be no fee adjustment for each change not exceeding \$250,000 which does not affect contract delivery or performance, or any contract provision.
2. Procedure. When it is proposed to make a change under the "Changes - Cost Reimbursement" clause and both parties agree that such a change will require no equitable adjustment as contemplated by subparagraph a. of this Special Provision, the Seller shall submit an abbreviated proposal or offer to accomplish the proposed change without an equitable adjustment. If the Buyer concurs that no adjustment is necessary, the Seller's proposal may be accepted in the appropriate written document.

The modification shall:

- i. Be issued under the "Changes - Cost Reimbursement" clause;
- ii. Cite this Special Provision;
- iii. Reference the Seller's proposal or offer; and
- iv. Direct the changes to be made.

The issuance of the modification shall constitute acceptance of the Seller's proposal or offer, shall be binding on both parties, and shall be a full, complete and final settlement for the directed changes.

2. Limitation. The parties agree that this advance Change Agreement shall not be used more than three times per year for each calendar year that this contract is in effect.

V. SELLER USE OF BUYER PROVIDED GMD SITE VEHICLES/EQUIPMENT

(Applies only to Sellers who use a vehicle/equipment from Boeing GMD motor pools.)

Pursuant to Buyer's BMD prime contract, Buyer intends to utilize Government funds to purchase and/or obtain by lease a limited number of vehicles/equipment (cars, trucks, fork-lifts) for use by Buyer, Seller, and other Buyer subcontract Site Activation personnel for the sole purpose of supporting GMD contract requirements at various GMD sites. Seller use of the said vehicles/equipment is limited to the above purpose and shall be subject to the following additional Seller obligations: Seller personnel must be properly licensed/certified as a condition for Seller use of the applicable vehicle/equipment and must comply with a vehicle/equipment sign out/sign in procedure.

Seller shall maintain in full force and affect the levels of insurance set forth elsewhere in this contract. Buyer shall be named as an additional insured with respect to Buyer's liability arising out of the operation or use by Seller or its employees, agents or invitees of the subject Buyer furnished vehicles/equipment. Seller assumes the risk of loss or damage to the vehicles/equipment arising from Seller's use thereof and agrees to indemnify Boeing for any resulting loss, damage, or destruction of same except for normal wear and tear. In addition, Seller shall indemnify and hold Buyer harmless from and against any and all other claims or liability for bodily injury to or death of any person, or loss of or damage to any property arising out of the operation or use of the subject vehicle/equipment by Seller, or its employee