



- 1. FORMATION OF CONTRACT.** This proposed contract is Buyer's offer to purchase the goods and services ("Goods") described in this offer. Acceptance is strictly limited to the terms and conditions in this offer. Unless specifically agreed to in writing by Buyer's Authorized Procurement Representative, Buyer objects to, and is not bound by, any term or condition that differs from or adds to this offer. Seller's commencement of performance or acceptance of this offer in any manner shall conclusively evidence acceptance of this offer as written.
- 2. SCHEDULE**
 - a. Seller shall strictly adhere to the shipment or delivery schedules specified in this contract. In the event of any anticipated or actual delay, Seller shall: (i) promptly notify Buyer in writing of the reasons for the delay and the actions being taken to overcome or minimize the delay; (ii) provide Buyer with a written recovery schedule; and (iii) if requested by Buyer, ship via air or expedited routing to avoid or minimize delay to the maximum extent possible, unless Seller is excused from prompt performance as provided in the "Excusable Delays" article of this contract. The added premium transportation costs are to be borne by Seller and are not considered as an allowable cost under this contract.
 - b. Seller shall not deliver Goods prior to the scheduled delivery dates unless authorized by Buyer.
- 3. PACKING AND SHIPPING**
 - a. Seller shall pack the Goods to prevent damage and deterioration. Seller shall comply with carrier tariffs. Unless this contract specifies otherwise, the price includes shipping charges for Goods sold F.O.B. destination. Unless otherwise specified in this contract, Goods sold F.O.B. place of shipment shall be forwarded collect. Seller shall make no declaration concerning the value of the Goods shipped except on Goods where the tariff rating is dependent upon released or declared value. In such event, Seller shall release or declare such value at the maximum value within the lowest rating. Buyer may charge Seller for damage to or deterioration of any Goods resulting from improper packing or packaging.
 - b. Unless this contract specifies otherwise, Seller will ship the Goods in accordance with the following instructions:
 - (i) Shipments by Seller or its subcontractors must include packing sheets containing Buyer's contract number, line item number, description and quantity of Goods shipped, part number or size, if applicable, and appropriate evidence of inspections. A shipment containing hazardous and nonhazardous materials must have separate packing sheets for the hazardous and nonhazardous materials. Seller shall not include vermiculite or other hazardous substance in any packing material included with the Goods. Items shipped on the same day will be consolidated on one bill of lading or airbill unless Buyer's Authorized Procurement Representative authorizes otherwise. The shipping documents will describe the material according to the applicable classification and/or tariff. The total number of shipping containers will be referenced on all shipping documents. Originals of all Government bills of lading will be surrendered to the origin carrier at the time of shipment.
 - (ii) Seller will not insure any FOB Origin shipment unless authorized by Buyer.
 - (iii) Seller will label each shipping container with the contract number and the number that each container represents of the total number being shipped (e.g., Box 1 of 2, Box 2 of 2).
 - (iv) Buyer will select the carrier and mode of transportation for all shipments where freight costs will be charged to Buyer.
 - (v) Seller will include copies of documentation supporting prepaid freight charges (e.g., carrier invoices or UPS shipping log/manifest), if any, with its invoices.
 - (vi) If Seller is unable to comply with the shipping instructions in this contract, Seller will contact Buyer's Traffic Management Department referenced elsewhere in this contract or Buyer's Authorized Procurement Representative.
- 4. QUALITY CONTROL.** Seller shall establish and maintain a quality control system acceptable to Buyer for the Goods purchased under this contract. Seller shall permit Buyer to review procedures, practices, processes and related documents to determine such acceptability. Seller shall have a continuing obligation to promptly notify Buyer of any violation of or deviation from Seller's approved inspection/quality control system and to advise Buyer of the quantity and specific identity of any Goods delivered to Buyer during the period of any such violation or deviation.
- 5. RIGHTS OF BUYER'S CUSTOMERS AND REGULATORS TO PERFORM INSPECTION, SURVEILLANCE AND TESTING.** Buyer's rights to perform inspections, surveillance and tests and to review procedures, practices, processes and related documents related to quality assurance, quality control, flight safety and configuration control shall extend to the customers of Buyer that are departments, agencies or instrumentalities of the United States

Government and to the United States Government Federal Aviation Administration and any successor agency or instrumentality of the United States Government. Buyer may also, at Buyer's option, by prior written notice from Buyer's Authorized Procurement Representative, extend such rights to other customers of Buyer and to agencies or instrumentalities of foreign governments equivalent in purpose to the Federal Aviation Administration. Seller shall cooperate with any such United States Government-directed or Buyer-directed inspection, surveillance, test or review without additional charge to Buyer. Nothing in this contract shall be interpreted to limit United States Government access to Seller's facilities pursuant to law or regulation.

6. **SELLER NOTICE OF DISCREPANCIES.** Seller shall immediately notify Buyer in writing when discrepancies in Seller's process or product are discovered or suspected regarding Goods delivered or to be delivered under this contract.
7. **INSPECTION OF SUPPLIES.** (Applicable only if supplies will be delivered.) FAR 52.246-3, "Inspection of Supplies - Cost Reimbursement," is incorporated by reference. "Contractor" means Seller, "Government" means Buyer and in paragraph (f) "6 months" is revised to read "12months."
8. **INSPECTION OF SERVICES.** (Applicable only if services will be provided.) FAR 52.246-5, "Inspection of Services - Cost-Reimbursement," is incorporated by reference. "Contractor" means Seller and "Government" means Buyer.
9. **WARRANTY.** Seller warrants that any hardware, software and firmware delivered under this contract shall be able to accurately process date/time data (including, but not limited to, calculating, comparing and sequencing) from, into and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations to the extent that other information technology, used in combination with the information technology being acquired, properly exchanges date/time data with it. The duration of this warranty and the remedies available to Buyer for breach of this warranty shall be as defined in, and subject to, the other warranties contained in this contract, provided that notwithstanding any provision to the contrary in such warranties, the remedies available to Buyer under this warranty shall include repair or replacement of any noncompliant product discovered and made known to Seller in writing. Nothing in this warranty shall be construed to limit any rights or remedies Buyer may otherwise have under this contract with respect to defects other than year-2000 performance.
10. **LIMITATION OF COST.** (Applicable if this contract is fully funded.) FAR 52.232-20, "Limitation of Cost," is incorporated by reference. "Schedule" means this contract, "Contractor" means Seller and "Government" and "Contracting Officer" mean Buyer. The word "exclusive" in the first sentence of paragraph (a) is revised to "inclusive" and paragraph (d)(1) is revised to read:

"(1) Buyer is not obliged to reimburse Seller for costs incurred and fee in excess of (i) the estimated cost and fee specified in the contract or, (ii) if this is a cost-sharing contract, the estimated cost to Buyer specified in the Contract."
11. **LIMITATION OF FUNDS.** (Applicable if this contract is incrementally funded.) FAR 52.232-22, "Limitation of Funds," is incorporated by reference. "Schedule" means this contract, "Contractor" means Seller "Government" and "Contracting Officer" means Buyer. The word "exclusive" in the second sentence of paragraph (b) is revised to "inclusive" and subparagraph (f)(1) is revised to read:

"(1) Buyer is not obliged to reimburse Seller for costs incurred and fee in excess of the total amount allotted by Buyer to this contract; and"
12. **TAXES.** Unless this contract specifies otherwise, the target cost of this contract includes, and Seller is liable for and shall pay, all taxes, impositions, charges and exactions imposed on or measured by this contract except for applicable sales and use taxes that are separately stated on Seller's invoice. Prices shall not include any taxes, impositions, charges or exactions for which Buyer has furnished a valid exemption certificate or other evidence of exemption.
13. **INVOICE AND PAYMENT.**
 - a. Unless otherwise authorized by Buyer, Seller shall issue a separate original invoice for each payment request, which shall include Buyer's contract number and line item number. Unless freight or other charges are itemized, Buyer may take any offered discount on the full amount of the invoice. Payment due date, including discount periods, shall be computed from the later of the scheduled delivery date, the actual delivery date or the date of receipt of a correct invoice. Payment shall be deemed to have been made on the date Buyer's check is mailed or payment is otherwise tendered. Seller shall promptly repay to Buyer any amounts paid in excess of amounts due Seller.
 - b. Payment of fee will be made in monthly installments based upon the percentage of completion of this contract, as

determined by Buyer. Payment will be deemed made on the date that Buyer's check is mailed or otherwise tendered.

- c. Except as provided in this article, payment will be made in accordance with the following clauses of the Federal Acquisition Regulations ("FAR"), which are incorporated by reference. In each of the following clauses, "Contractor" means Seller, "Contracting Officer" and "Government" mean Buyer and "Disputes Clause" means the Disputes Clause of this contract.

(i) FAR 52.216-7 Allowable Cost and Payment

(ii) FAR 52.216-8 Fixed Fee, if this is a cost-plus-fixed fee contract

(iii) FAR 52.216-10 Incentive Fee, if this is a cost-plus-incentive fee contract. Paragraph (e) is set forth in full elsewhere in this contract.

14. CHANGES

- a. Buyer's Authorized Procurement Representative may, without notice to sureties and in writing, direct changes within the general scope of this contract in any of the following: (i) technical requirements and descriptions, specifications, statement of work, drawings or designs; (ii) shipment or packing methods; (iii) place of delivery, inspection or acceptance; (iv) reasonable adjustments in quantities or delivery schedules or both; (v) amount of Buyer-furnished property; and, if this contract includes services, (vi) description of services to be performed; (vii) time of performance (i.e., hours of the day, days of the week, etc.); and (viii) place of performance. Seller shall comply immediately with such direction. Procurement
- b. If such change increases or decreases the cost or time required to perform this contract, the parties shall negotiate an equitable adjustment in the price or schedule, or both, to reflect the increase or decrease. Buyer shall modify this contract in writing accordingly. Unless otherwise agreed in writing, Seller must assert any claim for adjustment to Buyer's Authorized Procurement Representative in writing within 25 days and deliver a fully supported proposal to Buyer's Authorized Procurement Representative within 60 days after Seller's receipt of such direction. Buyer may, at its sole discretion, consider any claim regardless of when asserted. If Seller's proposal includes the cost of property made obsolete or excess by the change, Buyer may direct the disposition of the property. Buyer may examine Seller's pertinent books and records to verify the amount of Seller's claim. Failure of the parties to agree upon any adjustment shall not excuse Seller from performing in accordance with Buyer's direction.
- c. If Seller considers that Buyer's conduct constitutes a change, Seller shall notify Buyer's Authorized Procurement Representative immediately in writing as to the nature of such conduct and its effect upon Seller's performance. Pending direction from Buyer's Authorized Procurement Representative, Seller shall take no action to implement any such change.
- d. Notwithstanding the foregoing provisions of this article, the estimated or target cost of this contract and, if this contract is incrementally funded, the funds allotted for the performance thereof shall not be increased or deemed to be increased except by specific written modification of this contract indicating the new contract estimated cost and the new amount allotted to this contract. Until such modification is made, Seller shall not be obligated to continue performance or incur costs beyond the point established in the "Limitation of Cost" and "Limitation of Funds" Articles of this contract.

15. DISPUTES. Any dispute that arises under or is related to this contract that cannot be settled by mutual agreement of the parties may be decided by a court of competent jurisdiction. Pending final resolution of any dispute, Seller shall proceed with performance of this contract according to Buyer's instructions so long as Buyer continues to pay amounts not in dispute.

16. NOTICE TO BUYER OF LABOR DISPUTES. Whenever Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, Seller shall immediately give notice thereof, including all relevant information, to Buyer.

17. EXCUSABLE DELAYS. FAR 52.249-14, "Excusable Delays," is incorporated by reference. "Contractor" means Seller and "Contracting Officer" means Buyer.

18. TERMINATION/CANCELLATION.

- a. The performance of work under this contract may be terminated in whole or in part by Buyer in accordance with the Termination clause set forth in FAR 52.249-6, which provisions, except for subparagraphs (e) and (j), are incorporated herein by reference. "Government" and "Contracting Officer" mean Buyer and the phrase "1 year" is deleted each place it occurs and "six months" is substituted in its place.
- b. By written notice, Buyer may cancel the whole or any part of this contract in the event of Seller's default of any or all of the requirements of this contract or in the event of suspension of Seller's business, insolvency of Seller, institution of bankruptcy, liquidation proceedings by or against Seller, appointment of a trustee or receiver for

Seller's property or business or any assignment, reorganization or arrangement by Seller for the benefit of creditors.

- 19. ASSIGNMENT, DELEGATION AND SUBCONTRACTING.** Seller shall not assign any of its rights or interest in this contract or subcontract all or substantially all of its performance of this contract without Buyer's prior written consent. Seller shall not delegate any of its duties or obligations under this contract. Seller may assign its right to monies due or to become due. No assignment, delegation or subcontracting by Seller, with or without Buyer's consent, shall relieve Seller of any of its obligations under this contract or prejudice any of Buyer's rights against Seller whether arising before or after the date of any assignment. This article does not limit Seller's ability to purchase standard commercial supplies or raw materials.
- 20. PUBLICITY.** Without Buyer's prior written approval, Seller shall not, and Seller's subcontractors at any tier shall not, release any publicity, advertisement, news release or denial or confirmation of same regarding this contract or the Goods, Services or program to which it pertains. Seller shall be liable to Buyer for any breach of such obligation by any subcontractor.
- 21. BUYER'S PROPERTY.** Seller shall clearly mark, maintain an inventory of, and keep segregated or identifiable all of Buyer's property and all property to which Buyer acquires an interest by virtue of this contract. Seller assumes all risk of loss, destruction or damage of such property while in Seller's possession, custody or control. Upon request, Seller shall provide Buyer with adequate proof of insurance against such risk of loss. Seller shall not use such property other than in performance of this contract without Buyer's prior written consent. Seller shall notify Buyer's Authorized Procurement Representative if Buyer's property is lost, damaged or destroyed. As directed by Buyer upon completion, termination or cancellation of this contract, Seller shall deliver such property, to the extent not incorporated in delivered end products, to Buyer in good condition subject to ordinary wear and tear and normal manufacturing losses. Nothing in this article limits Seller's use, in its direct contracts with the Government, of property in which the Government has an interest.
- 22. GOVERNMENT-OWNED PROPERTY.** FAR 52.245-5, "Government Property (Cost Reimbursement, Time-and-Material, or Labor-Hour Contracts)," is incorporated by reference. "Contractor" means Seller, "Government" and "Contracting Officer" mean or include Buyer and paragraph (g) is revised to read as follows:
- "(g) Risk of Loss. Seller, upon the delivery to it or acquisition by it of any Government property, assumes the risk of and shall be responsible for all loss thereof or damage thereto. When such property is no longer needed for the performance of this contract, or at such other time as may be directed by Buyer pursuant to paragraph (i) of this clause, Seller shall return such property to Buyer or the Government, as applicable, in as good condition as when received, except for reasonable wear and tear, and except for such property as has been reasonably consumed in the performance of work hereunder."
- 23. PATENT, TRADEMARK AND COPYRIGHT INDEMNITY.** Seller will indemnify, defend and hold harmless Buyer and its customer from all claims, suits, actions, awards (including, but not limited to, awards based on intentional infringement of patents known at the time of such infringement, exceeding actual damages and/or including attorneys' fees and/or costs), liabilities, damages, costs and attorneys' fees related to the actual or alleged infringement of any United States or foreign intellectual property right (including, but not limited to, any right in a patent, copyright, industrial design or semiconductor mask work, or based on misappropriation or wrongful use of information or documents) and arising out of the manufacture, sale or use of products by either Buyer or its customer. Buyer and/or its customer will duly notify Seller of any such claim, suit or action; and Seller will, at its own expense, fully defend such claim, suit or action on behalf of indemnitees. Seller will have no obligation under this article with regard to any infringement arising from (a) Seller's compliance with formal specifications issued by Buyer where infringement could not be avoided in complying with such specifications or (b) use or sale of products in combination with other items when such infringement would not have occurred from the use or sale of those products solely for the purpose for which they were designed or sold by Seller. For purposes of this article only, the term Buyer will include The Boeing Company and all Boeing subsidiaries and all officers, agents and employees of Boeing or any Boeing subsidiary.
- 24. CONFIDENTIAL, PROPRIETARY, AND TRADE SECRET INFORMATION AND ITEMS.** Buyer and Seller shall each keep confidential and protect from unauthorized use and disclosure all (a) confidential, proprietary and/or trade secret information; (b) tangible items containing, conveying or embodying such information; and (c) tooling identified as being subject to this article and obtained, directly or indirectly, from the other in connection with this contract or other agreement referencing this contract (collectively referred to as a "Proprietary Information and Materials"). Buyer and Seller shall each use Proprietary Information and Materials of the other only in the performance of and for the purpose of this contract and/or any other agreement referencing this contract. However, despite any other obligations or restrictions imposed by this article, Buyer shall have the right to use, disclose and reproduce Seller's Proprietary

Information and Materials, and make derivative works thereof, for the purposes of testing, certification, use, sale or support of any materials delivered under this contract or any other agreement referencing this contract. Any such use, disclosure, reproduction or derivative work by Buyer shall, whenever appropriate, include a restrictive legend suitable to the particular circumstances. The restrictions on disclosure or use of Proprietary Information and Materials by Seller shall apply to all materials derived by Seller or others from Buyer's Proprietary Information and Materials. Upon Buyer's request at any time, and in any event upon the completion, termination or cancellation of this contract, Seller shall return to Buyer all of Buyer's Proprietary Information and Materials and all materials derived therefrom, unless specifically directed otherwise in writing by Buyer. Seller shall not, without the prior written authorization of Buyer, sell or otherwise dispose of (as scrap or otherwise) any parts or other materials containing, conveying, embodying or made in accordance with or by reference to any Proprietary Information and Materials of Buyer. Prior to disposing of such parts or other materials as scrap, Seller shall render them unusable. Buyer shall have the right to audit Seller's compliance with this article. Seller may disclose Proprietary Information and Materials of Buyer to its subcontractors as required for the performance of this contract, provided that each such subcontractor first agrees in writing to the same obligations imposed upon Seller under this article relating to Proprietary Information and Materials. Seller shall be liable to Buyer for any breach of such obligation by such subcontractor. The provisions of this article are effective in lieu of any restrictive legends or notices applied to Proprietary Information and Materials. The provisions of this article shall survive the performance, completion, termination or cancellation of this contract.

- 25. GRATUITIES.** Seller warrants that neither it nor any of its employees, agents, or representatives have offered or given, or will offer or give, any gratuities to Buyer's employees, agents or representatives for the purpose of securing this contract or securing favorable treatment under this contract.
- 26. OFFSET CREDITS.**
- a. To the exclusion of all others, Buyer or its assignees shall be entitled to all industrial benefits or offset credits which might result from this contract. Seller shall provide documentation or information that Buyer or its assignees may reasonably request to substantiate claims for industrial benefits or offset credits.
 - b. Seller agrees to use reasonable efforts to identify the foreign content of goods or services that Seller either produces itself or procures from subcontractors for work directly related to this contract. Promptly after selection of a foreign subcontractor for work under this contract, Seller shall notify Buyer of the name, address, subcontract point of contact (including telephone number) and dollar value of the subcontract.
- 27. UTILIZATION OF SMALL BUSINESS CONCERNS.** Seller agrees to actively seek out and provide the maximum practicable opportunities for small businesses, small disadvantaged businesses, women-owned small businesses, minority business enterprises, historically black colleges and universities and minority institutions, Historically Underutilized Business Zone small business concerns and U.S. Veteran and Service-Disabled Veteran Owned small business concerns to participate in the subcontracts Seller awards to the fullest extent consistent with the efficient performance of this contract.
- 28. RIGHTS AND REMEDIES.** Any failures, delays or forbearances of either party in insisting upon or enforcing any provisions of this contract, or in exercising any rights or remedies under this contract, shall not be construed as a waiver or relinquishment of any such provisions, rights or remedies; rather, the same shall remain in full force and effect. Except as otherwise limited in this contract, the rights and remedies set forth herein are cumulative and in addition to any other rights or remedies that the parties may have at law or in equity. If any provision of this contract is or becomes void or unenforceable by law, the remainder shall be valid and enforceable.
- 29. COMPLIANCE WITH LAWS.** Seller shall comply with all applicable statutes and government rules, regulations and orders, including those pertaining to United States Export Controls.
- 30. GOVERNING LAW.** This contract shall be governed by and construed in accordance with the laws of the state of Washington. No consideration shall be given to Washington's conflict of laws rules. This contract excludes the application of the 1980 United Nations Convention on Contracts for the International Sale of Goods.
- 31. GOVERNMENT CLAUSES.** Government clauses applicable to this contract are incorporated herein either by attachment to this document or by some other means of reference.
- 32. EVIDENCE OF CITIZENSHIP OR IMMIGRANT STATUS.** Buyer may be required to obtain information concerning citizenship or immigrant status of Seller's personnel or Seller's subcontractor personnel entering the premises of Buyer. Seller agrees to furnish this information before commencement of work and at any time thereafter before substituting or adding new personnel to work on Buyer's premises. Information submitted by Seller shall be certified by an authorized representative of Seller as being true and correct.

33. ACCESS TO PLANTS AND PROPERTIES. Seller shall comply with all the rules and regulations established by Buyer for access to and activities in and around premises controlled by Buyer or Buyer's customer.

34. ENTIRE AGREEMENT. This contract contains the entire agreement of the parties and supersedes any and all prior agreements, understandings and communications between Buyer and Seller related to the subject matter of this contract. No amendment or modification of this contract shall bind either party unless it is in writing and is signed by Buyer's Authorized Procurement Representative and an authorized representative of Seller.