

EXHIBIT A
BOEING INDIRECT SUPPLY CHAIN
CONSTRUCTION GENERAL PROVISIONS
Rev. 09/2016

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PART ONE – DEFINITIONS

As used in the Contract, the following words and expressions shall have the following meanings, except where the context clearly otherwise requires:

"Authority" means any federal, state, or local government, ministry, governmental department, commission, board, bureau, agency, instrumentality, executive, judicial or administrative body, having jurisdiction over the Work, Contractor and Boeing.

"Beneficial Occupancy" has the meaning set forth in **Clause 2.39.1. (Beneficial Occupancy)**.

"Best Industry Practices" means the best commercial practices, standard of care, skill and diligence which are generally engaged in or observed by professionals engaged in design and construction industries with respect to projects of a similar size, type, nature, scope and complexity to the Work and which, with respect to any objective, may be expected in the exercise of reasonable judgment, to accomplish that objective in a manner consistent with all applicable laws, reliability, safety, environmental protection, economy and expediency.

"Boeing" means The Boeing Company and/or a division, subsidiary or affiliate of The Boeing Company and its successors and assigns.

"Boeing Administrator" has the meaning set forth in **Clause 3.1. (Boeing Administrators)**.

"Boeing Authorized Purchasing Representative" has the meaning set forth in **Clause 3.1. (Boeing Representatives)**.

"Certificate of Completion" has the meaning set forth in **Clause 2.40.7. (Request for Final Inspection)**.

"Change" means any substitutions in, modification of, additions or deletions to the Work, the Work Schedule or Contract Time, within the scope of the Contract Documents.

"Change Order" means an order for one or more Changes issued by Boeing pursuant to **Clause 4.5. (Changes)**, which upon execution by the Parties becomes incorporated by reference into the Contract.

"Commencement of Work" shall have the meaning set forth in **Clause 2.3. (Commencement of Work)**.

"Completion Date" means the date by which Work set forth in an applicable Scope of Work shall be completed. There may be milestone dates of completion of various subcomponents of the Work prior to completion of the Work contracted for under the Project.

"Confidential Information" means all (i) confidential, proprietary, and/or trade secret information; (ii) designs, processes, drawings, specifications, reports; and (iii) any such information or data generated or used in connection with this Contract, which includes but is not limited to Work Product, data and other technical or proprietary information and the features of all parts, Materials, tools, gauges and patterns.

"Construction Demolition and Land Clearing Debris" or "CDL Debris" means nonhazardous solid waste resulting from any construction, remodeling, repair, or demolition of roadways, buildings, or other man-made structures and debris associated with land clearing activities. To the extent this term is defined or restricted by any applicable federal, state, or local law, such definition or restriction shall apply.

"Contract" or "Contract Documents" means, collectively, the Boeing Shared Services Group Construction General Provisions with attachments, the Contract Form signed by Boeing and Contractor, and any exhibits, supplements, and amendments to the Contract Form, including the Contract Drawings, Scope of Work and other specifications for the Work, pricing supplements, and any state or regional supplements. The phrase "the Contract" and "this Contract" refer to the "Contract" as defined herein.

"Contract Drawings" mean the drawings for the Work (including but not limited to Construction drawings prepared by architects and engineers) furnished by Boeing to the Contractor that are included in the Contract Documents. Such drawings may be modified from time to time by Boeing. The term does not include Contractor Drawings unless agreed to in writing by Boeing.

"Contract Form" means the form completed and executed by Boeing and Contractor that identifies the applicable Contract Price, Sum Allotted, Schedule, Scope of Work, and other Contract Documents.

"Contract Price" means the monies that Boeing agrees to pay Contractor for the performance of the Work as set forth in the Contract Form, Scope of Work and pricing exhibit, subject to the additions and deductions as provided in the Contract Documents.

"Contract Time" means the time from the Notice to Proceed with the Work until the Completion Date, including authorized adjustments.

"Contractor" means the person or persons or other entity that has entered into this Contract with Boeing and includes Contractor's representatives, agents, successors, and permitted assigns.

"Contractor Drawings" mean the design and drawings for the Work furnished under the Contract by Contractor or any Subcontractor, including without limitation shop drawings.

"Contractor Representative" has the meaning set forth in **Clause 2.4. (Contractor Representative)**.

"Days" in the context of the Contract means calendar days and is not limited to "Business Days," "Working Days," "Work Days," or other terms of like meaning unless otherwise expressly stated.

"Equipment" means equipment, tools, and supplies used by the Contractor and its Subcontractors in performance of the Work but does not include equipment, tools, or supplies incorporated into the Work. "Equipment" does not include "Materials" as that term is defined under this Contract.

"Event of Default" has the meaning set forth in **Clause 4.21. (Default)**.

"Excusable Delay" means any delay in performance or failure to perform the Work arising out of causes unforeseeable at the time of execution of the Contract which are beyond the control and without the fault or negligence of either party. Such causes may include, but are not restricted to: acts of God or of the public enemy; acts of the Government; fires; floods; epidemics; quarantine restrictions; riots; insurrections, civil commotions, terrorist acts, war, and freight embargoes. Excusable Delay does not include a delay caused by a delay in performance or failure to perform by a Subcontractor or Supplier.

"Extra Work" means furnishing Materials, furnishing Equipment, and/or doing Work not expressly or implicitly called for by the original Scope of Work as set forth in the Contract Documents. Extra Work is to be managed under the Contract as a "Change" pursuant to **Clause 4.5. (Changes)**.

"Field Order" means a written notice of unilateral direction issued by the Boeing Authorized Purchasing Representative and the Boeing Administrator for Changes pursuant to **Clause 4.5. (Changes)**.

"Final Inspection" has the meaning set forth in **Clause 2.40.7. (Request for Final Inspection)**.

"Final Payment Application" has the meaning set forth in **Clause 4.10.1. (Final Payment Application)**.

"Hazardous Chemical" means any chemical that is a physical hazard or a health hazard as defined by the OSHA Hazard Communication Standard, 29 CFR 1910.1200, or an OSHA-approved state equivalent standard.

"Hazardous Materials" are defined to include Hazardous Chemicals, Hazardous Substances, Hazardous Wastes and Regulated Wastes.

"Hazardous Substances" are defined as provided under federal law at 42 U.S.C. § 9601 [The Comprehensive Environmental Response, Compensation and Liability Act] and 40 C.F.R. § 302.3, and as provided under any applicable state or local law. The term also includes petroleum and petroleum products, as well as any polychlorinated biphenyls.

"Hazardous Waste" is defined as provided under federal law at 42 U.S.C. § 6903 (The Solid Waste Disposal Act, which, as amended, is also referred to as the Resource Conservation and Recovery Act), and 40 C.F.R. § 260.10, and as provided under any applicable state or local law.

"Incidental Design/Build Work" means the completion, design and engineering of certain elements of the Work designated in the Construction Drawings to be completed by the Contractor during performance of the Work.

"Indemnitees" has the meaning set forth in Clause 4.15.1. (Indemnification, **Negligence of Contractor or Subcontractors**).

"Insolvency Proceedings" occur when an entity does one or more of the following: (1) dissolves (other than in connection with a merger or consolidation that is a permissible assignment under the Contract); (2) becomes insolvent or is generally unable or fails to pay its debts as they become due; (3) suffers or consents to or applies for the appointment of a receiver, trustee, custodian or liquidator of itself or any of its property, or makes a general assignment for the benefit of creditors; (4) files a voluntary petition in bankruptcy, or seeks to effect a plan or other arrangement with creditors or any other relief under the United States Bankruptcy Code, 11 U.S.C. §§ 101 et seq. ("Bankruptcy Code"), or under any state, other federal, foreign or international law granting relief to debtors, whether now or hereafter in effect; (5) an involuntary petition or proceeding pursuant to the United States Bankruptcy Code or any other applicable state, other federal, foreign or international law relating to bankruptcy, reorganization or other relief for debtors is filed or commenced against it and is not dismissed, stayed or vacated within sixty days thereafter or, if earlier, it files an answer admitting the jurisdiction of the court and the material allegations of any involuntary petition or an order for relief is entered by any court of competent jurisdiction under the Bankruptcy Code or any other applicable state, other federal, foreign or international law relating to bankruptcy, reorganization or other relief for debtors; or (6) takes any corporate action authorizing or in furtherance of any of the foregoing.

"Joint Occupancy" occurs in accordance with **Clause 2.17.2. (Coordination On Site)**.

"Key Personnel" has the meaning set forth in **Clause 2.16.1. (Key Personnel)** and may include licensed Engineers, geologists, hydro geologists, environmental professionals and other personnel hired by Contractor or any Subcontractor. Key Personnel may be identified in a Work Order Authorization.

"Materials" include all materials, equipment, supplies, and other items incorporated or to be incorporated into the Work. This term does not include Equipment used by the Contractor or its Subcontractors in the performance of the Work that is not incorporated into the Work. "Materials" does not include "Equipment" as that term is defined under this Contract.

"Matter In Dispute" has the meaning set forth in **Clause 4.19. (Dispute Resolution Process)**.

"Notice of Substantial Completion" has the meaning set forth in **Clause 2.40.2. (Completion of All Work)**.

"Notice of Termination" has the meaning set forth in **Clause 4.23. (Notice of Termination)**.

"Notice to Proceed" is a written directive from Boeing instructing Contractor to begin any part or all of the Work.

"On-Site Work" means any goods provided or to be provided or services performed or to be performed by Contractor or its employees, subcontractors or suppliers under this Contract on property owned, operated, leased, occupied, or controlled by Boeing.

"Payment Bond" is a bond that guarantees payments of labor; Materials; and Equipment of Contractors and its Subcontractors and Suppliers. Failure of the Contractor to meet these obligations requires surety assumption of the debts.

"Performance Bond" is the bond that guarantees that the Contractor will actually complete the Work. Should the Contractor default, the surety must take action to complete the Contract.

"Project" means the entire design and construction project of which the Work is a part. The Project may include work to be performed by parties other than Contractor.

"Property Accountability List" (PAL) is a list of all nonlabor items to be used by Contractor or Subcontractors and paid for as part of the Contract Price, which have a purchase price of one thousand five hundred dollars (\$1,500) or greater, and that are not purchased for the purpose of being incorporated into the Work and that will have a residual value at the completion of the Work.

"Records" has the meaning set forth in Clause 4.12. (Audit and Records Review).

"Regulated Waste" means Hazardous Waste and/or other wastes regulated for any purpose, including disposal, by any federal, state or local law, including universal waste, waste defined as hazardous and/or dangerous by any jurisdiction having authority over the site of the Project, special waste, and any other regulated waste.

"Request for Information" means a formal request by Contractor to Boeing for clarification with respect to the Work to be performed.

"Schedule" means the schedule for the Work, submitted by Contractor pursuant to **Clause 2.5. (Schedule)**, and approved by Boeing, and any approved revisions thereof.

"Scope of Work" or "SOW" means the description of Work to be performed by the Contractor in order to fulfill the Contractor's obligations pursuant to the Contract and which is attached to this Contract as an exhibit and incorporated by reference herein. The SOW may be incorporated in a Work Order Authorization.

"Site" or "Job Site" means the lands and other places on, under, in or through which the Work is to be performed and any other place or lands provided by Boeing for the purposes of the Contract, together with such other buildings and places as may be specifically designated in the Contract Documents as forming part of the Site.

"Site-Specific Conditions" mean any conditions particular to the Work on a particular Project. Applicable special conditions may be set forth in the Contract Documents.

"Solid Waste" means all gaseous, solid and semisolid wastes including garbage, rubbish, ashes, industrial wastes, land clearing, demolition and construction wastes, and discarded commodities, but does not include Hazardous Waste. To the extent this term is defined or restricted by any applicable federal, state, or local law, such definition or restriction shall apply hereunder.

"Subcontractor" means any person or entity, at any tier, that performs, or assists Contractor or any subcontractor of Contractor, in performing any of the Work and includes representatives, agents, successors, and permitted assigns of any Subcontractor.

"Sum Allotted" means the total amount available for payment under the Contract during a particular period (which may be less than the total Contract Price). If the Contract does not specify the Sum Allotted, then the Sum Allotted shall be the Contract Price.

"Supplier" means any manufacturer, fabricator, supplier, distributor, Material supplier, or vendor having a direct contract with the Contractor or any Subcontractor to furnish Materials to be incorporated in the Work.

"Technical Data" consists of but is not limited to all research and engineering data and designs, engineering and manufacturing drawings, specifications, standards, process information, manuals, technical reports, and all computer software including flow charts, listings, object codes, source codes, and related documentation, Materials, or information, in any form, first produced or resulting from Materials, or information, in any form, first produced or resulting from performance of the Work.

"Technical Specifications" mean the written technical descriptions of Materials, construction systems, standards, and workmanship applicable to the Work that are set forth in the Contract Documents. Such Technical Specifications may be amended from time to time by Boeing during the performance of the Work.

"Termination for Convenience" has the meaning set forth in **Clause 4.22. (Termination for Convenience)**.

"Utility" means all pipelines (including water, fire water, storm drain and natural gas), telephone equipment, computer network, fiber optic lines, electric power, heating and air-conditioning systems, fire alarms, security systems and all other supply, disposal, distribution and communication systems, and similar facilities.

"Work" means the services to be performed by the Contractor in order to fulfill the Contractor's obligations pursuant to this Contract. The Work to be performed under the Contract includes the activities set forth in the Scope of Work or any Work Order Authorization, Technical Specifications and other Contract Documents and any associated labor, Work Product, Materials, Equipment and services, performed or to be performed by or for Contractor, its Subcontractors, and Suppliers. "Work Order Authorization" means the agreement to perform specific Work, reflected in a Work Order Authorization Form executed by the parties. The Work Order Authorization includes the SOW, Schedule, pricing and the Contractor's Key Personnel.

"Work Order Authorization Revision" means an order for one or more Changes issued by Boeing pursuant to **Clause 4.5. (Changes)**, which upon execution by the Parties becomes incorporated by reference into the Contract.

"Work Product" means all tangible items delivered to Boeing by Contractor, in any media (including electronic, print and hard copy) prepared and/or provided by Contractor pursuant to this Contract, including maps, Contract Drawings, Construction Documents, Technical Specifications, Technical Data, "as-built" drawings, surveys, manuals, all research and computer software, flow charts, listings, object code, source code and its documentation, Project specific safety plans and any other standards, process information, manuals, technical reports and all other technical documentation and other data, in any form, first produced or resulting from

performance of the Work. Unless otherwise indicated by Boeing, Contractor shall deliver the Work Product in both hard copy and electronic format (such as CAD disc or other electronic format designated by Boeing).

"Working Days" or "Work Days" refer to regularly scheduled days of activity on Site that, unless the Schedule provides otherwise, excludes federal holidays and weekends.

PART TWO – RESPONSIBILITIES OF CONTRACTOR

2.1. Sale and Purchase of Works. Contractor agrees to provide and Boeing agrees to pay for the Work described in the Contract Documents, including the Scope of Work. Boeing agrees to pay Contractor for the Work performed under the Contract in accordance with the Contract Documents, (including the pricing exhibit). Boeing will not be liable for Work performed by the Contractor if the Work is not authorized by Boeing.

2.2. Description of Contractor Work.

2.2.1. General. Contractor shall provide Boeing with the timely performance of the Work, including construction services, consultation, advice and other associated services in full compliance with the Contract Documents, including but not limited to the Scope of Work so as to complete the Work by the Completion Date. All Work provided to Boeing shall be performed in full compliance with the Contract Documents.

2.2.2. Overview Description. The Work to be provided includes all other deliverables to be provided to Boeing, as well as, any such consultation, advice and other services as may reasonably be required in support of the completion of the Work, throughout the course of the Contract including any required extensions of the Schedule. In addition, Contractor agrees and understands that it is intended that the Contract Documents, taken as a whole, require Contractor to furnish all necessary services, sufficient labor, qualified personnel, Materials, tools, Equipment, plant, other necessary items and supervision required to complete the Work described in the Contract at no additional cost to Boeing. Contractor is responsible for the proper operation and maintenance of all equipment, systems, and their components until these requirements have been met and until final acceptance of the Work by Boeing. When requested by Boeing, other Work may include:

2.2.2.1. Providing Analyses, Studies and Evaluations. Providing analyses of Boeing's needs, planning surveys, Site and facility utilization evaluations, and comparative studies of prospective sites and solutions.

2.2.2.2. Providing Incidental Design/Build Work. In connection with any Incidental Design/Build Work, Contractor further acknowledges and agrees that: (1) the Design/Build Work may be set forth in the Contract Documents only in outline form; (2) it shall (or shall ensure that its Subcontractors shall) provide all Work or other services (of either an engineering or a construction nature) necessary to provide Boeing with full, complete, and operational systems, in compliance with all applicable codes and industry standards, whether or not all such work is itemized in the Contract Documents in full and exact detail; (3) any Design/Build Work that is installed contrary to applicable codes, ordinances, and laws or contrary to the requirements and design concepts established in the Contract Documents shall be corrected, modified, repaired, or replaced promptly and at no cost to Boeing; and (4) later refinement or description of the Design/Build Work, whether by oral instruction or the issuance of further plans, specifications, directions or clarifications, shall not entitle the Contractor to any compensation in addition to the Contract Price and/or any extension of the Contract Time unless otherwise agreed to by the parties pursuant to **Clause 4.5. (Changes)**. Contractor shall ensure that Contractor's agreement with any Subcontractor performing Design/Build Work shall provide that Boeing is an expressly intended third-party beneficiary of the contract for the performance of such Work and that the Subcontractor shall be directly responsible to Boeing for the quality, technical accuracy, and coordination of all Design/Build Work provided by such Subcontractor, as applicable. The entity performing Design/Build Work

(whether the Contractor or Subcontracts) shall procure and maintain (and provide Boeing with evidence of) design errors and omissions insurance in such nature and amount as are acceptable to Boeing.

2.2.2.3. RESERVED.

2.2.2.4. RESERVED.

2.2.3. Commencement of Work. Contractor shall commence the Work upon the date set forth in the Contract or upon receipt of a "Notice to Proceed" or Work Order Authorization issued by Boeing instructing commencement of the Work. Such Notice to Proceed may, at Boeing's option, be issued for different phases of the Work, and if so given, Contractor shall only proceed with those items of the Work described in the Notice to Proceed and the Scope of Work. All Work shall be in strict compliance with the Contract Documents.

2.3. Independent Contractor. Contractor is an independent contractor for all purposes. In no event shall Contractor or its agents, representatives, or employees be deemed to be agents, representatives, or employees of Boeing. Contractor shall maintain complete control over Contractor's employees and any Subcontractors and Suppliers, and their respective employees. Contractor shall pay its employees and shall ensure that every Subcontractor pays its employees all wages, salaries, and other amounts due to such employees. Contractor shall perform all of the Work in accordance with its own means and methods and in compliance with the requirements of the Contract Documents. Nothing contained in the Contract or any subcontract awarded by Contractor shall create any contractual relationship between any Subcontractor and/or Suppliers and Boeing, except as otherwise expressly provided herein. If the Contractor comprises more than one legal entity, each such entity shall be jointly and severally liable under the Contract.

2.4. Contractor Representative. Before commencing any Work, Contractor shall designate a competent, authorized representative ("Contractor Representative") acceptable to Boeing to represent and act for Contractor and shall notify Boeing of the name and address of such representative. Such notice shall clearly specify in writing all limitations of the Contractor Representative's authority in representing and acting for Contractor. Subject to any such limitation, all notices, determinations, instructions, and other communications given to Contractor Representative by Boeing shall be binding on Contractor. Contractor Representative shall be present or be duly represented at the Site at all times when Work is actually in progress. Contractor shall notify Boeing in writing before any change in the designated Contractor Representative or imposition of any limitation on Contractor Representative's authority. Contractor shall coordinate with the Boeing Authorized Purchasing Representative to ensure that Field Orders and any other Changes in Contract, including the value or scope, will be coordinated with the Boeing Authorized Purchasing Representative and the Contract will be formally amended as necessary.

2.5. Schedule.

2.5.1. Adherence to Schedule. Contractor shall complete all Work as required to meet the Contract Time and any milestone dates set forth in the Contract Documents. Contractor shall perform the Work as expeditiously as is consistent with professional skill and care and the orderly progress of the Project, but in any event, shall deliver the Work Product no later than the Completion Date (including each milestone date, if any) for the Work Product as set forth in the Contract. Contractor shall prosecute the work substantially in accordance with the approved Schedule and failure to do so shall be evidence that Contractor is failing to prosecute the Work with such diligence as will ensure its completion within the time specified in this Contract and may result in termination for default. The Schedule shall include allowances for Boeing's review and approval of submissions by Authorities. Time limits established by the Schedule as approved by Boeing shall not be exceeded by Contractor, except for Excusable Delays. Timely completion of any of the Work required under

the Contract is critical as "time is of the essence" and failure to perform timely shall constitute a material breach of this Contract. Contractor acknowledges that Boeing will suffer adverse financial and other consequences if the Work is not completed within the time period established by Boeing.

2.5.2. Schedule for Sequencing the Work. In the event that the Work is to be separately sequenced or sequenced in phases, Contractor shall develop a schedule for performance of the Work in order to sequence and coordinate properly the Work with the services to be provided by other Boeing designers, contractors and suppliers under separate contracts. This schedule is to be prepared whether or not the services to be provided by other Boeing designers, contractors and suppliers are to proceed concurrently with the Work under this Contract.

2.5.3. Staffing to Schedule. Contractor shall furnish sufficient forces, construction plant, and Equipment and shall work such hours, including night shifts, overtime operations, and Sunday and holiday work, as may be necessary to ensure the prosecution of the Work substantially in accordance with the approved Schedule. If Contractor falls behind such schedule, Contractor shall take such steps as may be necessary to improve its progress, and Boeing may require Contractor to increase the number of shifts, overtime operations, days of work, including Saturdays, Sundays, and holidays, and the amount of plant, labor, and Equipment. Such costs are considered to be included in the Contract Price.

2.6. Status and Reporting.

2.6.1. Pre-Construction Meeting. At the option of Boeing and with no adjustment to the Contract Price, a pre-project meeting may be held before the Work is begun. If held, Contractor will be required to have Contractor's Key Personnel present (including field supervision) and the key personnel from its major Subcontractors. All present shall be prepared to discuss Work-specific issues, including the following:

- (i) Project Schedule.
- (ii) Schedule for submittals, deliveries and any required procurement, construction or fabrication.
- (iii) Subcontractors and Suppliers list.
- (iv) List of Contractor's list of Key Personnel, including office and emergency telephone numbers.
- (v) Budget, rates and factors for Contractor and all Subcontractors, if applicable.
- (vi) Submittal schedule and log.
- (vii) Shop drawing schedule and log, if required.
- (viii) Certificates of insurance.
- (ix) If required, plans for staging area layout, utilities plan and parking.
- (x) Review meetings agenda, daily journals, logs and progress reports.
- (xi) Hazardous Material schedule and log, Material Safety Data Sheets (MSDS).
- (xii) Site Specific Health and Safety Plan. (Including the name of the Safety Focal).
- (xiii) On-Site environmental procedures, concerns, and disposal requirements and reports.
- (xiv) Permitting process (Boeing and Contractor obtained permits).
- (xv) Boeing security procedures and requirements.
- (xvi) Work Site security.
- (xvii) Invoicing process.
- (xviii) Field Order/Change Order or Work Order Authorization Revision process including register review (if required).

2.6.2. Progress Reports. During the performance of the Work, Contractor shall submit to the Boeing Administrator periodic progress reports. The progress reports shall include all of the following elements that are applicable to the Work:

2.6.2.1. A copy of the Schedule in the format required by Boeing revised to reflect current progress;

2.6.2.2. Cost reports showing incurred costs and revised estimates of costs to complete the performance of the Work in comparison to the budget;

2.6.2.3. Earned Value Reports comparing the amount of Services completed and the amount of Services billed

2.6.2.4. RESERVED.

2.6.2.5. A list of Equipment used on the Work during the reporting period;

2.6.2.6. A listing of personnel performing the Work at the Site during the reporting period;

2.6.2.7. A forecast of personnel and Equipment for the succeeding thirty (30) days; and

2.6.2.8. Any other pertinent information as requested by the Boeing Administrator.

2.6.3. Boeing Review Meetings. Contractor shall schedule weekly review meetings with the Boeing Administrator to be attended by all Key Personnel of the Contractor's and relevant Subcontractor's staff. The following topics shall be discussed as applicable:

(i) Project Schedule;

(ii) Submittal and shop drawing log

(iii) Field Order, Change Order or Work Order Authorization Revision log and Contractor's review of meetings with Subcontractors

(iv) Safety status and issues

(v) Permitting status and issues

(vi) Job walkthrough

(vii) As-built drawings; and

(viii) Any other pertinent information as requested by the Boeing Administrator

2.6.4. Performance Evaluations. During the performance of the Work, performance may be measured periodically to verify that the established Project requirements are being met. Procedures and metrics will be developed with the Boeing Administrator at the time Work commences.

2.7. Consents, Permits, Licenses and Filings.

2.7.1. Regulatory Tasks. Unless otherwise specified in the Contract Documents, Boeing shall submit the application and payment for all building permits to the applicable building authority. Contractor shall be responsible for obtaining said building permits from the applicable building authority, as well as, for applying, paying and obtaining all other construction permits, occupancy certificates, consents, permits, licenses and other authorizations pertaining to the Contractor, Project, and Work. Further, Contractor shall be responsible for filing any follow-up reports required by any Authority to comply with any specific Contractor licensing or other regulatory requirements. Follow-up reports for submission to any Authority must be approved by the Boeing Administrator prior to submittal. Contractor shall furnish all bonds, security, or deposits required by any Authority in order to permit performance and completion of the Work. Unless otherwise directed by Boeing, Contractor also shall arrange any testing and/or inspection by all relevant Authorities and obtain a "certificate of

occupancy" (or its equivalent") from such Authorities and any other approvals necessary to ensure completion of the Work in accordance with this Contract and any applicable law.

2.7.2. Delivery of Permits. Contractor shall submit copies of any permits, certificates, consents, permits, licenses and other authorizations it obtains to the Boeing Administrator before starting that portion of Work covered by such permits, certificates, consents, permits, licenses and other authorizations and will provide the original signed-off any permits, certificates, consents, permits, licenses and other authorizations to the Boeing Administrator as a condition of final payment.

2.7.3. Compliance With Permits. Contractor shall abide by and comply with the requirements of all any permits, certificates, consents, permits, licenses and other authorizations relating to the Project and the Work.

2.8. Contractor Submittals.

2.8.1. General Requirements. Contractor shall submit to Boeing Contractor Drawings, data, and samples for review whenever:

2.8.1.1. Required by the Contract Documents,

2.8.1.2. For any Work that Contractor wants to perform in a manner significantly different from the manner indicated in the Contract Documents,

2.8.1.3. If substitutions require rearrangement of portions of the Work, or

2.8.1.4. If coordination drawings are created to coordinate Subcontractor Work. Contractor shall submit sufficient copies of data, samples, and Contractor Drawings for Boeing to retain four (4) copies plus the number of copies deemed necessary for use by the Contractor and Subcontractor.

Neither review by Boeing of such data, samples, and Contractor Drawings nor permission from Boeing to proceed shall constitute acceptance or approval of design details, calculations, analyses, test methods, certificates, or Materials developed or selected by Contractor or construction or installation procedures or otherwise relieve Contractor of its responsibility to fully comply with the Contract Documents.

2.8.2. Drawings.

2.8.2.1. Contractor shall prepare and submit to Boeing for approval by Boeing, coordination drawings as required by the Technical Specifications.

2.8.2.2. If Contractor Drawings are required for fabrication of Contractor-furnished Materials, installation of Contractor-furnished Material, or planning and/or performance of the Work, such Contractor Drawings shall be submitted before fabrication, installation, or performance commences, allowing ample lead time to avoid delay of the Work.

2.8.2.3. Before submittal to Boeing, the Contractor shall review the submittal and shop drawings for completeness and indicate its review and acceptance by affixing to all copies a stamp of the Contractor's name, which is executed by the appropriate Contractor representative. Submittals and shop drawings that have not been reviewed and accepted by the Contractor will not be accepted by Boeing. Unless otherwise specified in the Contract, Boeing will review the Contractor Drawings, pursuant to **Clause 2.8.5. (Boeing Review of Drawings, Samples, Certificates and Data)**.

2.8.3. Samples.

2.8.3.1. If samples are required by the Contract Documents, they shall be submitted by Contractor, allowing ample lead time to avoid delay of the Work. Samples shall be subject to review by Boeing. Materials represented by such samples shall not be manufactured, delivered to the Site, or incorporated into any Work before such review and authorization to proceed, pursuant to **Clause 2.8.5. (Boeing Review of Drawings, Samples, Certificates and Data)**.

2.8.3.2. Each sample shall bear a label showing Contractor's name, the Project name, and name of the item, manufacturer's name, brand name, model, Supplier's name and reference to the appropriate Contractor Drawing, and the appropriate section and paragraph number in any technical specifications supplied by Boeing.

2.8.4. Certificates.

2.8.4.1. If certificates are required for the Work by the Contract Documents or by applicable law, the number of copies required by the Contract Documents shall be submitted to Boeing, allowing ample lead time to avoid delay of the Work. Certificates shall be subject to review by Boeing. Material represented by such certificates shall not be fabricated, delivered to the Site, or incorporated into any Work before such review and authorization to proceed, pursuant to **Clause 2.8.5. (Boeing Review of Drawings, Samples, Certificates, and Data)**.

2.8.4.2. Certificates shall clearly identify the material being certified and shall include, without limitation, the following information: Contractor's name, the Project name, name of the item, manufacturer's name, reference to the appropriate Contractor Drawing, and the appropriate section and paragraph number in any technical specifications supplied by Boeing.

2.8.5. Boeing Review of Drawings, Samples, Certificates, and Data.

2.8.5.1. Contractor shall forward submittals of Contractor Drawings, samples, certificates, and data to the Boeing Administrator for technical review. Submittals will be returned with the review stamp indicating actions to be taken.

2.8.5.2. The return to Contractor of a submittal with notations will indicate the actions required of the Contractor. If the notation indicates "No Exception Taken," "Reviewed as Noted," or similar wording, the Contractor Drawings have been accepted by Boeing and Contractor will be authorized to proceed with the Work or procurement contemplated by the submittal on receipt of a Notice to Proceed.

2.8.5.3. If any submittal is returned to Contractor with notations indicating that corrections are required, Contractor shall correct and resubmit for review. Contractor is NOT authorized to proceed based on the original submittal. Contractor shall be responsible for, and bear all costs of, damages that may result from the ordering of any material or from proceeding with any part of the Work before review by Boeing of any prerequisite submittal and return from Boeing with a notation authorizing Contractor to proceed.

2.8.5.4. Contractor shall comply with any instructions in the transmittal letter accompanying any submittal returned. Contractor shall be responsible for, and bear all costs of, damages that may result from the ordering of any material or from proceeding with any Work other than in accordance with any transmittal letter.

2.8.5.5. Review by Boeing of Contractor's submittals of Contractor Drawings, samples, certificates, or other data shall not relieve Contractor of any obligations under the Contract Documents or relieve Contractor of its responsibility for the correctness of such Contractor Drawings, samples, certificates, or other data. Contractor shall accomplish any changes that are necessary to make the Work conform to the provisions of the Contract.

2.9. Deliverables at Work Completion. Upon completion of the Work, Contractor shall provide Boeing with all data, drawings, documents and deliverables required by the Contract Documents. Contractor agrees to provide Boeing all deliverables in the formats (i.e., paper, electronic media or both) requested by Boeing.

2.9.1. As-Built Data. During the performance of the Work, Contractor shall maintain on a weekly basis all data necessary to revise any Contract Drawings to conform to the as-built condition of the Work. The Contractor and Subcontractors will have a table dedicated to red lined drawings, the Contractor's superintendent will log in entries, and a signoff sheet will be on the wall above each set of drawings. Such drawings shall include, but not be limited to, all underground Utility lines encountered by Contractor in performing the Work. Promptly after completion of all the Work and as a condition precedent to final acceptance and final payment, Contractor shall deliver to Boeing two (2) complete sets of **accurate** red lined documents.

2.9.2. Operation and Maintenance ("O&M"). Prior to any Contractor submitting the Notice of Substantial Completion for all or any part of the Work, Contractor will submit Operation and Maintenance Manuals ("O & M Manuals"), nonstandard tools, spares and training for all equipment and systems installed in the Work. The provisions of this subsection do not apply to Boeing-furnished equipment.

2.9.2.1. O & M Manuals. Within thirty (30) days after issuance of the Notice to Proceed or fifteen (15) days before the request for Final Inspection, whichever date is earlier, Contractor shall submit to Boeing for review and approval a proposed table of contents for the O&M Manuals. Prior to submission of the Notice of Substantial Completion, Contractor shall provide Boeing with seven (7) copies of the O&M Manuals in new three-ring binders labeled with the Project name, contract number, and building number. These O&M Manuals shall include the original warranties, operating instructions, working drawings, spare parts lists, performance curves, maintenance and parts manuals, equipment and system element drawings and other operating and maintenance information. All documentation contained in the O&M Manuals shall be legible originals written in English; copies will not be acceptable. O&M Manuals shall contain a Contacts List of contact persons' names, phone numbers, facsimile numbers, electronic mail addresses, and street addresses for Contractor and all Suppliers and Subcontractors involved with the Work. This list shall be organized by company and shall indicate who (Contractor, Supplier, or Subcontractor) is responsible for the warranty of each piece of equipment and/or system element. O&M Manuals also shall contain a list of all equipment incorporated into the Work, stating the manufacturer's name, model number, and the manufacturer's recommended spare parts list for each piece of equipment and/or system element. All spare parts shall be identified by the original Supplier's part number. Individual pieces of equipment and/or system elements shall be placed in the O&M Manuals in separate sections containing the applicable documentation and information for each.

2.9.2.2. Training. Contractor shall train Boeing employees in the safe and proper operation and maintenance for each and every piece of equipment, system, and/or system element installed under this Contract. Within thirty (30) days after issuance of Notice of Award and/or Notice to Proceed, Contractor shall submit to Boeing for review and approval a detailed training plan of the required training for the safe and proper operation and maintenance of the equipment and/or system elements and a proposed table of contents for the O&M Manuals.

2.9.2.3. Nonstandard Tools. Contractor shall provide one (1) each of nonstandard tools required in the normal maintenance, adjustment, use, and operation of the equipment or system element. For small commercial standard equipment or system elements, the information and tools shall be limited to that normally available from the manufacturer.

2.9.2.4. Spares. Contractor shall provide all spares required by the Contract Documents.

2.9.2.5. Punch List. Contractor shall provide a copy of the completed punch list showing which items have been corrected and the scheduled completion date of any items not corrected.

2.9.3. Condition Precedent to Final Payment. Submittal of the above listed items and other deliverables is considered a contractual requirement and required before final acceptance and final payment. Acceptance of the above-listed items and other deliverable shall not constitute a waiver by Boeing of any irregularity in Contractor's performance and shall not relieve Contractor of responsibility for defects in design or other errors or omissions nor from compliance with all the Contract requirements.

2.10. Compliance with Laws and Regulations.

2.10.1. Compliance. At all times, Contractor shall comply and shall ensure that all Subcontractors and Suppliers and their agents and employees comply with all applicable laws, rules, regulations, ordinances, and governmental orders, including those pertaining to United States Export Controls.

2.10.2. Change in Laws. If there is a change in the laws, rules, regulations, or governmental orders applicable to the Contract or the Work, unforeseeable by Contractor at the time of Contract execution, which affects the Contract Price or the Contract Time, Contractor shall immediately notify Boeing and submit detailed documentation of the effect. In the event of any such change, an equitable adjustment, if necessary, in the Contract Price or Contract Time, or both, may be made. Any such change to the Contract shall be handled in accordance with **Clause 4.5. (Changes)**.

2.10.3. Compliance With Employment Laws. In addition to the foregoing, Contractor acknowledges and agrees that it will comply with employment laws and regulations that are applicable to activities of Contractor and Contractor's personnel under this Contract, including those laws and regulations that relate to wage and hour requirements, labor relations, employment discrimination, and immigration. With respect to immigration compliance, Contractor specifically agrees that it is, and will remain, and shall ensure that its Subcontractors are and will remain, in compliance with the U.S. statute known as the Immigration Reform and Control Act of 1986, as amended, and will permit Boeing, on reasonable notice, to inspect and audit Contractor's and Subcontractor's records documenting such compliance for Contractor's and Subcontractor's personnel who perform services under this Contract. Further, Boeing may be required to obtain documentation of citizenship or immigrant status of Contractor's personnel or Subcontractor's personnel entering the premises of Boeing. Contractor agrees to furnish the information before commencement of Work and before substituting or adding new personnel to Work on Boeing premises. Information submitted by Contractor shall be certified by an authorized representative of Contractor as being true and correct. Contractor acknowledges and shall ensure that its contracts with all Subcontractors and lower-tier Subcontractors that Contractor or its Subcontractors may use to perform services under this Contract will contain similar undertakings as set forth in this paragraph.

2.10.4 Anti-Slavery and Anti-Human Trafficking. Contractor commits that any material violation of law by Contractor relating to basic working conditions and human rights, including laws regarding slavery and human trafficking, applicable to Contractor's performance under this Contract/ Agreement may be considered a material breach of this Contract/Agreement for which Boeing may elect to cancel any open Orders between Boeing and the Contractor, for cause, in accordance with the provisions of this Contract/Agreement, or exercise any other right of Boeing for an Event of Default under this Contract/Agreement.

2.10.5 FAA Regulations. Without in any way limiting the requirements of Paragraph 2.10 Compliance with Laws and Regulations of the Boeing SSG Construction General Provisions, Contractor shall comply with the following additional rules and regulations as applicable.

(1) FAA:

Due to the proximity of the construction Project to airports, a height restriction on equipment (including cranes) and materials to be used by the Contractor, as well as, other additional requirements apply to the Work. The Contractor must obtain and read the following FAA Regulations set forth in Title 14 of the U.S. Code of Federal Regulations:

- 77.11 Scope
- 77.13 Construction or Alteration Requiring Notice
- 77.15 Construction or Alteration Not Requiring Notice
- 77.17 Form and Time of Notice
- 77.19 Acknowledgment of Notice

Prior to commencing any Work (including bringing any cranes to the job site) within FAA-regulated proximity to airport property, the Contractor shall coordinate FAA permit and other FAA requirements with the Boeing construction administrator. Unless otherwise directed in writing by the Boeing construction administrator, Contractor remains solely responsible for compliance with all FAA requirements applicable to the Work, including: (1) obtaining FAA Form 7460-1, Notice of Construction or Alteration from the Boeing construction administrator; (2) submitting the completed form to the applicable Airport FAA Tower Office, and obtaining a signed "Determination of No Hazard To Air Navigation" (Determination) from the FAA; and (3) submitting a copy of the completed form and FAA signed Determination to the Boeing construction administrator.

(2) Local Rules

Contractor shall comply with any applicable airport restrictions established by the local airport as well as any applicable restrictions established by Boeing.

2.11. Compliance, Errors and Discrepancies.

2.11.1. Compliance with Requirements, Standards and Codes. Contractor shall perform or test the Work in accordance with Best Industry Practices, Boeing standards (including AutoCAD standards), the requirements, and codes required in the Contract Documents or applicable law or regulation. The foregoing shall apply whether or not Boeing has provided detailed drawings for any Work to which any standards or codes are applicable. The edition or revision of any standard or code referred to in the Contract Documents shall be the current edition or revision on the effective date of the Contract Documents, unless otherwise expressly indicated.

2.11.2. Discrepancies and Inconsistencies.

2.11.2.1. With Applicable Law. If Contractor becomes aware of any discrepancy or inconsistency between the Contract and any law, rule, regulation, or governmental order applicable to the Contract or the Work, Contractor shall immediately notify Boeing in writing. The Contract may be amended, if necessary, to eliminate any such discrepancy or inconsistency including an equitable adjustment (increase or decrease) in the Contract Price or Contract Time, if applicable. Any such change to the Contract shall be handled in accordance with **Clause 4.5. (Changes)**.

2.11.2.2. Discovery of Other Conflicts, Errors, Omission and Discrepancies. In case of any conflicts, errors or omissions in, or conflict or discrepancies between the various Contract Documents, the matter shall be submitted immediately in writing by Contractor to Boeing for clarification. Any Work affected by any such error, omission, conflict or discrepancy, which is performed by Contractor after its discovery and prior to written clarification by Boeing, shall be at Contractor's risk and, if not acceptable to Boeing, at Contractor's expense. If clarification of the Contracts Documents is needed, any such change to the Contract shall be handled in accordance with **Clause 4.5. (Changes)**. Nonetheless, Contractor acknowledges that the SOW may contain omissions, conflicts, or ambiguities and agrees that Contractor is responsible for providing (without increase in the Contract Price or Time) the Work that is reasonably inferable from the drawings and reasonably necessary to produce the completed deliverables indicated by the SOW.

2.11.3. Acceptance of Work. Acceptance of Work will not relieve the Contractor or its representatives of the responsibility to perform in a skillful and workmanlike manner nor in any manner affect the Contractor's obligations as specified by this Contract.

2.12. Contractor Representations, Warranties and Covenants. Contractor hereby represents warrants and covenants that:

2.12.1. License. At the time of performance, Contractor shall be properly licensed, equipped, organized and financed to perform the Work. Contractor shall submit to Boeing, on request, proof of appropriate licensing and, if required, proof of financial compliance with any such licensing;

2.12.2. Experience and Qualifications. Each person or entity that performs the Work shall be experienced and qualified to perform the Work he or she performs, and Contractor agrees that Boeing shall be entitled to rely, without further inquiry, upon any assistance, guidance, direction, advice or other services provided by any such person or entity. If requested by Boeing, Contractor shall remove from the performance of the Work, without cost to Boeing or delay to the Project, any person Boeing deems objectionable;

2.12.3. Standard of Care. Contractor shall perform the Work with the standard of care, skill and diligence applicable to Contractor's industry and to a professional person or firm in the performance of services similar to the Work;

2.12.4. Fit for Intended Purpose. The Work results will be suitable for the intended purpose fit and free from defects in design, workmanship, and Materials.

2.12.5. Compliance. The Work shall be in accordance with the requirements, standards and codes set forth in the Contract Documents and applicable law or regulation.

2.12.6. Examination of Contract Documents and Site. Contractor has thoroughly examined all of the Contract Documents and the Site and has satisfied itself as to the character, quality and quantity of Work to be performed, the materials, and other items to be furnished, the adequacy and consistency of the Contract Documents, and all other requirements of this Contract, as well as the conditions that will be encountered at the Site or will otherwise affect the cost or difficulty of performing the Work.

2.12.7. Gratuities. Contractor warrants that neither it nor any of its employees, agents, or representatives have offered or given or will offer or give any gratuities to Boeing employees, agents, or representatives for the purpose of securing this Contract or any other Contract with Boeing or of securing favorable treatment under this Contract or any other Contract with Boeing.

2.12.8. RESERVED.

2.12.9. New Materials. Unless otherwise specified in the Contract Documents, all Materials incorporated into the Work shall be new and, where specified, of the most suitable grade of their respective kinds for their intended use, and all workmanship shall be in accordance with standard construction practices, construction practices acceptable to Boeing, and the requirements of the Contract Documents. Contractor warrants all Materials and labor furnished and Work performed under this Contract by Contractor or any Subcontractor or Supplier will be fit for the intended purpose and free from defects in design, workmanship, and Materials.

2.12.10. Warranty Period. In addition to the Contractor's Representations, Warranties and Covenants under this Clause 2.12, if, within twelve (12) months after the time Boeing issues its Certificate of Completion for the Work pursuant to **Clause 2.40 (Final Completion and Final Acceptance)**, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it with no cost to Boeing promptly after receipt of written notice from Boeing to do so. Nothing contained in this Clause 2.12 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the twelve month period for correction of Work as described in this Clause 2.12.10 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work. The warranty for any design or engineering services provided in connection with the Work shall be the lifetime of the Project. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damages or defect caused by abuse, modifications not executed by Contractor or its Subcontractors, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. Warranties set forth in this Contract shall run to Boeing and its successors, assigns, and customers. Contractor shall include terms in all contracts with Subcontractors and Suppliers that allow Boeing to enforce such warranties directly against such Subcontractors or Suppliers.

2.12.11. Free of Encumbrances. It will complete and deliver the Work to Boeing free and clear of all liens, security interests, claims, and encumbrances or an interest therein or thereto by any person.

2.12.12. Relationship of Trust. It accepts the relationship of trust and confidence established between Contractor and Boeing by this Contract.

2.12.13. Furnish Best Skill and Judgment. It will furnish its best skill and judgment and cooperate with the Project team in furthering the interests of Boeing and will ensure that its Subcontractors do the same.

2.12.14. Furnish Adequate Work Force. It will furnish efficient business administration and superintendence and use its best efforts to furnish at all times an adequate supply of workmen and Materials; as necessary to perform the Work.

2.12.15. Perform Services in the Best Interests of Boeing. It will perform and ensure that its Subcontractors and Suppliers perform the Work in the best way and in the most expeditious and economical manner consistent with the interest of Boeing.

2.12.16. Complete Services within Schedule and Budget. It will complete the Work by the Completion Date and for the Contract Price.

2.12.17. Remedy for Breach of Warranty. Boeing shall provide notice of any defect covered by the warranty set forth in **Clause 2.12. (Contractor Representations, Warranties and Covenants)** within the warranty period. Promptly after receipt of such notice, Contractor shall redesign and repair or replace any

portion of the Work affected by a defect covered by the warranty set forth in **Clause 2.12. (Contractor Representations, Warranties and Covenants)**. Contractor shall perform any tests required by Boeing to verify that any repair or replacement complies with the requirements of the Contract. Contractor warrants such repaired or replaced Work against defective Materials and workmanship for a period of twelve (12) months after the date of Boeing acceptance of such repaired or replaced Work. Except as otherwise set forth, all costs and expenses related to such redesign, repair or replacement and testing, including the removal, replacement and reinstallation of Materials necessary to gain access to the defective Work, shall be the sole responsibility of the Contractor. Whether warranty work is the responsibility of the Contractor or a Subcontractor or a Supplier, such warranty work shall be performed at no additional cost or charge to Boeing. If the parties disagree about the existence of a breach of warranty, Contractor shall promptly comply with direction from Boeing to redesign, repair, or replace the Work or furnish any materials or parts and installation instruction required to successfully correct the defect or nonconformance.

2.12.17.1. If the Parties later determine that Contractor did not breach this warranty, the parties shall equitably adjust the Contract Price. If Contractor fails to proceed with any repair, rework, replacement or testing required under this **Clause 2.12. (Contractor Representations, Warranties and Covenants)** within three (3) days after written notice is furnished to Contractor, Boeing may in its sole discretion (i) by contract or otherwise accomplish such redesign, repair, replacement, or testing and charge to Contractor any cost or damage occasioned to Boeing, or may reduce any amount otherwise payable under the Contract (or require repayment of any amount previously paid) in such amount as may be equitable under the circumstances, (ii) terminate the performance of Work under the Contract in accordance with **Clause 4.21. (Default)**, or (iii) do both (i) and (ii).

2.12.17.2. If Boeing determines that it is impracticable to redesign, repair or replace any defective portion of the Work found within the warranty period indicated in **Clause 2.12. (Contractor Representations, Warranties and Covenants)** Boeing may reduce the amount payable under the Contract (or require repayment of any amount previously paid) in such amount as may be equitable under the circumstances. Contractor shall include terms in all contracts with Subcontractors and Suppliers that allow Boeing to enforce warranties in the same manner contained in **Clause 2.12. (Contractor Representations, Warranties and Covenants)** directly against such Subcontractors or Suppliers.

2.12.18. Other Warranties. The warranties and remedies contained in **Clause 2.12. (Contractor Representations, Warranties and Covenants)** shall be in addition to any other specific or general warranties contained elsewhere in the Contract, at law or in equity, or in any other agreement for Work on the Project. For any repair or replacement not covered by **Clause 2.12. (Contractor Representations, Warranties and Covenants)**, the warranties and other provisions of such agreements shall govern the parties' rights and obligations. Furthermore, if Contractor obtains warranties from any Supplier or Subcontractor that are more favorable than the warranties contained in the Contract, Contractor shall enforce the warranties for the benefit of Boeing to the full extent possible under the terms of the warranties, provide Boeing notice of the warranties, and upon written request by Boeing assign the warranties to Boeing.

2.12.19. RESERVED.

2.13. Hidden, Unknown and Differing Site Conditions. Contractor shall immediately, and to the full extent possible before such conditions are disturbed, notify Boeing of:

2.13.1. Subsurface or latent physical conditions at the site differing materially from those indicated in any records of investigation made by Boeing or apparent from Contractor's site; and

2.13.2. Unknown physical conditions at the Site of any unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents that might affect the performance of the Work. The Boeing Administrator will, as promptly as practicable, investigate such conditions. Based on such investigation, Boeing will determine whether such conditions do materially so differ and, if so, whether such difference will increase or decrease the Contract Price and/or the Contract Time and/or result in any additions or deletions to the Work. If Boeing determines that there will be such an increase, decrease, addition, and/or deletion, an adjustment pursuant to and in accordance with **Clause 4.5. (Changes)** will be made. No claim of Contractor under this **Clause 2.13. (Hidden, Unknown and Differing Site Conditions)** will be allowed unless Contractor has given the required notice.

2.14. Materials and Quality. Unless otherwise specifically provided in the Contract, reference to any material or patented process by trade name, make, or catalog number, whether or not with the words "or equal" or words of similar meaning, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. Contractor is required to provide only new Material and may substitute any material or process that Boeing determines is equal to the material or process referenced. All substitutions, including "or equal" items, must have the prior written approval of Boeing. Certain items may be indicated as "no substitutions" in which event substitutions will not be accepted. When required by the Contract or by Boeing, Contractor shall promptly furnish to Boeing for approval all information concerning, and samples of, the Materials to be incorporated into the Work. Boeing shall have the right to reject any Materials installed or used without the approval required by this **Clause 2.14. (Materials and Quality)** or that do not comply with **Clause 2.27.3.4. (Asbestos Use Prohibited)**, in which event the Materials shall be removed at Contractor's sole cost and expense. Approval by Boeing pursuant to this **Clause 2.14. (Materials and Quality)** shall not relieve Contractor of any obligations under the Contract, including those related to warranties.

2.15. Quality, Surveillance, Inspection and Rejection of Materials and Workmanship.

2.15.1. Boeing Quality Surveillance. All Materials furnished and Work performed shall be properly inspected by Contractor and shall at all times be subject to quality surveillance by Boeing. Contractor shall provide safe and appropriate facilities and make available all designs, samples, drawings, lists, and documents that are necessary for such quality surveillance. Boeing shall be afforded full and free access to the shops, factories, or places of business of Contractor and all Subcontractors and Suppliers in order to allow Boeing to perform such quality surveillance and to determine the status of the Work. If Contractor covers all or any portion of the Work before any scheduled quality surveillance or testing by Boeing, Contractor shall be responsible for the cost of any uncovering and replacing needed in order to allow such surveillance or testing.

2.15.2. Rejection. In the event that during performance of any portion of the Work but before such time Contractor has given Boeing written notice that such Work is complete and ready for final acceptance, Boeing determines that such Work, including Materials, workmanship, or documentation is defective or does not comply with the requirements of the Contract Documents, Boeing shall notify Contractor of such determination. Immediately after receipt of such notice, Contractor shall, at Contractor's sole cost and expense, remove and replace or correct such defective Work so that the replaced or corrected Work complies strictly with all requirements of the Contract Documents. After such time as Contractor has given Boeing written notice that any Work is complete and ready for final acceptance, **Clause 2.40. (Final Completion and Final Acceptance)** and **Clause 2.12. (Contractor Representations, Warranties and Covenants)** shall apply.

2.15.3. Notice by Contractor. Unless otherwise specified in the Contract, Contractor shall be responsible for notifying the appropriate city, county, or other applicable inspection agency whenever the Work has advanced to a point at which an inspection is required under the Contract or any applicable law, rule, regulation, or order.

2.15.4. Uncovering of Work. If a portion of the Work is covered contrary to request from Boeing or to requirements specifically expressed in the Contract Documents, on written notice by the Boeing Administrator, Work must be uncovered for observation by Boeing and be replaced at the Contractor's expense and shall not be reimbursable under this Contract nor will there be any consideration for additional Contract Time. If a portion of the Work has been covered that Boeing has not specifically requested to observe before its being covered and that is not required to be left uncovered in the Contract Documents, the Boeing Administrator may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall be reimbursable under this Contract.

2.16. Labor and Personnel.

2.16.1. Key Personnel. Contractor shall furnish, and shall ensure that its Subcontractors furnish, all personnel necessary for the expeditious and satisfactory performance of the Work, including, when required by Boeing, project management staff on Site capable of supporting and managing the Work (hereinafter referred to as "Key Personnel"). The Key Personnel on Contractor's project management team shall be provided to Boeing in writing and shall include the Contractor's Representative; project manager(s); superintendent(s), both primary and assistants; and project engineers including a safety representative and quality assurance program manager. All Key Personnel shall be specifically dedicated to the Work. Contractor's Key Personnel shall ensure that a member of Contractor's Key Personnel team is present whenever Contractor or Subcontractor personnel are performing any On-Site Work under the Contract. Contractor shall not change any Key Personnel without the prior written approval of the Boeing Authorized Purchasing Representative, which approval shall not be unreasonably withheld; provided that in considering any such replacement, Boeing may take into account the replacement's education, experience, references, character, and other general qualifications for the position.

2.16.2. Other Requirements. Project management staff shall be shown on an organization chart that shall be kept current and on Site throughout the term of the Contract. Contractor shall employ, and shall ensure that all Subcontractors employ, only personnel to perform the Work who are competent, well-qualified, experienced, and skilled. Contractor's and Subcontractors' supervisory personnel must be able to speak, read, and write in English. If requested by Boeing, Contractor shall remove from the Site, at no cost to Boeing and with no permitted delay in the Work, any personnel of Contractor, or any Subcontractor or Supplier, including any project management staff, that Boeing determines in an exercise of its discretion, to be incompetent, dishonest, uncooperative, or otherwise unsatisfactory. Contractor is responsible for maintaining labor relations in such a manner that there is harmony among workers.

2.16.3. Contractor Manpower Reporting. When requested by Boeing, the Contractor shall supply periodically (at intervals designated by Boeing) manpower reports that include all labor and a description of Work performed by Contractor and all Subcontractors.

2.16.4. Work Assignments; Settlement of Jurisdictional Disputes. Work assignments and the settlement of jurisdictional disputes shall conform to either the "Rules, Regulations and Procedures of the Plan for Settlement of Jurisdictional Disputes in the Construction Industry" issued by the Building Trades Division of the AFL-CIO (or any successor agreement) or any other mutually established method of determining work assignments and settling jurisdictional disputes. When requested in writing by Boeing, Contractor shall submit a description of its labor agreements, if any.

2.16.5. Notice to Boeing of Labor Disputes.

2.16.5.1. Whenever an actual or potential labor dispute occurs or is threatened, Contractor shall immediately give notice to Boeing. Such notice shall include all relevant information with respect to any disputes, including whether the dispute will delay or threatens to delay the performance.

2.16.5.2. Contractor agrees to insert the substance of this **Clause 2.16.5. (Notice to Boeing of Labor Disputes)** in any subcontract as to which a labor dispute may delay the timely performance of this Contract; except that each subcontract shall provide that in the event its timely performance is delayed or threatened with delay by any actual or potential labor dispute, the Subcontractor shall immediately notify its next higher tier Subcontractor, or the Contractor, as the case may be, of all relevant information with respect to the dispute.

2.17. Cooperation and Coordination.

2.17.1 Boeing Consultants. To the extent that Boeing hires consultants to assist in the design and/or construction management of the Work, Contractor shall and ensure that its Subcontractors shall cooperate and coordinate as necessary with Boeing consultants.

2.17.2. Coordination on Site. Boeing and other contractors, subcontractors, or suppliers may be working at the Site during Contractor's performance of the Work (Joint Occupancy), and such concurrent activities may interfere with the Work. Boeing will endeavor to coordinate the Work and the work of all other suppliers and contractors in a manner consistent with the orderly and expeditious performance and completion of the entire Project so as to minimize interference with or suspension of the Work or any other work. Contractor shall and shall ensure that its Subcontractors and Suppliers shall fully cooperate with such other contractors, subcontractors, and suppliers to avoid any delay or hindrance of their work. Boeing may require that certain facilities be used concurrently by Contractor and other contractors. Contractor shall schedule all Work to avoid interruption of and interference with Boeing operations and work schedules in the work areas at and adjacent to the Site. In the event of scheduling disputes among those working on the Site, the matter shall be submitted to the Boeing Administrator for resolution, whose determination shall be binding and shall be promptly implemented.

2.17.3. Work Dependent on Others. If proper execution of the Work depends, in part, on actions by Boeing or work of a separate contractor, the Contractor shall, before proceeding with that portion of the Work, promptly report to the Boeing Administrator any apparent discrepancies or defects in such other construction or any situation that would adversely affect Contractor's Work. Failure of the Contractor to report such a circumstance shall constitute acknowledgment that Boeing or the other contractor had completed their work so that it is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable. Costs caused by delays or by improperly timed activities or by defective construction by Contractor or others shall be borne by the responsible party as provided. The Contractor shall promptly remedy damage caused by the Contractor to completed or partially completed work of others.

2.17.4. Non-Interference. Contractor acknowledges that Boeing may, if permitted by applicable law and governmental authority having jurisdiction, conduct its office and other operations at the Site, and Contractor agrees not to interfere in any manner whatsoever with such office and other business operations and, at the request of the Boeing Administrator, to fully cooperate with Boeing in scheduling any portion of the Work to accommodate such office and other business operations of Boeing.

2.18. Subcontractors and Suppliers.

2.18.1. Hiring of Subcontractor(s) and Supplier(s). Any Subcontractor or Supplier retained by Contractor shall have the necessary training, experience and qualifications to perform the Work in their respective fields to address the specific requirements of the Project.

2.18.1.1. List of Subcontractors and Suppliers. Before commencing the Work, Contractor shall provide the Boeing Administrator with a list of all Subcontractors and Suppliers (when the total value of such purchase from that Supplier exceeds \$10,000) that the Contractor intends to employ in the performance of the Work, together with copies of the contracts between Contractor and such Subcontractors and Suppliers. The list shall include the project name, Subcontractors' names and addresses, Suppliers' names and addresses, value of the subcontract or purchase order, and applicable State Workers Compensation Safety ratings for each entity and a brief description of their contracted work activities on the project. Such list also shall identify the value of the respective Subcontractors' subcontracts and suppliers' contracts, and the amounts that are to be paid to them with the estimated payment schedules. The list shall be updated any time Contractor determines to employ additional or substitute any Subcontractors or any Suppliers (when the value of such purchase with the Supplier exceeds \$10,000).

2.18.1.2. Review Right. Boeing shall have the right to approve, but not the obligation to approve, any Subcontractor or any Supplier (when the value of such subcontract or purchase with purchase order with the Supplier exceeds \$10,000) identified on Contractor's list of Subcontractors and Suppliers. The criteria for such approval shall be the Subcontractor's or Supplier's financial condition, ability to perform, and all other reasonably relevant considerations. When requested, Contractor also shall ensure that each Subcontractor's and Supplier's financial information is available for financial review pursuant to **Clause 4.13. (Contractor Financial Review)**. Contractor shall not enter into any subcontract with a Subcontractor or purchase order with a Supplier to whom Boeing has made a timely objection. If for any reason Boeing has not been given the opportunity to approve a Subcontractor or Supplier or has specifically denied approval of a Subcontractor or Supplier and Contractor enters into a contract with such Subcontractor or Supplier, Boeing will have the right to require Contractor to cancel such contract. In the event Contractor desires to replace any Subcontractor or Supplier previously approved by Boeing, Boeing will have the right to approve any such Subcontractor or Supplier in accordance with the provisions of this **Clause 2.18.1.2**. Neither approval nor disapproval by Boeing of a Subcontractor or Supplier shall in any manner alter Contractor's responsibility for completing the Work within the Contract Time.

2.18.2. No Contractual Relation. Nothing in this **Clause 2.18 (Subcontractors and Suppliers)** shall create any contractual relations between any Subcontractor or Supplier and Boeing or create any obligation on the part of Boeing to pay or to see the payment of any sums to any Subcontractor or Supplier.

2.18.3. Performance Responsibility. The hiring of any Subcontractor or Supplier to perform any of the Work shall not relieve Contractor from its responsibility for the performance of the Work in accordance with the terms of this Contract nor from its responsibility for the performance of any of its other obligations under this Contract, including Contractor's responsibility for completing the Work by the Completion Date. In addition, Contractor agrees:

2.18.3.1. To indemnify and hold harmless Boeing from any claim for a lien against Boeing by any Subcontractor and to pay all expenses, costs of litigation, and counsel fees related thereto or incident to establishing the right to indemnification; and

2.18.3.2. To indemnify and hold harmless Boeing from any loss to any Subcontractor or Supplier caused by extension of time should such an extension of time be granted to Contractor by Change Order or Work Order Authorization Revision signed by Boeing.

2.18.4. Requirements for Subcontracts and Purchase Orders. Contractor shall ensure that contracts and purchase orders with each Subcontractor and Supplier (when the value of such purchase with the Supplier exceeds \$10,000) contain contract clauses which reflect the following requirements and, where appropriate, have them include these provisions in agreements with sub-tier subcontractors:

2.18.4.1. To agree to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all obligations and responsibilities that the Contractor, by such Contract Documents, assumes toward Boeing; **2.18.4.2.** To agree to preserve and protect the rights of Boeing under the Contract Documents with respect to other Work to be performed by the Subcontractor and Materials to be supplied by the Supplier so that subcontracting will not prejudice the rights;

2.18.4.3. To submit to the Contractor applications for payment in such reasonable time as to enable the Contractor to apply for payment under **Clause 4.6. (Billing and Payment)** with all documents required therein, including the conditional partial and complete (as applicable) lien releases or lien waivers covering all Work for which Subcontractor is applying for payment;

2.18.4.4. To make all claims for extras, for extensions of time, and for damages for delays or otherwise, to the Contractor in the manner provided in the Contract for like claims by the Contractor;

2.18.4.5. To submit to the Contractor the partial or complete (as applicable) lien release or waiver for Subcontractor's Work applicable to the Work for which payment has been received with the next invoice for payment; and

2.18.4.6. To include a provision substantially as follows: "This subcontract [purchase order] shall be deemed assigned by the Contractor to Boeing on Subcontractor's [Supplier's] receipt of written notice of such assignment from Boeing." Contractor shall not unilaterally assign a Subcontractor or Supplier contract to Boeing.

2.18.5. Pricing for Change Orders and Work Order Authorization Revisions. When requested by Boeing, Contractor shall identify in detail the breakdown of rates and factors to be applied in pricing potential changes to Subcontractor and Supplier pricing, including the types of items addressed in **Clause 4.5. (Changes)** of the Contract Documents. (Any rates and factors included in the bid documents or in change proposals are considered provisional until reviewed and approved in writing by Boeing).

2.18.6. Payments. With respect to all payments made to any Subcontractor and Supplier, Contractor agrees:

2.18.6.1. To pay each Subcontractor and Supplier no later than seven (7) days following receipt of payment, in accordance with the Contract Documents, the amount allowed to the Contractor on account of the Subcontractor's Work to the extent of Subcontractor's interest therein; and

2.18.6.2. To forward to Boeing the confirmed partial and complete (as applicable) lien releases and waivers from the Subcontractor with the next invoice for payment documents evidencing the payment to the Subcontractor and releasing and waiving any claim against Boeing for the Work for which payment was received.

2.18.7. Claims by Subcontractors and Suppliers.

2.18.7.1. Contractor shall give Boeing immediate written notice of any claim made or action commenced against Contractor by any Subcontractor or Supplier;

2.18.7.2. Boeing shall not be responsible for resolving any dispute between Contractor and any Subcontractor or Supplier nor shall it be responsible to Contractor for any failure of a Subcontractor or Supplier to perform as required, whether or not Boeing has approved such Subcontractor or Supplier, pursuant to this **Clause 2.18 (Subcontractors and Suppliers)**; and

2.18.7.3. Each obligation of Contractor under the Contract shall include Contractor's obligation to ensure that any Subcontractor or Supplier performing the Work does so in accordance with the obligations and requirements applicable to Contractor. Contractor shall be liable to Boeing for the acts and omissions of all Subcontractors and Suppliers. Contractor shall schedule, supervise and coordinate the Work performed by all Subcontractors.

2.18.8. Cost Reimbursable Contracts. For any Contract that is not designated by Boeing as a fixed price contract (referred to herein as a "Cost Reimbursable Contract"), in addition to the above stated requirements, with respect to any Cost Reimbursable Contract, Contractor shall:

2.18.8.1. Take advantage of the most favorable prices obtainable and shall document quality, expertise, freight costs, time of performance, mark ups, and all other relevant factors. Contractor shall obtain, provide and maintain written evidence of all such procurement activity for both the Work and Changes connected with the retention of Subcontractors and Suppliers.

2.18.8.2. Furnish, prior to requesting bids from potential Subcontractors and Suppliers, the bid documents and all other pertinent information to, and consult with, Boeing. Boeing shall have the right to suggest modifications to the documents and to the proposed bidding list. Boeing shall be entitled to inspect all bids received and to require that the bids be opened in the presence of the Boeing Administrator. Contractor shall notify Boeing, in writing, of all bid dates at the time bids are requested. Contractors with the potential of vertical integration, such as intercompany relationships, must disclose said relationships to Boeing in writing prior to the award of any such Work. When bids are opened, they shall be recorded on a "Bid Tabulation" form that provides cost visibility in obtaining subcontracts and purchase orders, and copies of all such Bid Tabulation forms shall be forwarded to Boeing. Requests for deviations from the competitive bidding process shall be prepared by Contractor, shall include Contractor's reasons for not obtaining competitive pricing, and shall be submitted to the Boeing Administrator for approval prior to issuing subcontracts and/or purchase orders.

2.19. Confidentiality.

2.19.1. Protection of Confidentiality of Information. Contractor shall, and ensure that its Subcontractors and Suppliers shall, keep as confidential and protect from unauthorized use and disclosure all confidential Information related to performance of this Contract. Contractor shall use, and ensure that the Subcontractor shall use, such information and items and the features thereof only in the performance of the Work.

2.19.2. Disclosure. In the event Contractor or its Subcontractor or Suppliers is ordered by a court or governmental agency with competent jurisdiction to disclose any of the above documents or information, Contractor shall immediately notify the Boeing Administrator before Contractor or its Subcontractor or Supplier complies with such order so that Boeing has the opportunity to contest such order. Contractor shall also ensure that any of its employees or any of Subcontractors' and Suppliers' employees who no longer participate in the Work or leave the employ of Contractor or Subcontractor or Supplier maintain the confidentiality of all Confidential Information related to this Contract.

2.19.3. Return of Information. Unless otherwise provided herein or authorized by the Boeing Administrator in writing, Contractor shall return and ensure that Subcontractor and Supplier returns all Confidential Information to Boeing or make such other disposition as may be directed or approved by the Boeing Administrator.

2.19.4. Proprietary Information. Neither entering into this Contract nor disclosure of Confidential Information will affect any transfer of title in Confidential Information, or, except as otherwise specifically indicated in this Contract, create any right or license under any inventions, patents or other information of either party.

2.19.5. Controlling Provision. This Contract supersedes and replaces any prior contracts between the parties concerning the exchange of Confidential Information. As of the date of this Contract, the parties' rights and obligations with respect to all Confidential Information exchanged prior to such date shall be governed by the terms of this Contract and not by any prior contract under which such information may have been originally exchanged.

2.19.6. Reproduction and Use Rights. Boeing shall have the right to duplicate, use and disclose to any third parties in any manner and for any purpose any information regarding any Work provided by Contractor or its Subcontractors or Suppliers. Boeing also shall have the right to authorize others to use all data, writings, recordings, pictures, drawings and other information and items produced or delivered to Boeing or work done under this Contract and there shall be no additional compensation for any of the uses described in this Clause. Additionally, if a patented process is provided under a Work Order Authorization used by Contractor, Boeing shall have the right to continue such process until the Work Order Authorization is completed, at no additional cost to Boeing.

2.20. Data Security and Notice of Security Breach. To the extent that Boeing Confidential Information will reside on Contractor's (or its Subcontractor's or Supplier's) information technology systems, Contractor is responsible for any unauthorized use, access or disclosure of any Boeing Confidential Information entrusted to Contractor. Contractor shall implement and maintain appropriate administrative, physical and technical safeguards that prevent any unauthorized access to, use or disclosure of Boeing Confidential Information. In the event that Contractor discovers or is notified of a security breach or potential security breach of the Boeing Confidential Information which resides on Contractor's (or its parent's or subcontractor's) information technology systems, Contractor shall immediately notify Boeing of such security breach or potential security breach. For purposes of this Contract, a "security breach" includes the unauthorized use or other access to, interception of or acquisition of any Boeing Confidential Information that resides on Contractor's (or its Subcontractor's or Supplier's) information technology systems in which the security, confidentiality or integrity of the Boeing Confidential Information is compromised. Contractor shall include this requirement in any Subcontracts in which Boeing Confidential Information will be shared electronically.

2.21. Publications and Photographs. Contractor shall not, and shall ensure that its Subcontractors and Suppliers shall not, use the name "Boeing" or the Boeing logo in any news release, including photographs and films, advertisement, public announcement, or other form of publicity, or disclose any terms of this Contract to any third party, or deny or confirm same or any part of the subject matter of this Contract or any of the Work, without securing prior written approval from Boeing. Notwithstanding the above, this provision shall not preclude the Contractor from advertising the bid during the bidding process.

2.22. Work Product; Infringement Indemnification.

2.22.1. Copyrights. All Work Product produced by or for Boeing under this Contract shall to the greatest extent possible be considered a "work made for hire" as that term is defined in 17 U.S.C §101 of the US Copyright Act, and Boeing shall be deemed the author thereof and all copyrights therein shall immediately vest in Boeing upon creation, whether or not the Work is completed. In the event any work or any portion thereof does not fall within the definition of a "work made for hire" as set forth 17 U.S.C §101, Contractor hereby unconditionally and irrevocably assigns, transfers, and sets over to Boeing and its lawful successors and assigns, the entire right, title and interest in and to the works, including, the Work Product and all of the rights of the Contractor as the owner of the claims to copyright therein throughout the world, together with all causes of action and the right to register the same in the name of Boeing; the works and the copyrights therein to be held and enjoyed by Boeing as the assignee for the use and benefit of itself and its successors and assigns as fully and entirely as the same would have been held and enjoyed by the assignor, had this assignment, sale and transfer not been made. Contractor further waives any and all moral rights Contractor may have therein.

2.22.2. RESERVED.

2.22.3. Inventions. All inventions, discoveries, and improvements, whether or not patentable, conceived or first actually reduced to practice by Contractor or Subcontractor or their respective employees, either alone or with others, in the course of or as a result of performance of the Work shall be the sole and exclusive property of Boeing. Contractor shall disclose, or cause its Subcontractors and employees to disclose, all such inventions, discoveries, and improvements to Boeing promptly and in written detail. At the request and at the expense of Boeing, Contractor shall assist, or cause its Subcontractors and employees to assist, Boeing in order to: (a) make applications for letter patents in the United States and any foreign country specified by Boeing, (b) assign all such applications and any letter patents granted thereon to Boeing or its designee immediately and without charge, and (c) from time to time execute all instruments as may be reasonably required to protect the rights of Boeing and its designee and vest in Boeing or its designee all such inventions, discoveries, improvements, applications, and letter patents.

2.22.4. Technical Data and Computer Software. All technical data including but not limited to all research; architectural and engineering data and designs; architectural, engineering, manufacturing and shop drawings; specifications; standards, process information, manuals, and technical reports; and all computer software including flow charts, listings, object codes, source codes, and related documentation, materials, or information in any form first produced or resulting from performance of the Work shall be the sole and exclusive property of Boeing and may be used, duplicated, or disclosed by Boeing or third parties authorized by Boeing in any manner and for any purpose whatsoever. Contractor shall preserve all such technical data and computer software in confidence and shall not use, duplicate, or disclose any such technical data or computer software for any purpose other than for the performance of the Work or any other contract with Boeing without the prior express written permission of Boeing. Contractor shall also cause all Subcontractors to be governed by and comply with all the requirements of this provision.

2.22.5. Assignment of Intellectual Property Rights. Contractor hereby assigns and shall assign, and hereby agrees to cause all Subcontractors to assign, to Boeing the patents, trade secrets and copyrights subsisting in any intellectual property, including inventions, technical data, trade secrets, copyrights and computer software which are Boeing's property under **Clause 2.22. (Work Product, Infringement Indemnification)** together with all of the exclusive rights under such patents, trade secrets and copyrights subsisting the intellectual property. As evidence of such assignment, Contractor shall, upon Boeing's request, execute or cause a Subcontractor to execute, as appropriate, an assignment agreement, in a form approved by Boeing, with respect to any inventions, technical data or computer software which are Boeing's property under **Clause 2.22. (Work**

Product, Infringement Indemnification). Boeing shall have the right to hold and register such patents and copyrights in its own name, and may direct the Contractor to add appropriate notices to any copies made by the Contractor or any Subcontractor.

2.22.6. Pre-Existing Works. To the extent any pre-existing works of Contractor or any Subcontractor are contained in any of the Work in the nature of inventions, technical data, or computer software that are the property of Boeing under **Clause 2.22.4 (Technical Data and Computer Software)**, Contractor hereby grants and shall grant, and agrees to cause any Subcontractor to grant, to Boeing an irrevocable, non-exclusive, perpetual, royalty-free license to practice any of the exclusive rights under the intellectual property, including the patents, trade secrets and copyrights subsisting in such materials, including the right to use, copy, modify, distribute, and make derivative works of the source code, but only for purposes of, and incidental to, Boeing enjoyment of such property. Contractor shall provide and shall ensure that its Subcontractors provide to Boeing the source code for all pre-existing works in the nature of computer software, along with all related flow charts, listings, and documentation concurrently with delivery of the object code for such software.

2.22.7. Grant of License for Technical Data Not Owned by Boeing and Not a Pre-Existing Work. With respect to any technical data, as "technical data" is described in Clause 2.22 (Work Product, Infringement Indemnification), that Boeing does not own pursuant to this Clause and that is not a "pre-existing work" herein, Contractor hereby grants Boeing, and shall cause any Subcontractor to grant Boeing, the same license rights as are granted for pre-existing works under this Clause.

2.22.8. Infringement Indemnification. Contractor shall, at its sole expense, defend Boeing; its directors, officers, agents, employees, successors, assigns, subsidiaries; and its customers against or settle all actions, claims, liabilities, and proceedings based on actual or alleged infringement of any patent, trademark, or copyright for all or any portion of the Work, including any technical data or wrongful use of any trade secret or confidential information involving all or any portion of such Work and Contractor shall hold Boeing harmless from any resulting losses, liabilities, damages, costs, and expenses (including reasonable attorneys' fees), provided Contractor is provided with notice of such claims and proceedings with reasonable promptness and is given an opportunity, at Contractor's expense, to defend or settle such actions, claims, liabilities, and proceedings. Contractor's obligations under this **Clause 2.22 (Work Product, Infringement Indemnification)** shall not apply to any infringement arising from a modification by Boeing of any Work to the extent such modification caused such infringement.

2.22.9. RESERVED.

2.22.10. RESERVED.

2.23. Access to Boeing Property.

2.23.1. Compliance with Boeing Rules. Contractor shall comply with and enforce, and shall ensure that all Subcontractors and Suppliers comply with and enforce, all rules regarding access to the Site, including Site condition requirements and job work rules provided from time to time by Boeing, starting and quitting times, check-in and check-out procedures, daily clean-up, smoking regulations, Site safety and security regulations, emergency plans and procedures, in-plant speed limits and traffic regulations, and all other rules and regulations established by Boeing for access to and activities in and around premises controlled by Boeing as amended from time to time by Boeing. Compliance with this **Clause 2.23. (Access to Boeing Property)** shall not relieve Contractor of its responsibility for the performance of the Work and of complying with all requirements of the Contract Documents and applicable law. Contractor shall not establish any commercial activity or issue concessions or permits of any kind to third parties for establishing commercial activities on lands owned or

controlled by Boeing. Contractor shall not allow its employees or its Subcontractors to engage in any commercial activities on the Site.

2.23.2. Site Security Requirements.

2.23.2.1. General. Contractor agrees to abide by security procedures and requirements determined to be necessary, at Boeing discretion, with respect to performance of the Work and to safeguard at all times all classified materials, if any, provided to the Contractor. Contractor shall be required to obtain Boeing security clearance for its workers and Subcontractors if required by Boeing. Compliance with this **Clause 2.23.2. (Site Security Requirements)** shall not relieve Contractor of its responsibility for the performance of the Work, of complying with all requirements of the Contract Documents, and of any applicable safety obligations.

2.23.2.2. Badging. Contractor shall obtain and shall ensure the wearing of workers' passes or badges for each person (whether an employee of Contractor or any Subcontractor or Supplier) who is to work on Boeing premises, as follows:

2.23.2.2.1. Contractor shall obtain workers' passes and badges by submitting to the Boeing Administrator at least five (5) business days in advance of the time the individual will report for work, a completed Boeing badge request form, which includes the Contractor's name, Subcontractor's name, each individual's full name, present address, social security number, birth date, birthplace, and country of citizenship.

2.23.2.2.2. Contractor shall require its employees and Subcontractors and Suppliers to wear Boeing passes and badges visibly at chest height. Non-compliance with this stipulation may result in removal from Boeing property.

2.23.2.2.3. Personnel without a pass or badge or whose pass or badge is canceled or has expired will not be permitted to work on the Job Site or Boeing premises.

2.23.3. No Roaming. All workers shall remain at the location of their duties when on the Job Site and shall not be allowed to roam outside the Work and staging areas. Violations of this requirement may result in cancellation of the worker's pass and badge.

2.23.4. Export Control. The following provision shall apply whenever Boeing determines that some or all of the Site or access area to the Site may be subject to restrictions imposed by export control laws.

2.23.4.1. Before commencing any Work or accessing any restricted areas, the Contractor shall confer with the Boeing Administrator for identification of restricted areas and export control compliance instructions for area access.

2.23.4.2. Contractor will be required to provide information concerning citizenship or immigrant status of Contractor's personnel or Contractor's Subcontractor and Supplier personnel entering export-controlled premises of Boeing. Contractor agrees to furnish this information before commencement of Work and at any time thereafter before substituting or adding new personnel to work on Boeing's export-controlled premises. Information submitted by Contractor will be certified by an authorized representative of Contractor as being true and correct.

2.23.4.3. Except as provided below, only U.S. citizens or individuals otherwise qualifying as "U.S. Persons" under applicable export control laws may perform Work in export-controlled areas covered by this Agreement. A "U. S. Person" is any person who is in one of the following categories: (1) citizens or nationals of the United States, (2) Permanent Resident Aliens ("green-card" holders), or (3) "Protected Persons" as granted asylum or temporary residence as defined in the INS (Immigration and Naturalization Service) Regulations. There may be

certain instances where U.S. Citizenship is a requirement of this Agreement. To the extent the Contractor chooses to use individuals who are not U.S. citizens or individuals otherwise qualifying as U.S. Persons under applicable export control laws, the Contractor will be responsible for obtaining all export licenses required for each such individual to perform the Work to which he or she is assigned.

2.23.4.4. Without limiting the foregoing, Contractor shall comply with the laws and regulations of the United States and its departments and agencies relating to the export of technical data. Contractor acknowledges that it has the responsibility to obtain any licenses to export, re-export or import Products or technical data necessary for the Contractor to perform and Boeing to receive and use the Work before their initial delivery to Boeing. Contractor warrants that (i) neither it nor its senior officers and officials have been convicted of violating any of the U.S. criminal statutes enumerated in 22 CFR 120.27 since the effective date of the Arms Export Control Act, PL 94-329, 90 Stat 729 (June 30, 1976) and (ii) the Contractor is not ineligible to contract with, or to receive an export license or other approval from any agency of the U.S. Government. Boeing and the Contractor will not knowingly export or re-export any computer system, part, technical data or sub-elements under this Agreement, directly or indirectly, to any destinations prohibited by the U.S. Government. The term "technical data" in this context, means such data as is defined as technical data by applicable U.S. export regulations.

2.24. RESERVED.

2.25. Protection of Property.

2.25.1. Security of Property. Contractor shall at all times perform the Work, and all operations related thereto, so as to avoid the risk of loss, theft, or damage to any property by vandalism, sabotage, other construction activities, or other means. Contractor shall be solely responsible for inspecting the Site, the Work and any Materials, Equipment, and facilities to be incorporated into, or used for, the Work, in order to discover any conditions that create a risk of loss, theft, or damage to property. Contractor shall promptly take all action needed to alleviate any such risk. In addition, Contractor shall comply with any security procedures or requirements established by Boeing. Such compliance shall not relieve Contractor of its obligation to perform the other security obligations set forth in this **Clause 2.25. (Protection of Property)**. Contractor shall prepare and maintain for at least one (1) year after final acceptance of the Work, accurate reports of any loss, theft, or vandalism. Contractor shall furnish such reports to the Boeing Administrator in a timely manner.

2.25.2. Watchman. Unless otherwise agreed to by the parties, Boeing will not arrange for a security or watchman service for the Work or the Site. Contractor shall be responsible for and will promptly advise the Boeing Administrator of any theft or damage that might delay the execution of the Work.

2.25.3. Fire Prevention. If requested by Boeing, Contractor shall submit a plan for fire prevention and fire protection to Boeing for review. Such review by Boeing shall not relieve Contractor of its obligations for safety nor create any liability for Boeing. Contractor shall not perform any cutting, welding, burning, or flame- or spark-producing operations without prior written approval from Boeing. If any permit is required for such work, such permit shall be obtained before the operation takes place. Contractor shall place at each work area on the Site portable fire extinguishers that are appropriate for any fire hazard that exists at such work area and shall instruct its employees, and the employees of any Subcontractor, of their location and use. If cutting, welding, burning, or flame- or spark-producing operations are conducted, flammable Materials shall be protected in accordance with applicable permit requirements, and the Contractor will arrange for a fire watch to be present during and for an appropriate time after the operation to ensure that protective measures are taken and that no fires result from such operation. The fire watch shall have fire extinguisher equipment readily available and shall be skilled in its proper use. Contractor shall notify the Boeing Administrator before it stores

any flammables in the Contractor's staging area. If required by the Boeing Administrator, the Contractor shall furnish approved storage equipment for such flammables.

2.25.4. Disruption, Closure, Obstruction, or Damage. Contractor shall not commence Work involving the disruption of the operation of any Utility or the closure, obstruction, or damage to any Utility, highway, road, ditch, structure, storm water drainage systems, temporary or permanent sedimentation and erosion control systems, Site security fencing, other construction Work, or other property, whether or not located on the Site, until it obtains all necessary permits and written approval from Boeing to commence such Work. Contractor shall perform all other work so as not to disrupt the operation of any Utility or close, obstruct, or damage any Utility, highway, road, ditch, structure, storm water drainage systems, temporary or permanent sedimentation and erosion control systems, Site security fencing, other construction work, or other property. In the event of any disruption of any Utility or closure, obstruction, or damage to any Utility, highway, road, ditch, structure, storm water drainage systems, temporary or permanent sedimentation and erosion control systems, Site security fencing, other construction work, or other property, whether or not required for the Work, Contractor shall promptly make all repairs necessary to return it to its former condition. Before completing such repairs, Contractor shall arrange for temporary guards, lights, other signals, and temporary repairs as needed for safety in a manner acceptable to Boeing. Unless otherwise agreed to in writing by the parties, Contractor shall be responsible for the costs and time of the repairs, temporary guards, lights, other signals, and temporary repairs required. Contractor shall not be entitled to any increase in the Contract Price and/or the Contract Time resulting from the existence or the disruption, closing of, or damage to any Utility, highway, road, ditch, structure, storm water drainage systems, temporary or permanent sedimentation and erosion control systems, Site security fencing, other construction work, or other property, whether or not on the Site. The requirements of **Clause 2.28. (Utility Shutoff)** and **Clause 2.29. (Existing Underground Utilities and Digging)** will also apply.

2.25.5. Protection of Plants. Contractor shall preserve and protect all cultivated and planted areas and all vegetation (including trees, plants, shrubs, and grass) on or adjacent to the Site, which, as determined by Boeing, do not unreasonably interfere with the performance of the Work. Unless otherwise agreed to in writing by the parties, Contractor shall be responsible for all costs and time in connection with any repairs or restoration needed by reason of any damage to any such areas or vegetation or due to unauthorized cutting of vegetation, including damage arising from the performance of the Work through operation of Equipment or stockpiling of Materials.

2.25.6. Snow, Ice, Dirt, and Mud Removal. Contractor shall remove snow and ice to the extent necessary to perform the Work. Calcium chloride or other chemicals as aids or means to remove snow or ice will not be permitted. Contractor shall ensure that vehicles are constructed, loaded, maintained, and covered as necessary to prevent deposition of dirt, mud, or other debris on public roadways. Dirt, mud, and debris removal shall be undertaken on a continual basis. Dirt, mud, or debris dropped or otherwise deposited onto streets by vehicles involved in the Work shall be immediately removed.

2.25.7. Dust Control. At all times during the Work, Contractor shall take all necessary steps to effectively control dust in the working area, unpaved roads used in the operations, and other portions of the Site. Such dust control shall not include application of calcium chloride or any other chemicals but shall include intermittent watering and sprinkling at such frequency as will satisfactorily settle the dust. Contractor shall also comply with any requirements imposed by law to prevent fugitive dust emissions.

2.25.8. Spray Painting of Buildings and Structures. Spray painting of buildings or structures shall be conducted only as allowed by applicable air pollution control laws, including any site specific permits,

approvals or authorizations. Contractor shall notify the Boeing Administrator seven (7) days before all spray painting and shall obtain the Boeing Administrator's prior written approval of any paint spraying. The painting area must be well ventilated and completely sealed off with approved tarps. Any Visqueen must be of a fire-retardant variety.

2.25.9. No Smoking. Smoking is prohibited at the Site at all times unless otherwise notified by Boeing in writing.

2.26. Contractor Use of Boeing-Owned Equipment. Contractor is responsible for furnishing all Equipment needed to perform the Work. It is not the intent of the Contract Documents that Contractor, its Subcontractors or Suppliers use Boeing-owned equipment in the performance of the Work. Notwithstanding the above, Contractor may request Boeing to provide Boeing-owned equipment to assist in the Work. Whether such request is granted is within the sole discretion of Boeing. If granted, Contractor Use of Boeing owned equipment shall be at Contractor's expense and subject to the provisions set forth below.

2.26.1. Unique Site Conditions. Contractor shall identify at the start of the Work any unique Site conditions which may necessitate the use of unique equipment owned by Boeing and not otherwise readily available to Contractor, its Subcontractors or Suppliers in order to perform the Work. Contractor shall make any request to use such Boeing owned equipment with an explanation as to the basis for the request. Upon review of such request, Boeing will determine whether to assist the Contractor as requested. In the event that Boeing decides, in its sole discretion, to assist Contractor, Boeing shall coordinate the use of such Equipment with Contractor. Unless otherwise agreed to by Boeing, at all times such unique Boeing-owned Equipment shall remain in the control of and be operated by Boeing. Contractor and Boeing shall agree upon an equitable reduction, if appropriate, in the Contract Price for the use of the Boeing-owned Equipment.

2.26.2. Other Requests. In order to reduce or limit the costs of the Work, either Contractor or Boeing may suggest the use of Boeing owned equipment in lieu of the procurement of such equipment by the Contractor, its Subcontractors or Suppliers. The use of such Boeing owned equipment shall be at Boeing's sole discretion and subject to the conditions for use established by Boeing (which conditions may include the requirements that the Boeing owned equipment be operated by Boeing). Contractor agrees (and shall ensure its Subcontractors and Suppliers agree) that the use of any Boeing owned equipment shall be provided "As-Is, Where-Is," and without any warranty of fitness for use or merchantability or any other warranty of any kind (whether express or implied). Contractor shall:

2.26.2.1. maintain an inventory of such equipment;

2.26.2.2. protect and maintain such equipment in good working order;

2.26.2.3. be liable to Boeing for loss, damages, or destruction of Boeing owned equipment; except for normal wear and tear;

2.26.2.4. return such equipment immediately upon request by Boeing, and

2.26.2.5. carry and maintain at all times during the term of the Contractor's use of the Boeing-owned Equipment a policy or policies covering loss or destruction of, or damage to the Boeing owned equipment in the amount of the full replacement value. Such insurance shall provide for payment of loss thereunder to The Boeing Company or its subsidiaries as their respective interests may appear. Contractor shall cause its insurers to waive all rights of subrogation against The Boeing Company or its subsidiaries as their respective directors, officers and employees for any loss or destruction of or damage to the Boeing-owned Equipment which is

covered by insurance pursuant to this provision. Any deductibles and exclusions in coverage of such policies shall be assumed by and at the sole risk of Contractor shall be paid by Contractor.

If requested by Boeing, prior to the commencement of the use of such equipment, Contractor shall provide for review by Boeing and approval Certificates of Insurances reflecting full compliance with the above insurance requirements. To the extent allowed by applicable law and to the extent of the Contractor's or any Subcontractor's negligence (and not for the sole negligence of Boeing), Contractor shall indemnify Boeing for any injury, loss or damage to any person or property which arises from Contractor's, its Subcontractor's or Supplier's use of Boeing owned equipment, and;

2.26.2.6. agree upon an equitable reduction in the Contract Price for the use of the Boeing-owned Equipment, where appropriate.

2.26.3. Exclusion of Liabilities.

2.26.3.1. Disclaimer and Release. The warranties, conditions, representations, obligations and liabilities of Boeing and remedies of Contractor set forth in this Contract, are exclusive and in substitution for, and Contractor hereby waives, releases and renounces all other warranties and other obligations and liabilities of Boeing, and any other rights claims and remedies of Contractor against Boeing, express or implied, arising by law or otherwise, with respect to any nonconformance or defects in any service, Boeing-owned equipment or other things provided under this Contract, including:

2.26.3.1.1. Any implied warranty of merchantability or fitness;

2.26.3.1.2. Any implied warranty arising from course of performance course of dealing or usage of trade;

2.26.3.1.3. Any obligation, liability, right, claim or remedy in tort whether or not arising from the negligence of Boeing; and

2.26.3.1.4. Any obligation, liability, right, claim or remedy for loss of or damage to any property of Contractor, Subcontractor or Supplier including any damage to any Boeing-owned equipment or damage to property of Contractor, Boeing or any third party.

2.26.3.2. Exclusion of Consequential and Other Damages. Boeing shall have no obligation or liability, whether arising in contract (including warranty), tort (whether or not arising from the negligence of Boeing), or otherwise, for loss or use, revenue or profit or for any other incidental or consequential damages with respect to any nonconformance or defect in any service, Boeing-owned equipment or other things provided under this agreement.

2.27. Safety and Environmental Protection.

2.27.1. General.

2.27.1.1. Contractor's Sole Responsibility for Safety and Environmental Protection. Contractor shall at all times be solely responsible for all aspects of safety and environmental protection in connection with the Work, including initiating, maintaining, and supervising all safety and environmental precautions and programs. Such responsibility for safety includes the obligations set forth in **Clause 2.27.2. (Safety)**. Such responsibility for environmental protection includes the obligations set forth in **Clause 2.27.3. (Environmental Protection)**. Contractor shall at all times perform the Work, and/or ensure that its Subcontractors and Suppliers perform the Work, in a manner to avoid the risk of bodily injury to persons or risk of damage to property or the environment. Contractor shall promptly take all precautions that are necessary and adequate against any

conditions that involve such risks. Contractor shall continuously inspect all Work, Materials, and Equipment to discover the existence of any such conditions and shall be solely responsible for discovery and correction of any such conditions. Contractor shall cooperate and coordinate with Boeing and other contractors and their subcontractors as necessary regarding safety and environmental protection matters.

2.27.1.2. No Boeing Responsibility for Contractor's Safety or Environmental Performance. Boeing shall have no responsibility for the safety or environmental performance of Contractor or its Subcontractors or Suppliers, or any aspect of the safety or environmental protection in connection with the Work, including all safety and environmental precautions and programs of the Contractor.

2.27.1.3. Service Provider Manual Requirement.

2.27.1.3.1. Contractor shall comply, and shall ensure that all of its Subcontractors and Suppliers on site comply with requirements as set forth in the Contract Documents as well as Attachment A, Service Provider Manual (Boeing Manual). Requirements set forth in the Boeing Manual are not intended to be all inclusive. The absence of a specific requirement in the Attachment A does not relieve the Contractor from its obligations under this Contract (including but not limited to compliance with applicable law) nor prohibit Boeing from giving additional direction when warranted by the Work. Site-specific requirements added to section 6.0 of the Boeing Manual shall be coordinated with the Boeing Administrator and shall be hereby incorporated by reference into the Contract. Site-specific requirements shall not relieve Contractor, its Subcontractors, or its Suppliers from the obligation to comply with applicable law. By providing requirements, Boeing assumes no control or responsibility whatsoever for any aspect of the Work which shall remain solely with Contractor.

2.27.1.3.2. Contractor shall supplement and shall ensure that its Subcontractors and Suppliers supplement any such requirements in their safety and environmental plans as necessary and appropriate to ensure safety and environmental protection. Where any applicable law is more protective than the Boeing Manual such law shall be followed.

2.27.1.4. Observations. Boeing personnel may, but are not required to, visit the Work at any time to observe the Contractor's performance under the Contract. Any such visits or observations will neither relieve Contractor of its sole responsibility for all aspects of safety and environmental protection in connection with the Work, nor create or constitute actual control or the right to control such safety or environmental performance by Boeing. Neither observations or visits by Boeing, nor any actions or inactions during or as a result of such visits or observations shall give rise to a duty, responsibility, or liability of Boeing to the Contractor, any Subcontractor, Supplier, or their respective agents or employees.

2.27.2. Safety.

2.27.2.1. Safety Programs and Plans. Although Contractor has sole responsibility for safety in connection with the Work, Boeing has responsibility for the safety of its own employees. Accordingly, before beginning the Work, Contractor shall develop and submit for review by Boeing written project-specific safety plans in detail commensurate with the nature of the Work. Such plans shall describe anticipated hazards and control methods the Contractor will employ as adequate safeguards for all employees performing the Work, Work area invitees, Boeing's agents and employees, and the public. An appropriate health or safety professional should prepare such plans. Contractor's project-specific safety plans shall be made readily available at the work area. Contractor shall follow its project-specific safety plans and ensure that all its Subcontractors and Suppliers on Site follow the Contractor's project-specific safety plans. Review of such plans- by Boeing shall not:

2.27.2.1.1. Relieve in any manner Contractor of its sole responsibility for safety;

2.27.2.1.2. Be construed as limiting in any manner Contractor's obligation to undertake any action that may be necessary or required to establish and maintain safe working conditions at the work area; or

2.27.2.1.3. Indicate Boeing's control over the manner in which Contractor performs its Work or supervises its employees.

2.27.2.2. Safety Representative. Contractor shall appoint a competent safety representative with full authority to coordinate, implement, and enforce Contractor's project-specific safety plans and shall authorize such representative to devote whatever time is necessary to properly perform such duties. The safety representative shall attend all Project safety meetings and participate fully in all activities outlined in Contractor's project-specific safety plans.

2.27.2.3. Safety Meetings. Contractor shall hold regularly scheduled meetings to instruct its personnel and all personnel of Subcontractors and Suppliers in safety practices for the Work. Minutes shall be recorded at all safety meetings and copies promptly submitted to Boeing on request.

2.27.2.4. Accident Reports. Accidents and incidents occurring on property owned, leased or controlled by Boeing that involve property damage or employee time away from Work or medical treatment (not including first aid cases) or incidents that require an ambulance, security, or fire department response must be reported to the designated Boeing Administrator immediately and followed up in writing within eight (8) hours or by the end of the shift, whichever is sooner, of the accident or incident. Contractor shall maintain accurate accident and injury reports and shall furnish to Boeing a copy of any accident report prepared pursuant to any applicable law. Contractor shall also furnish to Boeing, in a form acceptable to Boeing, a monthly summary of injuries and hours worked each month.

2.27.2.5. Payment for Emergency Work. When any employee of Contractor or any Subcontractor or Supplier on site, who is engaged in any activity related to the Work, requires the services of an ambulance, physician, hospital, or other provider, Contractor shall pay or arrange for such Subcontractor or Supplier, to pay all charges for any such services directly to the provider of such services.

2.27.2.6. Emergency Notification. All emergency telephone numbers shall be provided to the Boeing representative and shall be readily accessible at the work area.

2.27.2.7. Excavation Below 12 inches. The Contractor shall use applicable site drawings to identify all underground utilities in the excavation area. After all known utility lines have been identified, Contractor shall then use underground testing equipment to accurately locate all utilities in the excavation area. The Contractor shall use a locator that complies with the Professional Competence Standard for Locating Technicians (National Underground Locating Contractors Association). The Contractor shall ensure that all identified utility lines are marked and labeled in compliance with the American Public Works Association standards. The Contractor shall notify Boeing of utilities not shown on existing site drawings

Once the utilities are properly marked in the excavation area, the Contractor may begin the excavation work. Appropriate mechanical means may be used except that hand tools and hand dig methods must be used when digging within 24 inches of any utility.

2.27.2.8. Lockout/Tag out. In addition to the requirements set forth in the Boeing Service Provider Manual, Contractor shall have a written lockout/tag out plan.

2.27.3. Environmental Protection.

2.27.3.1. Energy Conservation. To the greatest extent feasible, with consideration for cost, Contractor shall emphasize the use of energy-conserving products and methods.

2.27.3.2. Known Work Area Hazardous Materials. Before Work are commenced, Contractor shall obtain from Boeing information regarding the existence of any known asbestos, petroleum, polychlorinated biphenyl (PCB), or other Hazardous Materials at the Site that may present a risk to Contractor's employees or others in the work area.

2.27.3.3. Disturbance of Asbestos. Contractor shall instruct each of its employees to be alert for asbestos in the area where it is performing work, including insulation, pipe lagging and exterior building sheathing. Work activities that would result in disturbing asbestos-containing materials or otherwise result in asbestos-contaminated particles becoming airborne shall not be performed by the Contractor. If, in the course of the Work at the Site, Contractor encounters any suspect material (materials of the type and age that could contain asbestos and have not been determined to asbestos-free), Contractor shall immediately suspend the Work in the area affected and immediately report the condition to Boeing in writing. The Work in the affected area shall not be resumed except by written agreement of the Boeing Administrator and Contractor. It is contemplated by the parties that if asbestos abatement in the area is necessary, Boeing will contract with the appropriate abatement contractor to perform that work.

2.27.3.4. Asbestos Use Prohibited. Boeing policy is to eliminate the use of asbestos-containing materials. Contractor shall not use any asbestos-containing material without the prior written permission of the Boeing Administrator. If requested by Boeing Contractor shall provide written verification certifying no material containing asbestos has been used or installed as part of the Work or a statement identifying specifically where asbestos-containing material has been used, if Boeing approves such use.

2.27.3.5. Other Hazardous Materials. If, in the course of the Work at the Site, Contractor encounters materials reasonably believed to be petroleum, PCBs, lead or chromated paint or other Hazardous Materials, which were not previously disclosed by Boeing and which could present a risk to Contractor's employees or others in the area affected or which may result in a release to the environment, Contractor shall immediately suspend the Work in the area affected and immediately report the condition to Boeing, in writing. The Work in the affected area shall not be resumed except by written agreement of the Boeing Administrator and Contractor. It is contemplated by the parties that if remediation of the area is necessary, Boeing will contract with the appropriate remediation contractor to perform the remediation.

2.27.3.6. Waste Management. With respect to recyclable materials and Construction, Demolition and Land Clearing Debris generated by Contractor and its Subcontractors at the Site in performance of the Work, Contractor shall submit to the Boeing Administrator on a quarterly basis a written report which includes the following:

2.27.3.6.1. A description of all recyclables and non-hazardous waste (including CDL Debris) removed from the Site by Contractor, Subcontractor and Supplier;

2.27.3.6.2. The quantity of recyclables and non-hazardous waste removed from the Site, by weight, for that period;

2.27.3.6.3. Classification of the recyclables according to by the following categories:

Concrete, Asphalt and masonry

Clean Soil & Gravel

Metals

Stumps and Brush

Recyclables sorted off-site by a 3rd party provider

Boeing shall dispose of all Hazardous Waste generated at the Work Site. Contractor, its Subcontractors, and its Suppliers shall not remove Hazardous Waste from the Work Site. If additional or unanticipated amounts or types of waste are generated or encountered on-Site, the Contractor shall advise the Boeing Administrator as soon as possible and manage the Hazardous Waste on Site as directed by the Boeing Administrator.

2.27.3.7. Wastewater Handling and Storm Water Management.

2.27.3.7.1. If Contractor or its Subcontractors or Suppliers expect to produce wastewater in performance of the Work, including water produced in subsurface dewatering, or expect to handle Hazardous Materials in an area that may be exposed to storm water, Contractor shall develop a written plan to be approved by the Boeing Administrator for handling such wastewater or storm water. Both the control and discharge of wastewater and /or storm water shall be addressed in Contractor's plan. Such plan shall be drafted to adhere to applicable law and the Boeing's Site's Storm Water Pollution Prevention Plan, National Pollution Discharge Elimination System Permit (NPDES), and Sanitary Sewer System Discharge Permit, as applicable. The Boeing Administrator will inform the Contractor of such permit requirements. The Contractor and its Subcontractors and Suppliers shall adhere to the plan.

2.27.3.7.2. If the Work of the Contractor or its Subcontractors or Suppliers requires a new National Pollutant Discharge Elimination System ("NPDES") permit or any other permit, the Contractor shall work with the Boeing Administrator to ensure that an appropriate NPDES permit application is completed. Any permit prepared by the Contractor shall be submitted to Boeing for review before the permit is submitted to a government agency. Unless otherwise directed by the Boeing Administrator, the Contractor must be listed as the permittee or co-permittee on the permit if the state in which the permit is issued allows contractors to serve as permittees in conjunction with or in lieu of the owner of the site.

2.27.3.8. Air Pollution Control.

2.27.3.8.1. If Contractor or its Subcontractors or Suppliers expect to produce emissions of any air pollutant or contaminant in the performance of the on-Site Work, Contractor shall develop a written plan to be approved by the Boeing Administrator for minimizing such emissions. Such plan shall be drafted to ensure compliance with all applicable laws and any applicable provisions of any orders, permits, or approvals issued to or in the name of Boeing, including but not limited to any applicable Air Operating Permit. The Boeing Administrator will inform the Contractor of such provisions. The Contractor and its Subcontractors and Suppliers shall adhere to the plan.

2.27.3.8.2. Contractor shall provide to the Boeing Administrator (1) copies of its Air Operating Permits or registrations for any permitted or registered Equipment that is operated on Site and (2) no later than completion of the Project, copies of usage logs, if required.

2.27.3.9. Emergency Response.

2.27.3.9.1. If Contractor or its Subcontractors or Suppliers expect to bring, use, produce, encounter or handle any Hazardous Materials on Site, Contractor shall notify the Boeing Administrator and shall obtain from the Boeing Administrator information regarding the applicable plans and procedures for emergency response to spills or releases of Hazardous Materials. Contractor and its Subcontractors and Suppliers shall undertake

immediate response to incidental releases to contain the spill or release where the substance can be absorbed, neutralized, or otherwise controlled to prevent spreading, but only to the extent such response can be undertaken without posing a physical danger to the responding personnel or others nearby.

2.27.3.9.2. When the Contractor, Subcontractor, or Supplier discovers a spill or release, the Contractor, Subcontractor, or Supplier shall immediately notify the Boeing emergency response personnel identified in the Boeing emergency response plans and procedures and the Boeing Administrator. Unless the duty to make notification of any such spills or releases to an Authority is imposed by law directly on the Contractor or a Subcontractor or a Supplier, the Boeing Administrator shall notify the Authority. Contractor and its Subcontractors and Suppliers shall cooperate fully with the Boeing Administrator in ensuring timely and complete notification and response. If Contractor, Subcontractor or Supplier is itself required by law to make notification of a spill or release, then the Contractor, Subcontractor or Supplier undertaking such notification shall immediately inform the Boeing Administrator in detail regarding such notification.

2.27.3.10. Nuisance and Polluting Activity Prohibited. Polluting, dumping, or discharging of any harmful, noxious, or regulated materials (such as concrete truck washout, vehicle and equipment maintenance fluids, residue from saw cutting operations, or Hazardous Materials) into the building drains, streams, waterways, or holding ponds or to the ground surface is prohibited. Further, Contractor shall conduct its activities in such fashion to avoid creating any nuisance conditions, including suppression of noise and dust, control of erosion, and implementation of other measures as necessary to minimize the off-site effects of the Work.

2.27.3.11. **RESERVED.**

2.27.3.12. **RESERVED.**

2.27.3.13. **RESERVED.**

2.27.3.14. **RESERVED.**

2.27.3.15. Environmental Indemnification. Contractor shall indemnify and hold harmless The Boeing Company, its subsidiaries, affiliates, and their directors, officers, employees, and agents from and against:

2.27.3.15.1. all actions, causes of action, liabilities, claims, suits, judgments, liens, awards, fines, penalties, forfeitures and damages, of any kind and nature whatsoever (hereinafter "Claims"),

2.27.3.15.2. any expenses incurred in connection with the investigation or monitoring of environmental conditions,

2.27.3.15.3. any clean up costs or other expenses incurred in connection with any cleanup, containment, remedial, removal, or restoration work, to the extent necessary under applicable law, and

2.27.3.15.4. expenses, costs of litigation and counsel fees related thereto or incident to establishing the right to indemnification, to the extent in connection with the performance of On-Site Work, such Claims, costs, expenses, or fees arise out of an act or omission by Contractor or any of its subcontractors or suppliers that (1) results in the release, or threatened release into the environment, of any pollutants or contaminants, Hazardous Material, Hazardous Substances, Hazardous Chemicals, Toxic Chemical, Wastes (as those terms are defined herein and/or under any applicable law), or (2) constitutes a violation of Environmental Laws. In no event shall Contractor's obligations hereunder be limited to the extent of any insurance available to or provided by Contractor or any subcontractor or supplier thereof.

If any part of this paragraph **2.27.3.15.** is or becomes void or unenforceable by law in any jurisdiction, the remainder shall be valid and enforceable and shall be liberally construed in order to effectuate the purpose and intent of this paragraph **2.27.3.15.** , and the invalidity or unenforceability of any part of this paragraph **2.27.3.15.** in any jurisdiction shall not affect the validity or enforceability of this provision in any other jurisdiction. If any part of this paragraph **2.27.3.15.** is held to be void or unenforceable, such part shall be reformed only to the extent necessary to make it enforceable.

2.28. Utility Shutoff. In addition to the requirements set forth in Clause 2.27. (Safety and Environmental Protection) and Clause 2.29. (Existing Underground Utilities and Digging), if Contractor or any Subcontractor requires the temporary shut-off of any Utility (which term, as used in the Contract, shall include all pipelines, water, fire water, storm drain, telephone equipment, computer network, electric power, heating and air-conditioning systems, fire alarms, security systems and all other supply, disposal, distribution and communication systems, and similar facilities), it shall, at least seven (7) days in advance of the time it requires the shutoff, notify the Boeing Administrator and request approval of the Utility interruption schedule such that the proposed interruption of such services will not interfere with other activities on the Site, unless otherwise approved by Boeing. Contractor or any Subcontractor shall then perform the Work requiring the shutoff on such days and at such hours as Boeing may direct. Generally, such Utilities shall be interrupted only on Saturdays, Sundays, or other non-business days so as to not interfere with the operations on the Site. Under no circumstances will the Contractor or any Subcontractor proceed with Work affecting any Utilities without the prior written Boeing approval, including scheduling approval, of the Boeing Administrator. Utility interruption shall be included in the Schedule.

2.29. Existing Underground Utilities and Digging. The Contractor shall use blueprints, general knowledge, as-Built drawings, and any other applicable means to identify all Utility lines. After all known Utility lines have been identified, underground testing equipment shall verify and accurately locate all Utilities in the excavation area. The Contractor shall employ locating services that have demonstrated competency in locating Utilities. The Contractor will ensure that all identified lines will be marked and labeled in compliance with Boeing Labeling Standards obtainable from the Boeing Administrator. If Contractor or any Subcontractor moves, destroys, or renders inaccurate any Utility markings or environmental wells, Contractor shall label or restore such Utility markings and wells. The cost of Utility line markings required in the course of Contractor's performance of the Work shall be included in the Contract Price. The Contractor is responsible for adding all Utility lines not previously identified on existing drawings. The newly identified Utility lines shall be added and recorded on the red lined drawings. It is the responsibility of the Contractor to ensure that excavation proceeds with reasonable caution. The Contractor is responsible for employing a person qualified in similar type excavation work to verify the exact location of underground Utilities using probe and hand-dig procedure. Once the Utility line is located, the Contractor will commence Work with the appropriate mechanical means, using the probe and hand-dig procedure to minimize the risk of damaging Utilities or interrupting Utility service. In addition to the requirements of **Clause 2.28. (Utility Shutoff)** and **Clause 2.27. (Safety and Environmental Protection)**, if any Utility is damaged as a result of any failure of Contractor or any Subcontractor to exercise utmost care, the utility shall be repaired by Contractor at no cost to Boeing. If an existing Utility requires relocation, and such relocation is not specified in the Contract Documents, Boeing will issue written direction for such relocation. When excavation will be near a building, Contractor shall provide foundation engineering to ensure that proper precautions are taken to avoid damaging the structural integrity of the structure. The Contractor is required to formally document all of the required actions and steps taken for the successful completion of the above stated task.

2.30. Contractor's Work Area.

2.30.1. Assignment of Work Area at the Job Site. All of Contractor's work areas on the Site will be assigned by Boeing. Contractor shall confine its office, shops, storage, assembly, Equipment, Materials, and vehicle parking to the areas so assigned. Should Contractor find it necessary or advantageous to use any additional area outside the Site for any purpose whatever, Contractor shall obtain the approval of the Boeing Administrator before arranging for the use of such additional area, which additional area shall be at Contractor's sole expense.

2.30.2. Contractor's Staging Area. Contractor agrees to confine all its operations including storage; company vehicle unloading; and movement of Materials, Equipment, and workers to the staging area designated by the Boeing Administrator. Contractor shall be responsible for securing all Equipment and Materials used on the Work and shall provide the necessary tool boxes, fencing, and any other facilities necessary for such protection.

2.30.3. Contractor's Parking Areas. Parking on Site, if available, for Contractor's or its Subcontractor's or Supplier's trucks and service vehicles will be limited to the Contractor's staging area. This parking will be available only for a limited number of Contractor vehicles. All other personal vehicles are to be parked in off-site commercial general parking lots at Contractor's expense.

2.31. Contractor's Construction Plant, Equipment and Facilities.

2.31.1. Information and Drawings. Before proceeding with the erection or use of any construction plant, Equipment, or facilities in connection with the Work, including temporary structures, machinery, offices, and warehouses, Contractor shall furnish Boeing with any information and drawings relative to such construction plant, Equipment, and facilities that Boeing may reasonably request.

2.31.2. Requirements. Contractor shall provide and use only such construction plant, Equipment, and facilities as are capable of producing the quality and quantity of Work and Materials required by the Contract Documents, within the Contract Time, and at times specified in the Schedule. On notice by Boeing, Contractor shall discontinue operation of any construction plant, Equipment, or facilities that are not satisfactory to Boeing and shall either modify the unsatisfactory items to meet approval by Boeing or remove the unsatisfactory items from the Site. Contractor shall not remove any construction plant, Equipment, or facilities from the Site before final acceptance by Boeing of the Work without written approval by Boeing. Such approval shall not be unreasonably withheld. Unless stipulated otherwise in the Contract Documents, all Utilities and facilities required for the Work including power, sanitary facilities, telephones, and construction and drinking water will be provided by the Contractor.

2.31.3. Radio Frequency Devices.

2.31.3.1. Control. Should Radio Frequency communication devices (excluding commercial cellular telephones) are required for use on Boeing property during the Work, Contractor shall coordinate with the Boeing Administrator to allocate all frequency channels used on Boeing property or the Site. All radios or "walkie-talkies" used by Contractor, Subcontractors and other Contractor vendors on the Site will be capable of operating in the UHF or VHF frequency bands selected by Boeing.

2.31.3.2. Frequency Plan. Fourteen (14) days before the use of any Radio Frequency communication devices (excluding commercial cellular telephones), Contractor shall submit to the Boeing Administrator a written frequency plan. The plan must indicate specified information outlined herein for each radio frequency to be

used by Contractor and each Subcontractor and shall include a copy of Contractor's and Subcontractor's Federal Communications Commission (FCC) radio license. At a minimum the plan shall include:

2.31.3.2.1. Each discrete frequency, including each discrete private line code required for each user (include a copy of the FCC license for each frequency);

2.31.3.2.2. The specific location and power of each base station transmitter by frequency and private line code to be used;

2.31.3.2.3. The operating area and maximum Radio Frequency (RF) power output of the portable and mobile transmitters to be used on each frequency;

2.31.3.2.4. The number of units (portable and mobile) to be used on each frequency;

2.31.3.2.5. Rationale and explanation, if necessary, of why privacy codes (which permit the shared use of multiple radio nets on one frequency) cannot be employed; and

2.31.3.2.6. Date when frequency[ies] will no longer be required to support the Work.

The Boeing Administrator will give written approval of the plan that may include exclusions or limitations or require further coordination before operation.

2.31.4. Equipment. Contractor and all Subcontractors and Suppliers shall, at the time any of Contractor's or any Subcontractor's Equipment is moved onto the Site, ensure that all such tools and equipment are clearly identified as to the owner. Equipment that must be so marked includes power tools, welding machines, pumps, compressors, and tool boxes. It is recommended that Contractor, and all Subcontractors and Suppliers, identify their tools and equipment by color, decal, and etching. Before removing any Equipment from the Site, Contractor shall clear such removal through Boeing. No Equipment shall be removed from the Site without proper clearance from Boeing.

2.31.5. Operation of Vehicles and Other Equipment.

2.31.5.1. Vehicle Speed. Contractor shall be responsible for proper operation of its vehicles and shall abide by all Boeing in-plant speed limits and traffic regulations. Contractor's responsibility includes Subcontractor and Supplier vehicles.

2.31.5.2. Power for Equipment. When working inside occupied buildings, power for Equipment shall be applied in the following order of preference. It is preferred, and the Contractor is encouraged, to use electrically powered construction Equipment. Electrical power by definition includes the use of batteries. The second preference is the use of propane, followed by gasoline; and if no other source is available, then diesel may be used as a last resort.

2.31.5.2.1. Propane-powered Equipment shall be used only when electrical or battery-operated Equipment is not available and when propane-powered Equipment will not create a potential explosion hazard. When propane is not available and diesel- or gasoline-powered Equipment is substituted, part of the job specific safety plan shall include proper filtering or ventilation of exhaust emissions for diesel- and-gasoline powered Equipment. Internal combustion-powered Equipment requires provisions for combustion air and a catalytic converter, an exhaust pipe or hose vented to the outside of the building, or a Boeing-approved filtering system.

2.31.5.2.2. Diesel- and/or gasoline-powered Equipment of any type shall be used only when electrical, pneumatically or battery-operated Equipment and propane-powered Equipment are not available and when diesel- and/or gasoline-powered Equipment will not create a potential explosion hazard. No diesel- and/or

gasoline-powered Equipment of any type shall be operated inside Boeing-occupied buildings without exhaust scrubbers and sealed exhaust ducting from the Equipment exhaust to a point outside the building. Said exhaust ducting shall be completely sealed and incorporate integral exhaust fans that will provide positive exhaust of all engine fumes to the outside of the building.

2.31.5.2.3. Fueling must be performed exterior to any buildings. Fueling Operations must be conducted so as to prevent leaks, spills and releases to the environment. Storage of fuels on Boeing property must be approved by the Boeing Administrator and Boeing Fire Department.

2.31.5.3. Fumes and Exhaust.

2.31.5.3.1. Engine fumes and/or gases shall be exhausted to a point outside any buildings that will not allow exhausted gases from returning to the inside of the building through openings or through the operation of HVAC equipment. Exhaust scrubbers shall meet all applicable federal, state, and local requirements and shall not be used without the aforementioned sealed exhaust ducting unless approved in advance and in writing by the Boeing Administrator. Diesel- and/or gasoline-powered vehicles are not to be parked within a Boeing facility because of potential safety hazards.

2.31.5.3.2. While operating internal combustion-powered vehicles or equipment within a building or structure, Contractor must be sensitive to diesel fuel exhaust odors and may be required to provide additional ventilation and shall also monitor levels of carbon monoxide gas created by such equipment in an effort to minimize exposure levels and to ensure that readings do not exceed permitted levels. Control measures may include portable exhaust piping, blowers, fans, filters, scrubbers and ventilation hoses. When possible, operations using such equipment should be scheduled when the structure is not occupied. In addition, the building should be properly ventilated before occupancy takes place.

2.31.5.3.3. These requirements do not apply to transient vehicles or short-term loading and unloading inside occupied buildings. If a vehicle or a series of vehicles are allowed to remain running for more than fifteen (15) minutes, then their exhaust shall be piped or vented to the outside of the building or shall use a Boeing-approved filtering system.

2.32. Illumination. When any Work is performed at night or where light is shut off or obscured, Contractor shall provide, and shall ensure that Subcontractor provides, lighting sufficient to comply with all applicable laws and to permit the Work to be performed efficiently, satisfactorily, and safely and sufficient to permit thorough inspection of the Work. During any such periods, the access to the Site shall also be clearly illuminated. All wiring for electric light and power shall be installed and maintained in compliance with applicable law and industry standards; shall be securely fastened in place at all points; and shall be kept as far as possible from telephone wires, signal wires, and wires used for firing explosives. The cost of any Contractor (or Subcontractor) supplied illumination shall be included in the Contract Price.

2.33. Delivery, Unloading and Storage. Upon request by Boeing, Contractor shall ensure that all delivery vehicles report to a Boeing checkpoint for inspection before entering Boeing property through a Boeing gate. Contractor shall receive, unload, store in a secure place, and deliver from storage to the Site all Materials and Equipment required for the performance of the Work. The storage facilities and methods of storing shall be designed to keep such Materials and Equipment in a new condition, free from deterioration, and protected from damage by weather or On- Site activities. Such facilities and methods are subject to approval by Boeing, and Boeing shall have the right to inspect all storage facilities and stored Materials and Equipment at reasonable times. Contractor shall suitably store all materials and equipment subject to degradation by outside exposure or the elements. Contractor shall keep complete and accurate records of all Materials and Equipment received,

stored, and delivered for the Work. Such records shall be made available for inspection by Boeing. Contractor's responsibility for unloading, protecting, securing, and storing Materials and Equipment includes all Materials supplied by Boeing that are to be installed by Contractor. Contractor will keep current the anticipated and actual delivery schedule for such Materials and Equipment and will so advise the Boeing Administrator. The Boeing Administrator or his or her designee shall be notified of the delivery of all Boeing supplied Materials and Equipment.

2.34. Lines and Grades.

2.34.1. Survey Control Points. Survey control points and/or other baseline information may be set forth in the Contract Drawings. Contractor shall make provisions to preserve those control points for use by its employees, its Subcontractors, and other contractors working on the Site. If Contractor or any Subcontractor moves, destroys, or renders inaccurate any survey control point, such control point shall be replaced by Contractor at no cost to Boeing.

2.34.2. Layouts of Work. Contractor shall complete the layout of all Work and shall be responsible for all requirements necessary for the execution of any Work to the locations, lines, and grades specified or shown on the Contract Drawings, subject to such modifications as Boeing may require as the Work progresses. The Contractor and each Subcontractor shall review the critical dimensions and elevations of its Work and verify all grades, lines, levels, and dimensions indicated on the Contract Drawings. Inconsistencies shall be reported in writing to the Boeing Administrator for resolution before related Work begins. Contractor and each Subcontractor shall take all field measurements as required to supplement the control points shown in the Contract Drawings and will maintain all supplemental control points required for the proper execution of its Work. The Contractor and each Subcontractor shall exercise proper precautions to verify figures shown on drawings before laying out work and will be held responsible for any error resulting from the failure to exercise caution.

2.35. Protection of Monuments and Marks. Contractor shall protect all land monuments and property marks from disturbance and damage and shall not move them without the prior written consent of Boeing, which consent may specify the conditions under which the consent has been given. If Contractor or any Subcontractor moves, destroys, or renders inaccurate any land monuments or property marks, Contractor shall restore such land monuments and property marks at no cost to Boeing.

2.36. Restoration of Existing Improvements. Unless otherwise agreed to in writing by Boeing, Contractor shall repair, restore, and replace any real or personal property (including tools and equipment belonging to Boeing, and all existing structural, vegetative and other improvements) that the Contractor or its Subcontractors, Suppliers or other respective employees, agents, or invitees may damage or destroy in the performance of the Work to a condition substantially similar to the condition existing before such damage or destruction. Such restoration shall be to the condition existing before such damage or destruction and shall be accomplished to the reasonable satisfaction of Boeing.

2.37. Site Maintenance and Work Completion. Contractor shall, at all times, keep the Site in a neat, clean, and safe condition and shall not allow waste materials to accumulate. Contractor will at a minimum, keep clean the Work areas, staging area, and parking area used by the Contractor at the end of each shift. In performing the Work, Contractor shall protect adjacent building areas and their contents from dust, dirt, or other materials and will wet down dry materials to prevent blowing dust. Contractor shall not remove any construction plant, Equipment, or facilities from the Site before Boeing final acceptance of the Work without written approval by

the Boeing Administrator. When the Work is completed and before final payment is made, Contractor shall, to Boeing satisfaction.

2.37.1. With authorization by Boeing remove all construction plant, buildings, Solid Waste, unused or scrap Materials, and other Equipment belonging to it or used in the performance of the Work (other than Hazardous Wastes), including any salvageable Materials that were supplied by Boeing for incorporation into the Work but were not used;

2.37.2. As designated by Boeing, removal shall be either to an offsite location or to the Boeing warehouse or storage area On-Site,

2.37.3. Leave the Site in a neat, clean, and safe condition. Contractor shall manage Hazardous Waste in accordance with **Clause 2.27. (Safety and Environmental Protection)**.

2.37.4. The cost of the foregoing activities shall be included in the Contract Price. In the event the Site is not maintained in a neat, clean, and safe condition, Boeing may clean up and charge the cost thereof to the Contractor.

2.38. Testing.

2.38.1. Testing Schedule. The Contractor will submit a job-specific test schedule subject to approval by the Boeing Administrator. The test schedule shall recognize the difference between test agency and Contractor tests, repetitive and daily tests, observations in the field, and system or operational tests; also between factory testing of equipment and On-Site equipment testing. The test schedule shall include as a minimum:

2.38.1.1. A list of all tests to be performed as required by Contract specifications, applicable codes, or industry standards,

2.38.1.2. Procedures for each testing operation,

2.38.1.3. Information on test equipment and its calibration,

2.38.1.4. Frequency of repetitive tests,

2.38.1.5. Samples of forms for reporting test results to Boeing,

2.38.1.6. Schedule of test dates and durations, and

2.38.1.7. Procedures for notifying Boeing of any test.

Twenty-four (24) hour notice will be required for On-Site testing. The schedule provided hereunder will not substitute as proper notice.

2.38.2. Shop and Field Testing. Unless otherwise specifically provided in the Contract Documents, shop and field testing of the Work or other components of the Work shall be performed by Contractor in accordance with the Technical Specifications. The cost of such testing shall be included in the Contract Price. Contractor shall give Boeing enough prior notice of any such tests to allow a Boeing observer to be present. The Contractor shall perform field testing of the Work, including field testing of Materials used therein. Should tests in addition to those conducted by Contractor be desired by Boeing, Contractor will be advised in reasonable time to permit such testing. Such additional tests will be performed by Contractor or third parties approved or requested by Boeing at the expense of Boeing. Unless otherwise specifically indicated in the Contract Documents, Boeing may elect to perform field testing of the Work, including Materials used therein, in addition to that required of the Contractor. Contractor shall supply any necessary Equipment required to allow access to

the testing area. As provided in the Technical Specifications or as requested by Boeing, Contractor shall furnish samples and give reasonable assistance and cooperation in order to permit Boeing to test, or have tests performed, on Materials or Work in place, including reasonable stoppage of Work during such testing. Contractor shall be responsible for any additional cost of performing any such tests if the Work is not ready for the performance of such tests at the time specified by Contractor because the fault of Contractor.

2.39. Use of Completed Portions of the Work.

2.39.1. Beneficial Occupancy. Whenever, as determined by Boeing and, if required, certified by appropriate Authority and if in accordance with applicable law, any portion of Work performed by Contractor is in a condition suitable for use, Boeing may take possession of or use such portion ("Beneficial Occupancy"). Any Beneficial Occupancy shall not constitute completion or acceptance, and except as provided in this Clause 2.39.1, shall neither relieve Contractor of any of its responsibilities under the Contract nor act as a waiver by Boeing of any of the conditions thereof. If after taking Beneficial Occupancy of a portion of the Work, an item of such portion is subsequently rejected by Boeing when it is subject to final acceptance testing and inspection pursuant to **Clause 2.40. (Final Completion and Final Acceptance)**, then the warranty term applicable to Contractor's warranties as described in **Clause 2.12. (Contractor Representations, Warranties and Covenants)** as applied to such item shall commence as provided in therein once the Contractor has cured the defects in such item that resulted in its rejection and final acceptance of such portion is made in accordance with **Clause 2.40. (Final Completion and Final Acceptance)**. Except as provided in **Clause 2.39.2. (Possession Before Completion)**, if any Beneficial Occupancy materially increases the cost or delays the completion of remaining portions of the Work, an adjustment may be made pursuant to **Clause 4.5. (Changes)** because of such delay.

2.39.2. Possession Before Completion. If Contractor fails to complete the Work in accordance with the Schedule, Boeing shall have the right to take possession of and use any portion of the Work and require Contractor to continue performance of the Work. To the extent the failure to complete the Work was attributable to an Excusable Delay under **Clause 4.17.2. (Excusable Delays)**, an adjustment may be made pursuant to **Clause 4.5. (Changes)** because of such possession or use.

2.39.3. Unsatisfactory Work. If, as a result of Contractor's failure to comply with the provisions of the Contract Documents, any Work of which Boeing has taken Beneficial Occupancy proves to be unsatisfactory to Boeing, Boeing shall have the right to discontinue such Beneficial Occupancy until the unsatisfactory Work can, without material inconvenience to Boeing, be corrected, repaired, or replaced, as necessary, so that such Work complies with the Contract Documents; provided, however, that the period of such use pending completion of appropriate remedial action shall not exceed six (6) months.

2.39.4. Contractor's Use of Installed Equipment. Contractor shall not use any equipment that is permanently installed as part of the Work unless such use is approved by Boeing in writing. If Boeing grants such approval, Contractor shall properly use and maintain such equipment, and on completion of its use, recondition such equipment to the satisfaction of Boeing. If Boeing furnishes an operator for any such equipment, such operator will perform such services under the complete direction and control of Contractor and shall be considered Contractor's employee for all purposes, other than the payment of wages, workers compensation, and fringe benefits, whether paid directly or indirectly by Boeing.

2.40. Final Completion and Final Acceptance.

2.40.1. Completion of Portion of Work. When Contractor has determined that any portion of the Work is complete and has conducted any testing of such Work that Contractor reasonably deems necessary, Contractor

shall so inform the Boeing Administrator in writing. At the option of Boeing, if in the reasonable opinion of Boeing such portion of Work is capable of being fully and accurately tested or inspected before all the Work is completed, Boeing shall then commence monitoring of final acceptance testing of the equipment, Materials, and workmanship included in such Work. The acceptance or rejection of such portion of the Work shall be handled in accordance with the relevant provisions of this Contract.

2.40.2. Completion of All Work. Before Contractor's estimated date of completion of the Work, the Contractor shall submit to the Boeing Administrator a notice that the Work is substantially complete ("Notice of Substantial Completion"). On submission of the Notice of Substantial Completion, the Boeing Administrator and the Contractor will conduct a thorough walkthrough inspection of the Work. The Boeing Administrator will prepare a punch list of deficient Work identified during the walkthrough. The punch list will be submitted to the Contractor for corrective action and final completion. The Boeing Administrator and Contractor will jointly establish a schedule for completion of all punch list items; provided, however, the Contractor is responsible for scheduling sufficient time and personnel to make these corrections without delay.

2.40.3. Rejected Work. Boeing shall notify Contractor of the basis for rejection of any Work and allow Contractor a reasonable time to cure such defects at Contractor's cost and with no additional cost or charge to Boeing. Notwithstanding Contractor's right to so cure, Contractor shall be liable for any delay, except Excusable Delay, in completion of the Work.

2.40.4. Uncovering of Work. If a portion of the Work is covered contrary to Boeing request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Boeing Administrator, be uncovered for observation by Boeing and be re-covered at the Contractor's expense without change in the amounts payable to Contractor or in the Contract Time. If a portion of the Work has been covered that Boeing has not specifically requested to observe before its being covered and that is not required to be left uncovered in the Contract Documents, the Boeing Administrator may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and re-covering shall, by appropriate Change Order or Work Order Authorization Revision, be charged to Boeing. If such Work is not in accordance with the Contract Documents, the Contractor shall pay such costs unless the condition was caused by Boeing or a separate contractor, in which event Boeing shall be responsible for payment of such costs.

2.40.5. Correction of Work.

2.40.5.1. The Contractor shall promptly correct Work rejected by Boeing or Work failing to conform to the requirements of the Contract, whether observed before or after completion of the Work and whether or not fabricated, installed, or completed. The Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections and compensation for any consultant services and expenses made necessary thereby.

2.40.5.2. If, after completion of Work or designated portion thereof or after the date for commencement of warranties or by terms of an applicable warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from Boeing to do so. The applicable warranty period shall be extended with respect to portions of Work subject to correction for a period of time equal to the time between the original acceptance and the actual performance of the corrective Work.

2.40.5.3. The Contractor shall remove from the Site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by Boeing.

2.40.5.4. If the Contractor fails to correct nonconforming Work within a reasonable time, Boeing may correct it or assign the corrective work to other contractors at the option of Boeing and deduct the costs from the compensation due Contractor under this Contract.

2.40.5.5. If the Contractor does not proceed with correction of nonconforming Work within a reasonable time fixed by written notice from the Boeing Administrator, Boeing may remove it and store the salvageable Materials or Equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten (10) days after written notice to the Contractor, Boeing may with ten (10) additional days' written notice sell such salvageable Materials and Equipment at auction or at private sale and shall account for the proceeds after deducting costs and damages that should have been borne by the Contractor, including compensation for administration of the removal and storage, consultants' services, and other expenses made necessary thereby. If such proceeds of sale do not cover costs and damages, the amount payable to Contractor under the Contract shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to Boeing.

2.40.5.6. The Contractor shall bear the cost of correcting destroyed or damaged Work, whether completed or partially completed, caused by correction or removal of Work that is not in conformance with the requirements of the Contract Documents.

2.40.5.7. Nothing contained in this **Clause 2.40. (Final Completion and Final Acceptance)** shall be construed to alter the rights of Boeing under **Clause 2.12. (Contractor Representations, Warranties and Covenants)** or to establish a period of limitation with respect to any other obligations that the Contractor might have under the Contract Documents. Establishment of a time period to correct Work relates only to the specific obligation of the Contractor to correct the Work and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

2.40.6. Acceptance of Non-Conforming Work. If Boeing decides to accept Work that is not in accordance with the requirements of the Contract Documents, Boeing may do so instead of requiring its removal and/or correction, in which case the amounts payable to Contractor will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made. Acceptance of non-conforming Work shall not extend the Contract Time or release the Contractor from any warranty requirements of this Contract.

2.40.7. Request for Final Inspection. When the punch list items referred to in Clause 2.40.2. (Completion of All Work) are completed and any other requirements of the Contract Documents are completed, the Contractor shall submit a request to the Boeing Administrator for final inspection ("Final Inspection"). Before Final Inspection, the Contractor shall have completed all of the Work, including that set forth in all Change Orders or Work Order Authorization Revisions. At least five (5) days before submitting its request for Final Inspection, Contractor shall submit to the Boeing Administrator a correction list showing the corrections made to the items on the punch list. Concurrent with the submission of its request for Final Inspection, the Contractor is responsible for submitting to Boeing any document required by the Contract Documents. After Boeing accepts the Work in the Final Inspection, Boeing shall issue Contractor a certificate indicating the Work has been completed ("Certificate of Completion").

2.40.8. Acceptance of Work. Acceptance of Work will not relieve Contractor or its representatives of the responsibility to perform in a skillful and workmanlike manner nor in any manner affect Contractor's obligations as specified by this Contract.

2.41. Title to Materials.

2.41.1. Title to all Materials furnished by Contractor shall be in Contractor until Materials have been incorporated into the Work or paid for by Boeing. Immediately on incorporation into the Work or payment therefore, whichever occurs first, title shall vest in Boeing.

2.41.2. Neither Contractor nor any Subcontractor nor any of their representatives or employees shall have any right, title to or interest in water, soil, rock, gravel, sand, minerals or timber which are on or under the surface of the Site, or any other materials or items discovered by Contractor or any Subcontractor nor any of their representatives or employees as a result of the Work, nor shall Contractor or any Subcontractor nor any of their representatives or employees assert or make any claim thereto. At Contractors' request, the Boeing Administrator will determine, in its sole discretion, whether Contractor may use in the Work, at no charge, any such materials which are owned by Boeing and which meet the requirements of the Contract.

PART III – RESPONSIBILITIES OF BOEING

3.1. Boeing Representatives. Boeing shall designate and notify the Contractor of the Boeing Authorized Purchasing Representative and Boeing Administrator who shall act on behalf of Boeing. The Boeing Authorized Purchasing Representative will administer the Contract and is solely responsible for issuing any formal Change to the Contract that would result in an increase or decrease in the Scope of Work, Contract Price, Schedule, and/or Completion Date or that would otherwise change any provision of the Contract. The Boeing Administrator shall be the on-site representative responsible for monitoring the progress of the Work. Boeing shall notify Contractor of any change in the designated Boeing Authorized Purchasing Representative or Boeing Administrator.

3.2. Contractor Assistance. Boeing shall place at Contractor's disposal reasonably available information pertinent to the Project, including previous reports and other data relative to the construction of the Project.

3.3. RESERVED.

3.4. RESERVED.

3.5. Consents, Permits, Licenses and Filings.

3.5.1. Right of Entry to Boeing Property. To the extent necessary to perform the Work and to the extent Boeing has the authority to do so, Boeing hereby grants a revocable right of entry to Contractor, its agents, staff, Subcontractors and/or Suppliers to enter the Site for the limited and express purpose of performing those activities reasonably required by the Work. In all instances, prior to entering the Site to commence the Work, Contractor shall confirm with the Boeing Administrator that Boeing owns the Site or has otherwise secured the necessary rights of entry.

3.5.2. Building Permit and Other Permits, Licenses and Filings. Unless otherwise specified in the Scope of Work and other Contract Documents, Boeing shall submit the application and payment for all building permits to the applicable building authority. Boeing shall review for approval prior to Contractor's submittal any follow-up reports that the Contractor is required to submit pursuant to **Clause 2.6. (Status and Reporting)**. Contractor shall be responsible for obtaining all other required permits, license and filings necessary for the Work.

3.5.3. RESERVED.

3.5.4. RESERVED.

3.6. Notice of New Development. Give prompt written notice to the Contractor whenever Boeing observes or otherwise becomes aware of any material development that affects the scope or timing of the Work.

PART IV – GENERAL

4.1. General Representations, Warranties and Covenants.

4.1.1. General Representations, Warranties and Covenants of the Parties. Each party represents, warrants and covenants, in each case with respect to itself, that:

4.1.1.1. It is duly organized, validly existing, and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct business in the state or states and countries in which this Contract is to be performed;

4.1.1.2. It has all regulatory approvals necessary to enter into this Contract and to perform its obligations under this Contract;

4.1.1.3. The execution, delivery, and performance of this Contract are within its powers, have been duly authorized by all necessary action, and do not violate any terms and conditions in its governing documents, any contracts to which it is a party, or any applicable law;

4.1.1.4. This Contract constitutes a legally valid and binding obligation enforceable against it in accordance with its terms;

4.1.1.5. There are no Insolvency Proceedings pending or being contemplated by it or, to its knowledge, threatened against it;

4.1.1.6. There is not pending (or, to its knowledge, threatened) against it or any of its affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Contract;

4.1.1.7. No Event of Default or event that, with the giving of notice or lapse of time or both, would constitute an Event of Default by it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Contract; and

4.1.1.8. It is acting for its own account, has made its own independent decision to enter into this Contract based on its own judgment, is not relying on the advice or recommendations of the other party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Contract.

4.1.2. RESERVED.

4.2. Request for Information.

4.2.1. Need For Additional Information. In the event that Contractor requires additional information or other clarification in order to perform the Work, Contractor shall submit a formal written Request for Information ("RFI") to Boeing using an RFI form acceptable to Boeing. Examples of matters which would be addressed by a RFI include errors or omissions in or conflict or discrepancies between the various Contract Documents, as well as questions regarding the intent or interpretation or seeking other clarification of the

Contract Documents. Contractor shall be solely responsible for seeking additional information or other clarification and shall be solely liable for any cost or expense arising from its failure to do so.

4.2.2. Contractor Request. Contractor shall submit an RFI, if possible, immediately upon discovery of the issue, but in any event at the earliest practical date. To the extent possible, Contractor shall endeavor to resolve all concerns, questions, ambiguities or conflicts during the preliminary phase of the design, whereby Boeing may have additional time to respond without affecting the Schedule. Also, whenever possible Contractor shall submit all questions regarding systems or sub-systems together on a single RFI, identifying separate portions of the question by letter or numeral. Contractor will keep an RFI log and be responsible for assigning sequential numbers to the RFIs sent.

4.2.3. Boeing Response. Boeing shall be given at least ten (10) working days in which to respond to an RFI. Any actual critical response date shall be identified clearly on the RFI submitted by Contractor. Any Work affected by any pending request for RFI which is nonetheless is performed by Contractor (or its Subcontract or Suppliers) before written clarification is received from Boeing, shall be undertaken at Contractor's risk and expense.

4.2.4. Clarification Only. All Boeing responses to an RFI shall be considered as having been provided to Contractor for clarification only with no impact on the Contract Documents, the Contract Price or the Contract Time. If the clarification covers an incorrect description in or omission from the Contract Documents regarding details of the Work that are clearly necessary to accomplish the intent of the Contract Documents or that are customarily performed or furnished as part of work of the same type as the Work, no increase in the Contract Price allocable to the clarification shall be included in the applicable Change Order or Work Order Authorization Revision nor shall the Contract Time be extended.

4.2.5. Potential Change. Should Contractor consider the response to an RFI to constitute a Change to the Contract Documents, the Contract Price, or the Contract Time, Contractor shall submit a request for a Change Order or Work Order Authorization Revision pursuant **Clause 4.5. (Changes)**. Contractor's failure to protest any determination, instruction or clarification by Boeing within fourteen (14) days after receipt thereof shall constitute a waiver by Contractor of all of its rights to further protest, whether judicial or otherwise, with respect thereto. At all times, the Contractor shall proceed with the Work in accordance with the determinations, instructions, and clarifications provided by Boeing.

4.3. Bonds.

4.3.1. Requirements for Bonds.

4.3.1.1. Boeing shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment obligations arising thereunder as stipulated in the bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

4.3.1.2. When requested in writing by Boeing, Contractor shall require each Subcontractor to provide a performance bond and a payment bond.

4.3.1.3. At the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

4.3.2. Delivery of Bonds. If the Contract Documents or a Change Order or Work Order Authorization Revision directs the Contractor to provide performance and/or payment bonds for its operations or for the

operations of any specified Subcontractors, then, before commencing or continuing the Work, as the case may be, or within such further time as Boeing may authorize in writing, Contractor shall deliver to Boeing a performance bond and payment bond in a form satisfactory to Boeing. Such bonds shall be executed by a corporate surety acceptable to Boeing and shall be in an amount not less than the estimated cost of the Work. If such bonds, or surety on such bonds, become unacceptable to Boeing or if the estimated cost of the Work is substantially increased after such bonds are delivered, Contractor shall promptly deliver additional bond security, as required by Boeing. Failure to deliver bonds as required by the Contract shall constitute a default to which the provisions of **Clause 4.21. (Default)** shall apply.

4.4. Extra Work. If Boeing requires additional work not covered by the original Scope of Work and existing Change Orders or Work Order Authorization Revisions, Boeing may do the additional work itself or by the employment of others or it may direct Contractor to do the additional as "Extra Work," in which case a Change Order or Work Order Authorization Revision will be issued to reflect such Extra Work and Contractor will be paid for the Extra Work as provided in **Clause 4.5. (Changes)**.

4.5. Changes.

4.5.1. Right to Change. Boeing may make unilateral Changes to the Work, at any time, without invalidating this Contract and without notice to any sureties. All such Changes shall become a part of the Work, shall be memorialized in writing as approved Change Orders or Work Order Authorization Revisions pursuant to applicable provisions of the Contract Documents, and the Contract Price and Contract Time may be adjusted accordingly, if applicable.

4.5.2. Changes in the Work or Contract Documents. Changes in the Work or Contract Documents shall be effective only if made by a properly executed Change Order, Revised Work Order or Field Order.

4.5.2.1. Request for Change Proposal. A Request for Change Proposal is a written document signed by Boeing Authorized Purchasing Representative, which solicits Contractor's proposed modification to the Contract Price and/or Contract Time for a proposed change to the Work or Contract Documents.

4.5.2.1.1. Contractor shall submit a written proposal to the Boeing Authorized Purchasing Representative within fourteen (14) days of receipt of the request, which includes all adjustments to the Contract Price and/or Contract Time that result directly and/or indirectly from the proposed change.

4.5.2.1.2. Boeing shall accept, reject or otherwise respond to Contractor's proposal within a reasonable time. Contractor shall notify Boeing in writing if a response is required in less than thirty (30) days to avoid delay or disruption.

4.5.2.1.3. Contractor shall not perform any Work set forth in the Request for Change Proposal until Boeing Authorized Purchasing Representative directs Contractor to proceed. Contractor shall not be entitled to an adjustment to the Contract Price and/or Contract Time to the extent that Contractor performs any such work without proper authorization.

4.5.2.2. Field Order. When a written notice of a Change is directed by Boeing, it may be issued by the Boeing Authorized Purchasing Representative and Boeing Administrator in the form of a Field Order to Contractor.

4.5.2.2.1. All Field Orders shall be acknowledged by Contractor within seven (7) calendar days of receipt by signing and returning the Field Order to Boeing.

4.5.2.2.2. Within fourteen (14) calendar days of receipt of a Field Order, Contractor shall provide Boeing a description of the requirements of such Field Order and a detailed proposal of the effect of such Field Order on

the Contract Price and/or Contract Time (or in any schedule that is included in or prepared under the terms of this Contract).

4.5.2.2.3. Contractor shall immediately commence the Work directed by a Field Order so that any effects on any Schedule which is part of this Contract are minimized.

4.5.2.2.4. Failure to immediately commence Work required under a Field Order shall constitute a default to which the provisions of **Clause 4.21. (Default)** shall apply.

4.5.2.3. Emergencies. In the event of an emergency endangering life or property, Boeing may issue oral orders to Contractor for any Work required by reason of such emergency. Any such Work will be subject to the provisions of the Contract and will be confirmed in writing within twenty-four (24) hours.

4.5.3. Change Orders or Work Order Authorization Revision. After receipt of such description and estimate from Contractor, Boeing may at its discretion accept, cancel or modify the change. Boeing will issue a written Change Order or Work Order Authorization Revision for each finalized change and such Change Order or Work Order Authorization Revision shall be signed by both parties. Any Changes in the Contract Price agreed to by the parties resulting from Changes in the Work shall be deemed to fully compensate Contractor for the Change in the Work and Contractor expressly waives any right to make a later claim for increased costs. All Change Orders or Work Order Authorization Revision agreed to by the Parties shall be signed by the Boeing Authorized Purchasing Representative and Contractor's Representative. All agreed-to Changes will be incorporated into the Schedule within seven (7) days of execution of the Change Order or Work Order Authorization Revision by the Parties.

4.5.4. Contract Adjustments. In making a determination regarding any equitable adjustment (increase or decrease), if any, in the Contract Price or the Contract Time, resulting from a Change, the value of the subject Work will be evaluated and limited as follows:

4.5.4.1. Direct Labor Costs. These are the labor costs determined by either the estimated or actual number of additional labor-hours and the hourly costs related thereto necessary to perform the Change in the Work. The estimated hours shall be based on the reasonable time required to perform the task under the prevailing job conditions. Contractor Trade Association labor manuals will not be accepted as sole evidence of required labor-hours. Actual hours shall be properly substantiated with time sheets that have been verified by the Boeing Administrator on a daily basis for all applicable labor. Such time sheets shall include the Contract number, Project title, date and shift worked, employee's full name, job classification and description, hours worked both straight time and overtime, and the description of activities performed that would be necessary for cost controls. Labor shall constitute On-Site construction personnel based on costs normally associated with Contractor personnel, provided such costs are verifiable, auditable, and consistently applied to all Contractor personnel but limited to wages, fringe benefits, and payroll taxes (such as Federal Unemployment Insurance, State Unemployment Insurance, and Workers' Compensation). Supervision shall not be considered as appropriate to a Change unless demonstrated to be required in addition to supervision already on Site. The premium portion of wage and salary payments for overtime work shall be allowable at cost (no markup) and only if and to the extent Contractor obtains prior written authorization from Boeing to perform the overtime work.

4.5.4.2. Direct Material Costs. These are itemizations of the quantity and cost of additional Materials necessary to perform the Change in the Work. These costs shall be the unit cost applied to the quantity. The unit cost shall be the most favorable or lowest competitive cost prevailing in the area considering the quantities involved and the required delivery time and be based on the net cost after all offered or available discounts or rebates, freight costs, express charges, or special delivery costs, when applicable.

4.5.4.3. Contractor-Owned Equipment Usage Costs. The costs of major tools and Equipment shall be the reasonable estimated cost of additional major tools and Equipment necessary to perform the changed Work at the Site. Only the actual incremental cost increases (if any) will be allowed for tools and Equipment already on the Job Site for use on other Work. The rental rates to be applied shall be the reasonable estimated rate (monthly, weekly or hourly) that result in the lowest cost to Boeing for each tool or piece of Equipment and shall be based on seventy-five percent (75%) of the current rental rates established by the most recent edition of "Rental Rate Blue Book for Construction Equipment" published by Data Quest, San Jose, California. The rates shall include such considerations as location and depreciation. If not listed, a rental rate shall be mutually agreed to in writing based on useful life, salvage value, actual rental Equipment burden, and other related costs applied to the original purchase price.

4.5.4.4. Rental Equipment. For non-owned Equipment, the competitive local rental rates charged by equipment rental companies shall be used. Actual cost, if not included in rental rate, and billings for fuel, oil, lubrication, periodic maintenance, and insurance will require documentation of actual cost. The rates used shall be those in effect at the time of the performance of the Work and are the maximum rates allowable for Equipment of modern design and in good working condition provided that the cost of non-used Equipment shall not be chargeable for pricing purposes.

4.5.4.5. Expendable and Consumable Supplies. Expendable and consumable supplies are considered to be normal operating cost included in the Contractor's, Subcontractor's, or Supplier's overhead and/or fee. Such expendable and consumable supplies are not directly allowable in Change Order or Work Order Authorization Revision calculations.

4.5.4.6. Small Tools. Small tools means individual pieces of Equipment having an initial purchase price of one thousand five hundred (\$1,500) or less that are used by the Contractor to perform the Work. The Equipment consists of powered and non-powered tools associated with the Work. Small tools include Equipment previously owned by the Contractor, newly purchased by the Contractor, or rented from others. Unless otherwise provided for in the Contract Documents, no rental for such tools shall be considered as allowable in pricing changed Work.

4.5.4.7. Cost of Change in Insurance or Bond Premium. This cost shall be determined as follows:

4.5.4.7.1. Liability insurance: The cost (expressed as a percentage) of any changes in the Contractor's liability insurance arising directly from the changed Work; and

4.5.4.7.2. Bond: The cost (expressed as a percentage) of the additional premium for any bond required of Contractor arising directly from the changed Work.

4.5.4.8. Markup. The Contractor is limited to maximum markup percentages that are set forth in the Contract on any Change. This markup structure shall include the following: all indirect costs required for support of all direct labor, Materials and Equipment, supervision, management, estimating, engineering, coordination, subcontractor or vendor administration, cartage and handling, small tools, consumables, OSHA, lost time, site office overhead, liability insurance, and fee. No markups will be allowed for Contractor or Subcontractors on overtime premiums or shift differential.

4.5.4.9. Rates and Factors. Within fifteen (15) days of award of Work the Contractor shall request approval of all rates and factors not already included in Contract Documents to be used in any proposals by the Contractor and/or all Subcontractors and Suppliers. Such rate and factor approval requests shall be in such form

and detail as to allow full evaluation by Boeing. Such rates and factors include but are not limited to wage rates (including base rates with burden detail), Equipment rental rates, and any associated proposal markups.

4.5.5. Claims.

4.5.5.1. A Claim is any demand, assertion, or affirmation of right made in good faith by the Contractor that seeks to adjust the Contract Price or Contract Time, or interpret any dispute between Boeing and Contractor arising out of or related to the Contract Documents. Contractor shall continue to perform its obligations under the Contract Documents pending final resolution of any Claim made.

4.5.5.2. To make a Claim, Contractor must state in writing all known and presumed facts upon which the Claim is based, including (1) the character, duration, and extent of the Claim; (2) the date that Contractor or any Subcontractor or any employee, officer, agent, representative, or consultant of either of them, first knew of the incident; (3) any construction activities impacted by the incident; and (4) the cost and time consequences of the incident. No Claim shall be considered effective until such information is provided.

4.5.5.3 Contractor shall make the Claim to Boeing in writing within ten (10) days of the occurrence of the incident giving rise to such Claim.

4.5.5.4 All determinations, instructions, and clarifications in response to such claims by Boeing shall be final, unless Contractor files a written protest with Boeing within fourteen (14) days after Contractor's receipt of written determination by Boeing. Any such protest shall state clearly and in detail the basis thereof. Boeing will issue a final decision on each such protest. At all times, Contractor shall proceed with the Work in accordance with the determinations provided by Boeing. Contractor's failure to protest any determination by Boeing within fourteen (14) days after receipt shall constitute a waiver by Contractor of all of its rights to further protest, judicial or otherwise, with respect thereto. All time periods set forth in Clause 4.5. (Changes) are intended to ensure prompt and efficient identification of Changes in the Work and claims relating thereto and to avoid misunderstandings between Boeing and Contractor. Contractor agrees that failure to comply with the time requirements in Clause 4.5. (Changes) is deemed prejudicial to Boeing.

4.5.6. Contractor's Notice of Potential Change. If Contractor (a) receives request from a Boeing employee or other person (but not the Boeing Authorized Purchasing Representative) regarding the Work (whether by direction, instruction, or request from any employee or any architect, Contractor or other agent of Boeing and whether oral or written), which Boeing has not denominated a Field Order, but which Contractor believes constitutes a Change, or (b) experiences a situation which it considers to have a material impact on the Work, Contract Price, Contract Time, Design Schedule or performance of the Project constituting a potential Change, the Contractor will notify Boeing of such potential Change, prior to commencing performance, but no later than within three (3) calendar days after receipt or discovery of such potential Change, or before final payment under this Contract, whichever is earlier. Such notice will include the date, circumstances and source of such potential Change. After review, Boeing will issue a Change Order or Work Order Authorization Revision if Boeing, in its sole discretion, determines such action is appropriate. Any Services performed by Contractor which were not at the direction of or approved by the Boeing Authorized Purchasing Representative (as required by the Contract Documents) shall be at Contractor's risk and, if not acceptable to Boeing, at Contractor's expense.

4.5.7. No Authority. In no event shall Contractor be authorized on behalf of Boeing to enter into any agreements or undertakings, to execute any Field Order, Change Order or Work Order Authorization Revision or other document, to authorize any payments or accept or approve any documents, Work, goods or materials

which result in a change in the payments to be made to the Contractor hereunder or in the terms of this Contract without prior written approval by Boeing. Any Changes to the Contract shall be handled in accordance with this **Clause 4.5. (Changes)**.

4.5.8. No Other Modifications. Requests made to Contractor for Work or modifications of the Work or Changes, in any form, other than as provided in this Contract, are not to be accepted by Contractor, but shall be immediately reported to the Boeing Administrator. Any modification or Change to authorized Work shall not be binding on Boeing unless agreed to in writing by the Boeing Authorized Purchasing Representative and the modification or Change is made as provided in **Clause 4.5. (Changes)**.

4.6. Billing and Payment.

4.6.1. Contractor's Payment Request. Contractor shall submit its request for any payment for the Work as follows:

4.6.1.1. Invoice and Supporting Documentation. Once each month, Contractor shall submit one (1) copy of a proper invoice in such form and reasonable detail as Boeing may require. The invoice shall provide a cost breakdown correlated to the budget breakdown and shall be accompanied by any evidence supporting such invoice, including with respect to reimbursable items of cost, itemized statements of cost, vouchers, invoices approved for payment, and any other original documentation as may be requested by Boeing. The invoice must be accompanied by an updated Schedule and budget breakdown where appropriate.

4.6.1.1.1. Documentation. Documentation shall include a list identifying all Subcontractor and Supplier, the value of their subcontract or contract (as applicable), previous amounts paid, and current outstanding invoice amount. Documentation also shall include executed partial or complete (as applicable) lien releases or lien waivers or other documentation from Contractor, Subcontractors and Suppliers for Work previously paid by Boeing to Contractor necessary at any stage of the Work to protect Boeing against possible lien claims of Contractor and any Subcontractor and Supplier and for payments made by Boeing. Such lien releases or waivers shall be on such forms as required by Boeing (which forms shall be consistent with applicable law) and shall cover all Work completed to the date of the invoice for which Boeing has previously made payment. Boeing shall not be required to process a subsequent invoice until Contractor has provided Boeing with the proof of partial and complete (as applicable) lien release or waiver from Contractor or Subcontractors and Suppliers for any Work previously paid for by Boeing.

4.6.1.1.2. Discharge of Claims. Contractor shall promptly satisfy or discharge any claim or lien arising from or related to the performance of the Work or provision by Contractor or any Subcontractor and Supplier which is filed against Contractor, against Boeing or any of its affiliates or subsidiaries, or against any property of Boeing or any of its affiliates or subsidiaries. If any such claim or lien is not promptly satisfied or discharged by the Contractor after receipt of notice from Boeing to do so, Boeing may take action needed to satisfy or discharge such claim or lien and the Contractor shall be responsible for all costs incurred in connection with such satisfaction or discharge, regardless of when such claim or lien arose or whether any such claim imposed a lien upon any property of Boeing or any of its affiliates or subsidiaries. The amount of such costs shall be deducted from any monies due to Contractor or, if the amount of any monies due Contractor under the Contract is insufficient to meet such costs, or if any such claim or lien is satisfied or discharged by Boeing after final payment is made, Contractor shall promptly pay Boeing the amount of such costs.

4.6.1.1.3. Electronic Invoices. If Contractor also is submitting invoices electronically, such invoices shall not be entered into the electronic system until the copy of the invoice and all applicable documentation has been

received by the appropriate Boeing representative who will be identified at the time of Contract award if it is to be someone other than the Boeing Administrator.

4.6.1.2. Net 90 Days. Except as otherwise provided in the Contract, Boeing shall make payment to Contractor within ninety (90) days after receipt of a complete and correct invoice with supporting documentation. Any invoices paid by Boeing where payment is associated with Work of a Subcontractor or Supplier shall be paid by Contractor no later than seven (7) days after Contractor's receipt of payment from Boeing.

4.6.1.3. Payments made on Actual Costs. At any time or times before final payment under the Contract where Contractor has been reimbursed based on actual costs incurred, Boeing may audit Contractor's invoices and supporting statements of costs, including those of any Subcontractor and Supplier. Each payment theretofore made shall be subject to reduction for any amounts included in an audited invoice that do not constitute reimbursable costs. Any subsequent payment to Contractor may be reduced for overpayments or increased for underpayments on preceding invoices. Boeing will notify Contractor before making any reductions due to overpayments on prior invoices.

4.6.2. Limitation of Boeing Obligation – Sum Allotted. Unless otherwise agreed to by the parties in writing and unless otherwise required by law, in no event shall the obligation of Boeing to the Contractor exceed the Sum Allotted under the Contract. Should no amount be specifically established in the Contract Documents for the Sum Allotted, the Sum Allotted shall be the Contract Price.

4.6.2.1. Sum Allotted Not to Be Exceeded. Notwithstanding any other provision in the Contract Documents, Contractor shall not and shall ensure that its Subcontractors and Suppliers shall not continue performance, incur costs or obligations, or take any other action in connection with the performance of the Work that would cause the total amount that Boeing would otherwise be obligated to pay Contractor to exceed the Sum Allotted. This strict prohibition not to exceed the Sum Allotted prohibits Contractor from incurring any cost, either directly or indirectly through its Subcontractors and Suppliers, which would increase the financial liability of Boeing under the Contract beyond the Sum Allotted (including termination costs and expenses). The purpose of the Sum Allotted is to assist Boeing in budgeting for anticipated Project expenses. The Sum Allotted does not alter Contractor's obligation to complete the Work at no more than the amount set forth as the Contract Price pursuant to a Fixed Price Contract or Guaranteed Maximum Price Contract, if applicable.

4.6.2.2. Contractor Notice. Contractor shall promptly notify Boeing if at any time Contractor estimates that the total amount (including reasonable estimates of amounts not then susceptible of exact determination) that Boeing would be obligated to pay Contractor (including the Subcontractors and Suppliers) if the Work were to be terminated under **Clause 4.22. (Termination for Convenience)**, might exceed eighty-five percent (85%) of the then Sum Allotted for the Work. This eighty-five percent (85%) of the Sum Allotted notification requirement is not a retainage right to withhold funds until completion but rather is merely a triggering event for notification by the Contractor to Boeing for purposes of evaluating progress of Work and estimated costs incurred under the Contract for budget purposes, regardless of whether the Contractor has invoiced for such Service.

4.6.2.3. Termination. Boeing may terminate or suspend Service under the Contract if at any time it reasonably appears that the total amount that the Contractor would invoice Boeing, if Service were to be terminated at such time under **Clause 4.22. (Termination for Convenience)**, might exceed the then Sum Allotted to the Work.

4.7. Right to Offset. Except as otherwise provided in a Pricing Supplement or any other Supplement to this Contract, Boeing, without waiver or limitation of any of its rights or remedies, shall be entitled to deduct from

any amounts Boeing owes Contractor in connection with the Contract any and all amounts Contractor owes Boeing under this Contract or any other contract project.

4.8. Withheld Payments.

4.8.1. Withholding of Payment. Boeing may withhold, in whole or in part, any amount otherwise payable under the Contract if:

4.8.1.1. Any claim arising out of or connected with the Contract is filed against Contractor by Boeing or by any Boeing subsidiaries or affiliates or if there is a reasonable basis for filing any such claim against Contractor;

4.8.1.2. Any claim for which Boeing is to be reimbursed or any Indemnitee is to be indemnified by Contractor under the Contract is filed against Boeing or against any Boeing subsidiaries, affiliates, or any other Indemnitee, or if reasonable evidence indicates the probability of a filing of any such claim;

4.8.1.3. Any claim or lien related to the performance of the Work or provision by Contractor, any Subcontractor or Supplier of labor, Equipment, or Materials used in connection with the Work is filed against Boeing or any of its subsidiaries or affiliates, arising out of the Work and asserted against any property of Boeing or any of its subsidiaries or affiliates, or if reasonable evidence indicates the probability of a filing of any such claim;

4.8.1.4. Contractor is in default under any Contract provision;

4.8.1.5. Boeing reasonably doubts that the Work can be completed within the Contract Time; or

4.8.1.6. Contractor is in default of or owes Boeing any amount under any other contract between Boeing and Contractor.

4.8.2. Payments of Withheld Payments. Boeing will pay any payments withheld pursuant to this **Clause 4.8. (Withheld Payments)** if Contractor, as appropriate:

4.8.2.1. Pays, satisfies, or discharges any claim of Boeing, any of its subsidiaries or affiliates, any Indemnitee, or any third party that was the basis of the withholding of payment and provides documentation acceptable to Boeing certifying such payment satisfaction or discharge; and/or

4.8.2.2. Cures all defaults in its performance under the Contract.

4.9. Final Payment.

4.9.1. Final Payment Application. Upon completion of the Final Inspection and final acceptance of the Work by Boeing and after all requested and required documents have been received by the Boeing Project Administrator, Contractor shall submit an application for final payment ("Final Payment Application"). Contractor's submission of the Final Payment Application shall not be delivered to Boeing later than ninety (90) days after the date of such acceptance (or such longer period as Boeing may, in its discretion, approve in writing). This Final Payment Application shall include the following documents:

4.9.1.1. Final waivers or releases of liens by Contractor and all Subcontractors and Suppliers;

4.9.1.2. Release of surety, if any;

4.9.1.3. Affidavit of payment of state withholding taxes and sales tax; and

4.9.1.4. Any other documents required by the Boeing Administrator.

4.9.2. Payment. Within ninety-five (95) days after submittal of such Final Payment Application, Boeing shall pay to Contractor any unpaid balance of the Contract Price and any amounts that have been withheld or otherwise not paid to Contractor, subject to any withheld payments or any offsets for costs or damages.

4.9.3. Claims. No claim by Contractor, including any claims under **Clause 4.5. (Changes)** shall be allowed if asserted after final payment under the Contract, except for unresolved claims specified in the Final Payment Application in stated amounts or in estimated amounts when the amounts are not susceptible to exact statement by Contractor. Any such claim shall be limited to the amount set forth in the Final Payment Application. The deadlines for submission of claims by Contractor set forth in this **Clause 4.9. (Final Payment)** are intended to ensure prompt and efficient identification of all claims for payment, and to avoid misunderstandings between Boeing and Contractor. Contractor agrees that failure to comply with the deadline for submission of claims is prejudicial to Boeing.

4.10. Discharge of Claims.

4.10.1. Payment for Labor, Material, Equipment. Contractor shall be responsible for and shall ensure that each Subcontractor shall be responsible for all reports, payments, and other obligations relating to their respective employees, including those related to social security, income tax withholding, unemployment compensation, worker's compensation, and employee benefit plans. Contractor shall ensure that it and all Subcontractors and Suppliers are compliant with all federal, state, and local worker's compensation; unemployment compensation; and state and local tax laws. Boeing has no responsibility for withholding any portion of salary or wages due employees of Contractor or Subcontractor to comply with any of the aforementioned taxes or obligations. Contractor shall be responsible for and shall ensure that all Subcontractors and Suppliers shall be responsible for the prompt payment of all persons or entities that satisfactorily perform labor related to the Work or furnish services, Materials, Equipment, or other items (including water, gas, power, light, heat, oil, gasoline, telephone service, and rental of Equipment) used or to be used in the performance of the Work. If Contractor or any Subcontractor or any Supplier fails to so pay any such person or entity, such unpaid person or entity shall have a direct cause of action against Contractor under this Contract. If any such person or entity is not promptly paid, Boeing may, at any time after five (5) days prior notice to Contractor, pay such person or entity directly and, at Boeing's election, either deduct such payment from any amounts payable to Contractor, or receive payment from Contractor of the amount so paid by Boeing.

4.10.2. Discharge of Claims. Contractor shall promptly satisfy or discharge any claim or lien arising from or related to the performance of the Work or provision by Contractor, any Subcontractor or Supplier of labor, Equipment, or Materials used in connection with the Work that is filed against Contractor, against Boeing or any of its subsidiaries or affiliates, or against any Boeing-owned or leased property or of any of its subsidiaries or affiliates. If any such claim or lien is not promptly satisfied or discharged by Contractor after receipt of notice from Boeing to do so, Boeing may take any action needed to satisfy or discharge such claim or lien and Contractor shall be responsible for all costs incurred in connection with such satisfaction or discharge, regardless of when such claim or lien arose or whether any such claim imposed a lien on any property of Boeing or any of its subsidiaries or affiliates. The amount of such costs shall be deducted from any monies due to Contractor or, if the amount of any monies due Contractor under the Contract is insufficient to meet such costs or if any such claim or lien is satisfied or discharged by Boeing after final payment is made, Contractor or its sureties, if any, shall promptly pay Boeing the amount of such costs.

4.10.3. Boeing Right to Pay Subcontractors and Suppliers. In the event that Contractor is in Default under this Contract or has failed to pay any Subcontractor or a Supplier (as applicable) who is not in Default, Boeing may, at its option after five (5) days notice to Contractor, pay such Subcontractor(s) or Supplier(s) (as

applicable) directly and obtain partial or complete lien release(s) or lien waiver(s) from such Subcontractor(s) or Supplier(s). The amount of such payments shall be deducted from any monies due to Contractor or, if the amount of any monies due Contractor under the Contract is insufficient to meet such costs, or if any such claim or lien is satisfied or discharged by Boeing after final payment is made, Contractor or its sureties, if any, shall promptly pay Boeing the amount of any costs.

4.10.4. Release. Boeing may, as a condition precedent to any payment to Contractor, require Contractor to provide a list of all Subcontractors and Suppliers for the Work and to submit waivers and releases, satisfactory to Boeing, of any and all claims of Contractor, all Subcontractors and any other person, firm or corporation in connection with or in any way related to the performance of the Contract. Upon request, Contractor shall also furnish acceptable evidence that all such claims have been satisfied. No claim by Contractor shall be allowed if asserted after final payment under the Contract, except any claim which, with Boeing's consent, is specifically excepted from the operation of Contractor's release. Any such excepted claim shall be limited to the amount set forth in such exception.

4.11. Taxes.

In the event, the Work is subject to tax, the following provisions apply:

4.11.1. General. Unless this Contract specifies otherwise, the Contract Price includes, and Contractor is liable for and shall pay, all taxes, impositions, charges and exactions imposed on or measured by this Contract, except for applicable sales and use taxes. Applicable sales and use taxes shall be separately stated on Contractor's invoice. Contractor shall not include in the Contract Price or on the invoice any taxes, impositions, charges, or exactions for which Boeing has furnished a valid exemption certificate or other evidence of exemption.

4.11.2. Disputed Taxes. If any taxing authority assesses a tax against Contractor for which Contractor is entitled to reimbursement under this Contract, Contractor shall: (1) promptly notify Boeing; (2) provide Boeing an opportunity to review the proceedings in such tax assessment; and (3) keep Boeing fully informed as to the progress of such tax assessment. At its option, Boeing shall direct the conduct of any appeals, proceedings, hearings or litigation involved in any contest with respect to such tax assessment. If reasonably requested by Boeing, Contractor shall take such action as Boeing may direct with respect to the tax assessment and any payment by Contractor of such tax shall be made under protest, if protest is necessary and proper.

4.11.3. Recovery of Overpayment of Taxes. If overpayment is made, Contractor shall take such action as Boeing may reasonably direct to recover such payment and shall, if requested, permit Boeing in Contractor's name to file a claim or prosecute any action to recover such payment. Contractor shall cooperate with and provide reasonable assistance to Boeing in any such action.

4.12. Audit and Records Review.

4.12.1. Records.

4.12.1.1. Maintenance of Records. Contractor shall maintain accurate and detailed financial records, documents, and other evidence pertaining to (i) the amounts paid by Boeing to Contractor in connection with the Contract, allocating the total amounts paid for the Work to the various elements of the Work and (ii) the costs incurred by Contractor in connection with the Contract to such extent and in such detail as will properly reflect and fully support all costs, charges, and other amounts of any nature for which Contractor may claim reimbursement pursuant to **Clause 4.5. (Changes)** (collectively "Records"). Further, Records to be maintained shall date back to the time this Contract was issued and shall include catalogs, price lists, invoices and inventory records for purposes of verification of prices or rates charged by Contractor for Work procured by Boeing.

4.12.1.2. Audit. Upon request by Boeing, Contractor agrees to make available at all reasonable times from the date of the Contract, until the expiration of the period specified in **Clause 4.12.4. (Retention)**, all Records for inspection, audit, and reproduction by Boeing.

4.12.3. Subcontracts and Purchase Orders. Contractor shall include the requirements of **Clauses 4.12.1 (Records)**, and **4.12.1.2 (Audit)** in each subcontract and/or purchase order issued with respect to the Work, when the price for such subcontract or purchase order is fifteen thousand dollars (\$15,000) or more. All such subcontracts and purchase orders shall include the right of Boeing to audit such agreements, including all relevant records.

4.12.4. Retention. Contractor shall preserve and make available to Boeing its Records for a period of three (3) years from the date of final payment under this Contract and for such longer period, if any, as required by any other provision of this Contract or by Clauses 4.12.4.1 or 4.12.4.2 below:

4.12.4.1. If this Contract is completely or partially terminated, the Records relating to the Work shall be preserved and made available to Boeing for a period of three (3) years from the date of any resulting final settlement.

4.12.4.2. Records that relate to litigation or the settlement of claims arising out of the performance of this Contract, or cost and expenses of this Contract as to which exception has been taken by Boeing, its auditor, or its representatives, shall be retained by the Contractor until such appeals, litigations, claims, or exceptions have been fully and finally concluded.

4.13. Contractor Financial Review. If the Contract exceeds two hundred and fifty thousand dollars (\$250,000) and extends for more than one (1) year, and if requested, the Contractor shall provide financial data on a quarterly basis or as requested to the Boeing Credit Office for credit and financial condition reviews. Said data shall include but not be 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 seventy-two (72) hours of any written request. All such information shall be treated as confidential.

4.14. Risk of Loss and Damage to Property.

4.14.1. Boeing Risk of Loss.

4.14.1.1. Except as provided under Clause 4.14.2 (Contractor's Risk of Loss), Clause 4.14.3. (Contractor and Subcontractor Property), and Clause 4.14.4. (Protection of Property), to the extent the Work occurs on property owned, leased or controlled by Boeing, Boeing shall provide all-risk property insurance covering the property that is the subject of the Work, including Materials incorporated or to be incorporated therein, while such property is located at the Site. The insurance shall provide coverage for damage to or loss or destruction of such property by the perils normally covered in an all-risk policy (including fire, windstorm, explosion, riot, civil commotion, earthquake, or flood) and shall exclude those risks normally excluded from such policies (which exclusions shall include, specifically, loss or damage resulting from faulty workmanship, faulty Materials, or employee infidelity). Upon request, Boeing shall provide Contractor with a Certificate of Insurance to evidence its all-risk property insurance coverage.

4.14.1.2. Boeing shall cause its all-risk property insurers to waive all rights of subrogation against Contractor and any Subcontractor for damage to or loss or destruction of the property that is the subject of the Work including Materials incorporated or to be incorporated therein while such property is located at the Site.

4.14.1.3. In the event of a loss covered by the insurance provided by Boeing pursuant to **Clause 4.14.3. (Boeing's Risk of Loss)**, the proceeds of the insurance shall be paid to Boeing. Boeing shall distribute the proceeds of the insurance to Contractor, any Subcontractor, or other parties as their respective interests may appear. Boeing shall have the exclusive right to adjust and settle any loss with the insurers, and any settlement shall be binding on all interested parties.

4.14.1.4. Contractor shall immediately notify Boeing of any damage to or loss or destruction of the property that is the subject of Work including Materials incorporated or to be incorporated therein. Contractor shall protect such property from further damage; separate damaged and undamaged property; prepare a report for Boeing as to the cause of loss, damage, or destruction; assist Boeing in accounting for damages in preparation of a claim under the insurance policies provided by Boeing pursuant to **Clause 4.14.1. (Boeing Risk of Loss)**; and cooperate with Boeing in the settlement of such claim.

4.14.2. Contractor's Risk of Loss.

4.14.2.1. Except as provided under **Clause 4.14.1. (Boeing Risk of Loss)**, Contractor shall bear the risk of any loss or destruction of or damage to the property that is the subject of the Work or any Materials incorporated or to be incorporated therein until the completion of the Work or any portion of the Work and its final acceptance by Boeing.

4.14.2.2. Notwithstanding the provisions of **Clause 4.14.1. (Boeing Risk of Loss)**, Contractor shall, at Contractor's sole expense, be responsible for the first twenty-five thousand dollars (\$25,000) of the replacement cost for any loss or destruction of or damage to the property that is the subject of the Work including Materials incorporated or to be incorporated therein when such loss, damage, or destruction is attributable to the fault, negligence, or failure to properly safeguard such property by Contractor or any Subcontractor.

4.14.2.3. Notwithstanding the provisions of **Clause 4.14.1. (Boeing Risk of Loss)**, Contractor assumes and shall ensure that all Subcontractors and all employees of Contractor and Subcontractors assume the risk of loss or destruction of or damage to any property of such parties (including personal property, construction machinery, Equipment, scaffolding, or temporary or portable buildings), whether owned, hired, rented, borrowed, or otherwise, used at any time in connection with the performance of the Work. Contractor waives and shall ensure that all Subcontractors and all employees of Contractor and Subcontractors waive all rights of recovery against Boeing; its subsidiaries; and their respective directors, officers, agents, and employees for any such loss, disappearance, destruction of or damage to any property of such parties. Contractor and any Subcontractor shall cause their respective property insurers to waive all rights of subrogation against Boeing; its subsidiaries; and their respective directors, officers, agents, and employees.

4.14.3. Protection of Property.

4.14.3.1. At all times Contractor shall ensure that it and its Subcontractors use suitable precautions to prevent loss or destruction of or damage to Boeing property that is not the subject of the Work and to the property of third parties, including any governmental agency or Authority. If any such property is lost, destroyed, or damaged by the fault, negligence, or failure to properly safeguard such property by Contractor or any Subcontractor, or their respective employees, Contractor shall, at no cost to Boeing, (a) promptly and equitably reimburse the owner of such property for such loss, destruction, or damage or (b) repair or otherwise make good the same to the owner's satisfaction. If Contractor fails to do so, Boeing may do so and recover the cost from Contractor.

4.14.3.2. Notwithstanding the provisions of **Clause 4.14.3. (Protection of Property)**, if property insurance compensates Boeing for the loss, damage, or destruction of property referred to in herein, Contractor's liability under the Contract for loss or destruction of, or damage to, Boeing property which is not the subject of the Work (including property listed on the Property Accountability List as applicable) shall be limited to ten percent (10%) of the Contract Price or five million dollars (\$5,000,000), whichever is greater.

4.15. Responsibility for Damages.

4.15.1. Indemnification - Negligence of Contractor or Subcontractor. Contractor shall defend, indemnify, and hold harmless The Boeing Company, its subsidiaries, and their respective directors, officers, employees, and agents (hereinafter referred to as "Indemnitees") from and against all actions, causes of action, liabilities, claims, suits, judgments, liens, awards, and damages of any kind and nature whatsoever for property damage, personal injury, or death (including injury to or death of employees of Contractor or any Subcontractor) and expenses, costs of litigation and counsel fees, or incident to establishing the right to indemnification arising out of or in any way related to the Contract or the performance by Contractor, Subcontractor, or other third parties, including the provision of services, personnel, facilities, Materials, Equipment, support, supervision, or review. The foregoing indemnity shall apply only to the extent of the Contractor's or any Subcontractor's negligence and shall not apply to the sole negligence of the Indemnitees. After mutual negotiation of the parties, Contractor expressly waives any immunity under industrial insurance, whether arising out of statute or any other source, to the extent of the indemnity set forth in this **Clause 4.15.1. (Indemnification – Negligence of Contractor or Subcontractor)**.

4.15.2. RESERVED

4.15.3. RESERVED

4.15.4. No Limit. In no event shall Contractor's obligations under this Contract, including this **Clause 4.15. (Responsibility for Damages)**, be limited to the extent of any insurance available to or provided by Contractor.

4.16. Contractor's Insurance.

4.16.1. Commercial General Liability. Throughout the period when Work is performed and until final acceptance by Boeing, Contractor shall carry and maintain Commercial General Liability insurance with available limits of not less than two million dollars (\$2,000,000) per occurrence for bodily injury, including death, and property damage combined. Contractor shall ensure that all Subcontractors carry and maintain Commercial General Liability insurance with available limits of not less than one million dollars (\$1,000,000) per occurrence for bodily injury, including death, and property damage combined. Such per occurrence limits of insurance may be satisfied through a combination of "primary" and "umbrella" or "excess" policies. Such insurance shall be in an occurrence form, with insurers reasonably acceptable to Boeing, and contain coverage for all premises and operations, broad form property damage, contractual liability (including that specifically assumed under **Clause 4.15.1. (Indemnification, Performance of Contractor or Subcontractor)**) and products and completed operations coverage with limits of not less than one million dollars (\$1,000,000) per occurrence. Such insurance shall not exclude explosion, collapse, or underground excavation (XCU). Such insurance shall not be maintained on a per project basis unless the respective Contractor or Subcontractor does not otherwise maintain blanket coverage. Any policy that provides the insurance required under this **Clause 4.16. (Contractor's Insurance)**. shall:

4.16.1.1. Be endorsed to name "The Boeing Company, its subsidiaries, and their respective directors, officers, agents, and employees" as additional insured (hereinafter "Additional Insured") with respect to liability arising

out of Work performed by Contractor, or Subcontractor, as applicable (ISO 20 10 Form B, or equivalent reservation, or qualification);

4.16.1.2. Be endorsed to be primary to and noncontributory with any insurance maintained by The Boeing Company;

4.16.1.3. Provide a waiver of any rights of subrogation against the Additional Insured; and

4.16.1.4. Contain a severability of interest provision in favor of the Additional Insured.

4.16.2. RESERVED.

4.16.3. RESERVED.

4.16.4. RESERVED.

4.16.5. Automobile Liability. If licensed vehicles will be used in connection with the performance of the Work, Contractor shall carry and maintain, and ensure that any Subcontractor 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 Boeing, Business Automobile Liability insurance covering all vehicles, whether owned, hired, rented, borrowed, or otherwise, with limits of liability of not less than one million dollars (\$1,000,000) per occurrence combined single limit for bodily injury, death, and property damage.

4.16.6. Workers' Compensation and Employers Liability.

4.16.6.1. Workers' Compensation. Throughout the period when Work is performed and until final acceptance by Boeing, Contractor shall, and ensure that all Subcontractors shall, cover or maintain insurance in accordance with the applicable laws relating to workers' compensation with respect to all of their respective employees working on or about the Site, regardless of whether such coverage or insurance is mandatory or merely elective under the law.

4.16.6.2. Employers Liability. Throughout the period when Work is performed and until final acceptance by Boeing, Contractor shall carry and maintain, and ensure that all Subcontractors carry and maintain Employers Liability coverage with limits of not less than one million dollars (\$1,000,000) per accident. To the extent permitted by law, any policy that provides the insurance required by this **Clause 4.16.6. (Workers' Compensation and Employers Liability)** shall contain a waiver of rights of subrogation against The Boeing Company, its subsidiaries, and their respective directors, officers, agents and employees.

4.16.6.3. Federal Longshoreman and Harbor Workers Act. If this Contract involves maritime work, Contractor shall provide, and ensure that all Subcontractors provide, if required by law, insurance to meet the requirements of the Federal Longshoreman and Harbor workers Act or Federal Maritime Employers Liability Law (Jones Act).

4.16.6.4. Worker's Compensation Payments. If Boeing is required by any applicable law to pay any workers' compensation premiums with respect to an employee of Contractor or any Subcontractor, Contractor shall reimburse Boeing for such payment.

4.16.7. Certificates of Insurance.

4.16.7.1. Prior to commencing the Work, Contractor shall provide for Boeing review and approval Certificates of Insurance reflecting the specific contract and full compliance with the requirements set forth in **Clauses 4.16.1. (Commercial General Liability); Clause 4.16.5. (Automobile Liability); and Clause 4.16.6.**

(Workers' Compensation and Employers Liability). The certificates shall be kept current and in compliance throughout the period when Work is being performed and until final acceptance of the Work by Boeing and shall provide for thirty (30) days' advance written notice to Boeing in the event of cancellation or material change adversely affecting compliance with the foregoing requirements. Any policy or policies providing any of the insurance required under this **Clause 4.16. (Contractor's Insurance)** may be inspected by Boeing on request. Conformed copies of specific policy endorsements required under this **Clause 4.16. (Contractor's Insurance)** shall be provided to Boeing on request. Failure of Contractor or any Subcontractor thereof to furnish Certificates of Insurance or to procure and maintain the required insurance, or failure of Boeing to request such certificates, endorsements, or other proof of coverage, shall not constitute a waiver of the respective Contractor's or Subcontractor's obligations.

4.16.7.2. In jurisdictions requiring mandatory participation in a monopolistic state workers' compensation fund, or if Contractor or Subcontractor self-insures, the insurance certificate requirements for the coverage required under **Clause 4.16.6. (Workers' Compensation and Employers Liability)** will be satisfied by a letter from the appropriate state agency confirming participation in accordance with statutory requirements.

4.16.8. Self Assumption. Any self-insured retention, deductibles, and exclusions in coverage in the policies required under this **Clause 4.16. (Contractor's Insurance)** shall be assumed by, for the account of, and at the sole risk of Contractor or the Subcontractor that provides the insurance and, to the extent applicable, shall be paid by such Contractor or Subcontractor. In no event shall the liability of Contractor or any Subcontractor be limited to the extent of any of the minimum limits of insurance required under this **Clause 4.16. (Contractor's Insurance)**.

4.16.9. Reputable Insurance Companies. Any insurance required by this Contract shall be placed with an insurer or insurers of good repute and with a financial rating of not lower than Standard & Poor's BBB, Moody's Baa without Boeing's consent. Boeing shall be entitled at its sole discretion to refuse the placement of the insurance with any insurer notwithstanding that such insurer would otherwise satisfy the requirements of this Clause.

4.17. Delays.

4.17.1. Notice. Contractor shall notify Boeing in writing within three (3) days, or as otherwise agreed to by Boeing, upon discovery of any events, facts, and circumstances that may result in a delay in performance or failure to perform any of the Work for any cause.

4.17.2. Excusable Delays. Neither Party shall be deemed to be in default hereunder by reason of any delay in performance or failure to perform the Work pursuant to the Contract (including any failure by Contractor to make progress in the prosecution of the Work or any suspension by Boeing) if such delay or failure arises out of unforeseeable causes beyond the control and without the fault or negligence of the Party claiming Excusable Delay. The Party claiming Excusable Delay shall give notice and details to the other Party of the Excusable Delay, the length of time it is expected to continue and efforts (planned or underway) to overcome the effects of the event. At the request of Contractor, Boeing shall review the facts and extent of any delay in performance or failure to perform the Work pursuant to the Contract and, if such delay or failure was occasioned by an Excusable Delay, Contractor may seek an equitable adjustment, if appropriate, of the Contract Time and the Contract Price, in accordance **Clause 4.18.3. (Claims Resulting from Delays)** below, and the Contract shall be modified in writing accordingly.

4.17.3. Claims Resulting From Delays.

4.17.3.1. Pursuant to the procedures outline in **Clause 4.5. (Changes)**, Contractor may submit a claim to Boeing for equitable adjustments in the Contract Time and Contract Price, if appropriate, caused by a delay. Boeing shall review the facts and extent of any delay in performance or failure to perform the Work due to such delay. If a delay is substantially caused by Boeing actions or inactions (but not including a suspension pursuant to **Clause 4.18. (Suspension)**), Boeing may make, if appropriate, an equitable adjustment to the Contract Time and/or Contract Price to compensate Contractor for harm caused by such delay. If a delay was occasioned by an Excusable Delay, Boeing may, if appropriate, adjust the Contract Time. Boeing also may consider at its sole option an equitable adjustment to the Contract Price to mitigate the harm to Contractor as the result of the Excusable Delay. The Contract shall be modified in writing to incorporate any agreed to changes to the Contract Time or Contract Price resulting from a delay. In addition, at the sole option of Boeing, Boeing may require Contractor to accelerate the Work affected by the delay and adjust the Contract Price, as appropriate.

4.17.3.2. Except as provided above in **Clause 4.17.3.1.** above, the Contractor shall not recover any amounts from Boeing for delay in performance of the Work. If the delay is caused by anyone other than Boeing or persons acting for Boeing, the Contractor may not seek delay damages from Boeing and Boeing shall not be included as a party to any proceeding, whether in arbitration or litigation, in which the Contractor or any other contractor seeks damages directly or indirectly from one or more third parties allegedly responsible for such delay.

4.17.3.3. The Contractor shall not, as a result of delays from any cause, be entitled to damages arising out of actual or alleged loss of efficiency, morale, fatigue, attitude, or labor rhythm; constructive acceleration; home office overhead; expected under run; trade stacking; reassignment of workers; concurrent operations; cumulative impact; dilution of supervision; learning curve; logistics; ripple; season change; extended overhead; profit on damages for delay; impact damages; or similar damages.

4.18. Suspension.

4.18.1. Option to Suspend Work. Boeing may, at its option, at any time and without notice to any sureties, suspend the performance of all or any portion of Work. Boeing will give Contractor notice of any such suspension, including Boeing estimate of the duration of such suspension. During the period of suspension, Contractor shall use its best efforts to utilize its labor, Equipment and construction plant in such a manner so as to minimize costs associated with such suspension.

4.18.2. Contractor's Obligations. On receipt of any notice of suspension of all or any portion of the Work, Contractor shall, unless such notice requires otherwise:

4.18.2.1. Immediately discontinue the Work on the date and to the extent specified in such notice;

4.18.2.2. Place no further purchase orders or subcontracts for Materials, services, or facilities with respect to the suspended Work except to the extent required in such notice;

4.18.2.3. Promptly make every reasonable effort to obtain suspension, with terms satisfactory to Boeing, of all purchase orders, subcontracts, and rental agreements to the extent that they relate to performance of the suspended Work;

4.18.2.4. Provide the construction plant, labor, and Equipment needed to take any action that Boeing determines is appropriate to protect the Work (including partially completed portions of the Work and Materials to be incorporated in the Work) from deterioration;

4.18.2.5. Continue to protect and maintain the Work, including those portions of the Work that have been suspended; and

4.18.2.6. Designate an authorized representative, acceptable to Boeing, who may be contacted for any emergency work that may be required.

4.18.3. Compensation for Suspension. Unless the suspension is the result of Excusable Delay, Contractor may be eligible for compensation for any suspension of all or any portion of the Work only if the suspension (1) is not due to the fault or negligence of Contractor or any Subcontractor or Supplier and (2) is not due to Contractor's failure to comply with the requirements of the Contract Documents. As full compensation for any suspension for which Contractor is entitled to compensation, Contractor will be reimbursed for the following costs, reasonably incurred, without duplication of any item, to the extent that such costs directly result from such suspension of the Work:

4.18.3.1. If Boeing agrees in advance, a standby charge to be paid to Contractor during the period of suspension of Work, to compensate Contractor for keeping its organization and Equipment committed to the Work in a standby status to the extent required and pursuant to the suspension notice;

4.18.3.2. All reasonable costs associated with mobilization and demobilization of Contractor's labor, Equipment, and construction plant;

4.18.3.3. An equitable amount to reimburse Contractor for the costs incurred by Contractor in performing its obligations under **Clauses 4.18.2.3., 4.18.2.4. and 4.18.2.5.;** and

4.18.3.4. If as a result of the suspension of the Work, Contractor's cost of or time required to subsequently perform the Work is increased or decreased, an adjustment pursuant to **Clause 4.5. (Changes)** may be made in the Contract Price and/or the Contract Time for the remaining portion of the Work, as appropriate.

4.18.4. Resumption of Work. On receipt of notice from Boeing to resume the suspended Work, Contractor shall immediately resume performance of the suspended Work to the extent required in such notice. Any claim by Contractor for an increase in the Contract Price or an extension of the Contract Time shall be made to Boeing in writing pursuant to **Clause 4.5. (Changes)** within fourteen (14) days after Contractor's receipt of the notice to resume the Work. Any such claim shall be accompanied by sufficient detail to justify such claim as provided in **Clause 4.5. (Changes)** and also shall be accompanied by the Schedule, revised by Contractor to reflect the suspension, for Boeing review and approval.

4.19. Dispute Resolution Process.

4.19.1. If any question, dispute, or difference (the "Matter in Dispute") arises between Contractor and Boeing in relation to the Contract that cannot be settled by agreement between the Parties within thirty (30) days of one Party notifying the other Party of the Matter in Dispute, either Party may give the other written notice of the Matter in Dispute, specifying its nature and specifying the steps that the Party giving notice considers need to be taken to resolve the Matter in Dispute. The Parties agree to use reasonable efforts to resolve any dispute arising out of the Contract through meeting of their Authorized Representatives within thirty (30) days after receipt of such notice. If the Parties are unable to resolve the dispute at this level within the thirty (30)-day period, either Party may escalate the dispute to its executives. If the executive-level meeting fails to resolve the Matter in Dispute, either party may request non-binding mediation or, without further notice, pursue other available remedies, including legal proceedings, in order to resolve the Matter in Dispute. Any dispute that arises under or is related to this Contract that cannot be settled by mutual agreement of the Parties may be decided by a court of

competent jurisdiction in accordance with **Clause 4.20. (Governing Law and Venue)**. Pending final resolution of any dispute, the parties will proceed with their respective performance obligations under the Contract.

4.19.2. Negotiations undertaken pursuant to this **Clause 4.19. (Dispute Resolution Process)** will be deemed confidential settlement discussions. Nothing said by a party nor any position taken during the course of the negotiations will be introduced as evidence by the opposing party in any litigation concerning the same or related transactions or Matter in Dispute.

4.19.3. The rights and remedies of either party set forth in any provision of the Contract shall not limit any other rights or remedies afforded to such party by any other provision of this Contract or by applicable law, including but not limited to injunctive relief.

4.20. Governing Law and Venue. Unless otherwise indicated in a supplement to the Contract: (i) this Contract shall be construed in accordance with, and governed by, the laws of the State of Washington; provided, however, that Washington law relating to conflict of laws shall not apply, and, in the event of any actual or alleged conflict of laws, Washington law shall apply and govern; and (ii) any lawsuits arising under this Contract shall be instituted in the federal or state courts of Washington and each party hereby irrevocably submits to the *in personam* jurisdiction of such courts.

4.21. Default.

4.21.1. Events of Default. The following will constitute an Event of Default under the Contract:

4.21.1.1. Contractor becomes insolvent or unable to meet its payroll or other current obligations or is adjudicated bankrupt or has an involuntary petition in bankruptcy filed against it or makes an assignment for benefit of creditors, files a petition for an arrangement, composition, or compromise with its creditors under any applicable laws or has a trustee or other officer appointed to take charge of its assets;

4.21.1.2. Contractor assigns all or any part of the Contract, in violation of the provisions of **Clause 4.26 (Assignments; Third Party Beneficiaries)**;

4.21.1.3. Contractor abandons all or any portion of the Work and such abandonment is not the result of Excusable Delay;

4.21.1.4. Boeing determines that the Work is not being performed with such diligence as will ensure its completion within the Contract Time and/or the Schedule and such failure is not the result of Excusable Delay;

4.21.1.5. Boeing determines that Contractor is not performing the Work in accordance with the material terms of the Contract or is performing the Work in bad faith or in a manner unacceptable to Boeing;

4.21.1.6. Contractor fails to supply a sufficient number of properly skilled workers or proper Materials to perform the Work in a timely manner and such failure is not the result of Excusable Delay;

4.21.1.7. Contractor fails to make prompt payment due to Subcontractors or Suppliers;

4.21.1.8. Contractor disregards applicable laws, ordinances, statutes, rules, regulations, or orders of any public authority having jurisdiction;

4.21.1.9. Boeing determines that Contractor has otherwise failed to perform any of its obligations under the Contract Documents and such failure is not the result of Excusable Delay; and

4.21.1.10. Contractor fails to perform any Work in compliance with the Site Specific Health and Safety Plan.

4.21.2. Right to Cure. If Boeing determines that an Event of Default under **Clauses 4.21.1.3. through 4.21.1.10.** above has occurred and is continuing, Boeing will give Contractor notice thereof. Contractor shall have the right to cure any such default within five (5) days of receipt of such notice, or if such default cannot be cured within five (5) days, to commence the cure within five (5) days and thereafter diligently proceed to complete the cure. (Boeing in its sole discretion shall determine whether the Contractor is not diligently proceeding to complete the cure of the default.) If a Default has occurred and not been cured, Boeing shall have the right (but not the obligation), to withhold any amounts due under the Contract (without notice to Contractor's sureties, if any) until the Default has been cured, or withhold any amounts due under the Contract and terminate the Contract as to all or any portion of the uncompleted Work. Boeing will not be required to obtain bids or proposals for the completion of any terminated Work. Boeing shall have the right to make any expenditures that Boeing determines, in its sole discretion, will best complete the terminated Work.

4.21.3. Rights and Remedies.

4.21.3.1. Whether or not this Contract is terminated for Default, Contractor shall be liable to, shall reimburse Boeing for, and will otherwise be responsible for any damages or loss suffered by Boeing arising out of or connected to such Default. Such damages and loss include all expenses incurred by Boeing related to the completion of the terminated Work (in excess of the cost of Contractor's performance of such Work), together with a reasonable charge by Boeing for administering any contract for the completion of the terminated Work, delay damages paid or incurred by Boeing, and reasonable attorney fees. The amount of such expenses and an administrative charge shall be deducted by Boeing from any amounts due to Contractor under the Contract. In the event the amount of such expenses and administrative charge exceed any amount due to Contractor under the Contract, Contractor and its sureties, if any, shall be liable for and, on notice from Boeing, shall promptly pay the amount of such excess to Boeing.

4.21.3.2. In the event of any termination pursuant to **Clause 4.21. (Default):**

4.21.3.2.1. Contractor shall have no right to receive any payment related to the terminated Work;

4.21.3.2.2. Boeing shall have the right to complete the terminated Work by whatever method Boeing may deem expedient, including without limitation, by employing another contractor under such form of contract as Boeing may deem advisable or by having Boeing provide the labor and Materials and performing such Work; and

4.21.3.2.3. Boeing shall have the right to take possession of and to use any or all of the Materials, Equipment, construction plant, and property of any kind furnished by Contractor for such Work.

4.21.3.3. The rights and remedies of Boeing provided herein are cumulative with and in addition to any other rights and remedies provided by law or this Contract.

4.21.4. Wrongful Termination for Default. In the event Boeing terminates all or any portion of the Work pursuant to this **Clause 4.21. (Default)** and it is determined that termination was not appropriate under such Clause, such termination will be deemed to be a termination for convenience under **Clause 4.22. (Termination for Convenience)**, and the provisions of **Clause 4.22. (Termination for Convenience)** shall exclusively apply.

4.22. Termination for Convenience. Boeing may, at its option at any time and for any or no reason, terminate the Contract as to all or any portion of the uncompleted Work ("Termination for Convenience"). Contractor's sole right, in the event of any such termination, shall be receipt of payment from Boeing pursuant to **Clause 4.25. (Termination Payment)**. In no event shall Boeing be obligated to pay the Contractor any amount in excess of the Contract Price. Contractor hereby waives any claim for damages, including

consequential damages and loss of reputation and anticipated profits, on account of any termination for convenience. The provisions of this **Clause 4.22. (Termination for Convenience)** shall not limit or affect the right of Boeing to cancel this Contract for default.

4.23. Notice of Termination. In the event Boeing elects to terminate all or any portion of the Work pursuant to **Clause 4.21. (Default)** or **Clause 4.22. (Termination for Convenience)**, Boeing shall provide Notice of Termination to Contractor that will specify whether the termination is under **Clause 4.21. (Default)** or **Clause 4.22. (Termination for Convenience)**, the extent to which the Work is terminated, and the effective date of the termination ("Notice of Termination").

4.24. Contractor's Termination Obligation.

4.24.1. Contractor's Obligations. On receipt of a Notice of Termination under **Clause 4.21. (Default)** or under **Clause 4.22. (Termination for Convenience)**, Contractor shall, unless such notice requires otherwise:

4.24.1.1. Immediately cease performing the terminated Work on the date specified in such notice;

4.24.1.2. Place no further purchase orders or subcontracts for Materials, services, or facilities for terminated Work;

4.24.1.3. Promptly take all reasonable actions to obtain cancellation of all purchase orders and subcontracts, with terms acceptable to Boeing, to the extent they relate to the performance of the terminated Work, other than those that Boeing directs should be assigned to Boeing;

4.24.1.4. Assign to Boeing in the manner, at the times, and to the extent directed by Boeing, all of the rights, titles, and interests of Contractor under all purchase orders and subcontracts, in which case Boeing shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such purchase orders and subcontracts;

4.24.1.5. With the approval or ratification by Boeing, settle all outstanding liabilities and all claims arising out of the termination of purchase orders and subcontracts not assigned to Boeing, the cost of which would be reimbursable in whole or in part, in accordance with the provisions of this Contract;

4.24.1.6. Assist Boeing in inventorying all Materials and Equipment for such terminated Work that are in storage at the Site, in route to the Site, in storage or manufacture away from the Site, or on order from a Supplier;

4.24.1.7. Remove from the Site all Materials, Equipment, and construction plant listed in the inventory other than such Materials, Equipment, and construction plant that are designated in writing by Boeing to be used by Boeing in completing such Work;

4.24.1.8. Transfer title and deliver to Boeing in the manner, at the times, and to the extent directed by Boeing:

4.24.1.8.1. The fabricated or non-fabricated parts of the Work, Work in process, completed Work, supplies, and other materials produced as a part of or acquired in connection with the performance of the terminated Work; and

4.24.1.8.2. The completed or partially completed plans, drawings, documents, and any other information that, if the terminated Work had been completed, would have been furnished to Boeing.

4.24.1.9. Assist Boeing, as specifically requested in writing, in the maintenance, protection and disposition of property acquired by Boeing under the Contract;

4.24.1.10. If requested by Boeing, use its best efforts to sell in the manner, at the times, to the extent, and at the price or prices directed or authorized by Boeing, any of the property referred to in **item 4.24.1.6.** above; provided, however, that Contractor:

4.24.1.10.1. shall not be required to extend credit to any purchaser; and

4.24.1.10.2. may acquire any such property under the conditions prescribed and at a price; or prices approved by Boeing; and provided further that the proceeds of any such transfer or disposition, at Boeing election, shall be applied to reduce any payments to be made by Boeing to Contractor under the Contract, or shall be otherwise credited to the price or cost of the Work, or shall be paid in such other manner as Boeing may direct;

4.24.1.11. Complete performance of any portion of the Work that has not been terminated; and

4.24.1.12. Take such action as may be necessary, or as Boeing may direct, for the protection and preservation of the property related to this Contract that is in the possession of Contractor and in which Boeing has or may acquire an interest.

Contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the amounts paid or payable with respect to the Contract Price under **Clause 4.25. (Termination Payment)** .

4.24.2. Contractor's Termination Claim. After receipt of a Notice of Termination, Contractor shall submit to Boeing its termination claim in the form and with the certification prescribed by Boeing. Such claim shall be submitted promptly but in no event later than sixty (60) days after the effective date of termination. If Contractor fails to submit its termination claim within the time allowed, Boeing may determine, on the basis of the information available to it, the amount, if any, due Contractor by reason of the termination. Such determination shall be final and conclusively binding on Contractor. Promptly after any such determination, Boeing shall pay to Contractor the amount so determined.

4.25. Termination Payment.

4.25.1. Agreed Termination Payment. Subject to the provisions of **Clause 4.25.2. (Alternative to Agreed Termination Payment)**, Contractor and Boeing may agree on the whole or any part of the amount or amounts to be paid to Contractor, if any, by reason of a termination of Work pursuant to **Clause 4.21. (Default)** or **Clause 4.22. (Termination for Convenience)**. Upon such agreement, the Contract shall be amended accordingly, and Contractor shall be paid the agreed amount.

4.25.2. Alternative to Agreed Termination Payment. In the event Contractor and Boeing fail to agree, in whole or in part, as provided in **Clause 4.25.1. (Agreed Termination Payment)**, on the amount to be paid to Contractor, if any, in connection with a termination of Work pursuant to **Clause 4.21. (Default)** or **Clause 4.22. (Termination for Convenience)**, Boeing shall determine the amount due Contractor for such termination in accordance with the provisions of **Clause 4.25.2.1.** or **Clause 4.25.2.2.** below, as applicable. Payment to Contractor of such amount, less any amount withheld or reimbursable to Boeing pursuant to the Contract (including any amounts owed by Contractor to Boeing pursuant to **Clause 4.21. (Default)**), shall be deemed to satisfy the liability of Boeing to Contractor by reason of the termination.

4.25.2.1. For a termination under **Clause 4.21 (Default)**, the termination payment shall consist of the following, without duplication:

4.25.2.1.1. All compensation payable to Contractor under the provisions of the Contract, not previously paid to Contractor, for the satisfactory performance of portions of the Work before the effective date of the Notice of

Termination and any such costs allowable under the Contract as may continue for a reasonable time thereafter with the approval of or as directed by Boeing; provided, however, Contractor shall proceed as rapidly as practicable to discontinue such costs;

4.25.2.1.2. To the extent not included in payments previously made or in payments made pursuant to **Clause 4.25.2.1.1.** above, the cost of settling and paying claims arising out of the termination of Work under subcontracts or purchase orders, as provided in **Clause 4.25.1.3.**, which are properly chargeable to the terminated portion of the Contract; and

4.25.2.1.3. Reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of inventory for the terminated Work. If the termination payment amount determined under this **Clause 4.25.2.1.** is less than the total payment theretofore made to Contractor for the terminated Work, Contractor shall promptly repay to Boeing the excess amount.

4.25.2.2. For a termination under **Clause 4.22. (Termination for Convenience)**, the termination payment amount shall consist of the following, without duplication:

4.25.2.2.2. To the extent not included in payments previously made or in payments made pursuant to **Clause 4.25.2.1.** above, an amount that is reasonable under all the circumstances, as profit, for all Work performed in accordance with the requirements of the Contract.

4.25.3. Deduction From Termination Payment. There shall be deducted from the amount of any termination payment due Contractor pursuant to this **Clause 4.25. (Termination Payment)** (i) all payments theretofore made to Contractor, applicable to the terminated portion of the Contract; (ii) the amount of any claim, as estimated by Boeing, that Boeing may have against Contractor in connection with the Contract; and (iii) the agreed price for or the proceeds of sale of any Materials, supplies, or other things related to the terminated Work that were acquired by Contractor or sold pursuant to the provisions of **Clause 4.24. (Contractor's Termination Obligations)** and not otherwise recovered by or credited to Boeing.

4.25.4. Limitations on Termination Payments. Contractor shall not be entitled to be paid or credited for any termination an amount in excess of Contractor's actual reasonable costs occasioned by such termination plus the total compensation otherwise payable under this Contract reduced by the aggregate amounts of all compensation paid to Contractor under this Contract and further reduced by that portion of the total compensation under this Contract that is allocable to the Work with regard to which this Contract is not so terminated. Further, Contractor shall not be entitled to:

4.25.4.1. Any anticipated fee or profit on any unperformed Work as to which this Contract is terminated;

4.25.4.2. Any allowance for fee or profit, overhead, under use of facilities, or indirect costs related to unperformed Work as to which this Contract is terminated;

4.25.4.3. Any reallocation of cost, overhead, or profit;

4.25.4.4. Any increase in compensation for the Work as to which this Contract is not terminated;

4.25.4.5. Any compensation for equipment, components, parts, Materials, supplies, goods, or other items not purchased by Contractor specifically for performance of this Contract; or

4.25.4.6. Any other incidental, consequential, or punitive damages.

4.25.5. Partial Termination. In the event of a partial termination under **Clause 4.21. (Default)** or **Clause 4.22. (Termination for Convenience)**, the portion of the cost which is payable with respect to the Work not

terminated shall be adjusted by agreement between Contractor and Boeing and such adjustment shall be evidenced by an amendment to the Contract.

4.26. Assignments; Third Party Beneficiaries.

4.26.1. Assignment of Monies Due. Contractor may, but only with prior written consent by Boeing, assign monies due or to become due to Contractor under the Contract, and such assignment will be recognized by Boeing, provided written notice is given to Boeing at least sixty (60) days before payment is due. Any assignment of monies shall be subject to all proper off-set in favor of Boeing and to all deductions provided for in the Contract. Boeing may use all money it has withheld, whether or not the subject of an assignment by Contractor, for the completion of the Work in the event Contractor should be in default under the Contract or for the payment of damages, claims, or liens.

4.26.2. Other Assignments. Except as authorized under **Clause 4.26.1. (Assignment of Monies Due)**, Contractor shall not assign or transfer any of its rights under or interest in this Contract or subcontract all or substantially all of its performance of this Contract without prior written consent by Boeing. Contractor shall not delegate any of its duties or obligations under this Contract. No assignment, delegation, or subcontracting by Contractor, with or without the consent of Boeing, shall relieve Contractor of any of its obligations under this Contract or prejudice any of the rights of Boeing Contractor whether arising before or after the date of any assignment. Boeing may assign any of its rights and obligations arising under the Contract.

4.26.3. Third Party Beneficiaries. Except as provided in **Clause 4.26.1 (Assignment of Monies Due)** above, nothing in this Contract shall be construed to give any rights or benefits in the Contract to anyone other than Boeing and Contractor, and all duties and responsibilities undertaken pursuant to this Contract will be for the sole and exclusive benefit of Boeing and Contractor and not for the benefit of any other party.

4.27. Notices. Any notice provided with respect to the Contract shall be in writing. Notices shall be submitted to the Boeing Authorized Purchasing Representative when Boeing is the recipient and to Contractor's Representative when Contractor is the recipient. Notices may be delivered either personally to the authorized representative of the recipient party or by first class mail, facsimile, or electronic mail to such applicable address or facsimile number as the recipient has indicated in the applicable Contract Form, or otherwise indicated in writing, to the other party. The date on which any such notice by personal delivery or first class mail is so delivered shall be deemed to be the effective date of the notice. Notice by electronic mail and notice by facsimile shall be deemed to be received on the business day following the day on which such notice is sent.

4.28. Offset Credits.

4.28.1. To the exclusion of all others, Boeing or its assignees shall be entitled to all industrial benefits or offset credits which might result from this Contract. Contractor shall provide documentation or information which Boeing or its assignees may reasonably request to substantiate claims for industrial benefits or offset credits.

4.28.2. Contractor agrees to use reasonable efforts to identify the foreign content of goods or services which Contractor either produces itself or procures from Subcontractors or Suppliers for Work directly related to this Contract. Promptly after selection of a non-U.S. Subcontractor or Supplier for Work under this Contract, Contractor shall notify Boeing of the name, address, Subcontractor and Supplier point of contact (including telephone number) and dollar value of the subcontract and purchase order.

4.29. Joint Effort. This Contract shall be considered for all purposes as prepared by the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof

4.30. Words and Phrases. Unless otherwise stated in the Contract Documents, the Contract shall be interpreted in accordance with the plain and ordinary meaning of the language and in accordance with the customs and practices of the industry. In addition, the words and phrases listed below shall be interpreted as follows:

4.30.1. Where the words "as shown," "as detailed," "as indicated," or words of like import are used in the Contract, these references refer to the Work Product, Contract Drawings or Technical Specifications unless the context clearly indicates a different meaning;

4.30.2. Where the words "by others" or the acronym "NIC" (not in contract) appear in the Contract, the reference, unless the context clearly indicates otherwise, refers to work not covered by the Contract that is to be done by parties other than the Contractor or its Subcontractors and Suppliers;

4.30.3. In the event the applicable pricing exhibit states a fixed price, wherever the Contract provides that the Work is "at its expense" or "without charge" or that certain Work "will not be paid for separately," such quoted words mean that the Contractor shall be solely responsible for the cost of such Work and effects arising from it and shall not be reimbursed for such Work under this Contract;

4.30.4. In the interest of brevity, the Contract Documents may omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement;

4.30.5. Where the word "including" is used in the Contract, it means "including but not limited to" or "including without limitation;"

4.30.6. The titles and division of the Work Products, Contract Drawings Technical Specifications by trades or other classifications are for convenience only. The fact that any part of the Work should or could properly have been shown or specified under some other title or division shall not relieve the Contractor of its obligation to perform such Work and shall not entitle the Contractor to any adjustment in the Contract Price or the Contract Time;

4.30.7. Clause and Paragraph headings and titles in the Contract Documents have been included in the Contract solely for convenience of reference and shall not affect the meaning or interpretation of the Contract; and

4.30.8. Any word contained in the text of this Contract shall be read as the singular or the plural and as the masculine, feminine or neuter gender as may be applicable in the particular context.

4.31. Incorporation by Reference. The Exhibits referred to herein and attached hereto are hereby incorporated herein by reference thereto.

4.32. Waiver. None of the provisions of the Contract shall be considered waived by either Party unless such waiver is given in writing. No such waiver shall be a waiver of any past or future default, breach, or modification of any of the provisions of the Contract unless expressly stipulated in such waiver. If any provision of the Contract is or becomes void or unenforceable by force of law, the remainder shall remain valid and enforceable.

4.33. Severability. If any portion of this Contract is held by any court of competent jurisdiction to be illegal, invalid or unenforceable under present or future law, the remainder of this Contract shall not be affected thereby and shall remain in full force and effect.

4.34. Survival Provisions. In addition to the provisions of the Contract which, by their terms continue in effect after acceptance and final payment under or termination of, the Contract, the following provisions shall continue in effect after acceptance and final payment under, or termination of the Contract:

4.35. Authority. Each Party individually represents that the person executing this Contract is duly authorized to act as the party's representative to execute this Contract on behalf of the Party.

4.36. Execution. This Contract may be executed in counterparts and by facsimile, each of which, when so executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute one and the same Agreement.

4.37. Entire Agreement. This Contract embodies the entire agreement between Boeing and Contractor for the Work, and supersedes and merges any and all prior or contemporaneous written or oral agreements, commitments, understandings, or communications with respect to the Work. The Parties shall not be bound by or be liable for any other statement, representation, promise, inducement or understanding of any kind or nature concerning the Service except as set forth in the Contract Documents. Any amendment or modification of any of the terms or conditions of the Contract must be reduced to writing and signed by both Parties.