

26 Jul 02

Direct Sales
Partnering Agreement

Between

The Boeing Company

and

The Department of the Air Force
Air Logistics Centers

Subject: Public-Private Partnership Arrangement - Direct Sales Partnering Agreement (DSPA)

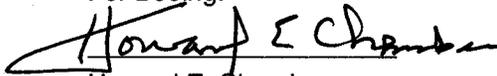
Authorities: 10 USC §2474, 10 USC §2563, 10 USC § 2208(j), and 22 USC §2770

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For Boeing:

For the Air Force:

 8/21/02
Date

Howard E. Chambers
Vice President – General Manager
USAF Airlift & Tanker Program
Integrated Defense Systems - LB

_____	_____
HQ AFMC / LG	Date
_____	_____
OC-ALC / CC	Date
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For Boeing:

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_____	_____	_____	_____
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Vice President - General Manager		_____	_____
USAF Airlift & Tanker Program		OC-ALC / CC	Date
Integrated Defense Systems - LB		_____	_____
	9-3-02	OO-ALC / CC	Date
_____	_____	_____	_____
E. David Spang	Date	WR-ALC / CC	Date
President		_____	_____
Military Aerospace Support		ASC / YC	Date

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For Boeing:

Date

For the Air Force:

[Signature] 23 Aug 02

Date

HQ AFMC / LG

Date

OC-ALC / CC

Date

OO-ALC / CC

Date

WR-ALC / CC

Date

ASC / YC

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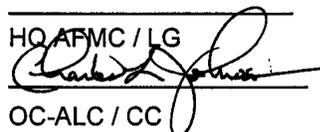
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For Boeing:

For the Air Force:

Date

HQ AFMC / LG Date


OC-ALC / CC 15 Aug 02
Date

OO-ALC / CC Date

WR-ALC / CC Date

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For Boeing:

For the Air Force:

Date

HQ AFMC / LG Date

OC-ALC / CC Date

OO-ALC / CC Date

S. Borgren, MG 8-20-02

WR-ALC / CC Date

ASC / YC Date

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For Boeing:

For the Air Force:

Date

HQ AFMC / LG Date

OC-ALC / CC Date

OO-ALC / CC Date

Donald J. [Signature] 10 Aug 02

WR-ALC / CC Date

ASC / YC Date

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For Boeing:

For the Air Force:

Date

HQ AFMC / LG Date

OC-ALC / CC Date

OO-ALC / CC Date

WR-ALC / CC Date

 29 Aug 02

ASC / YC Date

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PREAMBLE

This DSPA is made and entered into as of the date of the last signature hereto by and among the United States Air Force, acting through its Depot Maintenance Activity Mission Areas within the Air Logistics Centers (ALCs) located at Tinker AFB, Oklahoma City ALC (OC-ALC); Hill AFB, Ogden ALC (OO-ALC) and Robins AFB, Warner-Robins ALC (WR-ALC), hereinafter referred to as "ALCs" and McDonnell Douglas Corporation, a wholly owned subsidiary of The Boeing Company, having an office at Long Beach California, hereinafter referred to as "Boeing." Boeing and the ALCs are hereinafter referred to as the "parties" (collectively) or "party" (individually). The terms "Government" and "US Government," unless otherwise stated, refer to the United States Air Force (USAF).

Boeing and the ALCs through this DSPA have entered into a public-private partnership arrangement. The ALCs, acting as a "sellers," will provide to Boeing, acting as a "buyer," supplies and services for depot-level maintenance and repair activities, hereinafter referred to as "goods". The ALCs legal authority to enter into this public-private arrangement are contained in statutes: 10 USC §2474, 10 USC §2563, 10 USC § 2208(j), and 22 USC §2770.

The parties intend to draft a special contract requirement in the C-17 Flex Next Sustainment contract addressing the rights and remedies of the parties in the event circumstances occur in which an equitable adjustment may be warranted.

ARTICLE 1 - CONTRACT FORMATION AND MODIFICATION

The DSPA shall not be modified by reference to any course of dealing or usage of trade and shall not be modified by any course of performance. No modification of the DSPA shall be effective unless agreed to in writing signed by the party to be charged with the modification. No modification shall bind the Air Force unless signed by all the signatories of this document.

All Direct Sales Orders (DSO) and modifications thereto under this DSPA shall be bi-lateral between Boeing and the applicable ALC unless otherwise authorized within the terms of an individual article of this DSPA or an Implementation Agreement (IA). No bi-lateral modification shall bind Boeing unless signed by the Boeing's authorized purchasing agent (PA). No bi-lateral modification shall bind an ALC unless signed by its procurement contracting officer (PCO).

ARTICLE 2 - IMPLEMENTATION AGREEMENTS AND DIRECT SALES ORDERING PROCEDURES

- 2.1.** This article sets forth procedures the parties shall follow with regards to Implementation Agreements (IA) and the issuance of Direct Sales Orders (DSO) for depot-level maintenance and repair support.
- 2.2.** Boeing and the ALCs shall determine depot-level maintenance and repair requirements through a collaborative process culminating in a series of agreements identified as "Implementation Agreements." An Implementation Agreement is a comprehensive document that addresses all aspects of the work to be performed by the parties. The following are examples of a typical IA terms and conditions:
 - 2.2.1** IA identifying number
 - 2.2.2** IA period of performance
 - 2.2.3** Integrated Product Team (IPT) points of contact (DSPA article)
 - 2.2.4** Complete work descriptions / technical requirements documentation etc.
 - 2.2.5** Line items of work (work content & deliverables)
 - 2.2.6** Fiscal year pricing
 - 2.2.7** Delivery schedules

- 2.2.8 Quality standards (if different from the DSPA article)
 - 2.2.9 Inspection and acceptance procedures (DSPA article)
 - 2.2.10 Preservation, packaging, packing, and shipping instructions
 - 2.2.11 Boeing provided information / resources
 - 2.2.12 Boeing furnished property (DSPA article)
 - 2.2.13 Warranty terms (if different from the DSPA article)
 - 2.2.14 Reporting requirements
 - 2.2.15 IA modification, extension, and renewal terms and conditions
 - 2.2.16 Other terms and conditions, as applicable
 - 2.2.17 Payment provisions / schedule (DSPA article)
- 2.3. Boeing shall initiate work to the ALCs through the issuance of a DSO. The DSO shall, as a minimum, include:
- 2.3.1 Identity of recipient ALC organization
 - 2.3.2 Reference and incorporation of the DSPA and IA
 - 2.3.3 Priced Contract Line Item Numbers
 - 2.3.4 Delivery requirements / period of performance
 - 2.3.5 Payment provisions / schedule (DSPA article)
- 2.4. Requirements, which are outside an existing IA or significantly alter the terms and conditions of an existing IA shall be communicated to the ALC through a Request for Proposal (RFP). The RFP shall address the applicable terms and conditions of a typical IA detailed above. Boeing should provide the ALC as much advance notification for a pending RFP. The ALC response to a RFP shall be not more than 45 days unless parties agree otherwise.

ARTICLE 3 - ADMINISTRATION

Notices, Certificates, Revisions, and Acknowledgments: Shall be in writing and shall be deemed to be properly delivered when mailed by certified letter to the other party, or when received by the other party, if delivered by overnight courier, at its address as noted below, or to such other address as either party may, by written notice, designate to the others. Any revision to a DSO shall be addressed between the authorized purchasing agent (PA) of Boeing and the procurement contracting officer (PCO) of the applicable ALC as identified in the DSO.

Addressees: The addressees below are the points of contact (POC) for this DSPA. Any change to the addressee(s) may be accomplished by written notification to all the addressees.

BOEING
 Contracts Senior Manager
 C-17 Flexible Sustainment Contract
 The Boeing Company
 Department: Contract & Pricing
 2401 East Wardlow Road
 Long Beach, CA 90807-4418

OO-ALC
 OO-ALC/XPX
 7981 Georgia St.
 Hill AFB, UT 84056

OC-ALC
 OC/ALC/XPX
 3001 Staff Dr STE 1AG71A
 Tinker AFB, OK 73145

WR-ALC
 WR-ALC/XPXM
 215 Page Road, Suite 265
 Robins AFB, GA 31098-1662

ARTICLE 4 - WAIVER

Either party's exercise or failure to exercise any of its rights or remedies herein, including any delays or forbearances of either party in insisting upon or enforcing any provisions of this DSPA, shall not preclude or prejudice the party from exercising the same or any other right it may have hereunder, irrespective of any previous omission or action taken. A determination that any portion of this DSPA is unenforceable or void by law shall not affect the enforceability or validity of any of the remaining portions of this DSPA. In the event that any part, term, or provision of this DSPA is determined unenforceable, invalid, or in violation of applicable law or regulation, the parties agree to include a replacement provision, construed to accomplish its originally intended effect that does not violate such law or regulation.

ARTICLE 5 - NOTIFICATION OF DELIVERY OR COMPLETION SCHEDULE DELAY

- 5.1. If, for any reason, an ALC PCO believes the ALC will not be able to meet an order delivery, or completion schedule, the PCO agrees to promptly inform Boeing in writing of the reasons for the delay and the actions being taken to overcome or minimize the delay and provide Boeing with a written recovery schedule. The Parties will work together to determine the cause of the delay and potential remedies for correction.
- 5.2. In the event the parties mutually agree DSO workload should be temporarily accomplished by another source the ALC will provide written authorization to Boeing's PA. The DSO shall be amended by a bi-lateral modification.

ARTICLE 6 - LIMITATION ON LIABILITY

Notwithstanding any other article in this DSPA, in no event shall either party hereto be liable to the other party for consequential, incidental, or special (including multiple, or punitive, or other indirect) damages claimed to be incurred by the other party, whether such claim arises under contract, tort (including strict liability) or other theory of law.

ARTICLE 7 - INTEGRATED PRODUCT TEAM APPROACH

The parties will adopt an Integrated Product Team (IPT) approach to plan and manage the parties' efforts toward meeting their objectives and successfully accomplishing all necessary tasks. The IPT will promptly resolve any differences that may arise between the parties. An IPT manager designated by Boeing will lead the IPT. The IPT manager will be the primary IPT interface with the ALC regarding program issues. The IPT manager shall keep the ALC informed, as appropriate, of its communications with the C-17 System Program Office (ASC/YC) regarding any issues impacting the DSO/IA.

ARTICLE 8 - QUALITY ASSURANCE SYSTEM AND SOFTWARE MAINTENANCE

- 8.1. **Quality Standards:** In performing work under a DSO, the ALCs will comply with current quality assurance (QA) policies of the Air Force Materiel Command (AFMC). If the quality standards change, the work will be accomplished in accordance with the new standards. Detailed, unique, and/or specific quality standards and inspection and acceptance processes may be included in each DSO/IA.
 - 8.1.1 **ALCs' QA System:** The ALCs' QA program implemented under AFMCI 21-115, "Depot Maintenance Quality Assurance" meets the intent of the American National Standards Institute/American Society for Quality Control (ANSI/ASQC) Q9002.
 - 8.1.2 **DSO Compliance:** Should questions arise regarding an ALC's compliance with AFMC quality standards or any detailed, unique and/or specific quality requirement specified in a DSO, the ALC will cooperate with Boeing to review quality performance and processes,

provide information and/or take specific corrective action(s) as may be required.

8.1.3 Quality Records: The ALCs shall provide Boeing access to QA records.

8.2. Software Maintenance: The ALCs adhere to the Software Engineering Institute's (SEI) Capability Maturity Model (CMM) for software maintenance. An integral component of this model includes software quality assurance. The SEI CMM is the Department of Defense mandated standard model to be used in assessing the maturity of an organization's software processes, testing processes, quality assurance processes, configuration management processes, etc.

8.2.1 ALCs shall follow its developed quality assurance processes which strictly follow the Quality Assurance requirements of the CMM.

8.2.2 ALCs will conduct periodic software project audits and shall provide Boeing, upon request, the audit schedule and the opportunity to participate in such audits.

ARTICLE 9 - INSPECTION AND ACCEPTANCE

9.1. Inspection: Products repaired, manufactured, or serviced shall be returned to Boeing with a Certificate of Conformance (COC) along with an attached DOD Serviceable Tag (where appropriate).

9.2. Acceptance: Acceptance will be at the ALC unless a different location is specified in a DSO. The ALC executed COC will be used by Boeing as the acceptance document.

ARTICLE 10 - C-17 DATA AND DATA RIGHTS FURNISHED TO AIR LOGISTICS CENTERS

10.1. The parties agree that Boeing's obligations regarding "Essential Data" shall be limited to the data, data rights and media that have been delivered, are required to be delivered under C-17 prime contracts or made available under a "data rights" special contract requirement clause(s) under C-17 prime contracts. Boeing will furnish to the ALCs and/or make available via electronic access, "Essential Data," except as provided by paragraph 10.3 below.

10.1.1 "Essential Data" is defined as the technical data, computer software, and Boeing commercial standards regardless of the form or method of recording that is required to perform the maintenance and repairs assigned to the ALCs by Boeing.

10.1.2 "Technical Data" and "Computer Software" and related terms such as "Data", "Computer Software Documentation", "Computer Data Base", "Commercial Computer Software", "Commercial Item" and "Developed" shall have the meaning and data rights as defined in the DAR or DFARS regulations under which the Technical Data and/or Computer Software were first delivered to the Government.

10.1.3 Some essential data identified by Boeing for DSO performance reside in the USAF Joint Engineering Data Management Information Control System (JEDMICS). Should essential data not be available in JEDMICS, or the essential data is newly released and not yet downloaded to JEDMICS, Boeing shall provide the Government access to the essential data by means of its Part Structure Navigator (PSN) system. Boeing's Product Data Manager (PDM) Web shall not be used by the ALCs to access essential data as it contains Boeing unreleased and unauthorized engineering data. Other essential data, such as, C-17 computer software, reside within Boeing's internal repositories. For essential data that cannot be downloaded from PSN or are not resident in PSN Boeing shall furnish the data to the ALCs by the means set forth in the CDRL under which the data were delivered or required to be delivered under a C-17 contract.

10.1.4 ALCs may obtain Technical Data and Computer Software Data Rights Assertions from the C-17 System Program Office (SPO). Technical Data residing in Air Force JEDMICS identifies data rights and is marked with the applicable restrictive legends. Technical Data residing in Boeing Parts Structure Navigator (PSN) contains restrictive rights legends

marked on the technical data.

- 10.2. Release of liability:** The ALCs, and other persons to whom the ALCs may release or disclose proprietary or restricted data delivered or otherwise furnished under a DSO/IA, shall have no liability for any release or disclosure of proprietary or restricted data that is not marked to indicate that such data is licensed data subject to use, modification, reproduction, release, performance, display, or disclosure restrictions. The release of liability is not applicable to unmarked airborne computer software as DFARS 252.227-7014(f)(1) prohibits restrictive markings in airborne software if such markings degrade the performance of the combat aircraft. Such computer software restrictive markings have been identified in the data rights assertions provided to the Government in accordance with DFARS 252.227-7014(e).
- 10.3.** If Boeing and the ALCs identify:
- a) Data in other than Boeing's (or its subcontractor's) format and media (unless already specified in C-17 contracts "CDRLs");
 - b) Additional data that have not been previously delivered to the Government; or
 - c) Additional rights to the data beyond the rights the Government is already entitled to in accordance with the "Data Rights" clauses of the C-17 contracts;
- that are required in order to perform the depot-level maintenance and repairs assigned to the ALCs, Boeing shall make its best efforts to obtain and furnish such data, or obtain such data rights, to the extent negotiated as a change to the Flexible Sustainment prime contract. As to such data, Boeing shall, if separately authorized and funded by the C-17 SPO PCO, deliver the technical data and computer software, obtain additional rights, or convert the data to a different format or medium, as requested.
- However, Boeing is under no obligation to provide such additional data or data rights as described above if its component(s) or subcontractor(s) refuses (subject to the "Data Rights" clauses of the applicable C-17 prime contracts). If Boeing is unable to negotiate the additional data or data rights requested by the C-17 SPO, Boeing grants the Government the right to negotiate directly with Boeing components, its C-17 subcontractors and suppliers for the additional data and/or additional rights in the data. Under such circumstances, Boeing shall identify to the ALC the subcontractor, or supplier name and the item's applicable part number identification.
- 10.4. Warranty of Data:** DFAR Clause 252.246-7001, Warranty of Data, shall not apply to any data provided to an ALC under a DSO/IA, that have not been previously delivered under a CDRL requirement of a C-17 prime contract. The warranty period for the contract under which the C-17 deliverable data were originally delivered shall continue to apply.
- 10.5.** If Boeing furnishes to an ALC any data which is not contractually required and have not been delivered under a C-17 contract, such data shall be considered released for "information purposes only."
- 10.6. Negotiated License Rights:** Under current or prior C-17 contract(s) between Boeing and the Government the parties have negotiated a series of license rights to certain Boeing and its C-17 suppliers' and subcontractors' technical data and computer software. The SPO PCO can provide full text of the "Rights in Data" clauses.
- 10.7. Data Rights:** In accordance with DFARS 252.227-7013(b)(5), Rights in Technical Data – Noncommercial Items and DFARS 252-227-7014(b)(5), Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation, essential data that will be furnished to the ALCs under a DSO, in which the Government has previously obtained rights, shall be furnished with the pre-existing rights. The ALCs shall abide by the rights provided to the Government under DAR and DFARS data rights clauses.
- 10.8. Use of Essential Data:** Use of essential data containing restrictive markings by the ALCs shall not constitute acceptance, agreement or validation by the Government of Boeing's or its C-17 suppliers' and subcontractor's data rights assertion under any C-17 contract.
- 10.9. Disposition:** Each IA or DSO shall include disposition instructions for the return and/or destruction of essential data at the completion, termination, or cancellation of a DSO. The Boeing's PA shall address questions regarding disposition of essential data.

- 10.9.1** Upon Boeing request at any time, and in any event upon the completion, termination or cancellation of a DSO, the ALCs shall return to Boeing all of Boeing's or its subcontractors' or suppliers' proprietary or restricted data and all data derived therefrom; unless specifically directed otherwise in writing by Boeing. The ALCs shall not, without the prior written authorization of Boeing, sell or otherwise dispose of (as scrap or otherwise) any parts or other data containing, conveying, embodying or made in accordance with or by reference to any of the Boeing's, its subcontractors' or suppliers' proprietary data. Prior to disposing of such parts or data as scrap, the ALCs shall render them unusable. Boeing shall have the right to audit the ALCs compliance with this article.
- 10.9.2** Upon ALCs request at any time, and in any event upon the completion, termination or cancellation of a DSO, Boeing shall return to the ALCs all of the ALC's or its contractors' or subcontractors' or suppliers' proprietary or restricted data and all data derived therefrom; unless specifically directed otherwise in writing by the ALCs. Boeing shall not, without the prior written authorization of the ALCs, sell or otherwise dispose of (as scrap or otherwise) any parts or other data containing, conveying, embodying or made in accordance with or by reference to any of the ALC's, its contractors', subcontractors' or suppliers' proprietary data. Prior to disposing of such parts or data as scrap, Boeing shall render them unusable. The ALCs shall have the right to audit Boeing's compliance with this article.
- 10.10.** The provisions of this article shall survive the performance, completion, termination or cancellation of a DSO/IA.

ARTICLE 11 - BOEING FURNISHED PROPERTY (BFP)

This article establishes ALC property administration and accountability requirements for Boeing property furnished for performance under a DSO. Boeing furnished property (BFP) includes Boeing property and government-owned property accountable to Boeing. The ALCs shall use such property only for the purposes of a DSO and any use of the property for other than DSO purposes requires prior written approval from Boeing. The ALCs shall not transfer, destroy, modify, or otherwise dispose of such property without prior written authorization from the Boeing purchasing agent. Moreover, Boeing retains authority to relocate the BFP as needed and the ALC shall comply with disposition instructions provided by Boeing.

- 11.1. Property Covered:** All property Boeing furnishes to an ALC for a DSO's performance shall be set forth in an attachment to an IA. The attachment shall list each item of property, quantity, and scheduled delivery date to the ALC. All property shall be delivered to the ALC F.O.B. destination. From time to time, the parties may modify the property list. Such modification may be the result of adjustments to any element of the property list, substitution of an alternate national stock number (NSN) item, or substitution of a local ALC stock item(s). Any equitable adjustment due the ALC from any change to the property list attachment shall be accomplished using the procedures of the Changes article herein.
- 11.2. Title:** Boeing shall retain title to all Boeing furnished property other than government property accountable to Boeing.
- 11.3. Property Management System:** The ALC shall be responsible and accountable for all BFP provided under an IA. The ALC shall maintain a system to account for use, maintenance, repair, protection, and preservation for all BFP under a IA. The system shall manage property from receipt to final disposition. BFP shall be clearly labeled as Boeing Furnished Property. ALCs shall dispose of scrap in accordance with Air Force procedures.
- 11.4. ALC Inspection:** BFP for DSO performance shall be inspected by the ALC upon arrival for suitability of use. The ALC has the right to reject property not suitable for its intended use (non-conforming property). The ALC shall immediately notify Boeing of its reason(s) for rejecting non-conforming property. Known non-conforming property accepted by the ALC shall not excuse ALC performance under a DSO. Property initially accepted by the ALC, but later discovered to have been non-conforming at the time of delivery may result in an equitable adjustment in the DSO delivery schedule and/or cost/price, or both and the DSO may be modified bi-laterally.

- 11.5. Reporting Loss or Damage:** The ALC shall notify Boeing's purchasing agent in writing if Boeing furnished property is lost, damaged or destroyed (LDD). For government property, ALC shall notify C-17 SPO PCO for LDD incidents in lieu of Boeing. If BFP is lost, damaged, or destroyed, it shall not excuse an ALC performance and the ALC shall not be entitled to an equitable adjustment. Loss, damage or destruction (LDD) reports shall contain the following factual data as to the cause and circumstances surrounding the incident:
- 11.5.1** DSO/IA number for which the property is accountable;
 - 11.5.2** Property identification number and description of property (e.g., National Stock Number (NSN), part number, serial number, tool number, etc.);
 - 11.5.3** Acquisition cost of the property, if known;
 - 11.5.4** Date, time, and location of incident/discovery;
 - 11.5.5** Known interests in and commingled property of which the LDD is/was a part;
 - 11.5.6** Estimated scrap proceeds, when applicable; and
 - 11.5.7** Actions to prevent recurrence or repetition of similar incidents.
- 11.6. Non-Consumed Property:** The ALC is not responsible for reasonable wear and tear Boeing furnished property that is not consumed by the ALC in the performance of a DSO.
- 11.7. Final Accounting and Disposition of Boeing Furnished Property:** The ALC shall prepare for shipment, delivery F.O.B. origin, or dispose of the Boeing furnished property, as may be directed or authorized by Boeing's purchasing agent. Upon DSO completion, the ALC shall submit, in a form acceptable to Boeing, inventory schedules covering all items of Boeing furnished property not consumed in performing the DSO or delivered to Boeing. Separate inventory schedules will be submitted for Boeing owned and Government owned property accountable to Boeing.
- 11.8.** Pursuant to the procedures of FAR 52.211-5, Material Requirement, the ALCs are authorized use of used or reconditioned material, residual inventory, or former Government surplus property in performance

ARTICLE 12 - SPECIAL TOOLING AND SPECIAL TEST EQUIPMENT

If applicable, and unless otherwise specified as part of a DSO, the price includes the cost of gauges, jigs, fixtures, dies, molds, tools, patterns, and similar items of special tooling and special test equipment that may be manufactured or acquired by an ALC. The Government shall take title to such special tooling and special test equipment. The ALCs may use such special tooling and special test equipment for other than DSO or IA purposes during the DSO/IA performance period on a non-interference basis.

ARTICLE 13 - WARRANTY

- 13.1. Warranty of Work:** The ALCs warrant the services performed and the goods delivered under a DSO comply with the work descriptions, specifications, and technical or data packages whether attached or incorporated by reference to a DSO. ALC liability is limited to the correction of material and workmanship defects and is limited to the cost of rework. Material discrepancies related to Boeing furnished property are not warranted under this article.
- 13.2. Exception:** The warranty provision in 13.1 does not apply to work entered into under 22 USC §2770.
- 13.3. Actions that Void Warranty:** Any corrective action(s) unilaterally undertaken by Boeing to correct a workmanship defect shall be solely at Boeing's expense and shall void the ALC warranty.
- 13.4. Reporting and Corrections:** Warranty claims to be considered by the ALC must be received by the ALC POC identified in the Administration article within twelve (12) months. The twelve (12) month period commences for supplies from the date delivered (F.O.B.) by an ALC and for services from final acceptance by Boeing or its designated representative. Acceptance of any warranty claim resides entirely with the ALC. The ALC shall solely determine the appropriate means for

corrective action.

- 13.5. Dispute:** Failure of the parties to agree on responsibility for the corrective action shall be a matter for resolution under the Disputes article of this DSPA. If Boeing requires the ALC to perform corrective action prior to resolution of the dispute, then such corrective action shall be considered new work and advance payment shall be required, and funded in accordance with Payment article unless adequate unliquidated prior funding remains available. In the event the dispute is resolved in Boeing's favor, the advance payment shall be returned.

ARTICLE 14 - CHANGES

- 14.1. Right to Make Changes:** Boeing may, at any time, and exclusively in writing signed by its authorized purchasing agent, make changes within the general scope of a DSO which affect the following:
- 14.1.1 Supplies**
 - 14.1.1.1.** Drawings, designs, or specifications, statement of work, and technical requirements and descriptions;
 - 14.1.1.2.** Method of shipment or packing;
 - 14.1.1.3.** Place of inspection, delivery or acceptance;
 - 14.1.1.4.** Adjustments to quantities
 - 14.1.1.5.** Adjustment to delivery schedule(s) or
 - 14.1.1.6.** Amount of Boeing furnished property;
 - 14.1.2 Services** (does not apply to work entered into under 22 USC §2770 DSOs)
 - 14.1.2.1.** Description of services to be performed
 - 14.1.2.2.** Time of performance (e.g. hours of the day, days of the week)
 - 14.1.2.3.** Place of performance.
- 14.2. Equitable Adjustments:** For changes that result in an increase or decrease in the cost/prices or delivery schedule within a DSO, the parties shall negotiate an equitable adjustment to either the cost/price or delivery schedule or both. The equitable adjustment shall be executed by a bi-lateral modification to the DSO. The ALC shall notify Boeing's PA in writing not later than thirty (30) days from receipt of the directed change if it intends to submit a claim for equitable adjustment to the DSO. Boeing may, at its sole discretion, consider any such claim regardless of when asserted.
- 14.3. Proposal:** The ALC shall submit an equitable adjustment proposal within sixty (60) days from ALC receipt of the directed change. The proposal shall be supported by factual information, fully account for all increases and decreases in cost, and address any adjustment to schedule(s). The following statement shall accompany any ALC proposal for equitable adjustment:
- "THIS PROPOSAL FOR EQUITABLE ADJUSTMENT ACCURATELY REFLECTS REQUIRED ADJUSTMENT(S) TO THE DIRECT SALES ORDER RESULTING FROM THE CHANGED DIRECTION."
- 14.4. Adjustment to Payment Schedule:** Boeing shall adjust the DSO payment prior to settling any claim for equitable adjustment if requested by the ALC. The ALC shall fully support any request for payment schedule adjustment. A bi-lateral modification to the DSO shall be executed to effect such adjustment.
- 14.5. Dispute:** Any dispute under this article shall be addressed under the Disputes article of this DSPA. Failure of the parties to agree upon an equitable adjustment shall not excuse the ALC from performing in accordance with the directed change.
- 14.6. Notification of Change:** If an ALC considers Boeing's conduct constitutes a change subject to this article it shall immediately notify in writing Boeing's PA of the nature of the conduct and its effect upon the ALC performance. Pending clarification of the conduct or written direction from Boeing PA the ALC shall take no action to implement such change.

ARTICLE 15 - STOP WORK ORDER

- 15.1.** Boeing, may as a result of a stop work order issued under the C-17 flexible sustainment contract or with the written concurrence of the affected ALC Director of Maintenance or his designee, by written order, require the ALC to stop all, or any, part, of the work called for by a DSO for a period of 90 days after the order is delivered to the ALC PCO, or for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this article. Upon receipt of the order, the ALC shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. In the event the ALC Director of Maintenance disagrees with all or part of the stop work order the parties shall, within the 14 days cited above or an agreed to date, present their case to the C-17 System Program Director (SPD), ASC/YC. The C-17 SPD or his designee shall review the parties' cases and render a final decision. This decision is final and is not subject to the Disputes article of this DSPA. Within a period of 90 days after a stop-work order is delivered to the ALC, or within any extension of that period to which the parties shall have agreed, Boeing shall either –
- 15.1.1** Cancel the stop-work order; or
 - 15.1.2** Engage the ALC in termination discussion provided under the Termination article.
- 15.2.** If a stop-work order issued under this article is canceled or the period of the order or any extension thereof expires, the ALC shall resume work. Boeing shall make an equitable adjustment in the delivery schedule or DSO price, or both, and the DSO shall be modified by bi-lateral modification, in writing, accordingly, if –
- 15.2.1** The stop-work order results in an increase in the time required for, or in the ALC's cost properly allocable to, the performance of any part of a DSO; and
 - 15.2.2** The ALC asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if Boeing decides the facts justify the action, Boeing may receive and act upon the claim submitted at any time before final payment under a DSO.
- 15.3.** If a stop-work order is not canceled and the work covered by the order is ultimately terminated Boeing shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

ARTICLE 16 - TERMINATION

- 16.1. Notification:** Boeing may, as a result of a complete or partial termination under a C-17 flexible sustainment contract, terminate the corresponding part of the work in the applicable DSO. Such termination shall clearly identify the work affected and shall take effect immediately. In all other circumstances termination requires the mutual agreement of the parties by bi-lateral modification to the applicable DSO. In the latter circumstance, Boeing shall notify the affected ALC PCO at least 45 days in advance of any intent to terminate, either fully or partially, any work under a DSO. Such notification shall clearly identify the work affected and rationale for the decision. In either event, if the ALC PCO disagrees with all or part of the termination the parties shall, within the 45 days cited above or an agreed to date, present their case to the C-17 System Program Director (SPD), ASC/YC. The C-17 SPD or his designee shall review the parties' cases and render a final decision. This decision is final and is not subject to the Disputes article of this DSPA.
- 16.2. ALC Obligations:** Immediately upon termination an ALC shall, as it relates to the terminated work, take the following actions:
- 16.2.1** Stop work
 - 16.2.2** Award no subcontracts / orders for materials, services, or facilities
 - 16.2.3** Terminate, as necessary, subcontracts / orders for materials, services, or facilities
 - 16.2.4** As directed, by Boeing, deliver:
 - 16.2.4.1.** Completed or partially completed plans, drawings, information, and other property

- that, if the subject work had been completed, would be required to be furnished
- 16.2.4.2.** Fabricated or purchased parts, work in process, completed work, supplies, and other material produced or acquired for the effort terminated; and
 - 16.2.5** Take any action necessary, or direct, for the protection, preservation and return to Boeing of all property related to a DSO that is in the possession of an ALC.
 - 16.2.6** Continue performance on work not terminated.
- 16.3. Inventory Schedules:** An ALC shall submit to Boeing complete termination inventory schedule(s) no later than 90 days from the effective date of termination, unless extended in writing by Boeing upon written request of the ALC. Boeing shall provide the ALC disposition instructions within 30 days from receipt of the ALC's inventory schedule(s).
- 16.4. Settlement:** The parties may agree upon the whole or any part of the amount to be paid or remaining to be paid because of termination. The agreed amount, whether under this paragraph, or paragraph 16.5, exclusive of costs shown in 16.5.3, may not exceed the total DSO price as reduced by (1) the amount of payments previously paid and (2) the DSO price of work not terminated. The DSO shall be modified and the ALC paid the agreed amount.
- 16.5. Final Settlement Proposal:** Within six (6) months from the effective date of the termination an ALC shall submit to Boeing a final settlement proposal.
- 16.5.1** For Fixed Price work allowable cost claimed shall include:
 - 16.5.1.1.** Performance of the work terminated, up to the effective date of termination, including all initial costs and preparatory expenses reasonably allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under the DSO price for completed supplies or services accepted by Boeing;
 - 16.5.1.2.** Termination and settlement cost for contracts/subcontracts related to the terminated effort
 - 16.5.2** For Time & Material or Material or Labor Hour work allowable cost claimed shall include:
 - 16.5.2.1.** An amount for direct labor hours (as defined in the Schedule of the DSO) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rates in the schedule, less any hourly rate payments already made to an ALC;
 - 16.5.2.2.** An amount (computed under the provisions for payment of materials) for material expenses incurred before the effective date of termination not previously paid to an ALC;
 - 16.5.2.3.** An amount for labor and material expenses computed as if the expenses were incurred before the effective date of termination, if they are reasonably incurred after the effective date with the approval of or as directed by the PA; however, an ALC shall discontinue these expenses as rapidly as practicable;
 - 16.5.3** For all types of efforts the reasonable costs of settlement of the work terminated, may include:
 - 16.5.3.1.** Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
 - 16.5.3.2.** Termination and settlement of contracts subordinate hereto (excluding the amounts of such settlements); and
 - 16.5.3.3.** Storage, transportation, and other cost incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory
 - 16.5.4** For all types of effort the reasonable cost of settlement of the work terminated must include the consideration of the proceeds of sale of materials, supplies, or other items acquired by an ALC in the performance of a DSO and not otherwise disposed or sold under the provisions of this article and not recovered by or credited to Boeing, and any credit under a warranty claim that Boeing has successfully asserted to a final conclusion against an ALC under the Disputes article.
- 16.6. Equitable Adjustment:** In any partial termination, Boeing shall allow an ALC an equitable

adjustment to the cost/price of remaining work, if so affected, on a DSO. Any case for equitable adjustment shall be included an ALC's final settlement proposal.

- 16.7. Dispute:** Any dispute, other than the decision to terminate, under this article shall be addressed under the Disputes article of the DSPA.

ARTICLE 17 - DISPUTES

- 17.1. Governing Law:** The rights of the parties are defined by the terms and conditions of this DSPA and associated DSO/IA and the body of Federal Contracts case law, without any recourse to, or consideration of, any of its conflicts of laws
- 17.2. Disputes Prevention:** Both Boeing and the ALCs are committed to a disputes-prevention atmosphere during the performance of this DSPA and associated DSOs. The parties agree that their best efforts will be made to settle all controversies through direct negotiations at the lowest practical level. If negotiations reach an impasse, the parties agree to use to the maximum extent feasible one or more Alternate Disputes Resolution (ADR) processes contemplated by FAR 33.2 to reduce or eliminate the need for litigation. The parties further agree that any ADR process must be structured to allow sufficient time to exchange and analyze any information necessary to obtain and justify a settlement.
- 17.2.1** Consistent with FAR 33.214, in cases where the parties decide to use ADR, the parties will prepare a specific, written ADR agreement appropriate to the controversy, before the ADR process begins. The agreement should normally address the following (*as appropriate*): authorized representatives for each party; ADR techniques and processes to be utilized and procedures to be followed; methods for the exchange of information; a schedule and procedures for any discovery proceedings, including how to limit discovery/factual exchange; appointment and payment to neutrals; whether and to what extent to stay or suspend any pending litigation; possible audit requirements; confidentiality, at what point the parties will begin negotiations; and a provision for termination of the agreement.
- 17.2.2** If an ALC rejects Boeing's request to use ADR proceedings, the ALC shall provide Boeing a written explanation citing one or more of the conditions in 5 U.S.C. 572(b) or such other specific reasons that ADR procedures are inappropriate for the resolution of the dispute. See 41 U.S.C. 605(e) & FAR 33.214(b). In any case where Boeing rejects an ALC's request to use ADR proceedings, Boeing shall inform the ALC in writing of Boeing's specific reasons for rejecting the request
- 17.2.3** In the event either party believes a particular issue is not well-suited to ADR, or is dissatisfied with the progress being made in a particular ADR proceeding, that party may, after good faith efforts to resolve the issue, elect to abandon the ADR process and proceed as otherwise provided under this DSPA and associated DSOs, regulation, or statute. Nothing in this article shall be deemed to prevent either party from preserving and exercising its legal rights and remedies during the ADR process.
- 17.3. Judicial Review:** Boeing or the ALC, after exhausting the administrative remedies specified in above subparagraph, may pursue any remedy that is available to it under the law in a court of competent jurisdiction.
- 17.4. Pending resolution of dispute:** An ALC shall proceed with performance of a DSO according to Boeing's direction. Boeing agrees to adjust the DSO payment schedule(s) in those cases where the ALC requires a payment in advance of work continuation. Boeing recognizes it may be necessary to execute such adjustment prior to the parties finally settling a dispute. A bi-lateral modification to the DSO shall be executed to effect such payment schedule adjustment(s). In the event that the dispute is resolved in Boeing's favor, the advance payment shall be returned consistent with the resolution decision or judgment.

ARTICLE 18 - ASSIGNMENT

Boeing may, upon advance notice to the POCs identified in the Administration article assign this DSPA and its associated IAs and DSOs to any person, firm, or corporation with which Boeing may merge or consolidate or to which Boeing may assign substantially all of its assets.

ARTICLE 19 - PAYMENT

Funds must be resident at an ALC before any work can be performed under a DSO. Incremental payments may be made at mutually agreed intervals.

ARTICLE 20 - ORDER OF PRECEDENCE

In the event of any inconsistency between the Articles, Attachments, Specifications or Provisions, which constitute a DSO, the following order of precedence shall apply:

- DSPA terms and conditions
- IA terms and conditions
- DSO terms and conditions
- IA or DSO documents / attachments

ARTICLE 21 - SPECIFICATIONS

The ALCs shall not use any specification in lieu of those contained in a DSO without written consent from Boeing's IPT point of contact or purchasing agent.

ARTICLE 22 - TERM

The parties agree the term of this DSPA matches and will further match the current C-17 flexible sustainment contract and its successor contract(s).

ARTICLE 23 - RECORDS

An ALC shall maintain financial records and documentation relating to its performance under a DSO (records) for a period of twelve (12) months from final payment in accordance with the applicable Government records retention standards. Review of such financial records and documentation is limited to the U.S. Government only (i.e., C-17 System Program Office and/or Defense Contract Audit Agency) at the ALC's office, at all reasonable times. Boeing shall have the right, by request to the ALC POC in the Administration article on an expedited basis, to obtain US Government review of any ALC's pertinent books and records for the purpose of verifying any ALC claims to an equitable adjustment, termination claim, etc. This right expires twelve (12) months from the final delivery of goods on a DSO. ALCs shall maintain books, records, documents and other evidence and accounting procedures and practices, sufficient to properly reflect all direct and indirect costs of whatever nature claimed to have been incurred for the performance of work hereunder.

ARTICLE 24 - ACCESS TO GOVERNMENT FACILITIES

The ALCs shall furnish all reasonable office space and facilities and assistance necessary for the safe and convenient performance of Boeing employees for the purpose of providing technical representative support as required in performance of an IA or DSO.

ARTICLE 25 - PACKAGING AND SHIPPING

All items repaired under DSOs shall be shipped to the Boeing warehouse in Atlanta, Georgia using best Government practices unless specified otherwise in the IA or DSO.

ARTICLE 26 - INTEGRATION

This DSPA, including any documents incorporated herein by express reference, is intended to be a complete integration and there are no prior or contemporaneous different or additional agreements pertaining to the subject matter of the DSPA.