

APPENDIX D TO DIR CONTRACT NO. DIR-TSO-3452

BOARD End-User License Agreement

I M P O R T A N T

This is a legal agreement:

BOARD End-User License Agreement

Between

BOARD INTERNATIONAL,
Piazza Bernasconi 5
6830 Chiasso
Switzerland

And

(the customer)

Has to be **signed** and returned to BOARD INTERNATIONAL **within 30 (thirty) days** from purchase date.

BOARD INTERNATIONAL, Piazza Bernasconi 5, CH-6830 Chiasso
BOARD END-USER LICENSE AGREEMENT

This product (BOARD Management Intelligence) is licensed and registered under Swiss and International Copyright and other Intellectual Property laws.

IMPORTANT-READ CAREFULLY. THIS IS A LEGAL AGREEMENT BETWEEN YOU (THE CUSTOMER) AND BOARD INTERNATIONAL FOR THE SOFTWARE PRODUCT IDENTIFIED ABOVE, WHICH INCLUDES COMPUTER SOFTWARE AND RELATED DOCUMENTATION. BY SIGNING THIS AGREEMENT, YOU ACKNOWLEDGE THAT YOU HAVE READ THESE TERMS AND AGREE TO BE BOUND BY THEM. IF YOU DO NOT AGREE TO THESE TERMS, BOARD INTERNATIONAL IS UNWILLING TO GRANT YOU THIS LICENSE, IN WHICH CASE:

- (1) IF YOU RECEIVED THIS SOFTWARE ON CD-ROM, WITHIN THIRTY (30) DAYS OF PURCHASE, YOU MAY RETURN THE UNUSED SOFTWARE PRODUCT TO THE LOCATION WHERE YOU OBTAINED IT FOR A REFUND, WHICH MAY BE SUBJECT TO A RESTOCKING FEE; OR
- (2) IF YOU RECEIVED THIS SOFTWARE VIA DOWNLOAD FROM AN INTERNET WEB SITE, THEN YOU MUST DELETE ALL OF THE DOWNLOADED FILES AND YOU MAY OBTAIN A REFUND IN ACCORDANCE WITH THE REFUND POLICY OF SUCH INTERNET WEB SITE.

1.LICENSE GRANT:

Subject to the terms and conditions of DIR Contract No. DIR-TSO-3452 and this Agreement, BOARD INTERNATIONAL, Piazza Bernasconi 5, 6830 Chiasso, Switzerland ("BOARD INTERNATIONAL") hereby grants to you a personal, non-exclusive, non-transferable license (a "License") to use the software product identified above (the "Software") and the accompanying printed materials (the "Documentation") on the terms set forth below. BOARD INTERNATIONAL reserves all rights to the Software and Documentation not expressly granted to you.

2.LICENSE FEE.

Usage of the software is subject to the payment of a license fee.

3. PRODUCT.

The Software and Documentation is a "commercial item", consisting of "commercial computer software" and "commercial computer software documentation".

4. SCOPE OF LICENSE. THIS LICENSE GRANTS YOU THE FOLLOWING RIGHTS:

* Software:

If the Software is provided under a single-user license, a single individual may use the software on a single computer. A License for the Software may not be shared by multiple individuals on a single computer or used concurrently on different computers.

If the software is provided under concurrent license, then the software may be installed on multiple computers and used concurrently to the extent of the number of purchased users.

* Storage/Network Use:

You may store or install a copy of the Software on a storage device, such as a network server, used only to install or run the Software over an internal network; however, you must either acquire and dedicate a license for each individual who will use the Software or acquire a concurrent users license for each concurrent user. If the Software is installed on a network server or other system that physically allows shared access to the Software, you agree to provide technical or procedural methods to prevent use of the Software by individuals not specifically licensed to use the Software pursuant to this Agreement.

* Support:

Information regarding support of this product is located within the Support section of BOARD Internet web site at www.board.com.

5. RESTRICTIONS.

* Reverse Engineering:

You may not modify, translate, reverse engineer, decompile, disassemble (except to the extent applicable laws specifically prohibit such restrictions) or create derivative works based on the Software or Documentation, or any portion thereof.

* Copying:

You may not copy the Software or Documentation except as specifically provided by this Agreement.

* Separation of Components:

The Software is licensed as a single product. You may not separate the Software's component parts for use on more than one computer.

* Transfer:

You may not sublicense, rent, lease, lend or otherwise temporarily transfer the Software or Documentation.

• Application Service Provider:

Except prior BOARD's written consent, you may not use the Software to build applications or services made available to a third party on the basis of agreements such as Application Service Provider or equivalents.

* Proprietary Notices:

You may not remove any proprietary notices, labels or marks on the Software or Documentation.

* Use of BOARD 's Name:

You may not use BOARD's or its suppliers name, logos, or trademarks in any manner including, without limitation, in your advertising or marketing materials, except as is necessary to affix the appropriate copyright or other proprietary notices as required herein.

6. TITLE.

All title, ownership rights, and intellectual property rights in and to the Software and Documentation and any copies thereof are vested in and shall remain in BOARD INTERNATIONAL and/or its suppliers. The Software and the Documentation is protected by the copyright laws and other intellectual property laws of the Swiss and international laws and treaties.

7. SOFTWARE SUBSCRIPTION. (Annual technical support and software maintenance)

Software subscription as set out in this clause, is **automatically** accepted as part of this license agreement, unless written notice to BOARD INTERNATIONAL, within 90 (ninety) days from purchase date.

Software subscription grants the CUSTOMER all up-dates (correction of errors, modifications, improvements and "standard" extensions) developed by BOARD INTERNATIONAL Functions and programs that represent a "non-standard" extension of the Software, are excluded from software subscription.

Software subscription period is twelve (12) months and is subject to an annual fee payable in advance. No software subscription shall be provided while the customer is in default of any of its payment obligations.

The software subscription shall have three (3) one (1) year renew options exercised by the Customer providing to the Vendor thirty-day written notice prior to the then-expiration date, unless terminated by written notice to BOARD INTERNATIONAL in accordance with Appendix A, Section 11B of DIR Contract No. DIR-TSO-3452.

8. TERMINATION.

This Agreement shall continue in force until and unless terminated.

Terminations will be handled in accordance with Appendix A, Section 11B of DIR Contract No. DIR-TSO-3452.

Within five (5) days of termination of this Agreement, the customer shall:

- * subject to record retention laws and policies, return the Software and the Software Documentation and all copies, partial or complete, of the Software and the Software Documentation made by the CUSTOMER and relevant protection devices, to BOARD; or
- * destroy, in accordance with BOARD's requirements, the Software, the Software Documentation and all copies of the Software and the Software Documentation and relevant protection devices, and confirm in writing that such destruction has taken place.

9. LIMITED WARRANTY.

BOARD INTERNATIONAL warrants that the media containing the Software, if such media is provided by BOARD INTERNATIONAL, is free from defects in material and workmanship and will so remain for ninety (90) days from the date you acquired the Software. BOARD INTERNATIONAL's sole liability, and your sole and exclusive remedy, for any breach of this warranty shall be, in BOARD INTERNATIONAL's sole discretion: (i) to replace your defective media; or (ii) if the above remedy is impracticable, to refund the License fee you paid for the Software. Replaced Software and Documentation shall be covered by this limited warranty for the period remaining under the warranty that covered the original Software, or if longer, for thirty (30) days after the date of shipment to you of the replaced Software. Only if you inform BOARD INTERNATIONAL of such defect with the Software during the applicable warranty period and provide evidence of the date you acquired the Software will BOARD INTERNATIONAL be obligated to honor this warranty. BOARD INTERNATIONAL will use commercially reasonable efforts to replace or refund pursuant to the foregoing warranty within thirty (30) days of being so notified.

THIS IS A LIMITED WARRANTY AND IT IS THE ONLY WARRANTY MADE BY BOARD INTERNATIONAL. EXCEPT FOR THE LIMITED WARRANTY SET FORTH HEREIN, THE SOFTWARE AND DOCUMENTATION ARE PROVIDED "AS IS" AND BOARD INTERNATIONAL MAKES NO OTHER WARRANTY, REPRESENTATION, OR CONDITION, EXPRESS, IMPLIED, OR STATUTORY, AND EXPRESSLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT OF THIRD PARTY RIGHTS. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY OR CONDITION LASTS, SO THESE LIMITATIONS MAY NOT APPLY TO YOU IN THEIR ENTIRETY. NO BOARD INTERNATIONAL AGENT, OR EMPLOYEE IS AUTHORIZED TO MAKE ANY MODIFICATIONS, EXTENSIONS, OR ADDITIONS TO THIS WARRANTY.

If any modification is made to the Software or Documentation by you during the warranty period; if the media is subjected to accident, abuse, or improper use; or if you violate the terms of this Agreement, then this warranty shall immediately be voided. This warranty shall not apply if the Software is used on or in conjunction with hardware or software other than the unmodified version of hardware and software with which the Software was designed to be used as described in the Documentation.

THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY HAVE OTHER LEGAL RIGHTS THAT VARY BY JURISDICTION.

10. LIMITATION OF LIABILITY.

Limitation of Liability will be handled in accordance with Appendix A, Section 10K of DIR Contract No. DIR-TSO-3452.

11. GENERAL.

DIR Contract No. DIR-TSO-3452 and this Agreement represents the complete agreement concerning this license between the parties and supersedes all prior or contemporaneous agreements and representations between them with respect to the subject matter. In the event of conflict DIR Contract No. DIR-TSO-3452 shall prevail. This Agreement may be amended only in a writing executed by both parties. THE ACCEPTANCE OF ANY PURCHASE ORDER PLACED BY YOU IS EXPRESSLY MADE CONDITIONAL ON YOUR ASSENT TO THE TERMS SET FORTH HEREIN, AND NOT THOSE CONTAINED IN YOUR PURCHASE ORDER, AND SUCH PURCHASE ORDER TERMS SHALL HAVE NO EFFECT ON THIS LICENSE AGREEMENT. If any provision of this Agreement is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make it enforceable and the remainder of this Agreement shall nonetheless remain in full force and effect.

This agreement shall be governed by the laws of Texas and shall be interpreted in conformity of these laws. The competent state court for any dispute arising in connection with this contract is the state courts located in Travis County, Texas. Nothing herein shall be construed to waive the sovereign immunity of the State of Texas.

Signed for and on behalf of:
BOARD INTERNATIONAL
Piazza Bernasconi 5
6830 Chiasso
Switzerland
by (authorized person):

Signed for and on behalf of:

By (authorized person):

Date: _____
Ref: _____

BOARD MIT Management Intelligence Toolkit