

**Boeing Shared Services Group
COMPUTER HARDWARE MAINTENANCE AGREEMENT**

Effective _____, The Boeing Company ("Buyer"), a Delaware corporation acting through its division, Boeing Shared Services Group, and _____ ("Seller"), a _____ corporation, agree to the following terms and conditions.

RECITALS

- A. Buyer and Seller desire to establish now the terms and conditions under which they will do business in the future in order for Seller to provide maintenance services to Buyer.
- B. Buyer and Seller have specifically negotiated these terms and conditions with the express intent that they apply to maintenance services provided by Seller during the term hereof.

NOW, in consideration of the recitals, mutual promises, and covenants contained herein, the parties do agree as follows:

AGREEMENT

1. DEFINITIONS

As used herein the following terms, when capitalized, shall have the following meanings:

"Agreement" means these terms and conditions, each and every Contract, all exhibits now or hereafter made part of this Agreement, that are incorporated by this reference, and all of the specifications, technical descriptions, statements of work, schedules, drawings, designs, documents, and any other requirements or provisions attached to, incorporated into, or otherwise specified in these terms and conditions or any Contract.

"Buyer" means The Boeing Company or its divisions or The Boeing Company acting as agent for any of its affiliates or wholly owned subsidiaries." All references in this Contract to "The Boeing Company" and any of its affiliates, divisions, or wholly owned subsidiaries shall mean "Buyer."

"Buyer's Authorized Procurement Representative" means the representative of Boeing Shared Services Group Supplier Management department, identified in the Contract and as may be changed by written notice, who is authorized by Buyer to act on behalf of Buyer in business transactions with Seller.

"Contract" means Buyer's written order to Seller, which references this Agreement, for the delivery of Maintenance.

"Employee" means any employee or agent of Seller or Subcontractor who performs Maintenance.

"Equipment" means the hardware, including workstation and peripheral equipment, designated by a Contract that Seller will maintain pursuant to this Agreement.

"Equipment Records Management System" or "ERMS" means a Buyer inventory and accountability system for computing and communications equipment.

"Extra-Call" means a service call made by the Seller outside the time period contracted for Maintenance as specified in the Statement of Work.

"Maintenance" means all parts, labor, and diagnostic services provided under this Agreement.

"Maintenance Fee" means the fee, including any discounts, charged Buyer for Maintenance for an item of Equipment, as outlined in the Statement of Work and incorporated in the applicable Contract.

"Statement of Work" or "SOW" means the document that describes the Maintenance and other tasks to be provided by Seller to fulfill the requirements of this Agreement and that is attached as Exhibit A to this Agreement and incorporated herein by reference.

"Subcontractor" means any subcontractor, at any tier, or any other third party that performs any of Seller's obligations under this Agreement.

"Warranty Period" means the first ninety (90) days after Maintenance is performed.

2. TERMS AND CONDITIONS

- a. Term. These terms and conditions shall take effect on the effective date written above and expire on the fifth anniversary of the effective date, unless they are earlier terminated in accordance with the terms hereof or by the mutual written consent of the parties. These terms and conditions shall apply to all Maintenance ordered by Buyer during the term of this Agreement.
- b. Orders. Maintenance may be ordered on the terms and conditions of this Agreement solely by Buyer's Authorized Procurement Representative on a Contract. Each Contract will be effective upon written acknowledgement by Seller or commencement of performance by Seller.
- c. Objection. Except for the terms set forth in the paragraph entitled "Orders," neither party shall be bound by, and each specifically objects to, any term or condition that is different from or in addition to the provisions of these terms and conditions, unless such different or additional term or condition is accompanied by an express reference to the inconsistent term in these terms and conditions, or expressly waives the prohibition of different or additional terms in this paragraph, and is in writing signed by the party to be obligated. Such a modification, however, will apply only to the transaction covered by the Contract and has no effect whatsoever on the terms of this Agreement or the order of precedence applicable to any other transactions under this Agreement.
- d. Order of Precedence. In the event of any inconsistency within or relating to this Agreement, the following order of precedence will apply:
 - (1) Each Contract.
 - (2) These terms and conditions.
 - (3) The Statement of Work prepared by or at the direction of Buyer.

3. SELLER'S EMPLOYEES AND SUBCONTRACTORS

- a. Qualified Employees. Seller shall perform and shall cause its Subcontractors to perform all of the Maintenance using qualified Employees satisfactory to Buyer. No Employee unsatisfactory to Buyer will be assigned to perform any of the Maintenance. From time-to-time, Buyer may request and Seller shall provide resumes, references, or other information reflecting the qualifications of any Employee, either before or after the Employee is assigned to perform Maintenance.
- b. Replacements. If any Employee is or becomes unsatisfactory to Buyer, Seller or its Subcontractor, as the case may be, shall provide a qualified replacement satisfactory to Buyer in a timely fashion. If, despite its best efforts to do so, Seller or its Subcontractor is unable to provide a satisfactory replacement, Buyer may cancel the Contracts involved, in whole or in part, without any termination payment or other liability to Seller but only to the extent affected by the loss of Maintenance that would have been performed by the unsatisfactory Employee.
- c. Seller's Responsibilities. All Employees shall at all times be and remain employees of Seller or its Subcontractors, not employees of Buyer. Seller shall pay its Employees, and shall ensure that each of its Subcontractors pays its Employees, all wages, salaries, overtime, and other amounts due. Seller shall be responsible for, and shall ensure that each of its Subcontractors shall be responsible for, all reports, payments, and other obligations regarding their respective Employees, including without limitation, those

related to Social Security, income tax withholding, unemployment compensation, workers' compensation, overtime, and employee benefit plans.

- d. Expenses. Seller shall be responsible for all expenses of all Employees, including, without limitation, travel to and from the place where the Maintenance is to be performed.
- e. Subcontractors. Performance of the Maintenance is a personal obligation of Seller and may not be subcontracted or otherwise delegated without prior written consent of Buyer. Specification of a Subcontractor and that portion of the Maintenance to be performed by it in the applicable Contract shall constitute consent.

4. PRICES AND PAYMENT

- a. Price. Any price specified in the Contract for Maintenance is a firm fixed price for the term of the Contract. In the event Seller announces a decrease in rates for the Equipment identified in the Contract, Seller will immediately notify Buyer of such decrease, and the decreased rate will apply, automatically and without further formalities, to all Maintenance delivered after the announced date on which the decrease will take effect but no later than the date the decrease is incorporated into the Seller's price list.
- b. Payment. Seller shall issue a monthly invoice for Maintenance Fees that includes the following: (i) itemized equipment identification (including serial number) and rates, (ii) billing period, (iii) Contract number, (iv) invoice number, (v) invoice date, (vi) subtotal, and (vii) tax itemized by state and invoice total. Any fees, including any discounts, charged Buyer for Extra-Call services for an item of Equipment, as outlined in the Statement of Work and incorporated in the applicable Contract, will be consolidated to a maximum of one invoice each month with itemized detail that includes a Buyer employee signature attached. The invoice, however, shall not be issued before performance. Payment will be mailed sixty (60) days after receipt of a correct invoice. For purposes of prompt payment discounts, if any, the payment due date will be computed from acceptance or receipt of a correct invoice, whichever is later, to the date Buyer's check is mailed or otherwise tendered. Seller will prominently display notice of any applicable prompt payment discounts on the invoice. Unless taxes or other applicable charges are itemized, any discount may be taken on the full amount of the invoice.
- c. Automatic Payment. Buyer and Seller reserve the right to develop and implement, at any time, streamlined methods of billing and payment designed to process a payment without receiving an invoice from the Seller. Seller agrees to make good faith efforts to accommodate such methods.
- d. Liens. Seller warrants that, on the date Buyer pays for all the Maintenance delivered under this Agreement, all liens, rights of lien, and claims against Buyer arising from or related to Seller's provision of the Maintenance will have been released or satisfied. Upon request, Seller will provide to Buyer certification, together with receipts, releases, or other satisfactory evidence in support thereof, stating that no such liens, rights of lien, or claims exist on such date of payment.

5. MAINTENANCE SERVICES

- a. Scope of Services. Seller will provide on-site Maintenance support, as specified in the Statement of Work, for the Equipment identified by Buyer and will modify, adapt, or develop a maintenance plan or procedure to ensure that the Equipment meets original equipment manufacturer (OEM) specification for each system maintained. Seller will cooperate with the OEM as necessary to provide Maintenance for the Equipment as specified in the Statement of Work and shall, at Buyer's request, execute any non disclosure, license, or other agreements with the OEM necessary to obtain information, know-how, training, and any other support reasonably required from the OEM. Buyer will maintain an Equipment environment consistent with OEM specifications.
- b. Response. Seller response time will be tracked by Boeing Network Access Control Center (BNACC) personnel in accordance with the Statement of Work. Seller personnel will restore Equipment to full operating condition as quickly as possible. Problems that go beyond two (2) hours after arrival on site by Seller personnel will be escalated by Seller as stated in the paragraph entitled "Escalation."

- c. Escalation. Escalation is part of the contracted period of maintenance and is in addition to the restoration requirements described in the Statement of Work. Seller will use a structured approach for internal escalation of system problems that extend beyond two (2) hours after arrival on site by Seller personnel.
- (1) On-Site Time (OST). Starts at time Seller arrives on site and failing Equipment is available for repair.
 - (2) OST + 2 Hours. Local senior technical support is identified and called to assist.
 - (3) OST + 4 Hours. Local management is notified. District or regional technical support becomes involved on site within four (4) hours.
 - (4) OST + 8 Hours. District management is notified. District management notifies national management.
- d. Maintenance Service Not Covered by the Maintenance Fee. The following services are not included in the Maintenance Fee and may be billed on an Extra-Call basis:
- (1) Repair for damage resulting from neglect, misuse, or abuse caused by Buyer.
 - (2) Maintenance required to repair Equipment because a third party or Buyer employee, unauthorized by Seller, provided maintenance service for such Equipment.

If Seller provides any of the above services, it shall be paid on an Extra-Call basis according to the paragraph entitled "Extra-Call Services."

- e. Extra-Call Services
- (1) Contract. Buyer will provide Seller with a separate Contract to request Extra-Call services. When service is completed and a service report is signed by a Buyer employee, Seller may invoice Buyer in accordance with the paragraph entitled "Payment" of the clause entitled "Prices and Payment."
 - (2) Service Reports. Seller shall at all times keep service reports relating to all services performed under this Agreement for which Buyer is charged on an Extra-Call basis. Seller shall attach a copy of the applicable service report to each invoice for Extra-Call services. Seller will maintain these reports for three (3) years after termination of this Agreement and shall make them available to Buyer for examination upon request.
 - (3) Holidays. The Seller agrees to have personnel available upon request, at no extra charge, to be billed on a time-only basis, if required, to provide Maintenance on the following Buyer holidays: New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, the day after Thanksgiving, and Christmas Day.

6. REPLACEMENT PARTS

Only parts that are new or are warranted as new and meet OEM specifications, if any, will be used by Seller for repairs. Replaced parts become the property of Seller except for storage media and any specified parts for Equipment used in secured areas. Replaced magnetic storage media (i.e., disk packs) from systems in secured areas shall always remain the property of Buyer. As to other replaced storage media, Buyer shall retain title to such replaced parts unless Buyer specifically elects to transfer title therein to Seller. Replacement or reinitialization of storage media must have prior approval of the Buyer site manager. If Buyer transfers title to Seller in any computing storage media device, and if Buyer is unable to erase or overwrite residual information on it before transferring the device to the Seller, Seller shall, in that event, treat all information as Buyer proprietary and shall certify to Buyer that all residual information has been destroyed or degaussed before the device is released or provided to any other party other than to Buyer.

7. SPARE PARTS

Availability of spares will be sufficient to meet the requirements of the Statement of Work. Shipping charges for any part requiring emergency delivery from the plant, or the OEM supply point will be at Seller's expense.

8. OBSOLETE EQUIPMENT

- a. Buyer Surplus Equipment. In an effort to provide Maintenance support for aging Equipment, the Seller may indicate a desire to purchase Equipment being surplus by Buyer to be used for spare parts. Equipment will be available for sale in complete units only. Seller will have an option to first right of refusal to purchase surplus Equipment, as mutually specified and agreed to, from Buyer.
- b. Unsupportable Equipment. The Seller will notify Buyer in writing at least one (1) year in advance of its intent to discontinue Maintenance support services for the Equipment.

9. MAINTENANCE WARRANTIES

- a. Equipment Maintenance Warranty. Seller warrants the following to Buyer during the Warranty Period:
 - (1) Defects. Parts and spares shall be free of defects in material and workmanship. Refurbished parts and spares will be warranted by Seller as new.
 - (2) Design. To the extent not manufactured to detailed designs furnished by Buyer, parts and spares shall be free of all defects in design.
 - (3) Compatibility. Parts and spares shall be compatible with the Equipment identified in the Contract.
 - (4) Conformance to Requirements. The Equipment shall conform in all respects to all of the requirements of this Agreement.
- b. Performance Warranty. Seller warrants to Buyer that all Maintenance will be performed by Employees who are trained and competent on the Equipment in order to complete the Statement of Work and that the Maintenance will be accomplished in a professional manner.

10. PERFORMANCE AND COST INCENTIVES

Seller and Buyer shall, from time to time, work together to improve the quality and reduce the cost of Maintenance through joint quality improvement initiatives. To the extent these initiatives result in a reduction in the cost of Maintenance, Seller shall pass on one-half of the resultant cost savings to Buyer in the form of reduction in rates, credits, or other mutually agreed upon consideration. At Buyer's request, Seller will cooperate with Buyer to establish appropriate metrics to measure progress in any joint cost reduction initiative, and shall assist Buyer in identifying resultant cost savings for purposes of computing and allocating the resultant cost savings between the parties in accordance with this clause.

11. PROPRIETARY INFORMATION

Seller shall keep confidential and otherwise protect from disclosure all information and property obtained from Buyer in connection with this Agreement and identified as confidential or proprietary. Unless otherwise expressly authorized herein or by Buyer, Seller shall use such information and property only in the performance and for the purpose of this Agreement. Upon Buyer's request, and in any event at the completion, termination, or cancellation of this Agreement or any Contract, Seller shall return all such information and property to Buyer or make such other disposition thereof as directed by Buyer.

12. TAXES

- a. If any federal, state, or local sales or use tax (or its equivalent) is legally due on taxable Maintenance purchased, Seller will separately bill such tax on its invoice to Buyer. Buyer agrees to pay Seller for such tax or if such tax is not applicable to the Maintenance purchased, it will be so noted on the Contract and

Buyer shall provide appropriate exemption statements and information on its Contract acceptable to the taxing authority.

- b. All other taxes, including, but not limited to federal, state, and local income taxes, franchise taxes, gross receipts taxes, federal, state, and local sales and use taxes, and property taxes shall be the responsibility of the party who incurs the tax liability.
- c. For tax purposes, the items purchased under this contract by Shared Services Group, Supplier Management and Procurement may be purchased for Buyer or as agent for one of Buyer's subsidiaries.

13. GENERAL PERFORMANCE

Seller represents and warrants that Seller has the legal right to enter into and perform its obligations under this Agreement.

14. INFRINGEMENT

Seller shall defend, indemnify, and hold harmless Buyer and its subsidiaries and their directors, officers, employees, and agents from and against all actions, causes of action, liabilities, claims, suits, judgments, liens, awards, and damages of any kind and nature whatsoever (hereinafter referred to as "Claims") and expenses, costs of litigation (including without limitation clerk, paralegal, and expert witness costs), and reasonable attorneys' fees related thereto, or incident to establishing the right to indemnification, whether or not specifically awardable under any court rules, to the extent such Claims arise out of the infringement of any patent or copyright by Maintenance, or involve the wrongful use of any trade secret or confidential information. Buyer shall give Seller notice of all Claims made against Buyer or any of its subsidiaries, and shall cooperate with Seller (at Seller's expense) in the defense or settlement of such Claims. In no event shall Seller's obligations hereunder be limited to the extent of any insurance available to or provided by Seller or any Subcontractor.

15. PREMISES INDEMNIFICATION

- a. Seller's Indemnity. Seller shall defend, indemnify, and hold harmless Buyer and its subsidiaries and their respective directors, officers, employees, and agents (hereinafter referred to as "Indemnitees") from and against all actions, causes of action, liabilities, claims, suits, judgments, liens, awards, and damages, of any kind and nature whatsoever (hereinafter referred to as "Premises Claims"), for property damage, bodily injury, or death (including, without limitation, Premises Claims brought by employees of Seller or any Subcontractor) and expenses, costs of litigation (including without limitation clerk, paralegal, and expert witness costs), and reasonable attorneys' fees related thereto, or incident to the right to indemnification, arising out of or any way related to the performance of the Contract by Seller or any Subcontractor or their respective employees, including, without limitation, the provision of services, personnel, facilities, equipment, support, supervision, or review, to the extent such claims arise from any negligent act or omission or willful misconduct of Seller, any Subcontractor, or their respective employees. Seller expressly waives any immunity under industrial insurance, whether arising from Title 51 of the Revised Code of Washington or any other statute or source, to the extent of the indemnity set forth in this paragraph. In no event shall Seller's obligations hereunder be limited to the extent of any insurance available to or provided by the Seller or any Subcontractor.
- b. Subcontractor Indemnification. Seller shall require each Subcontractor to provide an indemnity, enforceable by and for the benefit of the Indemnitees, to the same extent required of Seller.

16. INSURANCE

- a. Commercial General Liability. Throughout the period of performance of this Agreement and until final acceptance by Buyer, Seller shall carry and maintain, and shall ensure that all Subcontractors carry and maintain, Comprehensive General Liability insurance with limits of not less than One Million Dollars (\$1,000,000) for each occurrence for bodily injury, including death, and property damage combined. Such insurance shall be in a form and with insurers acceptable to Buyer and shall contain coverage for all premises and operations, broad form property damage, contractual liability, and products and completed operations insurance.

- b. Automobile Liability. If licensed vehicles will be used in connection with the performance of this Agreement, Seller shall carry and maintain, and ensure that any Subcontractor who uses a licensed vehicle in connection with the performance of this Agreement carries and maintains, throughout the period of performance of the Agreement, Automobile Liability insurance covering all vehicles, whether owned, hired, rented, borrowed, or otherwise, with limits of liability of not less than One Million Dollars (\$1,000,000) for each occurrence combined single limit for bodily injury and property damage.
- c. Workers' Compensation and Employers Liability. Throughout the period of performance of this Agreement and until final acceptance by Buyer, Seller shall carry and maintain, and ensure that all Subcontractors carry and maintain, insurance in accordance with the applicable laws relating to workers' compensation with respect to all of its employees working on or about Buyer premises, regardless of whether such coverage or insurance is mandatory or merely elective under the law. If Buyer is required by any applicable law to pay workers' compensation premiums with respect to employees of Seller or any Subcontractor, Seller shall reimburse Buyer for such payment.
- d. Certificates of Insurance.
 - (1) Before the period of performance commences, Seller shall provide to the Buyer's Authorized Procurement Representative for review and approval certificates of insurance reflecting full compliance with the requirements set forth in the paragraphs entitled "Commercial General Liability," "Automobile Liability," and "Workers' Compensation and Employers Liability" of this clause. Such certificates shall be kept current and in compliance throughout the period of performance and until final acceptance by Buyer, and shall provide for thirty (30) days advance written notice to Buyer in the event of cancellation or material change adversely affecting the interests of Buyer. Any policy or policies providing the insurance required under this clause may be inspected by Buyer upon request.
 - (2) Seller at Seller's expense shall maintain or cause to be procured and maintained the policies of insurance required under this clause. Any self-retained layer, deductibles, and exclusions in coverage in such policies shall be assumed by, for the account of, and at the sole risk of Seller or the Subcontractor that provides the insurance and, to the extent applicable shall be paid by such Seller or Subcontractor. In no event shall the liability of Seller or any Subcontractor be limited to the extent of any insurance available to or provided by Seller or any Subcontractor or to the minimum limits of insurance required under this clause.

17. TERMINATION FOR CONVENIENCE

- a. Termination. Buyer may terminate any Contract, in whole or in part, by providing thirty (30) days written notice of such termination to Seller, specifying the extent and effective date of such termination thereof. On the specified termination date, Seller shall stop work under the Contract to the extent specified in the termination notice.
- b. Effect of Termination. In the event and to the extent of any termination under this clause, all obligations of Seller and all rights of Buyer under the Contract involved shall thereupon be terminated but only with respect to the Maintenance covered by the termination notice. Seller shall continue to perform those obligations under this Agreement to the extent not terminated.
- c. Termination Payment. In the event and to the extent of any termination under this clause, Buyer's total liability shall be to pay Seller the purchase price for all Maintenance performed on or before the termination date specified in the termination notice but not paid for under the Contract. Seller shall give Buyer written notice of its intent to submit any claims for compensation under this clause within ten (10) days after the effective date of termination and shall submit all such claims within thirty (30) days after the effective date of termination. Seller hereby waives, releases, and renounces any claim for compensation not made within this period.
- d. Overpayment. Any amounts paid by Buyer for Maintenance that was to have been rendered after the effective date of termination shall be refunded by Seller immediately following Seller's receipt of notice of termination.

18. CANCELLATION FOR DEFAULT

- a. Cancellation. Either party may cancel any Contract, in whole or in part, to the extent the other party fails to perform any of its material obligations under the Contract and does not cure the failure within thirty (30) days after service of a default notice, specifying the failure; except that for breaches of the clause entitled "Maintenance Warranties," the defaulting party shall have ten (10) days to cure after service of a default notice, specifying the failure.
- b. Effect of Cancellation. In the event and to the extent of any cancellation under this clause, all obligations of the nondefaulting party and all rights of the defaulting party under the Contract shall thereupon be canceled but only with respect to the Maintenance covered by the cancellation notice, and all rights of the nondefaulting party and all accrued obligations of the defaulting party under the Contract shall survive.
- c. Cancellation Payment. In the event and to the extent of any cancellation by Seller under this clause, Buyer's total liability shall be to pay Seller for the Maintenance performed on or before the effective date of cancellation, but not paid for under the Contract. Seller shall give Buyer written notice of its intent to submit any claims for compensation under this clause within ten (10) days after the effective date of cancellation and shall submit all such claims within thirty (30) days after the effective date of cancellation. Seller hereby waives, releases, and renounces any claim for compensation not made within this period.
- d. Overpayment. Any amounts paid by Buyer for Maintenance that was to have been rendered after the effective date of termination shall be refunded by Seller immediately following Seller's receipt of notice of cancellation.
- e. Termination for Convenience. If, after issuance of a default notice under the paragraph entitled "Cancellation for Default" of this clause by Buyer, it is determined for any reason that the Seller was not in default, or that the default was excusable under the provisions of this Agreement, then there will be no cancellation and the Contract will be terminated for convenience in accordance with the provisions of the clause entitled "Termination for Convenience" as of the date the cancellation would have taken effect under this clause.

19. DELAYS

- a. Excusable Delays. The time for performance by either party under this Agreement shall be extended for a period equal to any delay caused by unforeseeable causes beyond the control of the party. These causes include acts of God, acts of war, epidemics, fire, power failure, and labor difficulties between the party and its Employees.
- b. Termination for Convenience. If any delay that is excused under the paragraph entitled "Excusable Delays" of this clause persists for more than thirty (30) days, Buyer may terminate the Contracts involved under the clause entitled "Termination for Convenience."

20. COMPLIANCE

- a. With Applicable Laws. Seller warrants that any telephone apparatus or equipment furnished hereunder will comply with Part 68 of the rules of the Federal Communications Commission (47 CFR subparagraph 68.1, *et. seq.*), as applicable, and that, in the performance of its obligations under this Agreement, it has complied with or will comply with Chapters 6, 7, and 12 of the Fair Labor Standards Act, as amended, and the regulations of the U.S. Department of Labor issued thereunder. The provision entitled "Equal Opportunity" set forth in FAR 52.222-26 is incorporated herein by this reference, except that "Contractor" means Seller. Upon request, Seller shall submit certification that it performed its obligations under this Agreement in accordance with the foregoing warranty.
- b. With Buyer and Local Rules and Regulations. Seller shall ensure that any Employees on any Buyer premises (i) comply with Buyer's employee rules of conduct, including, without limitation, Buyer's security and safety procedures and (ii) comply with all federal, state, and local health, safety, and environmental laws and regulations applicable to such Buyer premises.

21. CHANGES

- a. Directed Changes. The Buyer's Authorized Procurement Representative may from time to time direct changes, in writing, within the general scope of any Contract or Statement of Work. Seller shall comply immediately with such direction and avoid unnecessary costs related thereto.
- b. Price and Schedule Adjustments. If any change under the paragraph entitled "Directed Changes" of this clause causes an increase or decrease in the cost or the time required for performance of the Contract, an equitable adjustment in the prices and schedules of the Contract shall be made to reflect such increase or decrease, and the Contract shall be modified in writing accordingly. Unless otherwise agreed in writing, any claims by Seller for adjustment must be delivered to Buyer in writing within thirty (30) days after Seller's receipt of such direction. Pursuant to the clause entitled "Records and Audit," Seller shall make available for Buyer's examination relevant books and records to verify Seller's claim for adjustment. Failure of Buyer and Seller to agree on any adjustment shall not excuse Seller from performing in accordance with such direction.
- c. Other Changes. If Seller determines that the conduct of any of Buyer's employees constitutes a change under this clause, Seller shall notify Buyer immediately in writing as to the nature of such conduct and its effect on Seller's performance. Pending direction from the Buyer's Authorized Procurement Representative, Seller shall take no action to implement any such change or deviation.
- d. Binding Effect. No change to any Contract will be effective or binding upon Buyer unless that change is authorized in writing by the Buyer's Authorized Procurement Representative.

22. RECORDS AND AUDIT

For a period no less than three (3) years after final payment under each and every Contract, Seller shall retain source data supporting list prices for all items billed to Buyer. Source data means documents, including, without limitation, price lists dating back to the time the order was placed, sufficient to verify the correctness of the price charged Buyer. Seller shall, upon request by Buyer, make source data available to Buyer for examination, reproduction, and audit.

23. NOTICES

Any notice, authorization, designation, request, or instruction under or in connection with this Agreement to be effective shall be in writing and shall be deemed duly given or served on delivery, addressed as set forth below. Either party may notify the other in the foregoing manner of any other address to which such communications are to be addressed under this Agreement.

Seller:

Buyer:

The Boeing Company
 Shared Services Group
 Supplier Management
 ___ P.O. Box Number or Street Address ___
 ___ City, State, and Zip Code ___

Attention:

Attention:

24. RELATIONSHIP OF THE PARTIES AND THEIR EMPLOYEES

- a. Independent Contractors. Seller is an independent contractor. Nothing in this Agreement shall be construed as creating any relationship between Seller and Buyer other than that of buyer and seller, or licensor and licensee, respectively. This Agreement is not intended to be, nor shall it be construed as, a joint venture, association, partnership, franchise, or other form of business organization or agency relationship.
- b. No Agency. Neither party shall have any right, power, or authority to assume, create, or incur any expense, liability, or obligation, express or implied, on behalf of the other, except as expressly provided herein.

25. DISASTER RECOVERY

In the event of a disaster or catastrophe totally or partially disabling Buyer's computing or telecommunications capability, whether due to natural or man-made causes, Seller agrees to use its best efforts to aid in the prompt restoration of computing or telecommunications capability, including but not limited to emergency replacements of Equipment, provision of maintenance services, and provision of technical assistance to Buyer in its attempts to recover data. Buyer shall be treated at least as favorably as Seller's most favored customer in the event that the disaster or catastrophe affects others. Buyer and Seller shall negotiate in good faith to provide reimbursement to Seller for the actual costs of time, materials, and shipping involved in such emergency response.

26. GENERAL PROVISIONS

- a. Severability. If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining provisions shall remain in full force and effect.
- b. Assignment. Except as set forth in the paragraph entitled "Subcontractors" of the clause entitled "Seller's Employees and Subcontractors," neither this Agreement, nor any obligations under it, may be assigned or delegated by either party without the prior written consent of the other party, except that Buyer may unilaterally assign this Agreement, in whole or in part, to any subsidiary of Buyer.
- c. Publicity. Neither party shall use the name of the other party in any news release, public announcement, advertisement, or other form of publicity without securing the prior written consent of the other. Neither party shall disclose any of the terms of this Agreement to any third party without the prior written consent of the other, except to the party's auditors or attorneys or under subpoena duly issued by a court of competent jurisdiction. Notwithstanding the foregoing, Buyer hereby consents to Seller's inclusion of Buyer's name in a customer listing published in a prospectus or an annual report, provided Buyer is not the sole customer listed.
- d. Survival. Except for any licenses expressly terminated or canceled, all licenses granted under this Agreement, all indemnities, warranties, and representations made under this Agreement, and all accrued obligations under the clause entitled "Proprietary Information" and the paragraph entitled "Publicity" will survive cancellation or termination of this Agreement. Cancellation or termination of this Agreement or any Contract will not affect operation of those provisions of this Agreement that, by their terms, survive or are required to effectuate the intent of the parties, as reflected by this Agreement.
- e. Third-Party Beneficiary. Every subsidiary of Buyer is an intended third-party beneficiary of this Agreement with rights of enforcement.
- f. Rights and Remedies. Except as limited under this Agreement, the rights and remedies afforded to each party under this Agreement are in addition to any other rights or remedies, at law or in equity or otherwise, including, without limitation, the rights and remedies of Buyer as a licensee of intellectual property under 11 U.S.C. § 365(n) (e.g., to retain its rights under this Agreement, and to request and obtain a copy of the source code and associated programmer's notes of any computer software provided to Buyer under this Agreement in object code form, as the embodiment of such intellectual property).
- g. Waiver. Either party's failure to exercise any of its rights under this Agreement shall not constitute a waiver of any past, present, or future right or remedy.
- h. Litigation. The prevailing party in any litigation arising out of this Agreement shall be entitled to recover its expenses, costs of litigation (including without limitation clerk, paralegal, and expert witness costs), and reasonable attorneys' fees from the losing party, whether or not specifically awardable under any court rules.
- i. Governing Law. This Agreement shall be construed under and governed by the law of the State of Washington, without regard to conflict of law provisions.
- j. Acknowledgement. Seller acknowledges that it has not been induced to enter into this Agreement by any representations or promises not specifically stated in this Agreement and that the provisions of this Agreement (including, without limitation, the clauses entitled "Infringement" and "Premises

Indemnification") have been negotiated by the parties and reflect an allocation of risk between the parties that is a basis of their bargain, both now and with respect to each and every Contract.

- k. Amendments. These terms and conditions may not be changed, amended, or modified, except by an amendment in writing, executed by the Buyer's Authorized Procurement Representative and an authorized representative of Seller.
- l. Financial Review. If the Agreement exceeds \$250,000 and extends for more than one year, and if requested, the Seller shall provide financial data on a quarterly basis or as requested to the Buyer's Credit Office for credit and financial condition reviews. Said data shall include but not be limited to balance sheets, schedule of accounts payable and receivable, major lines of credit, creditors, income statements (profit and loss), cash flow statements, firm backlog, and headcount. Copies of such data are to be made available within 72 hours of any written request by Buyer. All such information shall be treated as confidential.
- m. 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/boeing/aboutus/culture/code.page>. 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. Seller will promptly cooperate with and assist Buyer in implementation of and adherence to the Boeing Code.

Any material breach of this provision by Seller may be considered a major breach of this Contract for which Buyer may elect to cancel any open orders between Buyer and Seller, for cause, in accordance with the provision of this Contract entitled "Cancellation for Default" or exercise any other right of Buyer for an event of default under this Contract.
- n. Complete Agreement. This Agreement contains the complete and exclusive statement of the terms of the agreement between Buyer and Seller with respect to the Maintenance and merges any prior or contemporaneous agreements, commitments, proposals, representations, or communications, oral or written, with respect to the Maintenance.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate originals by their duly authorized representatives as of the dates set forth below.

THE BOEING COMPANY
(Acting through its division,
Boeing Shared Services Group)

SELLER

By

By

Title

Title

Date

Date

EXHIBIT A

STATEMENT OF WORK