

**Boeing Indirect Supply Chain  
VALUE-ADDED RESELLER AGREEMENT**

Effective \_\_\_\_\_ (the "Effective Date"), The Boeing Company ("Buyer"), a Delaware corporation, acting through its division, Boeing Indirect Supply Chain, and \_\_\_\_\_ ("Reseller"), a \_\_\_\_\_ corporation, agree to the following terms and conditions.

**RECITALS**

- A. Buyer and Reseller desire to establish now the terms and conditions under which they will do business in the future in order to expedite the placement and fulfillment of orders.
- B. Buyer and Reseller have specifically negotiated these terms and conditions with the express intent that they apply to each order placed by Buyer with Reseller during the term hereof.

NOW, THEREFORE, in consideration of the recitals, mutual promises, and covenants contained herein, the parties do agree as follows:

**AGREEMENT**

**1. DEFINITIONS**

In addition to other terms defined elsewhere in this Agreement, the following terms, when capitalized, shall have the following meanings:

"Agreement" means these terms and conditions, each and every Order or Statement of Work, and all exhibits now or hereafter made part of this Agreement that are incorporated by this reference, and any other requirements or provisions attached to, incorporated into, or otherwise specified in these terms and conditions or any Order.

"Authorized Users" means Buyer's officers, directors, employees, contractors, and other authorized users who will have access to the Licensed Software as determined by Buyer in its sole discretion.

"Buyer" means The Boeing Company or its divisions or The Boeing Company acting as agent for any of its affiliates or wholly owned subsidiaries. All references in this Agreement to The Boeing Company and any of its affiliates, divisions, or wholly owned subsidiaries shall mean Buyer.

"Buyer's Authorized Procurement Representative" means the representative of Boeing Indirect Supply Chain Supplier Management department identified in an Order or SOW, and as may be changed by written notice, who is authorized by Buyer to act on behalf of Buyer in business transactions with Reseller.

"Claims" means all actions, causes of action, liabilities, claims, suits, judgments, liens, awards, and damages of any kind and nature whatsoever.

"Documentation" means (a) any user manuals for the Goods or Services; (b) all addenda, corrections, and new editions of these materials; and (c) any other materials in any form that Reseller customarily provides to end users of the Goods or Services. Documentation includes, without limitation, all of the published specifications for the Goods on the Effective Date.

"EUA" or "End User Agreement" means the end user agreement passed from the OEM through Reseller to Buyer that contains terms and conditions specific to Buyer's use of the Goods.

"Goods" means all of the Licensed Software, all of the support or maintenance services performed under this Agreement, any other services related to the Licensed Software, and any electronics hardware and peripherals.

"Licensed Software" means the licensed software specified in an Order or identified in the attached Exhibit A or any other SOW and furnished by Reseller pursuant to this Agreement, and any Updates, modifications, licenses and Documentation.

"OEM" means the original equipment manufacturer, or in the case of Licensed Software, the software publisher/licensor.

"Order" means, for the delivery of Goods, Buyer's written order or change order to Reseller that references this Agreement.

"Services" means the Reseller support services, Order fulfillment services, any services related to Buyer's access to or use of the Goods, and all other products or services provided by Reseller under this Agreement pursuant to the attached Exhibit A or as may otherwise be set forth in a Statement of Work or Order.

"Site" means the facility or office or other location, as designated in this Agreement or an Order, for which the Goods are to be delivered.

"Statement of Work" or "SOW" means Exhibit A and any other written agreement between the parties for Reseller's provision to Buyer of any Services, training, or other items in a form mutually agreed to by the parties.

"Subcontractor" means any subcontractor, at any tier, or any other third party that performs any of Reseller's obligations under this Agreement.

"Updates" means any maintenances releases, bug fixes, error corrections, and minor enhancements to the Licensed Software and made available by OEM.

"Upgrades" means any major enhancements or significant new functionality or other upgrades of the Licensed Software and made available by OEM.

"Warranty Period" means the first (1st) year after acceptance of the Goods.

## 2. TERMS AND CONDITIONS

- a. Terms and Conditions. This Agreement shall apply to (a) the Goods provided to Buyer by Reseller pursuant to an Order; and (b) any Services specified in an Order or a Statement of Work. These terms and conditions shall be incorporated into every Order and Statement of Work automatically and without further formalities as of the date the Order or Statement of Work, as applicable, takes effect.
- b. Order of Precedence. In the event of any inconsistency within or relating to this Agreement, the following order of precedence will apply:
  - (1) This Agreement;
  - (2) Each Order;
  - (3) The specifications, technical descriptions, Statements of Work, schedules, drawings, and designs prepared by or at the direction of Buyer; and
  - (4) The specifications, technical descriptions, statements of work, schedules, drawings, and designs, other than those described above, prepared by Reseller, including, without limitation, those contained in Reseller's proposal and any correspondence or statements made by Reseller leading up to contract award.

## 3. ORDERS

- a. Quotes. For prices of Goods not otherwise set forth in a Statement of Work, Reseller shall provide Buyer's Authorized Procurement Representative with a written quote based on the pricing described in Section 7 (Prices and Payment) below. Quotes will include all relevant information about the Goods offered to Buyer, including, without limitation, (i) version information of any Licensed Software, (ii) the release date of the Licensed Software, (iii) OEM contact information, (iii) the lowest possible pricing for the Goods, (iv) whether the Goods can be delivered electronically to Buyer, (v) whether the Goods are or will be unavailable for immediate shipment, (vi) whether any restocking fees will apply upon return of an Order, and (vii) any other information required under this Agreement, including with respect to Pass-Through

Terms described in Section 9 (OEM Terms and End User License Agreements) below. All quotes will be valid for thirty (30) days from the date of Buyer's receipt unless promotional pricing for a particular Good is offered by Reseller or OEM with a different time period.

- b. Orders. Goods may be ordered on the terms and conditions of this Agreement solely by Buyer's Authorized Procurement Representative on an Order. Except for the terms set forth below in paragraph 3(c) (Order Process), neither party shall be bound by, and each specifically objects to, any term or condition that is different from or in addition to the provisions of this Agreement, unless such different or additional term or condition is accompanied by an express reference to the inconsistent term in this Agreement, or expressly waives the prohibition of different or additional terms in this paragraph, and is in writing signed by the party to be obligated. Such a modification, however, will apply only to the transaction covered by the Order and has no effect whatsoever on the terms of this Agreement or the order of precedence applicable to any other transactions under this Agreement.
- c. Order Process. The Goods to be provided shall be determined in such Order, including all attachments thereto. Each Order that refers to this Agreement shall be deemed a separate agreement that incorporates the terms and conditions of this Agreement by reference. Any Order issued hereunder will, at a minimum, contain the following:
- (1) The incorporation by reference of this Agreement;
  - (2) The Site;
  - (3) A detailed description of the Goods, including but not limited to SKU, OEM's part number, applicable designation, and/or specifications that will avoid confusion regarding the Goods to be delivered;
  - (4) Price, including any applicable fees, and payment terms; and
  - (5) The scheduled delivery date and whether delivery is available for electronic or physical delivery; and
- Any Order issued by Buyer that fails to include the above information should be reported to Buyer's Authorized Procurement Representative prior to Reseller's shipment under the applicable Order. The failure of Buyer to include all of the information above will not be deemed a breach (whether material or immaterial) of Buyer. Reseller is not required to deliver any Goods unless and until an Order has been provided to Reseller.
- d. Order Confirmation. Within four (4) business hours of Reseller's receipt of an Order, it shall provide Buyer's Authorized Procurement Representative with notice of whether it has accepted or rejected the Order through the means set forth in the Statement of Work or as otherwise agreed to by the parties. Such Order confirmations will include the expected delivery dates for the Goods or Services, method of delivery, Site, price, and Reseller's Order number. If Reseller's notice of rejection of an Order is not received by Buyer within five (5) days from the date of issuance of an Order, such Order shall be deemed to have been accepted by Reseller.
- e. No Minimum Orders. Neither this Agreement nor any Order issued pursuant to this Agreement is a commitment on the part of Buyer to purchase Goods from Reseller. Goods will be purchased on an "as ordered" basis through the execution of one or more Orders.
- f. Changes to Orders. From time to time, Buyer may modify or change an Order, which changes shall be effective upon Buyer's Authorized Procurement Representative's written notice to Reseller. Changes will apply to specific existing Orders issued to Reseller prior to the effective date of the notice for which Reseller has not shipped or electronically delivered any such Order to Buyer. Buyer and Reseller shall mutually agree upon any necessary adjustments to the delivery date, and Order information attributable to Buyer's Order changes. Buyer will not accept any unauthorized increase in Order quantity or price, substitution of Goods, or split shipments, unless authorized in writing by Buyer's Authorized Procurement Representative.

- g. Order Increases. From time to time, Buyer may increase the quantity on any Order prior to shipment by Reseller, which shall be effective upon Buyer's Authorized Procurement Representative's written notice to Reseller. Increases will only apply to a specific existing Order issued to Reseller prior to the effective date of the notice for which Reseller has not yet shipped or electronically delivered such Order to Buyer based on availability of stock. If such Order increases create a basis for a reduction in price for the respective Order, Reseller shall correct and apply such new discounted price to the Order.

#### 4. DELIVERY AND RISK OF LOSS

a. Delivery.

- (1) Unless the Order or Statement of Work specifies a different delivery point, all physical deliveries under this Agreement will be shipped as follows: (i) for Orders totaling more than One Thousand Dollars (\$1000), the Goods shall be shipped F.O.B. Buyer's destination by ground transportation, at Reseller's expense; and (ii) for Orders totaling less than One Thousand Dollars (\$1,000) and requiring physical delivery, the Goods shall be shipped F.O.B. Buyer's destination via the lowest-cost carrier, freight prepaid and itemized on Buyer's invoice. Upon Buyer's request, Reseller shall ship physical deliveries by air, and Buyer shall pay the actual air freight charges incurred by Reseller without mark up by Reseller; provided that if Reseller does not meet the shipment deadlines agreed to by the parties in an Order or Statement of Work, Reseller shall pay all applicable air freight charges incurred. For any Rush Orders (defined below) requiring immediate physical delivery, Reseller shall charge Buyer only for the actual shipping costs incurred by Reseller. In no event will Buyer pay any handling fees for any physical deliveries.
- (2) All electronic deliveries shall be sent to Buyer in accordance with the Order or Statement of Work. Buyer shall not be charged any freight or handling charges for electronic deliveries. If electronic delivery is not possible for a particular Order, Reseller shall notify Buyer immediately and obtain alternative delivery instructions from Buyer's Authorized Procurement Representative.
- (3) Title and risk of loss of all of the Goods shall pass to Buyer on delivery and acceptance at the Site.
- (4) Buyer shall have no liability for any incorrect or over-shipments by Reseller.

- b. Delivery Schedule. Unless otherwise set forth in an applicable Order, shipment and delivery under an applicable Order shall be within three (3) business days for physical deliveries and ten (10) business hours for electronic deliveries. Notwithstanding the foregoing, Buyer may, at its option, submit Orders requesting immediate delivery within two (2) business days or less for physical shipment and within eight (8) business hours or less for Orders delivered electronically ("Rush Orders"). Reseller shall use its best efforts to fill Rush Orders in accordance with the requested delivery time on the applicable Order. Reseller shall promptly notify Buyer in writing of any delay in delivery, the reasons therefor, and the actions being taken by Reseller to overcome or minimize the delay. If Reseller has provided an Order confirmation indicating a date for shipment that is not met by more than one (1) business day, then Buyer shall deem this a "late shipment." If requested by Buyer, Reseller shall, at Reseller's expense, ship such Order by air or other fast transportation to avoid further delay or minimize any anticipated delay to the maximum extent possible. If Buyer must use another source to procure the Goods as a result of any delay by Reseller or Reseller's failure to perform in accordance with the Order, Reseller shall be responsible for all reasonable costs in excess of those Buyer would have otherwise incurred had Reseller performed the fulfillment of the Order.

- c. Packing and Shipment. For Goods delivered physically to Buyer, Reseller shall mark, prepare and pack the Goods in accordance with Buyer's specifications, if any, in an Order or Statement of Work and otherwise in accordance with best commercial practices and in such a manner as to (i) prevent damage and deterioration, and (ii) comply with carrier tariffs and applicable regulations. All Goods shall be new and sealed in the OEM's original packaging. Charges for preparation for shipment (including packing and crating) are included in the price unless separately specified in the Order. Reseller shall not include vermiculite or other hazardous substances in any packing material included with the Goods. Reseller shall indicate Buyer's Order number on the outside of the shipping container on the shipping label.

- d. Media. The Licensed Software shall be delivered on the media types specified in the Order. If no media types are specified, Reseller will deliver the Licensed Software on the media type that Reseller customarily provides to end users of the Goods. Under no circumstances will Buyer be responsible to Reseller for any delivery fees for electronically delivered Goods.
- e. Split Orders. Unless otherwise authorized by Buyer in writing, Reseller is not authorized to provide split-deliveries of any Order.

## 5. ACCEPTANCE RETURNS AND CANCELLATIONS

- a. Acceptance. Acceptance of the Goods shall occur when the Goods meet all of the requirements of this Agreement, a Statement of Work, or a particular Order. Acceptance of the Goods is subject to inspection and acceptance testing by Buyer in accordance with this Agreement. In the event the Goods do not meet Buyer's installation and testing requirements or do not conform to the Documentation, Buyer may reject the Goods by providing Reseller with written notice of its rejection within sixty (60) days after delivery. No trial use or testing of the Goods, incremental or final payment, or passage of title constitutes acceptance nor does it prejudice Buyer's right to reject or revoke acceptance of all or any portion of the Goods.
- b. Returns. Reseller shall provide Buyer with a return material authorization ("RMA") number via email to Buyer's Authorized Procurement Representative within two (2) days of Reseller's receipt of Buyer's notice of rejection of any Goods. Upon Buyer's receipt of the RMA number, Buyer shall return the rejected Goods to Reseller. All returns of rejected Goods, and the shipment of repair or replacement parts for the Goods, shall be at Reseller's risk and expense. Upon Reseller's receipt of the returned Goods, Reseller shall promptly, but in no event more than fifteen (15) days after receipt, issue a credit to Buyer for the full amount invoiced for the returned Goods. Buyer will not pay any restocking fees of any kind for return such Goods. If Buyer's return is subject to a restocking fee from the OEM for any reason, Reseller will (i) disclose such restocking fees to Buyer prior to shipping any Goods to Buyer, and (ii) pass through any such restocking fees from Buyer to OEM without mark up of any kind.
- c. Order Cancellation. Buyer may cancel Orders for Good(s), in whole or in part, at any time prior to shipment for any reason without cancellation fees. Prior to acceptance of an Order, Reseller will disclose to Buyer any fees imposed by the OEM in excess of twenty percent (20%) that may be incurred as a result of Buyer's cancellation of an Order. Any cancellation costs shall be passed through to Buyer without increase or markup. In the event that the cancelled Goods have been shipped to Buyer after Reseller's receipt of Buyer's notice of Order cancellation (which such notice shall be deemed to be delivered two (2) business days after the date set forth on Buyer's notice), Reseller will pay the costs associated with the return freight of the Goods.

## 6. RESELLER RESPONSIBILITIES

- a. Sale of Goods; Services. Reseller shall (i) serve as Buyer's non-exclusive reseller of those Goods for which Reseller is designated by the applicable OEM as an authorized reseller; (ii) supply to Buyer all available Goods ordered by Buyer in accordance with the terms and conditions of this Agreement, any Statement of Work and any Orders; and (iii) provide the Services, including without limitation, any support and maintenance services, set forth in Exhibit A or any other Statement of Work, or Order.
- b. Duty to Notify Buyer.
  - (1) Restrictions or Unavailability of Goods. Reseller shall notify Buyer's Authorized Procurement Representative, prior to Order confirmation, of the following: (i) if Reseller is unable to obtain the Pass-Through Terms described in Section 9 below without modifications from the OEM; (ii) if any EUA contains any restrictions identified in Exhibit B; (iii) if any Goods are unavailable, including items that Buyer has requested Reseller procure on Buyer's behalf from an OEM; or (iv) if OEM has announced a discontinuation of sale at the time of quotation for such Goods. If any OEM prohibits Reseller from selling a specific product to Buyer, then Reseller reserves the right not to quote for resale of such products to Buyer.
  - (2) Upgrades and Updates. Reseller shall provide notice to Buyer's Authorized Procurement Representative within two (2) business days from its receipt of any information from the OEM or

information that may be generally available regarding any public release of any Upgrades of or Updates to the Licensed Software. Reseller shall ship, or use best efforts to cause the OEM to make electronically available or ship, any and all Upgrades and any and all new versions of the Licensed Software, including, without limitation, any Updates, within thirty (30) days of its release and availability to the public or Reseller, whichever is earlier, without additional charge to Buyer for any Licensed Software that is purchased from Reseller (i) for which Buyer is entitled to a free Update or Upgrade as determined by OEM's current warranty or Upgrade program; or (ii) with the related maintenance and support program from the OEM that provides Upgrades and Updates. Reseller shall quote and ship the most current published release of the Licensed Software for an Order.

- (3) Other Notices. Reseller shall provide notice to Buyer's Authorized Procurement Representative notice of (i) any public release of end-of-life or pertinent notices related to the Goods within two (2) business days of such release; (ii) any public release of price changes or licensing structures for the Goods purchased by Buyer within two (2) business days of such release; and (iii) any change in Reseller's authorized reseller status by an OEM within one (1) business day of any change.
- c. Security Requirements. Reseller shall comply with Buyer's security guidelines and information security requirements that may be furnished by Buyer from time to time with respect to any electronic integration necessary for Reseller to electronically deliver the Goods or in its performance of any Services.

## 7 PRICES AND PAYMENT

- a. Price. Prices for Goods shall be set forth in the Statement of Work or Order. Any price specified in the Statement of Work or quote is a firm fixed price.
- b. Pass-Through Pricing. Reseller shall pass through, at no additional cost to Buyer, all prices to which Buyer is entitled under any volume licenses and/or maintenance agreements between Buyer and an applicable OEM. Notwithstanding the foregoing, in the event that Reseller can obtain a better price than the OEM pass-through price, Reseller shall sell the applicable Goods to Buyer at the lower price. For Goods that Buyer does not have a volume license and maintenance agreement and Buyer is not entitled to pass-through pricing from the OEM, Reseller shall charge Buyer the lesser of the OEM prices and the prices set forth in a Statement of Work or applicable Order.
- c. Price Decreases. Any decrease in any OEM pricing or price decreases issued by Reseller shall be applied to any outstanding Orders that have not been shipped to Buyer. Reseller shall notify Buyer of any price decreases made by OEM within forty-eight (48) hours of such decrease; provided that any failure by Reseller to notify Buyer of decreases will not relieve Reseller's obligation to charge Buyer the applicable lower price on any Orders for which Reseller has not yet shipped. d. Price Increases. If any OEM or third party increases prices for any Goods contemplated under this Agreement, Reseller shall use its best efforts to provide Buyer with twenty-four (24) hours' notice from Reseller's receipt of such increases. Reseller shall not increase the prices for Goods set forth in a Statement of Work or existing Order without Buyer's Authorized Procurement Representative's prior written consent. Reseller shall use its best efforts to ensure that any OEM or other third-party price increases are effective no earlier than thirty (30) days after Buyer's Authorized Procurement Representative's receipt of notice from Reseller; provided that (i) in no event will price increases be effective any earlier than five (5) business days after Buyer's Authorized Procurement Representative's receipt of Reseller's notice of price increases, and (ii) no price increase will apply to outstanding Orders issued by Buyer for prices quoted in a Statement of Work or other quotations presented to Buyer less than thirty (30) days from Buyer's Authorized Procurement Representative's receipt of any price increases.
- e. Payment. Reseller shall issue a separate invoice for each delivery. Payment will be mailed ninety (90) days after receipt of a correct invoice. If the Goods have not been accepted by the close of this period, payment will be made promptly after acceptance of the Goods. For purposes of prompt-payment discounts, if any, the payment due date will be computed from acceptance or receipt of a correct invoice, whichever is later, to the date Buyer's check is mailed or otherwise tendered. Reseller will prominently display notice of any applicable prompt-payment discounts on the invoice. Unless taxes or other applicable charges are itemized, any discount may be taken on the full amount of the invoice. Buyer will have no liability to

OEM or Reseller whatsoever for any failure by Reseller to provide or pass through any fees due to OEM by Reseller for Goods purchased by Buyer hereunder.

## 8. TAXES

- a. If any federal, state, or local sales or use tax (or its equivalent) is legally due on taxable Goods purchased, Reseller will separately bill such tax on its invoice to Buyer. Buyer agrees to pay Reseller for such tax or if such tax is not applicable to the Goods purchased, it will be so noted on the Order and Buyer shall provide appropriate exemption statements and information on its Order that are acceptable to the taxing authority.
- b. All other taxes, including, but not limited to federal, state, and local income taxes, franchise taxes, gross receipts taxes, federal, state, and local sales and use taxes, and property taxes shall be the responsibility of the party that incurs the tax liability.
- c. For tax purposes, the items purchased under this Agreement or a specific Order by Buyer's Authorized Procurement Representative may be purchased for Buyer or as an agent for one of Buyer's subsidiaries.

## 9. OEM TERMS AND END USER LICENSE AGREEMENTS

- a. Reseller shall obtain a written and signed agreement with each OEM specifying, at a minimum, that (i) the warranties, representations, limitations of liability, indemnities and other terms substantially in the form set forth in the attached Exhibit B shall apply to Buyer's license and use of the Goods ordered by Buyer under this Agreement (collectively, "Pass-Through Terms"), (ii) that the Pass-Through Terms supersede any inconsistent terms in any EUA provided with the Goods and (iii) that such Pass-Through Terms are enforceable by Buyer against the OEM as a third-party beneficiary. Prior to the shipment of any Goods ordered by Buyer, Reseller shall provide Buyer with a complete and accurate copy of any such OEM agreements pertaining to the Goods ordered under the applicable Order or SOW. If Reseller is unable to obtain an agreement with an applicable OEM that contains all of the Pass-Through Terms, Reseller shall promptly notify Buyer before Order confirmation, and Buyer may terminate the Order without any further liability of any kind to Reseller.
- b. Upon purchase and delivery, a EUA will be passed from the OEM through Reseller to Buyer. Subject to any superseding terms in the Pass-Through Terms described in paragraph 9(a) above, Buyer's Authorized Users will be bound to the terms of the EUA. Reseller shall assist Buyer in Buyer's acquisition of the right to duplicate the Licensed Software only for backup or archival purposes and as necessary to transfer the Licensed Software to a backup computer in the event of computer malfunction, if not already addressed in the applicable EUA. In addition, if Buyer shall acquire Licensed Software on an "enterprise", "site", or "volume" basis, Reseller shall assist Buyer in Buyer's acquisition of the right to duplicate the Licensed Software using a "master" copy at no additional charge, for distribution of Licensed Software to Buyer's Authorized Users across its network. Notwithstanding the foregoing, should Buyer and the OEM enter into a valid agreement directly that modifies the terms and conditions of any EUA, such agreement executed by the parties shall supersede the EUA and govern the terms of any use of the Goods by Buyer.
- c. Reseller shall review all EUAs prior to Order confirmation. In the event that any EUA contains any of the terms set forth on Exhibit C, Reseller shall obtain Buyer's prior written consent before Order confirmation.
- d. If Reseller fails to comply with its obligations set forth in this Section 9 then, without limiting Buyer's other remedies under contract, at law, or in equity, (i) Reseller will indemnify, defend, and hold harmless Buyer for any Claims (as defined in Section 12 below) against Buyer: (1) for which Buyer would have been able to seek a remedy against OEM by virtue of the Pass-Through Terms; or (2) arising out of or related to any terms or conditions set forth on Exhibit C that are contained in any EUA; and (ii) Reseller's failure to notify Buyer of an OEM's refusal to agree to the Pass-Through Terms or that a EUA contains any of the provisions set forth on Exhibit C will be deemed a material breach of this Agreement.

## 10. REPRESENTATIONS AND WARRANTIES

- a. General. Reseller hereby represents and warrants to Buyer that:

- (1) Reseller shall perform the Services in a professional and workmanlike manner and in all material respects in conformance with the specifications, performance standards, and criteria set forth in the Order, with the degree of skill and care that is required by customarily accepted good and sound professional practices and procedures of the industry.
- (2) The Goods delivered to Buyer shall conform in all material respects with and operate in accordance with the specifications and criteria set forth in the Order and any applicable Documentation or Statement(s) of Work.
- (3) The Goods furnished in accordance with any Order will be (a) new and in original OEM-sealed packaging, if delivered in physical form; or (b) new and in an unused form that has been securely delivered electronically, if delivered in electronic form.
- (4) Reseller will maintain all necessary local, state, and federal licenses and certifications that may be required in order to provide the Services or deliver the Goods described in the Order(s). Reseller understands and acknowledges that Reseller is wholly responsible for ensuring compliance with all federal, state, and local laws associated with the delivery of all Services and Goods associated with this Agreement and associated Order(s), including, without limitation, any import or export laws and regulations.
- (5) Reseller has the legal right to enter into and perform its obligations under this Agreement, including, without limitation, the right to act as a value-added reseller of the Goods, and the execution of this Agreement will not violate or contravene any agreement with any third party.
- (6) Reseller has all rights, approvals, and/or authorizations necessary to perform the Services and provide the Goods hereunder, and the Goods delivered to Buyer shall be free and clear of all liens, taxes, encumbrances, and claims of others.
- (7) Reseller is authorized to execute this Agreement, is qualified to perform the Services and resell the Goods, and has good title to the materials, supplies, and equipment constituting the Services, free from all liens, encumbrances and claims of others.
- (8) Reseller shall abide by all terms and conditions imposed by the OEM, and Reseller shall not open any "shrink-wrap" Licensed Software packages or EUA packages or separate any Licensed Software (including, without limitation, Documentation and EUAs).
- (9) (i) Reseller has obtained an agreement with the applicable OEM to provide the Pass-Through Terms to Buyer, or, where OEM has refused to agree to all or part of the Pass-Through Terms, Reseller has provided Buyer with notice of such refusal prior to Order confirmation, and (ii) Reseller has obtain Buyer's prior written consent prior to Order confirmation in the event that any EUA contains any of the terms set forth on Exhibit C. For the avoidance of doubt, the Pass-Through Terms are in addition to other warranties provided under this Agreement, an applicable Order or SOW, or at law.
- (10) Reseller, unless authorized in writing to deliver the Licensed Software electronically by the applicable OEM (such authorization to be provided to Buyer upon request), shall not copy or reproduce any Licensed Software (except as stated herein or in any Licensed Software's pre-packaged license agreement), or modify, reverse engineer, disassemble, or decompile the Licensed Software in any way.
- (11) The Licensed Software does not contain software viruses, time bombs, logic bombs, trap doors or other malicious computer instructions, intentional devices or techniques that can or were designed to threaten, infect, assault, vandalize, defraud, disrupt, damage, disable or shut down a computer system or any component of such computer system, including its security or user data, and Reseller shall require all OEMs to use proper industry-compliant security and virus-scanning tools to detect and remove such threats and violations prior to packaging for shipment.



- (12) The Goods and Services do not infringe or misappropriate the intellectual property or other proprietary rights of any third party, including, without limitation, any patent, copyright, trademark, or trade secret.
  - (13) Other than as specified in any applicable Order, no other equipment, applications, interfaces, applications, or other items are required to be used in conjunction with the Goods in order for the Goods to operate as specified and in accordance with the Documentation.
- b. Remedy. If a defect occurs or appears in the Goods or Services provided hereunder, it shall be presumed that Reseller failed to meet the warranties for the Goods or Services described above, and Reseller shall at its own expense, (i) promptly correct or re-perform any such nonconforming Services within a reasonable time frame acceptable to Buyer at no additional cost; or (ii) provide any such conforming Goods within thirty (30) days of Reseller's receipt of any such defect or nonconformity.

## 11. PROPRIETARY INFORMATION

- a. Definition. For purposes of this Agreement, the term "Proprietary Information" means all data, code, and other information, whether accessed electronically or otherwise, of a confidential or proprietary nature and which is disclosed by one party hereto (the originating party) to the other party hereto (the receiving party), including, without limitation, any trade secrets, functional and technical specifications, designs, drawings, analyses, processes, ideas, "know-how," and other technical information. Subject to the provisions of this Section, information shall be considered Proprietary Information: (i) if marked as such; (ii) if the originating party orally or in writing has advised the receiving party of the confidential nature of the information; or (iii) if, due to its character or nature, a reasonable person in a like position and under like circumstances would treat it as confidential.
- b. Disclosure and Use. The receiving party shall preserve Proprietary Information received from the originating party in confidence and shall refrain from disclosing such Proprietary Information to any third party without written authorization from the originating party or except as otherwise set forth herein. Without limiting the foregoing, each party agrees to secure and protect the Proprietary Information of the other party in the same manner as it would secure and protect its own Proprietary Information, but in any event using no less than a reasonable degree of care, and agrees to take appropriate action by instruction or agreement with its employees, representatives, contractors, suppliers, service providers, or other agents who are permitted access to the other party's Proprietary Information to satisfy its obligations hereunder. Each party shall cooperate with and assist the other in identifying and preventing the unauthorized use, copying, or disclosure of all Proprietary Information. During the Term, the receiving party shall use Proprietary Information received from the originating party solely in connection with the purposes for which it was provided and in accordance with this Agreement.
- c. Exception. The obligations set forth above shall not be construed or interpreted to restrict or prohibit the disclosure or use of Proprietary Information that is:
- (1) Verifiably known to the receiving party without restriction when received, or thereafter is developed independently by the receiving party, without reference to Proprietary Information of the originating party;
  - (2) Obtained from a source other than the originating party through no breach of confidence by the receiving party and no wrongdoing of any third party;
  - (3) In the public domain when received by the receiving party or thereafter enters the public domain through no fault or wrongdoing of the receiving party; or
  - (4) Required by applicable law or regulation, provided that the receiving party promptly notifies the originating party of the requirement, and cooperates with the originating party (at the request and expense of the originating party) in contesting the requirement.
- d. No Other Rights Granted. Proprietary Information shall remain the property of the originating party. Except for the rights expressly granted under this Agreement, neither this Agreement nor the disclosure of Proprietary Information hereunder shall be construed as granting any right or license under any trade

secrets, copyrights, inventions, or patents now or hereafter owned or controlled by either party. This Agreement does not grant any right or license or impose any restriction on use or disclosure with respect to information, other than Proprietary Information, disclosed or received by either party in connection with this Agreement.

- e. Wind-up Activities. Upon termination of this Agreement and unless instructed to do otherwise by the originating party, the receiving party shall cease use of and destroy all of the Proprietary Information, if any, received from the originating party. The originating party may request, and the receiving party shall provide, written certification of the destruction.
- f. Transfer of Employees. Reseller acknowledges that Buyer is or may be using third-party programs, documentation, computing equipment, and other products that provide functionality and capabilities similar to those provided by the Goods. Likewise, Buyer acknowledges that Reseller is developing, or may desire to develop, new and improved products that address the needs and requirements of customers similar to Buyer. Notwithstanding any other provision of this Section or this Agreement, so long as each party does not knowingly disclose Proprietary Information received from the other party, each party may transfer and allow those employees who have had access to and reviewed the other party's Proprietary Information under this Agreement to use the ideas, concepts, and know-how gained from such access in other assignments.

## 12. INDEMNIFICATION

- a. Indemnity. Reseller shall defend, indemnify, and hold harmless Buyer and its subsidiaries and their respective directors, officers, employees, and agents (the "Indemnified Parties" or an "Indemnified Party") from and against all actions, causes of action, liabilities, claims, suits, judgments, liens, awards, and damages of any kind and nature whatsoever ("Claims") and expenses, costs of litigation (including, without limitation, clerk, paralegal, and expert witness costs), and reasonable attorneys' fees related thereto or incident to establishing the right to indemnification, whether or not specifically awardable under any court rules, to the extent such Claims arise out of or are related to (i) any actual or alleged infringement or misappropriation of any intellectual property right of any third party by the Goods or Services; (ii) Reseller's breach of Section 11 (Proprietary Information); (iii) any act, activity, or omission, including, without limitation, any negligent or willful misconduct, of Reseller, including activities on Buyer's premises and the use of any vehicle, equipment, fixture, or material of Reseller in connection with any service or right provided by Reseller under this Agreement; (iv) Reseller's failure to timely pay OEM any fees for Goods payable by Reseller and paid to Reseller by Buyer; or (v) any breach of Reseller's representations or warranties in this Agreement. Buyer shall give Reseller notice of all Claims made against an Indemnified Party and shall cooperate with Reseller (at Reseller's expense) in the defense or settlement of such Claims. In no event shall Reseller's obligations hereunder be limited to the extent of any insurance available to or provided by Reseller or any Subcontractor. Reseller expressly waives any immunity under industrial insurance, whether arising from Title 51 of the Revised Code of Washington, or any other statute or source, to the extent of the indemnity set forth in this paragraph.
- b. Cure. As soon as Reseller or Buyer has reason to believe a Claim is likely to be made against an Indemnified Party relating to Buyer's use of any Goods or Services, Reseller shall, promptly and at its sole expense, use its best efforts to settle, avoid, or otherwise cure the Claim by one of the following procedures:
  - (1) Obtain a license for the Indemnified Party to continue using the Goods giving rise to the Claim in accordance with this Agreement;
  - (2) Modify such Goods to make them non-infringing while maintaining the equivalent or better functionality, features, and performance; or
  - (3) Replace such Goods with a non-infringing product, either from Reseller or another reseller, having the equivalent or better functionality, features, and performance.

The procedures are set forth above in order of precedence. Reseller shall pursue each of these procedures in the order stated until the cure is accomplished. Buyer reserves the right, however, to direct Reseller to

attempt these procedures in a different order in the interest of minimizing the adverse impact of the cure on Buyer's operations.

- c. Cancellation. If, despite its best efforts to do so, Reseller is unable to effect a cure under paragraph 12(b) (Cure) above, and a permanent injunction ordering an Indemnified Party to cease further use of the Goods is issued by a court of competent jurisdiction, either party may cancel the Order under which the Goods were ordered, either in whole or in part, or any applicable SOW, whereupon the Indemnified Party may return all or any portion of the Goods to Reseller for a full refund. Any license granted under this Agreement with respect to the returned Goods will terminate as of the effective date of the cancellation. This remedy is in addition to, not in lieu of, Buyer's other remedies under this Agreement, at law or in equity.

### 13. 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 <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.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. 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.

Any material breach of this provision by Reseller may be considered a major breach of this Agreement for which Buyer may elect to cancel (i) any open Orders between Buyer and Reseller, for cause, in accordance with Sections 5 (Acceptance Returns and Cancellations) or 16 (Termination) above or (ii) exercise any other right of Buyer for an event of default under this Agreement

## 14. INSURANCE

- a. Commercial General Liability. Throughout the period of performance of this Agreement and until final acceptance by Buyer, Reseller shall carry and maintain, and shall ensure that all Subcontractors carry and maintain, Comprehensive General Liability insurance with limits of not less than One Million Dollars (\$1,000,000) for each occurrence for bodily injury, including death, and property damage combined. Such insurance shall be in a form and with insurers acceptable to Buyer and shall contain coverage for all premises and operations, broad form property damage, contractual liability, and products and completed operations insurance.
- b. Automobile Liability. If licensed vehicles will be used in connection with the performance of this Agreement, Reseller shall carry and maintain, and ensure that any Subcontractor who uses a licensed vehicle in connection with the performance of this Agreement carries and maintains, throughout the period of performance of the Agreement, Automobile Liability insurance covering all vehicles, whether owned, hired, rented, borrowed, or otherwise, with limits of liability of not less than One Million Dollars (\$1,000,000) for each occurrence combined single limit for bodily injury and property damage.
- c. Workers' Compensation and Employers Liability. Throughout the period of performance of this Agreement and until final acceptance by Buyer, Reseller shall carry and maintain, and ensure that all Subcontractors carry and maintain, insurance in accordance with the applicable laws relating to workers' compensation with respect to all of its employees working on or about Buyer premises, regardless of whether such coverage or insurance is mandatory or merely elective under the law. If Buyer is required by any applicable law to pay workers' compensation premiums with respect to employees of Reseller or any Subcontractor, Reseller shall reimburse Buyer for such payment.
- d. Certificates of Insurance.
  - (1) Prior to the commencement of the period of performance, Reseller shall provide to Buyer's Authorized Procurement Representative for review and approval certificates of insurance reflecting full compliance with the requirements set forth in paragraphs 14(a) (Commercial General Liability), 14(b) (Automobile Liability), and 14(c) (Workers' Compensation and Employers Liability) above. Such certificates shall be kept current and in compliance throughout the period of performance and until final acceptance by Buyer, and shall provide for thirty (30) days' advance written notice to Buyer in the event of cancellation or material change adversely affecting the interests of Buyer. Any policy or policies providing the insurance required under this Section may be inspected by Buyer upon request.
  - (2) Reseller, at Reseller's expense, shall maintain or cause to be procured and maintained the policies of insurance required under this Section. Any self-retained layer, deductibles, and exclusions in coverage in such policies shall be assumed by, for the account of, and at the sole risk of Reseller or the Subcontractor that provides the insurance and, to the extent applicable, shall be paid by such

Reseller or Subcontractor. In no event shall the liability of Reseller or any Subcontractor be limited to the extent of any insurance available to or provided by Reseller or any Subcontractor or to the minimum limits of insurance required under this Section.

## 15. TERM

The term of this Agreement ("Term") shall take effect on the Effective Date and expire on the fifth (5th) anniversary of the Effective Date, unless earlier terminated in accordance with the terms hereof or by the mutual written consent of the parties.

## 16. TERMINATION

- a. Termination for Convenience. Buyer may terminate this Agreement or any individual Statement of Work, in whole or in part, by providing notice of such termination to Reseller that specifies the extent and effective date of such termination thereof. On the specified termination date Reseller shall cease shipment of all Goods covered by the termination notice, other than those already delivered and accepted in accordance with this Agreement, as of the termination date specified in the termination notice.
- b. Termination for Default. Either party may terminate this Agreement or any individual Statement of Work, in whole or in part, to the extent the other party fails to perform any of its material obligations under this Agreement or the Statement of Work and does not cure the failure within thirty (30) days after service of a default notice, specifying the failure. Notwithstanding the foregoing, Buyer may immediately terminate this Agreement or an individual Statement of Work if Reseller breaches (i) Sections 4 (Delivery and Risk of Loss), 9 (OEM Terms and End User License Agreements), or 10 (Representations and Warranties) and fails to cure such failure within ten (10) days of a default notice specifying the failure; or (ii) Section 11 (Proprietary Information).
- c. Termination Payment. In the event and to the extent of any termination under this Section, Buyer's total liability shall be to pay Reseller for the terminated Goods that have been delivered and for which Reseller has not been previously compensated. Reseller shall have no claim against Buyer for Goods not delivered, loss of anticipated profits, or consequential damages suffered by reason of any such termination. Any claims by Reseller for compensation under this Section must be delivered to Buyer within thirty (30) days after Reseller's receipt of Buyer's notice of termination. Reseller hereby waives, releases, and renounces any claim for compensation not made within this period.
- d. Effect of Termination. In the event and to the extent of any termination under this Section, all obligations of the non-defaulting party and all rights and licenses of the defaulting party under the Statement of Work and/or an individual Order shall thereupon be canceled.

## 17. DELAYS

The time for performance by either party under this Agreement shall be extended for a period equal to any delay caused by unforeseeable causes beyond the control of the party. These causes include acts of God, acts of war, epidemics, fire, power failure, and labor difficulties between the party and its employees.

## 18. CHANGES

- a. Directed Changes. Buyer's Authorized Procurement Representative may from time to time direct changes, in writing, within the general scope of any Order or Statement of Work in one or more of the following: (i) technical requirements and descriptions, specifications, statements 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; and (v) the amount of any Buyer-furnished property. Reseller shall comply immediately with such direction and avoid unnecessary costs related thereto.
- b. Price and Schedule Adjustments. If any change under paragraph 18(a) (Directed Changes) above causes an increase or decrease in the cost of or the time required for performance of an Order or Statement of Work, an equitable adjustment in the prices and schedules of the Statement of Work or Order shall be made to reflect such increase or decrease, and the Statement of Work or Order shall be modified in writing

accordingly. Unless otherwise agreed in writing, any claims by Reseller for adjustment must be delivered to Buyer, in writing, within thirty (30) days after Reseller's receipt of such direction. Pursuant to the Section 20 (Records and Audit), Reseller shall make available for Buyer's examination relevant books and records to verify Reseller's claim for adjustment. Failure of Buyer and Reseller to agree upon any adjustment shall not excuse Reseller from performing in accordance with such direction.

- c. Other Changes. If Reseller determines that the conduct of any of Buyer's employees constitutes a change under this Section, Reseller shall notify Buyer immediately, in writing, as to the nature of such conduct and its effect upon Reseller's performance. Pending direction from Buyer's Authorized Procurement Representative, Reseller shall take no action to implement any such change or deviation.
- d. Binding Effect. No change to any Statement of Work or Order will be effective or binding upon Buyer unless authorized in writing by Buyer's Authorized Procurement Representative.

**19. COMPLIANCE**

- a. With Applicable Laws. Reseller warrants that in the performance of its obligations under this Agreement, it has complied with or will comply with Chapters 6, 7, and 12 of the Fair Labor Standards Act, as amended, and the regulations of the U.S. Department of Labor issued thereunder. The provision entitled "Equal Opportunity" set forth in FAR 52.222-26 is incorporated herein by this reference, except that "Contractor" means Reseller. Upon request, Reseller shall submit certification that it performed its obligations under this Agreement in accordance with the foregoing warranty.
- b. With Buyer and Local Rules and Regulations. Reseller shall ensure that any employees on any Buyer premises (i) comply with Buyer's employee rules of conduct, including, without limitation, Buyer's security and safety procedures; and (ii) comply with all federal, state, and local health, safety, and environmental laws and regulations applicable to such Buyer premises.
- c. With Export Laws and Regulations. Buyer shall comply with the laws and regulations of the United States and its departments and agencies relating to the export of technical data.

**20. RECORDS AND AUDIT**

For a period no less than three (3) years after final payment under each and every Order, Reseller shall retain source data supporting list prices for all items billed to Buyer. Source data means documents, including, without limitation, price lists dating back to the time an Order was placed, sufficient to verify the correctness of the price charged Buyer. Reseller shall, upon request by Buyer, make such data available to Buyer for examination, reproduction, and audit.

**21. PROTECTION OF PROPERTY**

Unless otherwise specified, upon delivery to Reseller, or manufacture or acquisition by Reseller, of any materials, parts, tooling, data, or other property, title to which is in Buyer, Reseller assumes the risk of, and shall be responsible for, any loss thereof or damage thereto. In accordance with the provisions of this Agreement, but in any event upon expiration or termination of the Agreement, Reseller shall return such property to Buyer in the condition in which it was received except for reasonable wear and tear.

**22. NOTICES**

Any notice, authorization, designation, request, or instruction under or in connection with this Agreement to be effective shall be in writing and shall be deemed duly given or served upon delivery, addressed as set forth below. Either party may notify the other in the foregoing manner of any other address to which such communications are to be addressed under this Agreement.

Reseller:

[REDACTED]  
[REDACTED]  
[REDACTED]

Buyer:

The Boeing Company  
Indirect Supply Chain  
P.O. Box Number or Street Address

[REDACTED]  
Attention: [REDACTED]

City, State, and Zip Code  
Attention: [REDACTED]

## 23. RELATIONSHIP OF THE PARTIES AND THEIR EMPLOYEES

- a. Independent Contractors. Reseller is an independent contractor. Nothing in this Agreement shall be construed as creating any relationship between Reseller and Buyer other than that of buyer and reseller or licensor and licensee, if applicable. As an independent contractor, Reseller shall not act as or be an agent or employee of Buyer in performing the Services, and shall determine the means and methods for satisfactorily providing the Services. This Agreement is not intended to be, nor shall it be construed as, a joint venture, association, partnership, franchise, or other form of business organization or agency relationship.
- b. No Agency. Neither party shall have any right, power, or authority to assume, create, or incur any expense, liability, or obligation, express or implied, on behalf of the other, except as expressly provided herein.
- c. Employees. Reseller's employees who perform Reseller's obligations under this Agreement shall at all times be and remain employees of Reseller, not employees of Buyer. Reseller shall pay Reseller's employees, and shall ensure that each of its Subcontractors pays its employees, all wages, salaries, overtime, and other amounts due to such employees. Reseller shall be responsible for, and shall ensure that each of its Subcontractors shall be responsible for, all reports, payments, and other obligations with respect to their respective employees, including without limitation, those related to social security, income tax withholding, unemployment compensation, workers' compensation, and employee benefit plans. Reseller shall comply with all requirements and obligations relating to its employees and other personnel under federal, state, and local law and regulations (or foreign law, if applicable). Such compliance shall include, but not be limited to, laws and regulations governing wage and hour requirements, social security, immigration and naturalization, social security, unemployment insurance, federal and state income taxes, workers compensation, labor relations and discrimination laws. Except to the extent of Buyer's negligence, Reseller shall defend, indemnify, and hold harmless Indemnified Parties (as defined in Section 12) from and against any and all Claims to the extent such Claims arise from allegations, claims or findings relating to Reseller's employees or other personnel providing Services or furnishing Goods under this Agreement.
- d. Customer/OEM Relationship. Reseller has no privity of contract in any software license agreement or purchase of goods between Buyer and OEM.
- e. No Privity With Reseller's Subcontractor/OEM. Any provision herein referring to Reseller's Subcontractors or OEM shall not create privity of contract between Buyer and such parties under this Agreement.

## 24. DISASTER RECOVERY

In the event of a disaster or catastrophe totally or partially disabling Buyer's computing or telecommunications capability, whether due to natural or man-made causes, Reseller agrees to use its best efforts to aid in the prompt restoration of computing or telecommunications capability, including but not limited to furnishing of emergency replacements of Goods upon request via overnight delivery, providing maintenance services, and providing technical assistance to Buyer in its attempts to recover data. Buyer shall be treated at least as favorably as Reseller's most favored customer in the event that the disaster or catastrophe affects others. Buyer and Reseller shall negotiate in good faith to provide reimbursement to Reseller for the actual costs of time, materials, and shipping involved in such emergency response.

## 25. GENERAL PROVISIONS

- a. Severability. If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining provisions shall remain in full force and effect.
- b. Assignment. Neither this Agreement, nor any obligations under it, may be assigned or delegated by Reseller without the prior written consent of Buyer.

- c. Publicity. Neither party shall use the name of the other party in any news release, public announcement, advertisement, or other form of publicity without securing the prior written consent of the other. Except as otherwise set forth in this Agreement, neither party shall disclose any of the terms of this Agreement to any third party without the prior written consent of the other, except to the party's auditors or attorneys or under subpoena duly issued by a court of competent jurisdiction. Notwithstanding the foregoing, Buyer hereby consents to Reseller's inclusion of Buyer's name in a customer listing published in a prospectus or annual report, provided that Buyer is not the sole customer listed.
- d. Survival. The following provisions shall survive termination of this Agreement: Sections 1 (Definitions), 9 (OEM Terms and End User License Agreements), 10 (Representations and Warranties), 11 (Proprietary Information), 12 (Indemnification), 13 (Limitation of Liability), 14 (Insurance), 19 (Compliance), 20 (Records and Audit), 21 (Protection of Property), 22 (Notices), 23 (Relationship of the Parties and Their Employees), 24 (Disaster Recovery), and 25 (General Provisions) and those provisions that expressly require their survival. Cancellation or termination of this Agreement or any Order shall not affect operation of those provisions of this Agreement that, by their terms, survive or are required to effectuate the intent of the parties, as reflected by this Agreement.
- e. Third-Party Beneficiary. Every subsidiary of Buyer is an intended third-party beneficiary of this Agreement with rights of enforcement.
- f. Rights and Remedies. Except as limited under this Agreement, the rights and remedies afforded to each party under this Agreement are in addition to any other rights or remedies, at law or in equity or otherwise, including, without limitation, the rights and remedies of Buyer as a licensee of intellectual property under 11 U.S.C. § 365(n) (e.g., to retain its rights under this Agreement and to request and obtain a copy of the source code and associated programmer's notes of any computer software provided to Buyer under this Agreement in object code form as the embodiment of such intellectual property).
- g. Waiver. Either party's failure to exercise any of its rights under this Agreement shall not constitute a waiver of any past, present, or future right or remedy.
- h. Litigation. The prevailing party in any litigation arising out of this Agreement shall be entitled to recover its expenses, costs of litigation (including, without limitation, clerk, paralegal, and expert witness costs), and reasonable attorneys' fees from the losing party, whether or not specifically awardable under any court rules. The venue for any such litigation shall be King County, Washington.
- i. Governing Law. This Agreement shall be construed under and governed by the laws of the State of Delaware, without regard to conflict of law provisions.
- j. Acknowledgement. Reseller acknowledges that it has not been induced to enter into this Agreement by any representations or promises not specifically stated in this Agreement and that the provisions of this Agreement (including, without limitation, the Section 12 (Indemnification)) have been negotiated by the parties and reflect an allocation of risk between the parties that is a basis of their bargain, both now and with respect to each and every Statement of Work and Order.
- k. Amendments. This Agreement may not be changed, amended, or modified, except by an amendment in writing, executed by Buyer's Authorized Procurement Representative and an authorized representative of Reseller.
- l. Financial Review. If the Agreement exceeds Two Hundred Fifty Thousand Dollars (\$250,000) and extends for more than one (1) year, the Reseller shall, if requested, provide financial data on a quarterly basis or as requested to the Buyer's Credit Office for credit and financial condition reviews. Said data shall include but not be limited to balance sheets, schedules 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. All such information shall be treated as confidential.



- m. Complete Agreement. This Agreement contains the complete and exclusive statement of the terms of the agreement between Buyer and Reseller with respect to the Goods and Services and merges any prior or contemporaneous agreements, commitments, proposals, representations, or communications, oral or written, with respect to the Goods and Services.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate originals by their duly authorized representatives as of the Effective Date.

BUYER:

THE BOEING COMPANY  
(acting through its division,  
Boeing Indirect Supply Chain)

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

RESELLER:

[REDACTED]

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

**EXHIBIT A**

**Statement of Work**

**[To be attached]**

## EXHIBIT B

### OEM Terms and Conditions

In accordance with Section 9 of the Agreement, Reseller will ensure the following provisions are in its agreements with any OEMs for the purchase of Goods to be delivered to Buyer in accordance with the Agreement.

#### A. WARRANTIES

a. OEM unconditionally represents and warrants that the Goods supplied pursuant to this Agreement or any Order (i) are of merchantable quality, (ii) conform to any specifications stated on the Order, (iii) will be new and will not be used or refurbished, (iv) are free from defects in title, (v) do not contain software viruses, time bombs, logic bombs, trap doors or other malicious computer instructions, intentional devices or techniques that can or were designed to threaten, infect, assault, vandalize, defraud, disrupt, damage, disable or shut down a computer system or any component of such computer system, including its security or user data, and Reseller shall require all OEMs to use proper industry-compliant security and virus-scanning tools to detect and remove such threats and violations prior to packaging for shipment, (vi) do not infringe or misappropriate any third party's intellectual property or other proprietary rights, and (vii) will be free from any defects in design and workmanship during the Warranty Period. All warranties herein stated in this Section shall apply and extend to Reseller, its customers, and the end users of the Goods.

b. If this Agreement or any Orders include services, then by accepting this Agreement, OEM also unconditionally represents and warrants, notwithstanding any other representation or agreement to the contrary, that: (i) the services will be provided by qualified personnel reasonably skilled and trained in the performance of the services and in a workmanlike and professional manner in accordance with general industry standards; and (ii) OEM is currently under no obligation to any third party, nor will it enter into any obligation to a third party, that could interfere with its provision of the services or deliverables. All warranties herein stated in this Section shall apply and extend to Reseller, its customers and the end users of the Goods.

c. If, before or during the Warranty Period, a defect occurs or appears in the Goods, OEM shall promptly, at its own expense, correct or re-perform any of the Goods which fail to meet such standards. OEM shall promptly correct any and all such defects without cost to Reseller or Reseller's customer.

#### B. INDEMNITY

a. Indemnity. OEM shall defend, indemnify, and hold harmless Reseller and its customers and end users of the Goods and their respective subsidiaries and their respective directors, officers, employees and agents (the "Indemnified Parties" or an "Indemnified Party") from and against all actions, causes of action, liabilities, claims, suits, judgments, liens, awards, and damages of any kind and nature whatsoever ("Claims") and expenses, costs of litigation (including, without limitation, clerk, paralegal, and expert witness costs), and reasonable attorneys' fees related thereto or incident to establishing the right to indemnification, whether or not specifically awardable under any court rules, to the extent such Claims arise out of or are related to (i) any actual or alleged infringement or misappropriation of any intellectual property right of any third party by the Goods; or (ii) any breach of OEM's representations or warranties in this Agreement. The Indemnified Party shall give OEM notice of all Claims made against the Indemnified Party and shall cooperate with OEM (at OEM's expense) in the defense or settlement of such Claims. In no event shall OEM's obligations hereunder be limited to the extent of any insurance available to or provided by OEM. THE INDEMNIFICATION PROVISIONS SET FORTH ABOVE SHALL NOT BE SUBJECT TO ANY LIMITATIONS ON THE AMOUNT OR TYPES OF DAMAGES THAT OEM IS LIABLE FOR UNDER THE TERMS OF ANY AGREEMENT BETWEEN OEM AND RESELLER OR OEM AND THE CUSTOMER OR END USER OF THE GOODS, INCLUDING, WITHOUT LIMITATION, ANY EUA BETWEEN OEM AND THE CUSTOMER OR END USER OF THE GOODS.

b. Cure. As soon as OEM or Reseller has reason to believe a Claim is likely to be made against an Indemnified Party relating to the Goods, Reseller shall, promptly and at its sole expense, use its best efforts to settle, avoid, or otherwise cure the Claim by one of the following procedures:

(1) Obtain a license for the Indemnified Party to continue using the Goods giving rise to the Claim in accordance with this Agreement;

(2) Modify such Goods to make them non-infringing while maintaining the equivalent or better functionality, features, and performance; or

(3) Replace such Goods with a non-infringing product, either from OEM or another vendor, having the equivalent or better functionality, features, and performance.

The procedures are set forth above in order of precedence. OEM shall pursue each of these procedures in the order stated until the cure is accomplished. The Indemnified Party reserves the right, however, to direct OEM to attempt these procedures in a different order in the interest of minimizing the adverse impact of the cure on the Indemnified Party's operations.

c. Cancellation. If, despite its best efforts to do so, OEM is unable to effect a cure under "Cure" above, and a permanent injunction ordering an Indemnified Party to cease further use of the Goods is issued by a court of competent jurisdiction, either party may cancel the Order under which the Goods were ordered, either in whole or in part, or any applicable SOW, whereupon the Indemnified Party may return all or any portion of the Goods to OEM for a full refund. Any license granted under this Agreement with respect to the returned Goods will terminate as of the effective date of the cancellation. This remedy is in addition to, not in lieu, of Reseller's other remedies under this Agreement, at law, or in equity.

#### **C. NO WAIVER**

NOTWITHSTANDING ANY TERM TO THE CONTRARY IN ANY AGREEMENT BETWEEN RESELLER AND OEM OR OEM AND THE END USERS OF THE GOODS, CLAIMS BY THE CUSTOMER OR END USER OF THE GOODS AGAINST OEM FOR CONTRIBUTION TOWARD THIRD PARTY INJURY, DAMAGE, OR LOSS ARE NOT LIMITED, WAIVED, RELEASED OR DISCLAIMED.

#### **D. CONTRACTUAL RELATIONSHIPS**

a. Reseller may be acting for itself or as an authorized fulfillment agent for one or more customers and/or non-affiliated companies, as specified in an Order. Whenever Reseller executes an Order as an authorized fulfillment agent, Reseller's customer(s) shall be an intended beneficiary of each right and remedy of Reseller and each obligation of OEM to Reseller under the Order, and such rights, remedies, and obligations shall inure to the benefit of Reseller's customer.

b. In providing the Goods, OEM shall operate as and have the status of an independent contractor and shall not act as or be an agent or employee of Reseller. As an independent contractor, OEM shall determine the means and methods for satisfactorily providing the Goods, and shall have full responsibility for complying with this Agreement or an Order.

#### **E. EXPORT COMPLIANCE**

OEM shall comply with all applicable laws and regulations regarding export-controlled items, including the requirement for contractors to register with the Department of State in accordance with the International Traffic in Arms Regulations ("ITAR"). OEM shall provide, with the Goods, the export classification control number ("ECCN") for the hardware, software, or technology that will be provided under an Order. OEM shall also notify Reseller, prior to sale, if any Goods are controlled as a defense article under the ITAR or any other country's laws or regulations. OEM shall indemnify and save harmless each Indemnified Party against any and all damages, liabilities, penalties, fines, costs, and expenses, including attorneys' fees, arising out of any claims, suits, allegations, or charges of OEM's failure to comply with the provisions of this Section. Any failure by OEM to comply with the requirements of this Section shall be a material breach of this Agreement. The substance of this Section shall be incorporated into any subcontract entered into by OEM for the provision of any part of the Goods under an Order.

#### **F. SUPERSEDING TERMS**

The warranties, representations, limitations of liability, indemnity provisions, and export provisions, if any, with respect to any Goods ordered by Reseller from OEM for delivery to its customers that are in conflict with those set forth in this Agreement, including, without limitation, any such terms in any OEM end user license agreement provided with the Goods, are hereby superseded and replaced with the warranties, representations, limitations of liability, indemnity provisions, and export provisions set forth in this Agreement.

#### **G. GOVERNMENT OR OTHER CUSTOMER CLAUSES.**

The clauses below are incorporated by reference, as if fully set forth herein, from the Federal Acquisition Regulation ("FAR") and the Defense Federal Acquisition Regulation Supplement ("DFARS") and apply to the extent indicated therein.

Except as may be otherwise stated, "Contractor," "Offeror" or any equivalent terms means Seller, "Government," "Contracting Officer" or any equivalent terms means Buyer, and all references to a "Disputes" clause shall mean the "Disputes" clause of this Contract. The effective version of each clause listed below shall be the latest version published on the date this Contract is issued. The full text of a clause may be accessed electronically at <https://www.acquisition.gov/content/regulations>.

52.204-25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment is incorporated by reference. Paragraph (b) is deleted and replaced with the following: "Seller is prohibited from providing Buyer with covered telecommunications equipment or services, or with any equipment, systems, or services that use covered equipment or services regardless of whether that use is in performance of work under a U.S. Government contract." Paragraph (c) is deleted in its entirety. Paragraph (d)(1) is deleted and replaced with the following: "In the event Seller identifies covered telecommunications equipment or services provided to Buyer during contract performance, or Seller is notified of such by a subcontractor at any tier or any other source, Seller shall report the information in paragraph (d)(2) of this clause via email to Buyer's Authorized Procurement Representative, with the required information in the body of the email."

## EXHIBIT C

### EUA Terms Requiring Buyer's Consent

As described in more detail in Section 9 of the Agreement, Reseller shall notify Buyer if any EUAs for any Goods Ordered by Buyer under the Agreement contain any of the following terms:

1. Automatic Renewal. Any Licensed Software that contains a EUA with terms regarding automatic renewal is not acceptable to Buyer, and Reseller must obtain Buyer's prior written consent prior to Order confirmation.
2. Restriction of Transfer – Systems or Site. Excluding any operating system, any Licensed Software that contains a EUA with terms prohibiting transfer of Licensed Software from: (a) one Buyer system to another Buyer system; or (b) one Buyer site location to another Buyer site location; is not acceptable to Buyer, and Reseller must notify Buyer prior to Order confirmation.
3. Restriction on Use. Any Licensed Software that contains a EUA with terms prohibiting Buyer's third- party contractors, outsourcers, and customers use is not acceptable to Buyer, and Reseller must notify Buyer prior to Order confirmation.
4. Restriction on Right to Copy. Any Licensed Software that contains a EUA with terms regarding restricting the right to copy beyond the terms of the Agreement and related addenda is not acceptable to Buyer, and Reseller must notify Buyer prior to Order confirmation.
5. Additional Financial Obligation. Any Licensed Software that contains a EUA with terms that may create any further financial obligation for Buyer is not acceptable to Buyer, and Reseller must obtain Buyer's prior written consent prior to delivery of Licensed Software.
6. No Warranty – Infringement/Indemnification. Any Licensed Software that contains a EUA with terms that do not provide for infringement protection against a breach of any third- party right to Licensed Software is not acceptable to Buyer, and Reseller must obtain Buyer's prior written consent prior to delivery of Licensed Software.
7. No Warranty for Virus. Any Licensed Software that contains a EUA with terms that indicate the OEM does not warranty Licensed Software against viruses at the time of delivery is not acceptable to Buyer, and Reseller must notify Buyer prior to Order confirmation.