BOMBARDIER BUSINESS AIRCRAFT AND BOMBARDIER COMMERCIAL AIRCRAFT
TECHNICAL PUBLICATIONS
TERMS AND CONDITIONS

THESE TERMS AND CONDITIONS (these “Terms” or this “Agreement”) are by and between the person or entity who is seeking a license to the technical publications (hereinafter, the “Customer”) and Bombardier Inc., or its subsidiaries or affiliates, as applicable (hereinafter referred to as “Bombardier”). The term “Customer” shall not include independent contractors of the Customer, consultants to the Customer, agents of the Customer or other third parties. The terms and conditions set forth herein apply to the granting of a right to use the technical publications as well as all related revisions services of maintenance, flight operations and other ancillary manuals for the Bombardier Inc. and its subsidiary, Learjet Inc. aircraft distributed in various formats, including videos, and applications by Bombardier including without limitation the SmartPubs or Navigator application, Bombardier Flight Deck application, Job Card Generator application, Online technical publications (OTP) and SmartFix or Aircraft Diagnostics System (ADS) Plus application using a tablet or other electronic device or via FTP protocol or via video (the “Publications”).

For purposes of providing services under this Agreement, such services or support may be provided by Bombardier or its subsidiaries or affiliates or a Bombardier designated third party. Where services or support are provided by a Bombardier subsidiary or affiliate, the provisions of this Agreement may apply to any transaction by that subsidiary or affiliate and for those purposes Bombardier may be replaced in the relevant clauses by the name of the applicable subsidiary or affiliate providing the service or support.

COPYRIGHT AND PROPRIETARY INFORMATION. Customer acknowledges that the Publications contain proprietary and confidential information of Bombardier and that Bombardier owns all right, title and interest (including but not limited to copyrights) in the Publications. Customer understands and agrees that Customer obtains no right, title, interest or ownership in the Publications and does hereby assign all of its right, title and interest (including without limitation, any copyrights) in and to the same to Bombardier. As between Bombardier and Customer, such Publications shall remain the sole and exclusive property of Bombardier. No part of the Publications may be reproduced or used to create derivative works, stored in any retrieval system, or transmitted in any part or form by any means, whether electronic, photocopying, microfilm, microfiche, mechanical or otherwise. Publications provided in the electronic format can be used only on a single computer, tablet or other electronic device controlled by Customer at any one time. Neither concurrent use on two or more computers (including related computing and hand-held electronic devices), nor use in a network, is permitted, unless Customer has paid for multiple licenses for the Publications. A separate license is required for each computer, tablet, or other electronic device on which the Publications are installed.

LICENSE. Subject to the terms and conditions of this Agreement, and until this Agreement is otherwise terminated or until Customer no longer has possession of the Publications, Bombardier grants Customer a non-exclusive, personal, non-transferable, non-sublicenseable right and license to use the Publications solely on a need to know basis and for maintenance, repair and operation of Customer’s aircraft. Customer is expressly prohibited from copying, reproducing, scanning, distributing, modifying, disassembling, de-compiling, reverse engineering or creating derivative works from Publications (or facilitating any such actions) including but not limited to any of the following reasons: (a) designing, reproducing or manufacturing products, materials, processes or services, including without limitation maintenance support software or (b) creating, developing or deriving parts, materials or modifications; or (c) making the Publications available to third parties whether it be in paper copy form or electronically such as making manuals available via the internet. Customer agrees not to use or disclose the Publications or any information and data contained therein to any third party except as expressly authorized above. Except for the license granted herein, nothing in this Agreement shall be construed as granting to Customer any ownership right in, license to or authority to edit, modify, adapt, display or otherwise use the Publications.

PAYMENT. All payments shall be made in full within thirty (30) calendar days of the date of the invoice from Bombardier, or its third party service provider Gilmore Global, except where Bombardier and Customer have previously agreed, in writing, to other payment terms. Customer shall pay to Bombardier interest on all amounts past due at the lesser of the rate of one and one percent (1.5%) per month or the maximum allowed by applicable law, until the date payment in full is received by Bombardier. Customer shall make all payments hereunder without set-off, deduction or counter claim of any kind.

OBLIGATION TO PROVIDE VALID CONTACT, BILLING AND BUSINESS INFORMATION. It is assumed that the Customer will provide to Bombardier up-to-date and accurate contact and billing information upon subscription to the Publications. The Customer agrees to notify Bombardier within thirty (30) days in writing of any change in his personal or billing information. Customer shall immediately notify Bombardier in writing in the event the Publications, or the tablet or other electronic device on which the Publications applications were downloaded has been lost, stolen or destroyed.

COLLECTION. Customer agrees to pay all reasonable attorneys’ fees, costs and expenses incurred by Bombardier as a result of any breach of this Agreement by Customer.

SHIPPING. The Publications will be shipped Carriage Paid To (CPT) Bombardier named place of destination, (Incoterms® 2010) using basic ground service (or basic international courier service for destinations outside Canada and the continental USA) to Customer. The cost of such shipping is included in the price of the Publications. Charges for other delivery options (including but not limited to express or priority delivery) are not included in the price of the Publications, and Customer shall be responsible for and pay any additional costs incurred by Bombardier to accommodate Customer’s request for other delivery options. Any Publications returned to Bombardier, per section (D) of the termination article herein, shall be returned Delivered Duty Paid (DDP) Bombardier designated facility (Incoterms® 2010).


TAXES. Except for corporate income taxes charged on Bombardier's net income, Customer shall be responsible for the payment of any taxes, including but not limited to sales, use, excise, goods and services, value added, consumption, withholding or other similar taxes, levies, imposts, tariffs, duties or assessments and any related penalties and interest, which may be levied, assessed, or imposed on Customer or Bombardier or otherwise by any governmental authority or agency as a result of or in connection with this Agreement ("Taxes"). Customer agrees to indemnify and hold Bombardier harmless from the payment or imposition of any Taxes.
LIMITATIONS AND EXCLUSIONS.

A. **No Warranties/Representations.** The obligations and liabilities of Bombardier and the rights and remedies of Customer set forth in this Agreement are exclusive and Bombardier makes no representations or warranties of any kind or nature and Customer hereby waives and releases all warranties and other obligations and liabilities, either express or implied, arising by law, in contract, civil, liability or in tort, or otherwise, including but not limited to any implied warranties of merchantability, fitness for a particular purpose, or infringement and any other obligations or liabilities on the part of Customer to anyone of any nature whatsoever by reason of the use of the Publications or related products and services delivered, distributed or furnished hereunder or otherwise. Bombardier has not authorized any third party, including the Bombardier designated third parties, to make any representations, warranties, promises, guarantees, covenants, or agreements, oral or written on Bombardier’s behalf, and Customer acknowledges and agrees that no such third parties are the agent of Bombardier and that Bombardier shall not be bound by the same. The laws of some states do not permit certain limitations on or disclaimer of warranties or remedies. In the event such a law applies, the foregoing exclusions and limitations are amended insofar, and only insofar, as required by said laws.

B. **Limitation of Liability.** Customer acknowledges that the prices Bombardier has agreed to charge Customer for the Publications or related goods and services covered by this Agreement (which can be found online for Bombardier Business Aircraft on the CIC website >TECHNICAL LIBRARY > TECHNICAL PUBLICATIONS > Publication Ordering > Technical Publications Price Catalog OR for Bombardier Commercial Aircraft at www.bcatechpubssales.com ) have been agreed upon by Bombardier in reliance upon Customer’s agreement limiting Bombardier’s liability as set forth below, and that without such agreement, Bombardier would be unwilling to provide such Publications or related products and services for the price and the terms set forth herein. BOMBARDIER’S LIABILITY ON ANY CLAIM OF ANY KIND, INCLUDING BREACH OF CONTRACT OR WARRANTY OR FOR NEGLIGENCE OR OTHER CONDUCT, FOR ANY LOSS OR DAMAGE ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THIS AGREEMENT, OR FROM THE PERFORMANCE OR BREACH THEREOF, OR FROM THE SALE, DELIVERY OR USE OF ANY PUBLICATIONS OR RELATED GOODS AND SERVICES COVERED BY, DELIVERED, DISTRIBUTED OR FURNISHED UNDER THIS AGREEMENT SHALL IN NO CASE EXCEED THE PRICE ALLOCABLE TO THE PUBLICATIONS OR RELATED GOODS AND SERVICES WHICH GIVE RISE TO THE CLAIM. IN NO EVENT SHALL BOMBARDIER BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL AND/OR PUNITIVE DAMAGES OF ANY KIND OR NATURE UNDER ANY CIRCUMSTANCES, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR ANY OTHER LOSSES OR DAMAGES FOR OR ARISING OUT OF ANY LACK OR LOSS OF USE OF THE PUBLICATIONS OR RELATED PRODUCTS AND SERVICES FOR ANY REASON. THE LAWS OF SOME STATES DO NOT PERMIT CERTAIN LIMITATIONS OR EXCLUSIONS OF LIABILITIES, OBLIGATIONS, WARRANTIES, RIGHTS OR REMEDIES. IN THE EVENT SUCH A LAW APPLIES, THE FOREGOING EXCLUSIONS AND LIMITATIONS ARE AMENDED INSOFA, AND ONLY INSOFA, AS REQUIRED BY SAID LAWS.

TERMINATION

A. **For Fault.** Bombardier may, by written notice to Customer, immediately terminate this Agreement including the license granted hereunder and suspend Customer’s subscription services, if: (i) Customer fails to comply with any of its obligations under this Agreement, including but not limited to, timely payment of all invoices of Bombardier; or (ii) if Customer, or any of its affiliates or the operating company of Customer’s aircraft, owes Bombardier Inc., its respective subsidiaries or affiliates any amounts and has failed to pay such amounts within the period of time required by the notice of the obligation whether such obligation is for Publications or other goods or services.

B. **Insolvency.** This Agreement shall immediately terminate in the event any proceedings are instituted by or against Customer under any bankruptcy statute or debtor’s relief laws, arrangement with any creditor(s) or the appointment of a receiver or trustee or an assignment for the benefit of creditors of Customer, or the institution of any similar proceedings.

C. **Loss, Theft or Destruction.** This Agreement may, at Bombardier’s discretion be suspended or terminated upon notification in writing by Customer that the tablet or other electronic device on which the Publications applications were downloaded has been lost, stolen or destroyed. The suspension of this Agreement and the related subscription and license for such Publications may be lifted, reinstated or a new one issued by notification of Customer to Bombardier, or its third party service provider Gilmore Global that such Publications or tablet or other electronic device has been found or replaced. No extension of this Agreement, refund or credit shall apply for the period of time the tablet, other electronic device or such Publications was lost, stolen or destroyed.

D. **Effect of Termination.** If this Agreement is terminated as provided herein, in addition to any other rights provided in this Agreement, all amounts due Bombardier under this Agreement shall be immediately due and owing, including but not limited to the amount of reasonable profit, and Customer shall promptly pay the same. If the Agreement is terminated, any license provided under this Agreement shall immediately be terminated.

E. **By Customer.**

*Initial Provisioning of Publications.* Manuals, whether paper, CD-ROM, DVD, electronic or digital, can be returned within thirty (30) calendar days from the date of shipment to the Customer, along with the invoice marked “Cancel”, to receive full credit of the amount paid to Bombardier. No refunds (including credits) will be given for orders returned more than thirty (30) calendar days after shipment.
(1) **Revision Services.** Revision services shall be automatically renewed at the end of the subscription term. An invoice will be sent to Customer at least thirty (30) calendar days prior to the scheduled renewal date. Customer shall have thirty (30) calendar days from the date of the invoice to cancel the revision service by sending written notice to Bombardier for Bombardier Business Aircraft at the following e-mail address: bbad.pubs.dist@aero.bombardier.com; for Bombardier Commercial Aircraft at the following e-mail address: bombardiercustomerservices@gilmore.ca; and for SAA at the following e-mail address: ml.baad.technical.publications@aero.bombardier.com. The revision service shall be cancelled and Customer shall be entitled to a credit for the invoiced amount if Customer’s written cancellation notice is received by Bombardier on or before the scheduled subscription renewal date. No refunds or credits will be issued for revision services cancelled after the subscription renewal date.

**APPLICABLE LAWS AND EXCLUSIVE JURISDICTION.**

This Agreement is governed by and interpreted in accordance with the internal laws of the State of New York, including all matters of construction, validity and performance, without giving effect to principles of conflicts of laws other than section 5-1401 and 5-1402 of the New York General Obligations law. The United States District Court for the Southern District of New York in the City of New York shall have exclusive jurisdiction in connection with any legal action, suit or proceeding with respect to any matter relating to or arising out of or in connection with this Agreement. However, in the event such court does not have federal subject matter jurisdiction over the dispute, then the Commercial Division of the Supreme Court for the State of New York in the City of New York shall have exclusive jurisdiction over any such dispute. The Parties fully waive any objection to the venue of such courts.

**Jury Waiver – THE PARTIES KNOWINGLY AND WILLINGLY WAIVE THEIR RESPECTIVE RIGHTS TO DEMAND A JURY TRIAL IN ANY ACTION OR PROCEEDING INVOLVING THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY REPRESENTS AND WARRANTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS OR HIS LEGAL COUNSEL AND HAS KNOWINGLY AND VOLUNTARILY WAIVED ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO TRIAL BY THE COURT.**

**WAIVER.** Failure by Bombardier to assert all or any of its rights upon any breach of this Agreement shall not be deemed a waiver of such rights either with respect to such breach or any subsequent breach, nor shall any waiver be implied from the acceptance of any payment or service. No written waiver of any right shall extend to nor affect any other right Bombardier may possess, nor shall such written waiver extend to any subsequent similar or dissimilar breach.

**SEVERABILITY.** Any provision in this Agreement which is prohibited or unenforceable in any jurisdiction shall, to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, each party hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

**EXPORT.** Customer shall be responsible for securing and complying with any U.S. or Canadian or other governmental export or import licenses and governmental authorizations as may be required as a result of any purchase or use of goods or services from Bombardier, and will otherwise comply with any applicable trade regulations. However, to the extent Bombardier is required to obtain an export or import license or governmental authorization, Customer shall assist Bombardier in obtaining any such export or import licenses and authorizations required. Bombardier may refuse any order if the sale or delivery of any goods or services may cause, in Bombardier’s sole discretion, a violation of any Canadian or other governmental export or import law or other trade regulations, including the Canadian Export and Import Permits Act, Special Economic Measures Act and United Nations Act, and the United States International Traffic in Arms Regulations, Export Administration Regulations, and Office of Foreign Assets Control sanctions and embargo programs.

**ASSIGNMENT.** Customer shall not assign any of its rights or obligations under this Agreement (including without limitation the license granted hereunder) without the prior written consent of Bombardier, which consent Bombardier may grant or withhold in its sole and absolute discretion. Any attempted assignment in violation of this Agreement shall be void. For Bombardier Business Aircraft, notwithstanding anything to the contrary in the prior two sentences of this section, if Customer sells the aircraft for which the Publications were obtained under this Agreement, before expiration of the then-current subscription period for the Publication, Bombardier will transfer the unused portion of Customer’s paid subscription service to the new owner, provided that Bombardier receives a written request signed by Customer directing the same within thirty (30) calendar days of the date of title transfer to the new owner. Customer understands and agrees that no credit is due or owed to Customer for any unused subscription service even if Bombardier has been paid for such service. Bombardier has the right to assign or transfer any of its rights under this Agreement to any of its subsidiaries or affiliates.

**ENTIRE AGREEMENT.** Upon receipt of the invoice or the Publications by Customer, whichever first occurs, the provisions hereof shall constitute the entire Agreement between the parties and supersede all prior offers, negotiations and agreements relating to the subject matter hereof, including but not limited to Customer’s terms and conditions presented to Bombardier prior to or subsequent to the date of this Agreement. This Agreement shall not be varied except in writing signed by both of the parties. For avoidance of doubt, the terms of a purchase order issued by Customer cannot change, supplement or modify the terms of this Agreement. Notwithstanding the foregoing, the terms and conditions of the End User License Agreement between Bombardier and Customer for the Bombardier Flight Deck application and SmartFix Plus or ADS application using a tablet or other electronic device or via FTP download or those found on the Publications themselves, shall not be superseded by this Agreement and shall be a complement to this Agreement.

**CONFIDENTIALITY.** Unless otherwise stated in this Agreement, the terms of this Agreement, the services and all other information including, without limitation, any and all designs, structures, assemblies, inventions, trade secrets, plans, discoveries, know-how, technical information, concepts, improvements, developments, technical knowledge, procedures, brochure, data, process, tooling, pricing and/or specification (hereinafter referred to as “Confidential Information”) which is:
II. (a) provided by Customer to Bombardier relating to contact, billing and business information related to the subscription and/or revision services of the Publications:
   (i) are strictly confidential;
   (ii) are exclusively the property of Customer in all respects; and
   (iii) shall not be used or disclosed to any person or entity except to its personnel, advisors or other representatives or Bombardier designated third parties having a need to know, acting on behalf of Bombardier and who need to have access to the information to the extent necessary to ensure adequate advice and support solely with respect to this Agreement and are bound by similar confidentiality undertakings.

Customer hereby assigns, conveys and transfers to Bombardier any and all rights, title and interest Customer may now or hereafter have or obtain (or be deemed to have or obtain) in any Confidential Information.

Bombardier grants to Customer a non-exclusive, non-transferable royalty free license to use any such Confidential Information for the limited purpose of enabling Customer to operate the Aircraft, which cannot be shared with any competitor of Bombardier.

MODIFICATION OF TERMS. Bombardier reserves the right to modify the terms and conditions of this Agreement from time to time without prior notice to the Customer.

SURVIVAL. The provisions of this Agreement shall survive the termination, expiration, or cancellation of this Agreement.