

Boeing Shared Services Group
HARDWARE PURCHASE AND FIRMWARE LICENSE AGREEMENT

This Hardware Purchase and Firmware License Agreement ("Agreement") is made and entered into as of _____ (the "Effective Date") by and between The Boeing Company ("Buyer"), a Delaware corporation, acting through its division, Boeing Shared Services Group, and _____ ("Seller"), a _____ corporation.

RECITALS

- A. Seller is engaged in the business of providing hardware and embedded firmware solutions to customers.
- B. Buyer and Seller desire to establish the terms and conditions under which Seller will sell to Buyer, and Buyer will purchase, Seller's hardware and license incorporated, embedded or otherwise provided firmware solutions and related services.

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

AGREEMENT

1. DEFINITIONS

As used in this Agreement, the following terms, when capitalized, shall have the following meanings:

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

"Critical Program Error" means any Program Error or Key, whether or not known to Buyer, which has or may have substantial adverse impact on the operations of Buyer or on use of the Licensed Firmware.

"Documentation" means user manuals for the Products; all addenda, corrections, and new editions of these materials; and any other materials in any form, that Seller customarily provides to end users of the Products. Documentation includes, without limitation, all of the published specifications for the Products described in a Purchase Order.

"Hardware" means the hardware and other equipment identified in a Purchase Order.

"Key" means any key, node lock, time-out, or other function, whether implemented by electronic, mechanical, or other means, which restricts or may restrict exercise of any of the licenses granted under this Agreement, based on residency on certain Hardware, frequency or duration of use, or other limiting criteria.

"Licensed Firmware" means the object code version of the computer programs incorporated, embedded, or otherwise provided by Seller for use in connection with the Hardware.

"Products" means the Hardware and Licensed Firmware.

"Program Error" means code in the Licensed Firmware that causes the Licensed Firmware to be inoperable, that produces unintended results or actions, or that produces results or actions other than those described in the Documentation or this Agreement. Program Error includes, without limitation, any Critical Program Error.

"Purchase Order" means Buyer's written order to Seller, which incorporates this Agreement by reference, for the delivery of Products.

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

"Support Services" means the maintenance and support services provided by Seller to Buyer and described in Exhibit A to this Agreement.

"Term" has the meaning set forth in subsection 13(a).

"Warranty Period" means the one (1) year period following Buyer's acceptance of the Products.

2. PURCHASE AND SALE OF PRODUCTS

- a. Orders. Seller will deliver to Buyer those Products identified in a Purchase Order and delivered by an Authorized Buyer Representative to Seller from time to time during the Term. Each Purchase Order shall specify the Products to be purchased by Buyer, price, delivery schedule, and location of delivery. Within ten (10) days of Seller's receipt of a Purchase Order, Seller will either (i) inform Buyer of its acceptance of such Purchase Order or (ii) if Seller is unable to deliver the Products described in the applicable Purchase Order, provide Buyer with written notice of rejection. If Seller does not provide written notice of its acceptance or rejection of a Purchase Order, the Purchase Order will be deemed accepted following such ten (10) day period.
- b. Changes to Orders. Buyer may make changes to any Purchase Order at any time prior to delivery, including, without limitation, changes to the shipping or packaging instructions, quantity of Products, delivery location, and schedules for the delivery of Products. Seller shall comply immediately with such direction and avoid unnecessary costs related thereto. If any such change causes an increase or decrease in the price or delivery schedule of the Products purchased, the parties will agree in writing upon any equitable adjustments to the price and schedule of the Purchase Order. Unless otherwise agreed in writing, any claims by Seller for adjustment must be delivered to Buyer, in writing, prior to the Products being shipped. Failure of Buyer and Seller to agree upon any adjustment shall not excuse Seller from performing in accordance with such direction.
- c. Additional Terms. Neither party shall be bound by, and each specifically objects to, any term or condition which is different from or in addition to the provisions of this Agreement and each accepted Purchase Order. Without limiting the generality of this paragraph, opening of a firmware package, accepting any "click-through" license or terms, or the performance of any other act that would otherwise constitute acceptance of terms and conditions in Seller's end user agreement or any terms and conditions posted on a website shall have no effect whatsoever.
- d. Order of Precedence. The terms of this Agreement shall govern over any inconsistent or additional terms in any Purchase Order, except that a Purchase Order may contain the terms expressly contemplated in this Agreement, including, without limitation, those terms set forth in Section 2a above. .

3. DELIVERY AND RISK OF LOSS

- a. Delivery. Unless the Purchase Order specifies a different delivery point, all deliveries under this Agreement will be F.O.B. origin.
- b. Delivery Schedule. Shipment and delivery under this Agreement shall be strictly in accordance with the quantities and schedules specified in a Purchase Order and with the other requirements of this Agreement. Seller shall promptly notify Buyer in writing of any delay in delivery, the reasons therefor, and the actions being taken by Seller to overcome or minimize the delay. If requested by Buyer, Seller shall, at Seller's expense, ship by air or other expedited transportation to avoid or minimize the delay to the maximum extent possible.
- c. Packing and Shipment. Seller shall prepare and pack the Products to prevent damage and deterioration and to comply with carrier tariffs. Charges for preparation for shipment (including packing and crating) are included in the price unless separately specified in the Purchase Order. Seller shall not include vermiculite or other hazardous substance in any packing material included with the Products.
- d. Returns. All returns of rejected or defective Products, and the shipment of repair or replacement parts for the Products, shall be at Seller's risk and expense.
- e. Media. The Licensed Firmware shall be delivered on the media specified in the Purchase Order. If no media are specified, Seller will deliver the Licensed Firmware on the media that Seller customarily provides to end users of the Hardware.

4. INSTALLATION AND ACCEPTANCE OF PRODUCTS

- a. Installation. Unless otherwise specified in a Purchase Order, Buyer shall be responsible for installation of the Products at each Buyer location.
- b. Acceptance. Upon delivery of the Products, Buyer will have sixty (60) days to inspect and review the Products. Buyer may reject any or all of the Products that are not strictly in conformance with the requirements of this Agreement or the applicable Purchase Order, and will notify Seller of such rejection in a timely manner. At Buyer's election and at Seller's risk and expense, all such Products will be returned to Seller for immediate refund, repair, replacement, or other correction and redelivery to Buyer within such time as Buyer may require. All costs, expenses, and loss of value incurred by Buyer as a result of or in connection with nonconformance and repair, replacement, or other correction may be recovered from Seller by equitable price reduction, set-off, or credit against any amounts which may be owed to Seller under this Agreement, the applicable Purchase Order or otherwise.
- c. Acts Not Constituting Acceptance. No trial use or testing of the Products, incremental or final payment, or passage of title constitutes acceptance or prejudices Buyer's right to reject or revoke acceptance of all or any portion of the Products.

5. LICENSE

- a. Grant. Seller hereby grants to Buyer and its affiliates and subsidiaries a non-exclusive, perpetual, worldwide license to:
 - (1) use the Licensed Firmware on the Hardware and in accordance with the Documentation;
 - (2) make additional copies of the Licensed Firmware as reasonably necessary for backup or archival purposes, or for benchmark or other temporary testing;
 - (3) change, modify, and copy the Documentation, including, without limitation, to edit and reformat any of the Documentation or convert any of the Documentation into machine-readable form, whether for on-line or other kinds of electronic access to it; and
 - (4) transfer the Licensed Firmware to another party in connection with the surplus or disposal of the Hardware.

This license includes the right to authorize employees, customers and suppliers of Buyer and its subsidiaries and affiliates to perform any of the activities described in this Section 5(a).

- b. Object Code. Buyer is not obligated to keep confidential the Licensed Firmware in object code or written form. Nothing in this Agreement or any Purchase Order is intended to establish, or should be construed as establishing, any kind of confidential relationship between Buyer and Seller with respect to the Licensed Firmware in object code form, regardless of any markings, screen displays, or other notices given by Seller at any time. Buyer shall refrain, however, from any reverse compilation, disassembly, or other attempt to obtain the Licensed Firmware in source code form, except to the extent permitted by law.
- c. Misuse of Licensed Firmware. In the event Seller has knowledge, or has reason to believe, that Buyer is using the Licensed Firmware beyond the scope of the license granted under this Agreement, Seller shall notify Buyer of the alleged misuse, in writing, in accordance with the Section entitled "Notices." Upon receipt of such notice, or in the event Buyer itself has reason to believe that misuse of the Licensed Firmware may be occurring, Buyer shall promptly investigate the alleged misuse, and shall destroy any unauthorized copies of the Licensed Firmware, or submit a written request to Seller for authorization to continue using some or all of them, and in either case pay any license fees owed for such copies. Buyer shall provide Seller with a written report which summarizes the results of Buyer's investigation into the alleged misuse and what actions Buyer took to correct it. **THE FOREGOING SETS FORTH SELLER'S SOLE AND EXCLUSIVE REMEDY FOR MISUSE OF THE LICENSED FIRMWARE SO LONG AS BUYER PERFORMS ITS INVESTIGATION AND MAKES PAYMENT OF ANY EXCESS LICENSE FEES TO SELLER IN A TIMELY FASHION.**

6. SUPPORT SERVICES AND RELATED SERVICES

During the Warranty Period, Seller shall provide Support Services at no charge to Buyer. Thereafter, Seller shall provide the Support Services, if ordered under a Purchase Order, at a price to be mutually agreed upon. Such price shall, in no event, exceed Seller's standard price for the provision of Support Services. The parties may agree in writing from time to time upon additional related services to be provided by Seller to Buyer in connection with the Products.

7. PRICES AND PAYMENT

- a. Price. Any price specified in a Purchase Order for the purchase of Products is a firm fixed price. Any price specified in a Purchase Order for the purchase of a license to any of the Licensed Firmware is for a fully paid-up perpetual, irrevocable, world-wide license.
- b. Payment. Seller shall issue a separate invoice for each delivery of Products. The invoice, however, shall not be issued before shipment. Payment will be mailed by Buyer sixty (60) days after receipt of a correct invoice. If the Products have not been accepted by the close of this period, however, payment will be made promptly after acceptance of the Products. 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. Liens. Seller warrants that, on the date Buyer pays for all the Products delivered under this Agreement, all liens, rights of lien, and claims against Buyer arising from or related to Seller's provision of the Products 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.

8. TAXES

- a. The price under this contract excludes state and local sales and use taxes. If any sales or use tax (or its equivalent) is legally due on Products 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 Products purchased, it will be so noted on the Purchase Order. Prices shall not include any taxes, impositions, charges or exactions for which Buyer has furnished a valid exemption certificate or other evidence of exemption.
- b. All other taxes, including, but not limited to federal, state, and local income taxes, franchise taxes, gross receipts taxes, and property taxes shall be the responsibility of the party who incurs the tax liability.
- c. For tax purposes, the Products purchased under this Agreement by Shared Services Group, Supplier Management & Procurement, may be purchased for Buyer or as agent for one of Buyer's affiliates or wholly-owned subsidiaries.

9. WARRANTIES

- a. General Warranties. Seller represents and warrants that Seller has the legal right to enter into, and perform its obligations under, this Agreement and each Purchase Order, including, without limitation, the right to deliver, pass title to, and grant a license with respect to the Products.
- b. Firmware Warranties. Seller warrants the following to Buyer during the Warranty Period:
 - (1) Media Defects. The media on which the Licensed Firmware is provided to Buyer will be free of defects in material and workmanship.
 - (2) Functions and Features. The Licensed Firmware will possess the functions and features contemplated by the Documentation.
 - (3) Performance. The Licensed Firmware will perform in accordance with the Documentation.

- (4) Program Errors and Defects. The Licensed Firmware will (i) be free of any Critical Program Errors; (ii) not contain any hidden files; (iii) not replicate, transmit, or activate itself without control of a person operating the computing equipment on which it resides; (iv) not alter, damage, or erase any data or computer programs without control of a person operating the computing equipment on which it resides; and (v) contain no Key.
 - (5) Compatibility. The Licensed Firmware shall be compatible with the operating system, application programs, computing equipment, and networks contemplated by the Documentation.
 - (6) Conformance to Requirements. The Licensed Firmware shall conform in all respects to all of the requirements of this Agreement, the relevant Purchase Order and any Documentation.
 - (7) No Viruses. The Licensed Firmware shall not contain any virus, Trojan Horse, worm, time bomb, back door, or other firmware routine designed to disable a computer program automatically or permit unauthorized access.
- c. Hardware Warranties. Seller warrants the following to Buyer during the Warranty Period:
- (1) Defects. The Hardware shall be free of defects in material and workmanship.
 - (2) Performance. The Hardware will perform in accordance with the Documentation.
 - (3) Compatibility. The Hardware shall be compatible with the operating system, application programs, computing equipment, and networks contemplated by the Documentation.
 - (4) Conformance to Requirements. The Hardware shall conform in all respects to all of the requirements of this Agreement, the relevant Purchase Order and any Documentation.
- d. Availability. Seller warrants the following to Buyer, both during and after the Warranty Period:
- (1) Discontinued Products. Seller shall continue to provide Support Services for:
 - (a) five (5) years after discontinuance of any of the Hardware or its operating system; and
 - (b) three (3) years after discontinuance of any of the Licensed Firmware other than the Hardware operating system.
 - (2) Old Releases. Seller shall continue to provide Support Services for at least two (2) releases of the Licensed Firmware below the level of the current release.
- e. Remedy. In the event Seller breaches any warranty set forth in subsection (b) or (c) above during the Warranty Period, Buyer will provide notice of such breach to Seller together with a description of the breach. Within ten (10) days of receipt of such notice, Seller will promptly repair or replace any nonconforming Products with substantially similar conforming Products. If Seller fails to repair or replace such Hardware or Firmware within such period, or the Products are still not conforming following Seller's attempts to cure such breach, Buyer may, at its option, either (i) provide Seller with a longer period to repair or replace the Products, or (ii) terminate the applicable Purchase Order under which the nonconforming Products were purchased and/or terminate this Agreement and, in either case, receive a full refund for all amounts paid for such nonconforming Products.

10. PROPRIETARY INFORMATION

- a. Definition. For purposes of this Agreement, the term "Proprietary Information" means any nonpublic information that relates to and is disclosed by one party (the originating party) to the other party (the receiving party) in connection with a Purchase Order or other matter within the scope of this Agreement, provided that, when disclosed, such information is in written or other permanent form (a permanent record) and is identified as proprietary to the originating party by clear and conspicuous markings. Any such information in another form when disclosed shall be considered Proprietary Information only if and to the extent the originating party (i) informs the

receiving party of the proprietary nature of the information prior to the disclosure and (ii) thereafter creates a permanent record of the disclosure, as described above, and delivers it to the receiving party promptly but in no event more than thirty (30) days after the original disclosure.

- b. Disclosure and Use. The receiving party shall preserve Proprietary Information received from the originating party in confidence and shall refrain from disclosing such Proprietary Information to any third party without the prior written authorization from the originating party. During the term of this Agreement, the receiving party shall use Proprietary Information received from the originating party solely in connection with the performance of its obligations under this Agreement. The disclosure-and-use obligations set forth above shall be considered satisfied by the receiving party through the exercise of the degree of care used to restrict disclosure and use of its own information of like kind and importance, but in no event less than reasonable care.
- c. Exception. This Agreement shall not restrict disclosure or use of Proprietary Information that is:
- (1) known to the receiving party without restriction when received, or thereafter is developed independently by the receiving party, without reference to Proprietary Information of the originating party;
 - (2) obtained from a source other than the originating party through no breach of confidence by the receiving party;
 - (3) in the public domain when received, or thereafter enters the public domain through no fault of the receiving party;
 - (4) disclosed by the originating party to a third party without restriction; or
 - (5) required by applicable law or regulation, provided the receiving party notifies the originating party of the requirement promptly, and cooperates with the originating party (at the request and expense of the originating party) in contesting the requirement.
- d. No Other Rights Granted. Proprietary Information shall remain the property of the originating party. Except for the rights expressly granted under this Agreement or the relevant Purchase Order, neither this Agreement or any Purchase Order nor the disclosure of Proprietary Information hereunder or thereunder shall be construed as granting any right or license under any trade secrets, copyrights, inventions, or patents now or hereafter owned or controlled by either party. This Agreement does not grant any right or license or impose any restriction on use or disclosure with respect to information, other than Proprietary Information, disclosed or received by either party in connection with this Agreement.
- e. Wind-up Activities. Upon termination of the Agreement and unless instructed to do otherwise by the originating party, the receiving party shall cease use of and return or destroy all of the Proprietary Information, if any, received from the originating party. The originating party may request, and the receiving party shall provide, written certification of the return or destruction of such Proprietary Information. Notwithstanding the foregoing, Buyer may retain any Proprietary Information of Seller necessary for Buyer's ongoing use of the Products, and Buyer will continue to use such Proprietary Information in accordance with the terms of this Agreement.

11. INDEMNIFICATION

- a. Infringement Indemnity. Seller shall defend, indemnify, and hold harmless Buyer, its affiliates and its wholly-owned subsidiaries and their respective directors, officers, employees, and agents ("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 "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, copyright, or other intellectual property right by the Products or involve the wrongful use of any trade secret or confidential information.

- b. Remedies for Infringement. As soon as Seller or Buyer has reason to believe a Claim under subsection (a) is likely to be made against the Indemnitees, Seller shall, promptly and at its sole expense, use its best efforts to settle, avoid, or otherwise cure the Claim by one of the following procedures:
- (1) obtain a license for the Indemnitees to continue using the Products giving rise to the Claim in accordance with this Agreement;
 - (2) modify such Products to make them noninfringing while maintaining the equivalent or better functionality, features, and performance; or
 - (3) replace such Products with a noninfringing product, either from Seller or another seller, having the equivalent or better functionality, features, and performance.

The procedures are set forth above in order of precedence. Seller shall pursue each of these procedures in the order stated until the cure is accomplished. Buyer reserves the right, however, to direct Seller to attempt these procedures in a different order in the interest of minimizing the adverse impact of the cure on Buyer operations. These obligations are in addition to, not in lieu of, Seller's obligations under the subsection entitled "Infringement Indemnity" of this Section. If, despite its best efforts to do so, (i) Seller is unable to effect a cure under the foregoing remedies and (ii) a permanent injunction ordering the Indemnitees to cease further use of the Products is issued or likely to be issued by a court of competent jurisdiction, either party may cancel the Purchase Order under which the Products were ordered, either in whole or in part, whereupon Buyer may return all or any portion of the Products to Seller for a full refund. Any license granted under this Agreement with respect to the returned Products will terminate as of the effective date of the cancellation. Any cancellation under this subsection will not (A) be deemed to be a cancellation for default or (B) relieve Seller of its accrued obligations under the subsection entitled "Infringement Indemnity" of this Section.

- c. General Indemnity. Seller shall defend, indemnify, and hold harmless Indemnitees from and against all Claims (including, without limitation, claims of the employees of Seller or any Subcontractor related to property damage, bodily injury, or death) 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, arising out of or in any way related to the performance of this Agreement 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 or 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 subsection. 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.
- d. Procedure. Buyer shall give Seller notice of all Claims made against the Indemnitees 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.

12. INSURANCE

- a. Commercial General Liability. Throughout the period of performance of this Agreement, 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 this 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, 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's premises. 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. Evidence of Insurance.
 - (1) Prior to the commencement of the period of performance, Seller shall provide to the Authorized Buyer Representative for review and approval evidence of insurance reflecting full compliance with the requirements set forth in the subsections entitled "Commercial General Liability," "Automobile Liability," and "Workers' Compensation and Employers Liability" of this Section.
 - (2) Seller, at Seller's expense, shall maintain or cause to be procured and maintained the policies of insurance required under this Section. Any self-retained layer, deductibles, and exclusions in coverage in such policies (i) shall be assumed by, for the account of, and at the sole risk of Seller or the Subcontractor that provides the insurance; and (ii) 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 Section.

13. TERM AND TERMINATION

- a. Term. The term of this Agreement will commence on the Effective Date and will continue for a period of three (3) years thereafter unless earlier terminated in accordance with the terms hereof or by the mutual written consent of the parties.
- b. Termination for Convenience. Buyer may terminate this Agreement or any Purchase Order, in whole or in part, by providing notice of such termination to Seller that specifies the extent and effective date of such termination thereof. On the specified termination date, Seller shall:
 - (1) stop performing all Support Services under this Agreement or the applicable Purchase Order (except for Support Services then-currently covered by a Warranty Period) to the extent specified in the termination notice; and
 - (2) cease shipment of all Products covered by the termination notice, other than those already delivered and accepted in accordance with the applicable Purchase Order, as of the termination date specified in the termination notice.
- c. Termination for Cause. Either party may terminate any Purchase Order, in whole or in part, or this Agreement to the extent the other party fails to perform any of its material obligations under a Purchase Order or this Agreement and does not cure the failure within thirty (30) days after service of a default notice specifying the failure; except for breaches of the Sections entitled "Delivery and Risk of Loss" or "Warranties," where the defaulting party shall have ten (10) days to cure after service of a default notice specifying the failure.
- d. Effect of Termination. In the event and to the extent of any termination pursuant to subsection (b) or (c) above, all obligations of Seller and all rights of Buyer under this Agreement or the terminated Purchase Order that are not identified in this Agreement as surviving expiration or termination of the Agreement shall thereupon be terminated, but only with respect to the Products covered by the termination notice, and excluding the provision of Support Services for any Products then-covered by a Warranty Period or the license to any Licensed Firmware included in any Hardware purchased and accepted by Buyer prior to such termination date. Seller shall continue to perform those obligations under this Agreement or any Purchase Order to the extent not terminated.

- e. Termination Payment. In the event and to the extent of any termination under this Section, Buyer's total liability shall be to pay Seller for (a) Products delivered and accepted under the terminated Purchase Order prior to the effective date of such termination, and (b) the terminated Support Services that have been performed under the terminated Purchase Order and for which Seller has not been previously compensated. Seller shall have no claim against Buyer for Support Services not performed, Products not delivered, loss of anticipated profits, or consequential damages suffered by reason of termination of either this Agreement or any Purchase Order. Any claims by Seller for compensation under this Agreement as a result of the termination of this Agreement by either party must be delivered to Buyer within thirty (30) days after receipt by either party of a notice of termination from the other party. Seller hereby waives, releases, and renounces any claim for compensation not made within this period.

14. 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, including, without limitation, acts of God, acts of war, epidemics, fire, power failure, labor difficulties between the party and its employees, and other similar events. In the event such delay goes on for more than sixty (60) days, Buyer may terminate this agreement for convenience.

15. 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 C.F.R. subparagraph 68.1, *et seq.*), as applicable, and that, in the performance of its obligations under this Agreement, it has complied with and 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 of its employees on any Buyer premises (i) comply with Buyer's employee rules of conduct, including, without limitation, Buyer's security and safety procedures which Seller and/or its employees have been provided access to; and (ii) comply with all federal, state, and local health, safety, and environmental laws and regulations applicable to such Buyer premises.
- c. With Export Laws and Regulations. Seller shall comply with all applicable statutes and government rules, regulations, and orders pertaining to United States export controls.

16. RECORDS AND AUDIT

For a period of no less than three (3) years after final payment under each and every Purchase Order, 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 prices charged Buyer. Seller shall, upon request by Buyer, make source data available to Buyer for examination, reproduction, and audit.

17. PROTECTION OF PROPERTY

Unless otherwise specified, upon delivery to Seller, or upon manufacture or acquisition by Seller, of any materials, parts, tooling, data, or other property, title to which is in Buyer, Seller assumes the risk of, and shall be responsible for, any loss thereof or damage thereto. In accordance with the provisions of the Purchase Order, but in any event upon delivery of the Products, Seller shall return such property to Buyer in the condition in which it was received except for reasonable wear and tear and except for such property as has been incorporated in the Products or reasonably consumed in the performance of a Purchase Order.

18. NOTICES

To be effective, any notice, authorization, designation, or request under or in connection with this Agreement or any Purchase Order shall be in writing and shall be deemed duly given or served upon 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 & Procurement
___P.O. Box Number or Street Address___
___City, State, and Zip Code___
Attention:

Attention:

19. RELATIONSHIP OF THE PARTIES AND THEIR EMPLOYEES

- a. Independent Contractors. Seller is an independent contractor of Buyer. Nothing in this Agreement shall be construed as creating any relationship between Seller and Buyer other than that of buyer and seller or licensee and licensor. 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.
- c. Employees. Seller's employees who perform Seller's obligations under this Agreement shall at all times be and remain employees of Seller, not employees of Buyer. Seller shall pay Seller's employees and shall ensure that each of its Subcontractors pays its employees, all wages, salaries, overtime, and other amounts due to such employees. Seller shall be responsible for, and shall ensure that each of its Subcontractors shall be responsible for, all reports, payments, and other obligations respecting their respective employees, including, without limitation, those related to social security, income tax withholding, unemployment compensation, workers' compensation, and employee benefit plans.

20. 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, without limitation, furnishing of emergency replacements of Products upon request via overnight delivery, providing maintenance services, and providing 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.

21. GENERAL PROVISIONS

- a. Severability. If any provision of this Agreement or a Purchase Order 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. Neither this Agreement, any Purchase Order nor any obligations hereunder or thereunder may be assigned or delegated by Seller without the prior written consent of the 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. Seller shall not disclose any of the terms of this Agreement to any third party without the prior written consent of the Buyer, except to the Seller's auditors or attorneys or under subpoena duly issued by a court of competent jurisdiction.
- d. Survival. Except for any licenses expressly terminated or canceled, all licenses granted under this Agreement and each Purchase Order, all indemnities, warranties, and representations made under this Agreement and each Purchase Order, and all accrued obligations for Products then-covered under a Warranty Period, or under the Section entitled "Proprietary Information" and the subsection entitled "Publicity" will survive cancellation or termination of this

Agreement and the relevant Purchase Order. Cancellation or termination of this Agreement or any Purchase Order shall 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 wholly-owned subsidiary of Buyer is an intended third-party beneficiary of this Agreement and each Purchase Order with rights of enforcement.
- f. Rights and Remedies. Except as limited under this Agreement or a Purchase Order, the rights and remedies afforded to each party under this Agreement and a Purchase Order 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 the relevant Purchase Order and to request and obtain a copy of the source code and associated programmer's notes of any computer firmware provided to Buyer under this Agreement or a Purchase Order 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 or a Purchase Order 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 or a Purchase Order 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. The venue for any such litigation shall be King County, Washington.
- i. Governing Law. This Agreement and each Purchase Order shall be construed under and governed by the laws of the State of Delaware, without regard to conflict of law provisions.
- j. Acknowledgment. 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 subsections entitled "Infringement Indemnity" and "General Indemnity") 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 Purchase Order.
- k. Amendments. Neither these terms and conditions nor the terms and conditions of a Purchase Order may be changed, amended, or modified except by an amendment in writing, executed by an Authorized Buyer Representative and an authorized representative of Seller.
- l. Financial Review. If requested, Seller shall provide financial data, on a quarterly basis, or as requested to the Boeing Corporate Credit Office for credit and financial condition reviews. Said data shall include but not be limited to Balance Sheets, schedules of accounts payable and receivable, major lines of credit, creditors, Statements of Income (profit and loss), Statements of Cash Flows, firm backlog, and headcount. Copies of such data are to be made available within 72 hours of any written request by Boeing's Corporate Credit Office.
- 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 ("Boeing Code") 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/employment/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. Seller will promptly cooperate with and assist Buyer in the implementation of and adherence to the Boeing Code.

Any material breach of this provision by Seller may be considered a major breach of this Agreement for which Buyer may (i) elect to cancel any open Purchase Orders between Buyer and Seller, for cause, in accordance with the subsection entitled "Termination for Cause"; or (ii) exercise any other right of Buyer for an event of default under this Agreement.

- n. Complete Agreement. This Agreement, together with each Purchase Order incorporating this Agreement by reference, contains the complete and exclusive statement of the terms of the agreement between Buyer and Seller with respect to Products and merges any prior or contemporaneous agreements, commitments, proposals, representations, or communications, oral or written, with respect to Products.

AGREED as of the Effective Date.

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

SELLER

By:

By:

Title:

Title:

Date:

Date:

Exhibit A
Support and Maintenance Services

Seller will provide Buyer with the following Support Services:

- a. Hardware Maintenance. Seller shall maintain the Hardware, if any, in accordance with the attachment to this Agreement entitled "Hardware Maintenance." Buyer reserves the right, however, to obtain maintenance for any, some, or all of the Hardware from other sellers. In this event, Seller shall, at Buyer's request, provide spare parts, training, and any other support reasonably required by any other sellers selected by Buyer to perform Hardware maintenance.
- b. Firmware Updates. Seller shall provide the following updates for the Licensed Firmware: the annual delivery to Buyer of all corrections, updates, new releases, or new versions of the Licensed Firmware, together with all accompanying Documentation, promptly after final testing, but in no event later than the date made available to Seller's general customer base. These annual deliveries will be made by Seller at no charge. From time to time, however, Buyer may request and Seller shall make additional deliveries, subject to reimbursement by Buyer of Seller's shipping and handling costs. Buyer may, but need not, use any, some, or all of the corrections, updates, new releases, or new versions of the Licensed Firmware delivered under this Section.
- c. Hot Line. Seller shall maintain a telephone "hot line" with which Buyer can report Program Errors to Seller twenty-four (24) hours a day, seven (7) days a week, or obtain ongoing technical assistance as may be required for Buyer to understand and use the Licensed Firmware. The hot line shall be available for live communication during Seller's normal working hours. If unable to provide live communication for all or any portion of the remaining twenty-four (24) hours a day, Seller shall provide a telephone message recording device which will effectively record Buyer's reports.
- d. Classification of Program Errors. Seller shall correct any Program Error which becomes known to it in accordance with the severity of the Program Error involved and its actual or potential impact upon Buyer operations. Buyer shall inform Seller of these facts when making its trouble report. Buyer reserves the right to reclassify any Program Error as a Critical Program Error, or vice versa, at any time. The fact that a Program Error is not classified as a Critical Program Error, however, shall in no way prejudice Buyer's rights or remedies under this Agreement.
- e. Response. Seller shall respond to every Buyer trouble report as follows, commencing upon receipt of Buyer's trouble report:
 - (1) Error Reporting. Seller shall provide telephone consultation to Buyer during Seller's normal working hours.
 - (2) Non-Critical Program Errors. For Program Errors other than Critical Program Errors, Seller shall use its best efforts to correct them either through the development and provision of corrective code for the Licensed Firmware or through corrective addenda or substitute pages for the Documentation, or both. Seller shall promptly replace any work-around, patch, or other temporary correction provided to Buyer, in response to a Program Error, with a permanent correction and, in any event, shall include such permanent correction in the next release of the Licensed Firmware.
 - (3) Critical Program Errors. For Critical Program Errors other than a Key, Seller shall respond in the same manner as that described in the preceding paragraph, but shall deliver a suitable work-around, patch, or other temporary correction suitable to restore lost functionality and performance within the first twenty-four (24) hours after such issue has been reported to Seller. For a Key, Seller shall unlock, remove, or disable the Key or shall provide Buyer with the algorithms, code, specifications, or other means to do so within the first six (6) hours after such issue has been reported to Seller.
 - (4) Extraordinary Circumstances. If Seller encounters unforeseen circumstances that delay or make it impossible for Seller to perform the obligations set forth above, Seller shall cooperate with Buyer to provide appropriate work-arounds, interim support, on-site personnel, or other remedial measures commensurate with the severity and impact of the Program Error.
- f. Other Users. Should Seller learn of a Program Error from any user other than Buyer, Seller shall promptly notify Buyer of the Program Error and its potential impact on Buyer operations, and shall respond in accordance with the procedure described in the section entitled "Response" of this Exhibit A as if the Program Error was reported by Buyer.

- g. Support for Corrections, Updates, New Releases, and New Versions. Any modifications to Documentation, additional Documentation, training, or technical assistance required for, or on account of, the installation of any corrections, updates, new releases, or new versions of the Licensed Firmware shall be provided promptly by Seller.
- h. Diagnostic Data. From time to time, Seller may request, and Buyer shall furnish (to the extent it has the legal right to do so), certain data generated by the Licensed Firmware as reasonably required by Seller to perform its obligations under this Section. Such data will be treated as Buyer's Proprietary Information in accordance with Agreement regardless of the markings, screen displays, or other notices provided, or not provided, on or in conjunction with such data.

Hardware Maintenance Attachment

[Attach]