

## 1.0 PARTIES

This Agreement is entered into by and between the Seller (hereinafter referred to as "Licensor") and Boeing (hereinafter referred to as "Licensee") in accordance with the terms and conditions contained herein and in the purchase order/contract which references this Agreement.

## 2.0 DEFINITIONS

- 2.1 The term "Licensed Program" shall mean (i) the computer software program identified in the purchase order/contract and (ii) all related material in machine readable, printed, or other form from time to time furnished by Licensor to Licensee to facilitate use of the Licensed Program and identified by Licensor in writing as being subject to the terms and conditions of this Agreement.
- 2.2 The term "Designated Equipment" shall mean the Central Processing Unit (CPU), and associated peripheral devices, identified by type and serial number in the purchase order/contract.
- 2.3 The term "Proprietary Information" shall mean Licensor documented information embodied in the Licensed Program, as defined in Paragraph 2.1 above, which at the time of its disclosure to Licensee is identified as proprietary by an appropriate stamp or legend. For purposes of this Agreement, orally disclosed Licensor information shall not be considered to be proprietary.
- 2.4 The term "Use" when used herein in connection with a Licensed Program, shall mean copying or otherwise transferring any portion of a Licensed Program from storage units or media into the Designated Equipment in accordance with instructions from any portion of a Licensed Program.

## 3.0 LICENSE GRANT

- 3.1 Licensor hereby grants to Licensee for the term of this Agreement a nonexclusive, nontransferable license to use the Licensed Program on the Designated Equipment at Licensee's location designated in the purchase order/contract, including use at any location of Licensee to which the Designated Equipment may be transferred pursuant to Paragraph 3.3 below.
- 3.2 The license of Paragraph 3.1 shall extend to temporary use of the Licensed Program on other Licensee equipment or systems when the Designated Equipment is inoperative or is undergoing repair, maintenance, or modification.
- 3.3 Upon prior written notice to Licensor, the license granted herein may be transferred at any time to replacement Designated Equipment of like configuration, or the Designated Equipment may be transferred to another location in Licensee's firm, provided that a description of the replacement Designated Equipment or the new location of the Designated Equipment fully the equivalent of that called for in the purchase order/contract is provided to Licensor.
- 3.4 [This paragraph only applies if the purchase order/contract is issued pursuant to a U.S.]

Licensor grants to Licensee the restricted right to sublicense the Licensed Program to U.S. Government agencies for specific U.S. Government contracts. Such sublicense shall be limited to the specific government contract, by number of users and on a Designated Equipment basis. The rights in the Licensed Program and related proprietary technical information, data, and documentation shall be subject to the restrictions in Clauses FAR 52.227-14 for restricted computer software and limited rights data; FAR 52.227-19 for commercial computer software; Department of Defense FAR Supplement (DFARS) 252.227-7013 for restricted rights computer software and limited rights technical data; or DFARS 252.227-7013 for commercial computer software, as applicable.

## 4.0 COPIES

- 4.1 Licensee may copy the Licensed Program to the extent necessary for proper utilization, including archival and restart purposes.
- 4.2 Licensee shall reproduce and include on all copies of the Licensed Program any trademark, copyright or proprietary legend contained on the original copy furnished by Licensor.

## 5.0 PROTECTION AND SECURITY

- 5.1 Licensee agrees to afford Licensor proprietary information embodied in the Licensed Program the same degree of protection against unauthorized use or disclosure as Licensee normally provides for its own proprietary information, provided that Licensee's obligation hereunder shall not apply to information which (i) is known to Licensee at the time of disclosure by Licensor, (ii) is now or hereafter in the public domain through no fault of Licensee, (iii) is developed independently by Licensee, (iv) is generally known or available from third parties

without restriction, and (v) is inadvertently disclosed by Licensee despite the same degree of protection against unauthorized use or disclosure which Licensee normally provides for its own proprietary information.

- 5.2 Licensee's nondisclosure obligations shall automatically cease upon termination of this Agreement and notice to Licensor that the original version of Licensed Program and all copies thereof have been destroyed.

## **6.0 RIGHT TO MODIFY**

- 6.1 Licensee has the right to edit, change, format, enhance or otherwise modify Licensed Program and to merge Licensed Program or any portion thereof with other software programs to form an updated work.
- 6.2 Licensee is under no obligation to disclose to Licensor any Licensee changes, modifications, enhancements or updated work referred to in Paragraph 6.1 above, and Licensor acquires no rights thereto.
- 6.3 Licensee agrees to comply with the provisions of Paragraph 4.2 above with respect to any portion of Licensed Program embodied in an updated work.
- 6.4 Subject to the provision of Paragraph 5.1 above, Licensee's right to use any unmodified portion of Licensed Program embodied in an updated work shall expire upon the cancellation or termination of this Agreement.

## **7.0 WARRANTY**

- 7.1 Licensor represents and warrants that it has the right and authority to enter into this Agreement and to grant the rights herein described.
- 7.2 Licensor warrants that the Licensed Program when delivered will be capable of performing the functions described in Licensor's specifications. Licensor warrants that the Licensed Program shall be free of time-based or event-based self-disabling codes. Licensor warrants that any documentation or proprietary information provided by Licensor hereunder will accurately support the Licensed Program. Licensor shall promptly and at its expense correct any errors or defects made known to Licensor by Licensee or that Licensor becomes aware of from any source during the period of this Agreement. If Licensor shall fail to correct such errors or defects or otherwise provide to Licensee a Licensed Program that conforms to Licensor's specifications within 30 days after becoming aware of any error or defect, this Agreement will automatically cease and terminate upon the expiration of that period, and Licensor shall promptly refund the license issue fee.
- 7.3 THE WARRANTIES STATED IN THIS AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OF ANY OTHER TYPE, WHETHER EXPRESS OR IMPLIED.

## **8.0 PROPERTY RIGHT INDEMNITY**

- 8.1 Licensor will indemnify Licensee and hold Licensee harmless from any and all claims that Licensee's use of the Licensed Program within the scope of this Agreement infringes any U.S. patent, copyright, trade secret, or similar property right of a third party.
- 8.2 Upon reasonable notice, Licensor will appear and defend Licensee at Licensor's cost and expense in any suit at law or equity relating to such infringement claims, and pay any costs, damages, or settlements, including attorneys fees, arising out of or in conjunction with such claims. In the event Licensor defends against such claims of infringement, Licensor shall have control of the litigation and Licensee agrees to cooperate with Licensor to the extent reasonably necessary in such defense.
- 8.3 Licensor shall have no obligation to defend Licensee or to pay any costs, damages, or attorneys' fees for any claim based upon the use of any version of the Licensed Program other than that furnished to Licensee by Licensor under this Agreement.
- 8.4 In the event any such claim of infringement has occurred, or, in Licensor's opinion is likely to occur, Licensee agrees to permit Licensor at Licensor's option and expense to (i) procure for Licensee the right to continue using the Licensed Program or (ii) replace or modify the Licensed Program so that it becomes non-infringing.
- 8.5 THE FOREGOING STATES THE ENTIRE OBLIGATION OF LICENSOR WITH RESPECT TO INFRINGEMENT OF PATENTS, COPYRIGHTS, TRADE SECRETS, OR SIMILAR PROPERTY RIGHTS.

## **9.0 LIMITATION OF LIABILITY**

- 9.1 LICENSOR SHALL NOT BE LIABLE FOR ANY LOST PROFITS, INTERRUPTION OF SERVICE, OR CONSEQUENTIAL DAMAGES OR, EXCEPT AS PROVIDED IN SECTION 8, FOR ANY CLAIMS AGAINST LICENSEE BY ANY OTHER PARTY.

**10.0 DELIVERY OF LICENSED PROGRAM**

- 10.1 Licensor at its expense will deliver or cause to be delivered the Licensed Program to Licensee in accordance with the required delivery schedule of Licensee's purchase order/contract.
- 10.2 Licensor's delivery of the Licensed Program to Licensee prior to the effective date of this Agreement shall be at Licensor's sole risk.

**11.0 INSTALLATION AND ACCEPTANCE**

- 11.1 Installation of the Licensed Program on the Designated Equipment shall be performed by Licensee unless otherwise stated on the purchase order/contract. Acceptance of the Licensed Program by Licensee shall occur after the Licensed Program has been installed and successfully completed its acceptance test procedure, if any, or it has successfully demonstrated that it will execute all of its programming instructions pursuant to Licensor's specifications.

**12.0 TERM AND TERMINATION OF AGREEMENT**

- 12.1 This Agreement shall become effective upon Licensor's acceptance of the purchase order/contract or by commencement of performance or by seasonable acknowledgement (the "effective date") and shall remain in effect indefinitely, unless sooner cancelled or terminated as provided herein.
- 12.2 Licensee may terminate this Agreement at any time by giving Licensor thirty (30) days advance written notice.
- 12.3 Licensor may terminate this Agreement if Licensee shall be in material default of any of the terms and conditions hereof and does not remedy the default within ninety (90) days from the date of the receipt of Licensor's written notice citing the default.
- 12.4 Upon termination or cancellation of this Agreement, Licensee shall either destroy or return to Licensor the Licensed Program and all copies made therefrom. Notice of destruction shall be provided to Licensor in writing.

**13.0 GENERAL PROVISIONS**

- 13.1 This agreement shall be governed by the laws of the State of Washington.
- 13.2 This Agreement is not assignable or transferable by Licensee without the prior consent of Licensor, except as otherwise provided in Paragraph 3.4, above. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors and assigns.
- 13.3 All notices required or permitted to be given under this Agreement shall be deemed to have been given when mailed, postage prepaid, and addressed to the party to receive such notice at the address shown in the purchase order/contract or such address as either party may from time to time direct in writing.
- 13.4 No action, regardless of form, arising out of this Agreement may be brought by either party more than one (1) year after the cause of action has accrued.
- 13.5 Licensor and Licensee are independent contractors hereunder and nothing contained herein shall be construed to mean that any party hereto is acting as an employee, partner, or agent of or with the other.