

# JONES DAY

51 LOUISIANA AVENUE, N.W. • WASHINGTON, D.C. 20001.2113  
TELEPHONE: +1.202.879.3939 • FACSIMILE: +1.202.626.1700

DIRECT NUMBER: (202) 879-3630  
BOLCOTT@JONESDAY.COM

February 6, 2014

## VIA E-MAIL

Joe Dichoso, Chief  
Equipment Authorization Branch, Laboratory Division  
Office of Engineering and Technology  
Federal Communications Commission  
7435 Oakland Mills Road  
Columbia, MD 21046-1609

**Re: The Boeing Company, Supplemented Request for Confidential Treatment  
FCC Identification Number H8V-BLK1 (Model: BLACK)**

Dear Mr. Dichoso:

The Boeing Company (“Boeing”), through its attorneys and in response to inquiries from your office, hereby submits this supplemented request for confidential treatment in order to request that the exhibits listed below and attached to the FCC Forms 731 for the H8V-BLK1 (Model: BLACK) be given confidential treatment and permanently withheld from public inspection pursuant to Sections 0.457(d) and 0.459 of the Commission’s Rules, 47 C.F.R. §§ 0.457(d) and 0.459:

- Block Diagram
- Internal Photos
- Operational Description
- Parts List
- Tune Up Procedure
- SDR Software/Security Information
- Schematics
- Antenna Specifications
- Product Change Document
- Boeing Black Purchase Agreement

Boeing further requests pursuant to Sections 0.457(d) and 0.459 of the Commission’s Rules, 47 C.F.R. §§ 0.457(d) and 0.459, that the exhibits listed below and attached to the FCC Forms 731 for the H8V-BLK1 be given temporary confidential treatment and withheld from public inspection for a period of 180 days:

Joe Dichoso, Chief  
February 6, 2014  
Page 2

Test Set Up Photos  
External Photos

Boeing has developed its Black phone primarily by governmental agencies and their contractors to ensure that data and voice communications undertaken by their respective employees are transmitted and stored in a highly secure manner. Pursuant to the Freedom of Information Act (“FOIA”), public disclosure is not required for “trade secrets and commercial or financial information obtained from any person and privileged or confidential categories of materials not routinely available for public inspection.”<sup>1</sup> The commercial proprietary information contained within the exhibits falls squarely within this exemption from public disclosure.

Pursuant to Sections 0.457(d) and 0.459 of the Commission’s Rules, 47 C.F.R. §§ 0.457(d) and 0.459, the following information is provided in support of the request for confidential treatment. Boeing is submitted the confidential information to the Commission in support of an application for equipment certification.<sup>2</sup> The exhibits for which confidential treatment is sought contain Boeing trade secrets and proprietary information relating to the secure operation of the Black phone that Boeing has developed and for which it seeks certification.<sup>3</sup> The information is also highly sensitive because it identifies operational and design elements of the product that facilitate the secure operation of the device and release of such information could assist third parties in defeating these security measures.<sup>4</sup> The market for development of these products is very competitive.<sup>5</sup> Due to the competitive environment for such products, release of this information to its competitors would harm Boeing.<sup>6</sup> Boeing would lose the competitive benefit of the substantial resources it invested in the development of the product should the information contained in these exhibits be disclosed to its competitors.

It is customary for companies such as Boeing not to disclose the details of its designs, technologies and products to competitors or to the public, and Boeing has taken reasonable actions to keep these trade secrets confidential.<sup>7</sup> Boeing employees sign agreements restricting their ability to disclose Boeing’s intellectual property used to develop products such as the Black

---

<sup>1</sup> 5 U.S.C. § 552(b)(4); *see also* 47 C.F.R. § 0.457(d).

<sup>2</sup> *See* 47 C.F.R. § 0.459(b)(2).

<sup>3</sup> *See* 47 C.F.R. § 0.459(b)(3).

<sup>4</sup> *See* 47 C.F.R. § 0.459(b)(3).

<sup>5</sup> *See* 47 C.F.R. § 0.459(b)(4).

<sup>6</sup> *See* 47 C.F.R. § 0.459(b)(5).

<sup>7</sup> *See* 47 C.F.R. § 0.459(b)(6).

Joe Dichoso, Chief  
February 6, 2014  
Page 3

phone. Boeing has not disclosed information regarding the product to any other party without first securing the execution of a non-disclosure agreement.<sup>8</sup> Boeing requests that the subject information not be made routinely available for public inspection at any time.<sup>9</sup> The design and technology included in the product would benefit Boeing's competitors and harm Boeing if it is released for public inspection at any time.

Boeing's Black phone will be sold primarily to government agencies and companies engaged in contractual activities with those agencies that are related to defense and homeland security. The device will be marketed and sold in a manner such that low level technical and operational information about the product will not be provided to the general public. Detailed technical information distributed at trade shows will be limited or protected by non-disclosure agreements.

Additional justifications for withholding the above listed materials from public inspection are as follows. With respect to the Block Diagram, Schematics, Internal Photos, Parts List/Tune Up Information, and Boeing Black Purchase Agreement, pursuant to guidance issued by your office, such materials may be treated as confidential on a permanent basis if "the device is sealed and disassembly would destroy the product."<sup>10</sup> There are no serviceable parts on Boeing's Black phone and any attempted servicing or replacing of parts would destroy the product. The Boeing Black phone is manufactured as a sealed device both with epoxy around the casing and with screws, the heads of which are covered with tamper proof covering to identify attempted disassembly. Any attempt to break open the casing of the device would trigger functions that would delete the data and software contained within the device and make the device inoperable.

The Boeing Black is also protected by the Boeing Black Purchase Agreement ("Purchase Agreement"), which specifically designates and protects as "proprietary information" the

components, hardware, Product Software, applications, functionalities, or internal structure or workings of the Product provided by Seller, including without limitation those that can be obtained by disassembling or opening the Product or its software or components.<sup>11</sup>

---

<sup>8</sup> See 47 C.F.R. § 0.459(b)(7).

<sup>9</sup> See 47 C.F.R. § 0.459(b)(8).

<sup>10</sup> *Confidentiality Procedures Detail*, FCC Office of Engineering and Technology, Laboratory Division, at 2 (Dec. 21, 2011).

<sup>11</sup> See *Boeing Black Purchase Agreement*, § 1.4 (a copy is attached to this letter and subject to the permanent confidentiality request of this letter).

Joe Dichoso, Chief  
February 6, 2014  
Page 4

The current Purchase Agreement, which itself is marked and designated as “Boeing Proprietary and Confidential,” further designates and protects as “proprietary information” all “descriptive information and data about the Product.”<sup>12</sup> The scope of this protection therefore includes both the internal parts and structure of the device, and also any photographs, depictions, or descriptions of these propriety elements.

The Purchase Agreement further provides that the purchaser agrees

to not disclose Proprietary Information to any nonparty or otherwise use Proprietary Information that it receives under this Agreement without first obtaining the written permission of Seller; (ii) to hold Proprietary Information in trust and confidence and only disclose or otherwise provide access to the same to employees or agents with a bona fide official use or need to know, and on the condition that said employees have been made aware of their obligations hereunder, agree to be bound by the same and have entered into confidentiality agreements as Buyer employees or agents which are no less restrictive than this Agreement; (iii) to refrain from using the Product, reverse engineering, or adding software, applications, or other components in a manner that violates the Proprietary Information or Intellectual Property rights of Boeing or any Third Party.

Considered together, the physical, technical, and legal measures that Boeing has undertaken to ensure the confidentiality and security of the internal components, functions and descriptions of the Boeing Black phone justify treatment of the Block Diagram, Schematics, Internal Photos, Parts List/Tune Up Information, and the Purchase Agreement as permanently confidential under Sections 0.457(d) and 0.459 of the Commission’s rules. Permanent confidential treatment is further justified for these exhibits because any disclosure of the identified exhibits would facilitate efforts to defeat Boeing’s these hardware security measures, which would be counter to the underlying purpose of the product.

Finally, the public interest will be served by granting this request for confidential treatment. It is in the public interest that equipment manufacturers invest in the development of new technologies and be permitted to benefit from those efforts.<sup>13</sup> It is also in the public interest that the design and operational details of products that are specifically intended for use by

---

<sup>12</sup> *See id.*

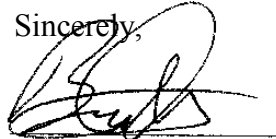
<sup>13</sup> *See* 47 C.F.R. § 0.459(b)(9).

Joe Dichoso, Chief  
February 6, 2014  
Page 5

governmental agencies and their contractors be protected from disclosure in order to ensure the continued reliability and security of such products.

Please contact the undersigned if you have any questions about this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce A. Olcott", written over a horizontal line.

Bruce A. Olcott  
Counsel to The Boeing Company

**BOEING BLACK  
PURCHASE AGREEMENT**

**1. Definitions.**

**1.1 “Buyer”** shall mean the customer procuring or purchasing the Product and/or Documentation, or any User, as defined herein or by the terms of the Boeing Black End User License Agreement (“EULA”).

**1.2 “Documentation”** shall mean any Boeing proprietary Architecture and other documentation related to the Boeing Black Mobile Device, including without limitation, the Boeing Black Quick Start Guide (“User Guide”).

**1.3 “Product”** shall mean the Boeing Black Mobile Device, including all hardware, Product Software (as defined herein), provided by Seller at the time of delivery, but excluding any hardware, software, component, functionality, application, wireless service, connectivity, or accessory not provided by Seller at time of delivery.

**1.4 “Proprietary Information”** shall mean any information relating to the components, hardware, Product Software, applications, functionalities, or internal structure or workings of the Product provided by Seller, including without limitation those that can be obtained by disassembling or opening the Product or its software or components. Furthermore, all intellectual property rights, copyrights, trademarks, trade secrets, and patents of Seller, as well as all other descriptive information and data about the Product whether communicated orally or in writing, with or without proprietary marking by Seller, shall be considered Proprietary Information.

**1.5 “Seller”** shall mean The Boeing Company or any assignee thereof.

**1.6 “Product Software”** shall mean the software provided by Seller at the time of delivery of the Product, but excluding any software, firmware, component, functionality, application, wireless service, connectivity, or accessory not provided by Seller at time of delivery.

**1.7 “Term”** shall have the meaning set forth in §3 below.

**1.8 “Third Party”** shall mean any person or entity other than Seller, Buyer, or User.

**1.9 “User”** shall mean any Buyer or person operating, possessing, transporting, accessing, or in any other way using the Product and/or Documentation.

**2. License.**

**2.1 Software and Firmware License.** Subject to the terms and conditions of this Agreement and the EULA, Seller hereby grants to Buyer a non-exclusive, non-transferable, non-sublicenseable right and license during the Term of this Agreement to use the Product in accordance with the terms hereof. Notwithstanding the foregoing, all ownership rights to any Product design, Product Software, Documentation, and Proprietary Information remain the sole and exclusive property of Seller and/or Third Parties.

**2.2 General Usage Restrictions**

(a) Buyer covenants, represents and warrants that it will not use the Product, or any Product Software, for any unlawful purpose or any purposes beyond the scope of the licenses

granted in this Agreement and the EULA, and that it will comply with any and all applicable laws, regulations, covenants, and Agreements governing the use, purchase, and sale of the Product. Buyer will operate the Device only pursuant to a separate user agreement with a wireless carrier.

(b) Without limiting the generality of the foregoing, Buyer will not (i) market or distribute the Product or Documentation; (ii) assign, sublicense, sell, lease or otherwise transfer or convey, or pledge as security or otherwise encumber, Buyer’s rights under the licenses granted in §2.1 or the EULA; (iii) modify the Product, including without limitation its Product Software, or Documentation, except with the prior written consent of Seller; (iv) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the design or source code from which any component of the Product is compiled or interpreted, and Buyer hereby acknowledges that nothing in this Agreement shall be construed to grant Buyer any right to obtain or use such source code; or (v) make copies of the Product Software or Documentation.

(c) Buyer shall undertake all measures necessary to ensure that any and all use of the Product, Product Software, and Documentation complies in all respects with any contractual or other legally binding obligations of Buyer or Seller to any Third Party. Buyer shall not enter into any contractual relationship or other legally binding obligation with any Third Party which shall have the purpose or effect of encumbering the use by Seller of the Product or Documentation.

(d) Buyer shall undertake all measures necessary to ensure that its use of the Product and Documentation complies in all respects with all applicable laws, statutes, regulations, ordinances or other rules promulgated by governing authorities having jurisdiction over the Parties, the Product or Documentation, including, without limitation, by means of obtaining any permits, licenses and/or approvals required with respect to export regulations promulgated by the Bureau of Export Administration or any other agency or department of the federal Government of the United States of America, including without limitation, the Federal Communications Commission.

**2.3 Third-Party Agreements**

(a) Buyer acknowledges that the Product and Product Software includes several software applications, components, and features that are governed by Third Party license and/or other use agreements. Buyer covenants, represents, and warrants that it will use the Product in accordance with all applicable Third-Party license and use Agreements, which may be terminated or modified from time to time by the Third Parties or Seller. Seller shall not be responsible for Buyer’s compliance with any Third Party license or user Agreement or for Third Party modification or termination of a Third Party license or user Agreement, whether or not any Third Party product, software, application, component, or features are included by Seller in the Product at the time of delivery, or whether any Third

**BOEING BLACK  
PURCHASE AGREEMENT**

Party license or user Agreement is provided to Buyer by Seller.

(b) Buyer acknowledges that components, applications, software, or accessories may be removed from the Product without Buyer consent or Buyer right to extract license fee concession or penalty against Seller, from time to time as warranted or required.

**3. Intellectual Property.**

3.1 Nothing in this Agreement shall create, by express grant, implication, estoppel or otherwise, in Buyer or User any right, title, interest, or license in or to the inventions, patents, technical data, computer software, software documentation, designs or other intellectual property of Seller, Seller's suppliers, or other Third Parties.

3.2 User agrees not to upload or access any data, software, firmware, component, accessory, or item that is inconsistent with these terms or infringes any IP rights of Boeing or Third Parties. User agrees not to reproduce any software, applications, or other Product features provided to Buyer by Seller at time of delivery.

**4. Term and Termination.**

**4.1 Term.** Buyer's obligations and restrictions herein shall commence on the date of delivery and extend perpetually for as long as Buyer possesses or uses the Product, unless terminated in accordance with §4.2 of this Agreement.

**4.2 Termination.** Seller shall have the right to terminate this Agreement immediately at any time for violation of regulation or law, or for material breach of this or any applicable Agreement. Upon termination, Buyer must immediately cease use of the Product, and return the Product, or any Product Software, components, or portion thereof, to Seller, upon request.

**5. License Fee.** There is no separate fee for the license grant contained in this Agreement. License fees are part of the Product price. Buyer is responsible for any and all license fees relating to Third-Party Product Software, or other software or components or accessories not provided by Seller. Wireless carrier service, connectivity, and data plans etc. are sold separately and are not the responsibility of Seller.

**6. Limited Warranty.**

**6.1 Limited Warranty for Product Hardware.** Seller warrants that the Product Hardware furnished under this contract shall be free from defects in materials and workmanship. Such warranty shall extend only to the Product Hardware at the time of delivery and does not extend to any Product Software, application, component, or accessory purchased, added, or otherwise obtained by Buyer. Limited shall commence at the time of delivery of the Product, and shall continue for one (1) year thereafter.

**6.2 Product Software Disclaimer.** Product Software is provided at Buyer's sole risk "as is" and "as available"

with all faults and without warranty of any kind under the EULA. Product Software includes Boeing and Third Party provided software for purposes of this section and EULA. User acknowledges that Product should not be used in situations where failure or time delays, errors, inaccuracies could lead to death, personal injury, or severe physical or environmental damage.

**6.3 Remedies.** For any valid warranty claim under §6.1 above, Seller may, at Seller's sole discretion repair the Product at no charge to Buyer, replace the Product at no charge to Buyer, or refund to Buyer the purchase price of the Product. Repaired or replaced Products shall be subject to this article in the same manner and to the same extent as materials originally delivered, but only as to the corrected or replaced part or parts thereof.

**7. Limitation of Liability.**

**7.1 Disclaimer.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SELLER DISCLAIMS ANY AND ALL OTHER PROMISES, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, ARISING OUT OF OR RELATING TO BUYER'S AUTHORIZED USE OF THE PRODUCT OR PRODUCT SOFTWARE UNDER THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DATA ACCURACY, SYSTEM INTEGRATION, TITLE, NON-INFRINGEMENT AND/OR QUIET ENJOYMENT, AND THE PRODUCT, PRODUCT SOFTWARE, DOCUMENTATION, AND ANY OTHER INFORMATION OR MATERIALS OTHERWISE PROVIDED ARE PROVIDED "AS IS" WITH NO OTHER WARRANTY PROVIDED. NO WARRANTY IS MADE BY SELLER ON THE BASIS OF TRADE USAGE, COURSE OF DEALING OR COURSE OF TRADE. SELLER DOES NOT WARRANT THAT THE PRODUCT, PRODUCT SOFTWARE, OR DOCUMENTATION WILL MEET BUYER'S REQUIREMENTS OR THAT THE OPERATION OF THE PRODUCT WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED. BUYER ACKNOWLEDGES THAT SELLER'S OBLIGATIONS UNDER THIS AGREEMENT ARE FOR THE BENEFIT OF BUYER ONLY.

**7.2 Exclusions of Remedies; Limitation of Liability.** IN NO EVENT SHALL SELLER BE LIABLE TO BUYER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, COSTS OF DELAY, INFRINGEMENT, ANY FAILURE OF DELIVERY, BUSINESS INTERRUPTION, COSTS OF LOST OR DAMAGED DATA OR DOCUMENTATION OR LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY

**BOEING BLACK  
PURCHASE AGREEMENT**

OF SUCH DAMAGES. THIS LIMITATION UPON DAMAGES AND CLAIMS IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE. THE CUMULATIVE LIABILITY OF SELLER TO BUYER FOR ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY CAUSE OF ACTION SOUNDING IN CONTRACT, TORT, OR STRICT LIABILITY, SHALL NOT EXCEED THE PURCHASE PRICE OF THE PRODUCT(S) TO WHICH THIS AGREEMENT APPLIES. THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE.

**7.3 Essential Basis.** The Parties acknowledge and agree that the disclaimers, exclusions and limitations of liability set forth in this §§ 7-8 form an essential basis of this Agreement, and that, absent any of such disclaimers, exclusions or limitations of liability, the terms of this Agreement, would be substantially different.

**8. Patent and Copyright.**

**8.1 Authorization and Consent.** To the extent that Buyer or User is a United States Government Department or Agency, or any member or employee thereof, Federal Acquisition Regulation provision 52.227-1 (ALT I) shall be incorporated into this Agreement and the EULA as if fully stated herein, to the full and complete benefit of Seller, regarding all claims, disputes, suits, or other matters arising out of, or relating to, the use of the Product or Product Software.

**8.2 Copyright.** The contents of 28 U.S.C. § 1498(b) shall be incorporated into this Agreement and the EULA as if fully stated herein, to the full and complete benefit of Seller regarding all claims, disputes, suits, or other matters arising out of, or relating to, the use of the Product or Product Software.

**9. Proprietary Information Obligations.** Buyer and User agree: (i) to not disclose Proprietary Information to any nonparty or otherwise use Proprietary Information that it receives under this Agreement without first obtaining the written permission of Seller; (ii) to hold Proprietary Information in trust and confidence and only disclose or otherwise provide access to the same to employees or agents with a bona fide official use or need to know, and on the condition that said employees have been made aware of their obligations hereunder, agree to be bound by the same and have entered into confidentiality agreements as Buyer employees or agents which are no less restrictive than this Agreement; (iii) to refrain from using the Product, reverse engineering, or adding software, applications, or other components in a manner that violates the Proprietary

Information or Intellectual Property rights of Boeing or any Third Party.

**10. Upgrades.** Patches, bug fixes, updates, and upgrades for the Product will be provided to Buyer at the sole discretion of Seller.

**11. Open Source Software (OSS) and Other Terms**

The Product contains Open Source Software (OSS) and other Third Party terms and conditions. It is Buyer's and User's responsibility to comply with these terms and license restrictions. OSS licenses and other Third Party terms can be found by accessing the "Legal Information" directory on the Product. To access "Legal Information", go to "Settings", select "About Phone", then "Legal Information".

**12. Own Risk.** Buyer and User are jointly and severally liable for the acts and omissions of all persons using the Product, whether or not authorized by Buyer. Buyer is solely and exclusively responsible for protecting and securing the Product. Furthermore, Buyer acknowledges that use of the Product must be in compliance with this Agreement, the Product User Guide, the EULA and any License Agreement applicable to the Product and that such use is at Buyer's and User's own risk.

**13. Safe Use.**

**13.1 Vehicle Operation.** Use of Product while operating a vehicle may be distracting and may be illegal, or subject to restrictions, in some states, countries, or jurisdictions. Seller recommends against, and expressly disclaims any liability for, use of the Product while operating a vehicle.

**13.2 Locations.** Product is not authorized for use in excessive heat, rain, thunderstorms, or extreme weather, or potentially explosive environments. Such areas may or may not be marked and include, but are not limited to; Fueling areas, below deck on boats, fuel or chemical transfer facilities, products (including vehicles) using liquefied petroleum gas, areas where the air contains chemicals or particles (such as grain, dust, or metal powders, and any other area where it is advisable to turn off a vehicle engine.

**13.3 Consent to Location and other Data Monitoring.** You acknowledge and agree that the Product contains certain applications, features and other Product Software that allow your personal location when possessing or using the Product, and/or your use of the Product, to be tracked, chronicled, and/or monitored by Third Parties and/ or distributed and shared with Third Parties. In addition, Boeing and its affiliates or suppliers may collect and use technical information gathered as part of the product support services related to the Product Software provided to you, if any, related to the Product Software. Boeing may use this information solely to improve its products or to provide customized services or technologies to you and will not disclose this information in a form that personally identifies

**BOEING BLACK  
PURCHASE AGREEMENT**

you. Location-based information includes information that can be used to determine the approximate location of a mobile device. Mobile devices which are connected to a wireless network transmit location-based information. Additionally, if you use applications that require location-based information (e.g. driving directions), such applications transmit location-based information. The location-based information may be shared with third-parties, including your wireless service provider, applications providers, Boeing, and other Third-Parties providing services.

**14. Equipment.**

**14.1 RF Emissions.** Buyer and User are hereby advised that the Product receives and transmits radio frequency (RF) energy. Product's RF emissions comply with the FCC/IC radiation exposure limits set forth for an uncontrolled environment and meets the FCC radio frequency (RF) Exposure Guidelines in Supplement C to OET65 and RSS-102 of the IC radio frequency (RF) Exposure rules. This transmitter must not be co-located or operating in conjunction with any other antenna or transmitter.

By using the Product, Buyer acknowledges and solely and exclusively accepts all health and medical risks relating to use of the Product, including without limitation, all risks, injuries, or death arising from the Product's RF or other emissions.

**14.2 Equipment Interference.** RF emissions from electronic equipment can negatively affect the operation of other electronic equipment, causing them to malfunction. Users shall obey all signage and instructions by equipment operators and manufacturers. Use of the Product may be prohibited while traveling in aircraft. Users shall follow all pilot and crewmember instructions regarding the use of the Product on aircraft. To avoid interfering with blasting operations, Users shall power off the Product when in a "blasting area" or in areas posted "Turn off two-way radio."

**14.3 Emergency Conditions.** The Product operates using radio signals, cellular, and landline networks as well as user-programmed functions, which cannot guarantee connection under all conditions. It is not intended to be relied upon for essential communications (e.g. medical emergencies or power outages).

**15. Nuclear Related Activities.** Product is not intended to be used, nor should it be used, in any nuclear-related application either as a "Basic Component" under 10 C.F.R. part 21 (U.S. Nuclear Regulatory Commission) or otherwise under similar nuclear laws and regulations of the United States or any other country.

**16. Provision of Service.**

**16.1 Applicable Laws.** The availability, reliability, and quality of service to the Product are dependent on wireless or radio transmissions not provided or monitored by Seller. Seller makes no representations about, and shall have no

liability or obligation for such service. BUYER AND USER SHALL BE SOLELY AND EXCLUSIVELY RESPONSIBLE FOR ANY COMPLIANCE OR AUTHORIZATIONS REQUIRED BY ALL APPLICABLE LAWS, RULES, AND REGULATIONS REGARDING BUYER'S OR USER'S USE AND OPERATION OF THE PRODUCT, INCLUDING WITHOUT LIMITATION, THOSE RELATING TO USER PRIVACY, AND THOSE PROMULGATED BY THE FEDERAL COMMUNICATIONS COMMISSION.

**16.2 Digital Certificates.** User is solely responsible for accepting and relying on any digital certificates and whether issued by Boeing or a Third Party. To the maximum extent permitted by applicable law, Boeing makes no warranties, express or implied, as to merchantability or fitness for a particular purpose, accuracy, security, or non-infringement of Third Party rights with respect to digital certificates.

**17. Cancellation and Returns.**

**17.1 Order Cancellation.** Orders must be cancelled within thirty (30) days of order placement.

**17.2 Returns.** Returns of Product by Limited Warranty as defined herein will be subject to prior approval by Seller. Products returned under Limited Warranty as defined herein must be properly packaged to commercially reasonable standards and shipped to Seller specified locations. Shipping containers must be clearly marked per Seller's instruction and shipped freight prepaid by the Buyer.

**18. Weights and Dimensions.** Advertised weights and dimensions are estimates or approximate only and are not warranted.

**19. Export.** WARNING - This hardware and technology may be restricted for export by the Arms Export Control Act (Title 22, U.S.C., Sec 2751, et seq.) or the Export Administration Act of 1979 (Title 50, U.S.C., App. 2401 et seq), as amended. Violations of these export laws are subject to criminal penalties. It is Buyer's responsibility to comply with all Export laws and regulations.

**20. Governing Law.** Any and all claims, matters, or disputes arising out of this Agreement or relating to the Product will be governed and construed in accordance with the laws of the State of Delaware, but excluding its conflict of laws provisions that would require the application of the laws of any other state or jurisdiction. Any suit, action, or claim arising out of the use of the Product or Product Software shall be brought solely in the federal court located in the Eastern District of Virginia, Alexandria Division. The UN Convention on Contracts for the International Sale of Goods shall not apply to any claim, matter or dispute arising out of this Agreement.

**21. Changes.** Any changes to this Agreement shall be in writing and agreed to by both parties. Any changes to this Agreement may impact the price or schedule for delivery of the Product.

**BOEING BLACK  
PURCHASE AGREEMENT**

**22. Force Majeure.** Seller will not be liable for any loss, damage or delay arising out of its failure to perform hereunder due to causes beyond its reasonable control, including without limitation, acts of God or Buyer, acts of civil or military authority, fires, strikes, floods, epidemics, quarantine restrictions, war, riots, delays in transportation, or transportation embargoes. In the event of any such delay, Seller's performance date(s) will be extended for that length of time as may be reasonably necessary to compensate for the delay and any effects thereof.

**23. Severability and Waiver.** This Agreement is the final, complete and exclusive agreement of the Parties with respect to the subject matter hereof and supersedes and merges all prior discussions between the Parties. In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. If moreover, any one or more of the provisions contained in this Agreement shall for any reason be held to be excessively broad as to duration, geographical scope, activity or subject, it shall be construed by limiting and reducing it, so as to be enforceable to the extent compatible with the applicable law as it shall then appear. No failure or delay by any Party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial waiver thereof include any other or further exercise thereof or the exercise of any other right, power or privilege.

**24. Survivability.** All terms shall survive any termination of this Agreement except for § 5.

**Buyer:** \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_