Boeing Shared Services Group
NO COST SOFTWARE EVALUATION
TERMS AND CONDITIONS

1. TERMS AND CONDITIONS

This Agreement is Buyer's offer to Seller. Acceptance of this Agreement is strictly limited to its terms. Buyer shall not be bound by and specifically objects to any term or condition whatsoever that is different from or in addition to the provisions of this Agreement, whether or not such term or condition will materially alter this Agreement. Seller commencement of performance, or acceptance of this Agreement in any manner, shall conclusively evidence agreement to this Agreement as written. Opening of a software package or the performance of any other act that would otherwise constitute acceptance of terms and conditions in Seller's end-user Agreement shall have no effect whatsoever.

2. DEFINITIONS

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

"Agreement" means these terms and conditions, each and every Contract, all exhibits now or hereafter made part of the Agreement, that are incorporated by this reference, and all of the specifications, technical descriptions, statements of work, designs, documents, and other requirements, provisions attached to, incorporated 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 & Procurement 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 or change order to Seller, which references this Agreement, for the delivery of goods.

"Seller" means the entity identified in the Contract who agrees to sell goods.

"Evaluation Period" means the period stated in the Contract during which Buyer is authorized to evaluate the Software.

"Software" means a certain computer program, in object code form, and its associated documentation as identified in the Contract.

3. EVALUATION

Buyer desires to obtain and Seller is willing to furnish a copy of the Software for evaluation by Buyer during the Evaluation Period. The Software shall be considered received when delivered to and signed for by an Buyer's Authorized Procurement Representative at the receiving location specified by Buyer. Within ten (10) days after the end of the Evaluation Period, Seller shall remove the Software from Buyer premises, and any copies of it made by Buyer, unless Seller gives Buyer authorization before close of the Evaluation Period to retain possession of the Software and copies for a longer time period.

4. GRANT

During the Evaluation Period, Seller hereby grants to Buyer the following rights in the Software:

a. A nonexclusive, nontransferable license for Buyer's internal use of the Software within the United States of America, solely for the purpose of evaluation, on a single computer processing unit (CPU);

b. The right to transfer the Software to another single CPU, provided the Software is never used on more than one CPU at a time; and

c. The right to reproduce, for the sole purpose of implementing reasonable software back-up procedures, up to one (1) copy of the Software, provided all copyright notices and proprietary legends are reproduced.

5. OWNERSHIP

The Software, including all copies of the Software and all copyrights subsisting in, or related to the Software is owned by Seller or its suppliers, as the case may be. Except for those rights in the Software specifically granted in this Agreement, no other rights in the Software are granted to Buyer.

6. RELATIONSHIP OF THE PARTIES

Each party shall bear all costs and expenses incurred by it under or in connection with this Agreement. Nothing in this Agreement shall be construed as an obligation by either party to enter into a contract, subcontract, or other business relationship with the other party. Notwithstanding the foregoing, should Buyer decide to license the Software, the Boeing Software License Terms and Conditions shall apply as of the date Buyer places an order for the Software with Seller, referencing such terms and conditions.

7. INFRINGEMENT INDEMNIFICATION

Seller shall defend, indemnify, and hold harmless Buyer and its subsidiaries and their respective 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 the Goods, or involve the wrongful use of any trade secret or confidential in formation. 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.

8. TERMINATION

This Agreement may be terminated by either party at any time by giving the other party written notice of termination.

9. 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 upon delivery, addressed as set forth in the Contract. 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.

10. GOVERNING LAW

This Agreement shall be construed under and governed by the laws of the State of Washington, without regard to conflict of law provisions.

11. 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. Nor shall either party 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 annual report, provided Buyer is not the sole customer listed.

12. COMPLETE AGREEMENT

This Agreement contains the complete and exclusive statement of the terms of the Agreement between Buyer and Seller with respect to the Goods and merges any prior contemporaneous agreements, commitments, proposals, representations, or communications, oral or written, with respect to the Software.