



## **1. FORMATION OF CONTRACT**

- a. 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, "Contract"), is Buyer's offer to purchase services or materials (collectively, "Services") 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 Contract in any manner shall conclusively evidence acceptance of this Contract as written. Seller's provision of Services shall be governed solely by this Contract. Buyer and Seller are referred to herein as a "Party" or collectively as the "Parties."
- b. 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.
- c. For purposes of this Contract, unless the context requires otherwise, (i) the words "include," "includes," and "including" are deemed to be followed by the words "without limitation"; (ii) the word "or" is not exclusive; (iii) the words "herein," "hereof," "hereby," "hereto," and "hereunder" refer to this Contract as a whole; (iv) words denoting the singular have a comparable meaning when used in the plural, and vice-versa; (v) words denoting any gender include all genders; and (vi) references to (a) articles, exhibits, schedules, attachments, and appendices mean the articles of, and exhibits, schedules, attachments, and appendices attached to, this Contract; (b) an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof; and (c) a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The Parties drafted this Contract without regard to any presumption or rule requiring construction or interpretation against the Party drafting an instrument or causing any instrument to be drafted. The exhibits, schedules, attachments, and appendices referred to herein are an integral part of this Contract to the same extent as if they were set forth verbatim herein.

## **2. SCHEDULE**

- a. Time is and shall remain of the essence in the performance of this Contract, and Seller shall strictly adhere to the schedules specified in this Contract. Failure to deliver in accordance with such schedules, if unexcused, shall constitute a material breach of this Contract. In the event of any anticipated or actual delay, including 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, to avoid or minimize delay to the maximum extent possible.
- b. Seller shall not deliver Services prior to the scheduled delivery dates unless authorized in writing by Buyer's Authorized Procurement Representative.

## **3. PACKING AND SHIPPING**

- a. Seller shall pack goods to prevent damage and deterioration. Unless otherwise set forth in this Contract, Seller shall package 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 this Contract specifies FOB destination (place of delivery), then in addition to any other shipping instructions, Seller shall forward materials freight prepaid. Seller shall make the transportation arrangements, pay the shipping costs, and remain responsible for goods until goods are delivered and Buyer takes possession at the destination.
- c. If this 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 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 shall ship goods in accordance with the Boeing Global Routing Guide found at <https://www.boeingsuppliers.com/become/logistics>. Upon Buyer's request, Seller shall 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 <https://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 its customer prime contracts or subcontracts; (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 has the burden to support the amount of Seller's claim for equitable adjustment. Further, Buyer shall have the right to verify the amount of Seller's claim in accordance with the "Financial Records and Audit" Article. 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.

## **5. INSPECTION**

- a. Services shall be subject to inspection, surveillance, and test at reasonable times and places, including Seller's and Seller's subcontractors' locations. Buyer shall perform inspections, surveillance, reviews, and tests so as not to unduly delay the work.
- b. Seller shall maintain an inspection system acceptable to Buyer for Services.
- c. If Buyer performs an inspection, surveillance, review, or test on the premises of Seller or its subcontractors, Seller shall furnish, and require its subcontractors to furnish, reasonable facilities, and assistance for the safe and convenient performance of these duties.
- d. 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 Buyer's customers 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. Nothing in this Contract shall be interpreted to limit United States Government access to Seller's facilities pursuant to law or regulation.
- e. Buyer shall have the right to perform reviews, including program reviews, requirements consumption reviews, and production readiness assessments, and Seller shall support all Buyer's reviews. Reviews shall be held at Seller's, Buyer's, or Buyer's customers' facilities, as requested by Buyer. The topics of these reviews shall be specified by Buyer and may include Seller's or Seller's sub-tier suppliers' current and future capacity and capabilities, raw material and component part status, production status, Buyer-supplied components, inventory, Buyer's requirements, Seller's current compliance to and process for: (i) review, (ii) incorporation, and (iii) flow down of Buyer or Buyer's customer requirements, manufacturing plans, first article plans, changes, forecasts, disaster preparedness, and other issues pertinent to Seller's performance under this Contract.

## **6. ACCEPTANCE AND REJECTION**

- a. Buyer shall accept Services or give Seller notice of rejection within a reasonable time after the date of delivery. No payment, prior test, inspection, passage of title, failure, or delay in performing any of the foregoing, nor failure to discover any defect or other nonconformance shall relieve Seller of any obligations under this Contract or impair any rights or remedies of Buyer, including revocation of acceptance.
- b. If Seller delivers defective or non-conforming Services, Buyer may at its option and at Seller's expense: (i) require Seller to promptly reperform, correct, or replace Services; (ii) correct Services; or (iii) obtain replacement Services from another source. Return to Seller of defective or non-conforming Services and redelivery to Buyer of corrected or replaced Services shall be at Seller's expense and risk of loss.
- c. Seller shall not redeliver corrected or rejected Services without disclosing the former rejection or requirement for correction. Seller shall disclose any corrective action taken. Repair, replacement and other correction and redelivery shall be completed as Buyer's Authorized Procurement Representative may reasonably direct.

## **7. SELLER'S 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/materials are discovered or suspected which may affect Services delivered or to be delivered under this Contract.
- b. Whenever Seller receives, either before or after shipment of goods under this Contract, notification that any 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 SD-25 GIDEP Operating Policies and Procedures.

## **8. COUNTERFEIT PARTS PREVENTION**

- a. Seller shall not furnish Counterfeit Parts, which are defined as unauthorized copies, imitation, substitute, or modified parts (e.g., materials, parts, components, subassemblies) which are misrepresented as specified genuine parts of an original or authorized manufacturer. Counterfeit Parts can include the false identification of grade, serial number, lot number, date code, documentation, performance characteristics, or the representation of used parts as new. Counterfeit and Suspect Counterfeit Parts shall be deemed nonconforming to this Contract. A Suspect Counterfeit Part is a part for which there is objective and credible evidence indicating that it is likely counterfeit.
- b. Seller shall plan, implement, and control processes appropriate to the organization and the products for the prevention of Counterfeit or Suspect Counterfeit Part use and their inclusion in goods. Seller's Counterfeit Parts prevention processes shall address the following:
  - i. Training of appropriate persons in the awareness and prevention of Counterfeit Parts;
  - ii. Application of a parts obsolescence monitoring program;
  - iii. Controls for acquiring externally provided product from original or authorized manufacturers, authorized distributors, or other approved sources;
  - iv. Requirements for assuring traceability of parts and components to their original or authorized manufacturers;
  - v. Verification and test methodologies to detect counterfeit parts;
  - vi. Monitoring of counterfeit parts reporting from external sources; and
  - vii. Quarantining and reporting of suspect or detected counterfeit parts, including preventing reentry into the supply chain.
- c. If Seller provides Electronic, Electrical, or Electromechanical (EEE) parts or assemblies containing EEE parts, Seller shall implement a counterfeit electronic parts detection and avoidance system compliant with the requirements of SAE standard AS5553 (revision as of the effective date of this Contract).
- d. If Seller becomes aware or suspects that it has furnished Counterfeit or Suspect Counterfeit Parts to Buyer, Seller promptly, but in no case later than thirty (30) days from discovery, shall notify Buyer and replace, at Seller's expense, such Counterfeit Parts or Suspect Counterfeit Parts with goods that conform to the requirements of this Contract. For confirmed Counterfeit Parts or Suspect Counterfeit Parts, GIDEP notification shall also be made no later than sixty (60) days after discovery. Seller shall be liable for all costs related to the delivery or replacement of Counterfeit Parts or Suspect Counterfeit Parts including any testing or validation costs necessitated by the installation of authentic goods in replacement of Counterfeit Parts or Suspect Counterfeit Parts.
- e. Seller bears responsibility for procuring authentic parts or items from its subcontractors and shall ensure that all such subcontractors comply with the requirements of this Article. Seller shall include the substance of this Article, including this flowdown requirement, in all subcontracts awarded by Seller for work under this Contract.

## **9. INVOICES AND PAYMENT/SELLER FURNISHED MATERIAL**

- a. Except as provided in this Article, payment shall be made in accordance with the following FAR clauses, which are incorporated by reference:
  - i. FAR 52.216-7, Allowable Cost and Payment (AUG 2018). This clause applies only to the portion of contract that provides for reimbursement of materials (as defined in FAR 52.232-7) at actual cost. The term "Contractor" means "Seller," the term "Contracting Officer" means "Buyer's Authorized Procurement Representative" except in paragraph (g) where "Contracting Officer" means "Contracting Officer or Buyer," and the term "Government" and "United States" means "Buyer" except in paragraph (a)(3) and (b)(1)(ii)(F), where Government means "Government and Buyer." Paragraph (d) is deleted. Subparagraphs (a)(2), (b)(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 this Contract.
  - ii. FAR 52.232-7, Payments Under Time-and-Materials and Labor-Hour Contracts (NOV 2021). The term "Contractor" means "Seller," the term "Contracting Officer" means "Buyer's Authorized Procurement Representative," and the term "Government" means "Buyer." Paragraph (c) is deleted. In paragraph (g)(2), the term "6 years" is deleted and replaced with the term "5 years, 9 months." The reference to the Allowable Cost and Payment clause in paragraph (b)(4), means FAR 52.216-7, Allowable Cost and Payment (AUG 2018), and reference to the "Disputes Clause" means the "Disputes" Article of this Contract.



- b. Payments shall be made in accordance with Buyer's standard payment process set forth at: <https://www.boeingsuppliers.com/become/terms>.
- c. 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.
- d. Payment shall be deemed made on the date Buyer's check is mailed or payment is otherwise tendered. Seller shall promptly repay Buyer any amounts paid in excess of amounts due to Seller.
- e. Material shall be furnished by Seller except as specifically provided in this Contract. Material purchased to support this Contract shall be billed at actual costs without overhead, general and administrative costs, cost of money and profit, as evidenced by paid invoices. Material withdrawn from Seller's stores shall be charged at cost determined in accordance with generally accepted accounting practices. Unless otherwise noted, handling charges are included in the labor rates established in this Contract. Buyer shall be credited with all cash or trade discounts, rebates, allowances (whether or not taken) and the value of any resulting scrap.
- f. Except for amounts invoiced under the "Termination" Article, 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.

## **10. 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 either: (i) cancel the suspension of work order; (ii) terminate this Contract in accordance with the "Termination for Convenience" provision of this Contract; (iii) terminate this Contract in accordance with the "Termination for Default" provision 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 terminated; (ii) the suspension results in a change in Seller's cost of performance or ability to meet the delivery schedule; and (iii) Seller submits a claim for adjustment within twenty (20) days after the suspension is canceled.

## **11. WARRANTY**

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



## **12. TERMINATION/CANCELLATION**

a. Federal Acquisition Regulation ("FAR") 52.249-6 (MAY 2004), ALT IV (SEPT 1996), "Termination (Cost Reimbursement)," is incorporated by reference, except for paragraphs (e) and (j), which are reserved. The term "Government" means "Buyer," the term "Contracting Officer" means "Buyer's Authorized Procurement Representative", the term "Contractor" means "Seller," and the phrase "1 year" is deleted each place it occurs and "six months" is substituted in its place. The time for requesting an equitable adjustment under paragraph (l) (lower case letter "L") is reduced to forty-five (45) days. The following paragraphs are modified as follows:

i. Subparagraph (a)(2) is deleted in its entirety and replaced with the following:

"(a)(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."

ii. Paragraph (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 shall be the same as if the termination was for the convenience of Buyer."

iii. Subparagraph (h)(1) is deleted in its entirety and replaced with the following:

"(h)(1) If the Contract is terminated under subparagraph (a)(1) of this 52.249-6 clause, include-

(i) An amount for direct labor hours (as defined in the Contract) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the Contract, less any hourly rate payments already made to Seller;

(ii) An amount (computed under the provisions for payment of materials) for material expenses incurred before the effective date of termination, not previously paid to Seller;

(iii) An amount for labor and material expenses computed as if the expenses were incurred before the effective date of termination, if they are reasonably incurred after the effective date, with the approval of or as directed by Buyer's Authorized Procurement Representative; however, Seller shall discontinue these expenses as rapidly as practicable;

(iv) If not included in subdivision (h)(1)(i), (ii), or (iii) of this clause, the cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract; and

(v) The reasonable costs of settlement of the work terminated, including-

(A) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;  
(B) The termination and settlement of subcontracts (excluding the amounts of such settlements); and  
(C) Storage, transportation, and other costs incurred, reasonably necessary for the protection or disposition of the termination inventory."



iv. Subparagraph (h)(2) is deleted in its entirety and replaced with the following:

“(h)(2) If the Contract is cancelled under subparagraph (a)(2) of this 52.249-6 clause, include the amounts computed under paragraph (h)(1) of this clause but omit-

- (i) Any amount for preparation of Seller’s termination settlement proposal; and
- (ii) The portion of the hourly rate allocable to profit for any direct labor hours expended in furnishing materials and services not delivered to and accepted by Buyer.”

b. Continuity of Supply. To ensure the continuity of supply of Services, Seller hereby grants to Buyer an irrevocable, non-exclusive, worldwide, royalty-free license, with the right to grant sublicenses, to exercise all IP Rights in Seller-Owned IP (as such terms are defined in the “Intellectual Property” Article) and Seller’s Proprietary Information and Materials (as defined in the “Confidential, Proprietary, and Trade Secret Information and Materials” Article) to produce, have produced by third parties, use, sell, and to obtain from alternate sources, products and services similar to Services (including related systems and components) and Manufacturing Materials in the event of a Seller’s default as described in subparagraph 12(b)(i) of this Contract, regardless of whether Buyer terminates this Contract in whole or in part for default.

### **13. FORCE MAJEURE**

Seller shall not be liable for excess re-procurement costs pursuant to the “Termination for Default” provision 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 failure is without the fault or negligence of either, Seller shall not be liable for excess re-procurement costs unless the materials or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit Seller to meet the required delivery schedules. Seller shall notify Buyer in writing within ten (10) days after the beginning of any such cause(s). In all cases, Seller shall use reasonable efforts to avoid or minimize all such failures, including exercising work-around plans or obtaining Services from other sources.

### **14. 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, or otherwise undergo a 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, a “Transaction”), without Buyer’s prior written consent. Seller shall provide advance written notice to Buyer at least one hundred and twenty (120) days prior to the date when such proposed assignment or Change of Control would take effect. No purported Transaction, 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 Transaction; 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 of 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 (a) all or substantially all of the assets directly or indirectly owned by, used by, or held for use by Seller or (b) all or substantially all of the assets used by Seller to provide Services;
  - 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. the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group (within the meaning of the Securities Exchange Act of 1934 and the rules of the Securities and Exchange Commission thereunder as in effect on the date of this Contract), of Equity Securities representing more than 50% of the voting power represented by the issued and outstanding equity interests of Seller or its controlling affiliates.

## **15. BUSINESS CONDUCT**

- a. **Compliance with Laws.** Seller and Services shall comply with all applicable statutes and government rules, regulations, and orders ("Laws"). Upon Buyer's request, Seller shall: (i) provide evidence of compliance with Laws; (ii) cooperate with any Buyer request relating to verification of Seller's suspected or potential non-compliance with Laws; and (iii) provide reasonable support to Buyer in relation to Buyer's compliance with Laws under this Contract or Buyer's contract with its customers.
- b. **Anti-Corruption and Anti-Bribery.** Seller shall comply with all applicable country laws relating to anti-corruption or anti-bribery, including 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 not (whether directly or 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 or in violation of any applicable laws relating to anti-corruption or anti-bribery.
- c. **Gratuities.** Seller warrants that neither it nor any of its employees, agents, or representatives have offered or given, or shall 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.
- d. **Supplier Code of Conduct.** Buyer is committed to a set of core values that includes transparency, integrity, accountability, and respect. In furtherance of this commitment, Buyer has adopted a Supplier Code of Conduct that outlines expected values and behaviors for all suppliers, including their employees, agents, and subcontractors. This code may be downloaded at [https://www.boeingsuppliers.com/principles/Boeing\\_Supplier\\_Code\\_of\\_Conduct.pdf](https://www.boeingsuppliers.com/principles/Boeing_Supplier_Code_of_Conduct.pdf). Seller shall: (i) adopt and enforce concepts, values, and behaviors consistent with those embodied in the Supplier Code of Conduct; and (ii) include the substance of this provision, including this flowdown requirement, in all subcontracts awarded by Seller for work under this Contract. If, in relation to this Contract, Seller becomes aware of any actual or potential breach of the Supplier Code of Conduct in Seller's business, operations or supply chain, Seller shall: (i) inform Buyer immediately via the reporting channel found at <https://www.boeing.com/sustainability/ethics-and-compliance#anchor2>; and (ii) cooperate fully with Buyer to investigate such breach.
- e. **Environmental Health and Safety.**
  - i. **Environment, 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 shall promote health and safety, environmental stewardship, and pollution prevention by appropriate source reduction strategies. Seller shall convey the requirement of this provision to its suppliers. Seller shall not deliver goods that contain asbestos mineral fibers.
  - ii. **Chemical Profile Declaration.** If requested by Buyer, Seller shall provide to Buyer or its authorized third-party service provider, the chemical profile of goods (by part number) in accordance with the requirements defined by the most recent published versions of IPC-1754 (<https://www.iaeg.com/chemicalrpt/IPC1754/>) and IAEG® Aerospace and Defense Declarable Substances List (<https://www.iaeg.com/chemicalrpt/addsl/>). A response (or a request for more time) shall be required within twenty-five (25) days of the notification. If requested by Buyer, Seller shall provide updates when there is a change in regulatory requirements, supply of new goods, a new Seller manufacturing location, or a change in the composition of goods provided since the last chemical profile declaration was provided to Buyer.
- f. **Work Transfer.** Seller shall not and shall ensure its supply chain shall not, initiate a movement or transfer of the location for the work to be performed under this Contract to another facility without Buyer's prior written approval. Seller shall notify Buyer of any potential work movement or placement at least sixty (60) days in advance of Seller committing to any such movement or placement by submitting the "Supplier Work Movement Notification Form" available on the Boeing Supplier Portal.
- g. **Buyer Policies.** Seller agrees that Buyer's internal policies, procedures, and codes are intended to guide the internal management of Buyer and are not intended to, and do not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by Seller against Buyer.
- h. **Conflict Minerals.** Per 15 U.S.C. 78m(p), if goods delivered to Buyer contain conflict minerals, then Seller shall, no later than thirty (30) days following each calendar year in which Seller has delivered those goods to Buyer, complete and provide to Buyer or Buyer's representative a single and comprehensive Conflict Minerals Reporting Template found at [https://www.boeingsuppliers.com/supplier\\_principles.html#/compliance](https://www.boeingsuppliers.com/supplier_principles.html#/compliance). Seller shall perform appropriate due diligence on its supply chain in order to fulfill the reporting obligations of this provision.
- i. **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 U.S. Sentencing Commission 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 this Contract that they may report any concerns of misconduct by Buyer or any of its employees

or agents by going to <https://www.boeing.com/company/ethics-and-compliance>. Seller shall convey the substance of this provision to its suppliers.

- j. Seller and Sub-Tier Supplier Information. In addition to requirements set forth elsewhere in this Contract, Seller shall, when reasonably requested by Buyer, provide sub-tier supplier information related to performance under this Contract. Such information may include Seller's subcontract management plans, Buyer programs supported, and Seller assessment of sub-tier supplier's capability, including financial health and performance issues.
- k. Offset Credits/Industrial Participation.
  - i. To the exclusion of all others, Buyer and 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 goods to be provided under this Contract.
  - ii. 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).
  - iii. 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 goods to be provided under this Contract.
- I. Subcontracting. Seller agrees that no subcontract placed under this Contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.

## **16. ACCESS TO PLANTS AND PROPERTIES**

Where Seller is either entering or performing work at premises owned or controlled by Buyer or Buyer's customer or obtaining access electronically to Buyer systems or information, Seller shall comply with: (i) all the rules and regulations established by Buyer or Buyer's customer for access to and activities in and around premises controlled by Buyer or Buyer's customer; (ii) Buyer requests for information and documentation to validate citizenship or immigration status of Seller's personnel or subcontractor personnel; and (iii) "The Boeing Company On-Site Environment, Health and Safety Supplemental Provisions" located in SP4 at <https://www.boeingsuppliers.com/become/terms>, as may be updated from time to time, which is incorporated by reference. In addition, Seller acknowledges that Buyer may perform routine background checks on Seller personnel. Seller shall include the substance of this Article, including this flowdown requirement, in all subcontracts awarded by Seller for work under this Contract.

## **17. CYBERSECURITY; ELECTRONIC ACCESS; AND ELECTRONIC ACCOUNTS**

- a. Cybersecurity. Seller shall comply with "The Boeing Terms of Use and Cybersecurity Supplement ("Terms of Use") located in SP5 at <https://www.boeingsuppliers.com/become/terms>, as may be updated from time to time, which is incorporated by reference.
- b. Electronic Access. 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 "Confidential, Proprietary, and Trade Secret Information and Materials" Article.
- c. Electronic Accounts. Seller shall gain access to, maintain access, and utilize the following electronic accounts during the performance of this Contract:
  - i. Supply Chain Platform. Purchase contracts, purchase contract changes, purchase contract acknowledgements, Advanced Shipment Notices (ASN), and electronic invoices shall be transmitted through the Exostar Supply Chain Platform. Seller must complete the Supply Chain Platform registration with Exostar for access via <https://my.exostar.com/>.
  - ii. 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 <https://my.exostar.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 shall 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:
    - (1) Supplier Profile Visibility Report (SPVR). Seller's performance under this Contract shall be measured by Buyer utilizing the SPVR Supplier Performance Measurement System. Performance shall be measured for delivery to schedule, quality acceptance, and general performance assessment (GPA) (for development contracts and contracts without standard deliveries) as applicable. Buyer shall generally provide a supplier performance rating



(SPR) each month. Seller shall monitor its SPR using the SPVR 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 SPVR (e.g., contact information, e-mail addresses, and telephone numbers) shall be reviewed for accuracy and updated, as applicable, at least once during the performance of this Contract or, at a minimum, annually.
- iii. SP1 Annual Representations and Certifications. Seller certifies that it has submitted current, accurate, and complete Annual Representations and Certifications in SP1 as of the date of the offer for this Contract which cover, among other things, size and socioeconomic status, debarment status and payments to influence certain federal transactions. Seller shall maintain its representations and certifications in SP1 on at least an annual basis and for the duration of the period of performance of this Contract; and Seller shall provide prompt written notice to Buyer upon Seller discovery of any error, inaccuracy or change in circumstances in its SP1.
- iv. Customer and Supplier Data Transmittal (CSDT). Seller shall use CSDT for submitting Seller's Data Requirements Lists (SDRLs). Usage on this Contract shall be as directed by Buyer.
- v. Supplier Quality Information System (SQIS). SQIS is 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 Contract and associated SQ processes.
- vi. 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.

## **18. 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 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 or import authority.
- c. Subject to applicable Trade Control Laws, Seller shall provide Buyer with the export control classification and country of origin for all commodities, software, and technology provided by the Seller and the Seller's sub-tier suppliers under this Contract.
- 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.

## **19. QUALITY CONTROL**

Seller shall establish and maintain a quality control system acceptable to Buyer for Services. Seller shall permit Buyer to review procedures, practices, processes, and related documents to determine such acceptability.

## **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 or trade secret information of a Party or third party disclosed by a Party; (ii) software provided under this Contract in source code form or identified as subject to this Article; and (iii) tooling identified as subject to this Article: in each case that is obtained, directly or indirectly, from the other in connection with this Contract or Buyer's contract with its customer, if any, (collectively referred to as "Proprietary Information and Materials"). Proprietary Information and Materials excludes information that is, as evidenced by competent records provided by the receiving Party, known to the receiving party or lawfully in the public domain, in the same form as disclosed hereunder, disclosed to the receiving Party without



restriction by a third party having the right to disclose it, 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 use Proprietary Information and Materials disclosed by the other Party only to perform and for the purpose of this Contract, other contracts between the Parties, and Buyer's contract with its customer, if any and shall not disclose such Proprietary Information and Materials to any third party except as expressly set forth herein. Seller shall not, without Buyer's prior written consent, use the Proprietary Information and Materials disclosed by Buyer in any manner not authorized under this Contract, including using such Proprietary Information and Materials to train, develop or improve any machine learning or artificial intelligence system. Buyer may also, at any time use, reformat, copy, or disclose Seller's Proprietary Information and Materials to: (i) fulfill Buyer's obligations under this Contract, other contracts with Seller, and Buyer's contract with its customer, if any; (ii) test, certify, use, sell, or support Services delivered under this Contract or Buyer's product containing such Services; (iii) evaluate Seller products and proposals, develop solicitations for Seller products, and develop interfaces or parameters for Boeing products; (iv) perform or obtain data analysis or risk mitigation; (v) obtain data storage, hosting, and other outsourced services; and (vi) ensure regulatory or legal compliance. Any such disclosure by Buyer shall, when appropriate, include a suitable restrictive legend.
- c. Seller may disclose Proprietary Information and Materials of Buyer to its subcontractors only as required to perform this Contract if Seller includes a suitable restrictive legend on such disclosures and if each such subcontractor has agreed 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.
- d. A Party may disclose received Proprietary Information and Materials in response to a subpoena or court order if the receiving Party has used reasonable efforts to give the disclosing Party advance written notice of such requirement to allow the disclosing Party to: (i) seek a protective order or other remedy; (ii) consult with respect to resisting or narrowing the scope of such requirement; or (iii) modify or waive compliance with this Article. If such protective order or remedy is not timely obtained, the receiving Party shall use commercially reasonable efforts to disclose only Proprietary Information and Materials legally required to be disclosed and to require confidential treatment of such disclosure.
- e. Upon Buyer's request, and in any event upon the completion or termination of this Contract, Seller shall return to Buyer all of Buyer's Proprietary Information and Materials and all materials derived therefrom, unless Buyer specifically directs otherwise in writing. Seller shall not (i) dispose of (as scrap or otherwise) any Services, parts or other materials containing, conveying, embodying or made in accordance with or by reference to any Buyer Proprietary Information and Materials without first rendering such items unusable, and ensuring that Buyer Proprietary Information and Materials cannot be discerned or extracted from such goods, parts, or other materials; or (ii) without a separate license agreement or other written approval from Buyer, make, use, or sell any Services, parts, or materials containing, conveying, embodying or made in accordance with or by reference to Buyer Proprietary Information and Materials of Buyer except as required to perform this Contract.
- f. The provisions of this Article are effective notwithstanding of any restrictive legends or notices on Proprietary Information and Materials and shall survive the completion or termination of this Contract. Buyer shall have the right to audit Seller's compliance with this Article.
- g. Seller agrees that any technical data and computer software furnished to Buyer as a required deliverable under this Contract shall 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 forty-five (45) days after such notification, Buyer may, at Seller's expense, correct any such Nonconforming Marking.

## **21. INTELLECTUAL PROPERTY INDEMNITY**

Seller shall indemnify, defend, and hold harmless Buyer and its customer from all claims, suits, actions, awards (including awards based on intentional infringement of patents), liabilities, damages, costs, and attorneys' fees related to the actual or alleged infringement of any intellectual property right or misappropriation or wrongful use of information or documents, and arising out of or related to the use, manufacture, reproduction, sale, or other distribution of Services by Buyer or its customer. Buyer or its customer shall timely notify Seller of any such claim, suit, or action. Seller shall, at its own expense, defend such claim, suit, or action, and Buyer shall have the right to participate in the defense at its own expense. Seller shall have no obligation to indemnify Buyer for infringement if and to the extent such infringement arises from (i) 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 (ii) use or sale of Services for other than their intended application when such infringement would not have occurred from the use or sale of those Services solely for the purpose for which they were designed or sold by Seller. The exception in (i) 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 shall include The Boeing Company, all Boeing subsidiaries, and all officers, agents, and employees of Boeing or its subsidiaries.

## 22. INTELLECTUAL PROPERTY

### a. Definitions:

“Intellectual Property” or “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 Rights” means all worldwide common law and statutory rights to the IP, including rights under patents, industrial designs, trade secrets, copyrights, and mask work registrations.

“Background IP” means all IP and IP Rights owned or controlled by Seller prior to the effective date or outside the scope of this Contract.

“Foreground IP” means IP and IP Rights conceived, developed, or created by, for, or with Seller, either alone or with third parties, in the performance of this Contract, including modifications to any Buyer Specification suggested or made by Seller.

“Buyer Specifications” means performance specifications, specification control documentation, interface control documents, schematics, definitions, configurations, and certification data, and all IP Rights therein, used or intended to be used by Boeing: (i) to establish and define (1) requirements for Services and associated processes, service level, system specification, certification, and configuration; and (2) architecture descriptions for Services and associated processes, service, and system; and (ii) to procure and certify Services or similar products and to assure integration of Services or similar product with a Boeing product or other systems and equipment included in a Boeing product.

b. Seller-Owned IP. Seller shall retain ownership of its Background IP and of any Foreground IP not assigned to Buyer pursuant to subparagraph d. below (collectively, the “Seller-Owned IP”). Seller grants to Buyer an irrevocable, nonexclusive, sublicensable, perpetual, paid-up, royalty-free, worldwide license to exercise all IP Rights in Seller-Owned IP solely to the extent that such Seller-Owned IP would otherwise interfere with Boeing’s, or its suppliers’, or its customers’ use or enjoyment of Services, Buyer Specifications or Buyer-owned IP. In addition, if Buyer cancels all or part of this Contract for Seller default in accordance with the “Cancellation for Default” provision of this Contract, Seller hereby grants Buyer the right to exercise all IP Rights in Seller-Owned IP for the purpose of preventing interruptions to or stoppage of Boeing’s production lines or delivery of Boeing’s products to Customers.

c. Third-Party IP. If Seller incorporates third-party IP into any contract deliverable, Seller shall obtain for Buyer at least the license rights granted in subparagraph b. of this Article in such third-party IP, and hereby grants such rights to Buyer.

d. Foreground IP. This subparagraph d. shall not apply to unmodified commercial off-the-shelf goods. If Services or goods are developed, modified, or redesigned pursuant to this Contract, then the subparagraphs below apply.

- i. All Foreground IP shall be the exclusive property of Buyer except as set forth in subparagraph iv below.
- ii. Seller hereby irrevocably assigns to Buyer all right, title, and interest in the Foreground IP. Seller shall protect Foreground IP as Buyer’s Proprietary Information and Materials under 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.
- iii. Seller shall, 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 assigned hereunder, 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. If Seller does not or cannot execute instruments or assist Buyer as described above, 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.
- iv. Subparagraphs ii. and iii. above shall not apply to any Foreground IP to the extent that the development of such Foreground IP was performed with funding received by Buyer under a U.S. Government procurement contract, except that any such Foreground IP that modifies, or is a derivative work of, Buyer Background IP, including any suggestions regarding or modifications made to Buyer Specifications, shall be the exclusive property of Buyer, and subparagraphs (ii) and (iii) shall apply to such Seller-developed Foreground IP.

e. Buyer-Owned IP. Buyer shall retain ownership of all Buyer IP provided hereunder, including the Buyer Specifications, and of any Foreground IP assigned to Buyer pursuant to subparagraph d. above (collectively, the “Buyer-Owned IP”). Buyer grants to Seller a non-exclusive, royalty-free right during the term of this Contract to exercise all IP Rights in the Buyer-Owned IP solely as necessary for Seller to perform its obligations 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 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, or using such Buyer-Owned IP or any derivative works of any of the Buyer-Owned IP to train, develop or improve any machine learning or artificial intelligence system.

## **23. PRICES; TAXES**

- a. **Prices.** The price of this Contract includes Seller's, and any Seller's subcontractors' (if any), performance of all requirements and obligations under this Contract.
- b. **Taxes.** 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.

## **24. FINANCIAL RECORDS AND AUDIT**

- a. **Record Retention.** Seller shall retain all financial records and documents pertaining to Services for a period of no less than three (3) years after the later of final payment or contract closeout. Such records and documents shall date back to the time this Contract was issued and shall include 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.**
  - i. The labor hours shall be supported by a complete and accurate timekeeping system acceptable to Buyer and shall include evidence of actual payment. Buyer shall have the right to assign representatives to Seller's plant for the purpose of verifying the number and type of direct hours being incurred and making such audit and check of Seller's activities as may be reasonably required. Material charges shall be supported by paid invoices or storeroom requisitions. When Buyer-furnished property is used, a copy of Buyer's shipper shall be kept in Seller's files for auditing purposes. Such records shall be made available to Buyer, upon request, for examination, reproduction, and audit from the date of this Contract until three years after final payment hereunder. As a result of any audit performed by Buyer, payments previously made to Seller shall be subject to adjustment for over payment or under payment, respectively. Seller shall submit its final invoice promptly after completion of work. Upon approval of Seller's final invoice and substantiating documentation and upon compliance by Seller with all terms of this Contract, Buyer shall promptly pay any balance due to Seller.
  - ii. Upon request, Seller shall make available to Buyer data relative to payroll policies and procedures, including collective bargaining agreements with respect to wage payments for straight time, overtime, holidays, etc.
- 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.
- e. **Defective Cost or Pricing Data.**
  - i. 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.
  - ii. 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.
  - iii. For the purposes of subparagraphs (e.i) and (e.ii) of this Article, if Buyer is a higher-tier subcontractor, "Government" means the higher-tier contractor and "prime contract" means the higher-tier subcontract.
  - iv. Seller shall not raise as defenses the matters listed in FAR 52.215-10(c)(1) (AUG 2011) or FAR 52.215-11(d)(1) (JUN 2020) unless some other date version or equivalent FAR clause is provided elsewhere in this Contract.
- f. **Contract Closeout.** Seller shall provide all information and assistance to Buyer so that Buyer may comply with Buyer's obligations in connection with FAR 4.804.



## **25. SELLER FINANCIAL REVIEW**

- a. Seller shall provide financial data as specified below, on a quarterly basis, or as requested, to Buyer for credit and financial condition reviews by Buyer's Enterprise Credit Risk office. 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 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. Such financial data shall include 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. 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 Seller.

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

Clauses applicable to this Contract from Buyer's contract with its customer, including applicable FAR, Defense Federal Acquisition Regulation Supplement ("DFARS"), or other agency acquisition regulation clauses, if any, are incorporated elsewhere in this Contract either by attachment or by some other means of reference, and shall prevail as provided for in the "Order of Precedence" Article.

## **27. RECIPROCAL WAIVER OF CLAIMS – QUALIFIED ANTI-TERRORISM TECHNOLOGY**

If this Contract involves the manufacture, sale, use, or operation of a Qualified Anti-Terrorism Technology 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), the Parties agree to a Reciprocal Waiver of Claims and 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 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.

## **28. PUBLICITY AND CUSTOMER COMMUNICATION**

- a. Without Buyer's prior written approval, Seller shall not, and shall require that its subcontractors at any tier shall not, release any publicity, advertisement, news release or denial or confirmation of same regarding Services or this Contract or the program to which it pertains. Seller shall be responsible to Buyer for any breach of such obligation by any subcontractor.
- 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 contractors, regarding Services or this Contract or the program to which it pertains. Seller shall have no communications regarding the foregoing with Buyer's customer, including any higher-tier contractors, without Buyer's advance written approval and coordination.

## **29. 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's Authorized Procurement Representative, upon completion or termination 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 (SEP 2021), 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.

### **30. 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 injury to or death of employees of Seller or any subcontractor thereof) and all expenses, costs of litigation, and attorneys' 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, by any subcontractor thereof, or by other third parties within the control or acting at the direction of Seller, or by any of their respective employees (collectively for the purposes of this paragraph, "Seller Parties"), including 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 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 any Seller Party. 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 subparagraph.
- 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 that specifically assumed under subparagraph 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 are 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 subparagraphs 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 termination. 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 its subcontractor's obligations hereunder.
- f. **Self-Assumption.** Any self-insured retention, deductibles, or 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 all subcontractors 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 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.

### **31 ADDITIONAL CONTRACT REQUIREMENTS**

- a. **Scope of Services.** Seller shall furnish Services set forth in this Contract during the term of this Contract.
- b. **Independent Contractor.** Seller is an independent contractor for all purposes. Seller shall have complete control over the performance of, and the details for accomplishing, Services. In no event shall Seller or its agents, representatives or



employees be deemed to be agents, representatives, or employees of Buyer. Seller's employees shall be paid exclusively by Seller for all Services performed. Seller shall comply with all requirements and obligations relating to such employees under federal, state, and local law (or foreign law, if applicable). Such compliance shall include laws regarding minimum wages, social security, unemployment insurance, federal and state income taxes, and workers' compensation insurance.

- c. **Standards.** Seller shall assign personnel satisfactory to Buyer. Buyer may, for good cause shown in Buyer's sole determination, require Seller to withdraw the services of any person and require that Seller promptly provide replacements for such persons satisfactory to Buyer. Seller shall indemnify and hold harmless Buyer from and against any liabilities, claims, charges or suits for alleged losses, costs, damages, or expenses arising from Buyer's exercise of its rights hereunder.
- d. **Overtime.** Overtime shall mean those hours worked in excess of forty (40) hours during Seller's standard work week. All such overtime must have prior written approval of Buyer.
- e. **Holidays and Vacations.** If work is performed on Buyer's premises, Buyer shall not be obligated to make any payments to Seller for days designated by Buyer as holidays or shutdown periods, except for work specifically authorized in writing by Buyer's Authorized Procurement Representative and performed by Seller on such days.

### **32. 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" and "Suspension of Work" Articles and provision 12(a) "Termination for Convenience" of this Contract 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.

### **33. 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.

### **34. 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 Services to Buyer.
- c. Seller agrees that Buyer approvals of Seller's technical and quality specifications, drawings, plans, procedures, reports, or other submissions shall not relieve Seller from its obligations to perform all requirements of this Contract.
- d. Buyer may at any time deduct all or any part of the damages resulting from any breach of this Contract from any part of the price still due under this Contract or any other contract between Buyer and Seller.

### **35. 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 written notice thereof, including all relevant information, to Buyer.

### **36. 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 incorporated into or attached to this 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. General Provisions (GP1, GP2, GP3, GP4, GP6, GP7, GP8, GP9) and Special Provisions (including SP1, SP2, SP3 (incorporated by this reference where Seller is formed, organized, or incorporated outside the United States), SP4 and SP5)
- e. Specifications (the most recently agreed to and issued version of specifications shall control and Buyer's specifications shall prevail over any subsidiary documents referenced therein)
- f. Statements of work (the most recently agreed to and issued version of a statement of work shall control)
- g. All other attachments, exhibits, appendices, documents, or terms incorporated by reference in or attached to this Contract.

### **37. ENTIRE AGREEMENT**

This Contract, together with all purchase orders, change orders, attachments, exhibits, supplements, specifications, schedules, and other terms referenced in or attached to 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.