

- 1. FORMATION OF CONTRACT.** This proposed purchase contract, which incorporates by reference these General Provisions and all other terms and conditions set forth in this proposed purchase contract (collectively, the “Contract”), is Buyer's offer to purchase the services and/or materials (collectively, the “Services”) described in this offer. Acceptance is strictly limited to the terms and conditions included in this offer. Unless specifically agreed to in writing by Buyer's Authorized Procurement Representative, Buyer objects to, and is not bound by, any term or condition that differs from or adds to this offer. Seller's commencement of performance or acceptance of this offer in any manner shall conclusively evidence acceptance of this offer as written. Seller's provision of the Services shall be governed solely by this Contract. Buyer and Seller are referred to herein as a “Party” or collectively as the “Parties.”

Except as authorized herein, no amendment or modification of this Contract shall bind either Party unless it is in writing and is signed by the authorized representatives of the Parties.

- 2. SCOPE OF SERVICES.** Seller shall furnish the Services set forth in the Contract during the term of this Contract.
- 3. INDEPENDENT CONTRACTOR.** Seller is an independent contractor for all purposes. Seller shall have complete control over the performance of, and the details for accomplishing, the Services. In no event shall Seller or its agents, representatives or employees be deemed to be agents, representatives or employees of Buyer. Seller's employees shall be paid exclusively by Seller for all Services performed. Seller shall comply with all requirements and obligations relating to such employees under federal, state and local law (or foreign law, if applicable). Such compliance shall include, but not be limited to, laws regarding minimum wages, social security, unemployment insurance, federal and state income taxes and workers' compensation insurance.
- 4. STANDARDS.** Seller shall assign personnel satisfactory to Buyer. Buyer may for good cause shown in Buyer's sole determination, require Seller to withdraw the services of any person and require that Seller promptly provide replacements for such persons satisfactory to Buyer. Seller shall indemnify and hold harmless Buyer from and against any liabilities, claims, charges or suits for alleged losses, costs, damages or expenses arising from Buyer's exercise of its rights hereunder.
- 5. SCHEDULE**
- Time is and shall remain of the essence in the performance of this Contract and Seller shall strictly adhere to the schedules specified in this Contract. Failure to deliver in accordance with the Contract schedule, if unexcused, shall constitute a material breach of this Contract. In the event of any anticipated or actual delay, including but not limited to delays attributed to labor disputes, Seller shall: (i) promptly notify Buyer in writing of the reasons for the delay and the actions being taken to overcome or minimize the delay; (ii) provide Buyer with a written recovery schedule; and (iii), if requested by Buyer, ship via air or expedited routing, at no additional cost to Buyer, to avoid or minimize delay to the maximum extent possible.
  - Seller shall not deliver Services prior to the scheduled delivery dates unless authorized in writing by Buyer's Authorized Procurement Representative.
- 6. NOTICE TO BUYER OF LABOR DISPUTES.** Whenever Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, Seller shall immediately give notice thereof, including all relevant information, to Buyer

**7. PACKING AND SHIPPING**

- Seller shall pack the materials to prevent damage and deterioration. Unless otherwise set forth in this Contract, Seller shall package the goods in accordance with the requirements of Boeing Document D37522-6 “Supplier Packaging”. Buyer may charge Seller for damage to or deterioration of any goods resulting from improper packing or packaging.
- If the Contract specifies FOB destination (place of delivery), then in addition to any other shipping instructions, Seller shall forward materials freight prepaid. Seller shall make the transportation arrangements, pay the shipping costs, and remain responsible for the materials until the materials are delivered and the Buyer takes possession at the destination.
- If the Contract specifies FOB origin (place of shipment), then in addition to any other shipping instructions, Seller shall forward goods collect. For goods shipped within the United States, Seller shall make no declaration concerning the value of the goods shipped except on goods where the tariff rating is dependent upon released or declared value. In such event, Seller shall release or declare such value at the maximum value within the lowest rating. Seller will ship the goods in accordance with the provisions set forth in the Boeing Domestic Shipment Routing Guide to be accessed through Buyer's supplier portal at <https://portal.exostar.com/>. Sellers need a One Time Password (OTP) token to log into the Boeing Supplier Portal. Upon Buyer's request, Seller will identify

packaging charges showing material and labor costs for container fabrication.

- d. Seller shall provide with each container shipped under this Contract an Advanced Shipping Notice ("ASN"). For each container shipped, Seller shall provide two (2) readable copies of the ASN barcode as follows: one (1) copy is to be securely affixed to the outside of each container and one (1) copy is to be loose inside each container. Non-conforming shipments are subject to rejection and repackaging at Seller's expense. Instructions and guidelines related to the ASN process can be found on the Boeing Supplier Portal. Seller shall access by selecting the "Enterprise ASN Instructions" hyper-link under the header "Exostar Resources". A copy of these instructions can also be found at [www.exostar.com](http://www.exostar.com).

## **8. CHANGES**

- a. Buyer's Authorized Procurement Representative may, without notice to sureties and in writing, direct changes within the general scope of this Contract in any of the following: (i) technical requirements and descriptions, specifications, statement of work, drawings or designs; (ii) shipment or packing methods; (iii) place of delivery, inspection or acceptance; (iv) reasonable adjustments in quantities or delivery schedules were both; (v) amount of Buyer-furnished property; (vi) terms and conditions of this Contract required to meet Buyer's obligations under customer prime contracts or subcontracts; (vii) description of services to be performed; (viii) the time of performance (e.g., hours of the day, days of the week, etc.); and (ix) place of performance. Seller shall comply promptly with such direction. Except for the rights granted to Buyer under this Article, a change pursuant to this Article shall not give rise to nor authorize any other modification of or amendment to the terms and conditions of this Contract.
- b. If such change increases or decreases the cost or time required to perform this Contract, Buyer and Seller shall negotiate an equitable adjustment in the price or schedule, or both, to reflect the increase or decrease. Buyer shall modify this Contract in writing accordingly. Unless otherwise agreed in writing, Seller must assert any claim for adjustment to Buyer's Authorized Procurement Representative in writing within twenty-five (25) days, and deliver a fully supported proposal to Buyer's Authorized Procurement Representative within sixty (60) days, after Seller's receipt of such direction. Buyer may, at its sole discretion, consider any claim regardless of when asserted. If Seller's proposal includes the cost of property made obsolete or excess by the change, Buyer may direct the disposition of the property. Buyer may examine Seller's pertinent books and records to verify the amount of Seller's claim. Failure of the Parties to agree upon any adjustment shall not excuse Seller from performing in accordance with Buyer's direction.
- c. If Seller considers that Buyer's conduct constitutes a change, Seller shall notify Buyer's Authorized Procurement Representative promptly in writing as to the nature of such conduct and its effect upon Seller's performance. Pending direction from Buyer's Authorized Procurement Representative, Seller shall take no action to implement any such change.

## **9. SUSPENSION OF WORK**

- a. Buyer's Authorized Procurement Representative may, by written order, suspend all or part of the work to be performed under this Contract for a period not to exceed one hundred (100) days. Within such period of any suspension of work, Buyer shall: (i) cancel the suspension of work order; (ii) terminate this Contract in accordance with the "Termination for Convenience" Article of this Contract; (iii) cancel this Contract in accordance with the "Cancellation for Default" Article of this Contract if grounds for default exist; or (iv) extend the stop work period.
- b. Seller shall resume work whenever a suspension is canceled. Buyer and Seller shall negotiate an equitable adjustment in the price or schedule or both if: (i) this Contract is not canceled or terminated; (ii) the suspension results in a change in Seller's cost of performance or ability to meet the Contract delivery schedule; and (iii) Seller submits a claim for adjustment within twenty (20) days after the suspension is canceled.

- 10. TERMINATION FOR CONVENIENCE.** Buyer may terminate all or part of this Contract for its sole convenience. In the event of such termination, Seller shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to stop work. Subject to the terms of this Contract, within ninety (90) days after the effective date of termination, Seller may submit to Buyer a claim reflecting the percentage of the work performed prior to the effective date of termination, plus reasonable charges that Seller can demonstrate to the satisfaction of Buyer using its standard record keeping system have resulted from the termination. Seller shall not be paid for any work performed or costs incurred which reasonably could have been avoided. Further, Seller shall not be paid, and in no event shall Buyer be obligated to pay, lost or anticipated profits or unabsorbed indirect costs or overhead. In no event shall Buyer be obligated to pay Seller any amount in excess of the Contract price. The provisions of this Article shall not limit or affect the right of Buyer to cancel this Contract for default. Seller shall continue all work not terminated.

## **11. CANCELLATION FOR DEFAULT**

- a. Buyer may, by written notice to Seller, cancel all or part of this Contract: (i) if Seller fails to deliver the Services within the time specified by this Contract or any written extension; (ii) if Seller fails to perform any other provision of

this Contract or fails to make progress, so as to endanger performance of this Contract, and, in either of these two circumstances, within ten (10) days after receipt of notice from Buyer specifying the failure, does not cure the failure or provide Buyer with a written detailed plan adequate to cure the failure if such failure reasonably cannot be cured within such ten (10) days and such plan is acceptable to Buyer's Authorized Procurement Representative; or (iii) in the event of Seller's bankruptcy, suspension of business, insolvency, appointment of a receiver for Seller's property or business, or any assignment, reorganization or arrangement by Seller for the benefit of its creditors.

- b. Seller shall continue all Services not canceled. If Buyer cancels all or part of this Contract, Seller shall be liable for Buyer's excess re-procurement costs.
- c. Buyer may require Seller to transfer title and deliver to Buyer, as directed by Buyer, any; (i) completed materials, and (ii) any partially completed materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights (collectively, "Manufacturing Materials") that Seller has specifically produced or acquired for the canceled portion of this Contract. Upon direction from Buyer, Seller shall also protect and preserve property in its possession in which Buyer or its customer has an interest.
- d. Buyer shall pay the Contract price for materials accepted. In addition, any payment for Manufacturing Materials accepted by Buyer and for the protection and preservation of property shall be at a price determined in accordance with the "Termination for Convenience" Article of this Contract, except that Seller shall not be entitled to profit. Buyer may withhold from any amount due under this Contract any sum Buyer determines to be necessary to protect Buyer or Buyer's customer against loss because of outstanding liens or claims of former lien holders.
- e. If, after cancellation, it is determined that Seller was not in default, the rights and remedies of the Parties shall be as if the Contract had been terminated according to the "Termination for Convenience" Article of this Contract.

**12. FORCE MAJEURE.** Seller shall not be liable for excess re-procurement costs pursuant to the "Cancellation for Default" Article of this Contract, incurred by Buyer because of any failure to perform this Contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of Seller. Examples of these causes are: (a) acts of God or any of the public enemy; (b) acts of the Government in either its sovereign or contractual capacity; (c) fires; (d) floods; (e) epidemics; (f) quarantine restrictions; (g) strikes; (h) freight embargoes; and (i) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of Seller. If Seller's failure is caused by the failure of a subcontractor of Seller, and if such failure arises out of causes beyond the reasonable control of both, and if such failure is without the fault or negligence of either, Seller shall not be liable for excess re-procurement costs unless the materials or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit Seller to meet the required delivery schedules. Seller shall notify Buyer in writing within ten (10) days after the beginning of any such cause(s). In all cases, Seller shall use reasonable efforts to avoid or minimize all such failures, including exercising work-around plans or obtaining the Services from other sources.

**13. QUALITY CONTROL.** Seller shall establish and maintain a quality control system acceptable to Buyer for the Services purchased under this Contract. Seller shall permit Buyer to review procedures, practices, processes and related documents to determine such acceptability.

**14. SELLER NOTICE OF DISCREPANCIES.** Seller shall promptly notify Buyer in writing when discrepancies in Seller's process, including any violation of or deviation from Seller's approved inspection/quality control system, or goods/materials are discovered or suspected which may affect the Services delivered or to be delivered under this Contract.

#### **15. INSPECTION**

- a. At no additional cost to Buyer, Services shall be subject to inspection, surveillance and test at reasonable times and places, including Seller's subcontractors' locations. Buyer shall perform inspections, surveillance and tests so as not to unduly delay the work.
- b. Seller shall maintain an inspection system acceptable to Buyer for the Services purchased under this Contract.
- c. If Buyer performs an inspection or test on the premises of Seller or its subcontractors, Seller shall furnish, and require its subcontractors to furnish, without additional charge, reasonable facilities and assistance for the safe and convenient performance of these duties.

#### **16. ACCEPTANCE AND REJECTION**

- a. Buyer shall accept the Services or give Seller notice of rejection within a reasonable time after the date of delivery. No payment, prior test, inspection, passage of title, any failure or delay in performing any of the foregoing, or failure to discover any defect or other nonconformance shall relieve Seller of any obligations under this Contract or impair any rights or remedies of Buyer.
- b. If Seller delivers defective or non-conforming Services, Buyer may at its option and at Seller's expense: (i) require

Seller to promptly reperform, correct or replace the Services; (ii) correct the Services; or (iii) obtain replacement Services from another source. Return to Seller of defective or non-conforming Services and redelivery to Buyer of corrected or replaced Services shall be at Seller's expense.

- c. Seller shall not redeliver corrected or rejected Services without disclosing the former rejection or requirement for correction. Seller shall disclose any corrective action taken. All repair, replacement and other correction and redelivery shall be completed as Buyer may reasonably direct.

## **17. WARRANTY**

- a. Seller warrants that:
  - i. The Services shall be performed by employees or agents of Seller who are experienced and skilled in their profession and in accordance with industry standards;
  - ii. The Services shall be free from defects in workmanship and conform to the requirements of this Contract; and
  - iii. The Services shall not infringe any patent, copyright, trademark, or other proprietary right of any third party or misappropriate any trade secret of any third party.
- b. To the extent Seller's delivery of Services includes materials or goods, Seller further warrants that:
  - i. The materials or goods shall conform to all specifications and requirements under this Contract and shall be free from defects in materials;
  - ii. To the extent the materials or goods are not manufactured pursuant to detailed designs and specifications furnished by Buyer, such materials or goods shall be free from design and specification defects;
  - iii. The materials or goods shall be free from liens or encumbrances;
  - iv. The materials or goods shall not contain any viruses, malicious code, trojan horse, worm, time bomb, self-help code, back door, or other software code or routine designed to: (a) damage, destroy or alter any software or hardware; (b) reveal, damage, destroy, or alter any data; (c) disable any computer program automatically; or (d) permit unauthorized access to any software or hardware; and
  - v. The materials or goods shall not contain any third-party software (including software that may be considered free software or open source software) that: (a) may require any software to be published, accessed or otherwise made available without the consent of Buyer; (b) may require distribution, copying or modification of any software free of charge; (c) may require disclosure, license or redistribution of source code; (d) may require the grant of rights in excess of those granted by Boeing in its standard end user license agreements; (e) may require that others have the right to modify the code; or, (f) may impose additional requirements on redistribution such as inclusion of additional license agreements for specific code modules.
- c. This warranty shall begin upon Buyer's final acceptance of the Services and shall survive inspection, test and payment for, the Services. This warranty shall extend for a period of one (1) year or such period as set forth elsewhere in this Contract, and Buyer shall give Seller notice after discovery of any defect or nonconformance in the Services. This warranty shall run to Buyer and its successors, assigns and customers. In the event of any defect or non-conforming Services, Buyer may, at its option and at Seller's expense, either (i) require correction, replacement or re-performance of any defective or nonconforming Services, or (ii) make an equitable adjustment in the price of this Contract. Any Services corrected, replaced or re-performed shall be subject to the requirements of this Contract to the same extent as Services initially performed.

## **18. COUNTERFEIT GOODS**

- a. Seller shall not furnish Counterfeit Goods to Buyer, defined as goods or separately-identifiable items or components of Goods that: (i) are an unauthorized copy or substitute of an Original Equipment Manufacturer or Original Component Manufacturer (collectively, "OEM") item; (ii) are not traceable to an OEM sufficient to ensure authenticity in OEM design and manufacture; (iii) do not contain proper external or internal materials or components required by the OEM or are not constructed in accordance with OEM design; (iv) have been re-worked, re-marked, re-labeled, repaired, refurbished, or otherwise modified from OEM design but not disclosed as such or are represented as OEM authentic or new; or (v) have not passed successfully all OEM required testing, verification, screening, and quality control processes. Notwithstanding the foregoing, Services or items that contain modifications, repairs, re-work, or re-marking as a result of Seller's or its subcontractor's design authority, material review procedures, quality control processes or parts management plans, and that have not been misrepresented or mismarked, shall not be deemed Counterfeit Goods. Counterfeit Goods shall be deemed nonconforming to this Contract.
- b. Seller shall implement an appropriate strategy to ensure that goods furnished to Buyer under this Contract are not Counterfeit Goods. Seller's strategy shall include, but is not limited to, the direct procurement of items from OEMs or authorized suppliers, conducting approved testing or inspection to ensure the authenticity of items, and, when items are to be procured from non-authorized suppliers, obtaining from such non-authorized suppliers appropriate certificates of conformance that provide one or more of the following: (i) the OEM's original certificate of conformance for the item; (ii) sufficient records providing unbroken supply chain traceability to the OEM; or (iii) test and inspection records demonstrating the item's authenticity.

- c. If Seller becomes aware or suspects that it has furnished Counterfeit Goods to Buyer under this Contract, Seller promptly, but in no case later than thirty (30) days from discovery, shall notify Buyer and replace, at Seller's expense, such Counterfeit Goods with OEM or Buyer-approved goods that conform to the requirements of this Contract. Seller shall be liable for all costs related to the replacement of Counterfeit Goods and any testing or validation necessitated by the installation of authentic goods after Counterfeit Goods have been replaced.
- d. Seller bears responsibility for procuring authentic goods or items from its subcontractors and shall ensure that all such subcontractors comply with the requirements of this Article.

**19. RIGHTS OF BUYER'S CUSTOMERS AND REGULATORS TO PERFORM INSPECTION, SURVEILLANCE AND TESTING.** Buyer's rights to perform inspections, surveillance and tests and to review procedures, practices, processes and related documents related to quality assurance, quality control, flight safety and configuration control shall extend to the customers of Buyer that are departments, agencies or instrumentalities of the United States Government, including the United States Government Federal Aviation Administration and any successor agency or instrumentality of the United States Government. Buyer may also, at Buyer's option, by prior written notice from Buyer's Authorized Procurement Representative, extend such rights to other customers of Buyer and to agencies or instrumentalities of foreign governments equivalent in purpose to the Federal Aviation Administration. Seller shall cooperate with any such United States Government-directed or Buyer-directed inspection, surveillance, test or review without additional charge to Buyer. Nothing in this Contract shall be interpreted to limit United States Government access to Seller's facilities pursuant to law or regulation.

## **20. INVOICES AND PAYMENT**

- a. As compensation for Services to be performed by Seller, Buyer shall pay Seller as set forth in this Contract. Buyer shall have no liability for any other expenses or costs incurred by Seller. Payment due date, including discount periods, shall be computed from the date of the later of the scheduled delivery date of the Services, the actual delivery date of the Services or the date of receipt of a correct invoice. Payments shall be processed on the next payment system run following the computed payment due date. Payment shall be deemed to have been made on the date the Buyer's check is mailed or payment is otherwise tendered. Seller shall promptly repay to Buyer any amounts paid in excess of amounts due Seller. Payment shall be subject to the standard payment process set forth elsewhere in the Contract or as set forth at: <http://www.boeingsuppliers.com>.
- b. Seller shall not take any action hereunder which could cause the amount for which Buyer would be obligated to Seller to exceed the Contract price. Seller shall advise Buyer, in writing, when the cumulative billable value of fees for Services and authorized expenses, if any, are equal to seventy-five percent (75%) of the Contract price. Notwithstanding any other provisions of this Contract, Buyer shall not be obligated to pay to Seller any amount in excess of the Contract price, provided however, that this sum may be increased from time to time by Buyer in writing.

Except for amounts invoiced under articles Termination for Convenience or Cancellation for Default, Seller shall be deemed to have waived all charges and fees that are not invoiced within ninety (90) calendar days after the end of the calendar year in which the charges were incurred.

**21. SELLER FURNISHED MATERIAL.** Material shall be furnished by Seller except as specifically provided in this Contract. Material purchased to support this Contract shall be billed at actual costs without overhead, general and administrative costs, cost of money and profit, as evidenced by paid invoices. Material withdrawn from Seller's stores shall be charged at cost determined in accordance with generally accepted accounting practices. Unless otherwise noted, handling charges are included in the labor rates established in this Contract. Buyer shall be credited with all cash or trade discounts, rebates, allowances (whether or not taken) and the value of any resulting scrap.

**22. OVERTIME.** Overtime shall mean those hours worked in excess of forty (40) hours during Seller's standard work week. All such overtime must have prior written approval of Buyer.

**23. HOLIDAYS AND VACATIONS.** If work is performed on Buyer's premises, Buyer shall not be obligated to make any payments to Seller for days designated by Buyer as holidays or shutdown periods, except for work specifically authorized in writing by Buyer's Authorized Procurement Representative and performed by Seller on such days.

**24. TAXES.** Unless this Contract specifies otherwise, the price of this Contract includes, and Seller is liable for and shall pay, all taxes, impositions, charges and exactions imposed on or measured by this Contract except for applicable sales and use taxes that are separately stated on Seller's invoice. Prices shall not include any taxes, impositions, charges or exactions for which Buyer has furnished a valid exemption certificate or other evidence of exemption.

**25. FINANCIAL RECORDS AND AUDIT**

- a. Seller shall maintain complete and accurate books, records and documents pertaining to the time worked, costs, expenses and allowances incurred in the performance of this Contract in sufficient detail to properly reflect all net costs (direct and indirect) of labor, materials, equipment supplies, services and other costs and expenses for which reimbursement or compensation is claimed. The labor hours shall be supported by a timekeeping system acceptable to Buyer and shall include evidence of actual payment. Buyer shall have the right to assign representatives to Seller's plant for the purpose of verifying the number and type of direct hours being incurred and making such audit and check of Seller's activities as may be reasonably required. Material charges shall be supported by paid invoices or storeroom requisitions. When Buyer-furnished property is used, a copy of Buyer's shipper will be kept in Seller's files for auditing purposes. Such records shall be made available to Buyer, upon request, for examination, reproduction and audit from the date of this Contract until three years after final payment hereunder. As a result of any audit performed by Buyer, payments previously made to Seller shall be subject to adjustment for over payment or under payment, respectively. Seller shall submit its final invoice promptly after completion of work. Upon approval of Seller's final invoice and substantiating documentation and upon compliance by Seller with all terms of this Contract, Buyer shall promptly pay any balance due to Seller.
- b. Upon request, Seller shall make available to Buyer data relative to payroll policies and procedures, including collective bargaining agreements with respect to wage payments for straight time, overtime, holidays, etc.
- c. Seller shall retain all financial records and documents pertaining to the Services for a period of no less than three years after final payment. Such records and documents shall date back to the time this Contract was issued and shall include, without limitation, catalogs, price lists, invoices, underlying data and basis for cost estimates, and inventory records. Buyer shall have the right to examine, reproduce and audit all Seller records related to pricing, performance and proposed costs associated with any proposals (prior to or after contract award), invoices or claims.

**26. SELLER FINANCIAL REVIEW**

- a. If the Contract, in the aggregate, exceeds \$700,000 and extends for more than one year, or if requested, the Seller shall provide financial data as specified below on a quarterly basis, or as requested, to Buyer's Corporate Credit Office for credit and financial condition reviews. If Seller itself is publicly traded (not a subsidiary of a publicly traded company) and is required to file reports with the Securities and Exchange Commission ("SEC"), Buyer's Corporate Credit Office shall obtain Seller financial data from information made available to the general public via 10-K and 10-Q reporting requirements. In the event that Seller does not submit financial statements to the SEC or is no longer required to do so during the term of this Contract, Seller shall provide financial data on a quarterly basis to Buyer's Corporate Credit Office. Such financial data shall include, but is not limited to, balance sheets, schedule of accounts payable and receivable, major lines of credit, creditors, income statements (profit and loss), cash flow statements, firm backlog, and headcount. Copies of such data are to be made available within seventy-two (72) hours of any written request by Buyer's Corporate Credit Office. All such information shall be treated as confidential.
- b. This provision shall not apply if Seller is a nonprofit education or research institution associated with state or provincial universities, an agency of the United States government or of state governments, an entity that is at least fifty percent (50%) directly owned by Buyer, or an individual providing Services when the individual is the sole employer (inclusive of subcontractors) of the Seller.

**27. CONFIDENTIAL, PROPRIETARY, AND TRADE SECRET INFORMATION AND MATERIALS**

- a. Buyer and Seller shall each keep confidential and protect from unauthorized use and disclosure all (i) confidential, proprietary and/or trade secret information of a Party or third party information authorized to be disclosed by a Party; including without limitation specifications and information pertaining to qualification, certification, manufacturing, and/or quality testing and procedures; (ii) software containing, conveying or embodying such information; and (iii) tooling that is obtained, directly or indirectly, from the other in connection with this Contract or other agreement, including Buyer's contract with its customer, if any, (collectively referred to as "Proprietary Information and Materials"). Proprietary Information and Materials shall not include information that is, as evidenced by competent records provided by the receiving Party, lawfully in the public domain in the same form as disclosed herein, lawfully disclosed to or known by the receiving Party without restriction, generally known in the relevant trade or industry prior to disclosure hereunder, or developed by the receiving Party independently without use of or reference to the disclosing Party's Proprietary Information and Materials.
- b. Buyer and Seller shall each use Proprietary Information and Materials of the other only in the performance of and for the purpose of this Contract, other contracts between the Parties, and Buyer's contract(s) with its customer, if any. However, despite any other obligations or restrictions imposed by this Article or any prior agreement, Buyer shall have the right to use, reformat and reproduce Seller's Proprietary Information and Materials internal to Buyer, regardless of when disclosed. Buyer shall further have the right to, use, disclose, reproduce and make derivative works of Seller's Proprietary Information and Materials (i) to fulfill Buyer's obligations under, and (ii) for the purposes of testing, certification, use, sale or support of any Services delivered under, this Contract (or Buyer's products

containing such Services), other contracts with Seller and Buyer's contract with its customer, if any. Any such use, disclosure, reproduction or derivative work by Buyer shall, whenever appropriate, include a restrictive legend suitable for the particular circumstances. In addition to disclosures permitted hereunder, a receiving Party may disclose received Proprietary Information and Materials in response to a subpoena or court order duly issued in a judicial or legislative process, provided that the receiving Party has used reasonable efforts to give the disclosing Party advance written notice of any such disclosure requirement in order to enable the disclosing Party (i) to seek an appropriate protective order or other remedy; (ii) to consult with the receiving Party with respect to the disclosing Party's taking steps to resist or narrow the scope of such request or legal process; or (iii) to modify or waive compliance, in whole or in part, with the terms of this section. In the event that such protective order or other remedy is not obtained in a timely manner, or the disclosing Party modifies or waives compliance, the receiving Party shall use commercially reasonable efforts to disclose only that portion of the Proprietary Information and Materials which is legally required to be disclosed and to require that all Proprietary Information and Materials that is so disclosed will be accorded confidential treatment.

- c. Upon Buyer's request at any time, and in any event upon the completion, termination or cancellation of this Contract, Seller shall return to Buyer all of Buyer's Proprietary Information and Materials and all materials derived therefrom, unless specifically directed otherwise in writing by Buyer. Seller shall not at any time (i) dispose of (as scrap or otherwise) any parts or other materials containing, conveying, embodying or made in accordance with or by reference to any Proprietary Information and Materials of Buyer without the prior written authorization of Buyer or (ii) make, use, or sell any goods, parts or other materials containing, conveying, embodying or made in accordance with or by reference to any Proprietary Information and Materials of Buyer except to the extent required to perform this Contract without Buyer's written approval, which may take the form of a license agreement between the Parties requiring payment by Seller of a reasonable license fee to Buyer as consideration for each use of such Proprietary Information and Materials of Buyer. Prior to disposing of such parts or other materials as scrap, Seller shall render them unusable. Buyer shall have the right to audit Seller's compliance with this Article.
- d. Seller may disclose Proprietary Information and Materials of Buyer to its subcontractors as required for the performance of this Contract, provided that each such subcontractor first agrees in writing to obligations no less restrictive than those imposed upon Seller under this Article. Seller shall be liable to Buyer for any breach of such obligation by such subcontractor.
- e. The provisions of this Article are effective notwithstanding the application of any restrictive legends or notices to Proprietary Information and Materials. The provisions of this Article shall survive the performance, completion, termination or cancellation of this Contract.

**28. PATENT, TRADEMARK AND COPYRIGHT INDEMNITY.** Seller will indemnify, defend and hold harmless Buyer and its customer from all claims, suits, actions, awards (including, but not limited to, awards based on intentional infringement of patents known at the time of such infringement, exceeding actual damages and/or including attorneys' fees and/or costs), liabilities, damages, costs and attorneys' fees related to the actual or alleged infringement of any United States or foreign intellectual property right (including, but not limited to, any right in a patent, copyright, industrial design or semiconductor mask work, or based on misappropriation or wrongful use of information or documents) and arising out of the manufacture, sale or use of goods by either Buyer or its customer. Buyer and/or its customer will duly notify Seller of any such claim, suit or action. Seller will, at its own expense, fully defend such claim, suit or action on behalf of the indemnitees. Seller will have no obligation under this Article with regard to any infringement arising from (a) the compliance of Seller's new product design with formal specifications issued by Buyer where infringement could not be avoided in complying with such specifications or (b) use or sale of goods for other than their intended application in combination with other items when such infringement would not have occurred from the use or sale of those goods solely for the purpose for which they were designed or sold by Seller. The exception in (a) above shall not apply if the infringement arises out of adherence to one or more industry standards or regulatory requirements. For purposes of this Article only, the term Buyer will include The Boeing Company and all Boeing subsidiaries and all officers, agents and employees of Boeing or any Boeing subsidiary.

## **29. INTELLECTUAL PROPERTY**

- a. Definitions:
  - Intellectual Property ("IP"). IP means inventions, discoveries and improvements; know-how; works of authorship, technical data, drawings, specifications, process information, reports and documented information; and computer software. IP includes all worldwide common law and statutory rights to the foregoing, including but not limited to, patents, industrial designs, trade secrets, copyrights, mask work registrations, and the like.
  - Background IP. Background IP means all IP owned or developed by Seller prior to the effective date of or outside the scope of this Contract.
  - Foreground IP. Foreground IP means IP conceived, developed or first reduced to practice by, for or with Seller either alone or with others in the performance of this Contract.

- b. **Seller-Owned IP.** Seller shall retain ownership of all its Background IP and of any Foreground IP not assigned to Buyer pursuant to paragraph e. below (collectively, the "Seller-Owned IP"). With regard to Seller-Owned IP that is other than Proprietary Information and materials, Seller grants to Buyer an irrevocable, nonexclusive, sublicensable, perpetual, paid-up, royalty-free, worldwide license (i) to use, reproduce, distribute, modify, and prepare derivative works of such Seller-Owned IP and (ii) to use, make, have made, offer for sale, sell, distribute and import products and services that incorporate or embody such Seller-Owned IP, in each case solely as necessary for the purpose of exploiting Buyer's rights in the Services and/or the Foreground IP assigned to Buyer hereunder, or as otherwise permitted under this Contract. Seller grants to Buyer such license rights for any purpose in the event Buyer cancels all or part of this Contract for Seller default in accordance with the "Cancellation for Default" Article of this Contract or in the event Buyer, in its own judgment, must provide Seller with design, manufacturing, or on-site support substantially in excess of what is required of Buyer under this Contract in order for Seller to comply with this Contract.
- c. **Agreements.** Seller shall obtain agreements with its employees and independent contractors to enable the grant of rights to which Buyer is entitled under this Article.
- d. **Third Party IP.** To the extent Seller incorporates third-party IP into any Contract deliverable, Seller shall obtain for Buyer at least the license rights granted in paragraph b of this Article in such third-party IP, at no additional cost to Buyer and hereby grants such rights to Buyer.
- e. **Foreground IP.** The following subparagraphs of this paragraph e shall not apply to any Services to the extent their development was funded by the U.S. Government.
  - i. All Foreground IP shall be the exclusive property of Buyer. To the extent Foreground IP consists of works of authorship that qualify as a "work made for hire" as defined under U.S. copyright law, such works shall be deemed to be "works made for hire" with the copyrights automatically vesting in Buyer. For all other Foreground IP, Seller hereby irrevocably transfers, conveys, and assigns to Buyer all right, title and interest in such Foreground IP for no additional charge. Seller shall protect Foreground IP that is Proprietary Information and Materials as required by this Contract and shall mark documents or portions of documents containing Foreground IP as "Boeing Proprietary" information or as otherwise directed by Buyer in writing.
  - ii. Seller will, within two (2) months after conception or first actual reduction to practice of any invention and prior to Contract completion, disclose in writing to Buyer all inventions, whether or not patentable, in sufficient technical detail to clearly convey the invention to one skilled in the art to which the invention pertains. Seller shall promptly execute all written instruments, and assist as Buyer reasonably directs in order to file, acquire, prosecute, maintain, enforce and assign Buyer's Foreground IP rights. Seller hereby irrevocably appoints Buyer and any of Buyer's officers and agents as Seller's attorney in fact to act on Seller's behalf and instead of Seller, with the same legal force and effect as if executed by Seller, with respect to executing any such written instruments.
  - iii. **Buyer-Owned IP.** Buyer shall retain ownership of all Buyer IP provided hereunder and of any Foreground IP assigned to Buyer pursuant to paragraph e. above (collectively, the "Buyer-Owned IP"). Buyer grants to Seller a non-exclusive, royalty-free right during the term of this Contract to use, reproduce, modify, practice and prepare derivative works of any Buyer-Owned IP solely as necessary for Seller to perform its obligations under this Contract or otherwise permitted under this Contract. Seller shall not, without Buyer's prior written consent, use Buyer-Owned IP or any derivative works of any of the Buyer-Owned IP in any manner not authorized under this Contract, including, but not limited to, developing, manufacturing, obtaining a certification to manufacture, offering for sale or selling any product, equipment, or service which utilizes or is enabled by Buyer-Owned IP.

### **30. ASSIGNMENT AND CHANGE OF CONTROL**

- a. Seller shall not and shall cause its affiliates not to, directly, indirectly, voluntarily or involuntarily, in each case, whether by transfer, operation of law, Change of Control (as defined in subparagraph b below) or otherwise assign this Contract, assign any of its rights or interest in this Contract, delegate any of its obligations under this Contract, or subcontract for all or substantially all of its performance of this Contract (each, an "Assignment"), without Buyer's prior written consent after advance written notice by Seller. No purported Assignment, with or without Buyer's consent, shall relieve Seller of any of its obligations under this Contract or prejudice any rights or claims that Buyer may have against Seller, whether such obligations, rights or claims, as the case may be, arise before or after the date of any purported Assignment; provided however, that Seller may assign its right to monies due or to become due under this Contract, and this Article does not limit Seller's ability to purchase standard commercial supplies or raw material in connection with its performance of this Contract.
- b. For purposes of this Contract, the term "Change in Control" shall mean any of the following, whether in a single transaction or a series of related transactions and whether or not Seller is a party thereto:
  - i. a sale, conveyance, transfer, distribution, lease, assignment, license or other disposition of all or substantially all of the assets of Seller;

- ii. any consolidation or merger of Seller or its controlling affiliates, any dissolution of Seller or its controlling affiliates, or any reorganization of one or more of Seller or its controlling affiliates; or
- iii. any sale, transfer, issuance, or disposition of any equity securities or securities or instruments convertible or exchangeable for equity securities (collectively, "securities") of Seller or its controlling affiliates in which the holders of all of the securities that may be entitled to vote for the election of any member of a board of directors or similar governing body of Seller or such controlling affiliate immediately prior to such transaction(s) hold less than fifty percent (50%) of the securities that may be entitled to vote for the election of any such member in such entity immediately following such transaction(s).

**31. PUBLICITY.** Without Buyer's prior written approval, Seller shall not, and Seller's subcontractors at any tier shall not, release any publicity, advertisement, news release or denial or confirmation of same regarding this Contract or the Services or program to which it pertains. Seller shall be responsible to Buyer for any breach of such obligation by any subcontractor.

**32. BUYER'S PROPERTY.** Seller shall clearly mark, maintain an inventory of and keep segregated or identifiable all of Buyer's property and all property to which Buyer acquires an interest by virtue of this Contract. Seller assumes all risk of loss, destruction or damage of such property while in Seller's possession, custody or control, including any transfer to Seller's subcontractors. Upon request, Seller shall provide Buyer with adequate proof of insurance against such risk of loss. Seller shall not use such property other than in performance of this Contract without Buyer's prior written consent. Seller shall notify Buyer's Authorized Procurement Representative if Buyer's property is lost, damaged or destroyed. As directed by Buyer, upon completion, termination or cancellation of this Contract, Seller shall deliver such property, to the extent not incorporated in delivered materials, to Buyer in good condition subject to ordinary wear and tear and normal manufacturing losses. Nothing in this Article limits Seller's use, in its direct contracts with the Government, of property in which the Government has an interest.

**33. OFFSET CREDITS/INDUSTRIAL PARTICIPATION**

- a. To the exclusion of all others, Buyer or its assignees shall be entitled to all industrial benefits or offset credits that might result from this Contract. Seller shall provide all information and assistance to Buyer that Buyer may reasonably request in support of Buyer's efforts to secure offset credits related to the goods to be provided under this Contract.
- b. Before entering into a subcontract for any non-U.S. products or services in excess of \$100,000 in support of this Contract, Seller shall complete and submit to Buyer Form X33647, entitled, "Advance Content Notification/Supplier Foreign Content Report" as set forth in the Supplier Data Requirements List (SDRL) applicable to this Contract. If there is no SDRL applicable to this Contract, Seller shall submit the form to Buyer's Authorized Procurement Representative and e-mail a copy to: [foreigncontent@boeing.com](mailto:foreigncontent@boeing.com).
- c. In addition, Seller shall support Buyer in the fulfillment of offset, industrial participation, co-production or similar obligations that Boeing may have accepted as a requirement for the sale of end products to non-U.S. customers related to the goods to be provided under this Contract.

**34. UTILIZATION OF SMALL BUSINESS CONCERNS.** Seller agrees to actively seek out and provide the maximum practicable opportunities for small businesses, small disadvantaged businesses, women-owned small businesses, minority business enterprises, historically black colleges and universities and minority institutions, Historically Underutilized Business Zone small business concerns and US Veteran and Service-Disabled Veteran Owned small business concerns to participate in the subcontracts Seller awards to the fullest extent consistent with the efficient performance of this Contract.

**35. BUSINESS CONDUCT**

- a. Compliance with Laws. Seller and the Services shall comply with all applicable statutes and government rules, regulations and orders including without limitation, (i) all applicable country laws relating to anti-corruption or anti-bribery, including, but not limited to, legislation implementing the Organization for Economic Co-operation and Development "Convention on Combating Bribery of Foreign Public Officials in International Business Transactions" or other anti-corruption/anti-bribery convention; and (ii) the requirements of the Foreign Corrupt Practices Act, as amended, ("FCPA") (15 U.S.C. §§78dd-1, *et. seq.*), regardless of whether Seller is within the jurisdiction of the United States, and Seller shall, neither directly nor indirectly, pay, offer, give, or promise to pay or give, any portion of monies or anything of value received from Buyer to a non-U.S. public official or any person in violation of the FCPA and/or in violation of any applicable country laws relating to anti-corruption or anti-bribery.
- b. Gratuities. Seller warrants that neither it nor any of its employees, agents, or representatives have offered or given, or will offer or give, any gratuities to Buyer's employees, agents or representatives for the purpose of securing this Contract or securing favorable treatment under this Contract.

- c. Code of Basic Working Conditions and Human Rights. Buyer is committed to providing a safe and secure working environment and the protection and advancement of basic human rights in its worldwide operations. In furtherance of this commitment, Buyer has adopted a Code of Basic Working Conditions and Human Rights setting out in detail the measures it takes to ensure this commitment is fulfilled. This code may be downloaded at <https://www.boeing.com/principles/human-rights.page>. Buyer strongly encourages Seller to adopt and enforce concepts similar to those embodied in the Boeing Code, including conducting Seller's operations in a manner that is fully compliant with all applicable laws and regulations pertaining to fair wages and treatment, freedom of association, personal privacy, collective bargaining, workplace safety and environmental protection. Seller shall include the substance of this clause, including this flowdown requirement, in all subcontracts awarded by Seller for work under this Contract.
- d. Environmental Health and Safety Performance. Seller acknowledges and accepts full and sole responsibility to maintain an environment, health and safety management system ("EMS") appropriate for its business throughout the performance of this Contract. Buyer expects that Seller's EMS will promote health and safety, environmental stewardship, and pollution prevention by appropriate source reduction strategies. Seller shall convey the requirement of this clause to its suppliers. Seller shall not deliver goods that contain any asbestos mineral fibers.
- e. Seller Facility. Seller shall provide Buyer written notice of any proposed plans for moving Seller's manufacturing location for the goods or moving tooling or other equipment utilized in the manufacture of the goods to another facility. In no event shall Seller proceed with implementing such plans prior to obtaining Buyer's prior written approval.
- f. Buyer Policies. Seller agrees that Buyer's internal policies, procedures and codes are intended to guide the internal management of the Buyer and are not intended to, and do not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by the Seller against the Buyer.
- g. Conflict Minerals. Seller shall, no later than thirty (30) days following each calendar year in which Seller has delivered any goods to Buyer, under this Contract or otherwise, complete and provide to Buyer a single and comprehensive Conflict Minerals Reporting Template, using the form found at <http://www.boeing.com/suppliers>. Seller shall perform appropriate due diligence on its supply chain in order to fulfill the reporting obligations of this Article.
- h. Ethics and Compliance Program. Seller acknowledges and accepts full and sole responsibility to maintain an ethics and compliance program appropriate for its business throughout the performance of this Contract. Buyer strongly encourages Seller to model its program in accordance with the Federal Sentencing Guidelines, applicable guidance from enforcement authorities, and industry best practices. Seller shall publicize to its employees who are engaged in the performance of work under the Contract that they may report any concerns of misconduct by Buyer or any of its employees or agents by going to [Ethics@Boeing](mailto:Ethics@Boeing). Seller shall convey the substance of this clause to its suppliers.
- i. Seller and Sub-Tier Supplier Information. In addition to requirements set forth elsewhere in this Contract, Seller will, when reasonably requested by Buyer, provide sub-tier supplier information related to performance under this Contract. Such information may include but is not limited to Seller's subcontract management plans, Buyer programs supported, Seller assessment of sub-tier supplier's capability including financial health and performance issues.

**36. ACCESS TO PLANTS AND PROPERTIES.** Where Seller is either entering or performing work at premises owned or controlled by Buyer or Buyer's customer or obtaining access electronically to Buyer systems or information, Seller shall comply with: (i) all the rules and regulations established by Buyer or Buyer's customer for access to and activities in and around premises controlled by Buyer or Buyer's customer; (ii) Buyer requests for information and documentation to validate citizenship or immigration status of Seller's personnel or subcontractor personnel; and (iii) the provisions of Special Provisions 4 (SP4) "The Boeing Company On-Site Environment, Health and Safety & Insurance Supplemental Provisions". In addition, Seller acknowledges that Buyer may perform routine background checks on Seller personnel. Seller shall include the substance of this clause, including this flowdown requirement, in all subcontracts awarded by Seller for work under this Contract.

**37. ACCESS TO BUYER INFORMATION AND ELECTRONIC SYSTEMS**

- a. Seller and its personnel shall comply with the Terms of Use of Boeing Information and Electronic Systems located at <http://www.boeing.com/suppliers/terms.html> which is incorporated herein by reference, with the revision date applicable to this Agreement being the revision in effect as of the date of Seller's acceptance of this Contract.
- b. In addition to any other rights and obligations set forth in any relevant Agreement, Seller acknowledges that any information accessed through the electronic information systems operated by or on behalf of Buyer, whether or not marked as "proprietary" or equivalent, shall be considered as proprietary to Buyer and shall be protected in accordance with the "Proprietary Information and Materials" Section of the Contract.

**38. TRADE CONTROL COMPLIANCE**

- a. The Parties shall comply with all export and import laws, regulations, decrees, orders, and policies of the United States Government and the Government of any country in which the Parties conduct business pursuant to this Contract, including but not limited to the Export Administration Regulations ("EAR") of the U.S. Department of Commerce, the International Traffic in Arms Regulations ("ITAR") of the U.S. Department of State, the U.S. Customs & Border Protection Regulations, the Harmonized Tariff Schedule, and the antiboycott and embargo regulations and guidelines as set forth in the EAR and in the U.S. Department of the Treasury, Office of Foreign Assets Control (collectively, "Trade Control Laws").
- b. Seller shall control the disclosure of, and access to, controlled items or technical data provided by Buyer related to performance of this Contract in compliance with all applicable Trade Control Laws. Seller shall not transfer (to include transfer to foreign persons employed by or associated with, or under contract to Seller, or Seller's sub-tier suppliers or Seller's non-U.S. subsidiaries) any export controlled item, data or services, without providing advance notice to Buyer and obtaining the requisite export and/or import authority.
- c. Subject to applicable Trade Control Laws, Seller shall provide Buyer with the export control classification of any commodity or technology including software.
- d. Seller represents that it maintains an effective export/import control compliance program in accordance with all applicable Trade Control Laws. A copy of process control documents and other documents reasonably requested by Buyer related to Seller's compliance with applicable Trade Control Laws shall be made available to Buyer upon request.
- e. Seller shall promptly notify Buyer if Seller is, or becomes, listed in any Denied Parties List or if Seller's export privileges are otherwise denied, suspended or revoked in whole or in part by any Governmental entity.
- f. Seller shall timely inform Buyer of any actual or alleged violations of any applicable Trade Control Laws, including any suits, actions, proceedings, notices, citations, inquiries, or other communications from any government agency concerning any actual or alleged violations, in Seller's performance under this Contract and shall comply with all reasonable requests from Buyer for information regarding any such violations.
- g. Seller shall incorporate into any contracts with its sub-tier suppliers obligations no less restrictive than those set forth in this Article requiring compliance with all applicable Trade Control Laws.

**39. CUSTOMER CLAUSES.** Clauses applicable to this Contract from Buyer's contract with its customer, if any, are incorporated elsewhere in this Contract either by attachment or by some other means of reference.

**40. GOVERNING LAW.** This Contract and any disputes arising out of, or relating to, this Contract shall be governed by the laws of the State of Delaware without regard to the conflict of law rules thereof. This Contract excludes the application of the 1980 United Nations Convention on Contracts for the International Sale of Goods.

**41. DISPUTES.** Any dispute that arises under or is related to this Contract 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.

**42. NO WAIVER, RIGHTS AND REMEDIES**

- a. Any failures, delays or forbearances of either Party in insisting upon or enforcing any provisions of this Contract, or in exercising any rights or remedies under this Contract, shall not be construed as a waiver or relinquishment of any such provisions, rights or remedies; rather, the same shall remain in full force and effect.
- b. Except as expressly and affirmatively disclaimed in writing in this Contract, the rights and remedies set forth herein are cumulative and in addition to any other rights or remedies that the Parties may have at law or in equity. If any provision of this Contract is or becomes void or unenforceable by law, the remainder shall be valid and enforceable. Seller acknowledges and agrees that money damages would not be an adequate remedy for any actual, anticipatory or threatened breach of this Contract by Seller with respect to its delivery of the Services to Buyer.
- c. Seller agrees that Buyer approvals of Seller's technical and quality specifications, drawings, plans, procedures, reports, and other submissions shall not relieve Seller from its obligations to perform all requirements of this Contract.
- d. Buyer may at any time deduct or set-off Seller's claims for money due or to become due from Buyer against any claims that Buyer has or may have arising out of this Contract or other transactions between Buyer and Seller.

**43. INDEMNIFICATION, INSURANCE AND PROTECTION OF PROPERTY.** The following provisions shall only apply if and to the extent Seller's personnel enter or perform work at premises owned or controlled by Buyer or Buyer's customer:

- a. Indemnification. Seller shall defend, indemnify and hold harmless The Boeing Company, its subsidiaries, and their

directors, officers, employees and agents from and against all actions, causes of action, liabilities, claims, suits, judgments, liens, awards and damages of any kind and nature whatsoever for property damage, personal injury or death (including without limitation injury to or death of employees of Seller or any subcontractor thereof) and expenses, costs of litigation and counsel fees related thereto or incident to establishing the right to indemnification, arising out of or in any way related to this Contract, the performance thereof by Seller or any subcontractor thereof or other third parties within the control or acting at the direction of Seller, or any of their respective employees (collectively for the purposes of this paragraph, the "Seller Parties"), including, without limitation, the provision of goods, services, personnel, facilities, equipment, support, supervision or review. The foregoing indemnity shall apply only to the extent of the negligence or willful misconduct of the Seller Parties that occurs while on premises owned or controlled by Buyer. In no event shall Seller's obligations hereunder be limited to the extent of any insurance available to or provided by Seller or any subcontractor thereof. Seller expressly waives any immunity under industrial insurance, whether arising out of statute or other source, to the extent of the indemnity set forth in this paragraph.

- b. Commercial General Liability. Seller shall carry and maintain, and ensure that all subcontractors thereof carry and maintain, throughout the period when work is performed and until final acceptance by Buyer, Commercial General Liability insurance with available limits of not less than \$2,000,000 per occurrence for bodily injury and property damage combined. Such insurance shall contain coverage for all premises and operations, broad form property damage, contractual liability (including, without limitation, that specifically assumed under paragraph a herein) and goods and completed-operations insurance with limits of not less than \$1,000,000 per occurrence for a minimum of twenty-four (24) months after final acceptance of the work by Buyer. Such insurance shall not be maintained on a per-project basis unless the respective Seller or subcontractor thereof does not have blanket coverage.
- c. Automobile Liability. If licensed vehicles will be used in connection with the performance of the work, Seller shall carry and maintain, and ensure that any subcontractor thereof who uses a licensed vehicle in connection with the performance of the work carries and maintains, throughout the period when work is performed and until final acceptance by Buyer, Business Automobile Liability insurance covering all vehicles, whether owned, hired, rented, borrowed or otherwise, with available limits of not less than \$1,000,000 per occurrence combined single limit for bodily injury and property damage.
- d. Workers' Compensation and Employer's Liability. Throughout the period when work is performed and until final acceptance by Buyer, Seller shall, and ensure that any subcontractor thereof shall, cover or maintain insurance in accordance with the applicable laws relating to Workers' Compensation (and Employers' Liability with limits not less than \$1,000,000 per incident) with respect to all of their respective employees working on or about Buyer's premises. If Buyer is required by any applicable law to pay any Workers' Compensation premiums with respect to an employee of Seller or any subcontractor, Seller shall reimburse Buyer for such payment.
- e. Certificates of Insurance. Prior to commencement of the work, Seller shall provide for Buyer's review and approval certificates of insurance reflecting full compliance with the requirements set forth in paragraphs b, c and d. Such certificates shall be kept current and in compliance throughout the period when work is being performed and until final acceptance by Buyer, and shall provide for thirty (30) days advance written notice to Buyer in the event of cancellation. Failure of Seller or any subcontractor thereof to furnish certificates of insurance or to procure and maintain the insurance required herein or failure of Buyer to request such certificates, endorsements or other proof of coverage shall not constitute a waiver of Seller's or subcontractor's obligations hereunder.
- f. Self-Assumption. Any self-insured retention, deductibles and exclusions in coverage in the policies required under this Article shall be assumed by, for the account of and at the sole risk of Seller or the subcontractor which provides the insurance and to the extent applicable shall be paid by such Seller or subcontractor. In no event shall the liability of Seller or any subcontractor thereof be limited to the extent of any of the minimum limits of insurance required herein.
- g. Protection of Property. Seller assumes, and shall ensure that all subcontractors thereof and their respective employees assume, the risk of loss or destruction of or damage to any property of such parties whether owned, hired, rented, borrowed or otherwise, brought to a facility owned or controlled by Buyer or Buyer's customer. Seller waives, and shall ensure that any subcontractor thereof and their respective employees waive, all rights of recovery against Buyer, its subsidiaries and their respective directors, officers, employees and agents for any such loss, destruction or damage. At all times Seller shall, and ensure that any subcontractor thereof shall, use suitable precautions to prevent damage to Buyer's property. If any such property is damaged by the fault or negligence of Seller or any subcontractor thereof, Seller shall, at no cost to Buyer, promptly and equitably reimburse Buyer for such damage or repair or otherwise make good such property to Buyer's satisfaction. If Seller fails to do so, Buyer may do so and recover from Seller the cost thereof.

**44. ORDER OF PRECEDENCE.** All documents and provisions in this Contract shall be read so as to be consistent to the fullest extent possible. In the event of a conflict or inconsistency between the documents or provisions as incorporated into or attached to the Contract, the documents or provisions shall prevail in the order listed below, with the first

document or provision listed having the highest precedence:

Document Title/Description:

- a. Customer Contract Requirements (CCR), if set forth in this Contract
- b. The system generated purchase contract document
- c. Common terms and conditions (CXXX, DXXX, EXXX, FXXX, GXXX, HXXX, IXXX, JXXX, MXXX, QXXX)
- d. Buyer site-specific terms and conditions
- e. General Provisions (GP1, GP2, GP3, GP4, GP6, GP7, GP8, GP9) and Special Provisions (SP1, SP2, SP3, SP4)
- f. Specifications (the most recently agreed to and issued version of specifications shall control and Buyer's specifications will prevail over any subsidiary documents referenced therein)
- g. Statements of work (the most recently agreed to and issued version of a statement of work shall control)
- h. All other attachments, exhibits, appendices, documents or terms incorporated by reference in or attached to this Contract

**45. ENTIRE AGREEMENT.** This Contract, together with all purchase orders, change orders, attachments, exhibits, supplements, specifications, and other terms referenced in this Contract, contains the entire agreement of the Parties and supersedes any and all prior agreements, understandings and communications between Buyer and Seller related to the subject matter of this Contract.