

- 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 goods and any related services and/or other deliverables (collectively, the “Goods”) described in this offer. Acceptance is strictly limited to the terms and conditions 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 Goods 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. SCHEDULE**

- a. Time is and shall remain of the essence in the performance of this Contract and Seller shall strictly adhere to the shipment or delivery 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 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 other expedited routing, at no additional cost to Buyer, to avoid or minimize delay to the maximum extent possible.
- b. Seller shall not deliver Goods prior to the scheduled delivery dates unless authorized in writing by Buyer's Authorized Procurement Representative.

**3. PACKING AND SHIPPING**

- a. Seller shall pack the Goods so as 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.
- b. If the Contract specifies FOB destination (place of delivery), then in addition to any other shipping instructions, Seller shall forward Goods freight prepaid. Seller shall make the transportation arrangements, pay the shipping costs, and remain responsible for the Goods until the Goods are delivered and the Buyer takes possession at the destination.
- c. 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/>. 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).

**4. 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 or both; (v) amount of Buyer-furnished property; (vi) terms and conditions of this Contract required to meet Buyer's obligations under U.S. Government prime contracts or subcontracts; and, if this Contract includes services, (vii) description of services to be performed; (viii) 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, the Parties 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. Seller shall provide Buyer supporting data in sufficient detail for Buyer 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.
- d. Notwithstanding the foregoing provisions of this Article, the estimated or target cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance thereof shall not be increased or deemed to be increased except by specific written modification of this Contract indicating the new Contract estimated cost and the new amount allotted to this Contract. Until such modification is made, Seller shall not be obligated to continue performance or incur costs beyond the point established in the "Reimbursement Limitation" Article of this Contract.

## **5. 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.

## **6. TERMINATION/CANCELLATION**

- a. Federal Acquisition Regulation ("FAR") 52.249-6 (May 2004), "Termination (Cost Reimbursement)," is incorporated by reference, except that the term "Government" means "Buyer," the term "Contracting Officer" means "Buyer's Authorized Procurement Representative," the phrase "1 year" is deleted each place it occurs and replaced by the term "six months," paragraphs (e) and (j) are deleted, and subparagraph (a)(2) is deleted in its entirety and replaced with the following:

"(2) Buyer may cancel the whole or any part of this Contract in the event of:

- (i) Seller's default ("default" includes failure to make progress in the work so as to endanger performance) of any or all of the requirements of this Contract and 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
- (ii) in the event of suspension of Seller's business, insolvency of Seller, institution of bankruptcy, liquidation proceedings by or against Seller, appointment of a trustee or receiver for Seller's property or business or any assignment, reorganization or arrangement by Seller for the benefit of creditors."

- b. Subparagraph (b) is deleted in its entirety and replaced with the following:

"(b) Buyer's Authorized Procurement Representative shall terminate or cancel the Contract in accordance with paragraph (a) of this 52.249-6 clause by delivering to Seller a Notice of Termination or Notice of Cancellation specifying whether termination or cancellation is pursuant to subparagraphs (a)(1) or (a)(2), the extent of the termination or cancellation, and the effective date. If, after cancellation under subparagraph (a)(2)(i), it is determined that Seller was not in default or that Seller's failure to perform or to make progress in

performance is due to causes beyond the control and without the fault or negligence of Seller as set forth in the Force Majeure Article, the rights and obligations of the Parties will be the same as if the termination was for the convenience of Buyer.”

c. Subparagraph (h)(4) is deleted in its entirety and replaced with the following:

“(4) A portion of the fee payable under the Contract, determined as follows:

- (i) If the Contract is terminated under subparagraph (a)(1) of this 52.249-6 clause, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the Contract, but excluding subcontract effort included in subcontractors’ termination proposals, less previous payments for fee.
- (ii) If the Contract is cancelled under subparagraph (a)(2) of this 52.249-6 clause, the total fee payable shall be such proportionate part of the fee as the total number of articles (or amount of services) delivered to and accepted by the Government is to the total number of articles (or amount of services) of a like kind required by the Contract.”

**7. FORCE MAJEURE.** Seller shall not be liable for excess re-procurement costs pursuant to the “Termination/Cancellation” 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 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 delay is without the fault or negligence of either, Seller shall not be liable for excess re-procurement costs unless the goods 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 Goods from other sources.

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

**9. SELLER NOTICE OF DISCREPANCIES**

- a. 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 are discovered or suspected regarding Goods delivered or to be delivered under this Contract, including the quantity and specific identity of any impacted Goods.
- b. Whenever Seller receives, either before or after shipment of Goods under this Contract, notification that any of the Goods, including any component, part, or material thereof, is the subject of a Government-Industry Data Exchange Program (“GIDEP”) alert, Seller shall promptly furnish such information to Buyer. If this Contract is over \$500,000, Seller shall participate in GIDEP under the latest revision of GIDEP Requirements Guide, NAVSEA S0300-BU-GYD-010.

**10. INSPECTION**

- a. For all Goods delivered under this Contract, FAR 52.246-3 (May 2001), "Inspection of Supplies - Cost Reimbursement," is incorporated by reference. The term “Supplies” includes the “Goods”, the term "Contractor" means “Seller”, and the term "Government" means “Buyer”, except in paragraph (k). Paragraph (k) is removed and replaced with the following: “(k) Except as otherwise specified in the Contract, the Seller’s obligation to correct or replace Government-furnished property shall be governed by the clause pertaining to Government-owned property. The Seller’s obligation to correct or replace Buyer-furnished property shall be governed by the clause pertaining to Buyer’s property.” In paragraph (f), "6 months" is revised to read "12 months."
- b. For all services delivered under this Contract, FAR 52.246-5 (Apr 1984), “Inspection of Services - Cost-Reimbursement,” is incorporated by reference. The term "Contractor" means “Seller”, and the term "Government" means “Buyer.”

- c. Without serving as a limitation on the foregoing clauses, Seller acknowledges that the following are deemed defects or nonconformances under with the Inspection of Supplies and Inspection of Services clauses incorporated by reference in this Contract:
- i. Design and specification defects to the extent the Goods are not manufactured pursuant to detailed designs and specifications furnished by Buyer;
  - ii. Infringement of any patent, copyright, trademark, or other proprietary right of any third party or misappropriation of any trade secret of any third party;
  - iii. The delivery of Goods subject to liens or encumbrances;
  - iv. The delivery of Goods containing 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 delivery of Goods containing 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; or (b) may require distribution, copying or modification of any software free of charge.

#### **11. 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, Goods 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 the applicable Contract for which they were delivered.
- 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. For confirmed Counterfeit Goods, GIDEP notification shall also be made no later than sixty (60) days after discovery. 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.

- #### **12. 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

### 13. INVOICE AND PAYMENT

- a. Except as provided in this Article, payment will be made in accordance with the following clauses of the FAR, which are incorporated by reference, and in accordance with Buyer's standard payment process set forth at: <http://www.boeingsuppliers.com>. In each of the following clauses the term "Contractor" means "Seller", the term "Contracting Officer" means "Buyer's Authorized Procurement Representative", the term "Government" means "Buyer", and the "Disputes Clause" means the Disputes Article of this Contract.
  - i. FAR 52.216-7 (Jun 2013), "Allowable Cost and Payment," except that for purposes of final indirect cost rate determinations in paragraph (d), the terms "cognizant Federal Agency official" and "appropriate Government representative" maintain their original meaning. Subparagraphs (a)(2), (b)(4), and (d)(4) and paragraph (f) are deleted. In subparagraph (h)(2)(ii)(B), the term "6 years" is deleted and replaced with the term "5 years, 9 months." The blank in paragraph (a)(3) is filled-in with the word "30th," unless otherwise specified in the Contract. All payments are made in accordance with Buyer's standard payment process set forth at: <http://www.boeingsuppliers.com>.
  - ii. FAR 52.216-8 (Jun 2011), "Fixed Fee," if this is a cost-plus-fixed fee contract.
  - iii. FAR 52.216-10 (Jun 2011), "Incentive Fee," if this is a cost-plus-incentive fee contract. The values to fill-in the blanks in subparagraph (e)(1) are set forth elsewhere in this Contract.
- b. Each invoice shall include Buyer's Contract number. Buyer may take any offered discount. Payment due date, including discount periods, shall be computed from the date of receipt of a correct invoice. Payments shall be processed on the next payment system run following the computed payment due date.
- c. Payment shall be deemed to have been made on the date 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.
- d. Except for amounts invoiced under articles Termination / Cancellation, 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.

### 14. REIMBURSEMENT LIMITATION

- a. If this Contract is fully funded, FAR 52.232-20 (Apr 1984), "Limitation of Cost," is incorporated by reference. The term "Schedule" means this Contract, the term "Contractor" means Seller, the term "Government" means Buyer, and the term "Contracting Officer" means Buyer's Authorized Procurement Representative. The word "exclusive" in the first sentence of paragraph (a) is revised to "inclusive." Paragraph (d)(1) is revised to read: "(1) Buyer is not obliged to reimburse Seller for costs incurred and fee in excess of (i) the estimated cost and fee specified in the Contract or, (ii) if this is a cost-sharing contract, the estimated cost to Buyer specified in the Contract."
- b. If this Contract is incrementally funded, FAR 52.232-22 (Apr 1984), "Limitation of Funds," is incorporated by reference. The term "Schedule" means this Contract, the term "Contractor" means Seller, the term "Government" means Buyer, and the term "Contracting Officer" means Buyer's Authorized Procurement Representative. The word "exclusive" in the second sentence of paragraph (b) is revised to "inclusive." Subparagraph (f)(1) is revised to read: "(1) Buyer is not obliged to reimburse Seller for costs incurred and fee in excess of the total amount allotted by Buyer to this Contract; and...."

**15. 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.

### 16. FINANCIAL RECORDS AND AUDIT.

- a. Record Retention. Seller shall retain all financial records and documents pertaining to the Goods 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.
- b. Audit of Proposals and Pricing.
  - i. Certified Cost or Pricing Data. To the extent this Contract, or any modification thereof, exceeds the threshold for submission of certified cost or pricing data in FAR 15.403-4 and is not otherwise exempt from the certified cost or pricing data requirements in accordance with FAR 15.403-1(b), Seller shall provide to Buyer for this Contract or modification to this Contract, as the case may be, the certified cost or pricing data required by Table 15-2 of FAR 15.408 in the format set forth in the Supplier Proposal Adequacy Checklist, Form X35298. Buyer shall have the right to examine, reproduce and audit such Seller records.

- ii. Other than Cost or Pricing Data. To the extent this Contract, or any modification thereof, does not exceed the threshold for submission of certified cost or pricing data in FAR 15.403-4 or is otherwise exempt from the certified cost or pricing data requirements in accordance with FAR 15.403-1(b), Seller shall support and demonstrate to Buyer the reasonableness of any Seller proposals or pricing for this Contract or modification to this Contract, as the case may be, in accordance with FAR 15.402 and FAR 15.404-3(c)(2). Seller shall provide to Buyer such information other than cost or pricing data and any other information necessary to satisfy obligations Buyer may have to its customer demonstrating price reasonableness for proposals and pricing. Buyer shall have the right to examine, reproduce and audit such Seller records.
- c. Audit of Claims and Invoices. Seller shall provide to Buyer all information supporting Seller's claims pertaining to incurred costs, including, but not limited to, Seller's invoices for cost reimbursement, claims arising out of a termination or partial termination of this Contract or out of some other dispute, and Seller's proposals under the Changes article of this Contract that involve unique claims (e.g., obsolescence costs), which must be verified by audit. Buyer shall have the right to examine, reproduce and audit all such Seller records.
- d. Protection. Seller records disclosed pursuant to this Article shall be protected in accordance with the Confidential, Proprietary, and Trade Secret Information and Materials article of this Contract.

## **17. 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 employee (inclusive of subcontractors) of the Seller.

- 18. PERFORMANCE & FEE.** Notwithstanding any other provision herein, to the extent Seller's performance is the direct and proximate cause of Buyer losing some or all of Buyer's fee that it would have otherwise earned under its prime contract, Seller shall be liable to Buyer for the amount of such lost fee ("Lost Fee"). Prior to Buyer taking action to recover such Lost Fee, Buyer shall provide written notice to Seller. Such notice shall set forth the basis for Buyer's assertion that Seller was responsible for the Lost Fee. Upon receipt of such notice, Seller shall have fifteen (15) business days to provide Buyer with a written response. Buyer shall then have an additional fifteen (15) business days to evaluate and consider Seller's response. In the event that the Parties fail to reach agreement based on the foregoing procedure, the Parties shall escalate the Lost Fee dispute to their respective management designees who shall have an additional thirty (30) days to confer to resolve the dispute. If, after such additional time, the Parties cannot resolve the Lost Fee dispute, either Party may seek relief from a court of competent jurisdiction. If Seller and Buyer reach agreement of the amount of Seller's liability for Buyer's Lost Fee, Buyer may debit such amount against amounts owing to Seller under this Contract or other contracts between the Parties.

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

- a. If Seller, its subcontractor, or prospective subcontractor fails to submit accurate, complete and current cost or pricing data, and, as a result of that failure, the Government reduces the price of Buyer's prime contract, Buyer may recover from Seller an amount equal to the price reduction of the prime contract.
- b. If, as a result of Seller's or its subcontractor's foregoing conduct, the Government imposes a penalty on or charges Buyer interest, Buyer may recover from Seller the amount of that interest or penalty.
- c. For the purposes of paragraphs a and b of this Article, if Buyer is a higher-tier subcontractor, "Government" means the higher-tier contractor and "prime contract" means the higher-tier subcontract.
- d. Seller will not raise as defenses the matters listed in FAR 52.215-10(c)(1) (AUG 2011) or FAR 52.215-11(d)(1) (AUG 2011).

**20. 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 Goods delivered under, this Contract (or Buyer's products containing such Goods), 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 Goods, 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 Goods, 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.
- f. Seller agrees that any technical data and computer software furnished to Buyer as a required deliverable under this Contract will be free from confidential, proprietary, or restrictive-use markings that are not expressly permitted by applicable FAR or other U.S. Government agency FAR supplement clauses incorporated in this Contract ("Nonconforming Markings"). Buyer may notify Seller of a Nonconforming Marking, and if Seller fails to remove or correct such marking within sixty (60) days after such notification, Buyer may, at Seller's expense, correct any such Nonconforming Marking.

**21. PATENT, TRADEMARK AND COPYRIGHT INDEMNITY.** Seller shall 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.

## 22. 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 Goods 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 employee 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: (i) commercial off-the-shelf Goods except to the extent such Goods are modified or redesigned pursuant to this Contract; or (ii) any Goods 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 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.

### **23. 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).

### **24. PUBLICITY AND CUSTOMER COMMUNICATION**

- a. 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 Goods, or program to which it pertains. Seller shall be responsible and liable to Buyer for any breach of such obligation by any subcontractor. Seller shall incorporate a similar provision in all subcontracts under this Contract.
- b. Except as otherwise expressly provided in this Contract, Buyer shall be responsible for all coordination and communication with Buyer's customer, including any higher-tier contractor(s), regarding this Contract or the Goods or program to which it pertains. Seller shall have no communications regarding the foregoing with Buyer's customer, including any higher-tier contractor(s), without Buyer's advance written approval and coordination.

### **25. PROPERTY MANAGEMENT**

- a. 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 Goods, 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
- b. Government-Owned Property. To the extent that Seller, including any subcontractor thereof, uses U.S. Government property, either furnished to or acquired by Seller under this Contract, in the performance of this

Contract, Seller shall manage such property in accordance with FAR 52.245-1 (APR 2012), unless some other date version or equivalent FAR clause is provided elsewhere in this Contract, as implemented through the requirements of clause E000, which is incorporated by reference into this Contract.

- c. Special Tooling. To the extent that Seller, including any subcontractor thereof, uses special tooling, either furnished to or acquired by Seller under this Contract, in the performance of this Contract, Seller shall manage such tooling in accordance with clause E223, which is incorporated by reference into this Contract.

## **26. 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.

## **27. UTILIZATION OF SMALL BUSINESS CONCERNS**

- a. Seller agrees to use commercially reasonable efforts to 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 U.S. 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.
- b. The Seller is hereby notified that, under 15 U.S.C. 645(d), any person who misrepresents a firm's business size or socioeconomic status as defined in FAR 52.219-9 in order to obtain a contract to be awarded under the preference programs established pursuant to sections 8(a), 8(d), 9 or 15 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall: (i) be punished by imposition of a fine, imprisonment, or both; (ii) be subject to administrative remedies, including suspension and debarment; and (iii) be ineligible for participation in programs conducted under the authority of the Act. Socioeconomic status for Boeing subcontracts includes the list of concerns in FAR 52.219-9 as well as women-owned small business concerns, Historically Black College or University or Minority Institutions, Indian organizations or Indian-owned economic enterprises, rural area small business concerns, foreign business concerns, joint ventures, and/or a large minority business concerns or women-owned large business concerns.

## **28. BUSINESS CONDUCT**

- a. Compliance with Laws. Seller and the Goods 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 <http://www.boeing.com/aboutus/culture/code.html>. 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.boeingsuppliers.com>. 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. Subcontracting. Seller agrees that no subcontract placed under this Contract will provide for payment on a cost-plus-a-percentage-of-cost basis.

**29. 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; and (ii) Buyer requests for information and documentation to validate citizenship or immigration status of Seller's personnel or subcontractor personnel. 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.

**30. 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.boeingsuppliers.com/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.

**31. ELECTRONIC COMMERCE ACCOUNTS.** Seller shall gain access to, maintain access and utilize the following electronic accounts during the performance of this Contract:

- a. Supply Chain Platform. Purchase contracts, purchase contract changes, purchase contract acknowledgements, Advanced Shipment Notices (ASN) and electronic invoices will be transmitted through the Exostar Supply Chain Platform. Seller must complete the Supply Chain Platform registration with Exostar for access via [www.myexostar.com](http://www.myexostar.com).
- b. Boeing Supplier Portal. The Supplier Portal provides general information, as well as individualized information related to this Contract. Seller shall complete the Boeing Supplier Portal registration and purchase a One Time Password (OTP) Token from Exostar via [www.myexostar.com](http://www.myexostar.com) within forty-five (45) days of Contract award for each Seller representative requiring access. Boeing performs semi-annual access revalidation audits for many

applications on the Boeing Supplier Portal. Seller will be notified via email during the audit period and must respond to maintain access. Seller shall request access, through Buyer's Authorized Procurement Representative, to the applications required on the Boeing Supplier Portal for the performance of this Contract, which may include:

- i. Boeing Enterprise Supplier Tool (BEST)
  - (1) Supplier Performance Measurement. Seller's performance under this Contract will be measured by Buyer utilizing the BEST Supplier Performance Measurement System. Performance will be measured for delivery to Contract schedule, quality acceptance, and general performance assessment (GPA) (for development contracts and contracts without standard deliveries) as applicable. Buyer will generally provide a supplier performance rating (SPR) each month. Seller shall monitor its SPR using the BEST system at least monthly and take corrective action, as appropriate, to ensure on-time delivery of quality products to Buyer.
  - (2) Supplier Profile. The Supplier Profile contained in BEST (e.g., contact information, e-mail addresses, telephone numbers, diversity information, etc.) shall be reviewed for accuracy and updated, as applicable, at least once during the performance of the Contract or, at a minimum, annually.
- ii. SP1 Annual Representations and Certifications. Seller shall, on at least an annual basis, establish and maintain Annual Representations and Certifications. Seller shall provide immediate written notice to Buyer if Seller learns that any of its representations and certifications in SP1 were erroneous when submitted or if any of Seller's representations and certifications in SP1 become invalid due to changes in Seller's status or business practices. Seller shall ensure its Annual Representations and Certifications are current, accurate and complete throughout the period for which the SP1 is valid.
- iii. Customer and Supplier Data Transmittal (CSDT). Seller shall use CSDT for submitting Seller's Data Requirements Lists (SDRLs). Usage on this Contract will be as directed by Buyer.
- iv. Supplier Quality Information System (SQIS). SQIS is the Buyer's standard system for managing Supplier Quality (SQ) processes such as supplier approval, supplier surveillance, and supplier corrective action. Seller shall access SQIS for receiving and providing electronic information in support of the performance of this contact and associated SQ processes.
- v. Electronic Procurement Information Center (EPIC). Seller shall use EPIC to complete purchase contract closeout activity and to receive electronic Request for Quotations (e-RFQ) as directed by Buyer.

### **32. 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.

**33. GOVERNMENT CLAUSES.** Government 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.

**34. 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, provided that (i) contract provisions that have been incorporated directly from or by express reference to the FAR or FAR supplements, (ii) contract provisions that have been flowed down from a contract with the U.S. Government, and (iii) the Changes Article and the Termination/Cancellation Article (excluding subparagraph (a)(2)), shall be construed and interpreted according to the federal common law of government contracts as enunciated and applied by federal judicial bodies, boards of contract appeals, and quasi-judicial agencies of the federal government. This Contract excludes the application of the 1980 United Nations Convention on Contracts for the International Sale of Goods.

**35. 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.

**36. 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 Goods 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.

**37. 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, 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 Employers' 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.

**38. RECIPROCAL WAIVER OF CLAIMS – QUALIFIED ANTI-TERRORISM TECHNOLOGY.** If this Contract involves the manufacture, sale, use, or operation of a Qualified Anti-Terrorism Technology(ies), and Seller is either Buyer's (i) contractor, (ii) subcontractor, (iii) supplier, or (iv) vendor, of or for such technologies, then pursuant to 6 U.S.C. §443(b) of the SAFETY Act and 6 C.F.R. §25.5(e), under this Reciprocal Waiver of Claims, each Party shall be responsible for Losses, including business interruption losses, that such Party sustains (and for Losses that its employees sustain) resulting from an activity resulting from an Act of Terrorism when the Qualified Anti-Terrorism Technology(ies) has been deployed in defense against or response to or recovery from such Act of Terrorism. "Act of Terrorism," "Loss," "Qualified Anti-Terrorism Technology," and "Reciprocal Waiver of Claims," are defined in 6 U.S.C. §§443-444.

**39. 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.

**40. 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

**41. 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.