Boeing Indirect Supply Chain  
MASTER SERVICES AGREEMENT

**[INSTRUCTIONS FOR COMPLETION BEFORE SENDING TO SUPPLIER FOR THEIR REVIEW: – please** **(1) fill in all the information highlighted in yellow,** **(2) delete the square brackets and (****3) remove the yellow highlighting;** **(****4) delete this draft note and the draft notes on the contents pages.**

**Some information, e.g. Supplier name, place of incorporation, registered office and contact details will need to be completed by Supplier – it’s fine to leave this blank and highlighted and get them to complete it. If you have any questions, please contact C&RM or Law.]**

Effective **[**Month**]** **[**\_\_**]**, 20**[**\_\_**]** (the “**Effective Date**”), The Boeing Company, a Delaware corporation (“**The Boeing Company**”), and **[**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**]**, a **[**insert entity type and citizenship**]** (collectively, “**Supplier**”), in consideration of the mutual agreements and covenants contained herein, agree as follows:

# DEFINITIONS

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

“**Acceptance**” or “**Accepted**” means when the Services meet all of the specifications and requirements of this Agreement (including any applicable SOW) and have been affirmatively accepted by Buyer in writing.

“**Acceptance Criteria**” means the specific criteria set forth in an applicable SOW that must be satisfied for Buyer’s Acceptance of Services, or if no criteria are specified, that the Services meet the specifications and requirements of this Agreement and the applicable SOW(s).

“**Acceptance Period**” means the period of time for Buyer’s testing of Services as specified in a SOW. In the absence of a specific period of time in the applicable SOW, the Acceptance Period will be such period of time as is reasonably needed for Buyer to determine whether the Services meet the Acceptance Criteria.

“**Affiliate**” means, with respect to a party, any entity that directly, or indirectly through one or more intermediaries, Controls, or is Controlled by, or is under common Control with, that party.

“**Agreement**” means the terms and conditions of this document and its appendices, exhibits, and attachments, together with all SOWs (as defined below).

“**Applicable Laws**” means all federal, state, local, international and foreign laws, rules, regulations, directives, orders and ordinances relating to, or in any way governing, the Services, Supplier’s business, Supplier’s performance of the Services, or Buyer’s receipt and use of the Services.

“**Background IP**” means any Prior Works and any works developed by Supplier entirely outside the scope of this Agreement without use of any of Buyer’s Proprietary Information.

“**Benchmark Target**” means the **[**25th percentile**]** of the most competitive (i.e., lowest) prices within the Supplier’s benchmarking peer group, assuming comparable services and purchased volumes.

“**Benchmarking Factors**” means the factors that the selected benchmarking firm uses to compare Supplier to comparable peer groups in order to determine the competitiveness of Supplier, including the Supplier Rates, the Services, SLA, and other factors as such benchmarking firm deems appropriate.

“**Boeing Code**” means Buyer’s Supplier Code of Conduct, which may be downloaded at https://www.boeing.com/principles/human-rights.page (or successor site).

“**Boeing Data**” means any and all information, data, materials, works, expressions or other content, including any that are (a) uploaded, submitted, posted, transferred, transmitted or otherwise provided or made available by or on behalf of Boeing, whether relating to Boeing or any of Boeing’s customers or suppliers, for Processing by or related to the Services, (b) collected, downloaded or otherwise received by Supplier relating to Boeing or any Boeing customer or supplier pursuant to this Agreement or any SOW, or at the written request or instruction of Boeing, or (c) accessed by Supplier via any Buyer Systems. All output, copies, reproductions, improvements, modifications, adaptations, translations and other derivative works of, based on, derived from or otherwise using any Boeing Data are themselves also Boeing Data. For the avoidance of doubt, Boeing Data includes all Restricted Information relating to any Boeing Personnel, but does not include any of Supplier’s Prior Works.

“**Buyer**” or “**Boeing**” means, individually and collectively, The Boeing Company and its divisions and Affiliates.

“**Buyer’s Authorized Procurement Representative**” means the representative of the Boeing Indirect Supply Chain Supplier Management department who is identified in a SOW and is authorized by Buyer to act on behalf of Buyer in business transactions with Supplier, which may be changed from time to time by Buyer.

“**Buyer Materials**” means Buyer’s Proprietary Information, Buyer’s Intellectual Property Rights, and any other materials and information provided by Buyer under this Agreement.

“**Buyer Systems**” means any electronic information systems operated by or on behalf of Buyer, including, but not limited to, facilities, network equipment, telecommunications systems, software, applications, files, and data.

“**Change of Control**” means any one or more of the following:

1. a sale, conveyance, transfer, distribution, lease, assignment, license or other disposition of all or substantially all of the assets of Supplier or its Controlling Affiliate(s);
2. any consolidation or merger of Supplier or its Controlling Affiliate(s), any dissolution of Supplier or its Controlling Affiliate(s), or any reorganization of one or more of Supplier or its Controlling Affiliate(s); or
3. any sale, transfer, issuance, or disposition of any equity securities or securities or instruments, convertible or exchangeable, for equity securities (collectively, “**Securities**”) of Supplier or its Controlling Affiliate(s) in which the parties who Control Supplier or its Controlling Affiliate(s) prior to the sale, transfer, issuance or disposition of the Securities no longer Control Supplier or its Controlling Affiliate(s) immediately following that sale, transfer, issuance or disposition of the Securities.

“**Change Order**” has the meaning given to it in Section 5.

“**Change Request**” has the meaning given to it in Section 5.

“**Claim**” means any action, cause of action, suit, or other claim brought by a third party, including any agency or instrumentality of any government and any civil, criminal, administrative, or investigative action or proceeding commenced or threatened by a third party.

“**Control**” (including “**Controlled**” and other forms) of an entity means: (i) either (A) beneficial ownership (whether direct, or indirect through controlled entities or other means) of more than 50% of the outstanding voting securities of that entity or (B) in the case of an entity that has no outstanding voting securities, having the right to more than 50% of the profits of the entity, or having the right in the event of dissolution to more than 50% of the assets of the entity; or (ii) having the contractual power presently to designate more than 50% of the directors of a corporation, or in the case of unincorporated entities, of individuals exercising similar functions. (By way of example only, a company has indirect Control of a wholly owned subsidiary of its wholly owned subsidiary).

“**Deliverable**” means all materials (including Software, prototypes, drawings, artwork, documentation and any other deliverables), ideas, designs, techniques, inventions, discoveries, improvements, information, creative works and any other works discovered, prepared or developed by or on behalf of Supplier for Buyer in the course of or resulting from the provision of Services (collectively with any works, information or other items and all Intellectual Property Rights (including patents, copyrights, trade secrets, and any other rights, but excluding Background IP) and applications relating to any of the foregoing).

“**Disaster Recovery Plan**” means Supplier’s disaster recovery, business continuity and anticipated contingency plan for the Services.

“**Discloser**” means the party that discloses Proprietary Information to the other party under this Agreement or that other party’s Personnel, or whose Proprietary Information is otherwise exposed to the other party or that other Party’s Personnel.

“**Documentation**” means user manuals for any portion of the Deliverables (including any Background IP included in any Deliverables); all addenda, corrections, and new editions of these materials; and any other materials in any form, that Supplier customarily provides to end-users of any portion of the Deliverables.

An “**Event of Insolvency**” will occur if Supplier: (a) voluntarily enters into bankruptcy proceedings; (b) makes an assignment for the benefit of creditors; (c) has a petition filed against it under a bankruptcy law, a corporate reorganization law or any other law for relief of debtors or similar law analogous in purpose or effect, which petition is not stayed or dismissed within 120 days of filing thereof; or (d) enters into liquidation or dissolution proceedings or a receiver is appointed with respect to any assets of the other party, which appointment is not vacated within 120 days.

“**Force Majeure Event**” means an unforeseeable cause beyond a party’s reasonable control, such as a fire, flood, earthquake, elements of nature, an act of God or the public enemy, war, civil disturbance, acts of government in its sovereign or contractual capacity, labor dispute, embargo, epidemic, quarantine or other similar events.

“**ICC**” means the International Chamber of Commerce.

**“Implementation Milestone(s)**” means any schedules, timelines or milestone due dates as set forth in the Implementation Plan.

“**Implementation Milestone Schedule**” means [NOTE: Used in Section 4(c)(1)– was just “Milestone Schedule, but was not defined].

“**Implementation Plan**” means the plan developed by the parties to detail the Deliverables, Implementation Milestone Schedule, methodology, criteria, approach, respective roles and responsibilities of the parties, and other activities to be performed by the parties promptly after the Effective Date with respect to implementation of Services.

“**Indemnitees**” means Buyer and its Affiliates, and their respective directors, officers, employees, contractors, and agents.

“**Initial Term**” means the period beginning on the Effective Date and ending on the later of **[**\_\_\_\_\_\_\_\_\_\_**]** or so long as a SOW is in effect and has not been completed, unless this Agreement is earlier terminated in accordance with the terms hereof or by the mutual written consent of the parties.

“**Intellectual Property Rights**” means all rights of the following types, under the laws of any jurisdiction in the world: (i) copyrights and moral rights; (ii) trademark rights, trade name rights and similar rights; (iii) trade secret rights; (iv) patent and industrial design property rights; (v) other similar proprietary rights; and (vi) rights in or relating to applications, registrations, renewals, extensions, combinations, divisions, continuations and reissues of, and applications for, any of the rights referred to in clauses (i) through (v) above.

“**Key Supplier Personnel**” means the roles specified in a SOW as “Key Supplier Personnel”.

“**Loss**” and collectively “**Losses**” means all losses, liabilities, judgments, liens, awards, assessments, damages, payments, fines and penalties (including taxes and all related interest and penalties incurred directly with respect thereto), and all related costs, expenses and other charges (including all reasonable attorneys’ fees related thereto or incident to establishing the right to indemnification or damages and reasonable costs of investigation, litigation, settlement, judgment, interest and penalties, whether or not specifically awardable under any court rules).

“**Malicious Code**” means any code containing viruses, Trojan horses, time bombs, worms or like destructive code or code that self-replicates or computer instructions, circuitry or other technological means designed to disrupt, damage or interfere with any Buyer use of the Supplier Software or Buyer’s computer and communications facilities or equipment.

“**Milestone**” means any interim or final events, achievements, delivery dates or other circumstances set forth in a SOW that denote the anticipated progress, schedules or timelines under that SOW.

“**Most Competitive Pricing**” means a price that is within 2% of the pricing offered by Supplier to other corporate customers purchasing similar services in similar volumes.

“**New Pricing**” means revised Supplier Rates that reflect a prospective price reduction that meet the levels established by the benchmarker as required to be within the Benchmark Target for each benchmarked category.

“**Non-Developed Software**” means Supplier Software that is NOT developed at Buyer’s direction under this Agreement but is provided or incorporated to Buyer as a Service or Deliverable.

“**Performance Report**” has the meaning given to it in Section 4(j).

“**Personal Information**” has the meaning set forth in **the Supplement for the Security of Personal Data or Data Processing Agreement.**

“**Personnel**” means all of a party’s employees, contractors, and agents, and with respect to Supplier, includes the employees, contractors, subcontractors and agents of any of its Affiliates or subcontractors utilized in the performance of the Services or creation of Deliverables, and with respect to Boeing, includes Boeing’s Affiliates’ employees, contractors, and agents.

“**Prior Works**” means any works developed by Supplier prior to the earlier of the performance of the Services or the Effective Date.

“**Process**” means to perform any operation or set of operations on any data, information, material, work, expression or other content, including to (a) collect, receive, input, upload, download, record, reproduce, store, organize, combine, log, catalog, cross-reference, manage, maintain, copy, adapt, alter, translate or make other improvements or derivative works, (b) process, retrieve, output, consult, use, disseminate, transmit, submit, post, transfer, disclose or otherwise provide or make available, or (c) block, erase or destroy. “**Processing**” and “**Processed**” have correlative meanings.

“**Program Error**” means code in any Supplier Software or information contained in any Documentation that makes the Supplier Software inoperable or that produces unintended results or actions or that produces results or actions other than those described in the Documentation or this Agreement.

“**Proprietary Information**” means all data and other information, whether accessed electronically or otherwise, of a confidential or proprietary nature of the Discloser, including but not limited to, any trade secrets, functional and technical specifications, designs, drawings, translations, analysis, research, processes, computer programs in source code form, beta versions, algorithms, methods, ideas, “know how” and other technical information, sales and marketing research, materials, plans, projects and other business information, accounting and financial information, information concerning the products, services, and business of the Discloser and information concerning third ‑party suppliers or customers of Discloser, at any time furnished by the Discloser to the Recipient, or to which the Recipient is otherwise exposed, during the Term.

“**Recipient**” means the party that receives, or whose Personnel receives, Proprietary Information from the Discloser, or is, or whose Personnel is, otherwise exposed to Discloser’s Proprietary Information.

“**Records**” means, collectively, all books, records, documents, and other evidence of the time worked, costs, expenses, and allowances pertaining to this Agreement.

“**Restricted Information**” means any information that any of the Supplier Personnel collects, receives or obtains, from or on behalf of Buyer, or Buyer’s directors, officers, agents, suppliers, contractors, investors or customers**[**, or any Authorized User (as defined in **Appendix [\_TBD\_] - (SaaS Terms and Conditions)]** which is Sensitive Information, Personal Information, “nonpublic personal information,” as defined under the Gramm-Leach-Bliley Act (15 U.S.C. § 6801 et seq.), “protected health information” as defined under the Health and Insurance Portability and Accountability Act of 1996 (42 U.S.C. § 1320d), or “**Personal Data**” as that term is defined in the **Supplement for Security of Personal Data** or the **Data Processing Agreement (“DPA”)**, or other data associated with individual persons and protected by any Applicable Law, and all rules and regulations issued under any of the foregoing.

“**Regulatory Event**” means the adoption, enactment, modification or rescission (including expiration) of any Applicable Law by a governmental authority of competent jurisdiction.

[“**Renewal Term**” means **[**\_\_\_**]** year periods during which the term of this Agreement is renewed.][Note: Not always used, depending on how Section 3 is drafted.]]

“**Replacement Supplier**” means any replacement for Supplier that Buyer designates to perform the Services upon the expiration or termination of this Agreement or any SOW.

“**Restricted License**” means any or all of the following: (i) any third-party license; or (ii) the provisions of any open source or quasi-open source license agreement, including any of the following: GNU’s General Public License (GPL) or Lesser/Library GPL (LGPL), the Artistic License (e.g., PERL), the Mozilla Public License, the Netscape Public License, the Berkeley software design (BSD) license including Free BSD or BSD-style license, the Sun Community Source License (SCSL), an Open Source Foundation License (e.g., CDE and Motif UNIX user interfaces), the Apache Server license, or any other agreement obligating Buyer to make source code available to third parties or publish source code.

“**Scope of Services**” means the scope of the Supplier Services that are intended by the parties to be covered by this Agreement. The Scope of Services is attached hereto as **Appendix [\_\_]**.

“**Supplier Parties**” means, collectively, Supplier and all Supplier Personnel (each individually may be referred to as a “**Supplier Party**”).

“**Supplier Rates**” means the labor categories and pricing identified in **Exhibit [\_\_]** attached hereto.

“**Supplier Software**” means any Software developed by Supplier and provided under this Agreement, any third-party Software incorporated into Software developed by Supplier that is provided to Boeing under this Agreement, or any third-party Software that Supplier, acting as a reseller, provides to Boeing under this Agreement.

“**Supplier Systems**” means information technology infrastructure, including all computers, Software, databases, electronic systems (including database management systems) and networks used by or for Supplier to provide the Services, access the Buyer Systems, or otherwise in connection with the Services.

“**Service Level Agreement**” or “**SLA**” means Supplier’s agreement to meet or exceed the Service Levels as set forth in **Exhibit [\_\_]**, or if no SLA is included in this Agreement, the service level agreement set forth in the applicable SOW.

“**Service Levels**” or “**Service Level Commitments**” means the service level commitments agreed to by Supplier in connection with the Services to be provided under this Agreement or as set forth in the SLA.

“**Services**” means all tasks, actions, obligations and services that are within the Scope of Services and are performed or to be performed by Supplier under this Agreement, including those described or identified in an applicable SOW, any services, functions or responsibilities not specifically described in an SOW that are an inherent, necessary or customary part thereof or are otherwise required for proper performance hereunder, and any Transition Services. To the extent applicable, Services also include all Deliverables, Supplier Software, and other items provided by Supplier to Buyer under this Agreement.

“**Services Warranties**” means the warranties that Supplier makes to Buyer regarding the Services as described in Section 19.

“**Software**” means any software, library, mobile application, utility, tool, or other computer or program code, in object (binary) or source code form, including any updates and upgrades thereto, as well as the related Documentation.

“**Software Warranties**” means the warranties that Supplier makes to Buyer regarding the Software as described in Section 8.

“**Statement of Work**” or “**SOW**”means a document executed by an authorized representative of each party that sets forth the scope of the Services to be performed thereunder, the applicable Service Levels (if any), the schedule and any other terms agreed to by the parties related to the Services to be performed thereunder. The form of Statement of Work is attached hereto as **Appendix [\_\_]**.

“**Subcontractor**” means any subcontractor, at any tier, any service provider, or any other third party that performs any of Supplier’s obligations under this Agreement or on the Supplier’s behalf.

“**Term**” means, collectively, the Initial Term and all Renewal Terms (if any).

“**Terms of Use**” means the Boeing Terms of Use and Cybersecurity Supplement located in SP5 at <https://www.boeingsuppliers.com/terms.html>, as may be updated from time to time, or any successor document thereto.

“**Trade Control Laws**” means 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 Agreement (including any SOW), including the Export Administration Regulations (“**EAR**”) of the U.S. Department of Commerce, the International Traffic in Arms Regulations of the U.S. Department of State, the U.S. Customs & Border Protection Regulations, the Harmonized Tariff Schedule, and the anti‑boycott 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.

“**Transition Period**” has the meaning set forth in Section 23.

“**Transition Plan**” means the plan provided by Supplier to Buyer, and attached hereto as **Exhibit [\_]** that explains in a detailed manner how Supplier will accomplish the Transition Services.

“**Transition Requirements**” means the requirements that Supplier’s Transition Plan must satisfy as detailed in Section 23(b).

“**Transition Services**” means all services that Supplier performs or is required to perform upon the expiration or termination of this Agreement or any SOW to assist Buyer in the orderly transfer of the services, functions, responsibilities, tasks and operations performed hereunder, including turning over to Buyer all Deliverables (in all stages of development), Proprietary Information and other related information or data.

“**Vulnerability**” means an error, flaw, defect, failure, or fault in the Supplier Software that negatively affects the confidentiality, integrity, reliability, or availability of the Supplier Software or the Buyer Systems.

“**Work Made for Hire**” has the meaning assigned to it in United States intellectual property laws, including statutes, regulations and common law doctrines, as applicable.

# GENERAL TERMS AND CONDITIONS

## Relationship Between SOWs and Agreement. Supplier’s provision of the Services under an SOW is governed by this Agreement, and each SOW is subject to the terms of this Agreement. All SOWs will become part of, and will be incorporated into, this Agreement automatically as Exhibits without any further formalities. Any terms or conditions appearing on Supplier’s invoices, terms of use (including any click through or clickwrap terms of use), or purchase and sale documentation regarding the Services will be of no effect and this Agreement supersedes them. No waiver, modification, or addition to this Agreement is valid or binding on Buyer unless in writing and signed by Buyer’s Authorized Procurement Representative. Every delivery of Services provided by Supplier to Buyer is conditioned upon and confirms Supplier’s acceptance of this Agreement. References to Supplier’s acts or omissions in this Agreement or any SOW include acts or omissions by Supplier Personnel or Supplier Affiliates.

## Order of Precedence. If there is a conflict between any term of the main body of this Agreement, the Global Contracting Addendum, other Appendices to this Agreement, an SOW, or other Exhibits of this Agreement, or with any other document that the parties agree in writing is part of this Agreement, with any other term from any of the others, the following order of precedence will apply:

### With respect to any non-U.S. Services authorized under an SOW, The Global Contracting Addendum, solely with respect to those Services under that SOW; then

### All other appendices incorporated into this Agreement per Section 2(c) below (collectively, “**Appendices**”); then

### Any provision of an SOW that specifically references a provision of the Agreement that is inconsistent therewith and that it is the intent of the parties that the specific conflicting provision of the SOW controls, in which case that provision of the SOW will control with respect to that provision for that SOW only; then

### this main body of the Agreement; then

### all other terms and conditions of an SOW, for the purposes of that SOW only;

### all other exhibits incorporated into this Agreement per Section 2(d[)](#_Exhibits._The_following) below (collectively, “**Exhibits**”); then

### any other Boeing generated documents, exhibits, appendices, attachments, terms, flysheets, codes or documents that the parties agree in writing are part of this Agreement; then, lastly

### any Supplier generated documents that the parties agree in writing are part of this Agreement.

Notwithstanding anything to the contrary herein, in the event of a conflict between the terms of documents with the same precedence, the provisions that are executed later will control; and if both were executed simultaneously, then the provisions that provide the greatest protection to Buyer will control.

## Appendices. The following appendices are incorporated into this Agreement as if fully set out herein:

|  |  |  |
| --- | --- | --- |
| Appendix [\_\_] |  | Global Contracting Addendum |
| Appendix [\_\_] |  | Change Control Procedures |
| Appendix [\_\_] |  | Industrial Participation/Offset Credit Assistance |
| Appendix [\_\_] |  | Form of Statement of Work |

## Exhibits. The following exhibits are incorporated into this Agreement as if fully set out herein:

|  |  |
| --- | --- |
| Exhibit [\_\_] | Supplier Rates |
| Exhibit [\_\_] | Service Level Agreement |
| Exhibit [\_\_] | Scope of Services |
| Exhibit [\_\_] | Transition Plan |
| Exhibit [\_\_] | Non-Developed Software |
| Exhibit [\_\_] | Approved Subcontractors |

## Buyer Affiliates. If an Affiliate of The Boeing Company desires to utilize this Agreement, Supplier agrees to enter into SOWs with Boeing’s Affiliates (each, an “**Affiliate SOW**”). Each Affiliate SOW shall be subject to and governed by this Agreement, except that the term “**Buyer**” shall mean the applicable Affiliate of The Boeing Company. Without limiting the foregoing, The Boeing Company may provide the Services to any of its Affiliates or purchase Services on behalf of any of its Affiliates.

## Non-Exclusivity. Nothing in this Agreement requires Buyer to purchase Services from Supplier. Buyer may obtain goods and services similar to the Services from third parties in Buyer’s sole discretion or perform such services internally. Buyer will not be obligated to obtain any of the Services from Supplier with respect to any additional entity or business unit, including pursuant to an acquisition. However, Buyer will have the option to direct Supplier to provide Services under and in accordance with the terms of any SOW entered into under this Agreement to service any such additional Buyer entity or business unit and, if such additional entity or business has an agreement with Supplier for similar Services at the time of such acquisition, Supplier will not impose any termination fees on Buyer or such entity in connection with the termination of such agreement.

# TERM

This Agreement is effective on the Effective Date and through the Initial Term. Buyer has the option, but not the obligation, to renew the period of performance of this Agreement for successive Renewal Terms. Buyer may renew this Agreement by **180** days’ notice to the Supplier prior to the expiration of the Initial Term or then-current Renewal Term, as applicable.

# SERVICES

## Services Provided by Supplier. The general scope of the Services that Supplier may provide to Buyer hereunder is set forth in **Exhibit [\_\_] – Scope of Services**. Supplier will provide to Buyer the particular Services described in each Statement of Work, which will be substantially in the form of **Appendix [\_\_] – Form of Statement of Work**, agreed between and executed by the parties from time to time in accordance with the terms of this Agreement.

Supplier must provide and maintain, at Supplier’s expense, all personnel, facilities, equipment and other resources necessary in order to timely and completely perform the Services in accordance with this Agreement.

## Buyer Obligations. Buyer will use commercially reasonable efforts at its expense to provide resources to Supplier as specifically set forth in this Agreement or the applicable Statement of Work. Supplier will not be responsible for delays in performance of the Services to the extent directly resulting from Buyer’s failure to provide those resources in accordance with this Agreement or the applicable Statement of Work.

## Implementation Services

### *Implementation Plan*. The parties will agree on the specific activities under an Implementation Plan, to be undertaken as provided in this Section 4(c[)](#_Appendices._The_following) (Implementation of Services). The Implementation Plan must identify, among other things and to the extent applicable; (A) the implementation tasks Supplier must perform and the significant components and subcomponents of each such task; (B) the completion date for each implementation task; (C) any Deliverables to be completed by Supplier during the Implementation Period; (D) the Implementation Milestone Schedule; (E) the Acceptance Criteria and, if appropriate, testing, to be applied by Boeing in any applicable test period; (F) the contingency or risk mitigation strategies to be employed by Supplier in the event of disruption or delay; and (G) any implementation responsibilities to be performed or implementation resources to be provided by Boeing. Except as expressly set forth in the Implementation Plan, Boeing has no implementation responsibilities. Prior to undertaking any Implementation Service, Supplier must discuss with Boeing all known Boeing-specific material risks and must not proceed with the applicable activity until Boeing is reasonably satisfied with Supplier’s plans with regard to those risks and confirms the same in writing. Supplier must identify and resolve any foreseeable problems that may impede or delay the timely completion of each task in the Implementation Plan, and will ensure the timely completion of any applicable Implementation Milestone Schedule subject to clause (3) below. Supplier further represents and warrants that it has developed the Implementation Plan in view of its expertise in related Services as well as foreseeable risks, and that the Implementation Plan and any applicable Implementation Milestone Schedule are, to the best of Supplier’s knowledge, reasonable and achievable. If the parties are unable to agree on a final Implementation Plan within 30 days of the Effective Date, Boeing will have the right to terminate all or part of this Agreement or all or part of any Statement of Work without penalty or liability.

### *Implementation Services*. During the Implementation Period, Supplier must provide the Services and Deliverables described in the Implementation Plan (the “**Implementation Services**”). Unless otherwise agreed, Boeing will not incur any charges, fees or expenses payable to Supplier or any Subcontractor in connection with the Implementation Services, other than those charges, fees, and expenses specified in **Exhibit [\_\_]** (Supplier Rates), and those incurred by Boeing in connection with its performance of tasks expressly designated in the Implementation Plan as Boeing’s responsibility. Supplier must perform Implementation Services at all times in conformance with best practices in the applicable industry.

### *Failure to Meet Implementation Plan*. The Implementation Plan will set forth the Implementation Milestone Schedule. The Implementation Milestone Schedule will include, without limitation, specific milestones for the start date for each Service. The parties agree and acknowledge that Boeing must make critical decisions regarding its business operations in reliance upon the Implementation Milestone Schedule, which decisions may include the timing and scope of reductions to the workforce that has previously performed the Services. Accordingly, any delays in the achievement of the Implementation Milestone Schedule or any failure by Supplier to perform the Implementation Services in accordance with the standards provided herein is likely to cause irreversible harm to Boeing’s business operations. In view of the foregoing, the parties agree and acknowledge that (A) Supplier must avoid, work around or otherwise redress any potential delays or disruptions in the performance of the Implementation Services or achievements of the Implementation Milestone Schedule, whatever the cause of such potential delays or disruptions (other than delays or disruptions caused by Buyer’s failure to comply with the requirements of this Agreement or the applicable SOW); and (B) if Supplier fails to meet any portion of the Implementation Milestone Schedule or if Supplier fails to perform the Implementation Services in conformance with best practices in the industry (each, an “**Implementation Performance Failure**”), then, to the extent that the Implementation Performance Failure results from acts or omissions of Supplier (including a failure by Supplier to mitigate delays or disruptions under the preceding clause), then, Supplier must reimburse Boeing for any damages incurred by Boeing due to that failure. Such damages may include expenses for retaining or hiring Boeing employees or third parties to perform the Services transitioned under the Implementation Plan, as well as any travel or other expenses incurred by Boeing beyond the scope provided in the Implementation Plan.

## Designated Representative. Before beginning any of the Services, Supplier must notify Buyer in writing of the name of the person designated by Supplier to represent and act for Supplier with respect to the performance of the Services. This designated representative will be available throughout the period when any Services are performed as reasonably necessary to complete the Services or as otherwise agreed to by the parties in an applicable SOW. Notwithstanding the provisions of Section 28, during any such period of performance of Services, Supplier’s designated representative will be authorized to receive on Supplier’s behalf all notices and other communications from Buyer to Supplier.

## Schedule. Supplier must strictly adhere to the schedules specified in this Agreement and any applicable SOW. If there is any anticipated or actual delay to any Milestones set forth in an applicable SOW, Supplier must: (1) promptly notify Buyer in writing of the reasons for the delay and the actions being taken to overcome or minimize the failure to meet the applicable Milestones; (2) provide Buyer with a written recovery schedule; (3) undertake its best efforts to avoid, work around, or otherwise redress any potential delays or disruptions in the performance of the Services; and (4) to the extent such delay does not result from the failure of Buyer to comply with the requirements of this Agreement or the applicable SOW, then, the Buyer will have the right to setoff from any then-due amounts to Supplier, the actual cost to Buyer of the delay and Supplier’s failure to meet applicable Milestones, whatever the cause of such delay or failure (other than delays or failures caused by Buyer’s acts or omissions). Supplier must not deliver Services prior to the scheduled delivery dates unless authorized in writing by Buyer’s Authorized Procurement Representative or specifically allowed under the applicable SOW. Unless otherwise specifically agreed in the applicable SOW, notwithstanding the 30-day cure period specified in Section 22(b), if Supplier fails to meet any Milestone by more than **[****7]** days (other than due to any act or omission of Buyer), Buyer may terminate this Agreement or any SOW for cause in accordance with Section 22(b).

## Service Level Agreements. Supplier will meet or exceed the Service Levels set forth in the applicable SOW and SLA, if applicable; any material, prolonged, or recurring failure to meet Service Levels (as determined by Buyer) will constitute a material breach of this Agreement. The SOW will specify, if applicable to the Services: (1) the Service Levels for the Services, including the applicable performance metrics; (2) the service credits that Buyer will be entitled to in the event Supplier fails to meet the prescribed Service Levels or any other remedies for Supplier’s failure to meet the Service Levels; (3) any reporting tools to be used to measure the Service Levels; (4) the parties’ obligations to provide Performance Reports pertaining to the Service Levels; and (5) any other terms or conditions related to the Service Levels.

## Status Meetings. During the term of a SOW, and at each party’s own expense, the parties will meet as frequently as necessary to ensure adherence to the SOW schedule and Milestones at a time, place and manner as mutually agreed (i.e., in person or teleconference) to discuss the current status of the Services, modifications (if any) to any applicable SOW to correct assumptions or schedules, and such other matters as the parties deem appropriate.

## Governance. The parties will comply with the governance, relationship management and other provisions relating to the management of this Agreement as set forth herein, or as otherwise set forth in any SOW.

## Service Audits. Upon reasonable notice from Buyer, Supplier, and any Supplier Subcontractor will, not more than one time in any 12-month period (unless Buyer is aware of, or suspects, that Supplier is in material breach of this Agreement), at Buyer’s sole expense and during normal working hours, provide Buyer, its agents, or service providers with access to and any assistance that they may require with respect to the Supplier facilities where Services are performed (including any electronic information systems operated by or on behalf of Supplier) for the purpose of performing audits or inspections of the Services and the business of Supplier relating to the Services, including operational, security, financial, and other audits and compliance with the Service Level Agreement and any other performance metrics set forth in this Agreement or a SOW, in each case to the extent necessary to verify Supplier’s compliance with this Agreement. If any audit by Buyer results in Supplier being notified that Supplier or any Supplier Subcontractors are not in compliance with any Applicable Law, audit requirement, or other requirement set forth in this Agreement, Supplier will, and will cause any Supplier Subcontractor, to promptly take actions to comply with the notified Applicable Law, audit requirement, or other requirement, at its sole cost and expense. The provisions of this Section 4(i) will survive termination of this Agreement for a period of 3 years.

## Supplier Annual Review. At its sole cost and expense, Supplier must conduct a regular annual review of the Services. This review must, among other things, review conformance to all applicable SLAs and general satisfaction among Buyer’s employees; confirm security, backup and disaster recovery procedures; verify Supplier’s monitoring functions that are required under this Agreement; and review Supplier’s overall compliance with the terms of this Agreement. Supplier must provide Buyer with a report summarizing the results of each such review (the “**Performance Reports**”). In addition to the Performance Reports to be provided by Supplier, Supplier must provide to Buyer such other reports as reasonably requested by Buyer with respect to the Services.

## Right to Monitor. Buyer will have the right, but not the obligation, to monitor any aspect of the Services or Supplier’s performance under this Agreement. Buyer may, at its expense, contract with third parties to monitor the performance of the Services, and to verify the Performance Reports described in Section 4(j).

# CHANGES

## Changes. The parties may change any aspect of this Agreement or Statement of Work by mutual written agreement, including changes related to (1) the deletion of Services, (2) the addition of Services, (3) the modification of Services, or (4) any other changes that alter the scope of this Agreement or any Statement of Work.

## Change Requests and Procedure. Either Supplier or Buyer may request a change in accordance with this Section 5. The party requesting the change shall prepare at its expense a notice setting forth in reasonable detail the nature of the change requested (a “**Change Request**”). As soon as practical after receipt by the other party of the Change Request, the parties shall meet as necessary to discuss the change and to ascertain the effect of such changes on the Services and the Supplier Rates payable hereunder.

## Change Order. If the parties decide to implement a Change Request, the Supplier will prepare, at its expense, a written document describing the Supplier’s recommended approach to implementing the change and setting forth the effect of the change on the Services and the Supplier Rates. The proposed changes documented in a Change Request will be valid for at least 60 days and will, upon written execution by both parties, be deemed a “**Change Order**” and amend the applicable Statement of Work and be incorporated into this Agreement. Only Buyer’s Authorized Procurement Representative has the authority to execute a Change Order on behalf of Buyer. Execution of a Change Order by both an authorized representative of Supplier and Buyer’s Authorized Procurement Representative will constitute a modification of the applicable Statement of Work and will be binding on both parties hereto.

## Changes to Fees. Without limiting the generality of the foregoing Section 5(c), if any subsequent change, revision, alteration, or amendment to a Statement of Work involves an adjustment to the fees due hereunder, then **Exhibit [\_\_]** (Supplier Rates), will be revised as necessary to reflect the revised fees. Buyer will not be responsible for payment of any amounts that are not reflected on **Exhibit [\_\_]** (Supplier Rates), as amended pursuant to a Change Order described in this Section 5.

## Changes in Volume. During the Term and the Transition Period, Buyer may from time to time increase or decrease volumes within the Services. Such increases or decreases in volume will not impact the rates as set forth in **Exhibit [\_\_]** (Supplier Rates) and will not require execution of a Change Order.

# SOFTWARE Development services

To the extent that Supplier provides, or is required to provide, Supplier Software to Buyer that is developed at Buyer’s direction as a Deliverable under this Agreement, this Section 6 will apply.

## Development of Software. Supplier Software developed at Buyer’s direction under this Agreement will be created, performed and treated as Work Made for Hire. Supplier must comply with this Agreement and any applicable SOW in developing any Supplier Software for Buyer. Without limiting Section 13, Buyer will retain all rights, title and interest in and to any such Supplier Software. All Supplier Software developed for or on behalf of Buyer will be subject to the Acceptance procedures set forth in Section 11.

## Third-Party Materials. Supplier will not incorporate any third-party software (including any open source software) or other third-party materials into any Deliverables, without first obtaining (i) Buyer’s prior written permission and upon Supplier’s receipt of Buyer’s consent, and (ii) the right for Buyer to use any such third-party materials on commercially reasonable terms and conditions.

## Code Audit. Supplier must, at its expense, conduct an audit of the Deliverables to identify any open source software that may be present in the Deliverables and shall provide the results of the audit to Buyer prior to providing the Deliverables to Buyer. At no additional cost or expense to Buyer, Supplier must, and must use reasonable efforts to cause its Supplier Personnel to, cooperate with Buyer in any investigation that may be required or desirable to determine the origin of any code used in any Deliverables that include Supplier Software.

## Software Application Vulnerability Assessments. Supplier will use commercially reasonable efforts to proactively identify security flaws in the Deliverables and provide Buyer with a summary report and security rating for each of the Deliverables. Supplier will address all identified issues in a timely manner and in accordance with Buyer guidelines. Buyer is willing to discuss any vulnerability details that Supplier shares and work together to address concerns.

### Implementation. Supplier will provide to Buyer and follow a set of secure coding guidelines recognized as commercially reasonable in the software industry and use a set of similarly recognized common security control programming interfaces. Guidelines will indicate how code should be formatted, structured, and commented. Common security control programming interfaces will define how security controls must be called and how security controls will function. All security-relevant code will be thoroughly commented. Specific guidance on avoiding common security vulnerabilities will be included. Also, all code will be reviewed by at least one other developer against the security requirements and coding guideline before it is considered ready for unit test.

### Security Analysis and Testing. Supplier will perform application security analysis, testing and verification according to the verification requirements of a standard agreed by the parties. Supplier will document verification findings according to the reporting requirements of the standard. Supplier will provide the verification findings to Buyer. The current information security coding verification recommendation is to use a static binary scanning service, using a Buyer approved vendor(s).

### Secure Code Assessment. Supplier will engage a mutually approved, independent, third-party assessment organization to assess the Supplier Software (“**Secure Code Assessment**”) as a condition to Acceptance, and Supplier will ensure that the third-party rates the Supplier Software using commonly accepted software-assessment practices, including the Common Vulnerability Scoring System (“**CVSS**”). Upon Buyer’s request, and at no additional charge to Buyer, Supplier will provide a single-use license to Buyer’s assessment organization of choice to complete code vulnerability assessment. Supplier will promptly provide a summary report of the third party’s findings to Buyer. Buyer may, in its sole discretion, reject the Supplier Software if the Secure Code Assessment reveals a Vulnerability with a CVSS score greater than 6.0. Subsequent to Acceptance and at Buyer’s request, Supplier will, at its expense, cause a Secure Code Assessment to occur at least once every 2 years, and Supplier will promptly provide a summary report of the third-party assessing organization’s subsequent findings to Buyer.

# NON-DEVELOPED SOFTWARE

Where Supplier provides or incorporates Non-Developed Software, or if it is necessary for Buyer to access any such Non-Developed Software to utilize any Service or Deliverable, all such Non-Developed Software will be governed by this Section 7.

List of Non-Developed Software. Supplier must list all Non-Developed Software on **Exhibit [\_\_] (Non-Developed Software**).

## License Grant to Non-Developed Software. Supplier hereby grants to Buyer a perpetual, royalty-free, irrevocable, worldwide, non-transferable (except as set forth in Section 36(b)), non-exclusive license to:

### Use the Non-Developed Software on any computing equipment, including the right to share the Non-Developed Software by multiple central processing units or by multiple users, provided Buyer tenders any applicable license fee to Supplier. To the extent applicable, Buyer will have a process in place to monitor the number of persons concurrently using the Non-Developed Software designed to ensure that Buyer’s use does not exceed the total number of licenses purchased from Supplier;

### Transfer the Non-Developed Software between computing equipment;

### Make additional copies of the Non-Developed Software as reasonably necessary for backup or archival purposes, or for benchmark or other temporary testing purposes, or as may be required to satisfy Buyer’s internal requirements;

### Combine the Non-Developed Software with one or more other software programs;

### Copy, distribute, use, perform, modify or display the Documentation internally; and,

### Sublicense (through multiple tiers) the foregoing rights to its Affiliates and third-party providers.

## Ownership of Non-Developed Software. All Non-Developed Software and related Documentation is, or will be, and will remain, the exclusive property of Supplier or its third-party licensors, as applicable, and Buyer will have no rights or interests to the Non-Developed Software except as described in this Agreement.

## Changes and Upgrades to Software. Supplier will not make any changes or modifications to the Non-Developed Software that would adversely alter the functionality or performance of the Non-Developed Software used in providing the Services or incorporated into a Deliverable, or affect the day-to-day operations of Buyer’s business, without providing Buyer with prior notice and taking such measures as are necessary to maintain the quality of the Services and Deliverables and avoid interference with Buyer’s business operations.

## Support and Maintenance. Supplier must provide Buyer with support and maintenance services for the Non-Developed Software as set forth in the applicable SOW. The fees charged by Supplier for any support or maintenance must not exceed Supplier’s standard price for the provision of support and maintenance services. This maintenance will include, at a minimum, the delivery to Buyer of all corrections, updates, new releases, or new versions of the Non-Developed Software, together with all accompanying Documentation, promptly after final testing, but in no event later than the date made available to Supplier’s general customer base at no additional charge. Buyer may, but is not required to, use any, some, or all of the corrections, updates, new releases, or new versions of the Non‑Developed Software delivered under this clause.

# SUPPLIER SOFTWARE WARRANTIES

## Supplier Software Warranties. In addition to the Services Warranties, Supplier represents, warrants and covenants to Buyer that:

### to the best of its knowledge after thorough investigation and testing consistent with industry best practices the Supplier Software and its use by Buyer does not and will not in any way constitute an infringement or other violation of any copyright, trade secret, trademark, patent or other Intellectual Property Right of any third party;

### the Supplier Software does and will perform in accordance with the applicable SOW and all Documentation, and will not contain any undocumented features or capabilities that may result in Vulnerability;

### the Supplier Software is and will be free of any Program Errors or Vulnerabilities;

### Except for the functions and features expressly disclosed in the Documentation, the Supplier Software contains no hidden files, Malicious Code, or undocumented capability that may result in Vulnerability. Provided and to the extent the Software has any of the foregoing attributes, Supplier further represents and warrants that this Agreement and the Documentation together provide Buyer with the algorithms, specifications, and other code or information required to exercise any license granted under this Agreement without restriction; and

### Except as set forth in **Exhibit [\_\_]** (Non-Developed Software) or as otherwise specified in the applicable SOW, none of the Supplier Software is, in whole or in part, subject to any Restricted License. If any portion of the Supplier Software is subject to any Restricted License, then the terms governing Buyer’s use of that portion of the Software are specified in **Exhibit [\_\_]** (Non-Developed Software).

## Warranty Exclusions. The warranty coverage under this Section 8 does not apply to any defect caused by any negligent act or omission of Buyer, or by use of the Supplier Software in an operating environment not contemplated by the Documentation or this Agreement.

## Refund of License Fees. If the Supplier Software ordered under any SOW does not conform to the warranties set forth in the paragraph above entitled “Software Warranties”, Buyer will notify Supplier in writing and assist Supplier in replicating the nonconformity and Supplier will repair or replace the Supplier Software so that it is in compliance with such warranties. If Supplier is unable to resolve the nonconformity within 30 days of the notification, Supplier will refund all payments (including license, maintenance and support) made by Buyer for the Supplier Software within 30 days of receipt of Buyer’s certification signed by Buyer’s Authorized Procurement Representative that all copies of the Supplier Software have been uninstalled and destroyed. The foregoing remedy is in addition to any other remedies Buyer has under this Agreement or at law.

# PRICES AND PAYMENT

## Price. All Services (including any Transition Services) will be performed at the Supplier Rates. Supplier will ensure that the Supplier Rates are uniformly incorporated into all SOWs and that the Supplier Rates are consistently applied. The Supplier Rates will apply throughout the Term hereof, including any Renewal Term, and for the period that any Transition Services are being performed.

## Invoices. All invoices will be in the form specified by Buyer, will include all content acceptable to, and as may be reasonably specified by, Buyer and will include, as appropriate, reference to the applicable SOW, a detailed description of the Services, and any applicable fees calculated using the Supplier Rates. All invoice amounts will be billed and payable in U.S. currency. Unless otherwise agreed to by Buyer, Supplier will use Buyer’s Shared Services Payables Network for electronic invoicing and payables in accordance with the terms and conditions provided by Buyer to Supplier. Supplier waives all rights to invoice for any Services that were performed more than 120 days prior to the date of the invoice.

## Travel Expenses.

### Unless travel expense reimbursement is authorized in an applicable SOW, Supplier will be responsible for all expenses of its Supplier Personnel who perform the Services, including travel to and from the place where the Services are to be performed, living expenses, and local transportation. All invoices will be submitted in such form and with such certification and evidence in support thereof as Buyer may reasonably require. Supplier may not submit invoices for travel expenses except for expenses that have been authorized in advance by Buyer.

### If Supplier breaches any of the Services Warranties or Software Warranties, Supplier must promptly reimburse Buyer for any travel expenses that Buyer incurs in connection with monitoring and assisting with Supplier’s remediation of the applicable defects in the Services or Supplier Software.

## Payment. Payment of all invoices will be made as set forth in an applicable SOW, or if no payment terms are specified, Buyer will pay Supplier within 120 days of Buyer’s receipt of a correct invoice. Payments shall be processed on the next payment system run following the computed payment due date. Payment shall be deemed to have been made on the date 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. Unless freight or other charges are itemized, any applicable discount may be taken on the full amount of the invoice. The payment due date, including discount periods, will be computed from Buyer’s receipt of a correct invoice to the date Buyer’s payment is mailed or otherwise tendered. Supplier will promptly repay to Buyer any amounts paid in excess of the amounts due to Supplier.

## Taxes. Unless this Agreement specifies otherwise, the Supplier Rates include, and Supplier is liable for and must pay, all taxes, impositions, charges and exactions imposed on this Agreement or any SOW except for applicable sales, value-added, use or similar taxes imposed by any domestic or foreign taxing authority and that are separately stated on Supplier’s invoice. Prices must not include any taxes, impositions, charges or exactions for which Buyer has furnished a valid exemption certificate or other evidence of exemption.

## Liens. Supplier represents and warrants that, on the date Buyer pays for all the Services delivered under this Agreement or any SOW hereunder, all liens, rights of lien, and claims against Buyer arising from or related to Supplier’s provision of the Services will have been released or satisfied. On request, Supplier will provide to Buyer certification, together with receipts, releases, or other satisfactory evidence in support thereof, stating that no such liens, right of lien, or claims exist on such date of payment.

## Disputed Invoice Charges. If Buyer, in good faith, disputes Supplier’s computation of amounts due, Buyer may withhold payment of the disputed amount, but Buyer must pay all charges not in dispute by the invoice due date. An amount is not in dispute until Buyer has provided Supplier with written documentation explaining the disputed amount and describing the factual and contractual basis therefore. Buyer and Supplier will work in good faith to resolve any dispute following receipt of Buyer’s notice of dispute, including escalation to management as necessary. Upon resolution, disputed amounts are due and payable during Buyer’s next billing cycle. Amounts disputed in good faith by Buyer will not be subject to any interest or late fees. Buyer and Supplier may submit any claims for overcharges and undercharges, as the case may be, within 2 years of the date of the original invoice setting forth the overcharge or undercharge. Any claims submitted thereafter are deemed waived; provided, that there will be no such waiver with respect to claims by Buyer for refund of duplicate payments.

## Most Competitive Pricing. The parties recognize that, during the Term, Supplier may reduce its prices for competitive reasons, in order to reflect changes in technology, product line pricing, and market conditions. Supplier will offer Buyer its Most Competitive Pricing for the Services purchased by Buyer hereunder. Accordingly, Supplier will conduct an internal evaluation 30 days prior to the end of each calendar year during the Term sufficient to determine and to certify to Buyer that the Supplier Rates reflect Supplier’s Most Competitive Pricing. At Buyer’s request, Supplier will promptly provide a certificate to Buyer in the form of a letter to Buyer from one of Supplier’s senior executives either (1) confirming that the Supplier Rates are within the 2%-range required to constitute Most Competitive Pricing, or (2) submitting to Buyer, for its approval, revised Supplier Rates reflecting appropriate price reductions to enable Supplier to offer Most Competitive Pricing to Buyer. Any revisions to the Supplier Rates proposed by Supplier hereunder will be finalized by the parties in an amendment thereto. The new Most Competitive Pricing will be effective retroactively, to the time that Supplier began charging lower prices to another corporate customer purchasing similar services in similar volumes, and Supplier will promptly issue Buyer a refund for all fees paid by Buyer in excess of the Most Competitive Pricing.

## Regulatory Events. If a Regulatory Event has a material adverse effect on: (1) Supplier’s ability to perform its obligations under this Agreement; or (2) Buyer’s ability to use, or the cost to Buyer to use, the Services or Deliverables, then the parties will use their good faith and diligent efforts to arrive at a mutually agreeable Change Order that will modify the Services or Deliverables in a manner that avoids or mitigates the material adverse effect. If the Regulatory Event modifies, implements or rescinds an Applicable Law that applies to Supplier or if the Regulatory Event modifies, implements or rescinds an Applicable Law that is applicable to a substantial portion of the applicable industry of Supplier or any of Supplier’s other customers, then Supplier will bear all costs and expenses associated with such change even if the Applicable Law also applies to Buyer. If the Regulatory Event modifies, implements or rescinds an Applicable Law that applies solely to Buyer (and not to Supplier, a substantial portion of the applicable industry, or any of Supplier’s other customers), then Buyer will bear all costs and expenses associated with the change. If the parties are not able to agree on a Change Order relating to a Regulatory Event, then Buyer may terminate all or part of this Agreement or all or part of an SOW immediately upon notice without further obligation to Supplier and without regard to any provisions of this Agreement relating to notice periods; provided, however, that the foregoing will not relieve Supplier of its responsibility to perform any Transition Services pursuant to Section 23.

## Own Costs. Except as expressly provided in this Agreement, each party will be responsible for all costs, expenses, or losses incurred by it in connection with the negotiation, execution and performance of this Agreement.

# BENCHMARKING

## Factors. At Buyer’s election and with Supplier’s cooperation, the parties agree that if Buyer determines, in its sole discretion, that an appropriate set of measurements exist, the parties will undertake a benchmarking program that will determine the competitiveness of the Supplier Rates during the course of this Agreement. The benchmarking program will compare the Benchmarking Factors with those of a comparable peer group (as defined using the benchmarker’s methodologies with respect to the number of companies, the size of such companies and scope of services provided by such companies) and ensure that Supplier’s terms relating to the Benchmarking Factors are competitive (i.e., within the top-25th (or, as applicable, the bottom-25th (e.g., for costs)) percentile of the peer group). Buyer may elect to benchmark not more than once during any period of 12 consecutive months during the Term. The benchmark will cover **[**at Buyer’s election, a particular category of Services or**]** all Services in the aggregate provided by Supplier hereunder over a reasonable benchmark data period selected by Buyer given the length of time that the applicable Services have been utilized by Buyer.

## SOW and Fees. Buyer and Supplier will be equally responsible for the payment of the benchmarking fees, subject to Section 10(e). Buyer will be responsible for contracting with the benchmarker, which the parties agree will be any benchmarking firm that Buyer selects that is not a competitor of Supplier or its Subcontractors with respect to the provision of services similar to the Services.’

## Cooperation. Buyer and Supplier will work cooperatively with the benchmarker, making such personnel and information available as the benchmarker reasonably requests including, on a confidential basis, such party’s charges, rates and any other information that the benchmarker deems appropriate and applicable. Each party will have the opportunity to advise the benchmarker of any information or factors that it deems relevant to the conduct of the benchmarking, so long as such information is either disclosed to the other party or, in the case of Proprietary Information, marked by the Discloser as being released only to the benchmarker, and described in sufficient detail to describe the nature of the information.

## Target. The benchmarker will rank the Supplier’s terms relating to the Benchmarking Factors against the services of such other service providers as the benchmarker deems appropriate (whether external service providers or internal service providers within Buyer or Supplier) in order to compare pricing for like services. The Supplier Rates will be deemed to be “not competitive” if the pricing set forth as labor categories and pricing (with respect to the benchmarked services) is not within the Benchmark Target. Multiple processes for identification of peer groups and rankings may be utilized, as deemed appropriate by the benchmarker to ensure comparability, if more than one category of Services is benchmarked.

## Reports. The benchmarker will provide reports on the benchmarking to both Buyer and Supplier. If, as a result of any such benchmarking, the benchmarker determines that Supplier’s terms relating to the Benchmarking Factors are competitive, then no changes to this Agreement will occur. If the benchmarker determines that Supplier’s terms relating to the Benchmarking Factors are not competitive, then Supplier will propose to Buyer in writing: (1) New Pricing; (2) a retroactive credit for fees paid by Buyer in excess of such New Pricing since the beginning of the benchmarked period; and (3) a credit equal to all fees and charges for such benchmarking paid by Buyer under Section 10(b). If Supplier fails to timely submit its proposed New Pricing and such credits for approval in a manner that satisfies the Benchmark Target and otherwise complies with this clause, then Buyer may terminate this Agreement for cause pursuant to Section 22(b).

## Independent Provisions. The parties agree that Buyer will receive the lowest prices identified by application of the various price reduction methodologies specified in this Agreement. Accordingly, price reductions that might result from benchmarking under this Section 10 or Most Competitive Pricing under Section 9(h) will be calculated separately and the lowest-cost pricing will apply. If application of the price reduction methodologies renders lower-cost pricing than what is contained in labor categories and pricing, then labor categories and pricing will be revised as necessary to reflect the lower-cost pricing.

# ACCEPTANCE OF SERVICES

## Acceptance. The parties will adhere to the acceptance process as described herein and in the applicable SOW for the acceptance of all Services and Deliverables under this Agreement.

### Acceptance Testing. Buyer has the right to inspect, review, test and otherwise evaluate the Services or Deliverables after delivery for compliance with the applicable Acceptance Criteria. Such inspection and testing will be performed within the Acceptance Period in order to identify and resolve all material technical and operational impediments with the Services or Deliverables. Upon completion of such evaluation, Buyer will issue to Supplier a notice of Acceptance or rejection of the Services or Deliverables. Buyer’s failure to Accept or reject the Services or Deliverables within the Acceptance Period will constitute Buyer’s rejection of the applicable Services or Deliverables.

### Rejection and Cure. If Buyer determines that any portion of the Services or Deliverables fails to meet the Acceptance Criteria, Buyer will notify Supplier in writing with a description of deficiencies. Without limiting Buyer’s other remedies, in such event, Supplier will, at no additional charge to Buyer, make any necessary changes to the Services or Deliverables to correct any deficiencies. Supplier will resubmit the corrected Services or Deliverables within the timeframe requested by Buyer or, if no time frame is requested, within 15 days after Buyer notifies Supplier of the deficiencies of the Services or Deliverables. The Acceptance process in this Section 11(a) will apply to any resubmitted Services and there will be in each case a new Acceptance Period.

### Failure to Cure. If Supplier fails to make such changes to correct non‑conforming Services or Deliverables or, notwithstanding such changes, the Services or Deliverables still contain deficiencies, then Buyer may, in its sole discretion and in addition to any other remedies it may have: (A) provide, in writing, additional time for Supplier to make changes; or, (B) correct the nonconforming Services or Deliverables itself or through a third party and charge Supplier for Buyer’s reasonable correction costs; or, (C) terminate all or part of this Agreement or an SOW pursuant to Section 22(b) upon notice to Supplier. Upon Buyer’s election to terminate, Buyer will have no further obligation to make payments to Supplier and Supplier will refund to Buyer all of the fees paid to Supplier for the non-conforming Services or Deliverables.

## Minor Deficiency Correction. Notwithstanding Acceptance of any Services, Supplier, at no additional charge to Buyer, will correct or develop a workaround for any minor deficiencies identified by Buyer. Supplier will correct or develop a workaround for each minor deficiency within 30 days after Buyer provides notice to Supplier of the minor deficiency.

## Acts Not Constituting Acceptance. Trial use or testing of the Services, incremental or final payment, or Buyer acknowledgment of receipt does not constitute Acceptance or prejudice Buyer’s right to reject or revoke Acceptance of all or any portion of the Services.

# LABOR AND PERSONNEL

## Qualified Personnel. Supplier will perform all of the Services using qualified Supplier Personnel satisfactory to Buyer. Supplier will ensure that all Supplier Personnel assigned to perform the Services will possess the necessary knowledge, skills, experience and qualifications to provide and perform all Services in a diligent, workmanlike and professional manner in accordance with the terms of this Agreement, all Applicable Laws and best practices in the industry. No Supplier Personnel unsatisfactory to Buyer will be assigned to perform any of the Services. From time to time, Buyer may request and Supplier will provide resumes, references, or other information reflecting the qualifications of any Supplier Personnel, either before or after he or she is assigned to perform Services. Supplier and its Supplier Personnel will be properly licensed, certified, or registered in accordance with Applicable Law.

## Verification of Supplier Personnel. Supplier must verify that, as of the Effective Date or for new hires, prior to being assigned to perform the applicable Services, all of the Supplier Personnel performing the applicable Services or supporting Supplier’s duties and obligations under this Agreement, regardless of their location: (1) have not been convicted of any crime involving violence, fraud, theft, dishonesty or breach of trust under any Applicable Law; and (2) have not been on any list published and maintained by the Government of the United States of America of persons or entities with whom any United States person or entity is prohibited from conducting business. If either party becomes aware that any such Supplier Personnel has been convicted of a crime involving violence, fraud, theft, dishonesty or breach of trust, or is included on any list published and maintained by the Government of the United States of America of persons or entities with whom any United States person or entity is prohibited from conducting business, then Supplier must promptly remove such Supplier Personnel from providing such Services to Boeing and prohibit such Supplier Personnel from entering any Buyer facilities at which, or accessing any Buyer Systems through which, the Services are provided.

## Background Check. Supplier will comply with any background check requirements prior to any Supplier Personnel, including its Affiliates or respective subcontractors, have access to Boeing facilities, Boeing confidential and Proprietary Information, Boeing Personal Information, or Boeing Systems. Boeing will determine if the access and type of work Supplier will be providing requires elevated screening for Supplier Personnel. [USE IF NO ELEVATED SCREENING:] Supplier shall submit the Non-Employee Badge Request (NEBR) and Global Badge Request (GBR) forms. The NEBR and GBR process may include Boeing initiating a background screening. [USE IF ELEVATED SCREENING:] Supplier will ensure that all Supplier Personnel, agents and representatives that will have access to Boeing facilities, Boeing’s confidential or Proprietary Information, Boeing Personal Information, or Boeing systems have met the criterial provided in **EXHIBIT [ ]** and **EXHIBIT [ ]** and are otherwise in compliance with the requirements for access to Boeing facilities.

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## Replacements. Supplier will use all commercially reasonable efforts to ensure continuity of Supplier Personnel performing the Services and avoid excessive turnover of Supplier Personnel. If any Supplier Personnel leaves Buyer’s account, Supplier will ensure proper and effective knowledge transfer to that Supplier Personnel’s replacement. Supplier may not charge Buyer for training any replacement Supplier Personnel. If any Supplier Personnel is or becomes unsatisfactory to Buyer, Supplier will provide a qualified replacement satisfactory to Buyer in a timely fashion. If, despite its commercially reasonable efforts to do so, Supplier is unable to provide a satisfactory replacement, Buyer may terminate all or part of the SOW under which the Services involved were ordered upon notice to Supplier. Upon Buyer’s election to terminate, Buyer will have no further obligation to make payments to Supplier for such terminated Services.

## Subcontractors. Performance of the Services is a personal obligation of Supplier and may not be subcontracted or otherwise delegated without Buyer’s prior written consent. Specification of a Subcontractor and that portion of the Services to be performed by it in an SOW will constitute this consent. Nothing herein will release, waive or modify any obligations Supplier has under this Agreement. Supplier will be fully responsible for all acts and omissions of each Subcontractor and each Subcontractor’s employees and agents, whether or not Supplier itself was negligent or at fault, and any act or omission of any Subcontractor will be deemed an act or omission of Supplier hereunder. Supplier will ensure that each Subcontractor and each Subcontractor’s employees and agents comply fully with all provisions of this Agreement. Supplier will require each Subcontractor to enter into a confidentiality agreement to protect the Proprietary Information of Buyer under terms no less restrictive than those contained in this Agreement. Supplier will be responsible for all payments to its Subcontractors. Supplier must list all Subcontractors approved by Buyer to perform any Services on **Exhibit [ ]** (Approved Subcontractors).

## Key Supplier Personnel. Any Key Supplier Personnel roles must be initially filled by the individuals set forth in the applicable SOW and Supplier must cause each of the Key Supplier Personnel to fill his or her respective role(s) on the Buyer’s team for, at a minimum, the later of 12 months from the Effective Date or 12 months from the date the applicable Key Supplier Personnel was first placed in his or her position, except as a result of the Key Personnel’s voluntary resignation from employment with Supplier, involuntary termination from Supplier for cause, illness, disability, or death. Before assigning an individual to act as a Key Supplier Personnel, whether as an initial or subsequent assignment, Supplier must notify Buyer of the proposed assignment, introduce the individual to appropriate Buyer representatives, permit Buyer representatives to interview the individual, and provide Buyer with a resume and any other information about the individual reasonably requested by Buyer. If Buyer in good faith objects to the proposed assignment, the parties will attempt to resolve Buyer’s concerns on a mutually agreeable basis.

## Notice to Buyer of Labor Disputes.

### Whenever an actual or potential labor dispute is delaying or threatening to delay the performance of this Agreement, Supplier will immediately give notice thereof to Buyer. This notice must include all relevant information with respect to such disputes.

### Supplier agrees to insert the substance of this Section 12(g) in any subcontract entered into pursuant to or in connection with this Agreement as to which a labor dispute may delay the timely performance of this Agreement. Each subcontract will provide that if its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the Subcontractor will immediately notify its next higher tier Subcontractor or Supplier, as the case may be, of all relevant information with respect to such dispute.

## Compliance With Rules and Regulations. The safety and health of Supplier Personnel brought on Buyer’s premises will be the sole responsibility of Supplier. Supplier will report all accidents, injury-inducing occurrences or property damage arising from the performance of Services. Buyer will have the right to receive, at its request, copies of any reports filed with Supplier’s insurer or others. At any time when Supplier Personnel are on Buyer’s premises, Supplier will, and will ensure that Supplier Personnel will, comply with:

### Buyer’s rules, regulations, rules of conduct and other policies and procedures, including Buyer’s security and safety procedures, as provided by Buyer to Supplier (including Buyer’s then-current ‘Service Provider Manual’) or as otherwise posted on the premises of Buyer in accordance with Buyer’s standard operating procedure; and

### All Applicable Laws pertaining to Buyer’s premises.

## Non-U.S. Operations. Supplier will not perform Services outside of the U.S., whether performed by itself, a Supplier Affiliate or its Subcontractors, unless expressly agreed to by Buyer and set forth in an applicable SOW. If the performance of Services outside of the U.S. is permitted under an applicable SOW, (1) Supplier will remain liable and responsible for the performance of all such Services and (2) the terms and conditions of **Appendix [\_\_]** – (Global Contracting Addendum) shall apply to the performance of such non-U.S. Services. Any transfer by Supplier of Services to non-U.S.-based operations or non-U.S.-based Supplier Affiliates or Subcontractors other than as expressly permitted in an SOW, or any failure of Supplier to fully and accurately disclose the extent and nature of such transferred Services under an SOW, will constitute a material breach of this Agreement and Buyer may immediately avail itself of any and all rights and remedies to which it may be entitled under this Agreement, by law, or equity. Subject to the other provisions of this Agreement, promptly after approval by Buyer of a non-U.S. Subcontractor or Supplier Affiliate for work under this Agreement, Supplier will notify Buyer of the name, address, point of contact (including telephone number) of the applicable Subcontractor or Supplier Affiliate, and, for Subcontractors, the dollar value of the subcontract.

## Services Week. Services performed under this Agreement including proposals, pricing, and invoicing will be based on a 40-hour work week for U.S.-based Services and a 45-hour work week for non-U.S.-based Services, or as otherwise defined in an applicable SOW.

# INTELLECTUAL PROPERTY RIGHTS

## Ownership. Supplier will promptly furnish and disclose to Buyer all Deliverables, which will be treated as Work Made for Hire. All right, title and interest in the Deliverables and any other discoveries, inventions (whether or not protectable under patent laws), developments, improvements, works of authorship, software, information or data, know-how, ideas, mask works, or other technology, intellectual property or results, in preliminary or final form, authored, conceived, reduced to practice, developed, or invented by or on behalf of Supplier during its performance of any Services, in each case other than Supplier’s Background IP, vests in Buyer, and Supplier hereby assigns to Buyer all right, title and interest in and to the Deliverables.

## Background IP. Subject to the Buyer’s license rights granted in this Section 13(b), as between the parties, Supplier retains exclusive rights, title and interest to all Supplier’s Background IP. ’Supplier hereby grants Buyer an unrestricted, royalty-free, perpetual, irrevocable license to make, have made, sell, offer for sale, use, market, import, distribute, reproduce, copy, modify, prepare derivative works of, perform, display, disclose, sublicense and otherwise exploit Supplier’s Background IP as necessary to exploit Buyer’s rights in the Services or Deliverables that incorporates that Background IP or to otherwise perform under this Agreement***.***

## Moral Rights Waiver. Supplier hereby irrevocably waives (and to the extent necessary, has caused the Supplier Personnel to waive) all rights under all laws (of the United States and all other countries) now existing or hereafter permitted, with respect to any and all purposes for which the Deliverables may be used, including: (1) all rights under the United States Copyright Act, or any other country’s copyright law, including any rights provided in 17 U.S.C. §§ 106 and 106A; and (2) any rights of attribution and integrity or any other “moral rights of authors” existing under statutory, common or any other law.

## Further Assurances. At no additional charge, Supplier will execute all papers (including assignments) and do all things required in order to evidence, perfect, obtain, protect, defend, convey and enforce the rights of Buyer in the Deliverables. Supplier hereby irrevocably designates and appoints Buyer and its authorized officers and agents as Supplier’s agent and attorney in fact, to execute documents and take any lawfully permitted action to evidence, perfect, obtain, protect, defend, convey and enforce the rights of Buyer in the Deliverables that Supplier is unable or unwilling to perform.

## Ownership of Boeing Data. Buyer may, but is not required to, provide Boeing Data to Supplier in connection with this Agreement. As between Buyer and Supplier, Buyer is and will remain the sole and exclusive owner of all right, title, and interest in and to all Boeing Data, including all Intellectual Property Rights relating thereto, subject only to the limited license granted in subsection 13(f) below. Supplier must not sell, license or otherwise commercialize any Boeing Data.

## Limited License to Use Boeing Data to Provide Services. Subject to the terms and conditions of this Agreement, Buyer grants Supplier a limited, royalty-free, fully-paid up, non-exclusive, non-transferable, and non-sublicensable license to Process Boeing Data in the United States strictly as instructed by Buyer and solely as necessary to provide the Services for Buyer’s benefit or comply with Supplier’s duties as provided in this Agreement during the Term (or such longer period as is strictly necessary for Supplier to comply with its duties under this Agreement). Except for the limited license expressly provided in the preceding sentence, nothing contained in this Agreement may be construed to grant Supplier or any third party any right, title, or interest in or to any Boeing Data.

# CONFIDENTIALITY, PRIVACY & INFORMATION SECURITY AND PUBLICITY

## Confidentiality.

### Except as otherwise expressly permitted by this Agreement, or in writing by an authorized representative of the Discloser, the Recipient (A) must maintain the Discloser’s Proprietary Information in strict confidence, using at least the same degree of care as Recipient uses to protect its own Proprietary Information, but no less than a reasonable degree of care, and (B) must not use the Proprietary Information for any purpose other than the purposes contemplated under this Agreement.

### Subject to the provisions of this Section 14, information will be considered Proprietary Information: (A) if marked as such; (B) if the Discloser orally or in writing has advised the Recipient of the confidential nature of the information; or (C) if, due to its character or nature, a reasonable person in a like position and under like circumstances would understand it to be confidential. Irrespective of the foregoing requirements, all Deliverables, Boeing Background IP, Restricted Information, and Boeing Data are Boeing Proprietary Information.

### Each party will cooperate with and assist the other in identifying and preventing the unauthorized use, copying or disclosure of all Proprietary Information. Without limiting the foregoing: (A) the Recipient will disclose the Discloser’s Proprietary Information only to those of Recipient’s Personnel, suppliers, or other agents who have a need to know that Proprietary Information for the purposes expressly permitted herein, and only after such person or entity has agreed in writing to, or is otherwise legally bound by, confidentiality and nonuse provisions substantially similar to those in this Agreement; (B) the Recipient will not copy or authorize the copying of any such Proprietary Information, except as required for the purposes expressly permitted herein or otherwise authorized by the Discloser in writing; and (C) any copy of any such Proprietary Information that is made or authorized by the Recipient will contain all copyright, confidentiality or other proprietary notices contained on or in that Proprietary Information, as delivered by the Discloser. Additionally, Buyer has the right to use Supplier’s Proprietary Information for any internal purpose. Irrespective of the foregoing, Buyer may also, at any time use, reformat, copy or disclose Supplier’s Proprietary Information to: (i) fulfill Buyer’s obligations or exercise Buyer’s rights under this Agreement, other contracts with Supplier, and Buyer’s governmental contracts to which Supplier’s Proprietary Information is applicable, if any; (ii) test, certify, use, sell or support Services or Deliverables delivered under this Agreement, or Buyer’s product containing any such Deliverables; (iii) evaluate Supplier products and proposals, develop solicitations for Supplier products or services 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 will, when appropriate, include a suitable restrictive legend.

### The obligations set forth above do not apply to Proprietary Information that: (A) through no wrongful act of the Recipient, at the time of its disclosure is, or later becomes, available to the general public; (B) by documentation is demonstrated as being, or is demonstrated as having been, lawfully independently developed by Recipient without breach of this Agreement; or (C) is rightfully received by Recipient from a third party without a duty of confidentiality.

### If Recipient becomes legally compelled (by deposition, interrogatory, subpoena, civil investigative demand or similar process or applicable securities laws) to disclose any Proprietary Information, then Recipient must provide Discloser with prompt prior notice of that requirement so that Discloser may seek a protective order or other appropriate remedy. If that protective order or other remedy is not obtained, or if Discloser waives in writing compliance with the terms hereof, then Recipient may furnish only that portion of the information that Recipient is advised by written opinion of counsel is legally required; and Recipient must use reasonable efforts to obtain confidential treatment of such information.

### In the event of a conflict or inconsistency between any currently effective non-disclosure agreement between the parties and this Agreement, the provisions in this Agreement will control.

## Assignment to Competitors. With respect to any Supplier Personnel who has or may have access to Boeing Proprietary Information, Supplier will not assign that Supplier Personnel to the account of any competitor of Boeing without Boeing’s prior consent while that Supplier Personnel is providing Services to Boeing and for 1 year after that Supplier Personnel ceases to provide Services to Boeing.

## Privacy. For the purpose of this Section **“Data Privacy Laws”** means all Laws that apply to the Processing of Personal Data .

### If the Processing of Personal Data is not contemplated under this Agreement, other than the Personal Data associated with business contact details and other non-sensitive Personal Data necessary for both parties to execute the agreed upon Order, when Processing such non-sensitive Personal Data under this Agreement, the Order, or as part of the performance of the Services, Supplier must ensure the appropriate security measures are implemented to protect the non-sensitive Personal Data. Additionally, Supplier shall comply with all applicable Data PrivacyLaw

### If Supplier is Processing any Personal Data, during the Term of this Agreement beyond the non-sensitive Personal Data contemplated in Section 13.1, then Supplier shall (and must cause all Supplier Personnel to) comply with the Supplement for the Security of Personal Data or the Data Processing Agreement (“**DPA**”) set forth at <https://www.boeingsuppliers.com/terms.html>, as may be updated from time to time, or any successor document thereto, which is incorporated by reference. The DPA will apply in lieu of Section 13.1 to specifically address the responsibilities and controls associated with the Processing of all Personal Data. If there is a conflict between the terms of this Agreement and the terms of DPA, the provisions that provide the greatest protection to Boeing Data Information will control.

## Cybersecurity. If Supplier has access to any Buyer Systems, or is storing any Boeing Data on Supplier Systems, Supplier and Supplier Personnel must comply with the Terms of Use, which is incorporated by reference with the revision date applicable to this Agreement or any SOW being the revision in effect as of the Effective Date of this Agreement or the SOW, as applicable, as an Appendix to this Agreement. In addition to any other rights and obligations set forth in any relevant agreement, Supplier acknowledges that any information accessed through the Buyer Systems operated by or on behalf of Boeing, whether or not marked as “proprietary” or equivalent, is Boeing’s Proprietary Information. If there is a conflict between the terms of this Agreement and the Terms of Use, the provisions that provide the greatest protection to Boeing’s Proprietary Information will control. As between the parties, Supplier is responsible for the security of the Suppler Systems.

## Prohibited Uses of Boeing Data. Supplier must ensure that neither Supplier, its Affiliates, and of their respective Personnel, nor any third party (a) utilizes the Supplier Systems or any other technology or systems to train any artificial intelligence, large language models, machine learning algorithms, or any similar, equivalent, or successor technologies, with any Boeing Data or (b) sells, licenses, or otherwise commercializes any Boeing Data.

## Publicity. Supplier must not use Buyer’s name or trademarks in any news release, public announcement, advertisement, or other form of publicity, or disclose any of the terms of this Agreement to any third party without securing the prior written consent of Buyer.

## No Rights. Except for the limited use rights expressly granted under this Agreement, neither party acquires any right, title, or interest in the other party’s Proprietary Information.

# BUYER SYSTEMS AND RETAINED PROCESSES

## No Adverse Effect. Supplier will use commercially reasonable efforts to ensure that:

### in providing the Services, it does not by any act or omission adversely affect or alter the operation, functionality, or technical environment of the Buyer Systems or the processes of Buyer or any Buyer contractor that are related to the Services described under an applicable SOW (the “**Retained Processes**”); and

### the systems and processes used to provide the Services interface and integrate with the Buyer Systems and Retained Processes.

## Keep Informed. Buyer will provide Supplier with information, and Supplier will inform itself, and keep itself informed, about all aspects of the existing and future Buyer Systems and Retained Processes as necessary to perform the Services and comply with its obligations under this Section 15.

## Assistance. Supplier will provide Buyer on request with services in relation to the Buyer Systems and Retained Processes affected by the Services, including liaising with Buyer, its contractors or other third parties on the impact of any alterations to such Buyer Systems or Retained Processes. Supplier will provide such services at no additional cost to Buyer if such services can be reasonably provided by Supplier using the then-existing resources used to provide the Services without adversely affecting Supplier**’**s ability to provide the Services in accordance with the terms of this Agreement; provided, however, that if such assistance requires additional resources beyond those used to provide the Services or if using such resources would adversely affect Supplier**’**s ability to provide the Services in accordance with this Agreement, Supplier will notify Buyer of such requirement or effect, demonstrate to Buyer**’**s reasonable satisfaction that additional resources are needed or that using such resources would adversely affect Suppliers**’** ability to provide the Services in accordance with this Agreement and, upon Buyer**’**s approval, provide such additional resources on a time and materials basis at the Supplier Rates.

## Buyer Systems. Buyer will provide for Supplier**’**s use in performing the Services of those Buyer Systems, if any, as expressly set forth in an applicable SOW. Except as explicitly agreed otherwise by the parties in writing concerning other allowable uses and compensation to Buyer for such uses, all such Buyer Systems will be used by the Supplier only for the purpose of providing the Services hereunder. Except for the Buyer Systems, Supplier will be responsible for providing all other equipment, hardware, software, code, peripherals, high-speed connectivity, cabling, facilities and resources necessary to perform the Services unless otherwise set forth in an applicable SOW.

# INDEMNIFICATION

## Defense and Indemnification.

### Supplier will defend each Indemnitee against any Claim arising from or relating to any: (A) negligent act or omission of any Supplier Party; (B) breach of this Agreement by Supplier; (C) infringement of any third-party Intellectual Property Rights by the Services or Deliverables or the use thereof by Buyer or Supplier; (D) failure by Supplier to satisfy any of its tax or withholding obligations; (E) Supplier’s liability to Supplier Personnel, (F) with respect to activities hereunder related to Buyer’s premises, property damage, bodily injury, damage or destruction or loss of property, or death to the extent caused by any Supplier Party; and (G) any investigation or proceeding brought by any government authority or other regulatory body (i) against any Supplier Parties; or (ii) against Buyer where such investigation relates to any Supplier Party’s acts or omissions in connection with this Agreement or the Services (each such Claim an “**Indemnifiable Claim**”). Supplier will indemnify and hold harmless each Indemnitee from and against any and all Losses of every nature arising from or relating to any Indemnifiable Claim. Supplier’s duty to defend each Indemnitee is separate and independent from its duty to indemnify and hold harmless that Indemnitee.

### Without limiting Supplier’s other obligations under this Agreement, if either party reasonably believes the Deliverables or Services (or the use of the Deliverables or Services by Buyer) infringes, misappropriates, or otherwise violates the Intellectual Property Rights of a third party, Supplier will, at Buyer’s option and at Supplier’s expense: (A) obtain for Buyer the right to continue to exercise the rights and licenses granted to Buyer under this Agreement to the full extent contemplated by this Agreement; (B) substitute the allegedly infringing component for an equivalent non-infringing component acceptable to Buyer; or (C) modify the Services and Deliverables to make them non-infringing, without degrading the performance or quality of the Services and Deliverables or adversely affecting Buyer’s intended use. If (A), (B), or (C) is not obtainable on commercially reasonable terms, Buyer may terminate this Agreement or any applicable SOW, effective immediately, by notice to Supplier. In the event of a termination of this Agreement pursuant to this Section 16(a), Supplier will promptly refund to Buyer all fees for the Services or Deliverables attributable to the termination of this Agreement or applicable SOW.

### Supplier’s indemnification obligations hereunder will, with respect to a given Indemnifiable Claim, be subject to the Indemnitee seeking defense or indemnification by: (A) providing prompt notice of the existence of the Indemnifiable Claim to Supplier, provided that any delay in notification will not relieve Supplier of its obligations except and solely to the extent that such delay materially impairs Supplier’s ability to defend the Indemnifiable Claim; (B) reasonably cooperating with Supplier with respect to the defense and settlement of the Indemnifiable Claim; and (C) permitting Supplier, at Buyer’s option, to participate in and control the defense and settlement of the Indemnifiable Claim. Supplier will not settle any Indemnifiable Claim without Buyer’s prior written consent if that settlement arises from or is part of any criminal action, suit or proceeding or contains a stipulation to or admission or acknowledgment of any liability or wrongdoing (whether in contract, tort or otherwise) on the part of any Indemnitee, or otherwise requires any Indemnitee to take or refrain from taking any material action (such as the payment of fees or other amounts), such consent not to be unreasonably withheld or delayed.

### Notwithstanding anything herein to the contrary, Buyer may, without tendering the defense or settlement of the Indemnifiable Claim to Supplier and without waiving its right to indemnification obligations under this Section 16, control the defense of, settle and pay any Indemnifiable Claim that: (A) involves or includes or is based on an allegation that Buyer has not complied with any law; or (B) is asserted by any agency with regulatory authority over Buyer (each such Indemnifiable Claim a “**Buyer Prerogative Claim**”). Supplier will not be entitled to take control of the defense and investigation of any Buyer Prerogative Claim, nor to engage attorneys of its sole choice to handle and defend any Buyer Prerogative Claim.

### Supplier’s obligations hereunder will not be limited to the extent of any insurance available to or provided by the Supplier or any Subcontractor. Supplier expressly waives any immunity under industrial insurance, whether arising from Title 51.04.010 et seq. of the Revised Code of Washington or any other statute or source, to the extent of the defense and indemnity set forth in this Section 16.

# GENERAL LEGAL COMPLIANCE

## Compliance with Laws. Supplier will, and will cause all Supplier Personnel to, comply with all Applicable Laws in connection with its performance under this Agreement including (1) all Applicable 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 (2) the requirements of the Foreign Corrupt Practices Act, as amended, (“**FCPA**”) (15 U.S.C. §§78dd-1, et. seq.), regardless of whether Supplier is within the jurisdiction of the United States. Supplier must not, either 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 country laws relating to anti-corruption or anti-bribery. Supplier further agrees:

### To notify Buyer of any obligation under this Agreement that is prohibited under any Applicable Laws at the earliest opportunity but, in all events, sufficiently in advance of Supplier’s performance of such obligation so as to enable the identification of alternative methods of performance;

### To notify Buyer at the earliest possible opportunity of any Regulatory Event and in such case the parties shall allocate the costs incurred as a result of such Regulatory Event in accordance with Section 9(i); and

### Upon Buyer’s request, Supplier shall: (i) provide evidence of compliance with Applicable Laws; (ii) cooperate with any Buyer request relating to verification of Supplier suspected or potential non-compliance with Applicable Laws; and (iii) provide reasonable support to Buyer in relation to Buyer’s compliance with Applicable Laws under this Agreement.

## 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 Supplier, “Government,” “Contracting Officer” or any equivalent terms means Buyer, and all references to a “Disputes” clause means the “Disputes” clause of this Agreement. The effective version of each clause listed below will be the latest version published on the date this Agreement 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: “Supplier 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 Supplier identifies covered telecommunications equipment or services provided to Buyer during contract performance, or Supplier is notified of such by a subcontractor at any tier or any other source, Supplier must 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.”

# Trade Control LAWS

## The Parties must comply with all Trade Control Laws, and Supplier will control the disclosure of, and access to, controlled items or technical data provided by Buyer related to performance of this Agreement in compliance with all applicable Trade Control Laws. Supplier Parties may not transfer (to include transfer to foreign persons employed by or associated with, or under contract to Supplier, or Supplier’s Subcontractors or Supplier’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.

## Subject to applicable Trade Control Laws, Supplier must provide Buyer with the export control classification of any commodity or technology, including software.

## Supplier represents and warrants 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 Supplier’s compliance with applicable Trade Control Laws shall be made available to Buyer by Supplier upon request.

## Supplier must promptly notify Buyer if Supplier is, or becomes, listed in any “Denied Parties List” or if Supplier’s export privileges are otherwise denied, suspended or revoked in whole or in part by any governmental entity.

## Supplier must 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 Supplier’s performance under this Agreement and must comply with all reasonable requests from Buyer for information regarding any such violations.

## Supplier must incorporate into any agreements with its Subcontractors obligations no less restrictive than those set forth in this Section 18 requiring compliance with all applicable Trade Control Laws.

# SERVICES REPRESENTATIONS AND WARRANTIES

## Supplier represents, warrants and covenants that:

### Supplier Parties have and will perform the Services in a professional and workmanlike manner, in accordance with Applicable Law and the terms of this Agreement, by qualified personnel according to the level of professional care customarily observed by highly skilled professionals rendering similar services;

### the Services and Deliverables have and will:

#### conform to all applicable industry standards, the applicable SOW, the Acceptance Criteria, and the Documentation;

#### function properly and be free from material defects;

#### be fit and sufficient for the purposes expressed in this Agreement or the applicable SOW;

#### the Deliverables shall be free from liens or encumbrances;

#### the Deliverables will be free of any third-party software (including any open source software or other software subject to a Restricted License) or other third-party materials in any Deliverables, unless Supplier has received Buyer’s prior written permission and obtained the right for Buyer to use any such third-party software or materials on commercially reasonable terms and conditions; and

#### the Services and Deliverables are and will be free of any errors that may have substantial adverse impacts on the operations of Buyer or on the use of the Services or Deliverables or that negatively affect the confidentiality, integrity, or availability of the Buyer Systems or any Proprietary Information of Buyer, including any Malicious Code designed to (i) damage, destroy, or alter any software or hardware; (ii) reveal, damage, destroy or alter any data; (iii) disable any computer program automatically; or (iv) permit unauthorized access to any software or hardware.

## The warranties in this Section 19 will begin upon Buyer’s final Acceptance of the Services and any Deliverable and will survive inspection, test and payment for, the Services and Deliverables. These warranties will extend for a period of **[**1 year**]** from the later of the (1) date the Services were performed by Supplier, (2) the Deliverables were delivered to Buyer, or (3) the period set forth in the SOW for which such Services were purchased. These warranties will run to Buyer and its successors, assigns and customers.

## In the event of Supplier’s breach of Section 19, Buyer may, at its option and at Supplier’s expense, give Supplier notice after discovery of any defect or nonconformance in the Services or Deliverables and either (1) require correction, replacement or reperformance of any defective or non-conforming Services or Deliverables with functionally equivalent or superior Services or Deliverables acceptable to Buyer, or (2) require Supplier to refund to Buyer all of the fees paid to Supplier for the defective or non-conforming Services or Deliverables. Any Services or Deliverables corrected, replaced or reperformed will be subject to the requirements of this Agreement to the same extent as Services initially performed and/ or Deliverables initially provided.

## Without limiting any of Supplier’s obligations hereunder, Supplier has and will pass on to Buyer for Buyer’s enforcement, all manufacturer warranties applicable to the Services and Deliverables.

# Additional Supplier Representations, Warranties and Covenants:

## Without limiting any of Buyer’s other rights or remedies under this Agreement, throughout the Term, Supplier further represents, warrants and covenants that:

### to the best of its knowledge after thorough investigation and testing consistent with industry best practices the Services and Deliverables, and Buyer’s use thereof and exercise of its rights hereunder with respect thereto, do not and will not infringe, misappropriate, or violate any third-party Intellectual Property Rights;

### Supplier Parties’ performance of the Services and its obligations under this Agreement have not and will not breach any agreement that Supplier has with another party;

### Supplier Parties have not and will not provide any third-party confidential or proprietary information Buyer, or induce Buyer to use any such information unless otherwise agreed by Buyer;

### Supplier Parties have abided and will abide by all Applicable Laws, and, when on Buyer’s premises or accessing Buyer Systems, Buyer’s safety and other policies and rules, in the course of performing the Services;

### all of the Supplier Personnel, as applicable, performing any of the Services or contributing to any Deliverables have executed written non-disclosure, assignment of rights and other appropriate agreements sufficient to protect the Buyer’s Proprietary Information and Intellectual Property Rights in accordance with this Agreement, and sufficient to allow Supplier to grant the assignments and licenses to Buyer as provided herein;

### if the Services or Deliverables require a license, it has obtained that license, and such license is in full force and effect and will remain in full force and effect during the Term and thereafter as applicable;

### it has the right to enter into and perform its obligations under this Agreement;

### the execution and delivery of this Agreement has been duly authorized, and

### entering into this Agreement does not violate any Applicable Law.

# SUPPLIER’S INSURANCE

## Commercial General Liability. Supplier will carry and maintain throughout the Term, Commercial General Liability insurance with available limits of not less than One Million U.S. Dollars (U.S. $1,000,000) for each occurrence, for bodily injury and property damage combined. Such insurance will be in a form and with insurers acceptable to Buyer and will contain coverage for all premises and operations, broad form property damage, and contractual liability (including that specifically assumed under this Agreement).

## Automobile Liability. If licensed vehicles will be used in connection with the performance of the Services, Supplier will carry and maintain throughout the Term, Business Automobile Liability insurance covering all vehicles whether owned, hired, rented, borrowed, or otherwise, with available limits of liability of not less than One Million U.S. Dollars (U.S. $1,000,000) for each occurrence combined single limit for bodily injury and property damage.

## Workers’ Compensation. Supplier will carry and maintain, throughout the Term, insurance in accordance with the Applicable Laws relating to workers’ compensation covering all of its 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 any employees of Supplier, Supplier will reimburse Buyer for such payment.

## Professional Liability and Technology Errors & Omissions Liability Insurance. Supplier will carry and maintain throughout the Term insurance with policy limits of not less than Five Million U.S. Dollars (U.S. $5,000,000), each claim with a deductible of not more than Twenty-Five Thousand U.S. Dollars (U.S. $25,000). Such insurance will include coverage for infringement of any Intellectual Property Rights of any third party as related to Supplier’s performance under this Agreement. It will also include coverage for loss or disclosure of electronic data, media and content rights, infringement and liability, and network security failure liability.

## Cyber Security Liability Insurance. Supplier will carry and maintain throughout the Term Cyber Security Liability Insurance with policy limits of not less than Five Million U.S. Dollars (U.S. $5,000,000), each claim with a deductible of not more than Twenty-Five Thousand U.S. Dollars (U.S. $25,000) against liability for (1) systems attacks, (2) denial or loss of service attacks, (3) spread of malicious software code, (4) unauthorized access and use of computer systems, and (5) liability arising from the loss or disclosure of confidential electronic data. The Cyber Security Liability Insurance retroactive coverage date will be no later than the Effective Date.

## Additional Requirements. For the professional liability/errors and omissions coverage and the cyber security coverage: (1) any “insured vs. insured” exclusions will be modified accordingly to allow Buyer additional insured status without prejudicing Buyer’s rights under the policies; (2) there will be severability of the intentional conduct exclusions for the additional insureds; and (3) there will be an exception to any “breach of contract” exclusions for hold harmless agreements. Both policies will have a retroactive coverage date no later than the Effective Date and coverage will be maintained for an additional period of 3 years following termination or expiration of this Agreement.

## Certificates of Insurance. Before commencing the Services, Supplier will provide for Buyer’s review and approval “Certificates of Insurance” reflecting full compliance with the requirements set forth in this Section 21. Such certificates will be kept current and in compliance throughout the Term and will provide for 30 days advance notice to Buyer in the event of termination. Failure of Supplier 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 will not constitute a waiver of Supplier’s respective Supplier obligations hereunder.

## Self-Assumption. Any self-insured retention, deductibles, and exclusions in coverage in the policies required under this Section 21 will be assumed by, for the account of, and at the sole risk of Supplier and, to the extent applicable, will be paid by Supplier. In no event will the liability of Supplier be limited to the extent of any of the minimum limits of insurance required under this Section 21.

## Subcontractors and Supplier Affiliates. Supplier shall cause its Subcontractors and Supplier Affiliates performing Services hereunder to carry the same insurance and comply with the same obligations as is required of Supplier under this Section 21.

# TERMINATION

## Termination for Convenience. Buyer may terminate this Agreement or any SOW with or without cause, in whole or in part, by providing at least 30 days prior notice of such termination to Supplier, that specifies the extent and effective date of such termination. Supplier will stop provision of all Services 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 (which, at Buyer’s discretion may be upon completion of the Transition Period).

## Termination for Cause.

### Termination for Cause by Buyer.

#### *General*. Without limiting any of Buyer’s termination rights expressly set forth in this Agreement, Buyer may terminate this Agreement or any SOW for cause, in whole or in part, if Supplier fails to perform any of its material obligations under this Agreement or an applicable SOW and, if such breach is capable of cure (in Buyer’s discretion), Supplier does not cure the failure within 30 days after service of a default notice that specifies the failure.

#### *Persistent Breach or Event of Insolvency*. If, during any rolling 12‑month period, Supplier repeatedly defaults in the performance of any of its obligations under this Agreement or any SOW, whether or not (a) the effect thereof could reasonably be considered material or (b) such repeated defaults were cured, or if Supplier experiences an Event of Insolvency, then Buyer may, by giving notice to Supplier, terminate this Agreement or any or all of the SOW, in whole or in part, as of the termination date specified in the notice, without regard to any cure period.

### Termination for Cause by Supplier. Supplier may terminate this Agreement or any SOW for cause, in whole or in part, upon an uncured payment default by Buyer that is not being contested by Buyer in good faith and that continues for 90 consecutive days after Buyer’s receipt of Supplier’s notice thereof. Buyer’s failure to pay any amount under this Agreement that Buyer disputes in good faith in accordance with Section 9 will not give Supplier a termination right hereunder. Supplier may only terminate this Agreement under this Section 22(b)(2) and may only terminate that portion of this Agreement or the applicable SOW in respect of which Buyer has committed an uncured payment default. Except as set forth in this Section 22(b)(2), Supplier expressly waives any other rights it may have to terminate this Agreement.

### Deemed Termination for Convenience. If, after issuance of a default notice under Section 22(b)(1)(A), it is determined for any reason that Supplier was not in default or that the default was excusable under the provisions of this Agreement, then there will be no termination for cause. This Agreement or applicable SOW will be deemed to have been terminated for convenience in accordance with the provisions of Section 22(a) as of the date the termination would have taken effect under this Section 22(b).

## Effect of Termination. In the event and to the extent of any termination under this Section 22 or Section 25(b), Supplier will continue to perform those obligations under this Agreement or any other SOW to the extent not terminated. Termination of one SOW hereunder by Buyer will not automatically result in the termination of any other SOW. If Buyer terminates this Agreement or any SOW in accordance with this Section 22 or Section 25(b), such termination will be without any termination payment or other liability to Supplier and Supplier must promptly refund to Buyer all pre-paid amounts prorated based on the period of the Term or term of the applicable terminated SOW, as applicable, that has not yet expired and any in-progress Deliverables or Services that were not completed. Upon the termination of this Agreement or any SOW, Supplier shall return or destroy (with written certification) Buyer’s Proprietary Information in its possession or control. Additionally, consistent with its confidentiality obligations in Section 14, Supplier will deliver to Buyer all Deliverables (including all incorporated Background IP) in progress or completed as of the termination or expiration of this Agreement.

## Termination Payment.

### Termination Payment for Termination for Convenience. If this Agreement or any SOW is terminated for convenience, Buyer’s total liability related to that termination will be to pay Supplier for the terminated Services that have then been properly performed prior to the date of termination, and for which Supplier has not been previously compensated. Supplier will have no claim against Buyer for Services not performed, Services not accepted, Services or Deliverables not delivered, loss of anticipated profits, or consequential damages suffered by reason of any such termination. Any claims by Supplier for compensation under this Section 22(d)(1) must be delivered to Buyer within 60 days after Supplier’s receipt of Buyer’s notice of termination. Supplier hereby waives, releases, and renounces any claim for compensation not made within this period.

### Termination Payment for Termination for Cause.

#### Termination for Cause by Buyer. If this Agreement or any SOW is terminated for cause by Buyer (and Buyer has escalated the applicable dispute in compliance with Section 37.l (Escalation Process)), Buyer shall owe no payments to Supplier as Supplier will have no claim against Buyer for any Services terminated by Buyer for cause for which Supplier has not been paid, Services not performed, Services not accepted, Services or Deliverables not delivered, loss of anticipated profits or consequential damages suffered by reason of any such termination.

#### Termination for Cause by Supplier. If this Agreement or any SOW is terminated for cause by Supplier, Buyer’s total liability will be to pay Supplier the past-due payments giving rise to Supplier’s termination right and any other outstanding amounts that are due and owing to Supplier from Buyer under this Agreement or the applicable SOW for Services performed prior to the termination date.

#### Timing. The applicable party will submit any claims for compensation under this Section 22(d)(2) within 30 days after such party’s receipt of a notice of termination from the other party. Supplier hereby waives, releases, and renounces any claim for compensation not made within this period.

## Applicability of Bankruptcy Code Section 365(n). Anything to the contrary contained herein notwithstanding, the parties specifically acknowledge and agree that all licenses granted herein are subject to the United States Bankruptcy Code (11 U.S.C., the “**Bankruptcy Code**”), and if Supplier as a debtor in possession or through a trustee in bankruptcy in a case under the Bankruptcy Code rejects this Agreement, or any part thereof, Buyer may elect to retain its rights under this Agreement as provided in Section 365(n) of the Bankruptcy Code, provided Buyer complies with the terms of Section 365(n) of the Bankruptcy Code.

# Transition of Services

## Services Transfer. Commencing upon the earlier of (1) 180 days prior to the expiration of this Agreement or any SOW, (2) upon any notice of termination of this Agreement or any SOW (if earlier than the scheduled expiration date of this Agreement or such SOW), or (3) 180 days prior to any other ceasing of Services under this Agreement (e.g., Buyer’s removal of Services pursuant to any provision of this Agreement or ceasing of the provision of Services to divested business units), and continuing for a time period necessary to prevent any adverse impact to Boeing’s business, which will not exceed 12 months (the “**Transistion Period**”), regardless of the reason for termination or expiration, Supplier will perform the Transition Services in accordance with this Section 23. For the avoidance of doubt, all Transition Services shall be part of the Services. As part of the Transition Services, Supplier shall reasonably cooperate with Buyer to transition any terminated Services from Supplier to Buyer or the Replacement Supplier. With respect to Transition Services, this Agreement will not be deemed to have expired or terminated until the Transition Services requested by Buyer are completed in accordance with this Section 23.

## As part of the Transition Services, Supplier must:

### subject to the execution of a confidentiality agreement with any Replacement Supplier (which shall not be unreasonably withheld or delayed), promptly provide Buyer and the Replacement Supplier with all information and assistance reasonably necessary to transfer the Services (without interruption), including any related training required to permit personnel of Boeing or Replacement Supplier to assume responsibility for the provision of the Services, and permitting inspection of facilities used to provide the Services, a complete and accurate description of the quantity and configuration of all Supplier Software used in the provision of the Services and a complete description of the Services being provided and the Supplier Personnel involved;

### introduce Buyer to and assist Buyer in entering into a relationship with any third-party vendors that provide software or other materials that are necessary for the Buyer or the Replacement Supplier to perform the Services or use the Deliverables independently without assistance from Supplier;

### allow Buyer and the Replacement Supplier access to Supplier Personnel and other resources used in support of the Services as reasonably requested by Buyer for the purpose of effectuating an orderly transition of Services provided hereunder;

### to the extent permitted by Applicable Laws, ensure that Supplier Personnel that are critical to the performance of the Transition Services provided hereunder will not be transferred or re-assigned without Buyer’s prior consent, and

### provide a complete and correct copy of all data files, notes, or other materials created or maintained as part of the Services in the format requested by Buyer.

## Transition Plan. Supplier must provide to Buyer a proposed Transition Plan within 30 days of execution of this Agreement which will be subject to Section 11. The Transition Plan must meet the Transition Requirements and must expressly: (1) specify the Supplier Personnel and other resources that will perform Transition Services; (2) specify all things necessary to effect Transition Services as efficiently as possible and without a service interruption; and (3) set out a timetable and process for effecting Transition Services that will satisfy each of the Transition Requirements and will enable Buyer to have completed Transition Services as quickly as practicable without reducing the quality of the Services. Buyer will have the right to reject any proposed Transition Plan that does not meet the Transition Requirements, and Supplier must within 10 days resubmit a revised Transition Plan that addresses Buyer’s concerns. Upon Acceptance by Buyer of Supplier’s proposed Transition Plan, Supplier will provide the Transition Services in accordance with such Transition Plan for the Transition Period. Buyer shall have the right to request modifications to the Transition Plan through the Change Request process detailed in Section 5.

## Continuation of Services. In addition to performing the Transition Services, Supplier must continue to perform the Services and meet or exceed the Service Level Commitments during the Transition Period.

## Post-Transition Period Assistance. After the expiration of the Transition Period, Supplier must (1) answer questions from Buyer or any Replacement Supplier regarding the terminated Services on an “as needed” basis at Supplier’s then standard billing rates offered to its other customers for similar services and (2) deliver to Buyer any remaining Buyer information, documentation or other materials relating to the terminated Services still in Supplier’s possession or control.

## Transition Services Charges. Supplier will perform the Transition Services (which includes all services described in this Section 23) at no additional cost to Buyer other than Buyer’s obligation to continue to pay the fees for the Services as specified in the Supplier Rates.

## Presence at Facilities. Upon Buyer’s request, Supplier will provide staffing at Buyer’s facilities during the Transition Period for the purposes of complying with this Section 23. In addition, Supplier will permit Buyer’s personnel to enter and remain at Supplier’s facilities upon Buyer’s request, to the extent necessary to facilitate Supplier’s performance of Transition Services.

## Injunctive Relief. If Supplier breaches its obligations to provide Buyer with Transition Services in accordance with this Section 23, Buyer may immediately seek injunctive relief. If a court having jurisdiction finds that Supplier has breached any such obligations, Supplier agrees that, without any additional findings of irreparable injury or other conditions to injunctive relief, it will not oppose the entry of an order compelling performance by Supplier and restraining it from any further breaches.

# RELATIONSHIP OF THE PARTIES

## Independent Contractor. Supplier is an independent contractor. Nothing in this Agreement will be construed as creating any relationship between Buyer and Supplier other than that of buyer and seller or licensee and licensor, respectively. This Agreement is not intended to be nor will it be construed as a joint venture, association, partnership, franchise, or other form of business organization or agency relationship.

## No Agency. Neither party will have any right, power, or authority to assume, create, or incur any expense, liability, or obligation, expressed or implied, on behalf of the other, except as expressly provided herein.

## Employees. Supplier Personnel who perform Supplier’s obligations under this Agreement will at all times be and remain employees or independent contractors of Supplier, not employees of Buyer. Supplier will be exclusively responsible for payment of Supplier Personnel and will ensure that each of its Subcontractors pays its employees all wages, salaries, and other amounts due to such employees. Supplier will be responsible for and will ensure that non-employee Supplier Personnel will be responsible for all reports, payments, and other obligations in regard to their respective employees, including those related to social security, income tax withholding, unemployment compensation, workers’ compensation, and employee benefit plans.

# DISASTER RECOVERY; FORCE MAJEURE

## Disaster Recovery. Promptly after the Effective Date, and upon request by Boeing from time to time, Supplier must provide Buyer with access to Supplier’s Disaster Recovery Plan. If a disaster or catastrophe, whether resulting from natural or man‑made causes, totally or partially disables Supplier’s ability to perform the Services, Supplier must implement the Disaster Recovery Plan and also agrees to use its commercially reasonable efforts to mitigate any adverse impacts on Buyer (including delays to any Milestones), at no additional cost to Buyer. Buyer will be treated at least as favorably as Supplier’s most favored customer when a disaster or catastrophe affects others.

## Force Majeure. To the extent either party for any period is prevented, hindered, or delayed from performing any obligations under this Agreement, in whole or in part, as a result of a Force Majeure Event, and such non-performance, hindrance, or delay could not have been prevented by reasonable precautions, then the non‑performing, hindered, or delayed party will be excused for its non-performance of those obligations affected by that Force Majeure Event for as long as that Force Majeure Event continues to prevent, hinder, or delay performance and the non‑performing party continues to use commercially reasonable efforts, at its sole expense, to recommence performance whenever and to whatever extent possible without delay, including, as applicable, through the use of alternate sources, workaround plans, or other means. This Section 25(b) does not limit or otherwise affect Supplier’s obligation to perform if implementation of its Disaster Recovery Plan would allow it to provide Services through alternative means that are not impacted by the applicable Force Majeure Event. Whenever either party has knowledge that any circumstances may result in a Force Majeure Event, that party will promptly notify the other party of all relevant information and will continue notification of any material change in the situation. The excused time period for non‑performance will be limited to the duration of the Force Majeure Event, and for the entirety of such duration, Buyer will be relieved of the obligation to pay Supplier any fees for any affected Services. If the Force Majeure Event continues for more than 14 days, then at Buyer’s option, (1) Buyer may procure any such Services from an alternate source (including itself), in which such case Supplier will be liable to Boeing for any amounts charged by the alternate source in excess of the fees for the provision of those Services hereunder until such time as Supplier is able to restore the Services, or (2) Buyer will have the right to terminate all or a portion of this Agreement or any applicable SOW immediately, without penalty or additional charge, upon delivery of notice.

# RECORDS AND AUDIT

For a period of no less than 7 years after final payment under each SOW, Supplier will maintain complete and accurate Records. These Records will be maintained to the extent and in such detail as necessary to properly reflect all net costs (direct and indirect) of labor, materials, equipment, supplies and services and other costs and expenses of whatever nature. Buyer will have the right, on reasonable notice to Supplier, not more than one time in any 12-month period (unless Buyer is aware of, or suspects, that Supplier is in material breach of this Agreement), during normal working hours, to examine, reproduce and audit any and all Records related to the following:

## Pricing and performance in order to evaluate the accuracy, completeness and currency of cost and pricing data submitted with Supplier’s bid or offer to sell.

## Section 9, Section 22 and Section 23.

## Pricing and performance in order to verify the accuracy of prices and rates invoiced by Supplier.

Such audit right for any given SOW will consist of the following:

### A random invoice sampling of at least 5%.

### The determination of an error rate, if any.

### The calculation of an adjustment amount by applying the percentage error rate to the total current aggregate dollar expenditure figure for the entire time period in question and then adding approximate freight and tax considerations.

### Supplier will provide to Buyer’s auditors, inspectors, regulators and representatives such reasonable assistance as they require to perform the inspection, audits and verifications described herein. Supplier will promptly correct any deficiency or other problem found by any audit, examination or inspection. If any audit, examination or inspection reveals that Supplier’s invoices for the audited period required Buyer to pay more than what was owed, Supplier will promptly reimburse Buyer for the amount of any overcharges. All such payments for overcharges will be paid promptly along with the greater of 1.5% interest per month or the maximum interest permitted to be charged under Applicable Law, accrued from the date the payment was incorrectly invoiced. The provisions of this Section 26 will survive termination of this Agreement.

# PROTECTION OF PROPERTY

Unless otherwise specified in an applicable SOW, on delivery to Supplier or manufacture or acquisition by Supplier of any materials, parts, tooling, data or other property, in which Buyer holds title, Supplier assumes the risk of and will be responsible for any loss thereof or damage thereto. In accordance with the provisions of the applicable SOW, but in any event on delivery of the Services, Supplier will return such property to Buyer in the condition in which it was received. Exceptions will be for reasonable wear and tear on such property as has been reasonably incorporated in the Services or consumed in the performance of this Agreement.

# NOTICES

## All notices required or allowed under this Agreement must be in writing and sent by electronic mail or physical mail (e.g., registered or certified mail) to the person and address provided below in this Section (or as the recipient has otherwise designated through a previous notice given in accordance with this Section).

|  |  |  |
| --- | --- | --- |
| Supplier:  Attention: Email: |  | Boeing:  The Boeing Company Indirect Supply Chain *\_\_P.O. Box Number or Street Address\_\_\_ \_\_\_City, State, and Zip Code\_\_\_* Attention: Email:  With a copy sent to the Boeing Contracts Department at [ISCNotices@exchange.boeing.com](mailto:ISCNotices@exchange.boeing.com). |

Notices sent by physical mail will be deemed given upon receipt, and notices sent by electronic mail will be deemed given upon receipt by the sending party of written confirmation of the recipient’s receipt, EXCEPT that an automated email confirmation of delivery or read receipt will not constitute such confirmation, (unless otherwise specified). All notices of termination or breach must be addressed to the other party’s Legal Department.

# INDUSTRIAL PARTICIPATION – OFFSET CREDITS

## To the exclusion of all others, Buyer or its assignees will be entitled to all industrial benefits or offset credits available in non-U.S. locations which might result from this Agreement. Supplier will provide documentation or information which Buyer or its assignees may reasonably request to substantiate claims for industrial benefits or offset credits.

## Supplier agrees to use reasonable efforts to identify the foreign content of Services or Deliverables that Supplier either produces itself or procures from Subcontractors for work directly related to this Agreement. Subject to the other provisions of this Agreement, promptly after selection of a non-U.S. Subcontractor for work under this Agreement, Supplier shall notify Buyer of the name, address, subcontract point of contact (including telephone number) and dollar value of the subcontract, and the terms attached hereto as **Appendix [\_\_]**, (Industrial Participation/Offset Credit Assistance) will be incorporated herein by this reference and Supplier will comply with the requirements therein.

# [Left Blank intentionally.]

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# VALUE PROPOSITION

Buyer expects successful sourcing and Supplier’s business process value proposition to extend beyond cost reductions related to labor rates. Supplier must utilize cost-saving world class process improvement methodologies such as CMMI Level 5 and lean process improvement strategies to streamline or transform business processes, and create an interaction model that does not drive added cost within Buyer for administration or infrastructure. Savings from these quality improvement initiatives drive reductions in Supplier operation costs that can be passed on to Buyer.

# BUSINESS DOWNTURN

The parties agree that, in the event that Buyer experiences a business downturn beyond its control, Buyer may wish to request an adjustment to this Agreement as opposed to exercising its right to terminate for convenience. In such an event, Supplier and Buyer will cooperate in developing an arrangement to address the business downturn. The arrangement may include a revision to the Supplier Rates, an applicable SOW, Service Level Commitments, Term or other provisions. To invoke this provision, Buyer will notify Supplier in writing that it has experienced a business downturn and will suggest changes to address the downturn. In relation thereto, Buyer may prepare a Change Request under Section 5.

# DIVESTITURES

If Buyer sells or otherwise transfers control of any of its divisions, sites or portion thereof, Supplier agrees that, upon prior notice to Supplier describing the transaction in reasonable detail, Supplier will continue to provide the Services under an applicable SOW with respect to the divested division, site or portion thereof as provided in this Agreement for a period of up to 18 monthsat no additional charge. Thereafter, continued use of the Service by the divested division, site or portion thereof will be subject to such terms and conditions as Supplier and the divested division, site or portion thereof or its new owner will agree in writing.

# GOVERNING LAW

## This Agreement will be construed under and governed by the laws of the State of Delaware, without regard to the conflict of law provisions. This Agreement excludes the application of the 1980 United Nations Convention on Contracts for the International Sale of Goods.

## Any dispute that arises under or is related to this Agreement 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, Supplier must proceed with performance of this Agreement according to Buyer’s instructions so long as Buyer continues to pay amounts not in dispute.

# BUSINESS CONDUCT

## [Left blank intentionally.]

## Gratuities. Supplier represents and 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 Agreement or securing favorable treatment under this Agreement.

## Supplier Code. 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 the Boeing Code setting out in detail the measures it takes to ensure this commitment is fulfilled. Buyer strongly encourages Supplier to adopt and enforce concepts similar to those embodied in the Boeing Code, including conducting Supplier’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. Supplier must include the substance of this clause, including this flowdown requirement, in all subcontracts awarded by Supplier for work under this Agreement.

## Environmental Health and Safety Performance. Supplier 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 Agreement. Supplier shall comply with [SP4 - On-Site Environment, Health and Safety](https://www.boeingsuppliers.com/idscommon/clauses/SPX/SP4_2022-30-06.pdf) Supplemental Provisions located in SP4 at <https://www.boeingsuppliers.com/terms.html>, as may be updated from time to time, or any successor document thereto. Buyer expects that Supplier’s EMS will promote health and safety, environmental stewardship, and pollution prevention by appropriate source reduction strategies. Supplier shall convey the requirement of this clause to its suppliers. Supplier must not deliver any items (including the packaging for any such items) pursuant to any Services or Deliverables that contain any asbestos mineral fibers.

## Supplier Facility. Supplier must provide Buyer notice of any proposed plans for moving Supplier’s manufacturing location for any Deliverables or other Services or moving tooling or other equipment utilized in the manufacture of any Deliverables or other Services to another facility. Supplier may not proceed with implementing such plans prior to obtaining Buyer’s prior written approval.

## Buyer Policies. Supplier agrees that Buyer’s internal policies, procedures and codes are intended to guide Buyer’s internal management and are not intended to, and do not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by the Supplier against the Buyer.

## Conflict Minerals. Supplier must, no later than 30 days following each calendar year in which Supplier has delivered any physical goods to Buyer, under this Agreement or otherwise, complete and provide to Buyer a single and comprehensive Conflict Minerals Reporting Template, using the form found at [http://www.boeingsuppliers.com](http://www.boeingsuppliers.com/). Supplier will perform appropriate due diligence on its supply chain in order to fulfill the reporting obligations of this section.

## Ethics and Compliance Program. Supplier acknowledges and accepts full and sole responsibility to maintain an ethics and compliance program appropriate for its business throughout the performance of this Agreement. Buyer strongly encourages Supplier to model its program in accordance with the Federal Sentencing Guidelines, applicable guidance from enforcement authorities, and industry best practices. Supplier shall publicize to its employees who are engaged in the performance of work under the Agreement that they may report any concerns of misconduct by Buyer or any of its employees or agents by going to <https://integritycounts.ca/org/boeingweb>. Supplier will convey the substance of this clause to its suppliers and subcontractors.

## Supplier and Sub-Tier Supplier Information. In addition to requirements set forth elsewhere in this Agreement, Supplier will, when reasonably requested by Buyer, provide sub-tier supplier information related to performance under this Agreement. Such information may include, but is not limited to, Supplier’s subcontract management plans, Buyer programs supported, and Supplier’s assessment of sub‑tier supplier’s capability, including financial health and performance issues.

# GENERAL PROVISIONS

## Severability. A ruling by any court of competent jurisdiction that one or more of the provisions contained in this Agreement is invalid, illegal or unenforceable in any respect will not affect any other provision of this Agreement so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to either party.

## Assignment.

### Supplier will not assign this Agreement or any of its rights or obligations hereunder without the prior written consent of Buyer, and any purported assignment in violation of this Agreement will be void. Any Change of Control, assignment of this Agreement, or delegation of Supplier’s rights or obligations to any Supplier Affiliate is considered an assignment for the purposes of this Section 37(b). An assignment notwithstanding, failure to receive Buyer’s prior written consent will constitute a material breach of this Agreement and cause for immediate termination of this Agreement by Buyer pursuant to Section 22.

### If Buyer consents to any assignment or delegation of Supplier’s rights or obligations to a Supplier Affiliate, Supplier must ensure that Supplier Affiliate agrees to comply fully with the terms and conditions of this Agreement to the same extent that Supplier is required to comply with this Agreement. Supplier will be fully responsible for all acts and omissions of each Supplier Affiliate that is performing Services under this Agreement and each Supplier Affiliate’s employees and agents, whether or not Supplier itself entered into the applicable SOW. Any act or omission of any Supplier Affiliate will be deemed an act or omission of Supplier hereunder. Without prejudice to the rights of Buyer against Supplier as the principal obligor under this Agreement, Supplier guarantees to Buyer, as a continuing guarantee, the due, proper and punctual performance by all Supplier Affiliates performing Services hereunder of all of the terms, conditions, obligations, warranties, undertakings and agreements contained in this Agreement and any SOW entered into between Buyer and a Supplier Affiliate. Supplier must promptly on demand, fully and properly perform any obligations in respect of which a Supplier Affiliate has defaulted. Notwithstanding anything to the contrary in this Agreement, nothing herein will release, waive or modify any obligations Supplier has under this Agreement or that a Supplier Affiliate has to Buyer under a SOW entered into by that Supplier Affiliate.

### All of Buyer’s right, title, obligations and interest in this Agreement and any rights granted to it hereunder may be assigned to (A) any of its Affiliates; or (B) any direct or indirect successor to substantially all of the business or equity of Buyer, which successor will thereafter be deemed substituted as a party hereto, effective upon such assignment.

### Subject to this Section 37(b), this Agreement will be binding upon each party’s successors and permitted assigns.

## Survival. Except for any licenses expressly terminated, all licenses granted under this Agreement, all indemnities, warranties and representations made under this Agreement, and all accrued obligations under Section 13 and Section 14 will survive termination of this Agreement. Cancellation or termination of this Agreement or any SOW will not affect operation of those provisions of this Agreement which, by their terms, survive or are required to survive in order to effectuate the intent of the parties as reflected by this Agreement, including 13, 14, 16, 22(c), 22(d), 23, 24, 26, 28, 35, 36(b), 36(d), 36(i), 37, and 38.

## Third-Party Beneficiary. The Boeing Company is a third-party beneficiary with rights of enforcement for each SOW entered into by its divisions, Affiliates and wholly owned subsidiaries.

## Rights and Remedies. Except as expressly stated otherwise in this Agreement, the rights and remedies afforded to each party under this Agreement are in addition to any other rights and remedies at law or in equity or otherwise.

## Right to Setoff. Buyer, without waiver or limitation of any of its rights or remedies, will be entitled from time to time to deduct from any amounts due or owing by Buyer to Supplierin connection with this Agreement any and all amounts owed by Supplierto Buyer in connection with this Agreement.

## Waiver. Either party’s failure to exercise any of its rights under this Agreement or any SOW will not constitute a waiver of any past, present or future right or remedy.

## Acknowledgment. Each party 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 have been negotiated by the parties. Accordingly, any ambiguities in this Agreement shall not be construed against the drafter.

## Amendments. Except as expressly stated otherwise in the Agreement, these terms and conditions may not be changed, amended or modified, except by an amendment in writing, executed by the Buyer’s Authorized Procurement Representative and an authorized representative of Supplier.

## Financial Review..

### 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.

### 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.

## Counterparts. The parties may execute this Agreement and any SOW hereunder in counterparts, including PDF and other electronic copies, which taken together will constitute one instrument.

## Escalation Process.If a dispute has come to the attention of a party, such matter will be referred for resolution as follows: (1) to a vice president, senior manager or their delegate for discussion and resolution for a period of 10 days; and (2) thereafter to the president (or equivalent) or the president’s (or equivalent) designated representative, in the case of Supplier, and the Director for the applicable business unit for Buyer for discussion and resolution for a period of 10 calendar days, beginning no later than the last day of the first level escalation process; provided, however, that the foregoing time periods will be shortened as necessary to comply with any requisite review, notice or cure period under this Agreement. The identified representatives will meet in good faith to attempt to resolve such matter as provided below. The representatives are subject to change with reasonable notice. During their discussions, each party will honor the other’s reasonable requests for information which is not privileged and which relates to the dispute or claim. Thereafter, if the parties are not able to resolve the dispute at the end of the foregoing time periods, either party may, without further notice, pursue other available remedies, including legal proceedings in order to resolve the dispute. Any dispute that arises under or is related to this Agreement that cannot be settled by mutual agreement of the parties may be decided in accordance with Section 35.b) of this Agreement. Nothing contained in this Section 37.l) will limit or delay the right of either party to seek injunctive relief from a court of competent jurisdiction, subject to the terms of Section 35.b) of this Agreement, whether or not such party has pursued informal resolution in accordance with this Section 37.l).

## Section Headings; Construction; Interpretation. The section headings contained in this Agreement are for reference purposes only and do not affect the meaning or interpretation of this Agreement. In this Agreement, (1) “including” means “including but not limited to,”; (2) examples are illustrative and not the sole examples of a particular concept; (3) the word “or” is not exclusive; (4) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this Agreement as a whole; (5) words denoting the singular have a comparable meaning when used in the plural, and vice versa; and (6) words denoting any gender include all genders. Unless the context otherwise requires, references in this Agreement: (x) to sections, exhibits, schedules, attachments and appendices mean the sections of, and exhibits, schedules, attachments and appendices attached to, this Agreement; (y) to an agreement, instrument or other document means that agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means that statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The exhibits, schedules, attachments and appendices referred to herein are an integral part of this Agreement to the same extent as if they were set forth verbatim herein.

# COMPLETE AGREEMENT

This Agreement, including all appendices, exhibits, and any SOW(s) entered into pursuant to this Agreement, contains the complete and exclusive statement of the terms of the agreement between Buyer and Supplier with respect to the Services, and supersedes and merges any prior or contemporaneous agreements, commitments, proposals, representations or communications, oral or written, with respect to the Services.

[*Signature page immediately follows*.]

**IN WITNESS HEREOF**, the parties have caused this Agreement to be executed by their duly authorized representatives on the dates specified below, effective as of the Effective Date.

THE BOEING COMPANY

(Acting through its division

Boeing Indirect Supply Chain)

By By

Print Name Print Name

Title Title

Date Signed Date Signed

APPENDIX [\_\_]  
FORM OF SOW

SOW # [\_\_]

This Statement of Work #[\_\_] (“**SOW**”) is entered into on [\_\_], 20[\_\_] (the “**SOW Effective Date**”) between The Boeing Company, (“**The Boeing Company**”), and **[**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**]**, a **[**insert entity type and citizenship**]** (“**Supplier**”). This SOW is entered into pursuant to and will be governed by the Master Services Agreement between the parties dated \_\_\_\_\_\_\_\_\_\_ (hereinafter the “**Agreement**”).

1. Definitions. Unless otherwise set forth in this SOW, the defined terms in this SOW shall have the meanings ascribed to them in the Agreement.
2. Term. Unless earlier terminated in accordance with the Agreement, the term of this SOW is effective on the SOW Effective Date and shall continue until this SOW or the Agreement is terminated.
3. Scope of Services. [**To the extent applicable, please fill out the requirements for Supplier in each of the categories** **below**]
4. The Services and Deliverables to be provided by Supplier.
5. The Supplier Rates.
6. The delivery schedule and Milestones for the Services or Deliverables, including any necessary implementation services.
7. Acceptance testing process, Acceptance Criteria and the Acceptance Period for the Services or Deliverables.
8. Any Supplier Personnel requirements.
9. Any of Supplier’s Background IP to be provided in connection with the Services.
10. The facilities from which the Services will be performed and any necessary equipment, tools or resources that Supplier must provide to perform the Services.
11. Name and contact information for Supplier’s designated representative.
12. Names of all Key Supplier Personnel and how long they are required to stay on Buyer’s account.
13. Any restrictions on Supplier’s usage of any of the Buyer Materials.
14. Any Service Levels applicable to the Services. [**If Service Levels apply, please consider attaching an SLA in the form of Exhibit [****\_\_]**]
15. Any other information or details pertaining to the Services or Deliverables as may be agreed to by the parties.

**IN WITNESS HEREOF**, the parties have caused this SOW to be executed by their duly authorized representatives.

THE BOEING COMPANY

By By

Title Title

Date Date

EXHIBIT [\_\_]  
Service Level Agreement

**Service Level Commitment**

The Service Level Commitment is a measure of the time that Buyer (and, where applicable, its customers or end users) is guaranteed to be able to utilize the Services. The Service Level Commitment is expressed on a monthly basis.

|  |  |  |
| --- | --- | --- |
| **Description** | **Availability** | **Service Level Commitment** |
| Availability of the Services | 24 hours per day, 7 days per week | 99.999% |

The Service Level Commitment is intended to measure the percentage of time the Services are available to Buyer (and, where applicable, its customers or end users) during a month. The actual Service Level Commitment will be calculated as follows:

Where:

“**Excluded Time**”means the number of minutes during Force Majeure Events and Scheduled Maintenance.

“**Potential Uptime**”is the number of minutes in the calendar month less Excluded Time.

“**Scheduled Maintenance**” is any non-emergency maintenance on the Services of which the Buyer is notified at least 3 days in advance.

“**Outage Time**”is the number of minutes that the Service was unavailable to Buyer or, where applicable, its customers or end users, during the calendar month. Outage Time does not include Excluded Time.

“**Service Credits”** means the credits that Supplier shall pay to Buyer in accordance with this SLA if Supplier breaches its Service Level Commitment.

**Scheduled Maintenance**

Supplier will carry out maintenance work that may affect the availability of the Services between [2:00 am PT – 5:00 am PT]. Scheduled Maintenance will conform to the following limitations:

|  |  |
| --- | --- |
| **Description of Maintenance Related Limitations** | **Target** |
| Minimum Notice Period prior to Scheduled Maintenance | **[**3 Days**]** |
| Maximum Number of any Scheduled Maintenance action per month exceeding 15 minutes | **[**5**]** |
| Maximum Duration of any Scheduled Maintenance action in any month | **[**4 Hours**]** |

**Credits**

If Supplier does not meet the Service Level Commitment, Buyer will be entitled to Service Credits equal to the percentage of total fees paid for the Services in the applicable month on a cumulative basis as follows:

|  |  |
| --- | --- |
| **Service Level Commitment Percentage** | **Service Credit** |
| [< 99.998% to ≥ 99.991% | 10% |
| < 99.990% to ≥ 99.985% | 20% |
| < 99.984% to ≥ 99.777% | 30% |
| < 99.976% | 40%] |

For clarity, Service Credits accumulate based on each range of Service Level Commitment Percentage, up to a maximum Service Credit of [100]% of the fees for the month in which the Service Level Commitment was not met. For example, if the Service Level Commitment for a month is [99.987]%, then Buyer will receive three total Service Credits totaling [30]% of the fees for the month in which the Service Level Commitment was not met: [10]% for the first range [(< 99.998% to ≥ 99.991%)] and [20]% for the second range [(< 99.990% to ≥ 99.985%)].

Supplier will monitor the Services, its performance and all failures to meet the Service Level Commitment. Service Credits will be automatically applied to the bill in the month immediately following the month in which a Service Credit was earned. Upon termination or expiration of this Agreement, Service Credits will be credited against the final invoice for Services or, upon Buyer’s request, paid out in cash within 5 days after the effective date of termination or expiration.

In no event will Service Credits be the sole and exclusive remedy with respect to any failures to meet the Service Level Commitment. Service Credits are not intended to serve as a penalty and are instead intended as liquidated damages for Supplier’s failure to meet the Service Level Commitment.

**[Priority Levels**

Supplier shall provide maintenance and support for the Services in accordance with [insert Supplier’s support and maintenance policies]. Upon receipt of notice from Buyer of any support or maintenance issue regarding the Services, Supplier shall use commercially reasonable efforts to fix any reproducible errors within the following timeframes (which are based on the priority level of the applicable support or maintenance issue):

|  |  |  |  |
| --- | --- | --- | --- |
| **Priority** | **P1** | **P2** | **P3** |
| **Initial Response Time** | 1 hour | 2 hours | 48 hours |
| **Target Restoration** | 2 hours | 5 hours | 1 week |
| **Target Resolution** | 2 business days | 5 business days | 2 weeks |
| **Priority Level Definition** | Critical or emergency fault. Services are offline or a problem is affecting ALL or a large portion of web site traffic. Problem prohibits good end user experience. | Medium risk fault. Problem is affecting a small portion of web site traffic. Problem prohibits good end user experience. | Low risk fault, such as a cosmetic issue. Traffic not affected. Problem does not prohibit good end user experience. |

“**Initial Response Time**” means the target time for Supplier to respond to Buyer’s support or maintenance issue and provide an estimated time for resolution of the applicable issue.

“**Target Restoration**” means the time to find a temporary workaround to the reported problem or fault. A temporary workaround is a solution which is functionally equivalent to a regular working Service.

“**Target Resolution**” means the time to fully restore the Services.**]**

**Help Desk**

Buyer may email Supplier at **[**Insert address**]** or call Supplier at **[**Insert number**]** to report problems or faults relating to the Service. Supplier shall be responsible for opening tickets in response to Buyer’s support calls and emails to the Help Desk and tracking such tickets until they are closed. The email address and telephone number will be monitored by qualified and technically competent Supplier Personnel that are knowledgeable about the Services from **[**7:00 a.m. to 6:00 p.m. PT Monday through Friday, except public holidays**]**.

EXHIBIT [\_\_]  
Global Contracting Addendum

In the event that pursuant to the Agreement, Buyer approves Supplier’s assignment or delegation of responsibilities to a non-U.S. Affiliate or non-U.S. Subcontractor and Services will be performed outside of the U.S., then at Buyer’s election in its discretion, Supplier agrees (or, if applicable, shall cause any Supplier Affiliates entering into an SOW with Buyer) to insert the following terms and conditions into the applicable SOW.

1. Mandatory Local Laws. Supplier shall notify Buyer at the earliest possible opportunity of any applicable local laws or regulations of the relevant jurisdiction in which Services are being performed which cannot be derogated from by agreement of the parties or that are applicable to any situation falling within its scope, irrespective of the governing law set forth in this Agreement (“**Mandatory Local Laws**”). Supplier shall comply with all such Mandatory Local Laws and, at no additional cost to Buyer, use commercially reasonable efforts to assist Buyer in complying with such Mandatory Local Laws to the extent applicable. In no event shall compliance with Mandatory Local Laws reduce Supplier’s obligation to comply with all Applicable Law as required by the Agreement.
2. Local Currency Invoicing. Notwithstanding Section 9 of the Agreement, invoices and payment will be made in local currency unless otherwise agreed in writing by Buyer or Supplier.
3. Section 35.b) (Governing Law) of the Agreement shall be replaced with the following provision:

**[b.** International Arbitration.

1. Subject to Section **[35b]**(2), and except as provided in Section **[35]**(3), any dispute arising out of or relating to this Agreement, whether based on contract, tort, or any other legal or equitable theory,will be resolved as follows: If the parties do not resolve the applicable dispute through the escalation process set forth in the Agreement, either party may provide notice of its demand for formal dispute resolution through non-binding mediation. Within 30 days after the formal dispute resolution demand, the parties will meet for one day with an impartial mediator selected by mutual agreement and consider dispute resolution alternatives other than arbitration. If the parties cannot agree on a mediator, they will each select one nominator, who must not at that time be employed by either party, and the two nominators will agree on and appoint the mediator. If the parties do not resolve the dispute or agree on an alternative method of dispute resolution within 60 days after the formal dispute resolution demand, either party may give notice to the other party detailing the specific areas of the dispute, which will require the parties to enter into formal binding arbitration to finally resolve the dispute.

The Rules of Arbitration of the ICC in effect as of the Effective Date will apply to the arbitration except as follows:

1. The arbitration will be held by one arbitrator appointed by mutual agreement of the parties. If the parties cannot agree on an arbitrator within 15 days from the date written demand for arbitration is made, they will each select one nominator, who must not at that time be employed by either party, and the two nominators will agree on and appoint the arbitrator. If the nominators cannot agree upon an arbitrator within an additional 15-day period, then the ICC will appoint an arbitrator.
2. The place of arbitration will be Seattle, Washington, United States, and the English language will be used in the proceedings.
3. The parties will not disclose: the existence, content, or status of the arbitration proceedings; any document exchanged, produced, or created by the parties in connection with the arbitration proceedings; any testimony offered by the parties in connection with the arbitration proceedings; or the award or other determination of the arbitrator.
4. The parties will equally bear the costs of: (i) the fees and expenses of the arbitrator; (ii) ICC administrative expenses; and (iii) the fees and expenses of any experts retained by the arbitrator. Each party will otherwise bear its own legal fees and expenses, including the fees and expenses of any experts it may retain.
5. In no event will the arbitrator award any remedy which enjoins a party or its customers from manufacturing, using, marketing, selling, offering for sale, or importing that party’s products. In addition, notwithstanding anything in this Agreement to the contrary, in no event will the arbitrators award a remedy which requires a party to license to the other party any of its Intellectual Property Rights of whatever nature or beyond the remedies permitted by this Agreement.
6. The arbitrator may not order any conservatory or interim relief measures of any kind.
7. Either party at any time may seek an injunction or other equitable remedies against the other party for misappropriation of trade secrets or breach of confidentiality obligations without complying with the dispute resolution processes in Sections **[35b]**(1) and **[35b]**2.
8. This Section [35.b], including but not limited to the duty of the parties to arbitrate any dispute within its scope, will survive the expiration or termination of this SOW.**]**