



## **1. FORMATION OF CONTRACT**

- a. This proposed purchase contract, which incorporates by reference these General Provisions and all other terms and conditions set forth in this proposed purchase contract (collectively, "Contract"), is Buyer's offer to purchase goods or services (collectively, "Services") from a college, university or other educational institutions (herein referred to as "Seller") as described in this offer. Acceptance is strictly limited to the terms and conditions in this offer. Unless specifically agreed to in writing by Buyer's Authorized Procurement Representative, Buyer objects to, and is not bound by, any term or condition that differs from or adds to this offer. Seller's commencement of performance or acceptance of this Contract in any manner shall conclusively evidence acceptance of this Contract as written. Seller's provision of Services shall be governed solely by this Contract. Buyer and Seller are referred to herein as a "Party" or collectively as the "Parties."
- b. Except as authorized herein, no amendment or modification of this Contract shall bind either Party unless it is in writing and is signed by the authorized representatives of the Parties.
- c. For purposes of this Contract, unless the context requires otherwise, (i) the words "include," "includes," and "including" are deemed to be followed by the words "without limitation"; (ii) the word "or" is not exclusive; (iii) the words "herein," "hereof," "hereby," "hereto," and "hereunder" refer to this Contract as a whole; (iv) words denoting the singular have a comparable meaning when used in the plural, and vice-versa; (v) words denoting any gender include all genders; and (vi) references to (a) articles, exhibits, schedules, attachments, and appendices mean the articles of, and exhibits, schedules, attachments, and appendices attached to, this Contract; (b) an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof; and (c) a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The Parties drafted this Contract without regard to any presumption or rule requiring construction or interpretation against the Party drafting an instrument or causing any instrument to be drafted. The exhibits, schedules, attachments, and appendices referred to herein are an integral part of this Contract to the same extent as if they were set forth verbatim herein.

## **2. SCHEDULE**

Time is and shall remain of the essence in the performance of this Contract, and Seller shall use best efforts to adhere to the schedules specified in this Contract. Failure to deliver in accordance with such schedules, if unexcused, shall constitute a material breach of this Contract. If, at any time, Seller believes it may be unable to comply with the schedules, Seller shall immediately notify Buyer in writing of the probable length of any anticipated delay and the reasons for it and shall provide Buyer with a written recovery schedule.

## **3. PACKING AND SHIPPING**

- a. Seller shall pack goods and materials to prevent damage and deterioration. Unless otherwise set forth in this Contract, Seller shall package goods in accordance with the requirements of Boeing Document D37522-6 "Supplier Packaging". Buyer may charge Seller for damage to or deterioration of any goods resulting from improper packing or packaging.
- b. If this Contract specifies FOB destination (place of delivery), then in addition to any other shipping instructions, Seller shall forward goods freight prepaid. Seller shall make the transportation arrangements, pay the shipping costs, and remain responsible for the goods and materials until the goods and materials are delivered and Buyer takes possession at the destination.
- c. If this Contract specifies FOB origin (place of shipment), then in addition to any other shipping instructions, Seller shall forward goods collect. For goods shipped within the United States, Seller shall make no declaration concerning the value of goods shipped except on goods where the tariff rating is dependent upon released or declared value. In such event, Seller shall release or declare such value at the maximum value within the lowest rating. Seller shall ship Goods in accordance with the Boeing Global Routing Guide found at <https://www.boeingsuppliers.com/logistics.html>. Upon Buyer's request, Seller shall identify packaging charges showing material and labor costs for container fabrication.
- d. Seller shall provide with each container shipped under this Contract an Advanced Shipping Notice ("ASN"). For each container shipped, Seller shall provide two (2) readable copies of the ASN barcode as follows: one (1) copy is to be securely affixed to the outside of each container and one (1) copy is to be loose inside each container. Non-conforming shipments are subject to rejection and repackaging at Seller's expense. Instructions and guidelines related to the ASN process can be found on the Boeing Supplier Portal. Seller shall access by selecting the "Enterprise ASN Instructions" hyper-link under the header "Exostar Resources." A copy of these instructions can also be found at <https://www.exostar.com/>.

## **4. CHANGES**

- a. Buyer's Authorized Procurement Representative may, without notice to sureties and in writing, direct changes within the general scope of this Contract. Seller shall comply promptly with such direction. Except for the rights granted to Buyer under this Article, a change pursuant to this Article shall not give rise to nor authorize any other modification of or amendment to the terms and conditions of this Contract.
- b. If such change increases or decreases the cost or time required to perform this Contract, Buyer and Seller shall negotiate

an equitable adjustment in the price or schedule, or both, to reflect the increase or decrease. Buyer shall modify this Contract in writing accordingly. Unless otherwise agreed in writing, Seller must assert any claim for adjustment to Buyer's Authorized Procurement Representative in writing within twenty-five (25) days and deliver a fully supported proposal to Buyer's Authorized Procurement Representative within sixty (60) days after Seller's receipt of such direction. Buyer may, at its sole discretion, consider any claim regardless of when asserted. If Seller's proposal includes the cost of property made obsolete or excess by the change, Buyer may direct the disposition of the property. Buyer may examine Seller's pertinent books and records to verify the amount of Seller's claim. Failure of the Parties to agree upon any adjustment shall not excuse Seller from performing in accordance with Buyer's direction.

- c. If Seller considers that Buyer's conduct constitutes a change, Seller shall promptly notify Buyer's Authorized Procurement Representative immediately in writing as to the nature of such conduct and its effect upon Seller's performance. Only Buyer's Authorized Procurement Representative has authority on behalf of Buyer to make changes to this Contract. Buyer's engineering and/or technical personnel may provide technical advice or assistance concerning the work contained in this agreement. No such action shall be determined to be a change under the "Changes" provision of this contract and no equitable adjustment shall be provided.

## **5. INSPECTION**

- a. At no additional cost to Buyer, Services shall be subject to inspection, surveillance, and test at reasonable times and places, including Seller's and Seller's subcontractors' locations. Buyer shall perform inspections, surveillance, reviews, and tests so as not to unduly delay the work. If Buyer performs an inspection, surveillance, review, or test on the premises of Seller or its subcontractors, Seller shall furnish, and require its subcontractors to furnish, without additional charge, reasonable facilities and assistance for the safe and convenient performance of these duties.
- b. Buyer's rights under this Article shall extend to customers of Buyer, including customers that are departments, agencies or instrumentalities of the U.S. Government or foreign governments. Nothing in this Contract shall be interpreted to limit United States Government access to Seller's facilities pursuant to law or regulation.

## **6. ACCEPTANCE AND REJECTION**

- a. Buyer shall accept Services or give Seller notice of rejection within a reasonable time after the date of delivery. No payment, prior test, inspection, passage of title, failure, or delay in performing any of the foregoing, nor failure to discover any defect or other nonconformance shall relieve Seller of any obligations under this Contract or impair any rights or remedies of Buyer, including revocation of acceptance.
- b. Buyer may at its option and at Seller's expense: (i) require Seller to promptly reperform, correct or replace Services; (ii) correct the Services; or (iii) obtain replacement Services from another source. Return to Seller of defective or non-conforming Services and redelivery to Buyer of corrected or replaced Services shall be at Seller's expense and risk of loss.
- c. Seller shall not redeliver corrected or rejected Services without disclosing the former rejection or requirement for correction. Seller shall disclose any corrective action taken. Repair, replacement and other correction and redelivery shall be completed as Buyer may reasonably direct.

## **7. RESERVED**

## **8. RESERVED**

## **9. INVOICES AND PAYMENT**

- a. As compensation for Services to be performed by Seller, Buyer shall pay Seller as set forth in this Contract. Buyer shall have no liability for any other expenses or costs incurred by Seller. Payment due date, including discount periods, shall be computed from the date of the later of the scheduled delivery date of Service, the actual delivery date of Service, or the date of receipt of a correct invoice. Payments shall be processed on the next payment system run following the computed payment due date. Payment shall be deemed made on the date Buyer's check is mailed or payment is otherwise tendered. Seller shall promptly repay to Buyer any amounts paid in excess of amounts due to Seller. Payment shall be subject to the standard payment process set forth elsewhere in this Contract or as set forth at: <https://www.boeingsuppliers.com/>.
- b. Except for amounts invoiced under the "Termination" Article, Seller shall be deemed to have waived all charges and fees that are not invoiced within ninety (90) calendar days after the end of the calendar year in which the charges were incurred.

## **10. SUSPENSION OF WORK**

- a. Buyer's Authorized Procurement Representative may, by written order, suspend all or part of the work to be performed under this Contract for a period not to exceed one hundred (100) days. Within such period of any suspension of work, Buyer shall either: (i) cancel the suspension of work order; (ii) terminate this Contract in accordance with the "Termination for Convenience" provision of this Contract; (iii) terminate this Contract in accordance with the "Termination for Default"



- provision of this Contract if grounds for default exist; or (iv) extend the stop work period.
- b. Seller shall resume work whenever a suspension is canceled. Buyer and Seller shall negotiate an equitable adjustment in the price or schedule or both if: (i) this Contract is not terminated; (ii) the suspension results in a change in Seller's cost of performance or ability to meet the delivery schedule; and (iii) Seller submits a claim for adjustment within twenty (20) days after the suspension is canceled.

## **11. RESERVED**

## **12. TERMINATION**

- a. Termination for Convenience. Buyer may terminate all or part of this Contract for its sole convenience. In the event of such termination, Seller shall immediately cease all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work and divert applicable commitments covering personal services that extend beyond the effective date of termination. Subject to the terms of this Contract, with ninety (90) days after the effective date of termination, Seller may submit to Buyer a claim reflecting the percentage of the work performed prior to the effective date of termination, plus reasonable charges that Seller can demonstrate to the satisfaction of Buyer using its standard record keeping system have resulted from the termination. Seller shall not be paid for any work performed or costs incurred which reasonably could have been avoided. Further, Seller shall not be paid, and in no event shall Buyer be obligated to pay, lost or anticipated profits or unabsorbed indirect costs or overhead. In no event shall Buyer be obligated to pay Seller any amount in excess of the Contract price. This provision shall not limit or affect the right of Buyer to cancel this Contract for default.
- b. Termination for Default.
- i. Buyer may, by written notice to Seller, terminate all or part of this Contract if: (a) Seller fails to deliver Services within the time specified by this Contract or any written extension; (b) Seller fails to perform any other provision of this Contract or fails to make progress, so as to endanger performance of this Contract, and, in either of these two circumstances, within ten (10) days after receipt of notice from Buyer specifying the failure, does not cure the failure or provide Buyer with a written detailed plan adequate to cure the failure if such failure reasonably cannot be cured within such ten (10) days and such plan is acceptable to Buyer's Authorized Procurement Representative, or (c) Seller fails to provide written adequate assurance of its ability to perform in accordance with all terms of this Contract within ten (10) days of written request for adequate written assurance from Buyer specifying the matters that are or could affect such ability to perform.
  - ii. Seller shall continue work that is not terminated.
  - iii. Seller shall continue all Services not terminated. In the event Buyer terminates this contract for default, Buyer may require Seller to deliver to Buyer all work in process existing as of the date of termination.
- c. Continuity of Supply. To ensure the continuity of supply of Services, Seller hereby grants to Buyer an irrevocable, non-exclusive, worldwide, royalty-free license, with the right to grant sublicenses, to exercise all IP Rights in Seller-Owned IP (as such terms are defined in the "Intellectual Property" Article) and Seller's Proprietary Information and Materials (as defined in the "Confidential, Proprietary, and Trade Secret Information and Materials" Article) to produce, have produced by third parties, use, sell, and to obtain from alternate sources, products and services similar to Services (including related systems and components) and Manufacturing Materials in the event of a Seller's default as described in subparagraph 12(b)(i) of this Contract, regardless of whether Buyer terminates this Contract in whole or in part for default.

## **13. RESERVED**

## **14. ASSIGNMENT AND CHANGE OF CONTROL**

- a. Seller shall not and shall cause its affiliates not to, directly, indirectly, voluntarily or involuntarily, in each case, whether by transfer, operation of law, or otherwise undergo a Change of Control (as defined in subparagraph b. below) or otherwise assign this Contract, assign any of its rights or interest in this Contract, delegate any of its obligations under this Contract, or subcontract for all or substantially all of its performance of this Contract (each, a "Transaction"), without advance written notice given by Seller to Buyer at least one hundred and twenty (120) days prior to the date when such proposed assignment or Change of Control would take effect, and Buyer's prior written consent given after such notice and prior to the date when such assignment or Change of Control would take effect. No purported Transaction, with or without Buyer's consent, shall relieve Seller of any of its obligations under this Contract or prejudice any rights or claims that Buyer may have against Seller, whether such obligations, rights or claims, as the case may be, arise before or after the date of any purported Transaction; provided however, that Seller may assign its right to monies due or to become due under this Contract, and this Article does not limit Seller's ability to purchase standard commercial supplies or raw material in connection with its performance of this Contract.
- b. For purposes of this Contract, the term "Change in Control" shall mean any of the following, whether in a single transaction or a series of related transactions and whether or not Seller is a party thereto:



- i. a sale, conveyance, transfer, distribution, lease, assignment, license, or other disposition of all or substantially all of the assets of Seller;
- ii. any consolidation or merger of Seller or its controlling affiliates, any dissolution of Seller or its controlling affiliates, or any reorganization of one or more of Seller or its controlling affiliates; or
- iii. any sale, transfer, issuance, or disposition of any equity securities or securities or instruments convertible or exchangeable for equity securities (collectively, "securities") of Seller or its controlling affiliates in which the holders of all of the securities that may be entitled to vote for the election of any member of a board of directors or similar governing body of Seller or such controlling affiliate immediately prior to such transaction(s) hold less than fifty percent (50%) of the securities that may be entitled to vote for the election of any such member in such entity immediately following such transaction(s).

## **15. BUSINESS CONDUCT**

- a. **Compliance with Laws.** Seller and the Services shall comply with all applicable statutes and government rules, regulations and orders, including (i) all applicable country laws relating to anti-corruption or anti-bribery, including, legislation implementing the Organization for Economic Co-operation and Development "Convention on Combating Bribery of Foreign Public Officials in International Business Transactions" or other anti-corruption/anti-bribery convention; and (ii) the requirements of the Foreign Corrupt Practices Act, as amended, ("FCPA") (15 U.S.C. §§78dd-1, *et. seq.*), regardless of whether Seller is within the jurisdiction of the United States, and Seller shall not (whether directly or indirectly) pay, offer, give, or promise to pay or give, any portion of monies or anything of value received from Buyer to a non-U.S. public official or any person in violation of the FCPA or in violation of any applicable laws relating to anti-corruption or anti-bribery.
- b. **Gratuities.** Seller warrants that neither it nor any of its employees, agents, or representatives have offered or given, or shall offer or give, any gratuities to Buyer's employees, agents, or representatives for the purpose of securing this Contract or securing favorable treatment under this Contract.
- c. **Supplier Code of Conduct.** Buyer is committed to a set of core values that includes transparency, integrity, accountability and respect. In furtherance of this commitment, Buyer has adopted a Supplier Code of Conduct that outlines expected values and behaviors for all suppliers, including their employees, agents, and subcontractors. This code may be downloaded at [https://www.boeingsuppliers.com/principles/Boeing\\_Supplier\\_Code\\_of\\_Conduct.pdf](https://www.boeingsuppliers.com/principles/Boeing_Supplier_Code_of_Conduct.pdf). Buyer strongly encourages Seller to adopt and enforce concepts, values and behaviors consistent with those embodied in the Supplier Code of Conduct. Seller shall include the substance of this provision, including this flowdown requirement, in all subcontracts awarded by Seller for work under this Contract.
- d. **Environmental Health and Safety.**
  - i. **Environment, Health and Safety Performance.** Seller acknowledges and accepts full and sole responsibility to maintain an environment, health and safety management system ("EMS") appropriate for its business throughout the performance of this Contract. Buyer expects that Seller's EMS shall promote health and safety, environmental stewardship, and pollution prevention by appropriate source reduction strategies. Seller shall convey the requirement of this provision to its suppliers. Seller shall not deliver goods that contain asbestos mineral fibers.
  - ii. **Chemical Profile Declaration.** If requested by Buyer, Seller shall provide to Buyer or its authorized third-party service provider, the chemical profile of Goods (by part number) in accordance with the requirements defined by the most recent published versions of IPC-1754 (<https://www.iaeg.com/chemicalrpt/ipc1754/>) and IAEG® Aerospace and Defense Declarable Substances List (<https://www.iaeg.com/chemicalrpt/addsl/>). A response (or a request for more time) shall be required within twenty-five (25) days of the notification. If requested by Buyer, Seller shall provide updates when there is a change in regulatory requirements, supply of new goods, a new Seller manufacturing location, or a change in the composition of goods provided since the last chemical profile declaration was provided to Buyer.
- e. **Work Transfer.** Seller shall not and shall ensure its supply chain shall not, initiate a movement or transfer of the location for the work to be performed under this Contract to another facility without Buyer's prior written approval.
- f. **Buyer Policies.** Seller agrees that Buyer's internal policies, procedures, and codes are intended to guide the internal management of Buyer and are not intended to, and do not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by Seller against Buyer.
- g. **Conflict Minerals.** Seller shall, no later than thirty (30) days following each calendar year in which Seller has delivered any goods to Buyer, under this Contract or otherwise, complete and provide to Buyer a single and comprehensive Conflict Minerals Reporting Template, using the form found at <https://www.boeingsuppliers.com>. Seller shall perform appropriate due diligence on its supply chain in order to fulfill the reporting obligations of this Article.
- h. **Ethics and Compliance Program.** Seller acknowledges and accepts full and sole responsibility to maintain an ethics and compliance program appropriate for its business throughout the performance of this Contract. Buyer strongly encourages Seller to model its program in accordance with the U.S. Sentencing Commission Guidelines, applicable guidance from enforcement authorities, and industry best practices. Seller shall publicize to its employees who are engaged in the performance of work under this Contract that they may report any concerns of misconduct by Buyer or any of its employees



or agents by going to <https://www.boeing.com/principles/ethics-and-compliance.page>. Seller shall convey the substance of this provision to its suppliers.

- i. Seller and Sub-Tier Supplier Information. In addition to requirements set forth elsewhere in this Contract, Seller shall, when reasonably requested by Buyer, provide sub-tier supplier information related to performance under this Contract. Such information may include Seller's subcontract management plans, Buyer programs supported, Seller assessment of sub-tier supplier's capability, including financial health and performance issues.

## **16. ACCESS TO PLANTS AND PROPERTIES**

Where Seller is either entering or performing work at premises owned or controlled by Buyer or Buyer's customer or obtaining access electronically to Buyer systems or information, Seller shall comply with; (i) all the rules and regulations established by Buyer or Buyer's customer for access to and activities in and around premises controlled by Buyer or Buyer's customer; (ii) Buyer requests for information and documentation to validate citizenship or immigration status of Seller's personnel or subcontractor personnel; and (iii) "The Boeing Company On-Site Environment, Health and Safety Supplemental Provisions" located in SP4 at <https://www.boeingsuppliers.com/terms.html>, as may be updated from time to time, which is incorporated by reference. In addition, Seller acknowledges that Buyer may perform routine background checks on Seller personnel. Seller shall include the substance of this Article, including this flowdown requirement, in all subcontracts awarded by Seller for work under this Contract.

## **17. CYBERSECURITY AND ELECTRONIC ACCESS**

- a. Seller shall comply with "The Boeing Terms of Use and Cybersecurity Supplement ("Terms of Use")" located in SP5 at <https://www.boeingsuppliers.com/terms.html>, as may be updated from time to time, which is incorporated by reference.
- b. In addition to any other rights and obligations set forth in any relevant agreement, Seller acknowledges that any information accessed through the electronic information systems operated by or on behalf of Buyer, whether or not marked as "proprietary" or equivalent, shall be considered as proprietary to Buyer and shall be protected in accordance with the "Confidential, Proprietary and Trade Secret Information and Materials" Article.

## **18. TRADE CONTROL COMPLIANCE**

- a. The Parties shall comply with all export and import laws, regulations, decrees, orders, and policies of the United States Government and the Government of any country in which the Parties conduct business pursuant to this Contract, including the Export Administration Regulations ("EAR") of the U.S. Department of Commerce, the International Traffic in Arms Regulations ("ITAR") of the U.S. Department of State, the U.S. Customs & Border Protection Regulations, the Harmonized Tariff Schedule, and the antiboycott and embargo regulations and guidelines as set forth in the EAR and in the U.S. Department of the Treasury, Office of Foreign Assets Control (collectively, "Trade Control Laws").
- b. Seller shall control the disclosure of, and access to, controlled items or technical data provided by Buyer related to performance of this Contract in compliance with all applicable Trade Control Laws. Seller shall not transfer (to include transfer to foreign persons employed by or associated with, or under contract to Seller, or Seller's sub-tier suppliers or Seller's non-U.S. subsidiaries) any export-controlled item, data, or services, without providing advance notice to Buyer and obtaining the requisite export or import authority.
- c. Subject to applicable Trade Control Laws, Seller shall provide Buyer with the export control classification of any commodity or technology including software.
- d. Seller represents that it maintains an effective export/import control compliance program in accordance with all applicable Trade Control Laws. A copy of process control documents and other documents reasonably requested by Buyer related to Seller's compliance with applicable Trade Control Laws shall be made available to Buyer upon request.
- e. Seller shall promptly notify Buyer if Seller is, or becomes, listed in any Denied Parties List or if Seller's export privileges are otherwise denied, suspended, or revoked in whole or in part by any Governmental entity.
- f. Seller shall timely inform Buyer of any actual or alleged violations of any applicable Trade Control Laws, including any suits, actions, proceedings, notices, citations, inquiries, or other communications from any government agency concerning any actual or alleged violations, in Seller's performance under this Contract and shall comply with all reasonable requests from Buyer for information regarding any such violations.
- g. Seller shall incorporate into any contracts with its sub-tier suppliers, obligations no less restrictive than those set forth in this Article requiring compliance with all applicable Trade Control Laws.

## **19. RESERVED**

## **20. CONFIDENTIAL, PROPRIETARY, AND TRADE SECRET INFORMATION AND MATERIALS**

- a. Buyer and Seller shall each keep confidential and protect from unauthorized use and disclosure all (i) confidential, proprietary or trade secret information of a Party or third party disclosed by a Party; (ii) software provided under this Contract in source code form or identified as subject to this Article; and (iii) tooling identified as subject to this Article: in each case that is obtained, directly or indirectly, from the other in connection with this Contract or Buyer's contract with its

customer, if any, (collectively referred to as “Proprietary Information and Materials”). Proprietary Information and Materials excludes information that is, as evidenced by competent records provided by the receiving Party, known to the receiving party or lawfully in the public domain, in the same form as disclosed hereunder, disclosed to the receiving Party without restriction by a third party having the right to disclose it, or developed by the receiving Party independently without use of or reference to the disclosing Party’s Proprietary Information and Materials.

- b. Buyer and Seller shall use Proprietary Information and Materials disclosed by the other Party only to perform and for the purpose of this Contract, other contracts between the Parties, and Buyer’s contract with its customer, if any and shall not disclose such Proprietary Information and Materials to any third party except as expressly set forth herein. Buyer may also, at any time use, reformat, copy or disclose Seller’s Proprietary Information and Materials to: (i) fulfill Buyer’s obligations under this Contract, other contracts with Seller, and Buyer’s contract with its customer, if any; (ii) test, certify, use, sell, or support Services delivered under this Contract or Buyer’s product containing such Services; (iii) evaluate Seller products and proposals, develop solicitations for Seller products, and develop interfaces or parameters for Boeing products; (iv) perform or obtain data analysis or risk mitigation; (v) obtain data storage, hosting, and other outsourced services and (vi) ensure regulatory or legal compliance. Any such disclosure by Buyer shall, when appropriate, include a suitable restrictive legend.
- c. Seller may disclose Proprietary Information and Materials of Buyer to its subcontractors only as required to perform this Contract if Seller includes a suitable restrictive legend on such disclosures and if each such subcontractor has agreed in writing to obligations no less restrictive than those imposed upon Seller under this Article. Seller shall be liable to Buyer for any breach of such obligation by such subcontractor.
- d. A Party may disclose received Proprietary Information and Materials in response to a subpoena or court order if the receiving Party has used reasonable efforts to give the disclosing Party advance written notice of such requirement to allow the disclosing Party to: (i) seek a protective order or other remedy; (ii) consult with respect to resisting or narrowing the scope of such requirement; or (iii) modify or waive compliance with this Article. If such protective order or remedy is not timely obtained, the receiving Party shall use commercially reasonable efforts to disclose only Proprietary Information and Materials legally required to be disclosed and to require confidential treatment of such disclosure.
- e. Upon Buyer’s request, and in any event upon the completion or termination of this Contract, Seller shall return to Buyer all of Buyer’s Proprietary Information and Materials and all materials derived therefrom, unless Buyer specifically directs otherwise in writing. Seller shall not (i) dispose of (as scrap or otherwise) any Services, parts or other materials containing, conveying, embodying or made in accordance with or by reference to any Buyer Proprietary Information and Materials without first rendering such items unusable, and ensuring that Buyer Proprietary Information and Materials cannot be discerned or extracted from such Services, parts, or other materials; or (ii) without a separate license agreement or written approval from Buyer, make, use, or sell any Services, parts, or materials containing, conveying, embodying or made in accordance with or by reference to Proprietary Information and Materials of Buyer except as required to perform this Contract.
- f. The provisions of this Article are effective notwithstanding of any restrictive legends or notices on Proprietary Information and Materials and shall survive the completion, or termination of this Contract. Buyer shall have the right to audit Seller’s compliance with this Article.

## **21. INTELLECTUAL PROPERTY INDEMNITY**

Seller shall indemnify, defend and hold harmless Buyer and its customer from all claims, suits, actions, awards (including awards based on intentional infringement of patents), liabilities, damages, costs and attorneys’ fees related to the actual or alleged infringement of any intellectual property right or misappropriation or wrongful use of information or documents, and arising out of or related to the use, manufacture, reproduction, sale, or other distribution of Services by Buyer or its customer. Buyer or its customer shall timely notify Seller of any such claim, suit, or action. Seller shall, at its own expense, defend such claim, suit, or action and Buyer shall have the right to participate in the defense at its own expense. Seller shall have no obligation to indemnify Buyer for infringement if and to the extent such infringement arises from (i) the compliance of Seller’s new product design with formal specifications issued by Buyer where infringement could not be avoided in complying with such specifications or (ii) use or sale of Services for other than their intended application when such infringement would not have occurred from the use or sale of those Services solely for the purpose for which they were designed or sold by Seller. The exception in (i) above shall not apply if the infringement arises out of adherence to one or more industry standards or regulatory requirements. For purposes of this Article only, the term Buyer shall include The Boeing Company, all Boeing subsidiaries, and all officers, agents and employees of Boeing or its subsidiaries.

## **22. INTELLECTUAL PROPERTY**

### **a. Definitions:**

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

“IP Rights” means all worldwide common law and statutory rights to the IP, including rights under patents, industrial designs, trade secrets, copyrights and mask work registrations.

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

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

“Buyer Specifications” means performance specifications, specification control documentation, interface control documents, schematics, definitions, configurations, and certification data, and all IP Rights therein, used or intended to be used by Boeing: (i) to establish and define (1) requirements for Services and associated processes, service level, system specification, certification, and configuration; and (2) architecture descriptions for Services and associated processes, service, and system; and (ii) to procure and certify Services or similar products and to assure integration of Services or similar product with a Boeing product or other systems and equipment included in a Boeing product.

- b. Seller-Owned IP. Seller shall retain ownership of its Background IP and of any Foreground IP not assigned to Buyer pursuant to subparagraph d. below (collectively, the “Seller-Owned IP”). Seller grants to Buyer an irrevocable, nonexclusive, sublicensable, perpetual, paid-up, royalty-free, worldwide license to exercise all IP Rights in Seller-Owned IP solely to the extent that such Seller-Owned IP would otherwise interfere with Boeing’s, or its suppliers’, or its customers’ use or enjoyment of Services, Buyer Specifications, or Buyer-Owned IP.
- c. Third Party IP. If Seller incorporates third-party IP into any contract deliverable, Seller shall obtain for Buyer at least the license rights granted in subparagraph b of this Article in such third-party IP, at no additional cost to Buyer and hereby grants such rights to Buyer.
- d. Foreground IP. The following subparagraphs of this paragraph d shall not apply to unmodified commercial off-the-shelf goods. If Services or goods are developed, modified or redesigned pursuant to this Contract then the subparagraphs below apply.
  - i. All Foreground IP shall be the exclusive property of Buyer.
  - ii. Seller hereby irrevocably assigns to Buyer all right, title and interest in the Foreground IP for no additional charge. Seller shall protect Foreground IP as Buyer’s Proprietary Information and Materials under this Contract and shall mark documents or portions of documents containing Foreground IP as “Boeing Proprietary” information or as otherwise directed by Buyer in writing.
  - iii. Seller shall, within two (2) months after conception or first actual reduction to practice of any invention and prior to Contract completion, disclose in writing to Buyer all inventions assigned hereunder, whether or not patentable, in sufficient technical detail to clearly convey the invention to one skilled in the art to which the invention pertains. Seller shall promptly execute all written instruments and assist as Buyer reasonably directs in order to file, acquire, prosecute, maintain, enforce, and assign Buyer’s Foreground IP rights. If Seller does not or cannot execute instruments or assist Buyer as described above, Seller hereby irrevocably appoints Buyer and any of Buyer’s officers and agents as Seller’s attorney in fact to act on Seller’s behalf and instead of Seller, with the same legal force and effect as if executed by Seller, with respect to executing any such written instruments.
- e. Buyer-Owned IP. Buyer shall retain ownership of all Buyer IP provided hereunder, including the Buyer Specifications, and of any Foreground IP assigned to Buyer pursuant to subparagraph d. above (collectively, the “Buyer-Owned IP”). Buyer grants to Seller a non-exclusive, royalty-free right during the term of this Contract to exercise all IP Rights in the Buyer-Owned IP solely as necessary for Seller to perform its obligations under this Contract. Seller shall not, without Buyer’s prior written consent, use Buyer-Owned IP or any derivative works of any of the Buyer-Owned IP in any manner not authorized under this Contract, including developing, manufacturing, obtaining a certification to manufacture, offering for sale or selling any product, equipment, or service which utilizes or is enabled by Buyer-Owned IP.

### **23. TAXES**

The price of this Contract includes, and Seller is liable for and shall pay, all taxes, impositions, charges, and exactions imposed on or measured by this Contract except for applicable sales and use taxes that are separately stated on Seller’s invoice. Prices shall not include any taxes, impositions, charges, or exactions for which Buyer has furnished a valid exemption certificate or other evidence of exemption.

### **24. FINANCIAL RECORDS AND AUDIT**

Seller shall retain all financial records and documents pertaining to the Services for a period of no less than three (3) years after final payment. Such records and documents shall date back to the time this Contract was issued and shall include catalogs, price lists, invoices, underlying data, and basis for cost estimates and inventory records. Buyer shall have the right to examine, reproduce and audit all Seller records related to pricing, performance and proposed costs associated with any proposals (prior to or after contract award), invoices or claims.

### **25. RESERVED**



**26. GOVERNMENT OR OTHER CUSTOMER CLAUSES**

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

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

**27. RESERVED**

**28. PUBLICITY**

Except as required by law, neither party shall without the other's prior written approval, make reference to the other in a press release or any other written statement intended for publicity, advertisement, denial, or confirmation in connection with work performed under this Contract. Seller shall include this Article in any subcontracts issued under this Contract. Seller, upon written approval of Buyer, shall have the right to acknowledge Buyer's support of the work under this Contract in scientific or academic publications and other scientific or academic communications. Buyer approval shall not be unreasonably withheld.

**29. PROPERTY MANAGEMENT**

Seller shall clearly mark, maintain an inventory of, and keep segregated or identifiable all of Buyer's property and all property to which Buyer acquires an interest by virtue of this Contract. Seller assumes all risk of loss, destruction, or damage of such property while in Seller's possession, custody, or control. Seller shall not use such property other than in performance of this Contract without Buyer's prior written consent. Seller shall notify Buyer's Authorized Procurement Representative if Buyer's property is lost, damaged, or destroyed. As directed by Buyer, upon completion, or termination of this Contract, Seller shall deliver such property, to the extent not incorporated in delivered goods, to Buyer in good condition subject to ordinary wear and tear.

**30. RESERVED**

**31. ADDITIONAL CONTRACT REQUIREMENTS**

- a. Scope of Services. Seller shall furnish Services in accordance with the statement of work set forth in this Contract during the term of this Contract. Seller shall assign personnel including its employees, faculty, graduate assistants, and students, that are satisfactory to Buyer. At any time and for any reason, Buyer may require Seller to withdraw the services of any person and require that Seller promptly provide replacements for such persons satisfactory to Buyer
- b. Independent Contractor. Seller, including its employees, faculty, graduate assistants, and students, is an independent contractor for all purposes. Seller shall have complete control over the performance of, and the details for accomplishing, the Services. In no event shall Seller or its agents, representatives or employees be deemed to be agents, representatives or employees of Buyer. Seller's employees shall be paid exclusively by Seller for all Services performed. Seller shall comply with all requirements and obligations relating to such employees under federal, state and local law (or foreign law, if applicable). Such compliance shall include laws regarding minimum wages, social security, unemployment insurance, federal and state income taxes and workers' compensation insurance.
- c. Reserved
- d. Reserved
- e. Reserved
- f. Work Performance. Seller agrees that all Services performed hereunder shall be performed on a best effort basis by employees, students, faculty, graduate assistants, and staff having an appropriate experience and skill level and in compliance with the statement of work.





### **32. GOVERNING LAW**

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

### **33. DISPUTES**

Any dispute that arises under or is related to this Contract that cannot be settled by mutual agreement of the Parties may be decided by a court of competent jurisdiction. Pending final resolution of any dispute, Seller shall proceed with performance of this Contract according to Buyer's instructions so long as Buyer continues to pay amounts not in dispute.

### **34. NO WAIVER; RIGHTS AND REMEDIES**

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

### **35. NOTICE TO BUYER OF LABOR DISPUTES**

Whenever Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, Seller shall immediately give written notice thereof, including all relevant information, to Buyer.

### **36. ORDER OF PRECEDENCE**

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

Document Title/Description:

- a. Customer Contract Requirements (CCR), if set forth in this Contract
- b. The system generated purchase contract document
- c. Common terms and conditions (CXXX, DXXX, EXXX, FXXX, GXXX, HXXX, IXXX, JXXX, MXXX, QXXX)
- d. Buyer site-specific terms and conditions
- e. General Provisions (GP1, GP2, GP3, GP4, GP6, GP7, GP8, GP9) and Special Provisions (including SP1, SP2, SP3 (incorporated by this reference where Seller is formed, organized, or incorporated outside the United States), SP4 and SP5)
- f. Specifications (the most recently agreed to and issued version of specifications shall control and Buyer's specifications shall prevail over any subsidiary documents referenced therein)
- g. Statements of work (the most recently agreed to and issued version of a statement of work shall control)
- h. All other attachments, exhibits, appendices, documents, or terms incorporated by reference in or attached to this Contract.

### **37. ENTIRE AGREEMENT**

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