

- 1. FORMATION OF CONTRACT.** 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, the “Contract”), is Buyer's offer to purchase the goods and/or services (collectively, the “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 included 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 offer in any manner shall conclusively evidence acceptance of this offer as written. Seller's provision of the Services shall be governed solely by this Contract. Buyer and Seller are referred to herein as a “Party” or collectively as the “Parties.”
- 2. SCOPE OF SERVICES.** Seller shall furnish the Services in accordance with the statement of work set forth in the Contract during the term of this Contract. Seller shall assign personnel, including but not limited to 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.
- 3. 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.
- 4. 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, but not be limited to, laws regarding minimum wages, social security, unemployment insurance, federal and state income taxes and workers' compensation insurance.
- 5. SCHEDULE.** Seller shall use best efforts to adhere to the delivery or completion schedules as specified in this Contract. If, at any time, Seller believes it may be unable to comply with the delivery or completion 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.
- 6. 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 notice thereof, including all relevant information, to Buyer.
- 7. PACKING AND SHIPPING**

  - a. Seller shall pack the goods and materials to prevent damage and deterioration. Unless otherwise set forth in this Contract, Seller shall package the goods in accordance with the requirements of Boeing Document D37522-6 “Supplier Packaging” set forth at <http://www.boeingsuppliers.com>. Buyer may charge Seller for damage to or deterioration of any goods resulting from improper packing or packaging.
  - b. If the 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 the Buyer takes possession at the destination.
  - c. If the 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 the 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 will ship the goods in accordance with the provisions set forth in the Boeing Domestic Shipment Routing Guide to be accessed through Buyer's supplier portal at <https://portal.exostar.com/>. Sellers need a One Time Password (OTP) token to log into the Boeing Supplier Portal. Upon Buyer's request, Seller will 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 [www.exostar.com](http://www.exostar.com).

## **8. 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 the 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 will be provided.

## **9. 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: (i) cancel the suspension of work order; (ii) terminate this Contract in accordance with the "Termination for Convenience" Article of this Contract; (iii) cancel this Contract in accordance with the "Cancellation for Default" Article 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 canceled or terminated; (ii) the suspension results in a change in Seller's cost of performance or ability to meet the Contract delivery schedule; and (iii) Seller submits a claim for adjustment within twenty (20) days after the suspension is canceled.

**10. 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. The provisions of this Article shall not limit or affect the right of Buyer to cancel this Contract for default

## **11. CANCELLATION FOR DEFAULT**

- a. Buyer may, by written notice to Seller, cancel all or part of this Contract: (i) if Seller fails to deliver the Services within the time specified by this Contract or any written extension; or (ii) if 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. Seller shall continue work not canceled.
- b. Seller shall continue all Services not canceled. In the event Buyer cancels this contract for default, Buyer may require Seller to deliver to Buyer all work in process existing as of the date of cancellation.

## **12. 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 subcontractors' locations. Buyer shall perform inspections, surveillance and tests so as not to unduly delay the work. If Buyer performs an inspection 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.

## **13. ACCEPTANCE & REJECTION.**

- a. Buyer shall accept the Services or give Seller notice of rejection within a reasonable time after the date of delivery. No payment, prior test, inspection, passage of title, any failure or delay in performing any of the foregoing, or 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.
- b. Buyer may at its option and at Seller's expense: (i) require Seller to promptly reperform, correct or replace the 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.
- 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. All repair, replacement and other correction and redelivery shall be completed as Buyer may reasonably direct.

**14. INVOICE AND PAYMENT.** 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. Payment shall be deemed to have been made on the date the Buyer's check is mailed or payment is otherwise tendered. Seller shall promptly repay to Buyer any amounts paid in excess of amounts due Seller.

**15. TAXES.** Unless this Contract specifies otherwise, 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.

**16. FINANCIAL RECORDS AND AUDIT.** Seller shall retain all financial records and documents pertaining to the Services for a period of no less than three years after final payment. Such records and documents shall date back to the time this Contract was issued and shall include, without limitation, 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.

## **17. 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, and/or trade secret information, including Buyer-provided specifications and Buyer-provided information pertaining to qualification, certification, manufacturing, and/or quality testing and procedures; (ii) tangible items and software containing, conveying, or embodying such information; and (iii) tooling identified as being subject to this Article that is obtained, directly or indirectly, from the other in connection with this Contract or other agreement, including Buyer's contract with its customer, if any, (collectively referred to as "Proprietary Information and Materials"). Proprietary Information and Materials shall not include information that is, as evidenced by competent records provided by the receiving Party, lawfully in the public domain, lawfully disclosed to or known by the receiving Party without restriction, generally known in the relevant trade or industry prior to disclosure hereunder, 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 each use Proprietary Information and Materials of the other only in the performance of and for the purpose of this Contract, other contracts between the Parties, and Buyer's contract with its customer, if any. However, despite any other obligations or restrictions imposed by this Article or any prior agreement, Buyer shall have the right to use and reproduce Seller's Proprietary Information and Materials internal to Buyer, regardless of when disclosed. Buyer shall further have the right to, use, disclose, reproduce and make derivative works of Seller's Proprietary Information and Materials (i) to fulfill Buyer's obligations under, and (ii) for the purposes of testing, certification, use, sale or support of any goods delivered under, this Contract, other contracts

with Seller and Buyer's contract with its customer, if any. Any such use, disclosure, reproduction or derivative work by Buyer shall, whenever appropriate, include a restrictive legend suitable for the particular circumstances. The restrictions on disclosure or use of Proprietary Information and Materials shall apply to all materials derived by the receiving Party or others on its behalf from the disclosing Party's Proprietary Information and Materials. In addition to disclosures permitted hereunder, a receiving Party may disclose received Proprietary Information and Materials in response to a subpoena or court order duly issued in a judicial or legislative process, provided that the receiving Party has used reasonable efforts to give the disclosing Party advance written notice of any such disclosure requirement and to reasonably cooperate with the disclosing Party in protecting against any such disclosure and/or obtaining a protective order narrowing its scope.

- c. Upon Buyer's request at any time, and in any event upon the completion, termination, or cancellation of this Contract, Seller shall return to Buyer all of Buyer's Proprietary Information and Materials and all materials derived therefrom, unless specifically directed otherwise in writing by Buyer. Seller shall not at any time (i) dispose of (as scrap or otherwise) any goods, parts or other materials containing, conveying, embodying, or made in accordance with or by reference to any Proprietary Information and Materials of Buyer without the prior written authorization of Buyer or (ii) make, use, or sell any goods, parts or other materials containing, conveying, embodying or made in accordance with or by reference to any Proprietary Information and Materials of Buyer without notifying Buyer in writing before any such planned making, using, or selling activity and executing an agreement between the Parties requiring payment by Seller of a reasonable license fee to Buyer as consideration for each use of such Proprietary Information and Materials of Buyer, unless Buyer has provided prior written authorization to Seller.. Prior to disposing of such goods, parts or other materials as scrap, Seller shall render them unusable. Buyer shall have the right to audit Seller's compliance with this Article.
- d. Seller may disclose Proprietary Information and Materials of Buyer to its subcontractors as required for the performance of this Contract, provided that each such subcontractor first agrees 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.
- e. The provisions of this Article are effective notwithstanding the application of any restrictive legends or notices to Proprietary Information and Materials. The provisions of this Article shall survive the performance, completion, termination, or cancellation of this Contract.

**18. PATENT, TRADEMARK, AND COPYRIGHT INDEMNITY.** Unless otherwise prohibited by law and Seller notifies Buyer of such, Seller shall indemnify, defend, and hold harmless Buyer and its customer from all claims, suits, actions, awards (including, but not limited to, awards based on intentional infringement of patents known at the time of such infringement, exceeding actual damages, and/or including attorneys' fees and/or costs), liabilities, damages, costs, and attorneys' fees related to the actual or alleged infringement of any United States or foreign intellectual property right (including, but not limited to, any right in a patent, copyright, industrial design, or semiconductor mask work or based on misappropriation or wrongful use of information or documents) and arising out of the manufacture, sale, or use of Services or goods resulting from Services by either Buyer or its customer. Buyer and/or its customer shall duly notify Seller of any such claim, suit or action. Seller shall, at its own expense, fully defend such claim, suit, or action on behalf of the indemnitees. Seller shall have no obligation under this Article with regard to any infringement arising from (a) 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 (b) use or sale of Services or goods resulting from Services in combination with other items when such infringement would not have occurred from the use or sale of those Services or goods resulting from Services solely for the purpose for which they were designed or sold by Seller. For purposes of this Article only, the term Buyer shall include The Boeing Company and all Boeing subsidiaries and all officers, agents, and employees of Boeing or any Boeing subsidiary.

#### **19. OWNERSHIP OF INTELLECTUAL PROPERTY**

- a. Background (Preexisting) Inventions and Patents. Seller grants to Buyer, and to Buyer's subcontractors, suppliers, and customers in connection with goods or work being performed by Buyer, an irrevocable, nonexclusive, paid-up, worldwide license under any inventions, patents, industrial designs, and mask works (whether domestic or foreign) owned or controlled by Seller at any time before or during the term of this Contract, but only to the extent that such would otherwise interfere with Buyer's or Buyer's subcontractors', suppliers', or customers' use or enjoyment of goods or the work product or foreground inventions belonging to Buyer under this Contract.
- b. Foreground Inventions and Patents. All inventions conceived, developed, or first reduced to practice by, for, or with Seller in the course of any work that is performed under this Contract and any patents resulting from such inventions (both domestic and foreign) shall be the property of Buyer. Seller will (i) promptly disclose all such inventions to Buyer in written detail and (ii) execute all papers, cooperate with Buyer, and perform all acts necessary and appropriate in connection with the filing, prosecution, maintenance, or assignment of related patents or patent applications on behalf of Buyer.

- c. Preexisting Works of Authorship and Copyright. Unless superseded by an attached Seller Software License Agreement agreed to in writing by both Buyer and Seller, Seller grants to Buyer, and to Buyer's subcontractors, suppliers, and customers in connection with goods or work being performed by Buyer, a perpetual, irrevocable, nonexclusive, paid-up, worldwide license in Seller's copyrights to reproduce, distribute copies of, perform publicly, display publicly, and make derivative works from software included in or provided with or for goods (software) and related information and materials (software documentation) and that is owned or controlled by Seller at any time before or during the term of this Contract, but only to the extent that such copyrights would otherwise interfere with Buyer's or Buyer's subcontractors', suppliers', or customers' use or enjoyment of goods or the work products, inventions, or works of authorship belonging to Buyer and resulting from this Contract.
- d. Foreground Works of Authorship and Copyrights. All works of authorship (including, but not limited to, documents, data, drawings, software, software documentation, photographs, video tapes, sound recordings, and images) created by, for, or with Seller in the course of any work performed under this Contract, together with all copyrights subsisting therein, shall be the sole proprietary property of Buyer. To the extent permitted under United States copyright law, all such works will be works made for hire, with the copyrights therein vesting in Buyer. The copyrights in all other such works, including all of the exclusive rights therein, will be promptly transferred and formally assigned free of any additional charges to Buyer.

## **20. 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, 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, an "Assignment"), without Buyer's prior written consent after advance written notice by Seller. No purported Assignment, 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 Assignment; 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 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).

**21. 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.

**22. BUYER'S PROPERTY.** 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, termination or cancellation 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

## **23. BUSINESS CONDUCT**

- a. Compliance with Laws. Seller and the Services shall comply with all applicable statutes and government rules, regulations and orders. Without acting as a limitation, Seller shall comply with (i) all applicable country laws relating to anti-corruption or anti-bribery, including, but not limited to, legislation implementing the Organization for

Economic Co-operation and Development "Convention on Combating Bribery of Foreign Public Officials in International Business Transactions" (the "OECD Convention") 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, neither directly nor 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 and/or in violation of any applicable country 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 will 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. Code of Basic Working Conditions and Human Rights. Buyer is committed to providing a safe and secure working environment and the protection and advancement of basic human rights in its worldwide operations. In furtherance of this commitment, Buyer has adopted a Code of Basic Working Conditions and Human Rights setting out in detail the measures it takes to ensure this commitment is fulfilled. The Boeing Code may be downloaded at <http://www.boeing.com/aboutus/culture/code.html>. Buyer strongly encourages Seller to adopt and enforce concepts similar to those embodied in the Boeing Code, including conducting Seller's operations in a manner that is fully compliant with all applicable laws and regulations pertaining to fair wages and treatment, freedom of association, personal privacy, collective bargaining, workplace safety and environmental protection. Further, any material violation of law by Seller relating to basic working conditions and human rights, including laws regarding slavery and human trafficking, of the country or countries in which Seller is performing work under this Contract may be considered a material breach of this Contract for which Buyer may elect to cancel any open orders between Buyer and the Seller, for cause, in accordance with the provision of this order entitled "Cancellation for Default" or exercise any other right of Buyer for an Event of Default under this Contract. Seller shall include the substance of this clause, including this flowdown requirement, in all subcontracts awarded by Seller for work under this Contract.
- d. Environmental 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 will promote health and safety, environmental stewardship, and pollution prevention by appropriate source reduction strategies. Seller shall convey the requirement of this clause to its suppliers. Seller shall not deliver goods that contain any asbestos mineral fibers.
- e. Seller Facility. Seller shall provide Buyer written notice of any proposed plans for moving Seller's manufacturing location for the goods or moving tooling or other equipment utilized in the manufacture of the goods to another facility. In no event shall Seller proceed with implementing such plans prior to obtaining 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 the Buyer and are not intended to, and do not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by the Seller against the 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 <http://www.boeing.com>. Seller shall perform appropriate due diligence on its supply chain in order to fulfill the reporting obligations of this Article.

**24. 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; and (ii) Buyer requests for information and documentation to validate citizenship or immigration status of Seller's personnel or subcontractor personnel. In addition, Seller acknowledges that Buyer may perform routine background checks on Seller personnel. Seller shall include the substance of this clause, including this flowdown requirement, in all subcontracts awarded by Seller for work under this Contract.

## **25. ELECTRONIC ACCESS**

- a. Buyer may (in its sole discretion) grant in writing to Seller a limited, nontransferable, nonexclusive, revocable (in Buyer's sole discretion) right for Seller personnel to access electronic information systems operated by or on behalf of Buyer, including, but not limited to, facilities, network communications systems, telecommunications systems, software, applications, information and data, (collectively, the "Boeing Systems") during the term of this Contract to the extent necessary for Seller to perform this Contract. Seller personnel shall not access or use the Boeing Systems for any other purpose. Seller and its personnel's access to and use of the Boeing Systems shall be in accordance with the Terms of Use of Boeing Electronic Systems located at

[http://www.boeingsuppliers.com/terms\\_conditions/Terms-of-Use-of-Boeing-Electronic-Systems-Supplement.pdf](http://www.boeingsuppliers.com/terms_conditions/Terms-of-Use-of-Boeing-Electronic-Systems-Supplement.pdf),

which is incorporated herein by reference, with the revision date applicable to this Contract being the revision in effect as of the date of Seller's acceptance of this Contract. BOEING SYSTEMS ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, AND SELLER EXPRESSLY AGREES THAT BUYER MAKES NO WARRANTY, EXPRESS OR IMPLIED, AS TO RELIABILITY AND AVAILABILITY OF ANY BOEING SYSTEMS.

- b. In addition to any other rights and obligations set forth in any relevant Contract, Seller acknowledges that any information accessed through the Boeing Systems, 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 of the Contract.
- c. Buyer shall have the right to audit Seller's compliance with this Article.
- d. Seller and Seller personnel understand and consent as follows: Seller and Seller personnel have no reasonable expectation of privacy in any communications or data, personal or otherwise, transiting or stored on Boeing Systems; any communications or data transiting or stored on Boeing Systems may be monitored, intercepted, recorded, and searched at any time and for any lawful purpose, and may be used or disclosed for any lawful purpose.
- e. Any security breach of the Boeing Systems or other breach of the requirements of this Article, including the requirements set forth in the Terms of Use of Boeing Electronic Systems, shall be grounds for default in accordance with the "Cancellation for Default" Article of this Contract.

## **26. 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 but not limited to 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 and/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.

**27. CUSTOMER CLAUSES.** 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.

**28. 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.

**29. 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.

## **30. 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 the Services to Buyer.
- c. Seller agrees that Buyer approvals of Seller's technical and quality specifications, drawings, plans, procedures, reports, and 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.

**31. 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 as incorporated into or attached to the 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 (SP1, SP2, SP3, SP4)
- f. Specifications (the most recently agreed to and issued version of specifications shall control and Buyer's specifications will 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

**32. ENTIRE AGREEMENT.** This Contract, together with all purchase orders, change orders, attachments, exhibits, supplements, specifications, and other terms referenced in 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. Except as authorized herein, no amendment or modification of this Contract shall bind either Party unless it is in writing and is signed by Buyer's Authorized Procurement Representative and an authorized representative of Seller.