

T-72
PURCHASE ORDER TERMS AND CONDITIONS
(PROFESSIONAL SERVICES AGREEMENT)

1. DEFINITIONS.

“Customer” or “Licensee” means the entity name listed on the Purchase Order/Subcontract. “Seller” means the party with whom Customer is contracting and any reference to “vendor,” “subcontractor,” “contractor” or “supplier” shall also mean Seller. Any reference to Seller shall also be understood to include Seller’s employees. “Purchase Agreement” (License) means the name or title of the instrument of contracting, including all documents, exhibits, and attachments referenced thereon.

2. ACCEPTANCE OF AGREEMENT.

This Agreement is Customer’s offer to Seller. Seller’s acceptance is expressly limited to the terms of the Agreement and Customer hereby objects to any additional or different terms in Seller’s acceptance. Seller accepts this Agreement as written by executing and returning to Customer the Acceptance or Acknowledgement copy of the Agreement, or by beginning performance.

3. ENTIRE AGREEMENT.

This agreement is the complete and exclusive statement of the terms of agreement between Seller and Customer. This Agreement supersedes all prior oral agreements between the parties on this subject.

4. MODIFICATION.

No modification of this Agreement (including any additional or different terms in Seller’s acceptance) shall be binding on Customer unless agreed to in writing and signed by Customer’s Purchasing Representative.

5. PERFORMANCE-DELAY.

Time is of the essence in the Seller’s performance of this Agreement. If at any time it appears to Seller that it may not meet any of the performance schedules or the scheduled completion date of the Services to be performed for any reason, including labor disputes, Seller shall immediately by verbal means (to be confirmed in writing) notify Customer of the reasons for and the estimated duration of such delay. If requested by Customer, Seller shall make every effort to avoid or minimize the delay to the maximum extent possible including the expenditure of premium time. Any additional cost caused by these requirements of Customer shall be borne by Seller, unless the delay in performance arises out of causes beyond the control and without the fault or negligence of Seller or its subcontractors within the meaning of the Cancellation-Default clause herein. The foregoing requirements are in addition to any of Customer’s other rights and remedies as may be provided by law or this Agreement.

6. THE SERVICES.

Seller agrees to provide the consulting services and/or training classes described herein and specified more fully in the Purchase Order hereto (the “Services”) at the location, beginning on the Commencement Date, and continuing through completion of the Services

provided for herein. The description of the Services includes a projected timetable by which each of the identified stages of the Services is to be completed. The term of this Agreement may be renewed or extended by written agreement signed by the parties hereto.

7. CONFIDENTIALITY OF LICENSOR’S INFORMATION.

Notwithstanding any other provisions of this Agreement to the contrary, Customer hereby agrees that it shall use reasonable efforts to avoid disclosure of Licensor’s proprietary/confidential information to any third party other than Licensee’s consultants, agents and representatives having access to Customer proprietary data. Further, Licensor agrees that all such proprietary/confidential information shall be marked with a stamp or legend indicating its confidential/proprietary nature. For the purposes of the Agreement, the term “reasonable efforts” shall mean that Customer shall treat such proprietary/confidential information in accordance with Customer’s procedures regarding vendor/customer proprietary information. Further, Customer shall have the right to copy the software products for backup and archival purposes.

Customer shall not be liable for use or disclosure of any such proprietary information if the same is:

- A. In the public domain at the time it was disclosed;
- B. Known to the party receiving it at the time of disclosure;
- C. Used or disclosed inadvertently provided the appropriate degree of care is exercised;
- D. Used or disclosed with the prior written approval of the other party;
- E. Independently developed by the receiving party;
- F. Becomes known to the receiving party without similar restrictions from a source other than the disclosing party having the right to disclose.

8. INVOICES AND PAYMENT.

- A. Price.
 - (1) As full compensation for the performance of this Agreement, unless otherwise provided in the Agreement, Customer shall pay Seller at the price set forth in the Agreement for all Services actually performed hereunder by Seller. Said price covers all profit and all wages and salaries, overhead, taxes and other costs and expenses of Seller incident to this Agreement.
 - (2) Overtime or other premium rates, if any, will not be paid unless the performance of the overtime or other premium-pay services have the prior written approval of Customer, provided Customer may, in writing, subsequently approve any overtime or premium rates paid by Seller, and such approval shall, to the extent thereof, be

deemed to fulfill the requirements for Customer's approval.

- B. Invoices. Once each month (or more frequently if approved by Customer), Seller shall submit to Customer, in such form and with such evidence in support thereof as Customer may reasonably require, an invoice for each payment provided for in the Agreement. Payment of invoices shall not constitute approval or acceptance of Services rendered. At any time prior to final payment under this Agreement, Customer may have the invoices audited as to validity. Payment of Seller's invoices shall be subject to adjustment for any amounts subsequently found upon audit or otherwise to have been improperly invoiced.

9. PRICE PROTECTION.

The fees and charges specified herein are the total fees and charges for the Services and will not be increased during the term of this Agreement except as the parties may agree in writing. Seller represents that the price stated for Services performed hereunder is at least as favorable as that charged to any other customer for the same or similar services. Any renewal of this Agreement shall be at a fee or charge which shall be the lower of (a) then prevailing prices of the Customer; or (b) the fees and charges of the previous term, increased by not more than 10 percent.

10. EQUIPMENT, DATA, AND SERVICES.

Customer shall furnish to the consultant, without cost to the Seller, such equipment, data, and services as Customer in its discretion deems necessary for the Seller's performance of the Services. Upon completion of the Services, or termination of the Services, the Seller shall within a reasonable period of time after such completion or termination, return such equipment and data to Customer without cost to the Seller. The Seller will not be responsible for loss or damage to the equipment or data caused by normal wear and tear or Acts of God. The Seller will be responsible for such loss or damage due to his negligence. Customer reserves the right to withhold payment pending satisfactory return of such equipment and/or data.

11. TERMINATION/CANCELLATION.

- A. Termination-Convenience. The performance of Services under this Agreement may be terminated, in whole or in part, by Customer for Customer's convenience at any time and for any reason on Customer giving written termination notice to Seller and shall pay to Seller termination charges computed in the following manner: (1) a sum computed and substantiated in accordance with standard accounting practices for those reasonable costs incurred by Seller prior to the date of termination for completed Services, Services in process, materials directly related to the Agreement, for orderly phase out of performance as requested by Customer in order to minimize the costs of the termination and for preparation and settlement of Seller's termination claim and (2) a reasonable profit on such Services performed; provided, however, that Customer shall not be liable to Seller for any

costs which would not have been charged had the Agreement not been terminated nor for any sum in excess of the total price stated in the Agreement for the terminated Services.

- B. Cancellation-Default. Except in the case of delay or failure resulting from circumstances beyond the control and without the fault or negligence of Seller or of its suppliers or subcontractors, Customer shall be entitled, by written cancellation notice to Seller, to cancel the whole or any part of this Agreement for default, without granting an extension of time, and to have all other rights against Seller by reason of Seller's default as provided by law. If it be found that Seller was not in default, the rights and obligations of the parties shall be the same as if a Notice of Cancellation had been issued pursuant to Clause 11.A. above, Termination-Convenience.
- C. Other. By written notice to Seller, Customer may cancel the whole or part of this Agreement in the event of suspension of Seller's business, insolvency of Seller, institution of bankruptcy, reorganization, arrangement, liquidation proceedings by or against Seller or proceedings for the benefit of creditors or for any failure by Seller to provide adequate assurances (as provided for in Uniform Commercial Code, section 2-609) of its ability or willingness to perform its obligations under this Agreement. Such cancellation shall be deemed "for default" in accordance with paragraph B. of this Termination/Cancellation clause and the rights and obligations of the parties shall be determined as therein provided.

12. DISPUTES.

Either party may litigate any dispute arising under or relating to this order. Such litigation shall be brought and jurisdiction and venue shall be proper only in a state or federal district court in Los Angeles County. Pending resolution of any such dispute by settlement or by final judgment, the parties shall proceed diligently with performance.

13. WAIVER OF RIGHT TO JURY TRIAL.

Buyer and Seller hereby waive their respective right to trial by jury of any cause of action, claim, counterclaim or cross-complaint in any action, proceeding or hearing brought by either Seller against Buyer or Buyer against Seller on any matter whatsoever arising under, relating to, or in any way connected with this Order, the relationship of Seller and Buyer or any claim of injury or damage, or the enforcement of any remedy under any law, statute or regulation now or hereafter in effect.

14. KEY PERSON(S).

In the event that Customer designates in a Purchase Order that the individual(s) there named is or are essential to the Services offered pursuant to this Agreement, the parties agree that should such individual or individuals no longer be employed during the term of this Agreement by the Seller for whatever reason, the Customer shall have the right to

terminate this Agreement on thirty (30) days' written notice.

15. RIGHT OF CUSTOMER TO REJECT VENDOR EMPLOYEES.

Customer shall have the right to reject any of Seller's employees whose qualifications in Customer's good faith and reasonable judgment do not meet the standards established by Customer as necessary for the performance of the Services. Said standards may include applicable United States Government security regulations.

16. PATENT RIGHTS.

The consultant shall promptly disclose to Customer all ideas, inventions, discoveries and improvements (whether patentable or not), that are made, conceived or reduced to practice by Seller, solely or jointly with others, during the period of performance of this Agreement, and that are related to the work of the Seller under this Agreement.

All such ideas, inventions, discoveries and improvements shall be the sole property of Customer, and the Seller further agrees to assist Customer in all reasonable ways, at the request of Customer and at no expense to the Seller, in obtaining protection of, perfecting Customer's record title in, and enforcing Customer's rights in such ideas, inventions, discoveries and improvements.

When the Services are completed, the Seller shall certify to Customer that, to the best of the Seller's knowledge and belief, all ideas, inventions, discoveries and improvements that are subject to this Agreement have been disclosed to Customer or that there are none. Customer's obligation to make final payment shall be conditioned upon such certification by the Seller.

17. COPYRIGHTS.

The Seller agrees that all writings, sound recordings, pictorial matter, drawings or other graphical representations, and other works which are produced, compiled, or collected for Customer in connection with this Agreement shall be delivered to Customer and shall be the sole property of Customer, and all rights to copyright therein, if any, shall belong to Customer.

The Seller shall not deliver to Customer under this Agreement any copyrighted matter without the prior written approval of Customer, and agrees that Customer shall have the right to copyright anywhere, any and all matter delivered under this Agreement.

The Seller shall not deliver to Customer any material in which copyrights are owned by another party, or which is any other way subject to restrictions on use or disclosure by Customer, without the prior written approval of Customer and unless such material is clearly identified as copyrighted or subject to restrictions, and the proprietor of the material is clearly identified.

Seller agrees to release, transfer and assign and does hereby release, transfer and assign to Licensee all rights, title, and interest to Licensee of every kind and character, including that of patent rights, design rights, copyright, or other forms of proprietary rights (collectively, the "Rights") in the Product, Material or Work including computer software and

documentation. Such Rights shall include, but are not limited to, the right to worldwide copyright and to renew such copyright; the right to publish the Product, Material or Work and any reissue, revision or translation thereof; and the right to promote or advertise the Product, Material or Work.

Seller further agrees that it will cooperate with Licensee in all lawful acts which may be necessary or desirable or become necessary or desirable in the judgment of Licensee including execution and acknowledgment of all specific, subsequent, confirming, and implementing assignment documents in order to perfect such transfer to Licensee of the Rights contemplated hereunder. Licensee agrees to reimburse Seller for reasonable costs, including attorney's fees which Seller may incur performing such efforts.

18. WARRANTIES.

Seller warrants that, in performing the Services:

- A. It will strictly comply with the descriptions and representations as to the Services (including performance capabilities, accuracy, completeness, characteristics, specifications, configurations, standards, function and requirements) which appear herein;
- B. Its products, if any, shall be uniform in appearance, clean and presentable in accordance with generally applicable standards in the industry;
- C. Any preparation software or data analysis used in the Services shall be available to Customer for a period of five (5) years following the completion of the Services. The warranty shall only apply to preparation software or data analysis owned by or under the control of Seller;
- D. The Services will not be in violation of any applicable law, rule or regulation, and Seller will have obtained all permits required to comply with such laws and regulations;
- E. The Services will not violate or in any way infringe upon the rights of third parties, including property, contractual, employment, trade secrets, proprietary information and nondisclosure rights, or any trademark, copyright or patent rights;
- F. Seller is the lawful owner or licensee of all programs used in the performance of the Services contemplated hereunder; such programs have been lawfully developed or acquired by the Seller and Seller has the right to permit Customer access to or use of such program; and
- G. Employment of Seller's personnel originally assigned to perform the Services will be continuous throughout the term of this Agreement, except for termination of employment. (This warranty shall only apply to individuals designated as "key person(s).")

19. REGENERATION OF LOST OR DAMAGED DATA.

Seller shall, at its own expense, promptly replace or regenerate from Customer's machine-readable supporting material any data which Seller has lost or damaged, or obtain at Seller's own expense a new copy of lost or damaged data from the Customer.

20. CUSTOMER'S INSTRUCTIONS; TRAINING IN CUSTOMER PROCEDURES.

Seller shall ensure that its employees, servants, and agents will, whenever on the Customer's premises, obey all reasonable instructions and directions issued by the Customer. Seller's personnel assigned to perform the Services shall attend, where required, a training session or sessions, at Seller's expense, concerning Customer's standards and procedures relating to on-site rules of behavior, work schedule, security procedures and any other standards and procedures adhered to by Customer's regular employees.

21. INSPECTION.

If this Agreement is to be performed on premises under Seller's control, Customer shall, at all reasonable times during the period of performance, have access to and the right to inspect all Services being performed under this Agreement.

22. BONDS.

If a bond or bonds is specifically required by the terms of the Agreement, then prior to commencing Services hereunder, or within such further time as Customer may allow in writing, Seller shall deliver to Customer a performance bond and a payment bond executed by a corporate surety acceptable to Customer in amounts not less than the Agreement price, on the bond forms either furnished by or acceptable to Customer in accordance with the instructions on said forms. Failure to deliver acceptable bonds within the time allowed shall constitute a material breach of this Agreement and entitle Customer to (A) cancel Seller's right to proceed with the Services, and (B) recover from Seller any damages resulting from such breach. If any surety on such bonds becomes unacceptable to Customer or if the Agreement price is substantially increased after such bonds are delivered, Seller shall promptly deliver such acceptable additional bond security as Customer may require.

23. CLEARANCE OF MATERIALS INTENDED FOR PUBLIC RELEASE.

No news release, including photographs and films, advertisement, public announcement, denial or confirmation of same, on any part of the subject matter of this Agreement or any phase of any program hereunder shall be made without prior written approval of both parties.

24. INDEMNIFICATION AND HOLD HARMLESS.

In the event Seller, its officers, employees, agents, subcontractors, and/or lower-tier subcontractors enter premises occupied by or under the control of Customer or third parties in the performance of this Agreement, the Seller shall indemnify and hold harmless Customer, its officers, employees and agents from any loss, cost, damage, expense or liability by reason of, or property damage or personal injury (including death) of whatsoever nature or kind arising out of, as a result of, or in connection with such performance occasioned in whole or in part by the actions or omissions of Seller, its officers, employees, agents, subcontractors and/or lower-tier subcontractors excepting such loss, cost or damage occasioned by fault or negligence of Customer,

Government or third parties. Seller shall purchase and maintain insurance, including blanket contractual liability insurance, necessary to guarantee fulfillment of this hold harmless and indemnification agreement.

25. CHANGES.

Customer may at any time, in a written directive or order, make reasonable changes within the general scope of this Agreement in any one or more of the following: (A) definition of Services to be performed, (B) products, if any, ordered and (C) schedule of and place of performance. If any such change requires an increase or decrease in the cost of or in the time required for the performance of any part of the Services under this Agreement, whether changed or not changed by any such Agreement, or otherwise affects any other provision of this Agreement, an equitable adjustment shall be made in the (1) price, (2) performance schedule and (3) in such other provisions of this Agreement as may be so affected, and this Agreement shall be changed or modified in writing accordingly. Any claim by Seller for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by Seller of such written order or within such further time as may at any time be agreed upon in writing by the parties; provided, however, that Customer, if it decides that the facts justify such action, may receive and act upon any such claim at any time prior to final payment under this Agreement. Where the cost of products or property made obsolete or excess as a result of a change is included in Seller's claim for adjustment, Customer shall have the right to prescribe the manner of disposition of such products or property. Failure of the parties to agree upon any adjustment to be made under this clause shall not excuse the Seller from proceeding with this Agreement as changed.

26. TAXES.

All prices herein, unless otherwise provided, include all applicable Federal, state and local taxes as may be assessed against Seller except those sales or use taxes required by law to be paid by Customer.

27. CHOICE OF LAW.

This Order and any dispute arising hereunder shall be governed by the substantive and procedural laws of the State of California, except, however, that California's Choice of Law provisions shall not apply.

28. PROTECTION OF PERSONS AND PROPERTY.

Seller shall exercise proper precautions at all times for the protection of persons and property and shall comply with Customer's safety and security requirements.

29. INDEPENDENT CONTRACTOR.

Seller's relation-ship to Customer in the performance of this Agreement is that of an independent contractor. Seller's employees, agents or representatives ("Employees") performing Services under this Agreement shall at all times be under Seller's direction and control. Seller shall pay all wages, salaries and other amounts due its Employees in connection with this Agreement and shall be responsible for all reports and obligations respecting them including but not limited to social security,

income tax withholding, unemployment compensation, and workmen's compensation.

30. COMPOSITION OF CONTRACTOR.

If Seller is comprised of more than one legal entity, such entity shall be jointly and severally liable to Customer under this Agreement.

31. CONFLICT OF INTEREST.

The Seller warrants that there is no conflict of interest between the Services to be provided under this Agreement and the Seller's other activities. Seller shall advise Customer of any conflict of interest that arises during the performance of the Agreement.

32. SUBCONTRACTING.

Seller shall not enter into a subcontract for Services to be performed under this Agreement without the prior written consent of Customer's Purchasing Representative. Customer's approval of any subcontract or any provisions thereof shall not in any way be construed as a ratification thereof or relieve the Seller of any responsibility for performing this Agreement. No purchase order or subcontract placed by Seller under this Agreement shall provide for payment on a cost-plus-a-percentage-of-cost basis.

33. SUCCESSORS OF PARTIES.

This Agreement is binding on the parties and their respective legal representatives, trustees, successors and assigns.

34. PATENT, TRADEMARK, AND COPYRIGHT INDEMNITY.

Seller shall defend, indemnify, and hold Buyer, Buyer's officers, agents, employees, and customers harmless against all claims and liabilities, including costs, for infringement of any United States patent, trademark, or copyright by any Products delivered under this Order or, at Seller's option and expense, Seller shall obtain such licenses as are necessary to remove such infringement, provided that Seller is reasonably notified of such claims and liabilities. Seller's obligation shall not apply to Products manufactured by Seller pursuant to detailed designs developed by Buyer and furnished to Seller under an Order which does not require research, development, or design work by Seller. Seller's obligation shall also not apply to any infringement arising from the use or sale of Products in combination with items not delivered by Seller if such infringement would not have occurred from the use or sale of such Products solely for the purpose for which they were designed or sold to Buyer. Seller's obligation shall extend to the U.S. Government only if and to the extent Buyer has agreed to indemnify the U.S. Government.

35. DELEGATION AND ASSIGNMENT.

No delegation of any duties under this Agreement shall be binding upon Customer until its written consent thereto has been obtained. Seller shall inform Customer in writing prior to any assignments of rights to monies due or to become due under this Agreement.

36. COMPLIANCE WITH AND APPLICABILITY OF LAWS.

A. Federal, State and Local Laws. Seller warrants that in the performance of this Agreement, it will comply with all applicable Federal, state and local laws. On its invoice or in other form

satisfactory to Customer, Seller shall submit certification that the Services and products, if any, covered by this Agreement were produced in compliance with all applicable requirements of Sections 6, 7 and 12 of the Fair Labor Standards Act (29 U.S.C. 201-219), as amended, and of regulations and orders of the U.S. Department of Labor issued under Section 14 thereof.

B. Equal Opportunity. Buyer is an "Equal Opportunity" employer and Seller shall, therefore, comply with the provisions of the President's Executive Agreement 11246 as supplemented and all related regulations of the Department of Labor.

C. Responsibilities. Seller shall obtain at Seller's expense, all permits, licenses and authorizations required to perform this Agreement.

37. NONWAIVER.

Any failure at any time of Customer to enforce any provision of this Agreement shall not constitute a waiver of such provision or prejudice the right of Customer to enforce such provision at any subsequent time.

38. MISCELLANEOUS.

A. Insurance Requirements.

(1) Seller and its subcontractors shall procure and thereafter maintain worker's compensation, employer's liability, comprehensive general liability (bodily injury and property damage) and comprehensive automobile liability (bodily injury and property damage) insurance, and such other insurance as Customer may from time to time require and to the extent and in the amounts as may be specified in this Agreement.

(2) If any of Seller's required insurance is cancelled during its term, or coverage afforded by it is reduced, the Seller is required to be certain that the particular insurance company gives written notice to Customer's insurance group thirty (30) days before the effective date of such cancellation or change.

(3) If requested by Customer, Seller shall have its insurer furnish the insurance group of the Customer a "Certificate of Insurance" evidencing its compliance with the insurance requirements as set forth in this Agreement.

B. Cumulation of Remedies. All remedies available to either party for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

C. Notices. Any notice or other communication hereunder shall be in writing.

D. Waiver. No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented.

- E. Site of Services. If Seller's services are performed at Customer's offices, Customer shall provide space and facilities to Seller's staff commensurate with that provided to its own employees to the extent necessary to perform the Services specified by this Agreement.
- F. Modifications. If Customer modifies by written request the scope of Services hereunder, Seller may perform such Services at its discretion. If Seller so performs, Customer agrees that Seller may expend the time which Seller deems reasonable and necessary to perform the Services and the charges for such Services, and other terms and conditions of performance, shall be governed by this Agreement except as provided otherwise in writing signed by the parties.