

**BOEING SHARED SERVICES GROUP**  
**DATA SUBSCRIPTION SERVICES AGREEMENT**

Effective \_\_\_\_\_, 200\_ (the "Effective Date"), The Boeing Company ("Buyer"), a Delaware corporation, acting through its division, Boeing Shared Services Group, and \_\_\_\_\_ ("Seller"), a \_\_\_\_\_, agree to the following terms and conditions.

**RECITALS**

- A. Buyer and Seller desire to establish now the terms and conditions under which Seller will provide Buyer with access to certain data subscription services through the placement of orders as more fully set forth in, and pursuant to the terms and conditions of, this Agreement.
- B. Buyer and Seller have specifically negotiated these terms and conditions with the express intent that they apply to each order placed by Buyer with 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:

"Affiliate(s)" means an entity that owns, is owned by or is under common ownership of a holding company or subsidiary of one of the parties. For purposes of this definition only, "ownership" or any form of the word means the ownership of more than 50% ownership of the assets or stock of an entity, with control of the day-to-day operations. Seller Affiliates are not deemed to be subcontractors for any term or condition hereunder or in any Schedule(s) that relates to the use of subcontractors. Unless otherwise permitted by Seller in writing, Buyer's Affiliates shall be allowed to use the Product(s) licensed hereunder.

"Agreement" means these terms and conditions, each and every Purchase Order, all exhibits now or hereafter made part of this Agreement, and any other requirements or provisions attached to, incorporated into, or otherwise specified in these terms and conditions.

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

"Authorized Users" means an unlimited number of Buyer's employees, agents, subcontractors, and Affiliates unless a specific number of Authorized Users is designated in the applicable Purchase Order.

"Buyer" means The Boeing Company or its divisions, or The Boeing Company acting as agent for any of its affiliates or wholly owned subsidiaries, including, but not limited to, McDonnell Douglas Corporation, Douglas Aircraft Company, and Boeing North American, Inc. All references in this Agreement to The Boeing Company and any of its affiliates, divisions, or wholly owned subsidiaries shall mean Buyer.

"Claims" shall have the meaning given it in Section 9.

"Databases" means one or more electronic databases containing Materials, together with all related web tools, search engines via the internet or Seller's website, software and other components including software incorporated into CDs and DVDs, for which Seller grants Buyer the access, use and other rights set forth in this Agreement, as identified in the applicable Purchase Order.

"Database Availability" means all times other than Database Unavailability.

"Database Unavailability" means any time in which the Databases, or any components thereof, are not responding or are returning error codes.

"Documentation" means user manuals for the Databases, all addenda, corrections, and new editions of these manuals, and any other materials in any form, that Seller customarily provides to end users of the Databases. Documentation includes, without limitation, all of the published specifications for the Databases on the date that the applicable Purchase Order takes effect.

Expenses" means all reasonable and documented expenses incurred by Seller in providing specific Materials to Buyer, (including, without limitation, media and shipping charges, accommodation and meals, communications and/or administrative charges, courier and travel costs) and for which Buyer is obligated to pay Seller.

"Fees" shall mean the money due to Seller for Materials provided, as set in the Purchase Order. Fees are exclusive of Expenses and Taxes, which will be charged separately to the Buyer.

"Force Majeure Event" shall have the meaning given it in Section 15.

"Indemnitees" shall have the meaning given it in Section 9.

"Materials" means the data, libraries, research, reports, rankings, spreadsheets, graphics, tables, charts, standards and well logs, and other content and materials accessible by Buyer through the Databases, but shall not include any content or materials that are based, in whole or in part, on, or incorporate, any of Buyer's business information, data, or Proprietary Information.

"Normal Working Hours" means from 8:00 AM [PST] until 5:00 PM [PST], Monday through Friday.

"Proprietary Information" shall have the meaning given it in Section 8.a.

"Purchase Order" means Buyer's written order or change order to Seller, that references this Agreement, for the delivery of Services.

Services" means access to, and use of, the Databases, Materials and Documentation, and other services provided under this Agreement or any Purchase Order.

"Scheduled Maintenance" means any scheduled maintenance of the Databases of which Buyer is notified 48 hours in advance and that is performed during a standard maintenance window on [Sunday] from [12:00 AM to 2:00 AM] [PST].

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

"Subscription Period" means the length of time, specified in the applicable Purchase Order, that Buyer and its Authorized Users are authorized to access and use the Databases, Materials and Documentation; provided, however, if no time period is specified in the applicable Purchase Order, the Subscription Period will continue through the end of the term set forth in Section 12.

"Taxes and Surcharges" shall have the meaning given it in Section 5.

## **2. DATA SUBSCRIPTIONS AND LICENSES**

- a. Subscriptions. Seller shall sell to Buyer, and Buyer shall purchase from Seller, subscriptions to the Databases.
- b. License. Seller grants to Buyer a non-exclusive, worldwide license, during the Subscription Period, for the Authorized Users to access, use, display, download, copy, reproduce, and distribute the Databases, Materials and Documentation by any means and on any platform, solely for Boeing's internal business use and any other use set forth in the applicable Purchase Order.
- c. Access. Unless provided otherwise in the applicable Purchase Order, Seller shall grant all Authorized Users access to the Databases as follows: (1) to the extent Seller is technically capable, Seller shall enable Authorized Users in certain IP ranges provided to Seller by Buyer to access the Databases; (2) if Seller is not technically capable of

granting Authorized Users access to the Databases through the use of IP ranges provided by Buyer, Seller shall issue to each Authorized User a unique user ID and password that will allow access to the Databases; provided, however, that in the event that the parties mutually determine that, due to the volume of Authorized Users, it is not commercially reasonable to issue a unique user ID and password for each Authorized User, Seller shall issue a master user ID and password to Buyer for use with all Authorized Users. If access to the Databases is granted through the use of unique user IDs and passwords, Buyer shall have the right to reassign any such user ID and password to another Authorized User so long as only one Authorized User is using any such user ID and password at any given time.

- d. Limitations. Buyer may only use the Databases, Materials and Documentation in the manner expressly set forth in this Agreement. In the event that Seller has knowledge, or has good reason to believe, that Buyer is allowing access to, and use of, the Databases, Materials or Documentation to persons other than Authorized Users, Seller shall notify Buyer of the alleged overuse, in writing, in accordance with Section 18. Upon receipt of such notice, Buyer shall promptly investigate the alleged overuse and take all reasonable steps to correct the overuse, including payment of additional Fees owing, if any, as a result of such overuse. Buyer shall provide Seller with a written report that summarizes the results of Buyer's investigation into the alleged overuse and what actions Buyer took to correct it. THIS IS SELLER'S SOLE AND EXCLUSIVE REMEDY FOR OVERUSE OF THE DATABASE, MATERIALS OR DOCUMENTATION SO LONG AS BUYER PERFORMS ITS INVESTIGATION AND MAKES PAYMENT TO SELLER, IF ANY IS REQUIRED, IN A TIMELY FASHION.

### 3. PURCHASE ORDERS; ORDER OF PRECEDENCE

- a. Purchase Orders. The Services may be ordered on the terms and conditions of this Agreement solely by the Authorized Buyer Representative pursuant to a Purchase Order. Each Purchase Order will be effective upon written acknowledgment by Seller or commencement of performance by Seller. Each Purchase Order shall specify the:
- (1) Databases for which Buyer is purchasing subscriptions.
  - (2) Subscription Period.
  - (3) Fees.
  - (4) Delivery schedule.
- b. Objection. Except for the terms set forth in the paragraph entitled "Purchase 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 Purchase Order and has no effect whatsoever on the terms of this Agreement or the order of precedence applicable to any other transactions under this Agreement.
- c. Order of Precedence. In the event of any inconsistency within or relating to this Agreement, the following order of precedence will apply:
- (1) This Agreement.
  - (2) Any exhibits, schedules or attachments to this Agreement.
  - (3) Every Purchase Order issued under this Agreement.

### 4. PRICES AND PAYMENT

- a. Price. In consideration of the Services, licenses and rights granted to Buyer under this Agreement, Buyer shall pay to Seller the fees set forth in Exhibit A (the "Fees").

- b. Consistent Pricing. To ensure that the pricing of this Agreement is uniformly incorporated into all Purchase Orders with Seller, Seller will monitor all of Buyer's requests for quotations, proposals, or information regarding the Services and will ensure that the Fees set forth on Exhibit A are incorporated into the Purchase Orders related to such requests. In the event that Seller intends to propose to Buyer pricing other than that set forth in Exhibit A for such Services, Seller shall first consult with the Authorized Buyer Representative. In the event a purchaser known by Seller to be a subsidiary or other controlled entity of Buyer places a Purchase Order for Services but fails to request the Fees contained in Exhibit A, Seller shall notify such purchaser of the existence of this Agreement and the Fees set forth in Exhibit A and shall offer such Fees to such purchaser. Seller warrants that the Fees set forth on Exhibit A do not exceed the price charged by Seller to any other customer purchasing the same Services in similar quantities under similar terms and conditions.
- c. Payment. Seller shall issue separate invoices for each Purchase Order. Payment will be mailed sixty (60) days after receipt of an undisputed invoice. If Buyer, in good faith and by the due date of the disputed invoice, disputes Seller's computation of amounts due, Buyer may withhold payment on the invoice. Buyer and Seller will work in good faith to resolve any dispute within sixty (60) days following the receipt of Buyer's notice of dispute, including elevation to management as necessary. Upon resolution, disputed invoices are due and payable within sixty (60) days of such resolution. 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.

## 5. TAXES; SELLER FINANCIAL REVIEW

- a. Taxes. All of the following taxes are deemed to be included in the Fees: federal, state, and local income taxes; franchise taxes; gross receipts taxes; property taxes; or business and occupation taxes. All federal, state or local sales or use taxes, surcharges or other transaction taxes or fees ("Taxes and Surcharges") applicable to the Services shall be set forth on the applicable Purchase Order for such Services. The Taxes and Surcharges will be separately stated on the invoice and charged to Buyer. With respect to the any Services provided under this Agreement, Buyer will not be required to pay any charges or expenses except the Fees and Taxes and Surcharges.
- b. Seller Financial Review. If this Agreement (and all Purchase Orders placed hereunder) 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 Boeing 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.

## 6. WARRANTIES

Seller represents and warrants that: (a) the Databases shall contain the functions and features contemplated by the applicable Purchase Order and the Documentation, perform in accordance with the Documentation, and otherwise conform in all respects to all of the requirements of this Agreement; (b) the Databases shall be available and accessible to Buyer in accordance with the Service Level Commitment; (c) Seller has the legal right to enter into, and perform its obligations under, this Agreement, including, without limitation, the right to deliver and grant a license with respect to the Databases, Materials and Documentation; (d) neither the Databases, Materials or Documentation infringe on or misappropriate any third party's intellectual property or other proprietary rights; (e) neither the Databases, Materials or Documentation contain any program, routine, device or other undisclosed feature, including, without limitation, a so-called time bomb, virus, software lock, drop dead device, malicious logic, worm, trojan horse or trap or back door, or other harmful device which is designated to delete, disable, deactivate, provide unauthorized access or to produce unauthorized modifications; and (f) the Databases, Materials and Documentation are based on Seller's best efforts to compile and analyze the industry recognized best sources available to Seller at any given time. THE WARRANTIES SET FORTH ABOVE AND ELSEWHERE IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

## 7. SERVICE LEVEL AND SUPPORT

- a. Service Level Commitment. Seller shall ensure Database Availability sufficient to maintain monthly availability with respect to Buyer's access to the Databases of not less than 99.9% (or 43 minutes of total unavailability) (the

"Service Level Commitment"), calculated to include twenty-four (24) hours per day over each month, but excluding from the numerator and the denominator in the calculation the duration in time of any temporary shutdowns due to Scheduled Maintenance. The total amount of Scheduled Maintenance shall not exceed two (2) hours per month. Any Scheduled Maintenance in excess of two (2) hours a month shall be deemed Database Unavailability.

- b. c. Repeated Failures. In the event that: (1) Seller fails to satisfy the Service Level Commitment for any three (3) months in a twelve (12) month period; or (2) the total availability of the Databases falls below 95% (36 hours of downtime) in any given month, Seller shall be deemed to have breached this Agreement and Buyer shall have an immediate right to terminate this Agreement pursuant to Section 14 (notwithstanding any cure period).
- d. Hot Line. Seller shall maintain a telephone hot line to which Buyer can report Service Level Commitment problems 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 Databases. The hot line shall be available for live communication during 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 that will effectively record Buyer's reports.
- e. Support for Corrections, Updates, New Releases, and New Versions. Any modifications to Databases, Documentation, training, or technical assistance required for, or on account of, the use or installation of any corrections, updates, new releases, or new versions of the Databases shall be provided promptly by Seller at no cost to Buyer.

## 8. PROPRIETARY INFORMATION

- a. Definition. For purposes of this Agreement, the term "Proprietary Information" means information that is disclosed by one party (the originating party) to the other party (the receiving party) in connection with 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 informs the receiving party of the proprietary nature of the information prior to the disclosure and 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. Proprietary Information does not include the Databases, Materials or Documentation.
- 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 written authorization from the originating party. These obligations will terminate three (3) years after receipt. During the term of this Agreement, the receiving party shall use Proprietary Information received from the originating party solely in connection with performing 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, but in no event less than reasonable care, used to restrict disclosure and use of its own information of like kind and importance.
- 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.

- (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, neither this Agreement nor the disclosure of Proprietary Information hereunder 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. For avoidance of doubt, all Proprietary Information and other content or materials of Buyer used in conjunction with the Services shall be owned by Buyer and shall not be considered part of the Materials or Services.
- e. Wind-up Activities. Upon termination of this Agreement and unless instructed to do otherwise by the originating party, the receiving party shall cease use of and 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 destruction. Notwithstanding the foregoing, each party may retain one copy of each and every permanent record of the Proprietary Information disclosed to it under this Agreement solely as a record of the disclosure.
- f. Transfer of Employees. Seller acknowledges that Buyer is or may be using third-party programs, documentation, and other products that provide functionality and capabilities similar to those provided by the Databases. Likewise, Buyer acknowledges that Seller is developing, or may desire to develop, new and improved products that address the needs and requirements of customers similar to Buyer. Notwithstanding any other provision of this clause or this Agreement, therefore, so long as each party does not knowingly disclose Proprietary Information received from the other party, each party may transfer and allow those employees who have had access to and reviewed the other party's Proprietary Information under this Agreement to use the ideas, concepts, and know-how gained from such access in other assignments.
- g. Privacy. Seller shall not use or disclose to any third party any personal information regarding the Authorized Users, or contact Authorized Users, for direct marketing purposes or for purposes unrelated to providing the Services hereunder, including, without limitation, to offer or promote any software, goods, services or other information or content owned by Seller or any third party other than in relation to the Services, nor shall it knowingly allow and enable third parties to do so.

## 9. INFRINGEMENT 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 "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 Databases, Materials or Documentation, 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, provided that: (a) Seller uses counsel reasonably acceptable to Buyer; (b) Buyer shall have the right to participate with counsel of its own choosing in such defense or settlement at its own expense; (c) Buyer is not obligated to pay any amount contained in such award or settlement that is not covered by Seller's indemnification obligations hereunder; and (d) Seller shall not make, without the prior written approval of Buyer, any admission of facts in such a settlement or award that assesses blame against Buyer. 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.

## 10. PREMISES INDEMNIFICATION

- a. Seller's Indemnity. Seller shall defend, indemnify, and hold harmless the Indemnitees from and against all Claims, for property damage, bodily injury, or death (including, without limitation, Claims of any 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 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, 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 paragraph. 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.

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 hereunder.

## **11. INSURANCE If Seller is on Buyer premises this section will be applicable.**

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) per 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, products and completed operations insurance, and intellectual property infringement.

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) per 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 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 commencement of the period of performance, Seller shall provide to the Buyer's Authorized Buyer 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 under this Agreement 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 on 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.

## **12. TERM**

This Agreement shall take effect on the Effective Date and, unless earlier terminated in accordance with the terms hereof or by the mutual written consent of the parties, shall expire on the later of: (a) the third anniversary of the Effective Date; or (b) the expiration of the last Subscription Period under any Purchase Order.

## **13. TERMINATION FOR CONVENIENCE**

- a. Termination. 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.
- 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 this Agreement or the Purchase Order shall thereupon be terminated but only with respect to the Services covered by the termination notice. Seller shall continue to perform those obligations under this Agreement or the Purchase Order to the extent not terminated.
- c. Termination Payment. In the event and to the extent of any termination under the clause entitled "Termination for Convenience" Buyer's total liability shall be to pay Seller for the terminated Services that have then been performed and for which Seller has not been previously compensated. Seller shall have no claim against Buyer for Services not performed, loss of anticipated profits, or consequential damages suffered by reason of any such termination. Any claims by Seller for compensation under the clause entitled "Termination for Convenience" must be delivered to Buyer within thirty (30) days after Seller's receipt of Buyer's notice of termination. Seller hereby waives, releases, and renounces any claim for compensation not made within this period. In addition, Seller shall promptly remit to Buyer a pro rata refund of Fees pre-paid under any terminated Purchase Order for the remaining balance of the term of such Purchase Order from and after the date of such termination.

#### **14. CANCELLATION FOR DEFAULT**

- a. Cancellation. Either party may cancel any Purchase Order, in whole or in part, to the extent the other party fails to perform any of its material obligations under the Purchase Order and does not cure the failure within thirty (30) days after service of a default notice, specifying the failure; except for breaches of the clause entitled "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 and licenses of the defaulting party under the Purchase Order shall thereupon be canceled, but only with respect to the Services covered by the cancellation notice, and all accrued obligations of the defaulting party under the Purchase Order 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 terminated Services that have then been performed and for which Seller has not been previously compensated. Seller shall have no claim against Buyer for Services not performed, loss of anticipated profits, or consequential damages suffered by reason of any such termination. Any claims by Seller for compensation under the paragraph entitled "Cancellation" of this clause must be delivered to Buyer within thirty (30) days after Seller's receipt of Buyer's notice of termination. Seller hereby waives, releases, and renounces any claim for compensation not made within this period. In addition, Seller shall promptly remit to Buyer a pro rata refund of Fees pre-paid under any terminated Purchase Order for the remaining balance of the term of such Purchase Order from and after the date of such termination.
- d. Termination for Convenience. If, after issuance by Buyer of a default notice under the paragraph entitled "Cancellation" of this clause, 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 Purchase Order 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.

#### **15. DELAYS**

Nonperformance by either party will be excused to the extent that the failure to perform is caused by an event or events beyond its reasonable control and without the fault or negligence of that party or its suppliers or subcontractors, or by any material act or failure to act by that party, in the exercise of diligence, without penalty, upon delivery of written notice, including but not limited to labor disputes, acts of war, natural causes, mechanical or power failures, or any order, law or ordinance in any way restricting the operation of the Service (each, a "Force Majeure Event"). The non-performing party shall exercise all reasonable efforts to eliminate the Force Majeure Event delay and to resume performance of its affected obligations as soon as practicable. The excused time period for nonperformance will be limited to the duration of the Force Majeure Event. If the Force Majeure Event continues for more than fifteen (15) days, then the unaffected party will have the right to terminate this Agreement immediately, without penalty, upon delivery of written notice.



## 16. COMPLIANCE

- a. With Applicable Laws. Seller warrants 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, and all other applicable statutes and government rules, regulation and orders. 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: (1) comply with Buyer's employee rules of conduct, including, without limitation, Buyer's security and safety procedures; and (2) 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. Buyer shall comply with the laws and regulations of the United States and its departments and agencies relating to the export of technical data.

## 17. RECORDS AND AUDIT

- a. Records. Seller shall retain all records and documents pertaining to the Services for a period of no less than three years after final payment. Such records and documents shall date back to the time this Agreement was executed and shall include without limitation, catalogs, price lists, invoices and inventory records for purposes of verification of prices or rates charged by Seller for Services procured by Buyer. Buyer shall have the right to examine, reproduce and audit all such records related to pricing and performance to evaluate the accuracy, completeness and currency of cost and pricing data submitted with Seller's bid or offer to sell; and related to "changes," "termination for Convenience" or "Cancellation for Default" articles of this Agreement.
- b. Report Regarding Usage Data. Seller shall track all usage data under each Purchase Order. Once each calendar quarter, Seller will submit to the Authorized User a report detailing the following information for each Purchase Order:
  - (1) Databases provided.
  - (2) Authorized Users for each Database.
  - (3) Subscription Period for each Database.
  - (4) Fees paid for each Authorized User and total Fees paid for each Database.

The fourth quarterly report shall include for each Purchase Order, a summary of the entire year's activity addressing each of the above criteria.

The first report shall be due at the end of the first calendar quarter ending after the Effective Date. Subsequent reports will be due at the end of every calendar quarter thereafter. Upon receiving evidence that all sales are being fully tracked, Buyer may elect to decrease the frequency requirement of these reports and will convey such a change, if any, in writing to the Seller.

Any costs associated with providing the above reports will be incorporated into Seller's Fees and will not be invoiced as a separate charge.

## 18. 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 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:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention:

Buyer:

The Boeing Company  
Shared Services Group  
Supplier Management & Procurement  
\_\_\_\_P.O. Box Number or Street Address\_\_\_\_  
\_\_\_\_City, State, and Zip Code\_\_\_\_

Attention:

## 19. 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. 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. 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. Neither party may assign this Agreement or its rights or obligations under this Agreement without the prior written consent of the other party, not to be unreasonably withheld; provided, however, that Buyer may, without Seller's consent, assign this Agreement in whole or in part to any affiliate, or to any successor in interest by way of merger, acquisition, sale of all or substantially all of its assets or stock, or the divestiture of any portion of Buyer's business. Subject to the foregoing, the Agreement will bind and inure to the benefit of any permitted successors or assigns.
- 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 annual report, provided Buyer is not the sole customer listed.
- d. Survival. 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 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 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).
- 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.
- i. **Governing Law.** This Agreement shall be construed under and governed by the law of the State of Delaware, 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 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.** These terms and conditions may not be changed, amended, or modified, except by an amendment in writing, executed by the Authorized Buyer Representative and an authorized representative of Seller.
- l. **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/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 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 any provision for termination or exercise any other right of Buyer for any failure of performance under this Contract. In addition to the provision set forth in the Code of Basic Working Conditions and Human Rights in the contract, Seller further commits that any material violation of law by Seller relating to basic working conditions and human rights, including laws regarding slavery and human trafficking, applicable to Seller's performance under this Contract/Agreement may be considered a material breach of this Contract/Agreement for which Boeing may elect to cancel any open Orders between Boeing and the Seller, for cause, in accordance with the provisions of this Contract/Agreement, or exercise any other right of Boeing for an Event of Default under this Contract/Agreement.

Seller shall include the substance of this clause, including this flow down requirement, in all subcontracts awarded by Seller for work under this Contract/Agreement.

- m. **Gratuities.** Seller warrants that neither it nor any of its employees, agents or representatives have offered or given, or will offer or give, any gratuities to Buyer's employees, agents or representatives for the purpose of securing this contract or securing favorable treatment under this contract.
- n. **Utilization of Small Business Concerns.** Seller agrees to actively seek out and provide the maximum practicable opportunities for small businesses, small disadvantaged businesses, women-owned small businesses, minority business enterprises, historically black colleges and universities and minority institutions, Historically Underutilized Business Zone small business concerns and US Veteran and Service-Disabled Veteran Owned small business concerns to participate in the subcontracts Seller awards to the fullest extent consistent with the efficient performance of this Agreement.
- o. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may be executed by facsimile, which shall be deemed an original.

- p. Seller Communications. Seller shall not communicate with the Buyer for purposes unrelated to providing the Services hereunder, including, without limitation, to offer or promote any software, goods, services, notices or other information or content owned by Seller or any third party other than in relation to the Services, nor shall it knowingly allow and enable third parties to do so. Pre-approval must be obtained, in writing, for these types of communications from the Buyer's Representative. All other notices shall be sent through the Buyer's Authorized Representative.

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

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 - FEES