

**The Boeing Company eXMeritus Program**

11250 Waples Mill Road, Suite 330, Fairfax, Virginia 22030

**SERVICES AGREEMENT  
COVER PAGE**

The attached documents describe the relationship between the eXMeritus program, part of Autometric Inc, a wholl owned subsidiary of The Boeing Company ("**eXMeritus**") and the client identified below ("**Client**") (each of eXMeritus and Client, a "**Party**"). This Services Agreement (the "**Agreement**") includes this cover page (the "**Cover Page**") and the attached Service Terms and Conditions (the "**Service Terms**"). This Agreement will become effective when this Cover Page is executed by authorized representatives of both Parties.

**CLIENT INFORMATION:**

Name/Company: \_\_\_\_\_ Principal Contact Person: \_\_\_\_\_

Address: \_\_\_\_\_ Phone: \_\_\_\_\_

\_\_\_\_\_ Fax: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**TO BE COMPLETED BY EXMERITUS:**

Contract Number: \_\_\_\_\_ Initial Term: \_\_\_\_\_

Fees & Payment Terms (If necessary, attached additional exhibits.): \_\_\_\_\_

\_\_\_\_\_

Notes: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

The Parties have caused their duly authorized representatives to execute this Agreement as of the dates set forth below.

CLIENT: _____	Autometric Inc.
By (Signature): _____	By (Signature): _____
Name (Printed): _____	Name (Printed): _____
Title: _____	Title: _____
Date: _____	Date: _____

## The Boeing Company eXMeritus Program SERVICES TERMS AND CONDITIONS

### 1. ENGAGEMENT OF SERVICES.

**1.1 Purchase Orders.** During the term of this Agreement, Client may issue purchase orders (each, a "**Purchase Order**") identifying standard eXMeritus service offerings within the Scope that are requested. Each such Purchase Order shall specify the quantity of hours of such Services to be purchased under such Purchase Order as well as the fees or other charges to be paid by Client. Purchase Orders shall become effective upon signature signifying acceptance by eXMeritus.

**1.2 Other Services.** eXMeritus has no obligation under this Agreement to provide Services outside of the Scope. In the event that Client requests Services outside of the Scope, eXMeritus and client agree to negotiate in good faith a mutually acceptable statement of work (SOW) or other appropriate agreement regarding the provision of such Services pursuant to all appropriate terms and pricing.

**1.3 Order of Precedence.** In the event of any conflict between this Agreement and a Purchase Order, the Agreement shall control.

**1.4 Provision of Services.** eXMeritus will be responsible for providing Services only to Client. Any Services purchased shall be performed at times mutually agreed between the Parties. The manner and means by which eXMeritus chooses to perform the Services are in eXMeritus' sole discretion and control and subject to the availability of personnel.

**1.5 Independent Contractor.** eXMeritus' relationship with Client is that of an independent contractor and nothing in this Agreement shall be construed to create a partnership, joint venture, or employer-employee relationship. Neither Party is authorized to make any representation, contract, or commitment on behalf of the other Party.

**2. DEFINITIONS.** Certain capitalized terms used in this Agreement, not otherwise defined above, or on the Cover Page, shall have the meanings set forth below.

**2.1 "Confidential Information"** shall include by way of illustration, but not limitation, (a) trade secrets, inventions, ideas, processes, formulas, source and object codes, data, programs, other works of authorship, know-how, improvements, discoveries, developments, designs and techniques; and (b) proprietary information regarding plans for research, development, new products, marketing and selling, business plans, budgets and unpublished financial statements, licenses, prices and costs, suppliers and end users; and (c) information regarding the skills and compensation of employees of the disclosing Party. In addition, Confidential Information shall include proprietary or confidential information that either Party has received or will in the future receive from third parties. Notwithstanding the other provisions of this Agreement, nothing received by the receiving Party (the "**Receiving Party**") will be considered to be the Confidential Information of the disclosing Party (the "**Disclosing Party**") if: (i) it has been published or is otherwise readily available to the public other than by a breach of this Agreement; (ii) it has been rightfully received by the Receiving Party from a third party without confidentiality restrictions; (iii) it has been independently developed for the Receiving Party by employees or agents having no access to the Disclosing Party's Confidential Information; or (iv) it was known to the Receiving Party prior to its first receipt from the Disclosing Party.

**2.2 "Purchase Order"** shall mean a document complying with the requirements of Section 1.

**2.3 "Scope"** shall mean eXMeritus' standard services in the nature of software installation, technical consulting, training and support with respect to certain software products and other associated services to be provided by eXMeritus to Client or on behalf of Client to its customers with respect to HardwareWall™ or eXMeritus Software products or identified in any valid Purchase Order or SOW..

**2.4 "Services"** shall mean services to be provided by eXMeritus, subject to this Agreement, to Client or Client's customers, as such services are identified in a valid Purchase Order.

### 3. TERMS OF SERVICE.

**3.1 Data and Information.** Client shall ensure that eXMeritus is provided a full and complete DD Form 254, with all authorizations deemed necessary by eXMeritus, to allow eXMeritus to perform the Services. Provided that eXMeritus has obtained all necessary clearances and authorizations, Client shall, in a timely manner and at no charge to eXMeritus, give eXMeritus access to all technical data, computer facilities, programs, files, documentation, test data, sample output, or other information and resources, including classified information and resources, that are, in eXMeritus' reasonable opinion, required by eXMeritus for performance of the Services, and Client hereby grants to eXMeritus a nonexclusive license to use, reproduce, modify and create derivative works of all such materials in performance of the Services. Client will be responsible for, and assumes the risk of, any problems, delays, losses, claims, or expenses it incurs resulting from the content, accuracy, completeness, and consistency of all such data, materials, and information supplied by Client. Other responsibilities of Client, if any, shall be set forth in the applicable Purchase Order. Where any of the following occur for any reason other than a breach of the Agreement by eXMeritus: (a) the performance of the Services is delayed; (b) eXMeritus is required to perform the Services in circumstances other than those expressly or reasonably assumed and normally pertaining to services of a similar nature; (c) there is a change in the scope, timing, order or complexity of the Services; then eXMeritus shall be entitled to additional payment by the Client and amendment to the Agreement that is reasonable in the circumstances. Client warrants that any system, templates, software, documentation modules or user interface, which is to be rewritten, modified, used, copied or converted, installed, or enhanced hereunder, is owned or licensed by the Client in such a manner so as to permit eXMeritus to perform its obligations hereunder without threat of legal liability. In the event that there is a claim of infringement relating to eXMeritus' efforts in this regard, Client agrees to indemnify, defend and hold eXMeritus harmless against any such claim.

**3.2 Equipment.** When Services are required to be performed on site at Client's or Client's customers' facility, Client shall provide, at no charge to eXMeritus, such office space, services, and equipment (such as copiers, fax machines, computers and modems) as are, in eXMeritus' reasonable determination, required to perform the Services.

**3.3 Services for Client's Customers.** If eXMeritus is performing Services on behalf of Client for Client's customers, Client shall be solely responsible for obtaining all of the materials, licenses and equipment described in Sections 3.2 and 3.3 from its customer and shall require such customer to agree in writing to be bound by the confidentiality obligations set forth in Section 4.

**3.4 Services for U.S. Government Customers.** If eXMeritus is performing Services on behalf of Client for Client's U.S. Government customers, eXMeritus will comply with the following provisions of Federal Acquisition Regulations, to the extent applicable, which are hereby made part of and incorporated by reference into this Agreement: (a) FAR 52.219-8 (Utilization of Small Business Concerns) (OCT 2000); (b) FAR 52.222-26 (Equal Opportunity) (APR 2002); (c) FAR 52.222-35 (Affirmative Action for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans) (DEC 2001); (d) FAR 52.222-36 (Affirmative Action for Workers with Disabilities) (JUN 1998); (e) FAR 52.222-41 (Service Contract Act of 1965, as Amended) (MAY 1989). All Services provided pursuant to this Agreement are "commercial items" as such term is defined at 48 C.F.R. 2.101.

**3.5 No Licenses.** Client acknowledges that, unless otherwise agreed in a Purchase Order, no intellectual property rights are

licensed or transferred by eXMeritus to Client or any third parties pursuant to this Agreement.

**4. CONFIDENTIAL INFORMATION.** If Confidential Information is disclosed in a writing or other tangible form, it shall be clearly marked as "Confidential" or with a comparable legend and if disclosed orally or visually, it shall be identified as Confidential by the Disclosing Party at the time of such oral or visual disclosure. If information is disclosed without an appropriate legend or notice, the Disclosing Party may provide notice of its status as Confidential Information at a later date and the parties agree that any such information shall be treated as Confidential Information after the notice of the status as Confidential Information has been provided. The Receiving Party agrees during the term of this Agreement and thereafter to take all steps reasonably necessary to hold the Confidential Information of the Disclosing Party in trust and confidence using at the least the same degree of care that such Receiving Party uses to prevent the disclosure or misuse of its own confidential Information of like importance, but in no event with less than reasonable care. The Receiving Party further agrees that it will not use the Disclosing Party's Confidential Information in any manner or for any purpose not expressly set forth in this Agreement and will not disclose such Confidential Information to any third party, without first obtaining the express written consent, on a case-by-case basis, of the Disclosing Party. Notwithstanding the foregoing, it shall not be a violation of this Section 4 to make a disclosure of the Disclosing Party's Confidential Information to the extent required pursuant to the order or requirement of a court, administrative agency, or other governmental body; provided, however, that the Receiving Party shall provide prompt written notice thereof to the Disclosing Party and shall allow the Disclosing Party to obtain confidential treatment or to limit the scope of the required disclosure.

**5. COMPENSATION AND PAYMENTS.**

**5.1 Compensation.** Client shall pay eXMeritus fees at the hourly rate set forth in the applicable Purchase Order based on eXMeritus' performance of Services under this Agreement. Client shall also reimburse eXMeritus for documented materials, travel, lodging, and reasonable out-of-pocket expenses that are incurred by eXMeritus employees in their performance of the Services. Unless otherwise expressly stated in a Purchase Order, all fees payable under this Agreement are exclusive of taxes and similar charges. If eXMeritus provides Services on behalf of Client to Client's customers, Client shall be solely responsible for payments to eXMeritus and shall pay eXMeritus for such Services regardless of whether Client has been paid by its customers. Upon termination of this Agreement for any reason, eXMeritus will be paid its fees for the number of hours eXMeritus has performed the Services and expenses incurred by eXMeritus up to and including the effective date of such termination.

**5.2 Payments.** eXMeritus shall submit invoices to Client for all payments due and payable under this Agreement. Client shall pay to eXMeritus the fees and expenses identified in the applicable invoice within thirty (30) days after the date of eXMeritus' invoice. Payments due eXMeritus under this Agreement shall, if not paid when due, bear simple interest at the lower of one percent (1%) per month or the highest rate permitted by law.

**6. WARRANTY; DISCLAIMER.**

**6.1 Warranty.** eXMeritus will perform the Services in a professional and workmanlike manner, consistent with the ordinary degree of skill prevalent in the industry. CLIENT'S SOLE AND EXCLUSIVE REMEDY AND EXMERITUS' SOLE AND EXCLUSIVE LIABILITY FOR BREACH OF THIS SECTION 6.1 WILL BE FOR EXMERITUS TO RE-PERFORM, AT NO ADDITIONAL CHARGE TO CLIENT, ANY SERVICES NOT CONFORMING TO THE FOREGOING WARRANTY.

**6.2 Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE SERVICES, AND ANY OTHER INFORMATION, MATERIALS OR SERVICES PROVIDED BY EXMERITUS UNDER THIS AGREEMENT ARE PROVIDED "AS IS" WITH NO OTHER WARRANTY PROVIDED AND EXMERITUS EXPRESSLY DISCLAIMS ALL OTHER CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER

EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, ACCURACY, SYSTEM INTEGRATION AND NON-INTERFERENCE, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE.

**7. LIMITATION OF LIABILITY.** EXMERITUS WILL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS) IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL OR EQUITABLE THEORY, EVEN IF EXMERITUS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL EXMERITUS' AGGREGATE CUMULATIVE LIABILITY FOR ANY CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED SHALL NOT EXCEED THE TOTAL AMOUNT OF ALL FEES THEN-PAID TO EXMERITUS BY CLIENT UNDER SECTION 5.1 DURING THE TWELVE (12)-MONTH PERIOD IMMEDIATELY PRIOR TO THE EVENT, ACT OR OMISSION GIVING RISE TO SUCH LIABILITY. THE PROVISIONS OF THIS AGREEMENT ALLOCATE RISKS UNDER THE AGREEMENT BETWEEN EXMERITUS AND CLIENT AND EXMERITUS' PRICING REFLECTS THIS ALLOCATION OF RISK AND LIMITATION OF LIABILITIES. THE DISCLAIMERS, EXCLUSIONS AND LIMITATIONS OF LIABILITY SET FORTH IN THIS AGREEMENT FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES, AND, ABSENT ANY OF SUCH DISCLAIMERS, EXCLUSIONS OR LIMITATIONS OF LIABILITY, THE PROVISIONS OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THE ECONOMIC TERMS, WOULD BE SUBSTANTIALLY DIFFERENT.

**8. TERMINATION.**

**8.1 Term.** This Agreement shall commence on the Effective Date and shall remain in effect until the earlier to occur of (i) completion of all outstanding Purchase Orders hereunder; or (ii) termination in accordance with Section 8.2. Notwithstanding the foregoing, provided that a Purchase Order has been offered and accepted and Services thereunder are not completed, this Agreement shall remain in effect for the "Initial Term" set forth on the Cover Page unless earlier terminated in accordance with Section 8.2. Unless otherwise stated in the applicable Purchase Orders, the term of each Purchase Order shall last until performance thereunder is completed.

**8.2 Termination for Breach.** Either Party may, at its option, terminate this Agreement in the event of a material breach by the other Party. Such termination may be effected only through a written notice to the breaching Party, specifically identifying the breach or breaches on which such notice of termination is based. The breaching Party will have a right to cure such breach or breaches within thirty (30) days of receipt of such notice, and this Agreement shall terminate in the event that such cure is not made within such thirty (30)-day period. Without limiting the foregoing, eXMeritus may immediately terminate this Agreement upon written notice in the event that Client becomes insolvent or enters bankruptcy during the term of this Agreement.

**8.3 Termination of Individual Purchase Orders.** Either Party may, at its sole option and for its own convenience, terminate any or all Purchase Orders in effect upon fifteen (15) days prior written notice. Upon such termination, the Parties shall inform each other of the extent to which performance has been completed through such date, and collect and deliver all work in process. In the event of termination, the Parties agree to wind up their work in a commercially reasonable manner. eXMeritus shall be paid for all work performed and expenses incurred through the date of termination.

**8.4 Effect of Termination.** Upon any termination of this Agreement, each Party shall (i) immediately discontinue all use of the other Party's Confidential Information; (ii) delete the other Party's Confidential Information from its computer storage or any

other media, including, but not limited to, online and off-line libraries; (iii) shall return to the other Party or, at the other Party's option, destroy, all copies of such other Party's Confidential Information then in its possession; and (iv) shall promptly pay all amounts due and remaining payable hereunder. The provisions of Sections 2, 3.5, 4, 5, 6, 7, 8.4, and 9 shall survive any expiration or termination of this Agreement.

## **9. GENERAL PROVISIONS.**

**9.1 No Solicitation.** Client acknowledges and agrees that the employees and consultants of eXMeritus who perform the Services are a valuable asset to eXMeritus and are difficult to replace. Accordingly, Client agrees that during the term of this Agreement, and for a period of one (1) year after the termination or expiration of this Agreement, it shall not offer employment or engagement (whether as an employee, independent contractor or consultant) to any eXMeritus employee or consultant who performs any of the Services. Client agrees that for each individual that Client hires in violation of this Section 9.1, Client shall pay to eXMeritus liquidated damages equal to fifty percent (50%) of the annual cumulative value of salary and benefits paid or payable to that individual by either Client or eXMeritus, whichever amount is greater.

**9.2 Governing Law.** This Agreement will be governed and construed in accordance with the laws of the Commonwealth of Virginia, but excluding its conflict of laws provisions that would require the application of the laws of any other state. Any suit hereunder will be brought solely in the federal court located in the Eastern District of Virginia, Alexandria Division, or state courts in Fairfax County, Virginia..

**9.3 Attorney's Fees.** If any dispute arises between the Parties with respect to the matters covered by this Agreement which leads to a proceeding to resolve such dispute and eXMeritus prevails in such a proceeding, eXMeritus shall be entitled to receive its reasonable attorneys' fees, expert witness fees and out-of-pocket costs incurred in connection with such proceeding, in addition to any other relief it may be awarded.

**9.4 Injunctive Relief.** Each Party acknowledges that any actual or threatened breach of Section 4 will constitute immediate, irreparable harm to the other Party for which monetary damages would be an inadequate remedy, and that such Party shall be entitled to seek injunctive relief to remedy such actual or threatened breach, without requirement of posting bond.

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

**9.6 No Assignment.** Client may not assign this Agreement without the express written consent of eXMeritus, and any such attempted assignment shall be void and of no effect. eXMeritus reserves the right to assign this Agreement in the event of any merger, acquisition or reorganization involving all or substantially all of the assets related to its performance of this Agreement.

**9.7 Notices.** All notices, requests and other communications under this Agreement must be in writing, and must be mailed by registered or certified mail, postage prepaid and return receipt requested, or delivered by nationally recognized courier or by hand to the Party to whom such notice is required or permitted to be given. If mailed, any such notice will be considered to have been given five (5) business days after it was mailed, as evidenced by the postmark. If delivered by nationally recognized courier, any such notice will be considered to have been given upon

confirmation of receipt by the receiving Party. If delivered by hand, any such notice will be considered to have been given when received by the Party to whom notice is given, as evidenced by written and dated receipt of the receiving Party. The mailing address for notice to either Party will be the address shown on the signature page of this Agreement. Either Party may change its mailing address by notice as provided by this section.

**9.8 Force Majeure.** Nonperformance by either Party, except for the making of payments, shall be excused to the extent that performance is rendered impractical by strike, fire, flood, earthquake, or other acts of God, governmental acts, orders or restrictions, or any other reason when failure to perform is beyond the reasonable control of the nonperforming Party.

**9.9 Export.** Each Party agrees not to export, directly or indirectly, any data acquired from the other Party or any products utilizing such data to countries outside the United States, which export may be in violation of the United States export laws or regulations or the laws and regulations of any other applicable jurisdiction.

**9.10 Counterparts.** This Agreement may be executed in counterparts, all of which taken together constitute a single instrument. Execution and delivery of this Agreement may be evidenced by facsimile transmission.

**9.11 Entire Agreement.** This Agreement is the final, complete and exclusive agreement of the Parties with respect to the subject matter hereof and supersedes and merges all prior discussions between the Parties. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, will be effective unless in writing and signed by the Party to be charged. The terms of this Agreement will govern all Services undertaken by eXMeritus for Client or on behalf of Client for its customers under all applicable Purchase Orders.

**[End of Services Terms and Conditions]**