

**CUSTOMER CONTRACT REQUIREMENTS****Arrow 3****CUSTOMER CONTRACT ATP-AL-201****CUSTOMER CONTRACT REQUIREMENTS**

The following customer contract requirements apply to this contract to the extent indicated below.

**1. Prime Contract Special Provisions** The following prime contract special provisions apply to this purchase order**Arrow 3 .****NOTIFICATION OF DEBARMENT/S US PENSION AND EXPORT DATA CONTROL (AUG 2009).**

Seller shall provide immediate notice to Buyer in the event of being debarred suspended, or proposed for debarment by any Federal Agency during the performance of this contract.

- (1) For the purpose of this clause,
  - (A) Foreign person is any person who is not a citizen of the or lawfully admitted to the for permanent residence under the Immigration and Nationality Act, and includes foreign corporations, foreign organizations, and foreign governments;
  - (B) Foreign representative is anyone, regardless of nationality or citizenship, acting as an agent, representative, official, or employee of a foreign government, a foreign-owned or influenced firm, corporation, or person; and
  - (C) Foreign sources are those sources (vendors, subcontractors, and suppliers) owned and controlled by a foreign person.
- (2) Seller shall place a clause in subcontracts containing appropriate export control restrictions, set forth in this clause.
- (3) Nothing in this clause waives any requirement imposed by any other U.S. Government agency with respect to employment of foreign nationals or export-controlled data and information.
- (4) Equipment and technical data generated or delivered in the performance of this contract are controlled by the International Traffic in Arms Regulation (ITAR), 22 CFR Sections 121 through 128. An export license is required before assigning any foreign source to perform work under this contract or before granting access to foreign persons to any equipment and technical data generated or delivered during performance (see 22 CFR Section 125). Seller shall notify Buyer and obtain the written approval of Buyer prior to assigning or granting access to any work, equipment, or technical data generated or delivered in the performance of this contract to foreign persons or their representatives.

This notification shall include the name and country of origin of the foreign person or representative, the specific work, equipment, or data to which the person will have access, and whether the foreign person is cleared to have access to technical data (DoD 5220.22-M, National Industrial Security Program Operating Manual (NISPOM)).

**DEFINITIONS OF THE CONTRACT**

For the purposes of this Contract, the following terms shall have the meanings hereinafter set forth:

<b><u>Term</u></b>	<b><u>Definition</u></b>
Arrow 3 Interceptor	Joint U.S-Israeli developed exo-atmospheric interceptor for defense against ballistic missiles.
Arrow 3 Program Property	Means all the supplies, Project Equipment, components, systems, sub-systems, equipment, tools, materials, (except items acquired or developed through Boeing's or a Boeing subcontractor's/vendor's internal capital investment), work-in-process, finished work, the Boeing Items, and all other tangible, which Boeing and/or its subcontractors acquire, manufacture, create, construct, obtain, compile, or establish for the purposes of this Contract and/or the Arrow 3 Program.
Arrow Weapon System (AWS)	The Israeli missile defense system consisting of Arrow missiles and launchers, Hazelnut Launcher Control System, Green Pine Fire Control Radar, and Citron Tree Battle Management Center.
Boeing Items	The items and work share under this Contract for which Boeing is responsible for their development and production of initial quantity/lot.
Boeing Property	Physical property and information data acquired by Boeing or its subcontractor without using funds from the Arrow Program.
Classified Information	Official Information that required protection in the interests of national security and is so designated by the application of a security classification marking. This information may be in oral, visual, magnetic or documentary form, or in the form of equipment or technology.
Contractor Project Background Information (CPBI)	Project Background Information (including information subject to proprietary rights) generated and delivered by a contractor (including its subcontractors).
Contractor Project Foreground Information (CPFI)	Project Foreground Information generated and delivered by a contractor (including its subcontractors).

<b><u>Term</u></b>	<b><u>Definition</u></b>
Controlled Unclassified Information	Unclassified Information to which access or distribution limitations have been applied in accordance with applicable national laws or regulations. It could include information that has been declassified but remains controlled.
Cooperative Project Personnel (CCP)	Military members or civilian employees of a Government Party assigned to the other Government Party's facilities who perform managerial, engineering, technical, administrative, Contracting, logistics, financial, planning or other functions in furtherance of the PA.
Defense Purposes	Manufacture or other use in any part of the world by or for the armed forces of either Government Party.
Designated Security Authority (DSA)	The security office approved by national authorities to be responsible for the security aspects of the RDT&E Agreement and the PA.
DoD	Means the Department of Defense of the United States of America.
Effective Date	Means the date this Contract becomes effective as set forth in Article 2.2(b) below.
Engineering Drawings	A type of technical drawing used to clearly define requirements for engineered items. Engineering Drawings are a major component of a technical data package. Engineering Drawings disclose the physical and functional requirements for an item using graphic and/or textual presentations. An engineering drawing conveys the required information that a manufacturer needs to produce an item.
General Security of Information Agreement (GSOIA)	Agreement between the Governments of the United States of America and Israel relating to the storage, handling, transmittal and safeguarding of Classified Information generated or used under the RDT&E Agreement and the Upper Tier Interceptor Project Agreement.
Government Project Background Information (GPBI)	Information generated in part or in whole by Government (US or Israeli) military or civilian employees outside the scope of in the performance of the PA (including subcontracts there under).
Government Project Foreground Information (GPFI)	Information generated in part or in whole by Government (US or Israeli) military or civilian employees in the performance of the PA (including subcontracts there under).
IAI Property	Physical property and information data acquired by IAI or with funds provided by IAI.
IAI Information	Means all drawings, data, designs, specifications and other documentation and information provided by IAI (including such items originating from Rafael and/or IM I) to Boeing and/or its subcontractors.

<u>Term</u>	<u>Definition</u>
IMOD	Means the Israeli Ministry of Defense.
Initial Lots	Production representative articles manufactured for operational test and evaluation and initial operational capability as specified in the CLIN chart which is an Attachment to the Statement of Work.
Interim Project Review (IPR)	An in-process project review that covers all aspects including cost, schedule, performance, risk, and functional areas, such as project and technical management, systems engineering, manufacturing, testing, and sustainment.
Israeli Upper Tier Interceptor Project Liaison Officer	An official/representative of the Israeli government who, upon approval or certification by the Israeli Ministry of Defense, is authorized to act as its official representative in connection with the PA, including its appendices.
Master Schedule	Means the schedule for the performance of Arrow 3 Program tasks/activities under this Contract.
Patent	Grant by a government of the right to exclude others from making, using, or selling an invention. The term refers to any and all Patents, including, but not limited to, Patents of implementation, improvement, or addition, petty Patents, utility models, appearance design Patents, registered designs, and inventor certificates or like statutory protections as well as divisions, reissues, continuations, renewals, and extensions of any of these.
Product Definition Data	Data that encompasses data elements required to define a product. Product Definition Data includes specifications, performance requirements, quality assurance plans, geometry, topology, interfaces and features necessary to completely define a component part or an assembly of parts for the purpose of design, analysis, modeling, test, and evaluation.
Production Prototype	Production representative articles manufactured for operational test and evaluation and initial operational capability as specified in the CLIN chart which is an Attachment to the Statement of Work.
Project Agreement (PA)	The Project Agreement between the Governments of the United States of America and Israel issued under the framework of the RDT&E Agreement, for the development, test, initial lot production, and integration of the Upper Tier Interceptor <i>Arrow 3</i> with the Arrow Weapon System.
Project Background Information	Information not generated in the performance of this Contract and/or the Arrow 3 Program.
Project Classification Guide	A document that describes the methods by which Project Information shall be classified.

<b><u>Term</u></b>	<b><u>Definition</u></b>
Project Equipment	Any material, equipment, and item, subsystem, component, special tooling or test equipment whose acquisition has been funded under this Contract or the PA (Project Equipment may include BFE).
Project Foreground Information	Information generated in the performance of this Contract (including subcontracts there under) and/or the PA. For avoidance of doubt, the term Project Foreground Information includes both Government Project Foreground Information (GPFI) and Contractor Project Foreground Information (CPFI)
Project Information	Any information provided to, generated in, or used in the performance of a PA regardless of form or type, including, but not limited to, that of a scientific, technical, business, or financial nature, and also including photographs, reports, manuals, threat data, experimental data, test data, designs, specifications, processes, techniques, inventions, drawings, technical writings, sound recordings, pictorial representations, and other graphical presentations, whether in magnetic tape, computer memory, or any other form and whether or not subject to copyright, Patent, or other legal protection.
Project Invention	Any product, process, invention or discovery formulated or made (conceived or first actually reduced to practice) in the course of work performed under a PA in any field of technology, provided it is new, involves an inventive step and is capable of industrial application. The term "first actually reduced to practice" means the first demonstration sufficient to establish to one skilled in the art to which the invention pertains, of the operability of an invention for its intended purpose and in its intended environment.
Project Plan	An implementing arrangement under the PA that contains a detailed description of how the Project Officers (PO) shall manage the Project.
Project Progress Milestone (PPM)	A Project milestone that includes, but is not limited to, design reviews, data delivery, and test events to measure the status of Project progress.
Project Security Instruction (PSI)	A document that describes the methods by which Project Information and material shall be marked, used, transmitted and safeguarded.
Research, Development, Testing and Evaluation Agreement (" <u>RDT&amp;E</u> ")	Means the Agreement between the Department of Defense of the United States of America and the Ministry of Defense of the State of Israel for Research, Development, Test and Evaluation Projects, dated September 13, 2006.
Subcontractors	Means the subcontractors of Boeing or Seller
Technical Data Package	Description of an item suitable for supporting manufacturing, production, and logistics throughout an item's lifecycle. Technical Data Packages define design configuration and

<u>Term</u>	<u>Definition</u>
	procedures required to ensure adequacy of item performance. Technical Data Package data includes Product Definition Data, Engineering Drawings, quality assurance specifications, reliability data and packaging details.
Test Equipment	Means the test equipment required for development of the Arrow 3 Interceptor.
Third Party	A government other than the government of a Party and any person or other entity whose government is not the government of a Party.
Upper Tier Interceptor	A defensive missile for exo-atmospheric interception of ballistic missiles in defense of Israel. The Arrow 3 interceptor is the primary and intended interceptor for the Upper Tier Interceptor Project.
Upper Tier Interceptor Project	The development, test, initial lot production, and integration of the Upper Tier Interceptor with the Arrow Weapon System. Block 5 enhancements will be conducted under the Arrow System Improvement Program Agreement.
U.S. Upper Tier Interceptor Project Liaison Officers	US Government officials who, upon approval or certification by the Missile Defense Agency (MDA), are authorized to act as official representatives in connection with the PA, including its appendices.

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**ARTICLE 1 - QUALITY CONTROL, PROGRAM MANAGEMENT, TESTING, ACCEPTANCE**

1.1 Seller shall, subject to reasonable security considerations and applicable laws, regulations and export licenses, grant BOEING/IAI access to its and its subcontractors' premises in accordance with the provisions of the SOW. Seller and its subcontractors shall provide, at no additional cost, all reasonable facilities and assistance for the safety and convenience of BOEING/IAI visits in accordance with the provisions of the SOW. Seller shall provide BOEING/IAI's personnel, upon request, with written and other information required for performance of Contract- required reviews, tests, meetings, etc.

**ARTICLE 2 – IAI AND ARROW 3 PROGRAM PROPERTY****2.1 Title and Use**

(a) Seller hereby acknowledges and agrees that:

- (i) it has no right, title or interest in BOEING/IAI Property and/or Arrow 3 Program Property other than the rights to possess and use such property for the purposes of performing this Contract;
- (ii) BOEING/IAI is the owner and/or sole authorized representative of the owner/s of the BOEING/IAI Property and the Arrow 3 Program Property. Without derogating from the foregoing, title to Arrow 3 Program Property shall vest in IMOD upon the earliest to occur of acquisition, manufacture, creation, construction, obtaining, compilation, or establishment (as applicable) of the relevant item of the Arrow 3 Program Property by Seller and/or its subcontractors;
- (iii) it shall look to and follow BOEING/IAI's directions with respect to all matters relating to the BOEING/IAI Property and Arrow 3 Program Property (including, but not limited to, its use, handling, transfer and safeguarding);
- (iv) it shall not create or permit to be created, suffer any lien upon or encumber, and shall discharge promptly at Seller's sole expense, any liens, charges, pledges, claims or demands that may attach to any of the BOEING/IAI Property and Arrow 3 Program Property while such BOEING/IAI Property and Arrow 3 Program Property is in the possession or control of Seller and/or its subcontractors;
- (v) title to BOEING/IAI Property and/or Arrow 3 Program Property shall not be affected by their incorporation into or attachment to any property not owned by BOEING/IAI, nor shall any item of the BOEING/IAI Property and/or Arrow 3 Program Property that is personal property become a fixture or lose its identity as personal property by being attached to any real property; and
- (vi) none of the BOEING/IAI Property and/or Arrow 3 Program Property shall be used for any purpose other than performance by Seller and its subcontractors of this Contract.

(b) Facilities modified (fixed improvements or structural alterations that cannot be removed without loss of value or damage to the premises) to accommodate the Arrow 3 Program will be the property of Seller and its sub- contractors, provided that (i) Seller provides BOEING/IAI with a written facility item list detailing such planned modifications and obtains BOEING/IAI's written approval that title shall vest in Seller, and (ii) such change is necessary to the performance of the Contract.

2.2 Notice of Loss - Seller shall be responsible for the risk of loss, destruction or damage to the BOEING/IAI Property and Arrow 3 Program Property while in Seller's or its subcontractors' care, custody or control. Seller shall obtain and maintain insurance coverage for the BOEING/IAI Property and Arrow 3 Program Property. In the event of any loss of or destruction or damage to the BOEING/IAI Property and/or the Arrow 3 Program Property (or any part thereof), Seller shall immediately notify BOEING/IAI in writing of any such loss, destruction or damage.

2.3 (a) Marking - Seller shall clearly mark and identify each item of BOEING/IAI Property and Arrow 3 Program Property as such (including, if applicable, the provider of such items) and Seller and its subcontractors shall only use BOEING/IAI Property and Arrow 3 Program Property for the purpose of performing its obligations under this Contract. Seller and its subcontractors shall maintain written records of all BOEING/IAI Property and Arrow 3 Program Property that is in its care, custody or control.

(b) Maintenance – Seller shall perform normal maintenance, as applicable, on the BOEING/IAI Property and Arrow 3 Program Property in accordance with sound industrial practice, including protection, preservation, and repair and normal parts replacement. Seller shall perform any maintenance work directed by BOEING/IAI in writing.

(c) Transfer - Seller and its subcontractors shall not sell, lease, lend or otherwise transfer title to or possession of, or disclose, (as applicable) any of the BOEING/IAI Property and Arrow 3 Program Property to any third party except as authorized by BOEING/IAI. BOEING/IAI shall have the sole authority for permitting such transfers of BOEING/IAI Property and Arrow Program 3

Property, as applicable, specifying the methods and conditions for implementing such transfers. Seller shall, in accordance with BOEING/IAI's instructions, return the BOEING/IAI Property and Arrow 3 Program Property to BOEING/IAI or transfer the BOEING/IAI Property and Arrow 3 Program Property to another entity or location as directed by BOEING/IAI, in the condition in which same was received, acquired or manufactured, except for normal wear and tear. Costs for transfer/disposition of BOEING/IAI Property and Arrow 3 Program Property shall be borne by BOEING/IAI and reimbursed to Seller and or its subcontractors, to the extent such transfer/disposition occurs in the context of a termination.

(d) License - BOEING/IAI, in its own right and as the sole authorized representative of the owner/s, hereby grants Seller a royalty-free license to use the BOEING/IAI Information and ARROW3 Information for the purposes of performing its obligations under this Contract. Seller may, subject to obtaining BOEING/IAI's prior written approval, sub-license such BOEING/IAI Information and ARROW3 Information to its subcontractors.

(e) Warranties – Seller shall ensure that any purchased item for the Arrow3 Program which has a standard warranty from its subcontractors, Seller shall pass the benefit of such warranties to BOEING/IAI.

### **ARTICLE 3 - CONFIDENTIALITY AND SECURITY**

3.1 Seller shall act in accordance with the security and confidentiality provisions established set forth in the RDT&E Agreement and the PA clauses as flowed down, and the Project Security Instruction and Project Classification Guide and other security guidelines and classifications formulated on the basis of these provisions.

3.2 All Classified Information or material (as determined under the relevant laws/regulations of Israel and the United States of America) transferred or provided to, or generated by, either Party with respect to this Contract shall be stored, handled, transmitted, and safeguarded in accordance with the relevant security agreements between the Governments of Israel and the United States of America, including the GSOIA.

3.3 Classified Information and material shall be transferred only through official government-to-government channels or through channels approved by the relevant governmental security authorities. Such information and material shall bear a label designating the level of classification; denote the country of origin, the conditions of release, and the fact that the information relates to this Contract.

3.4 Seller shall take all steps to ensure that all classified information and materials transferred or provided to, or generated by, it with respect to this Contract shall be used only in accordance with the relevant laws/regulations, for the purposes permitted in this Contract and shall ensure that access to such classified information and materials is limited to those persons who possess the requisite security clearances and have a specific need for access to such information and materials in order to participate in the Arrow 3 Program. Seller shall flow down to its subcontractors and vendors these measures for safeguarding the use, handling, disclosure, storage, and transmittal of information and materials

3.5 Seller shall not disclose or transfer classified information and/or materials to any third part whatsoever without the prior written approval of BOEING/IAI and the relevant governmental authorities.

3.6 The Parties shall jointly establish a secured process for the transfer of Classified Information. Use of the said secured process shall be subject to the approval of appropriate governmental authorities.

3.7 Controlled Unclassified Information provided or generated under this Contract shall be handled in accordance with the provisions of the NDA and controlled as follows:

- o Such information shall be used only for the purposes provided in this Contract.
- o Access to such information shall be limited to personnel whose access is necessary for the permitted use in the Arrow 3 Program.
- o Seller shall not further disclose or transfer such information unless BOEING/IAI consents in writing to such disclosure.
- o Seller shall provide immediate notification of any unauthorized disclosure or any disclosure under any legislative provision.
- o Nothing contained herein shall be construed to derogate in any way the obligations or responsibilities of the Parties as set forth in the NDA.



**ARTICLE 4- WARRANTY**

4.1 Notwithstanding inspection, reviews, tests, approvals and/or acceptance by BOEING/IAI of the Seller Items that are delivered to BOEING/IAI, Seller warrants that for a period of twelve (12) months after delivery to BOEING/IAI of the [hardware deliveries], the Seller Items (and every sub-part, sub-system or unit thereof) shall be free from all defects in materials or workmanship and shall conform with the requirements of the Contract. Seller shall be notified within 30 calendar days after a defect is identified and shall effect repairs as an allowable cost under this contract. Failures arising from defects in BOEING/IAI Property and Information are excluded.

4.2 At any time during the above-referenced warranty period, BOEING/IAI may require Seller to replace or correct any non-conforming Seller Items. Except as otherwise provided in this article below, the cost of replacement or correction shall be included in allowable cost, determined in Article 8 below, but no additional Fee (defined therein) shall be paid. Seller shall not tender for acceptance Seller Items required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken.

4.3 If Seller fails to proceed promptly to perform required replacement or correction, BOEING may, upon sixty (60) days written notice, –

- (a) By contract or otherwise, perform the replacement or correction and charge to Seller any increased cost or make an equitable reduction in the Fee;
- (b) Require delivery of undelivered Seller Items at an equitable reduction in the Fee; or
- (c) Terminate this Contract pursuant to Article 6.

Failure by the Parties to agree on the amount of increased cost to be charged to Seller or to the reduction of the Fee shall be a dispute.

4.4 Notwithstanding Sections 4.2 and 4.3 above, BOEING/IAI may at any time require Seller to correct or replace, without cost to BOEING/IAI, non-conforming Seller Items, if the non-conformances are due to (a) fraud, lack of good faith or willful misconduct on the part of Seller's managerial personnel or (b) the conduct of one or more of Seller's employees selected or retained by Seller after Seller's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified. For the avoidance of doubt, Seller's managerial personnel shall be determined at the Missile Defense Systems business segment level.

4.5 Notwithstanding inspection, reviews, tests, approvals, and/or acceptance by BOEING/IAI with respect to any of the activities/tasks/services performed by Seller or its subcontractors pursuant to this Contract, Seller warrants that such activities/tasks/services shall be performed in a professional and workmanlike manner.

4.6 The applicable warranty period specified in Article 4.1 above shall be extended in the case of any repair or replacement of an item by the time required to effect such repair. The contractual period of performance for allowable warranty cost will be extended to the end of the last warranty item covered by this clause. For items repaired or replaced pursuant to this provision, the repaired item shall be warranted:

- (a) until the end of the original 12-month warranty period, plus the period commencing upon the date of BOEING/IAI's notification to Seller of the warranty claim and ending upon the receipt by BOEING/IAI of the relevant repaired or replaced item (the "Tolling Period"), if BOEING/IAI receives the repaired or replaced item during the first nine (9) months of the warranty period for such item; and
- (b) until the end of the third month following BOEING/IAI's receipt of the repaired or replaced item, plus the Tolling Period, if BOEING/IAI receives the repaired or replaced items after the first nine (9) months of the warranty period for such item.

4.7 BOEING/IAI will return the warranted item to Seller within 30 days of notification that the item requires warranty repair. Any disassembly beyond normal acceptance inspection, maintenance, and or attempt to repair by BOEING/IAI without prior approval of Seller shall void this warranty.

4.8 Seller will perform a warranty claim investigation and provide a written disposition of its findings to Buyer. If Seller rejects Buyer's warranty claim, Seller will provide reasonable substantiation of its rejection with the disposition. If Seller determines that Buyer's warranty claim is valid, Seller shall proceed with corrective action. The Buyer shall be responsible for the cost of removal of the defective part, transportation of the defective part to the Seller, and reinstallation of the repaired or replacement part.

4.9 Seller shall ensure that BOEING/IAI will receive from Seller's Arrow 3 subcontractors, the same warranty proposed and negotiated with Seller from their subcontractors.

**ARTICLE 5 – TERMINATION FOR CONVENIENCE**

5.1 BOEING/IAI shall have the right, at its convenience and discretion, to terminate this Contract, in whole or in part, from time to time, by giving Seller a Notice of Termination for Convenience given in accordance with the provisions of this contract, specifying the extent to which this Contract is terminated, and the date upon which such termination shall become effective. Such termination for convenience shall be subject to the terms and procedures for termination set forth below. Costs included in Seller's termination claim may be verified by the Auditor and/or the U.S. Government. In addition, in the event of such termination, any licenses granted to Seller and its subcontractors hereunder shall be automatically revoked and cancelled, as applicable. In such event (and without limiting any of BOEING/IAI's rights under this Contract) the provisions of Article 6 shall apply.

5.2 Seller shall not have any contention and/or claim (other than as set forth in this Article) against BOEING/IAI, IMOD and/or the United States Government in respect of the termination, for any reason whatsoever, of the RDT&E Agreement, and/or the ARROW 3 Program, and/or the ARROW 3 Project Agreement between the U.S. Government and IM OD, and/or this Contract and/or any purchase order canceled in consequence thereof.

5.3 Seller acknowledges that BOEING/IAI and the IM OD do not warrant that production by Seller will take place. Seller shall not have any claim and/or contention against BOEING/IAI, the IMOD and/or the United States Government for the absence of such production.

5.4 After receipt of the Notice of Termination, Seller shall act immediately according to the provisions in the Notice of Termination for Convenience. Following such Notice, Seller shall not enter into any additional commitments/engagements in the framework of this Contract without BOEING/IAI's prior written authorization and except as directed by BOEING/IAI, Seller shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this Article:

- (a) Stop work as specified in the notice.
- (b) Place no further subcontracts or orders (referred to as "subcontracts" in this Article), except as necessary to complete the continued portion of the Contract (if applicable).
- (c) Terminate all subcontracts to the extent they relate to the work terminated.
- (d) Assign to BOEING/IAI, as directed by BOEING/IAI, all right, title, and interest of Seller under the subcontracts terminated, in which case BOEING/IAI shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
- (e) With approval of BOEING/IAI, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this Contract.
- (f) Transfer title (if not already transferred) and, as directed by BOEING/IAI, deliver to BOEING/IAI:
  - (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated;
  - (ii) the completed or partially completed plans, drawings, information, and other property that, if the Contract had been completed, would be required to be furnished to BOEING/IAI; and
  - (iii) the jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this Contract, the cost of which Seller has been or will be reimbursed under this Contract.
  - (iv) For the avoidance of doubt, to the extent not covered in (i) to (iii) above, Seller's obligations under the provisions of this Article shall also apply to all items of BOEING/IAI Property and Information and all ARROW3 Property and Information.
- (g) Complete performance of the work not terminated.
- (h) Take any action that may be necessary, or that BOEING/IAI may direct, for the protection and preservation of the BOEING/IAI Property and Information and ARROW3 Property and Information that is in the possession of Seller (and/or its subcontractors).
  - (i) Use its best efforts to sell, as, and to the extent, directed or authorized by BOEING/IAI, any property of the types referred to in subparagraph 5.4(f); provided, however, that Seller (i) is not required to extend credit to any purchaser and (ii)

may acquire the property under the conditions prescribed by, and at prices approved by, BOEING/IAI. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by BOEING/IAI under this Contract, credited to the price or cost of the work, or paid in any other manner directed by BOEING/IAI.

- 5.5 Seller shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by BOEING/IAI upon written request of Seller within such 120-day period.
- 5.6 After termination, Seller shall submit a final termination settlement proposal to BOEING/IAI in the form and with the certification prescribed by the United States Government for termination of cost-reimbursement contracts. Seller shall submit the proposal promptly, but no later than 180 days from the effective date of termination, unless extended in writing by BOEING/IAI upon written request of Seller within this 180-day period. However, if BOEING/IAI determines that the facts justify it, a termination settlement proposal may be received and acted on after 180 days or any extension. If Seller fails to submit the proposal within the time allowed, BOEING/IAI may determine, on the basis of information available, the amount, if any, due Seller because of the termination and shall pay the amount determined.
- 5.7 Subject to paragraph 5.6 above, BOEING/IAI and Seller may agree on the whole or any part of the amount to be paid (including an allowance for the Fee) because of the termination. In such event, the Contract shall be amended, and Seller paid the agreed amount.
- 5.8 If Seller and BOEING/IAI fail to agree in whole or in part on the amount of costs and/or Fee to be paid because of the termination of work, BOEING/IAI shall determine, on the basis of information available, the amount, if any, due Seller, and shall pay that amount, which shall include the following:
- (a) All costs reimbursable under this Contract, not previously paid, for the performance of this Contract (excluding costs reimbursable under paragraphs (b) and (c) below) before the effective date of the termination, and those costs that may continue for a reasonable time with the approval of or as directed by BOEING/IAI; however, Seller shall discontinue these costs within 75 days of the effective date of termination.
  - (b) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract if not included in subparagraph 5.8(a) above.
  - (c) The reasonable costs of settlement of the work terminated, including --
    - (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
    - (ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
    - (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
  - (d) A portion of the Fixed Fee payable under the Contract equal to the percentage of completion of work contemplated under the Contract, but excluding any portion of the fee allocable to costs to be reimbursed in accordance with Article 5.8(b), less previous payments for fee.
- 5.9 The cost principles and procedures in Part 31 of the Federal Acquisition Regulation, in effect on the date of this Contract, shall govern all costs claimed, agreed to, or determined under this Article.
- 5.10 Seller shall have the right of dispute, under the Disputes clause, from any determination made by BOEING/IAI under paragraphs 5.6, 5.8, or 5.12 of this Article, except that if Seller failed to submit the termination settlement proposal within the time provided in paragraph 5.6 and failed to request a time extension, there is no right to dispute. If the BOEING/IAI has made a determination of the amount due under paragraphs 5.6, 5.8, or 5.12, BOEING/IAI shall pay Seller (1) the amount determined by BOEING/IAI if there is no right to dispute or if no timely dispute has been commenced, or (2) the amount finally determined after the dispute is resolved.
- 5.11 In arriving at the amount due Seller under this Article, there shall be deducted --
- (a) All unliquidated advance or other payments to Seller, under the terminated portion of this Contract;
  - (b) Any claim which BOEING/IAI has against Seller under this Contract; and
  - (c) The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by Seller or sold under this Article and not recovered by or credited to BOEING/IAI.

- 5.12 Seller and BOEING/IAI must agree to any equitable adjustment in the Fixed Fee for the continued portion of the Contract when there is a partial termination. BOEING/IAI shall amend the Contract to reflect such agreement.
- 5.13 (a) BOEING/IAI shall, under the terms and conditions prescribed herein, make partial payments and payments against costs incurred by Seller for the terminated portion of the Contract, if BOEING/IAI believes the total of these payments will not exceed the amount to which Seller will be entitled.
- (b) If the total payments exceed the amount finally determined to be due, Seller shall repay the excess to BOEING/IAI upon demand, together with interest computed at the rate of then annual LIBOR plus 2%. Interest shall be computed for the period from the date the excess payment is received by Seller to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Seller's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the BOEING/IAI because of the circumstances.
- 5.14 If following the payment of the costs referred to in this Article, Seller acquires any asset or right, the title to such asset or right shall be vested in BOEING/IAI.
- 5.15 To eliminate doubt, it is emphasized that Seller shall not be entitled to any remedy, compensation and/or additional payment due to the termination of the Contract according to this Article, apart from the payments specified in this Article.

## ARTICLE 6 - TERMINATION FOR DEFAULT

### 6.1

- (a) BOEING/IAI may terminate this Contract, in whole or in part, from time to time, by giving Seller a Notice of Termination for Default, specifying the nature of Seller's default, that correction has not been made within the cure period, the extent to which this Contract is terminated, and the date upon which such termination shall become effective. Such termination for default shall be subject to the terms and procedures set forth below. In all such cases, within five (5) days of BOEING/IAI's issuance of the notice of default/cure the Parties ExCom shall meet (in person or by telephone) to discuss possible solutions to resolve the default. If the Parties fail to meet or reach an agreed resolution within the applicable cure period or mutually agreed extension of such period, then the termination for default shall become effective.
- (b) BOEING/IAI may terminate this Contract for Seller's default in any of the following circumstances:
- (i) If Seller fails to perform one or more of its material obligations under this Contract in strict compliance with the terms of this Contract; or
- (ii) If Seller fails to deliver any item or to achieve any milestone or to perform any services required by this Contract within the time specified herein; or
- (iii) If Seller so fails to make progress of its performance under this Contract as to endanger performance of this Contract in accordance with its terms; or
- (iv) In the event of suspension of Seller's business, Seller's insolvency, institution of bankruptcy, liquidation proceedings by or against Seller, appointment of a trustee or receiver for Seller's property or business, or any assignment, reorganization or arrangement by Seller for the benefit of creditors.

and in any of the circumstances listed in (i) to (iii) above, Seller does not cure such default within thirty (30) days after receipt of such written notice from BOEING/IAI.

### 6.2 In the event of termination of this Contract by BOEING/IAI for Seller's default:

- (a) The provisions of Article 5 shall apply (as if BOEING/IAI had terminated this Contract for convenience) except that:
- (i) Article 5.8(c)(i) shall not apply and BOEING/IAI shall not pay any of the costs/expenses incurred by Seller for the preparation of Seller's termination settlement proposal; and
- (ii) Article 5.8(d) shall be modified to provide that BOEING/IAI shall pay that portion of the Fixed Fee that corresponds to the ratio of the amount/number of Seller Items and services actually delivered/performed and accepted by BOEING/IAI to the total amount/number of Seller Items/services required to be delivered/performed under the Contract;
- (b) BOEING/IAI shall be entitled to draw upon the performance bond described below in the event of an uncorrected material

breach by Seller. The proceeds of the performance bond will be used to complete performance and/or correct any failure to perform or other deficient performance;

- (c) All licenses granted to Seller and its subcontractors hereunder shall be automatically revoked and cancelled; and
- (d) Any costs paid to Seller (e.g. pre-termination costs) may be verified by the Auditor and/or the U.S. Government.

6.3 The subject matter of this Contract is of critical importance to the national security of the State of Israel. Accordingly, in the event BOEING/IAI terminates this Contract for Seller's default and/or for convenience, then, in addition to, and without prejudice to, any other rights BOEING/IAI may have, BOEING/IAI shall have the right, at BOEING/IAI's expense (subject to Section 10.2(b) if the termination is for default), to direct Seller (and Seller shall undertake) to transfer and/or preserve, protect and deliver to BOEING/IAI (and/or a third party in the U.S. designated by BOEING/IAI) all (i) BOEING/IAI Property and Information, (ii) ARROW3 Property and Information, and (iii) work in process, raw materials, supplies, components, and equipment as Seller shall have manufactured or acquired and for which it has not yet been paid (and for which it will be paid).

6.4 Seller's responsibilities and obligations under this Article shall also apply to BOEING/IAI Property and Information and ARROW3 Property and Information that is in the possession or control of its subcontractors.

6.5 Upon written request within thirty (30) days after the Effective Date of this Contract, Seller shall provide BOEING/IAI a corporate guaranty, in alternative amounts of 10%, 15% and 20% of the total Contract Cost and Fixed Fee.). If BOEING/IAI notifies Seller in writing that BOEING/IAI elects to have the corporate guaranty issued to BOEING/IAI, then Seller shall cause corporate guaranty to be issued to BOEING/IAI in the amount specified by BOEING/IAI in its notice (i.e., 10%, 15% or 20%) within 30 days. The corporate guaranty shall be extended if Seller has not completed performance of its obligations in this Contract by such date. If BOEING/IAI elects to receive the corporate guaranty, then the costs of opening and maintaining the corporate guaranty shall be included in the costs allowed under this Contract in accordance with Article 28. However, if BOEING/IAI draws upon the corporate guaranty in the event that Seller defaults under this Contract, then BOEING/IAI shall be entitled to recover such costs from Seller.

6.6 BOEING/IAI and Seller agree that the remedies set forth in this Contract shall be the sole and exclusive remedy of the Parties in the event of default by either of the Parties and the Parties shall have no other claims against each other. However, Seller reserves the right to challenge any default determination and/or to challenge BOEING/IAI's draw against the Performance Bond.

#### **ARTICLE 7 – RESERVED**

#### **ARTICLE 8 - RESERVED**

#### **ARTICLE 9 - AUDIT RIGHTS**

9.1 Seller shall maintain complete and accurate cost records regarding Seller's performance of all of its obligations hereunder. Such records shall be capable of verification through audit and analysis, and shall be made available to the Auditor for examination and audit at all reasonable times from the date of signature of this Contract until three (3) years after conclusion of the Contract. Seller agrees that the Auditor (which may be MDA or the DoD Contract Audit Agency (DCAA) if designated by BOEING/IAI), shall have the right to perform complete and comprehensive audits of Seller's records.

9.2 To the extent the DCAA performs such audit, then the ascertainment of costs, price investigation and pricing shall be carried out in accordance with the DCAA Regulations and Practices applicable. The auditing entity shall be entitled to prepare notes and prepare extracts from the documents submitted.

9.3 Seller's Subcontractors shall provide the Auditor the relevant information, permit examination of applicable records, such as calculations and accounts and observations of applicable business operations.

#### **ARTICLE 10 – LIABILITY AND INSURANCE**

10.1 Seller shall be liable for any loss and/or damage to Boeing/IAI Property and/or ARROW 3 Property (including materials, equipment, and supplies, incorporated or to be incorporated therein) irrespective of the cause of such loss or damage, while such

property is in the care, custody or control of either Seller or any of its subcontractors at any level. However, Seller shall have no obligation or liability, whether arising in contract, tort, or otherwise, for loss of use, revenue, or profit or for any other incidental or consequential damages with respect any Boeing/IAI Property and/or ARROW 3 Property that are lost and/or damaged.

10.2 Seller shall be liable to Boeing/IAI and IMOD, upon the first demand of either of them, for any loss caused to either of them due to any bodily injury to or death of any person not employed by Boeing or IAI, and for all claims, suits, liabilities, losses, expenses, damages and costs, caused to or incurred by, IAI, IMOD, Boeing, and/or the United States Government, persons employed by them or acting on their behalf and any third party, relating to such injury or death and arising in the course of and consequent on and/or as a result of Seller's negligent actions or omissions and/or those of anyone acting on its behalf, including subcontractors, in the performance of its obligations under this Contract, but only to the extent such injury or death was caused by the negligence or wilful misconduct of Seller personnel.

10.3 Neither Seller nor Boeing/IAI shall have any claim or obligation to the other arising from or relating to any bodily injury to or death of any person employed by it.

#### **ARTICLE 11 – GOVERNMENT MANAGEMENT, OVERSIGHT AND CONTROL**

11.1 The IMOD and U.S. Government Israeli Cooperative Program Office ("ICPO") have management, oversight and control powers with respect to the ARROW 3 Program, by virtue of the provisions of the RDT&E Agreement and the PA, and the IAI-IMOD ARROW 3 Contract, and by virtue of any purchase orders that may be signed between the IMOD and IAI and/or Boeing in the future. Boeing undertakes to extend to the IMOD and MDA any assistance required for the exercise of its management, oversight and control powers.

11.2 For said purpose IMOD's and MDA's representative in all that pertains to and derives from this Contract shall be the CCP's, the Israeli Upper Tier Interceptor Project Liaison Officer(s) and the US Upper Tier Interceptor Project Liaison Officers, or anyone acting on their behalf. Boeing undertakes to cooperate with the IMOD and M DA representatives and to aid them in the performance of their function.

11.3 Seller undertakes to enable IMOD to perform any act that is required, in IMOD's judgment, for fulfilling IMOD's undertakings to the U.S. Government and/or for verifying Seller and/or BOEING/IAI's compliance with its undertakings to the IMOD according to this Contract. Without derogating from the general nature of the foregoing, Boeing shall place at IMOD's disposal, for this purpose, all the information and/or documents and/or data (excluding accounting records required by IM OD).

11.4 Without derogating from the other provisions of this Contract, Seller shall include in its agreements with the Subcontractors provisions establishing that any right granted to IAI/IMOD and/or to the DoD by virtue of this Contract vis-à-vis Seller, shall vest in the IAI/IMOD and/or in the DoD vis-à-vis Seller's Subcontractors. Seller shall incorporate in its agreements with non-Principal Subcontractors provisions establishing that any right granted to the BOEING/IAI/IMOD and/or to the DoD by virtue of this clause vis-à-vis Seller, shall vest in BOEING/IAI/IMOD and/or in the DoD vis-à-vis those non-Principal Subcontractors of Seller.

11.5 Without derogating from the foregoing IM OD and DoD shall have the following rights with regard to this Contract:

- (a) to review performance, technical, cost and schedule aspects of this Contract, including receiving copies of technical data, engineering drawings, computer software and listing and test data.
- (b) to approve, monitor and update the Contract M aster Schedule.
- (c) to manage and control transfer of BOEING/IAI and/or Arrow 3 Program Property whether furnished by BOEING/ IAI or acquired.
- (d) to maintain an oversight of the security aspects of the Contract, including reviewing and obtaining approval for transfer of Classified Information.
- (e) full access and insight to Seller and Seller's sub contractor's facilities, subject to Seller's and Seller's sub contractor's security policies and U.S. law relating to the export of Defense Articles and/or Services. This access is limited to Seller's major suppliers and will be limited to only that area where work for this Contract is performed.
- (f) DoD shall have access to all financial data related to this Contract.

11.6 IMOD shall be entitled, at its discretion, to send a representative as an observer at any material meeting between BOEING/ IAI and Seller, including meetings for the purpose of negotiations.

## ARTICLE 12 – PROJECT INFORMATION

12.1 Seller shall immediately notify BOEING/IAI and IMOD if they are subject to any license or agreement that will restrict their freedom to disclose information or permit its use as required for the Program. Starting October 30, 2009 Seller shall make best efforts not to enter into any new agreement or arrangement with any existing or new subcontractors that will result in or include restrictions on disclosure or use of information needed for the Program. In any event, Seller shall submit all subcontractor intellectual property terms for Boeing's review and approval.

### 12.2. Contractor Project Background Information ("CPBI")

Seller hereby agrees that all Contractor Project Background Information may be:

- (a) Disclosed to BOEING, IAI, IMOD, M DA and other parties working on the Project, without additional charge, provided that:
  - (i) The CPBI is necessary to or useful in the Project;
  - (ii) Such disclosure of CPBI may be made available without incurring liability to holders of proprietary rights;
  - (iii) Disclosure is consistent with the applicable national disclosure policies and regulations; and
  - (iv) Any disclosure or transfer to other contractors is consistent with the applicable export control laws and regulations.
- (b) Used by IMOD, MDA and their contractors and subcontractors, without charge for Purposes of the Project only, and may be subject to further restrictions by holders of proprietary rights. Any such restrictions shall be identified in accordance with clause 2 above.
- (c) Seller (and/or its subcontractors) shall retain all of its rights, if any, with respect to CPBI. Seller shall prepare a list of all its CPBI, which shall indicate, with respect to each item of CPBI, the country of origin, security classification, proprietary information, use and disclosure restrictions and the parties to which the restrictions apply. Such list shall be a living document which shall be updated on a continuous basis throughout the term of the Contract.

### 12.3. Project Foreground Information

12.3.1 Seller hereby agrees that title to all Project Foreground Information, whether CPFI or GPFI, and including Project Inventions shall belong to IAI and/or IM OD and/or M DA. For avoidance of doubt, Seller shall not sell, transfer title to, disclose or transfer possession of Project Foreground Information to any third party without the prior written consent of IAI.

12.3.2 Seller may use Project Foreground Information for purposes of performing the Contract.

12.3.3 Seller shall not sell, transfer title to, disclose or transfer possession of Project Foreground Information to any third party without the prior written consent of IAI.

12.3.3 Project Foreground Information shall be prepared and delivered as a Technical Data Package (TDP) (or a Product Definition Data (PDD) if a TDP is unavailable), all as set forth in [TBD annex (list of data deliverables)].

### 12.4. Security, Export Laws and Regulations

12.4.1 Seller agree that all Project Information (classified and unclassified) shall be identified and marked and shall be handled according to Art. IX (Controlled Unclassified Information) or Art. XI (Security), as applicable, of the RDT&E Agreement, and the GSOIA, PSI, Project Classification Guide. Transfer of Project Information shall be consistent with and subject to all applicable export control laws and regulations.

12.4.2 Seller further agrees that:

- (a) Project Foreground Information shall not be used in offensive ballistic missile systems;
- (b) Use of Project Foreground Information for other missile systems, rocket systems, or unmanned air vehicles shall be in accordance with US law, regulation and policy; and
- (c) Upon request of Boeing, IAI, IMOD and/or MDA, and/or their authorized representatives, Seller shall provide visibility into the identity of prospective contractors and subcontractors receiving export –controlled information.

### 12.4.3 Classified Information

- (a) Seller agrees that all Classified Information provided or generated pursuant to the Contract and/or the PA and that comes within its possession or control shall be stored, handled, transmitted and safeguarded in accordance with the GSOIA. In addition, Classified Information shall be transferred through official government-to-government channels only, or other channels approved by the government. All Classified Information shall be marked to indicate the level of classification, country of origin, conditions of release, and that it relates to the RDT&E and PA.
- (b) Seller further agrees that Classified Information:
- (i) Shall be safeguarded against unauthorized disclosure;
  - (ii) Shall not be released to any third party without the prior written authorization, in accordance with applicable laws and regulations, of the government have authority over such information;
  - (iii) Shall be used only for the purposes authorized in the Contract; and
  - (iv) Shall comply with any distribution and access restrictions on such information;
- (c) Seller shall promptly and fully inform Boeing and IAI and cooperate in investigating any cases of known or suspected loss or unauthorized disclosure or use of Classified Information.
- (d) Seller shall comply with the security instructions issued by the US and/or Israeli (as applicable) Designated Security Authority (DSA) for the Program, including
- (i) Having the required Contractor and facilities security clearances (including at all subcontractor levels);
  - (ii) Ensure that all persons with access to Classified Information have been briefed of their responsibilities; and
  - (iii) Limiting access on a "need to know" basis.

#### 12.4.4 Controlled Unclassified Information (CUI)

- (a) Seller agrees that, unless otherwise agreed in writing, Controlled Unclassified Information shall be controlled as follows:
- (i) Used only for the purposes authorized for use of Project Information;
  - (ii) Access limited to persons whose access is necessary for the permitted use;
  - (iii) Access/use shall be in accordance with all applicable laws and regulations and security instructions; and
  - (iv) Seller shall provide immediate notification to Boeing and IAI of any unauthorized disclosure or any disclosure required under any laws, statutes, regulations, and/or court orders or directives.
- (b) Controlled Unclassified Information shall be appropriately marked to ensure its "in confidence" nature and also to indicate export control regulations (e.g. "ITAR-controlled", "EAR-controlled", "For Official Use Only", etc.) as all as set forth in the Project Security Instruction.

#### 12.5. Government Security Oversight

12.5.1 Seller shall permit visits to its facilities and laboratories, by employees of IAI, Boeing, IMOD, and MDA, and their authorized representatives, provided such persons have all necessary and appropriate security clearances and a need to know.

12.5.2 Seller hereby represents that it has and shall maintain all required facility and personal security clearances and security compliance systems and procedures as needed to comply with all applicable laws and regulations and the security instructions applicable to this Contract.

12.5.3 Seller shall allow the DSA's to conduct periodic inspections to ensure that Classified Information is properly protected.

#### 12.6 IAI Information

12.6.1 Seller hereby acknowledges and agrees that:

- (a) It has no right, title or interest in IAI Information other than the rights to possess and use such property for the purposes of performing this Contract; and
- (b) IAI is the owner and/or sole authorized representative of the owner/s of the IAI Information.



- (c) None of the IAI Information shall be used for any purpose other than performance by Seller and its subcontractors of this Contract.