

1. CONTRACT FORMATION

1.01 Definitions

In this Contract, unless the context otherwise requires, words importing the singular shall also include the plural and vice versa. Headings are inserted for convenience of reference only and are not a part of, nor shall they affect any construction or interpretation of the clause.

With the exception of terms specifically defined within and applicable to that specific clause, the definitions set forth below shall apply to this Contract and any Order issued pursuant to this Contract.

“Buyer” means The Boeing Company and its Affiliates.

“Buyer’s Authorized Procurement Representative” means the individual designated by Buyer in the Contract and as may be changed by written notice, who is authorized by Buyer to act on behalf of Buyer in business transactions with Seller regarding this Contract.

“Embodiment” means all flow charts, logic diagrams, programmer's notes, user's manuals, listings, error codes, down time losses, alarm codes, speed losses, and such other material or diagnostics necessary for the use, upkeep, maintenance, and modification of all or any portion of the Software or Goods.

“Implementation Plan” means the Document detailing the steps required to deliver the Integrated System described in the applicable SOW. It will include, among other things, a Key Milestone Schedule, the services and deliverables to be completed by Seller, the contingency or risk mitigation strategies to be employed by Seller in the event of disruption or delay, and any implementation responsibilities to be performed or implementation resources to be provided by Buyer. Each Implementation Plan shall include a date for the Project Substantial Completion Guaranteed Date.

“Integrated System” means the Product. Any services, functions or responsibilities not specifically described in the applicable Statement of Work or “SOW” are an inherent, necessary or customary part of the Integrated System or are otherwise required for proper performance of the Integrated System in accordance with this Contract, they shall be deemed to be included within the scope of work, as if such services, functions or responsibilities were specifically described in the SOW. The Integrated System, and the components thereof, supplied hereunder are unique as that term is used under Article 2-716 of the Uniform Commercial Code.

“Key Milestone Schedule” means the Document, completed by Seller and approved by Buyer, which contains specific completion dates, defines deliverables, and defines objective evidence associated with the completion of Key Milestones.

“Machine Data” means the data indicating status and measuring performance or effectiveness of the Goods, either directly or indirectly, including but not limited to, torque time, speed, location, distance, starts and stops.

“Order” means each purchase order issued by Buyer and accepted by Seller under the terms of this Contract or issued within the Buyer’s authority under this Contract.

“Product” means the products, goods, software, services, Tooling and/or related deliverables, together with all components and parts thereof, and related Materials furnished or to be furnished to Buyer under any Order, except for rotating use tooling.

“Project Substantial Completion Guaranteed Date” means the date when the Integrated System has been fully designed, produced, delivered to Buyer’s factory, is fully functioning and has passed the final acceptance test.

“Tooling” has the meaning given to Accountable Tooling in D33200-1, “Boeing Suppliers’ Tooling.” The singular form of “Tooling” is “Tool.”

NOTE: In reference or incorporated Documents, notes, common clauses, etc., the following applies:

- The term “Buyer” and “Boeing” are interchangeable terms.
- The term “Seller” and “Company” are interchangeable terms.

- The term “Product(s)” is interchangeable with “Goods”, “Services”, “Items”, or “Integrated System”.
- The terms “Contract”, “Agreement”, “Purchase Agreement” or “Purchase Contract” are interchangeable terms except as specifically agreed to in writing by the Parties.

1.02 Offer and Acceptance

Buyer and Seller enter into this contract to govern Buyer’s purchase from Seller of the Integrated System described in this contract. These terms and conditions together with all other terms and conditions set forth in, attached to or incorporated by reference in the contract are referred to collectively as the “Contract.” Unless expressly 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 Contract. Seller’s acceptance of this Contract in any manner or commencement of performance constitutes acceptance of this Contract as written. Except as authorized herein, no amendment or modification of this Contract shall bind either Party unless it is in writing and is signed by the authorized representatives of the Parties. Buyer and Seller are referred to herein as a “Party” or collectively as the “Parties.”

1.03 Order of Precedence

All documents and provisions in this Contract shall be read so as to be consistent to the fullest extent possible. In the event of a conflict or inconsistency between the documents or provisions as incorporated into or attached to the Contract, the documents or provisions shall prevail in the order listed below, with the first document or provision listed having the highest precedence:

Document Title/Description:

- a. Customer Contract Requirements (CCR), if set forth in this Contract
- b. Common terms and conditions
- c. General Provisions (GP) and Special Provisions (SP3 and SP4 where applicable)
- d. The Buyer’s system generated purchase contract document
- e. Buyer site-specific terms and conditions
- f. Specifications (the most recently agreed to and issued version of specifications shall control and Buyer’s specifications will prevail over any subsidiary documents referenced therein)
- g. Statements of work (the most recently agreed to and issued version of a statement of work shall control)
- h. All other attachments, exhibits, appendices, documents or terms incorporated by reference in or attached to this Contract.

1.04 Independent Contractor

Seller is an independent contractor for all purposes. Seller shall have complete control over the performance of, and the details for accomplishing, the Integrated System. In no event shall Seller or its agents, representatives or employees be deemed to be agents, representatives or employees of Buyer. Seller’s employees shall be paid exclusively by Seller. Seller shall comply with all requirements and obligations relating to such employees under federal, state and local law (or foreign law, if applicable). Such compliance shall include, but not be limited to, laws regarding minimum wages, social security, unemployment insurance, federal and state income taxes and workers’ compensation insurance.

1.05 Standards

Seller shall assign personnel satisfactory to Buyer. Buyer may, for good cause shown in Buyer’s sole determination, require Seller to withdraw the services of any person and require that Seller promptly provide replacements for such person satisfactory to Buyer. Seller shall indemnify and hold harmless Buyer from and against any liabilities, claims, charges or suits for alleged losses, costs, damages or expenses arising from Buyer’s exercise of its rights hereunder.

2. DELIVERY AND PAYMENTS

2.01 Schedule

- a. Seller shall strictly adhere to the shipment or delivery schedules specified in this Contract. Failure to adhere to such Contract schedule, unless excused by Force Majeure shall constitute a breach of this Contract. In the event of any anticipated or actual delay, including but not limited to delays attributed to labor disputes, Seller shall: (i) promptly notify Buyer in writing of the reasons for the delay and the actions being taken to overcome or minimize the delay; (ii) provide Buyer with a written recovery schedule; and (iii) if requested by Buyer, ship via air or other expedited routing, at no additional cost to Buyer, to avoid or minimize delay to the maximum extent possible.
- b. Seller shall not deliver Products prior to the scheduled delivery dates unless authorized in writing by Buyer's Authorized Procurement Representative.
- c. Buyer shall, at no additional cost, retain Goods furnished in excess of the specified quantity or in excess of any allowable overage unless, within forty-five (45) days of shipment, Seller requests return of such excess. In the event of such request, Seller shall reimburse Buyer for reasonable costs associated with storage and return of the excess. If Goods are manufactured with reference to Buyer's proprietary information or materials, Seller agrees that, pursuant to the "Confidential, Proprietary and Trade Secrets Information and Materials" section of this Contract, it will not sell or offer such Goods for sale to anyone other than Buyer without Buyer's prior written consent. This restriction shall not prevent Seller to sell items to third parties similar to the Goods, so long as such items do not reference Buyer's proprietary information or materials.
- d. In the event Buyer delays the original scheduled delivery dates for any reason, then Buyer shall pay all direct and documented costs associated with such delay including, but not limited to, on-site or off-site storage of the Goods, transportation of the Goods to a storage facility, and replacement insurance which shall include loading and transportation of the Goods to a storage facility if necessary in the sole discretion of Seller.

2.02 Packaging and Shipping

- a. Seller shall package the Products to prevent damage and deterioration in accordance with the requirements of Buyer Document D37522-6 "Supplier Packaging" set forth at <http://boeingsuppliers.com>, unless otherwise directed by Buyer.
- b. Seller shall ship Products in accordance with the provisions set forth in either (a) the Buyer Domestic Shipment Routing Guide Instructions for shipments within the United States or (b) the Buyer International Shipment Routing Guide Instructions for Products shipments originating outside the United States; these are accessed through Buyer's Supplier Portal at <https://portal.exostar.com/> ("Supplier Portal"). Non-Conforming shipments are subject to rejection and repackaging at Seller's expense. If Seller is unable to access Buyer's Supplier Portal, Seller shall contact Buyer's Authorized Procurement Representative. Where packaging costs are included in the Product pricing, upon Buyer's request, Seller will identify packaging charges, including itemization of material and labor costs for container fabrication.

2.03 Invoice and Payments

- a. Payment for Product delivered shall be made via the auto pay process 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 of the Products, the actual delivery date of Product or the date of receipt of a correct invoice. Payments shall be processed on the next payment system run following the computed payment due date. Payment shall be subject to the applicable payment process set forth elsewhere in the Contract or if not in the Contract as set forth at: <http://www.boeingsuppliers.com>.
- b. If an error in payment is discovered by Buyer or Seller, a written notification shall be submitted to the other Party and resolution of the error shall occur in a timely manner.
- c. For payment of non-delivered Items or non-recurring Items, Seller shall issue a separate original invoice for each Item in accordance with the schedules identified by Buyer. Such invoice shall include Buyer's Contract number and line item number. Seller shall forward its invoice to the address specified elsewhere in this Contract. Payments shall be processed on the next payment system run following the computed payment due date. Payment shall be subject to the applicable payment process set forth elsewhere in the Contract or if not in the Contract, as set forth at: <http://www.boeingsuppliers.com>.
- d. Payment shall be deemed made on the date Buyer's check is mailed or payment is otherwise tendered. Except for amounts invoiced under Sections Termination for Convenience or Cancellation for Default, Seller shall be deemed to have waived all charges and fees that are not invoiced within ninety (90) calendar days after the end of the

calendar year in which the charges were incurred.

2.04 Taxes

Unless this Contract specifies otherwise, the price of this Contract includes, and Seller is liable for and shall pay, all taxes, impositions, charges, exactions or similar taxes ("Indirect Taxes") imposed on or measured by this Contract except for applicable sales and use taxes in which (a) Buyer has agreed to pay and (b) are separately stated on Seller's invoice. The price of this Contract shall not include any Indirect Taxes, for which Buyer has furnished a valid exemption certificate or other evidence of exemption.

2.05 Implementation

- a. Payment milestones identified in the Purchase Order shall be tied to completion of "Key Milestones." Seller will provide Buyer with a detailed Implementation Plan that reflects the steps required to deliver the Integrated System, as described in the SOW and in accordance with the Key Milestones. The initial Implementation Plan, including at least the Key Milestone Schedule (as defined in Section 1.01), shall be attached to the Contract as Attachment A. No later than thirty (30) days after the execution of any additional SOW under this Purchase Order, Seller will provide Buyer with an Implementation Plan. For any subsequent, approved revisions of the Implementation Plan, or Implementation Plans associated with any SOWs under this Purchase Order, such Implementation Plans shall be attached and numbered sequentially as Attachment A-1, A-2, A-3, etc. Changes to the Key Milestone Schedule must be agreed to in writing by the Buyer's Authorized Procurement Representative. In the event of the execution of any changes to a SOW under this Purchase Order, the Seller has thirty (30) days to provide a detailed Implementation Plan applicable to that SOW. Except as expressly set forth in the Implementation Plan, and agreed to by the Buyer, Buyer shall have no responsibilities for implementation.
- b. Services and deliverables, such as installation, testing, general support and maintenance provided by the Seller, shall be included in the Implementation Plan.
 - i. If any services, functions or responsibilities not specifically described in the Implementation Plan are inherent, necessary or customary, or are required for proper performance of the services explicitly included in the Implementation Plan, then they shall be deemed to be included within the scope of the Implementation Plan as if such services, functions or responsibilities were specifically described in the Implementation Plan. Unless otherwise agreed, Buyer shall not incur any charges, fees or expenses payable to Seller or any Subcontractor in connection with the Implementation Plan, other than those charges, fees and expenses specified in the Implementation Plan, and those incurred by Buyer in connection with its performance of tasks expressly designated in the Implementation Plan as Buyer's responsibility. All services shall at all times be performed in conformance with best practices in the applicable industry.
 - ii. Seller shall provide all cooperation and assistance reasonably required or requested by Buyer in connection with Buyer's evaluation or testing of the deliverables and services set forth in the Implementation Plan. Seller shall perform all services under the Implementation Plan so as to avoid or minimize to the extent possible (a) any disruption to or adverse impact on the business or operations of the Buyer, (b) any degradation of the services then being received by Buyer, or (c) any disruption or interference with the ability of Buyer to obtain the full benefit of the services. Prior to undertaking any service pursuant to the Implementation Plan, Seller shall discuss with Buyer all known Buyer-specific material risks and shall not proceed with such activity until Buyer is reasonably satisfied with the plans with regard to such risks and confirms the same in writing. Seller shall identify and resolve any foreseeable problems that may impede or delay the timely completion of each task in the Implementation Plan and shall use all its best efforts to ensure the timely completion of the Key Milestones.
- c. Seller 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 is reasonable and achievable. Buyer shall, in its' sole discretion, approve Seller's completion of the tasks set for in the Implementation Plan. If the Integrated System is to be installed at a secure facility, Seller shall comply strictly with written direction from Buyer, specifying the schedule, manner for installation or removal, and any other requirements specific to the secure facility.
- d. In addition to addressing Key Milestones, the Implementation Plan shall include, without limitation, specific milestones for the services and deliverables (including what constitutes objective evidence of completion)

("Evidence of Completion"). The Parties agree and acknowledge that Buyer must make critical decisions regarding its business operations in reliance upon the Implementation Plan. Accordingly, any delays in the achievement of the Key Milestones or any failure by Seller to perform services under the Implementation Plan in accordance with the standards provided herein is likely to cause irreparable harm to Buyer's business operations. In view of the foregoing, the Parties agree and acknowledge that (a) Seller shall undertake its best efforts to avoid, work around, or otherwise redress any potential delays or disruptions in the performance of the Plan, whatever the cause of such potential delays or disruptions; and (b) if Seller fails to meet any portion of the Implementation Plan, including performance of services in conformance with best practices in the industry, then, to the extent that such failure results from acts or omissions of Seller (including, without limitation, a failure by Seller to exert its best efforts to mitigate delays or disruptions under the preceding clause), the Seller shall reimburse Buyer for any damages incurred by Buyer due to such failure.

- e. Seller shall meet the Key Milestone dates for each SOW. If the Seller does not timely meet a Key Milestone, the Seller has () days to produce a recovery plan (approved by Buyer in its sole discretion) to recover the schedule to Buyer's satisfaction, or following the () day period, Buyer, at its sole discretion, in each instance, may take any actions it deems necessary in order to recover schedule, including, without limitation, performing any repair, rework, redesign, replacement, testing or other work by itself or by contracting with a third party, or paying additional costs or expenses for expedited goods and services, including, without limitation, expedited shipping and freight costs ("Buyer Recovery Actions"). In each such case, Seller shall be responsible to reimburse Buyer for all resulting costs and expenses (including costs of cover) incurred by Buyer, including, without limitation, Buyer labor at fully burdened labor rates (currently \$ per hour, which shall be the minimum fully burdened labor rate but which may increase over time). Buyer reserves the right to set off such costs and expenses against any final amounts due to Seller from Buyer. Seller shall include this provision in all contracts with subcontractors to allow Buyer to enforce this provision in the same manner directly against each such subcontractor.
- f. Seller acknowledges that, if it fails to timely meet a Key Milestone, Buyer will sustain damages from delay distinct from those addressed by Sections d and e above (or elsewhere in this Contract) and that such damages are difficult to ascertain or quantify, including, without limitation, possible stoppage or interruption of its production line, utilization of additional employee and other resources (apart from those devoted to Buyer Recovery Actions), and damage to Buyer's reputation with its customers. Accordingly, if any Key Milestone dates are not met by Seller, then Seller shall pay liquidated damages ("Delay Liquidated Damages") to Buyer in the amount of dollars (USD \$) for each one (1) business day that Seller delayed and failed to render the deliverables and services and provide Evidence of Completion as set forth in the Implementation Plan. The last day for purposes of calculating the amount of Delay Liquidated Damages shall be the date the missed Key Milestone is achieved. Seller acknowledges and agrees that this amount is a reasonable estimate of Buyer's anticipated losses and damages considering all of the circumstances existing on the date of the execution of this Contract, including the relationship of the amount of such liquidated damages to the degree of harm to Buyer that reasonably could be anticipated. Further, for the harm addressed in this Section f, the Parties expect that proof of actual damages would be impractical or extremely difficult. Such Delay Liquidated Damages amounts shall be paid and received as liquidated damages and not as a penalty. The payment of Delay Liquidated Damages compensates only for the distinct harm identified in this Section f arising from Seller's failure to timely meet the identified Key Milestones, not for any other harms, and shall not affect any other claims for damages. Buyer expressly reserves and preserves any and all other claims that it may be entitled to bring against Seller under this Contract, related agreements, and applicable law, including, without limitation, claims for third-party injury, damage, or loss. Buyer reserves the right to set-off all such costs and expenses, including but not limited to its Delay Liquidated Damages for a miss of a Key Milestone, against any final amounts due to Seller from Buyer.
- g. As frequently as necessary to ensure adherence to the Implementation Plan, but no less than once a month, Seller shall meet with Buyer to report on its progress in performing its responsibilities and meeting the timetable set forth in the Implementation Plan. Such meetings shall take place at a time, place and manner as mutually agreed (i.e. in person or teleconference). Seller shall also provide written reports to Buyer at least weekly regarding such matters, and shall provide oral reports more frequently if reasonably requested by Buyer. Without limitation to Seller's responsibilities under this Section to undertake its best efforts to avoid, work around, or otherwise mitigate any potential delays in the performance of the Implementation Plan, Seller shall (i) immediately notify Buyer in writing of any potential delays in the achievement of the Key Milestone Schedule that arise during the course of the Implementation Plan immediately upon its receipt of any information indicating that Seller may not perform its responsibilities or meet the timetable set forth in the Implementation Plan; and (ii) use best efforts to develop and identify, for Buyer's consideration and approval, specific measures to minimize or alleviate each such delay and mitigate the risks associated therewith. Seller will comply with any other governance requirements set forth in the

SOW or Implementation Plan.

2.06 Milestone Payments

If Buyer makes or agrees to make any milestone payments under the Contract in advance of final acceptance of the Integrated System, the following provisions shall apply:

- a. Ownership. Upon the initial milestone payment, Buyer shall become and thereafter be deemed to be the owner of the following whether then existing or thereafter arising: (i) all materials, parts and other goods purchased under this Contract that are to be incorporated into the Integrated System, (ii) all Goods, intellectual property and other general intangibles developed or created in part or in full under this Contract or identified to this Contract, and (iii) all consumable supplies purchased primarily for Seller's use in the performance of this Contract (the property described in this item (a) is hereinafter referred to as the "Boeing Property"). Such passage of ownership of the Boeing Property to Buyer shall (a) not constitute acceptance under this Contract by Buyer of the Boeing Property, (b) extend the warranty period set forth in Section 3.05.b below so that it still ends on the later of the date twelve (12) months after final acceptance of the Integrated System or the date that otherwise would be the last day of the warranty period set forth in Buyer's specifications or this Contract and (c) not relieve Seller of its liability on any third-party contracts.
- b. All-Risk Insurance. Seller shall insure the Goods against fire and other perils under a suitable all-risk policy in a form and with insurers satisfactory to Buyer, shall cause such insurers to name Buyer as a loss payee on such policy, and shall cause such insurers to provide to Buyer a certificate of insurance evidencing such coverage and indicating that such insurance will not be canceled or materially altered without thirty (30) days prior written notice being provided to Buyer, and otherwise holding Buyer harmless from any claims for premiums in connection with such policy. Seller hereby represents that it has not granted, and hereby covenants that it will not grant, to any third party a security interest, whether or not subordinate to the interest hereby granted to Buyer in the Goods.
- c. Title and Risk of Loss. Notwithstanding Buyer's ownership of the Boeing Property, risk of loss of the Goods shall remain with Seller until delivery to Buyer's facilities, at which point Buyer shall assume risk of loss. The Parties explicitly agree that title to (i) materials or parts purchased under this Contract that are to be incorporated into the Goods, (ii) Goods developed or created in part or in full under this Contract, and (iii) consumable supplies that are purchased primarily for Seller's use in the performance of this Contract shall pass to Buyer immediately. Such passage of title shall not constitute acceptance by Buyer of such materials or of the Goods into which they are incorporated, nor shall any Warranty Period commence with respect to such materials or Goods, nor shall Seller be relieved of its liability on any third-party contracts.
- d. Segregation. Any Buyer Property located at Seller's premises shall be conspicuously marked and tagged indicating ownership by Buyer; and, except as required for performance, be (i) segregated from any non-Goods or items owned by Seller or any third parties and maintained in a separate area and (ii) restricted to access only by Buyer employees and authorized employees of Seller or its subcontractors that are specifically assigned to work in that area. Seller's failing to comply in all particulars with the foregoing requirements shall not in any way impair or invalidate Buyer's ownership interest in the Boeing Property.
- e. Ordinary Course. Seller represents that it is in the business of supplying the Goods being purchased by Buyer and the materials or parts therefor. Further, Seller represents that the Goods, including the materials or parts therefor and the work in progress, are being sold in the ordinary course of the Seller's business.
- f. Security Interest. It is the express intention of the Parties that all Boeing Property at all times be deemed owned by Buyer. If notwithstanding such intention Seller is found to have an interest in any Buyer Property, it is the intention of the Parties that this Contract constitute a security agreement and that Seller shall be deemed to have granted Buyer a first priority purchase money security interest in all of Seller's right, title and interest in and to such Buyer Property.

2.07 Liens

Seller warrants that, on the date Buyer pays for the Integrated System delivered under this Contract or any Contract hereunder, all liens, rights of lien, and claims against Buyer arising from or related to Seller's provision of the Integrated System will have been released or satisfied. On request, Seller 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.

3. CONFORMANCE

3.01 Quality Control

- a. Seller shall establish and maintain a quality control system acceptable to Buyer and relevant to the Integrated System. Seller shall permit Buyer to review procedures, practices, processes, and related documents to determine such acceptability.
- b. Seller shall promptly notify Buyer in writing when discrepancies in Seller's process, including any violation of or deviation from Seller's approved inspection/quality control system, or Integrated System are discovered or suspected regarding the Integrated System delivered or to be delivered under this Contract, including the quantity and specific identity of any impacted Products.

3.02. Inspection

The Integrated System shall be subject to inspection, routine surveillance and test at reasonable times and places, including Seller's subcontractors' locations, at no additional cost to Buyer. Buyer has the right to visit Seller's and Seller's subcontractors' locations at times that do not unduly interfere with Seller's performance under this Contract to inspect, review and assess progress and performance under this Contract, including, but not limited to, production, schedule, and quality. Any Buyer representative shall be allowed access to all areas used for the performance of the Contract. Buyer may extend its rights to customers of Buyer that are departments, agencies or instrumentalities of the United States Government, including the United States Government Federal Aviation Administration and any successor agency or instrumentality of the United States Government or instrumentality of foreign governments' equivalent in purpose to the FAA.

3.03 Acceptance and Rejection

- a. Seller shall deliver the Integrated System that (a) conforms to the applicable requirements and specifications; (b) is free from defects in materials and workmanship; (c) if it is not a Buyer-designed product, is free from defects in design and is fit for its intended purpose; and (d) if it is a service, is performed in a good and workmanlike manner and in accordance with industry standards by employees or agents who are experienced and skilled in their profession ("Conforming Product").
- b. Buyer will inspect and test the Integrated System and/or its Goods after delivery for compliance with the applicable acceptance criteria described on **Attachment A-X**. As part of the Implementation Plan, the Parties shall use a Test Period to provide a trial and testing of the Integrated System and/or its components in order to identify and resolve all materials technical and operational impediments. Such inspection and testing shall be performed within the Acceptance Period. Buyer shall accept the applicable Products, or give Seller notice of rejection within a reasonable time after the date of delivery.
- c. If Seller delivers non-Conforming Product, Buyer may at its option and at Seller's expense: (i) require Seller to promptly correct or replace or re-perform, the Products; (ii) correct or re-perform the Products; (iii) obtain replacement Product from another source or (iv) return the Products, if appropriate, for credit or refund. Return to Seller of non-Conforming Products and redelivery to Buyer of corrected or replaced Product shall be at Seller's expense. These remedies are in addition to any remedies Buyer may have at law or equity.
- d. No payment, prior test, inspection, use, passage of title, acceptance, failure or delay in performing any of the foregoing, or failure to discover any non-Conforming Product shall relieve Seller of any obligations under this Contract or impair any rights or remedies of Buyer, including revocation of acceptance.
- e. Seller shall not redeliver or re-perform corrected or rejected Products without disclosing the former rejection or requirement for correction and any corrective action taken. Buyer is not required to accept any corrected or rejected Product that is redelivered by Seller. All repair, replacement and other correction and redelivery shall be completed as Buyer's Authorized Procurement Representative may reasonably direct. Acceptance of any Product by Buyer following any replacement, repair or rework pursuant to this Section shall not alter or affect the obligations of Seller or the rights of Buyer under this Contract.
- f. Notwithstanding Acceptance of any Product, Seller, at no additional charge to Buyer, shall correct or develop a work around for any minor deficiencies identified by Buyer. Seller shall correct or develop a work around for each

minor deficiency within thirty (30) days after Buyer provides notice to Seller of the minor deficiency.

- g. Trial use or testing of the Integrated System, incremental or final payment, or Buyer acknowledgement of receipt does not constitute Acceptance or prejudice Buyer's right to reject or revoke Acceptance of all or any portion of the Integrated System or any of its components.
- h. Secure Code Review. As a condition of Buyer's acceptance of Products; at least every two years from the date of Buyer's acceptance of Products; and within three months after every major version update to the Products, Seller shall demonstrate to Buyer's satisfaction either: (a) that the Products contain no defects that exceed a Common Vulnerability Scoring System ("CVSS") score of 6.0, as assessed by a third party assessment organization approved in writing by Buyer; or (b) that Seller's secure development lifecycle is in substantial alignment with ISO 27034.

3.04. Counterfeit Products

- a. Seller shall not furnish Counterfeit Products to Buyer, defined as Products or separately-identifiable items or components of the Integrated System that:
 - (i) are an unauthorized copy or substitute of an Original Equipment Manufacturer or Original Component Manufacturer (collectively, "OEM") item;
 - (ii) are not traceable to an OEM sufficient to ensure authenticity in OEM design and manufacture;
 - (iii) do not contain proper external or internal materials or components required by the OEM or are not constructed in accordance with OEM design;
 - (iv) have been re-worked, re-marked, re-labeled, repaired, refurbished, or otherwise modified from OEM design but not disclosed as such or are represented as OEM authentic or new; or
 - (v) have not passed successfully all OEM required testing, verification, screening, and quality control processes.

Counterfeit Products shall be deemed non-Conforming-Products to this Contract.

- b. Seller shall implement an appropriate process to ensure that Products furnished to Buyer under this Contract are not Counterfeit Products.
- c. If any Product is an Electronic Part or contains Electronic Parts, or is a service where Seller will supply Electronic Parts or components, parts, or assemblies containing Electronic Parts as part of the service, Seller shall also comply with the requirements set forth in AS5553 "Counterfeit Electronic Parts; Avoidance, Detection, Mitigation and Disposition".
- d. Buyer shall have the right to review and evaluate Seller's policies and procedures relating to its Counterfeit Products detection and avoidance system.
- e. Seller bears responsibility for procuring authentic Products or items from its subcontractors and shall ensure that all such subcontractors comply with the requirements of this Section.

3.05 Warranty

Except as may be provided elsewhere in this Contract, the following warranty and remedies shall apply to the Integrated System and component Products delivered and/or performed under this Contract.

- a. Seller warrants that:
 - i. The Integrated System furnished under this Contract shall conform to all specifications and requirements of this Contract and shall be free from defects in materials and workmanship;
 - ii. The Products shall be performed by employees or agents of Seller who are experienced and skilled in their profession and in accordance with industry standards;
 - iii. To the extent the Products are not manufactured pursuant to detailed designs and specifications furnished

by Buyer, the Products shall be free from design and specification defects;

iv. The Integrated System shall not infringe any patent, copyright, trademark, or other proprietary right of any third party or misappropriate any trade secret of any third party;

v. The Integrated System shall be free from liens or encumbrances;

vi. The Integrated System shall be compatible with the operating system, application programs, computing equipment and networks contemplated by the Documentation, and shall be able to perform all standard functions performed by similar software.

vii. The Integrated System shall not contain any viruses, malicious code, trojan horse, worm, time bomb, self-help code, back door, or other software code or routine designed to: (a) damage, destroy or alter any software or hardware; (b) reveal, damage, destroy, or alter any data; (c) disable any computer program automatically; or (d) permit unauthorized access to any software or hardware; and

viii. The Integrated System shall not contain any third-party software (including software that may be considered free software or open source software) that: (a) may require any software to be published, accessed or otherwise made available without the consent of Buyer; (b) may require distribution, copying or modification of any software free of charge; (c) may require disclosure, license or redistribution of source code; (d) may require the grant of rights in excess of those granted by Boeing in its standard end user license agreements; (e) may require that others have the right to modify the code; or, (f) may impose additional requirements on redistribution such as inclusion of additional license agreements for specific code modules.

b. This warranty shall begin upon Buyer's final acceptance of the Integrated System and shall survive inspection, test and payment for the Integrated System. The warranty shall extend for a period of one (1) year or such other period as set forth elsewhere in this Contract, and Buyer shall give Seller notice after discovery of a defect or nonconformance in the Integrated System. The warranty shall run to Buyer and its successors, assignees and customers. In the event of any failure under warranty of the Integrated System, Buyer may, at its option and at Seller's expense: (i) require prompt correction or replacement of the Integrated System or component Product, or (ii) return the Integrated System or component Product for credit or refund. Return to Seller of the warranted Products and redelivery to Buyer of corrected or replaced Products shall be at Seller's expense. Products required to be corrected or replaced shall be subject to the requirements of this Contract in the same manner and to the same extent as Products originally delivered under this Contract, but only as to the corrected or replaced part or parts thereof. Even if the Parties disagree about the existence of a breach of this warranty, Seller shall promptly comply with Buyer's direction to: (i) repair, rework or replace the Products, or (ii) furnish any materials or parts and installation instructions required to successfully correct the defect or nonconformance. If the Parties later determine that Seller did not breach this warranty, the Parties shall equitably adjust the Contract price.

3.06 Support Services and Related Services

a. During the Warranty Period, Seller shall provide the Support and Maintenance Services described on Attachment B (collectively, "Support and Maintenance Services") at no charge to Buyer. Support and Maintenance may address any component of the Integrated System, Seller shall provide the Support and Maintenance Services, if ordered under a Purchase Order, at a price to be mutually agreed upon. Such price shall, in no event, exceed Seller's standard price for the provision of Support and Maintenance Services. The Parties may agree in writing from time to time upon additional related services to be provided by Seller to Buyer in connection with the Integrated System.

b. Buyer reserves the right, however to obtain maintenance for any, some, or all of the Products from other suppliers or to perform such maintenance itself. In this event, Seller shall, at Buyer's request, provide spare parts, training, and any other support reasonably required by Buyer or to any other supplier selected by Buyer to perform maintenance on the Products.

c. Seller shall maintain the Licensed Software, for the lifetime of the Integrated System, in accordance with the following terms and conditions of this clause:

1. The maintenance shall include, at a minimum, the annual delivery to Buyer of all corrections, updates, new releases, or new versions of the Licensed Software, together with all accompanying Documentation, promptly after final testing, but in no event later than the date made available to Seller's general customer base.

2. These annual deliveries will be made by Seller at no charge.
- d. From time to time, however, Buyer may request and Seller shall make additional deliveries, subject to reimbursement by Buyer of Seller's shipping and handling costs.
 1. Buyer may, but need not, use any, some, or all of the corrections, updates, new releases or new versions of the Licensed Software delivered under this clause.
- e. From time to time, Seller may request, and Buyer shall furnish (to the extent it has the legal right to do so), certain data generated by the Licensed Software as reasonably required by seller to perform its obligations under this clause. Such data will be treated as Buyer's Proprietary Information in accordance with Section 6.01 (Confidentiality) of this Contract regardless of the markings, screen displays, or other notices provided, or not provided, on or in conjunction with such data.

4. CHANGES AND PERFORMANCE

4.01 Changes

- a. Buyer's Authorized Procurement Representative may, without notice to sureties and in writing, direct changes within the general scope of this Contract as set forth under (i) – (vii) below ("Change"). Seller shall immediately comply with such directed written Change. Under no circumstance shall Seller refuse to implement such directed written Change under this Contract. A Change may modify:
 - (i) technical requirements and descriptions, specifications, statement of work, drawings or designs;
 - (ii) shipment or packing methods;
 - (iii) place of delivery, inspection or acceptance;
 - (iv) reasonable adjustments in quantities or delivery schedules or both;
 - (v) amount of Buyer-furnished property;
 - (vi) terms and conditions of this Contract required to meet Buyer's obligations under its customer prime contracts or subcontracts; and
 - (vii) if this Contract includes services, description of services to be performed; time of performance (e.g., hours of the day, days of the week, etc.); or place of performance.

Any actions by Seller, including implementation, related to Changes that are not authorized by Buyer's Authorized Procurement Representative do not create any rights of obligations for the Parties under this Contract.

- b. If within twenty-five (25) days of Seller's receipt of a Buyer directed Change Seller provides cost data to Buyer in writing that substantiates an increase in the cost of this Contract or time required to perform under this Contract solely caused by the Boeing directed Change, Buyer may make an equitable adjustment to the Contract price or schedule, unless otherwise agreed in writing. If within twenty-five (25) days of Buyer's notification of a decrease in the cost of this Contract or time required to perform under this Contract solely caused by the Buyer directed Change the Seller has not disputed the adjustment in writing Boeing shall make an equitable adjustment to the Contract price or schedule, unless otherwise agreed in writing.

If Seller's claim for equitable adjustment includes the cost of property made obsolete or excess by the change, Buyer may direct the disposition of the property. Seller has the burden to support the amount of Seller's claim for equitable adjustment. Further, Buyer shall have the right to verify the amount of Seller's claim in accordance with the Financial Records and Audit Section of this Contract. Failure of the Parties to agree upon any adjustment shall not excuse Seller from performing in accordance with Buyer's direction.

- c. If Seller considers that Buyer's conduct constitutes a change, Seller shall notify Buyer's Authorized Procurement Representative promptly in writing as to the nature of such conduct and its effect upon Seller's performance.

Pending direction from Buyer's Authorized Procurement Representative, Seller shall take no action to implement any such change.

4.02 Suspension of Work

- a. Buyer's Authorized Procurement Representative may, by written order, temporarily suspend all or part of the work to be performed under this Contract for a period not to exceed one hundred (100) days ("Stop Work Order"). Upon issuance of a Stop Work Order, Seller shall promptly comply with its term and take all reasonable steps to minimize costs arising from the work covered by the Stop Work Order during the period of work stoppage. Within such period covered by the Stop Work Order, Buyer shall: (i) cancel the Stop Work Order; (ii) terminate this Contract in accordance with the "Termination for Convenience" Section of this Contract; (iii) cancel this Contract in accordance with the " Default" Section of this Contract if grounds for default exist; or (iv) extend the stop work period.
- b. If the Stop Work Order is cancelled by Buyer or the period of the Stop Work Order (including any extensions thereof) ends, Seller shall promptly resume performance under this Contract. If within twenty (20) days of Seller's receipt that the Stop Work Order is cancelled or the period of the Stop Work Order (including any extensions thereof) ends, Seller provides performance and/or cost data to Buyer in writing that substantiates an increase in the cost of this Contract or substantiates that the Stop Work Order is the sole cause of the Seller's inability to meet the Contract delivery schedule Buyer may make an equitable adjustment to the Contract price or schedule, unless otherwise agreed in writing. Buyer shall have the right to verify all cost data provided in accordance with the "Financial Records and Audits" Section of this Contract.

4.03 Force Majeure

Failure by Seller to deliver Product on the scheduled delivery date shall be excused if such failure arises from and is prohibited by: (a) terrorist acts; (b) Government embargo (c) natural disasters; (d) epidemics; (e) riots; and (f) war. In each instance, the failure to perform must be beyond the control and without the fault or negligence of Seller. If Seller's failure is caused by the failure of a subcontractor of Seller and if such failure arises out of causes beyond the control of both, and if such failure is without the fault or negligence of either, such failure by Seller to deliver Products on the scheduled delivery date shall be excused unless the goods or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit Seller to meet the required delivery schedules. Seller shall notify Buyer in writing within ten (10) days after the beginning of any such cause(s). Seller shall avoid or minimize all such failures, including exercising work-around plans or obtaining the Products from other sources. If the delivery of Product is excused for more than thirty (30) days due to Force Majeure, Buyer may in its sole discretion terminate this Contract for default in accordance with the Default Section except that Seller is not responsible for Buyer's excess re-procurement costs.

4.04 Assurance of Performance

If Buyer determines at any time that it is not sufficiently assured of Seller's full, timely, and continuing performance hereunder, Buyer may request written assurance ("Assurance of Performance") with respect to any specific matters that are affecting or could affect Seller's performance under this Contract. Seller shall provide to Buyer an Assurance of Performance as promptly as possible, but no later than ten (10) days following Buyer's request. Each Assurance of Performance shall include all information, reports, and other materials prepared by Seller as Buyer may reasonably request. Except as to payment for accepted Products, Buyer may suspend all or any part of Buyer's performance hereunder until Buyer receives an Assurance of Performance from Seller satisfactory to Buyer.

4.05 Termination for Convenience

Buyer may terminate all or part of this Contract for its convenience. In the event of such termination, Seller shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to stop work. Within ninety (90) days after the effective date of termination, Seller may submit to Buyer a claim reflecting the percentage of the work performed prior to the effective date of termination, plus reasonable charges that Seller can demonstrate to the satisfaction of Buyer using its standard record keeping system have resulted from the termination. Seller shall not be paid for any work performed or costs incurred which reasonably could have been avoided. Further, Seller shall not be paid, and in no event shall Buyer be obligated to pay, lost or anticipated profits or unabsorbed indirect costs or overhead. In no event shall Buyer be obligated to pay Seller any amount in excess of the Contract price. The provisions of this Section shall not limit or affect the right of Buyer to cancel this Contract for default. Seller shall continue all work not terminated. Any documentation required to substantiate the claim must be submitted not later than six (6) months from the termination notice. Seller's failure to submit a fully compliant claim, including supporting documentation, within the timeframe shall be deemed a waiver by Seller of such claim.

4.06 Cancellation for Default

- a. Buyer may, by written notice to Seller, cancel all or part of this Contract (i) if Seller fails to deliver the Integrated System within the time specified by this Contract or any written extension, (ii) if Seller fails to provide Buyer with an adequate Assurance of Performance pursuant to such Section set forth in the Contract, or (iii) in the event of Seller's bankruptcy, suspension of business, insolvency, appointment of a receiver for Seller's property or business, or any assignment, reorganization or arrangement by Seller for the benefit of its creditors.
- b. Buyer may, by written notice to Seller, cancel all or part of this Contract if Seller fails to perform any other provision of this Contract, and within ten (10) days after receipt of notice from Buyer specifying the failure, does not cure the failure or provide Buyer with a written detailed plan adequate to cure the failure if such failure reasonably cannot be cured within such ten (10) days and such plan is acceptable to Buyer's Authorized Procurement Representative.
- c. Seller shall continue all work not cancelled.
- d. Buyer may require Seller to transfer title and deliver to Buyer, as directed by Buyer, any (i) completed Products, and (ii) any partially completed Products and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights (collectively, "Manufacturing Materials") that Seller has specifically produced or acquired for the canceled portion of this Contract. Upon direction from Buyer, Seller shall also protect and preserve property in its possession in which Buyer or its customer has an interest.
- e. Buyer shall pay the Contract price for completed Products accepted. In addition, any payment for Manufacturing Materials accepted by Buyer and for the protection and preservation of property shall be at a price determined in accordance with the "Termination for Convenience" Section of this Contract, except that Seller shall not be entitled to profit. Buyer may withhold from any amount due under this Contract any sum Buyer determines to be necessary to protect Buyer or Buyer's customer against loss because of outstanding liens or claims of former lien holders.
- f. If, after cancellation, it is determined that Seller was not in default, the rights and remedies of the Parties shall be as if the Contract had been terminated according to the "Termination for Convenience" Section of this Contract.

4.07 Disaster Recovery

- a. Disaster Recovery Plan. Seller shall maintain a written disaster recovery plan (the "Disaster Recovery Plan"), which shall be attached to this Contract as Attachment C (Disaster Recovery Schedule). The Disaster Recovery Plan shall include detailed procedures regarding Seller's data back-ups, Seller Systems, power back-ups, telecommunications, personnel and other resources as are necessary to ensure that: (a) the Services are restored as promptly as possible, but in no event more than twenty-four (24) hours from the inception of a Disaster (the "Service Restoration Deadline"); and (b) all Service Information in Seller's possession or control at a given time is capable of being recovered, and the integrity of all such recovered Service Information is retained, in the event that the Seller's System or the Seller's Facilities experience a Disaster. The Disaster Recovery Plan: (a) shall include detailed recovery procedures for all reasonably foreseeable Disasters and other disruptions to the performance of the Services, to ensure all restoration of such Services within the Service Restoration Deadline; (b) shall otherwise satisfy the provisions set forth below; and (c) is subject to the written consent of Buyer.
- b. Disaster Recovery Capabilities. Seller shall maintain, and continue to maintain throughout the Term, off-site Disaster recovery capabilities that permit Seller to implement its Disaster Recovery Plan and provide such Disaster recovery services as set forth in this Disaster Recovery Plan and to promptly recover from a Disaster or other comparable outage, and to continue providing Services in accordance with the Contract, including all Service Levels. Seller shall also provide, as a component of its Disaster Recovery Plan, uninterrupted backup power supply to guard against electrical outages at the Seller Facilities from which the Services are rendered and backup telecommunications lines to such Seller Facilities, on independent circuits, to guard against telecommunications outages.
- c. Disaster Recovery Plan Changes. Seller may, on written notice to Buyer, change the Disaster Recovery Plan, provided that it notifies Buyer of such change in writing at least thirty (30) days prior to its implementation and such change does not, in Buyer's reasonable opinion, have a material adverse effect on the Disaster Recovery Plan as it existed prior to such change. Seller shall change the Disaster Recovery Plan upon Buyer's request, if Buyer reasonably believes that such change is prudent in light of the Disaster Recovery Plan's objectives and/or is required to comply with Applicable Laws, Buyer's business recovery guidelines or requirements, or Buyer's commitments to its customers.

- d. Testing. Seller and Buyer shall test the operation and effectiveness of the Disaster Recovery Plan at least once annually during the Term, and Seller shall promptly disclose to Buyer and remedy, at Seller's cost, any material deficiencies or problems disclosed by or through such testing.
- e. Implementation. Seller shall implement its Disaster Recovery Plan immediately upon the occurrence of a Disaster or other comparable outage and, upon such implementation, the Disaster Recovery Plan shall operate in accordance with its terms.
- f. Termination. Seller's breach of this Section 4.07 (Disaster Recovery) shall be deemed a Material Default.

5. AUDIT AND ACCESS

5.01 Responsibility for Property

Seller shall clearly mark, maintain an inventory of, and keep segregated or identifiable all of Buyer's and Buyer's customer's property and all property to which Buyer has acquired an interest under the terms of this Contract. Seller assumes all risk of loss, deterioration, destruction or damage of such property and risk of lost paperwork while in Seller's or its subcontractors' or suppliers' possession, custody or control. Deterioration does not include Items deteriorated due to the lapse of shelf-life or other inherent deterioration. 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 an Order without prior written consent from Buyer. Seller shall promptly notify Buyer's Authorized Procurement Representative if Buyer's property is lost, deteriorated, damaged or destroyed. As directed by Buyer, upon completion, termination or cancellation of this Contract or all or a portion of any Order, Seller shall at Seller's expense, deliver such property, to the extent not incorporated in delivered Products, to Buyer in good condition subject to ordinary wear and tear and normal manufacturing losses. Nothing in this Section limits Seller's use, in its direct contracts with the government, of property in which the government has an interest.

5.02 Seller Access

- a. When Seller is on premises owned or controlled by Buyer or Buyer's customer or obtains access electronically to Buyer systems or information, Seller shall comply with: (i) all the rules and regulations established by Buyer or Buyer's customer for access to and activities in and around premises controlled by Buyer or Buyer's customer; (ii) Buyer requests for information and documentation to validate citizenship or immigration status of Seller's personnel or subcontractor personnel and (iii) the provisions of Special Provisions 4 (SP4) "The Boeing Company On-Site Environment, Health and Safety & Insurance Supplemental Provisions".
- b. Seller acknowledges that Buyer may perform routine background checks on Seller personnel and subcontractor personnel related to such access. Seller shall include the substance of this Section, including this flowdown requirement, in all subcontracts awarded by Seller for work under this Contract.
- c. Should Seller and its personnel or Seller's subcontractor(s) and its personnel electronically access Buyer systems, they shall comply with the Terms of Use of Boeing Information and Electronic Systems ("Terms of Use"). In addition to any other rights and obligations set forth in any relevant agreement, Seller acknowledges that any information accessed through the electronic information systems operated by or on behalf of Buyer, whether or not marked as "proprietary" or equivalent, shall be considered as proprietary to Buyer and shall be protected in accordance with the "Proprietary Information and Materials" Section of the Contract.
- d. Both the SP4 and Terms of Use incorporated herein by reference and are set forth at:
<http://www.boeingsuppliers.com/terms.html>

5.03 Financial Records and Audit

Seller shall retain all financial records and documents pertaining to the Products for a period of no less than three years after final payment. Such records and documents shall date back to the time this Contract was issued and shall include without limitation, catalogs, price lists, invoices, underlying data and basis for cost estimates, and inventory records. Buyer shall have the right to examine, reproduce and audit all Seller records related to pricing, incurred costs and proposed costs associated with any proposals (prior to or after contract award), invoices or claims. Seller shall make data available within a reasonable time as may be determined by Buyer but no later than thirty (30) days of receiving Buyer's request.

5.04 Seller 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. 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, but is not limited to, balance sheets, schedule of accounts payable and receivable, major lines of credit, creditors, income statements (profit and loss), cash flow statements, firm backlog, and headcount. Copies of such data are to be made available within three (3) day of any written request by Buyer. All such non-public information shall be treated as Seller's Proprietary Information and Materials.

If Seller is contractually obligated to a third party to perform on a Buyer statement of work, Buyer may request that such third party also perform a financial condition review of Seller. Seller shall cooperate with such review. In addition, Buyer may request that Seller perform a financial condition review of any of its subcontractors and suppliers performing on a Buyer statement of work.

Seller shall maintain a process to evaluate and assess on an on-going basis the financial health of its supply chain. Buyer's may review and evaluate Sellers process. Such review and evaluation shall not relieve Seller of any of its obligations under this Contract.

5.05 Buyer Systems and Retained Processes

a. No Adverse Effect. Seller will shall use commercially reasonable efforts to ensure that:

- (1) in providing the Integrated System, 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 service seller that are related to the Services described under an applicable Contract (the "Retained Processes"); and
- (2) the systems and processes used to provide the Integrated System interface and integrate with the Buyer Systems and Retained Processes.

b. Keep Informed. Buyer shall provide Seller with information, and Seller 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 5.05 (Buyer Systems and Retained Processes).

c. Assistance. Seller shall provide Buyer on request with services in relation to the Buyer Systems and Retained Processes affected by the Services, including liaising with Buyer, its service sellers or other third parties on the impact of any alterations to such Buyer Systems or Retained Processes. Seller will provide such services at no additional cost to Buyer if such services can be reasonably provided by Seller using the then-existing resources used to provide the Services without adversely affecting Seller's ability to provide the Services in accordance with the terms of this Contract; provided, however, that if such assistance requires additional resources beyond those used to provide the Services or if using such resources would adversely affect Seller's ability to provide the Services in accordance with this Contract, Seller 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 Seller's ability to provide the Services in accordance with this Contract and, upon Buyer's approval, provide such additional resources on a time and materials basis at the fees set forth on the labor categories and pricing.

d. Buyer Systems. Buyer will provide for Seller's use in performing the Services those Buyer Systems, if any, as expressly set forth in an applicable Contract. 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 Seller only for the purpose of providing the Services hereunder. Except for the Buyer Systems, Seller 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 Contract.

6. PROPRIETARY INFORMATION PROTECTION AND INTELLECTUAL PROPERTY

6.01 Confidential, Proprietary and Trade Secret Information and Materials

- a. Buyer and Seller shall keep confidential and protect from unauthorized use and disclosure all (i) confidential, proprietary and/or trade secret information of a Party or third party disclosed by a Party; (ii) software provided under this Contract; and (iii) tooling identified as subject to this Section, in each case that is obtained, directly or indirectly, from the other in connection with this Contract or Buyer's contract with its customer, if any, (collectively referred to as "Proprietary Information and Materials"). Proprietary Information and Materials excludes information that is lawfully in the public domain, lawfully disclosed to or known by the receiving Party without restriction, generally known in the relevant trade or industry prior to disclosure hereunder, or developed without use of or reference to the disclosing Party's Proprietary Information and Materials. Seller shall only disclose to Buyer or use third party Proprietary Information and Materials that it has the right to disclose or use for the purpose of performing its obligations under this Contract.
- b. Buyer and Seller shall each use Proprietary Information and Materials of the other only to perform and for the purpose of this Contract, other contracts between the Parties, and Buyer's contract with its customer, if any. Buyer may also, at any time use, reformat, copy and disclose, Seller's Proprietary Information and Materials (i) to fulfill Buyer's obligations under this Contract, other contracts with Seller, and Buyer's contract with its customer, if any; (ii) test, certify, use, sell or support the Integrated System delivered under this Contract or Buyer's product containing such Products; (iii) evaluate Seller products and proposals and develop solicitations for Seller products and interfaces or parameters for future Boeing products; (iv) perform or obtain data analysis and (v) obtain data storage, hosting and other outsourced services. Any such disclosure by Buyer shall, whenever appropriate, include a suitable restrictive legend.
- c. A Party may also disclose received Proprietary Information and Materials in response to a subpoena or court order, if the receiving Party has used reasonable efforts to give the disclosing Party advance written notice of such requirement to allow the disclosing Party to: (i) seek a protective order or other remedy; (ii) consult with respect to resisting or narrowing the scope of such requirement; or (iii) modify or waive compliance with this Section. If such protective order or remedy is not timely obtained, the receiving Party shall use commercially reasonable efforts to disclose only Proprietary Information and Materials legally required to be disclosed and to require confidential treatment of such disclosure will be accorded confidential treatment.
- d. 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 (i) dispose of (as scrap or otherwise) any Products, parts or other materials containing, conveying, embodying or made in accordance with or by reference to any Buyer Proprietary Information and Materials without the prior written authorization of Buyer or (ii) without a separate license agreement or written approval from Buyer make, use, or sell any Products, parts or other materials containing, conveying, embodying or made in accordance with or by reference to any Proprietary Information and Materials of Buyer, except to the extent required to perform this Contract without Buyer's written approval, which may take the form of a license agreement between the Parties requiring payment by Seller of a reasonable license fee to Buyer as consideration for each use of such Proprietary Information and Materials of Buyer. Prior to disposing of such Products, parts or other materials as scrap, Seller shall render them unusable. Buyer shall have the right to audit Seller's compliance with this Section.
- e. Seller may disclose Proprietary Information and Materials of Buyer to its subcontractors as required to perform this Contract, if Seller includes a suitable restrictive legend on such disclosure and if each such subcontractor agreed in writing to obligations no less restrictive than those imposed upon Seller under this Section. Seller shall be liable to Buyer for any breach of such obligation by such subcontractor.
- f. The provisions of this Section are effective notwithstanding of any restrictive legends or notices on Proprietary Information and Materials and shall survive the completion, termination or cancellation of this Contract. Buyer shall have the right to audit Seller's compliance with the Section.
- g. Seller shall be fully responsible for all acts and omissions of each Subcontractor and each Subcontractor's employees and agents, whether or not Seller itself was negligent or at fault, and any act or omission of any Subcontractor shall be deemed an act or omission of Seller hereunder. Seller shall ensure that each Subcontractor and each Subcontractor's employees and agents comply fully with all provisions of this Contract. Seller shall 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 Contract. Seller shall be responsible for all payments to its Subcontractors.

6.02 Intellectual Property Ownership and License

a. Definitions:

Intellectual Property ("IP") means inventions, discoveries and improvements; know-how, works of authorship, technical data, drawings, specifications, process information, reports and documented information; and computer software.

"IP Rights" means all worldwide common law and statutory rights to IP, including but not limited to rights under, patents, industrial designs, trade secrets, copyrights and mask work registrations.

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

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

"Buyer Specification" means the performance specification, specification control documentation, interface control document, schematics, definition, configuration, and certification data, and all IP Rights therein, used or intended to be used by Buyer (i) to establish and define (1) requirements for the Integrated System and associated processes, service level, system specification, certification, and configuration; and (2) architecture descriptions for the Integrated System and associated processes, service, and system; and (ii) to procure and certify Integrated System or similar products and to assure integration of the Integrated System or similar product with a Buyer product or other systems and equipment included in a Buyer product.

b. Seller-Owned IP. Seller shall retain ownership of all its Background IP and of any Foreground IP not assigned to Buyer pursuant to Section d. below (collectively, the "Seller-Owned IP").

- (1) Seller grants to Buyer an irrevocable, nonexclusive, sublicensable, perpetual, paid-up, royalty-free, worldwide license to exercise all IP Rights in Seller-Owned IP solely to the extent that such Seller-Owned IP would otherwise interfere with Buyer's, Buyer's suppliers', or Customers' use or enjoyment of the Integrated System and/or Buyer Specifications.
- (2) Seller also grants to Buyer an irrevocable, nonexclusive, sublicensable, perpetual, paid-up, royalty-free, worldwide license to exercise all IP Rights in Seller-Owned IP solely to the extent that such Seller-Owned IP would otherwise interfere with Buyer's use of the Foreground IP; provided, that if Buyer does not select Seller to perform work under a Production Contract, then Buyer shall not have the right to provide the Seller's Background IP to any third party that competes with Seller on the same technology without first obtaining Seller's written consent. Notwithstanding the foregoing, Seller hereby grants to Buyer an irrevocable, nonexclusive, sublicensable, perpetual, paid-up, royalty-free, worldwide license to exercise all IP Rights in Seller-Owned IP solely to the extent necessary to enjoy Buyer's Foreground IP, effective automatically five (5) years from the date of the license granted in this Section, including the right to disclose and sublicense such Seller-Owned IP without restriction.
- (3) If Buyer cancels all or part of this Contract for Seller default in accordance with Section 4.06 (Cancellation for Default), Seller hereby grants Buyer the right to exercise all IP Rights in Seller-Owned IP for the purpose of preventing interruptions to or stoppage of work, Buyer's production lines or delivery of Buyer's products to Customers.

c. Third Party IP. If Seller incorporates third-party IP into any contract deliverable, Seller shall obtain for Buyer at least the license rights granted in Section b. of this Intellectual Property Ownership and License Section in such third-party IP, at no additional cost to Buyer, and hereby grants such rights to Buyer.

d. Foreground IP. The following sub-Sections of this Section d. shall not apply to unmodified commercial off-the-shelf

Products. If such commercial off-the-shelf Products are modified or redesigned pursuant to this Contract then the below applies.

- i. All Foreground IP shall be the exclusive property of Buyer. Seller hereby irrevocably assigns to Buyer all right, title and interest in the Foreground IP for no additional charge. Seller shall protect Foreground IP that is Proprietary Information and Materials as required by this Contract and shall mark documents or portions of documents containing Foreground IP as "Buyer Proprietary" information or as otherwise directed by Buyer in writing.
 - ii. Seller will, within two (2) months after conception or first actual reduction to practice of any invention and prior to Contract completion, disclose in writing to Buyer all inventions assigned hereunder, whether or not patentable, in sufficient technical detail to clearly convey the invention to one skilled in the art to which the invention pertains. Seller shall promptly execute all written instruments, and assist as Buyer reasonably directs in order to file, acquire, prosecute, maintain, enforce and assign Buyer's Foreground IP rights. If Seller does not or cannot execute instruments or assist Buyer as described above, Seller hereby irrevocably appoints Buyer and any of Buyer's officers and agents as Seller's attorney in fact to act on Seller's behalf and instead of Seller, with the same legal force and effect as if executed by Seller, with respect to executing any such written instruments.
- e. Buyer-Owned IP. Buyer shall retain ownership of all Buyer IP provided hereunder and the Buyer Specifications and of any Foreground IP assigned to Buyer pursuant to Section d. above (collectively, the "Buyer-Owned IP"). Buyer grants to Seller a non-exclusive, royalty-free right during the term of this Contract to use, reproduce, modify, practice and prepare derivative works of any Buyer-Owned IP solely as necessary for Seller to perform its obligations under this Contract or otherwise permitted under this Contract. Seller shall not, without Buyer's prior written consent, use Buyer-Owned IP or any derivative works of any of the Buyer-Owned IP in any manner not authorized under this Contract, including, but not limited to, developing, manufacturing, obtaining a certification to manufacture, offering for sale or selling any product, equipment, or service which utilizes or is enabled by Buyer-Owned IP. Seller must request a license from Buyer for use of any of Buyer-Owned IP including patents thereon for applications not authorized under this contract and the granting of such license and all terms related thereto will be at Buyer's sole discretion.

6.03 Patent, Trademark and Copyright Indemnity

- a. Integrated System shall not infringe upon any United States or foreign patent, copyright, trademark, or other proprietary right of any third party or misappropriate any trade secret of any third party (collectively, "Infringement").
- b. 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), liabilities, damages, costs and attorneys' fees for the actual or alleged Infringement arising out of or related to the use, manufacture, reproduction sale or other distribution of Products by Buyer or its customer. Buyer and/or its customer will timely notify Seller of any such claim, suit or action. Seller will, at its own expense, defend such claim, suit or action, and Buyer shall have the right to participate in the defense at its own expense. Seller will have no obligation to indemnify Buyer for infringement arising from (a) the compliance of Seller's new product design with formal specifications issued by Buyer where infringement could not be avoided in complying with such specifications or (b) use or sale of Products for other than their intended application 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. The exception in (a) above shall not apply if the infringement arises out of adherence to one or more industry standards or regulatory requirements. For purposes of this Section only, the term Buyer will include The Boeing Company and all subsidiaries and all officers, agents and employees of Boeing or any subsidiary.

6.04 Data

- a. Seller shall provide Product Use Information at Buyer's request. "Product Use Information" means Seller's data directly related to the use and support of the Product that falls into one of the following categories: (a) Products' performance and reliability information; (b) summary and detailed shop findings (including teardown, functional test, and corrective action reports) on Integrated System; (c) maintenance data on Integrated System; (d) non-conformance data relating to Integrated System; (e) service bulletin incorporation; and (f) component message data on Integrated System. Buyer and its Affiliates may use and disclose Product Use Information and analysis thereof in Buyer materials, products, and services, provided that Seller identification information is removed. Buyer and its Affiliates may use and disclose Product Use Information as Buyer determines to be reasonably necessary to comply with legal and regulatory requirements, commitments and processes.

- b. In addition, machine data that describes state, condition, and performance, including effectiveness, that is generated or received by the Integrated System and any associated analysis is shall be Buyer's Proprietary Information and owned by Buyer. Seller shall not encrypt or otherwise restrict or limit Buyer's access to machine data.

6.05 Software and Firmware License Grant

- a. Firmware License Grant. "Licensed Firmware" means the object code version of the computer programs incorporated, embedded, or otherwise provided by Seller for use in connection with the hardware and other equipment provided as part of the Integrated System or any of its Products. "Documentation" means user manuals for the Products on the date the applicable Product is delivered; and any other materials in any form, that Seller customarily provides to end users of the Products. Documentation includes, without limitation, all of the published specifications for the Products on the date that of delivery. Seller hereby grants to Buyer and its affiliates and subsidiaries, a non-exclusive, perpetual, sublicensable, worldwide license to:
- i. Use the Licensed Firmware in the Integrated System and in accordance with the Documentation;
 - ii. Make additional copies of the Licensed Firmware as reasonably necessary for backup or archival purposes, or for benchmark or other temporary testing;
 - iii. Change, modify, and copy the Documentation, including without limitation, to edit and reformat any of the Documentation or convert any of the Documentation into machine-readable form, whether for on-line or other kinds of electronic access to it;
 - iv. Transfer the Licensed Firmware to another party in connection with the surplus or disposal of the Products.

The above license includes the right to authorize employees, customers and suppliers of Buyer and its subsidiaries and affiliates to perform any of the activities described in this Section 6.05.

- b. Software License Grant. "Program" means each and every copy of the computer program or programs and all corrections, updates, new releases, and new versions of such programs, if any, ordered under this Contract, in any form, whether object or source code. "Licensed Software" means the Program and the Documentation. With respect to all copies of the Program in object code form, and all copies of the Documentation in any form, Seller hereby grants and shall grant to Buyer and its subsidiaries a nonexclusive, perpetual, sublicensable, worldwide license to:
- (1) Use the Program on the Hardware or any other computing equipment. This use right includes the right to share use of the Program by multiple central processing units or by multiple users, provided Buyer tenders the applicable license fee, if any, to Seller. If the anticipated number of users of the Program will exceed the number of licenses purchased from Seller with respect to such copies ("Licenses"), Buyer shall have a reasonable mechanism or process in place to monitor that the number of persons using the Program concurrently does not exceed the total number of Licenses.
 - (2) Transfer the Program between Hardware or any other computing equipment. This transfer right includes the right to upgrade any copy of the Licensed Software, provided Buyer tenders either the applicable object code upgrade fee or a sum equal to the difference between the then-current license fees for the current and the upgraded versions of the Licensed Software, whichever is less.
 - (3) Make additional copies of the Licensed Software as reasonably necessary for backup or archival purposes, or for benchmark or other temporary testing.
 - (4) Combine the Program with one or more other programs, provided any portion of the Program involved continues to be subject to the terms and conditions of this Contract.
 - (5) Make, or have made, as many additional copies of the Licensed Software as may be required to satisfy Buyer requirements within the Site, provided the Contract specifies "Site License."
 - (6) Change the form of the Documentation. This conversion right includes the right to edit and reformat any of the Documentation. It also includes the right to convert any of the Documentation into machine-readable form,

whether for on-line or other kinds of electronic access to it, provided Buyer tenders the aggregate purchase price, if any, of those tangible copies of the Documentation supplanted by the conversion.

(7) This license includes the right to authorize employees or agents of Buyer Sellers or subcontractors who are performing work for Buyer on Buyer premises to perform any of the activities described in Sections 6.05.b(1) through (6) above.

- c. License of Prior Releases or Versions of Licensed Software. Seller hereby grants Buyer the right and option to license a release or version of the Licensed Software that it has previously licensed, is other than the current release or version, and is no longer available from Seller. This option may be exercised by Buyer through issuance of a Contract, specifying the prior release or version and the number of copies, whereupon Seller hereby grants and shall grant Buyer the right to make, or have made, as many additional copies of the Licensed Software as may be required to satisfy Buyer requirements for the prior release or version of the Licensed Software, provided Buyer tenders the applicable license fee for each copy to Seller.
- d. Source Code License. Any source code delivered shall include an Embodiment of the source code. In addition to Buyer's license to any source code presently delivered as part of the Software under this Contract, Seller grants to Buyer for its internal purposes a vested, fully paid, irrevocable license in the source code of all executable Software delivered under this Contract, the exercise of which is contingent on Seller's failure to support the Goods for whatever reason.
- e. Assignment. The licenses described in this Section 6.05 may be assigned by Buyer to an assignee of this Contract, and/or to a purchaser of the Product or any of its components, without the consent of Seller.
- f. Buyer's Contractors. Buyer may cause a contractor, for the benefit of Buyer, to exercise the rights granted to Buyer under this Contract so long as Buyer takes reasonable measures to protect information that the Seller has identified to the Buyer as confidential information and that is included in the disclosure to the contractor. Buyer's obligation to take reasonable measures shall be satisfied by its exercising the same degree of care it uses to protect its own information of like kind and importance.
- g. Object Code. Buyer is not obligated to keep confidential the Licensed Firmware and Licensed Software in object code or written form. Nothing in this Contract is intended to establish, or should be construed as establishing, any kind of confidential relationship between Buyer and Seller with respect to the Licensed Firmware or Licensed Software in object code form, regardless of any markings, screen displays, or other notices given by Seller at any time.
- h. Misuse of Licensed Firmware or Licensed Software. In the event Seller has knowledge, or has reason to believe, that Buyer is using the Licensed Firmware or Licensed Software beyond the scope of the license granted under this Contract, Seller shall notify Buyer's Authorized Procurement Representative of the alleged misuse, in writing, in accordance with Section 13. Upon receipt of such notice, or in the event Buyer itself has reason to believe that misuse of the Licensed Firmware or Licensed Software may be occurring, Buyer shall promptly investigate the alleged misuse, and shall destroy any unauthorized copies of the Licensed Firmware or Licensed Software, or submit a written request to Seller for authorization to continue using some or all of them, and in either case pay any license fees owed for such copies. Buyer shall provide Seller with a written report which summarizes the results of Buyer's investigation into the alleged misuse and what actions Buyer took to correct it. **THE FOREGOING SETS FORTH SELLER'S SOLE AND EXCLUSIVE REMEDY FOR MISUSE OF THE LICENSED FIRMWARE OR LICENSED SOFTWARE SO LONG AS BUYER PERFORMS ITS INVESTIGATION AND MAKES PAYMENT OF ANY EXCESS LICENSE FEES TO SELLER IN A TIMELY FASHION.**
- i. Equipment. To the extent necessary to exercise its rights under the Contract, Seller grants to Buyer an irrevocable, fully-paid license under all applicable patents, trade secrets, copyrights, or other intellectual property. Buyer's license rights include the following rights related to specific Goods:
 - (1) The right to use, reproduce, and modify the Software;
 - (2) The right to use, reproduce, and modify the Documentation; and
 - (3) The right to use the Equipment, including the right to modify, enhance, maintain, repair, or reconstruct it and the right to make and use component parts of the Equipment.

6.06 Code Audit

Seller shall at its expense conduct an audit of the Integrated System to identify any Third Party Software that may be

present in the Integrated System and shall provide the results of the audit to Buyer prior to providing the Integrated System to Buyer. At no additional cost or expense to Buyer, Seller shall, and shall use reasonable efforts to cause its employees and agents to, cooperate with Buyer in any investigation that may be required to determine the origin of any code used in the Integrated System. "Third Party Software" means software that, in whole or in part, is subject to any of the following (each, a "Restricted License"): (a) any third party license; or (b) the provisions of any open source or quasi-open source license agreement, including, without limitation, 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. If any portion of the Integrated System is subject to any Restricted License, then the terms governing Buyer's use of that portion of the Integrated System are specified in a separate exhibit attached to this Contract. If any Third Party Software is required for Boeing's Buyer's use of the Integrated System, Seller shall, at Buyer's request, obtain and negotiate required software licenses acceptable to Buyer prior to final acceptance of the Integrated System.

6.07 Availability of Source Code

- a. Source Code Escrow. Upon written notice from Buyer at any time during the term of this Agreement and at Buyer's expense, Seller will deposit the Source Code for the Licensed Software into escrow with Iron Mountain Incorporated pursuant to the terms of an escrow agreement acceptable to Boeing. If Buyer requests deposit of Source Code into escrow for a particular Licensed Software application, Seller shall also deposit into escrow the Source Code for any subsequent updates, new releases, or new versions of the Licensed Software within sixty days of the date of such updates, new releases, or new versions are provided to Buyer.
- b. Source Code License. Seller hereby grants Buyer and its subsidiaries a nonexclusive, perpetual, irrevocable, worldwide license to (i) use, reproduce and create derivative works of the Source Code for the purpose of supporting, maintaining, operating, correcting, improving, extending and adapting the Licensed Software and (ii) produce and have produced executable versions of the Licensed Software (and modified versions thereof) for use by or on behalf of Buyer and its subsidiaries hereunder. The foregoing license includes the right to have subcontractors, consultants and agents of Buyer and its subsidiaries use, reproduce, and modify the Source Code in support of Buyer and its subsidiaries at any location; provided, that such subcontractors, consultants and agents are bound by confidentiality agreements with Buyer. Buyer and its subsidiaries hereafter retain all of the foregoing license rights in the Source Code, but Buyer covenants on behalf of itself and its subsidiaries not to exercise such rights unless a Release Condition occurs.
- c. Release Conditions. Each of the following shall be a "Release Condition":
 - (1) In the event that Seller becomes a debtor in any case under bankruptcy or insolvency law (whether voluntarily or involuntarily) or makes an assignment for the benefit of creditors; or
 - (2) Seller ceases to conduct business in the ordinary course; or
 - (3) Seller ceases to support and license a particular Licensed Software, including subsequent releases to any such Licensed Software, and the Source Code is not utilized in any other currently shipping and supported Licensed Software so that its functions and features of the Source Code are not available to Buyer in the other Licensed Software; or
 - (4) Seller defaults on any loan from a third party or receives a demand for loan close-out from a financial institution; or
 - (5) Seller is at any time insolvent (whether measured under a balance sheet test or by the failure to pay debts as they come due) or the subject of any insolvency, receivership or assignment for the benefit of creditors proceeding under state or non-bankruptcy law; or
 - (6) Breach of this Agreement by Seller, including, without limitation, the breach of Section 3.06 above or the service level agreement; or
 - (7) Death or disability of an owner of Seller or filing of a power of attorney due to his inability to function which causes a material disruption in the ability of the Seller to support or maintain the Licensed Software; or

- (8) The failure of any subcontractor of Seller to provide support to Seller related to this Agreement as a result of lack of payment by Seller or other dispute with Seller; or
- (9) Seller is acquired by an entity that Buyer considers to be a competitor of Buyer; or
- (10) A third party acquires ownership or control of the Licensed Software by sale or exclusive license where Buyer considers such third party to be a competitor of Buyer or unable to fulfill Seller's obligations under this Agreement with respect to such Licensed Software; or
- (11) The Licensed Software for which Buyer has a production dependency fails to perform to the Specifications or warranties for the Licensed Software and Seller fails to correct the Licensed Software within 30 days after written notice thereof.

If Buyer determines that one or more of the Release Conditions has occurred, Buyer shall provide written notification to the Seller in accordance with Section 13.

7. ASSIGNMENT

7.1 Assignment and Change of Control

- a. Seller shall not and shall cause its affiliates not to, directly, indirectly, voluntarily or involuntarily, in each case, whether by transfer, operation of law, or otherwise undergo a Change of Control (as defined in sub-Section b below) assign this Contract, assign any of its rights or interest in this Contract, delegate any of its obligations under this Contract, or subcontract for all or substantially all of its performance of this Contract (each, a "Transaction"), without Buyer's prior written consent after advance written notice by Seller. No purported Transaction, with or without Buyer's consent, shall relieve Seller of any of its obligations under this Contract or prejudice any rights or claims that Buyer may have against Seller, whether such obligations, rights or claims, as the case may be, arise before or after the date of any purported Transaction; provided however, that Seller may assign its right to monies due or to become due under this Contract, and this Section does not limit Seller's ability to purchase standard commercial supplies or raw material in connection with its performance of this Contract.
- b. For purposes of this Contract, the term "Change in Control" shall mean any of the following, whether in a single transaction or a series of related transactions and whether or not Seller is a party thereto:
 - i. a sale, conveyance, transfer, distribution, lease, assignment, license or other disposition of all or substantially all of the assets of Seller;
 - ii. any consolidation or merger of Seller or its controlling affiliates, any dissolution of Seller or its controlling affiliates, or any reorganization of one or more of Seller or its controlling affiliates; or
 - iii. any sale, transfer, issuance, or disposition of any equity securities or securities or instruments convertible or exchangeable for equity securities (collectively, "securities") of Seller or its controlling affiliates in which the holders of all of the securities that may be entitled to vote for the election of any member of a board of directors or similar governing body of Seller or such controlling affiliate immediately prior to such transaction(s) hold less than fifty percent (50%) of the securities that may be entitled to vote for the election of any such member in such entity immediately following such transaction(s).

8. BUSINESS CONDUCT

8.01. Compliance with Laws.

Seller shall comply with all legal requirements, including laws, statutes, ordinances, rules, regulations, and orders, applicable to its performance under this Contract. Seller shall (i) comply with all applicable country laws relating to anti-corruption or anti-bribery, including legislation implementing the Organization for Economic Co-operation and Development "Convention on Combating Bribery of Foreign Public Officials in International Business Transactions" and other anti-corruption and anti-bribery conventions; (ii) comply with the requirements of the Foreign Corrupt Practices Act, as amended ("FCPA") (15 U.S.C. §§78dd-1, et. seq.), regardless of whether Seller is within the jurisdiction of the United States; and (iii) neither directly nor indirectly, pay, offer, give, or promise to pay or give, any money 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.

8.02. 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.

8.03. Code of Basic Working Conditions and Human Rights.

Buyer is committed to providing a safe and secure working environment and the protection and advancement of basic human rights in its worldwide operations. In furtherance of this commitment, Buyer has adopted a Code of Basic Working Conditions and Human Rights setting out in detail the measures it takes to ensure this commitment is fulfilled ("Code"). This Code may be downloaded at <http://www.boeing.com/aboutus/culture/code.html>. Buyer strongly encourages Seller to adopt and enforce concepts similar to those embodied in the Code, including conducting Seller's operations in a manner that is fully compliant with all applicable laws and regulations pertaining to fair wages and treatment, freedom of association, personal privacy, collective bargaining, workplace safety and environmental protection. Seller shall include the substance of this Section, including this flowdown requirement, in all subcontracts awarded by Seller for work under this Contract.

8.04. Environmental Health and Safety Performance.

Seller acknowledges and accepts full and sole responsibility to maintain an environment, health and safety management system ("EMS") appropriate for its business throughout the performance of this Contract. Buyer expects that Seller's EMS will promote health and safety, environmental stewardship, and pollution prevention by appropriate source reduction strategies. Seller shall convey the requirement of this Section to its suppliers. Seller shall not deliver Products that contain any asbestos mineral fibers.

8.05. Seller Facility.

Seller shall provide Buyer written notice of any proposed plans for moving Seller's manufacturing location for the Integrated System or moving tooling or other equipment utilized in the manufacture of the Integrated System to another facility. In no event shall Seller proceed with implementing such plans prior to obtaining Buyer's prior written approval.

8.06. Conflict Minerals.

Seller shall, no later than thirty (30) days following each calendar year in which Seller has delivered any goods to Buyer, under this Contract or otherwise, complete and provide to Buyer a single and comprehensive Conflict Minerals Reporting Template, which can be access on the Buyer's Supplier Portal Seller shall perform appropriate due diligence on its supply chain in order to fulfill the reporting obligations of this Section.

8.07. Ethics and Compliance Program.

Seller acknowledges and accepts full and sole responsibility to maintain an ethics and compliance program appropriate for its business throughout the performance of this Contract. Buyer strongly encourages Seller to model its program in accordance with the Federal Sentencing Guidelines, applicable guidance from enforcement authorities, and industry best practices. Seller shall publicize to its employees who are engaged in the performance of work under the Contract that they may report any concerns of misconduct by Buyer or any of its employees or agents by going to Ethics@Boeing. Seller shall include the substance of this Section, including this flowdown requirement, in all subcontracts awarded by Seller for work under this Contract.

8.08. Publicity.

Without Buyer's prior written approval, Seller shall not, and shall require that its subcontractors at any tier shall not, release any publicity, advertisement, news release or denial or confirmation of same regarding this Contract or the Products or program to which it pertains. Seller shall be responsible to Buyer for any breach of such obligation by any subcontractor.

8.09. Utilization of Small Business Concerns.

To the fullest extent consistent with the efficient performance of this Contract, Seller shall 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.

8.10. Offset / Industrial Participation.

To the exclusion of all others, Buyer or its assignees shall be entitled to all industrial benefits or offset credits that might result from this Contract. Seller shall provide all information and assistance to Buyer that Buyer may reasonably request in support of Buyer's efforts to secure offset credits, industrial participation, co-production or similar obligations related to the Products to be provided under this Contract.

Before entering into a subcontract for any non-U.S. products or services in excess of \$100,000 in support of this Contract, Seller shall complete and submit to Buyer, Buyer Form X33647 "Advance Content Notification / Supplier Foreign Content Report" as set forth in the Supplier Data Requirements List ("SDRL") applicable to this Contract. If there is no SDRL applicable to this Contract, Seller shall submit the form to Buyer and email a copy to foreigncontent@boeing.com.

8.11. Nonexclusivity of Services.

Nothing in this Contract requires Buyer to purchase the Services only from Seller. Buyer may obtain services similar to the Services from a third party or third parties in Buyer's sole discretion or perform such services internally. Buyer will not be obligated to obtain any of the Integrated System or its Products from Seller with respect to any additional entity or business unit, including pursuant to an acquisition. However, Buyer will have the option to direct Seller to provide Services under and in accordance with the terms of this Contract to service any such additional entity or business unit and, if such additional entity or business unit has an agreement with Seller for services similar to the Services at the time of such acquisition, Seller will not impose any termination fees on Boeing or such entity in connection with the termination of such agreement.

8.12 Reliance

Entering into this Contract is in part based upon Buyer's reliance on Seller's ability, expertise, and awareness of the intended use of the Integrated System. Buyer and Customers (if applicable) may rely on Seller as an expert, and Seller shall not deny any responsibility or obligation hereunder to Buyer or Customers on the grounds that Buyer or Customers provided recommendations, Proprietary Information and Materials, or assistance in any phase of the work involved in producing or supporting the Integrated System, including but not limited to Buyer's acceptance of specifications, test Data, or the Integrated System.

9. TRADE COMPLIANCE

9.01 Trade Control

- a. The Parties shall comply with all export and import laws, regulations, decrees, orders, and policies of the United States Government and the Government of any country in which the Parties conduct business pursuant to this Contract, including but not limited to the Export Administration Regulations ("EAR") of the U.S. Department of Commerce, the International Traffic in Arms Regulations ("ITAR") of the U.S. Department of State, the U.S. Customs & Border Protection Regulations, the Harmonized Tariff Schedule, and the antiboycott and embargo regulations and guidelines as set forth in the EAR and in the U.S. Department of the Treasury, Office of Foreign Assets Control (collectively, "Trade Control Laws").
- b. Seller shall control the disclosure of, and access to, controlled items or technical data provided by Buyer related to performance of this Contract in compliance with all applicable Trade Control Laws. Seller shall not transfer (to include transfer to foreign persons employed by or associated with, or under contract to Seller, or Seller's sub-tier suppliers or Seller's non-U.S. subsidiaries) any export controlled item, data or services, without providing advance notice to Buyer and obtaining the requisite export and/or import authority.
- c. Subject to applicable Trade Control Laws, Seller shall provide Buyer with the export control classification of any commodity or technology including software.
- d. Seller represents that it maintains an effective export/import control compliance program in accordance with all applicable Trade Control Laws. A copy of process control documents and other documents reasonably requested by Buyer related to Seller's compliance with applicable Trade Control Laws shall be made available to Buyer upon request.
- e. Seller shall promptly notify Buyer if Seller is, or becomes, listed in any Denied Parties List or if Seller's export privileges are otherwise denied, suspended or revoked in whole or in part by any Governmental entity.
- f. Seller shall timely inform Buyer of any actual or alleged violations of any applicable Trade Control Laws, including any suits, actions, proceedings, notices, citations, inquiries, or other communications from any government agency concerning any actual or alleged violations, in Seller's performance under this Contract and shall comply with all reasonable requests from Buyer for information regarding any such violations.

- g. Seller shall incorporate into any contracts with its sub-tier suppliers obligations no less restrictive than those set forth in this Article requiring compliance with all applicable Trade Control Laws.

10. INDEMNIFICATION, INSURANCE, AND PROTECTION OF PROPERTY.

The following provisions shall only apply if and to the extent Seller's personnel enter or perform work at premises owned or controlled by Buyer or Buyer's customer:

10.01 Indemnification

Seller shall defend, indemnify and hold harmless The Boeing Company, its subsidiaries, and their directors, officers, employees and agents from and against all actions, causes of action, liabilities, claims, suits, judgments, liens, awards and damages of any kind and nature whatsoever for property damage, personal injury or death (including without limitation injury to or death of employees of Seller or any subcontractor thereof) and expenses, costs of litigation and counsel fees related thereto or incident to establishing the right to indemnification, arising out of or in any way related to this Contract, the performance thereof by Seller, any subcontractor thereof or other third parties within the control or acting at the direction of Seller, or any of their respective employees (collectively for the purposes of this paragraph, the "Seller Parties"), including, without limitation, the provision of goods, services, personnel, facilities, equipment, support, supervision or review. The foregoing indemnity shall apply only to the extent of the negligence or willful misconduct of the Seller Parties that occurs while on premises owned or controlled by Buyer. In no event shall Seller's obligations hereunder be limited to the extent of any insurance available to or provided by Seller or any subcontractor thereof. Seller expressly waives any immunity under industrial insurance, whether arising out of statute or other source, to the extent of the indemnity set forth in this paragraph.

10.02 Commercial General Liability

Seller shall carry and maintain, and ensure that all subcontractors thereof carry and maintain, throughout the period when work is performed and until final acceptance by Buyer, Commercial General Liability insurance with available limits of not less than \$2,000,000 per occurrence for bodily injury and property damage combined. Such insurance shall contain coverage for all premises and operations, broad form property damage, contractual liability (including, without limitation, that specifically assumed under paragraph a herein) and goods and completed-operations insurance with limits of not less than \$1,000,000 per occurrence for a minimum of twenty-four (24) months after final acceptance of the work by Buyer. Such insurance shall not be maintained on a per-project basis unless the respective Seller or subcontractor thereof does not have blanket coverage.

10.03 Automobile Liability

If licensed vehicles will be used in connection with the performance of the work, Seller shall carry and maintain, and ensure that any subcontractor thereof who uses a licensed vehicle in connection with the performance of the work carries and maintains, throughout the period when work is performed and until final acceptance by Buyer, Business Automobile Liability insurance covering all vehicles, whether owned, hired, rented, borrowed or otherwise, with available limits of not less than \$1,000,000 per occurrence combined single limit for bodily injury and property damage.

10.04 Workers' Compensation and Employers' Liability

Throughout the period when work is performed and until final acceptance by Buyer, Seller shall, and ensure that any subcontractor thereof shall, cover or maintain insurance in accordance with the applicable laws relating to Workers' Compensation (and Employers' Liability with limits not less than \$1,000,000 per incident) with respect to all of their respective employees working on or about Buyer's premises. If Buyer is required by any applicable law to pay any Workers' Compensation premiums with respect to an employee of Seller or any subcontractor, Seller shall reimburse Buyer for such payment.

10.05 Certificates of Insurance

Prior to commencement of the work, Seller shall provide for Buyer's review and approval certificates of insurance reflecting full compliance with the requirements set forth in Sections 10.02, 10.03, and 10.04. Such certificates shall be kept current and in compliance throughout the period when work is being performed and until final acceptance by Buyer, and shall provide for thirty (30) days advance written notice to Buyer in the event of cancellation. Failure of Seller or any subcontractor thereof to furnish certificates of insurance, or to procure and maintain the insurance required herein or failure of Buyer to request such certificates, endorsements or other proof of coverage shall not constitute a waiver of Seller's or subcontractor's obligations hereunder.

10.06 Self-Assumption

Any self-insured retention, deductibles and exclusions in coverage in the policies required under this Section 10 shall be assumed by, for the account of and at the sole risk of Seller or the subcontractor which provides the insurance and, to the extent applicable, shall be paid by such Seller or subcontractor. In no event shall the liability of Seller or any subcontractor thereof be limited to the extent of any of the minimum limits of insurance required herein.

10.07 Protection of Property

Seller assumes, and shall ensure that all subcontractors thereof and their respective employees assume, the risk of loss or destruction of or damage to any property of such parties, whether owned, hired, rented, borrowed or otherwise, brought to a facility owned or controlled by Buyer or Buyer's customer. Seller waives, and shall ensure that any subcontractor thereof and their respective employees waive, all rights of recovery against Buyer, its subsidiaries and their respective directors, officers, employees and agents for any such loss, destruction or damage. At all times, Seller shall, and ensure that any subcontractor thereof shall, use suitable precautions to prevent damage to Buyer's property. If any such property is damaged by the fault or negligence of Seller or any subcontractor thereof, Seller shall, at no cost to Buyer, promptly and equitably reimburse Buyer for such damage or repair or otherwise make good such property to Buyer's satisfaction. If Seller fails to do so, Buyer may do so and recover from Seller the cost thereof.

11. NO WAIVER; RIGHTS AND REMEDIES

- a. Any failures, delays or forbearances of either Party in insisting upon or enforcing any provisions of this Contract, or in exercising any rights or remedies under this Contract, shall not be construed as a waiver or relinquishment of any such provisions, rights or remedies; rather, the same shall remain in full force and effect.
- b. Except as expressly and affirmatively disclaimed in writing in this Contract, the rights and remedies set forth herein are cumulative and in addition to any other rights or remedies that the Parties may have at law or in equity. If any provision of this Contract is or becomes void or unenforceable by law, the remainder shall be valid and enforceable. Seller acknowledges and agrees that money damages would not be an adequate remedy for any actual, anticipatory or threatened breach of this Contract by Seller with respect to its delivery of the Integrated System to Buyer.
- c. Seller agrees that Buyer approvals of Seller's technical and quality specifications, drawings, plans, procedures, reports, and other submissions shall not relieve Seller from its obligations to perform all requirements of this Contract.
- d. Buyer may at any time deduct or set-off Seller's claims for money due or to become due from Buyer against any claims that Buyer has or may have arising out of this Contract or other transactions between Buyer and Seller.

12. LAW AND DISPUTES

12.01 Governing Law

This Contract and any disputes arising out of, or relating to, this Contract shall be governed by the laws of the State of Delaware without regard to the conflict of law rules thereof. This Contract excludes the application of the 1980 United Nations Convention on Contracts for the International Sale of Products.

12.02 Disputes

Buyer and Seller shall use reasonable efforts to resolve all disputes between them arising out of or relating to this Contract or performance hereunder. Any dispute 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.

13. NOTICES

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



Seller:

Buyer:

The Boeing Company
Indirect Supply Chain
P. O. Box Number or Street Address
City, State, and Zip Code
Attention:

Attention:

14. ENTIRE AGREEMENT.

This Contract, together with all purchase orders, change orders, attachments, exhibits, supplements, specifications, schedules and other terms referenced in or attached to this Contract, contains the entire agreement of the Parties and supersedes any and all prior agreements, understandings, proposals, and communications between Buyer and Seller related to the subject matter of this Contract.

15. GOVERNMENT OR OTHER CUSTOMER CLAUSES.

a. Government or other Buyer customer clauses applicable to this Contract, if any, are incorporated elsewhere in this Contract either by attachment or by some other means of reference.

b. In addition, the clause(s) below are incorporated by reference, as if fully set forth herein, from the Federal Acquisition Regulation ("FAR") and/or Defense Federal Acquisition Regulation Supplement ("DFARS") and apply to the extent indicated therein. Except as may be otherwise stated, "Contractor," "Offeror" or any equivalent terms means Seller, "Government," "Contracting Officer" or any equivalent terms means Buyer, and all references to a "Disputes" clause shall mean the "Disputes" article of this Contract. The effective version of each clause listed shall be the latest version published on the date this Contract is issued. The full text of a clause may be accessed electronically at <https://www.acquisition.gov/content/regulations>.

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

Attachment A-XX

Implementation Plan

TO BE COMPLETED BY SELLER

Attachment B
Support and Maintenance Services

TO BE COMPLETED BY SELLER

Attachment C
Disaster Recovery Plan

TO BE COMPLETED BY SELLER