

## The Boeing Company eXMeritus Program MAINTENANCE AND SUPPORT SERVICES ADDENDUM

This Maintenance and Support Services Addendum (the "**Addendum**") is an addendum to, and is hereby incorporated into, the Enterprise Software License Agreement, dated [REDACTED], between Autometric Inc, a wholly owned subsidiary of The Boeing Company ("**Company**") and the Licensee identified below, including the Enterprise Software License Terms and Conditions and other addenda incorporated therein (collectively, the "**Agreement**").

**1. ADDITIONAL DEFINITIONS.** Certain capitalized terms, not otherwise defined in this Addendum, will have the meanings set forth or cross-referenced in the Enterprise License Terms and Conditions.

**1.1 "Software Error"** will mean any material nonconformity of the Company Software with the Documentation.

**1.2 "Software Update"** will mean any version of the Company Software, developed subsequent to the Effective Date, which implements minor improvements or augmentations, or which corrects failures of the Company Software materially to conform to the then-current Documentation.

**1.3 "Software Upgrade"** will mean any version of the Company Software, developed subsequent to the Effective Date, which implements additional features or functions, or which produces substantial and material improvements with respect to the utility and efficiency of the Company Software, but which does not constitute merely a Software Update, and which is not marketed by Company as a separate product and/or service.

**1.4 "Technical Support"** means the provision of responses by qualified Company personnel to questions from Eligible Licensee Personnel related to use and operation of the Company Software, including basic instruction or assistance related to functional errors in the Company Software.

### 2. TECHNOLOGY MAINTENANCE

Company agrees to furnish the Licensee and the Licensee agrees to accept from Company, maintenance services with respect to the equipment listed in Addendum Exhibit A attached hereto ("Equipment") in accordance with the terms and conditions herein contained for the amount of the Total Charge.

**2.1 Error Corrections.** Company will use commercially reasonable efforts to adapt, re-configure or re-program the Company Software, as applicable, in order to correct in a timely fashion any Software Errors reported to Company by Eligible Licensee Personnel, as defined below, provided that if Company determines in good faith that any such Software Error is the result of errors or misstatements in the Documentation, Company may correct such non-conformity solely by amending the Documentation, as necessary, and further provided that any failure or inability by Company to correct any such Software Error, or failure or inability to do so in a timely fashion, will in no event be deemed a breach of Company's obligations hereunder.

**2.2 Procedural Workarounds.** In the event that Company fails or is unable to correct any Software Error, as required by this Addendum, Company will use commercially reasonable efforts to develop in a timely fashion procedures or routines, for use by end users of the Company Software, which, when employed in the regular operation of the Company Software, will avoid or substantially diminish the practical adverse effects of the relevant Software Error, provided that any failure or inability by Company to develop any such procedure or routine, or failure or inability to do so in a timely fashion, will in no event be deemed a breach of Company's obligations hereunder.

**2.3 Software Updates.** From time to time Company may, in its discretion, develop Software Updates and/or Software Upgrades. In general, Software Upgrades will be denoted by a major revision number (e.g. version 2) and Software Upgrades will be denoted by a minor version number (e.g. version 2.1). Company will, during the Term of this Addendum, make such Software Updates available to Licensee, provided that Licensee has paid all fees due under this Agreement (including fees payable under this Addendum). Any such Software Updates provided hereunder will be deemed to constitute part of the Company Software and will be subject to all the terms and provisions hereof, including, without

limitation, terms and provisions related to licenses, usage restrictions and ownership of such Company Software.

**3. TECHNICAL SUPPORT.** Subject to Licensee's payment of support fees as required in Section 4 of this Addendum, Licensee will be permitted to designate in writing to Company up to two (2) Licensee personnel for purposes of obtaining Technical Support from Company ("**Eligible Licensee Personnel**") in conjunction with the Company Software and the Equipment. The maintenance services provided by Company and the days of the week and the hours such services will be provided by Company under this Agreement are as detailed in the Service Schedule attached hereto as Addendum Exhibit B (respectively, the "Contracted Services" and the "Contracted Service Hours"). Company will provide Technical Support to such Eligible Licensee Personnel subject to the conditions regarding availability or response times with respect to each such form of access as set forth in Addendum Exhibit Bt**4. FEES.** 4.1 Maintenance Service Agreement fees shall be as set forth in , refer to Addendum Exhibit C.

4.2. The Total Charge is due and payable annually in advance, without offset or deduction, on the first day of the quarter in which the Contracted Services are to be provided in consideration for the performance of Company's obligations under this Addendum.

4.3 The Total Charge is subject to change by Company, effective at any time after the initial term, upon written notice to be given prior to the termination notice period set by the Term provisions of this Agreement below. Such change will not exceed an annual rate of 5% of the Total Charge paid with respect to the year preceding such change.

4.4 Subject to Section 6 herein, charges for maintenance service provided outside of the Contracted Service Hours and/or for service performed on Company Software or the Equipment which is not covered by this Agreement, including service which is excluded by virtue of Section 6 hereof, shall be at the then prevailing Company labor and materials service rates (refer to Addendum Exhibit D, "Additional Charges").

4.5 Additional Charges shall be due and payable thirty (30) days from the date of invoice. Company reserves the right to withhold Service if Licensee has not made all payments when due, including purchase payments with respect to Company equipment, or Licensee is in arrears on the payment.

4.6 All charges referred to herein do not include any applicable taxes including without limitation, sales taxes or VAT. Any taxes or amounts in lieu thereof and interest thereon paid or payable at any time by Company (exclusive, however, of taxes based on net income) will be paid by Licensee. In addition to the charges due under this Agreement, Licensee agrees to pay or reimburse Company for any and all taxes, duties, fees and other charges of every kind, nature and description imposed by any government or municipal authority whether now in force or hereafter enacted or imposed.

4.7 Payment shall be made in US Dollars and will be due within 30 days of receipt of appropriate invoice for charges other than the Total Charge which is due in accordance with Section 4.2.

4.8 Accrued payment obligations shall survive termination of this Addendum.

**5. TERM.** This Addendum shall become effective (i) when executed by authorized representatives of both Parties; or (ii) the Effective Date of the Agreement, whichever later occurs (the "**Addendum Effective Date**"), and shall continue in effect for a period of one (1) year, unless earlier terminated. Thereafter, the Addendum will renew automatically for successive one (1)-year periods, unless either Party provides notice of its desire not to renew not less than ninety (90) days prior to the end of the initial one (1)-year term or then-current renewal term, as applicable.

**6. EXCLUSIONS.** Company shall not be liable for delay in performance hereunder if such delay or failure is caused by unavailability of information and material or computer time to be furnished by Licensee. The Contracted Services under this Agreement do not include operating supplies or any of the following:

6.1 Services performed at any time to resolve a problem known or proven to be outside of the Equipment.

6.2 Services performed outside the Contracted Service Hours.

6.3 Performing specification changes sponsored by the Licensee or services required to correct malfunctions where the operating environment is different from that in which the Equipment was originally accepted.

6.4 Installation, relocation, removal, modification, re-configuration or substitution of Equipment or accessories, attachments or other devices.

6.5 Labor, parts and repairs necessary to put the Equipment into good operating condition when it was not under Company warranty or under a Company maintenance service agreement immediately prior to this Agreement.

6.6 Repairs or services made necessary by error, neglect, misuse, abuse or negligent acts, including failure by the Licensee to follow Company installation, operation, or maintenance instructions and specifications and by causes not reasonably under the control of Company.

6.7 Services which would be impractical for Company to render because of modifications to the equipment made by the Licensee or by others other than Company.

6.8 Maintenance required to repair damages, malfunctions or failures caused by attachment or failure of non-Company equipment or software not maintained by Company.

6.9 Services to software where the system does not conform to the update level necessary to support the Software or has been modified, other than by Company personnel, so as not to conform to the specifications for which the software was designed.

6.10 Services to Software where the Licensee is using the Software or any software in violation of its respective licenses.

6.11 Services to Software where system software (i.e. operating system, system utilities and libraries, drivers, etc.) is not supported and approved by Company.

6.12 Company shall not be liable for delay in performance hereunder if such delay or failure is caused by labor disputes, strikes, war, acts or enemies, riots, insurrection, civil commotion, federal, state, or municipal action, statute, ordinance or regulation, fire, flood, accident, storm or any act of God, failure of supplies, or any other cause, contingency or circumstances not subject to the control of Company.

6.13 Any other services not listed in this Agreement.

Company neither guarantees nor implies the availability of service outside the Contracted Service Hours nor the availability of service other than the Contracted Services as defined herein, however

Company will, at its own discretion, use commercially reasonable efforts to supply such service, subject to payment by Licensee of a charge additional to the Total Charge, at Company's then prevailing labor and materials service rates.

## **7. LICENSEE RESPONSIBILITIES.**

7.1 To initiate a request for Service, the Licensee's Eligible Licensee Personnel will contact and notify Company about the Software Error.

7.2 Licensee shall provide adequate working space and facilities including light, heat, ventilation, electrical current and outlets, and the like, for use by Company maintenance personnel and adequate storage space for any necessary spare parts. All such facilities shall be reasonably close to the Equipment to be serviced and shall be provided at no extra charge to Company.

7.3 Licensee shall provide Company, at no charge, access to and use of any machines, attachments, features, communication facilities or other Equipment and material normally at Licensee's site which, in the opinion of Company personnel, are necessary to facilitate the performance of the Contracted Services.

7.4 Licensee shall provide Company access to the Equipment to perform the Contracted Services during the Contracted Service Hours. Licensee shall not require Company or its employees to waive claims or potential claims of liability against the Licensee nor shall any other conditions be imposed on Company as a condition of site access except those set forth herein.

7.5 Licensee will undertake the specific responsibilities placed on it in the Service Schedule (Addendum Exhibit B) including without limitation preparation of all required government forms necessary to establish security protocols (including without limitation DD Form 254 or any analogous form).

7.6 Licensee agrees that the Equipment will be operated only by personnel who have been properly trained by Company, in accordance to the instructions given by Company in the applicable documentation including without limitation any installation, maintenance and training manuals. Licensee shall not perform, attempt to perform cause to be performed maintenance of or repair to the Equipment except with prior written approval of Company.

## **8. WARRANTY AND LIMITATION OF LIABILITY.**

8.1 Warranty. Company's obligations hereunder are provided in lieu of all warranties, whether express or implied, and Company hereby expressly disclaims any warranty including the warranties of non-infringement, merchantability and fitness for particular purpose.

8.2 In addition to and supplemental of the limitations of liability contained in the other portions of this Agreement, including without limitation the Enterprise Software License Terms and Conditions and other addenda incorporated therein, Company shall under no circumstances be held liable for incidental or consequential damages resulting from failure to provide maintenance of the Equipment covered by this Agreement or from defects or deficiencies in such maintenance parts or materials supplied. Further, Company will not be liable (a) for personal injury or property damage except for proven direct damages for personal injury or to tangible personal property caused by its negligence, (b) For loss of data stored on magnetic media or in electronic memories, (c) For incidental, special, indirect or consequential damages including lost profits, lost savings or revenues, or (d) For any damages (regardless of their nature) caused in whole or in part by the Licensee's failure to fulfill or observe any of its obligation under this agreement.

## **9. MISCELLANEOUS.**

9.1 This agreement shall be governed by the laws of the Commonwealth of Virginia, without regard to its conflict of laws

principles. The parties hereby submit to the jurisdiction of the federal and state courts located in the Commonwealth of Virginia.

9.2 Each party warrants that it has not relied upon nor been induced to enter into this Agreement by any representation not recorded in it.

9.3 Clause headings are for convenience and will not affect the construction or interpretation of this Agreement.

9.4 The relationship between Company and Licensee is that of independent contractors. Neither party is the agent of the other, and neither party has any authority to make any contract expressly or implicitly in the name of the other party without that party's prior written consent.

9.5 No failure, delay, relaxation or indulgence on the part of either party in exercising any power or right conferred upon it in this Agreement will operate as a waiver of such power or right.

9.6 Company may subcontract any or all of the work to be performed under this Agreement, but will retain responsibility for

the work subcontracted. Otherwise, this Agreement is not assignable or transferable by either party without the prior written consent of the other party.

9.7 In the event that any of these terms and conditions or any part of any term or condition is judged illegal or unenforceable for any reason, the continuation in force of the remainder of these terms and conditions will not be prejudiced.

9.8 Any notice to be given by either party to the other must be in writing and must be served in person or sent by certified delivery or another form of delivery with a proof of delivery to the party. Notices will be sent to the, or to any other address notified for the purpose of receiving notices after the date of the Agreement.

9.9 This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. it may be amended only by agreement in writing signed by authorized representatives of both parties on or after the date of this Agreement.

The Parties have caused their duly authorized representatives to execute this Agreement as of the dates set forth below.

**LICENSEE:** \_\_\_\_\_

**AUTOMETRIC INC.:**

**By (Signature):** \_\_\_\_\_

**By (Signature):** \_\_\_\_\_

**Name (Printed):** \_\_\_\_\_

**Name (Printed):** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_