

# PSS/T-72

## NORTHROP GRUMMAN SYSTEMS CORPORATION

### PURCHASE ORDER TERMS AND CONDITIONS PROFESSIONAL SERVICES AGREEMENT

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#### 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.

- A. PERSONNEL, for the purposes of the Privacy, Confidentiality and Security clause of this contract, means employees, agents, consultants or contractors of Seller or Northrop Grumman, as applicable
- B. PERSONAL INFORMATION, is any information relating to an identified or identifiable natural person (such as name, postal address, email address, telephone number, date of birth, Social Security number (or its equivalent), driver’s

license number, account number, credit or debit card number, personal identification number, health or medical information, or any other unique identifier or one or more factors specific to the individual’s physical, physiological, mental, economic or social identity), whether such data is in individual or aggregate form and regardless of the media in which it is contained, that may be (i) disclosed at any time to Seller or its Personnel by Northrop Grumman or its Personnel in anticipation of, in connection with or incidental to the performance of services for or on behalf of Northrop Grumman; (ii) Processed at any time by Seller or its Personnel in connection with or incidental to the performance of services for or on behalf of Northrop Grumman; or (iii) derived by Seller or its Personnel from the information described in (i) or (ii) above.

- C. PROCESS or PROCESSING means any operation or set of operations performed upon Personal Information, whether or not by automatic means, such as creating, collecting, procuring, obtaining,

accessing, recording, organizing, storing, adapting, altering, retrieving, consulting, using, disclosing or destroying the data.

**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. RESERVED**

**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. 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

**6. INVOICE 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 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.

**C.** Unless otherwise specified in the Purchase Order. Buyer's Invoice Instructions are incorporated herein and available on Buyer's On-line Automated Supplier Information System (OASIS): <https://oasis.northgrum.com/corp/pss/docs/InvoiceInstructions.pdf>.

**7. RESERVED**

**8. 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.

**9. 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

**10. 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).")

**11. 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.

**12. 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.

**13. 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.

**14. 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.

**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. 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.

**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. 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.

**21. 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.

**22. SUBCONTRACTING.**

- A. Seller shall not subcontract without the prior written authorization of Buyer for the performance of any service to be provided hereunder, and Seller shall require a like agreement from any immediate and lower-tier suppliers. This is not a restriction on authorized distributors, dealers, jobbers or industrial suppliers.
- B. No subcontract placed under this Order shall provide for payment on a cost- plus-percentage-of cost basis, and any fee payable under cost-reimbursement subcontract shall not exceed the fee limitations in subsection 15.404-4(c) of the Federal Acquisition Regulation (FAR)
- C. Any subcontract awarded to a foreign person, as defined in the International Traffic in Arms Regulations or the Export Administration Regulations, must comply with the Export and Import Compliance clause herein.

**23.-24. RESERVED**

**25. 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.

**26. INSURANCE.**

During the entire Order period Seller and its subcontractors shall, at their sole cost and expense, procure and maintain Worker's Compensation insurance coverage as required by the laws of the state in which the work is performed and such insurance shall provide waiver of subrogation in favor of Northrop Grumman. Seller shall also maintain, at their sole cost and expense, Employer Liability insurance in the amount of \$1,000,000.

- A. Whenever performance requires work on a Government installation, Buyer's premises, or premises under the care, custody or control of Buyer or Buyer's customer, Seller and its subcontractors shall, at their sole cost and expense, procure and maintain the following insurance coverage in the minimum limits indicated:

1. General Liability (Professional Liability, as applicable) – Combined Single Limit \$2,000,000 bodily injury and property damage. Coverage shall include but not necessarily be limited to, premises and operations, products and completed operations and contracts.
  2. Automobile Liability – Combined Single Limit \$2,000,000 bodily injury and property damage covering all owned, hired and non-owned vehicles.
- B. All insurance required as a part of this Order shall be placed with insurance companies that are authorized to do business under the laws of the state or states in which the work is being performed and shall be in a form reasonably acceptable to Buyer.
- C. General Liability and Automobile Liability insurance coverage shall provide that Buyer is named as an additional insured and if requested by Buyer, Seller shall provide evidence that the required insurance is in place in the form of insurance certificates.
- D. Insurance coverage described herein must be in place and effective prior to commencement of any activity that is the subject of this Order. Renewal insurance certificates, if applicable, shall be provided to Buyer at least 15 days prior to the expiration date of the insurance under each required coverage.
- E. Buyer and Seller agree to defend, indemnify, and save harmless the other from all damages and liabilities arising out of or in connection with presence on the other's premises pursuant to this Order; provided, however, that such damage and liability shall not have been caused by the negligence of the agents, subcontractors or employees of the indemnified parties

**27. 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.

**28. COMPLIANCE WITH LAWS.**

Seller warrants that it shall comply with all applicable federal, state, or local laws, rules, and regulations in the performance of this Agreement. Seller shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin and warrants compliance with Section 508 of the Rehabilitation Act. Where applicable, the Supplier agrees to provide products and services which are Section 508 compliant and agrees to provide a Voluntary Product Accessibility Template® (VPAT®) to Customer Representatives, if requested.

**29. 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.

**30.-31. RESERVED**

**32. EXPORT AND IMPORT COMPLIANCE**

This provision may not be modified or amended by any addendum, exhibit, attachment, or any other agreement without prior written approval from Northrop Grumman Law Department (Export/Import).

**A. Export Compliance.**

General. Performance of this Order may involve the use of or access to articles, technical data or software that is subject to export controls under 22 United States Code 2751 – 2799 (Arms Export Control Act) and 22 Code of Federal Regulations 120-130 (International Traffic in Arms Regulations or "ITAR") or 50 United States Code 2401-2420 (Export Administration Act of 1979, as amended), 50 United States Code 1701-1706, (International Emergency Economic Powers Act, as amended), and 15 Code of Federal Regulations 768 – 799 (Export Administration Regulations) and their successor and supplemental laws and regulations (collectively hereinafter referred to as the "Export Laws and Regulations"). Seller represents and warrants that it is either 1) a U.S. Person as that term is defined in the Export Laws and Regulations, or 2) a Foreign Person as that term is defined in the Export Laws and Regulations and has disclosed to Buyer's Representative in writing the country in which it is incorporated/authorized/organized to do business, and all nationalities of any dual or third-country national employees who will require access to the data, articles or services provided hereunder. Seller shall comply with any and all Export Laws and Regulations, and any license(s) issued there under.

1. Registration. If Seller is a U.S. entity and is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services, Seller represents that it is registered with the U.S. Department of State's Directorate of Defense Trade Controls, as required by the ITAR, and it maintains an effective export and import compliance program in accordance with the ITAR.
2. Foreign Persons. Seller shall not re-transfer any export-controlled information (e.g. technical data or software) to any other non-US person or entity (including the Seller's dual and/or third-country national employees) without first complying with all the requirements of the applicable Export Laws and Regulations. Prior to any proposed re-transfer, Seller shall first obtain the written consent of the Buyer. No consent granted by Buyer in response to Seller's request shall relieve Seller of its obligations to comply with the provisions of paragraph A. of this Clause or the Export Laws and Regulations, nor shall any such consent constitute a waiver of the requirements of paragraph A. hereinabove, nor constitute consent for Seller to violate any provision of the Export Laws and Regulations.

**B. Political Contributions, Fees and Commissions.**

If this Purchase Order is valued in an amount of \$500,000 or more, then in performance of this Purchase Order, Seller shall not directly or indirectly pay, offer or agree to pay any political contributions or any fees or commissions.

For purposes of this section and pursuant to 22 CFR 130.6, political contribution means any loan, gift, donation or other payment of \$1,000 or more made, or offered or agreed to be made, directly or indirectly, whether in cash or in kind, which is:

- 1) To or for the benefit of, or at the direction of, any non-U.S. candidate, committee, political party, political faction, or government or governmental subdivision, or any individual elected, appointed or otherwise designated as an employee or officer thereof; and
- 2) For the solicitation or promotion or otherwise to secure the conclusion of a sale of defense articles or defense services to or for the use of the armed forces of a non-U.S. country or international organization. Taxes, customs duties, license fees, and other charges required to be paid by applicable law or regulation are not regarded as political contributions.

For purposes of this section and pursuant to 22 CFR 130.5, fee or commission means any loan, gift, donation or other payment of \$1,000 or more made, or offered or agreed to be made directly or indirectly, whether in cash or in kind, and whether or not pursuant to a written contract, which is:

- (1) To or at the direction of any person, irrespective of nationality, whether or not employed by or affiliated with the Seller; and
- (2) For the solicitation or promotion or otherwise to secure the conclusion of a sale of defense articles or defense services to or for the use of the armed forces of a non-U.S. country or international organization.

C. Import Compliance.

Both parties shall comply with all U.S. Customs laws and regulations (e.g., 19 CFR) and all other applicable U.S. government regulations pertaining to importations of goods and materials into the United States.

For International Purchase Orders (Purchase orders issued to entities addressed in foreign countries): Specifically, without excluding other regulations, Seller shall comply with and adhere to the commercial invoice requirements detailed in 19 CFR 141 subpart F of the regulations, and provide additional information as requested by the Buyer. Seller shall immediately upon discovery, notify Buyer of any change to the shipment data related to product valuation, quantities shipped, country of origin, port of export and any additional information directed by the Buyer. Seller will timely provide pre-alert shipping information and documentation prior to shipment arrival to the U.S. Buyer will direct Seller where to send pre-alert shipping information and documentation. Pre-alert shipping documentation includes, but is not limited to, a commercial invoice, airway bill, bill

of lading, and other required documentation as directed by U.S. regulations and Buyer. For Domestic Purchase Orders (Purchase orders issued to entities addressed in the United States): Seller shall assume all U.S. import responsibilities, to include designation as U.S. Importer of Record, Customs clearance, duty, taxes, and fees for goods entering into the United States. Unless otherwise agreed in writing, NGC will not assume any import liabilities for goods procured through a domestic purchase order.

D. Indemnification.

Seller shall indemnify and save harmless Buyer from and against any and all damages, liabilities, penalties, fines, costs, and expenses, including attorneys fees, arising out of claims, suit, allegations or charges of Seller's failure to comply with the provisions of this Clause and breach of the warranty set forth in paragraph A or B. Any failure of Seller to comply with the requirements or any breach of the warranty contained in this Clause shall be a material breach of this Order.

E. Subcontracts.

The substance of this Clause shall be incorporated into any lower-tier subcontract or purchase order entered into by the Seller for the performance of any part of the work under this Order.

F. Notification.

Seller agrees to provide prompt notification to Buyer in the event of changes in circumstances such as ineligibility to contract with US Government, debarment, assignment of consent agreement, and initiation or existence of a US Government investigation, that could affect Seller's performance under this contract. Seller further agrees to provide prompt notification to Buyer should any offer, agreement or payment of political contributions, fees or commissions (as defined herein and pursuant to this Order) be made in contravention of the prohibition in Section B.

**33. RESERVED**

**34. 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.

**35.-37. RESERVED**

**38. MISCELLANEOUS.**

- A. 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.
- B. Notices. Any notice or other communication hereunder shall be in writing.
- C. 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.
- D. 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.

- E. 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.

**39. 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.

**40. 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.

**41. - 42. RESERVED**

**43. 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.

**44. 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.

**45. RESERVED**

**46. 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.

**47. -50. RESERVED**

**51. 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.

**52. RESERVED**

**53. 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.

**54. -63. RESERVED**

**64. 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.

**65. -66. RESERVED**

**67. SUCCESSORS OF PARTIES.**

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

**68. -71. RESERVED**

**72. 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.

**73. -79. RESERVED**

**80. RESPONSE TO AUDIT.**

Buyer shall not be prohibited from providing copies of the purchase order to federal and state taxing agencies as requested by either Buyer's or government auditors to comply with auditing procedures.

## **81. DIVESTITURES - IT PRODUCTS & SERVICES.**

- A. Upon Buyer's divestiture of any affiliate, division, business unit, line of business or sector ("divested entity"), Buyer may assign in whole or in part the software and/or maintenance services that are the subject of this order to that divested entity. Upon execution of an assignment, Buyer shall have no further rights or obligations with respect to the assigned licenses and/or services (with the exception of any unpaid license and/or maintenance service fees which remain due on the effective date of such assignment) and the divested entity shall become the "customer" of record for those assigned licenses and/or services. Any such assignment or other transfer of licenses to the software and/or maintenance services made to a third party will be subject to the prior written consent of Seller/licensor which consent will not be unreasonably withheld or delayed.
- B. Divested entities will have the right, for a period of twelve (12) months post-divestiture, to continue to purchase the software products and/or maintenance services covered under this order, or Buyer may purchase such licenses under this order on behalf of the divested entities. If a divested entity wishes to order from Seller directly, Seller reserves the right to require such divested entity to provide financial information sufficient to determine creditworthiness before accepting any orders.
- C. For software. In the event of a divestiture, Buyer shall be permitted to use the software products to provide managed services for the divested entity during a period of transition, provided that Buyer's use in such case is only for the divested entity. Once the transition period ceases, Buyer shall assign the licenses to the divested entity as provided in the "divestiture" provision in this purchase order.
- D. Buyer shall have the unrestricted right to transfer the software license(s) to its parent and/or any subsidiary or affiliate of Buyer upon written notification to Seller/licensor of such transfer without payment of additional costs or fees provided that the number of licenses transferred does not exceed the Buyer's total licensed count. In each such instance, Buyer shall inform Seller/licensor of the transfer, and shall provide details on the name and address of assignee, including which products (and how many licenses of each) are being transferred.

## **82. MERGERS AND ACQUISITIONS - IT PRODUCTS/SERVICES.**

- A. If Buyer merges with or acquires entities that have existing licensed software, the merged, or acquired entity's licenses will terminate upon completion of the acquisition or merger and the merged/acquired entity's licenses will be combined with Buyer's existing licenses of the same license type under the terms of this purchase order, provided that Buyer and the merged/acquired entity are both current on maintenance and there are no outstanding receivables against either account. There shall be no transfer fee for combining the licenses, provided; however, that Buyer will true up the merged or acquired licenses to match Buyer's software configuration and license type(s).

Maintenance will continue on the combined number of users. Buyer may, at its option, permit an acquired entity to continue to operate its existing software as a standalone operation, but subject to the terms of this purchase order at no additional cost other than continued maintenance fees.

- A. If Buyer merges with or acquires an entity or entities that have a need for Seller's products and services, Buyer and the acquired entity will be permitted to make purchases using this purchase order and price discounts in support of the acquired entity. If under any existing purchase order with an acquired entity or entities Seller currently provides or agrees to provide maintenance services, Buyer and Seller will negotiate a combined maintenance agreement sufficient to cover the combined companies so as to avoid any disruption in service.

## **83. RESERVED**

## **84. 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.

## **85. SOFTWARE CHAIN OF CUSTODY.**

Seller represents and warrants that it has policies and procedures in place to ensure that software code used to develop product(s) has been within Seller's configuration management and control during the entire development process. Should Buyer determine that Seller has supplied product(s) that have failed or do not properly function (i.e. harmful/malicious code embedded into software) due to lapses in the chain of custody, Buyer shall promptly notify Seller and Seller shall at its own expense immediately replace the defective product(s) with product(s) that conform to the software documentation specifications.

## **86. REPORTING - IT SOFTWARE.**



For software. Upon request, Seller will submit within 48 hours a copy of the testing procedures and test results used for the product(s) being procured.

**87. PRIVACY, CONFIDENTIALITY AND SECURITY**  
Seller will ensure that it provides the services under this agreement in accordance with the following requirements:

- (a) Seller will hold in strict confidence any and all Personal Information.
- (b) Seller will provide at least the same level of privacy protection for Personal Information as is required by the relevant U.S.-EU Safe Harbor Framework ("Safe Harbor") Principles.
- (c) Seller will Process Personal Information only on behalf of Northrop Grumman and in accordance with Northrop Grumman's written instructions, and only in connection with the services it provides for Northrop Grumman and to fulfill its obligations to Northrop Grumman.
- (d) Seller will comply with all applicable laws and regulations relating to the privacy, confidentiality or security of Personal Information and applicable provisions of Northrop Grumman's privacy policies, statements or notices that are attached hereto (collectively, "Privacy Requirements").
- (e) In the event a Privacy Requirement, enforcement action, investigation, litigation or claim, or any other circumstance, is reasonably likely to adversely affect Seller's ability to fulfill its obligations under this agreement, Seller will promptly notify Northrop Grumman in writing and Northrop Grumman may, in its sole discretion and without penalty of any kind to Northrop Grumman, suspend the transfer or disclosure of Personal Information to Seller or access to Personal Information by Seller, terminate any further Processing of Personal Information by Seller, and terminate Seller's agreement to provide services to Northrop Grumman, if doing so is necessary to comply with applicable Privacy Requirements.
- (f) Subject to applicable law, in the event Seller is required by law or legal process to disclose Personal Information, it will give prior written notice of the disclosure to Northrop Grumman, so that Northrop Grumman may, in its discretion, seek to block the disclosure. Northrop Grumman will have the right to defend such action in lieu of and on behalf of Seller. Northrop Grumman may, if it so chooses, seek a protective order. Seller will reasonably cooperate with Northrop Grumman in such defense at Northrop Grumman's reasonable cost.
- (g) Seller may disclose Personal Information to a third party if, and only if, it obtains the written consent of Northrop Grumman *and* (1) the disclosure is made to a party that performs services on behalf of Northrop Grumman and the disclosure is made in order to perform the Seller's services to Northrop Grumman; or (2) the disclosure is made to a third party performing clerical, administrative, technical, or security-related services for Seller, and such disclosure is incidental to the performance of such services. In either case, Seller will enter into a written agreement with such third party under which the third party agrees it will (i) maintain the confidentiality of the disclosed Personal Information; (ii) provide at least the same level of privacy protection as is required by the relevant Safe Harbor Principles (unless such third party has certified to the Safe Harbor, or is subject to the European Union Directive on Data Protection (Directive 95/46/EC) or

another adequacy finding by the European Commission, in which case the third party is not required to make the representation contained in (ii)); (iii) not disclose the Personal Information to other third parties without the prior written agreement of Northrop Grumman; (iv) use the Personal Information only in connection with performing its obligations under its agreement with Seller; (v) disclose the Personal Information only to its own personnel who need the information to perform the obligations under the agreement with Seller, and who have been fully advised as to the confidentiality requirements set forth herein; (vi) promptly notify Seller of any Information Security Incident (as defined below); and (vii) return to Seller all copies of Personal Information Processed in connection with the relevant services for which the third party was retained or, upon Seller's written request (provided that Seller receives Northrop Grumman's prior written approval), securely destroy or, at the option of Northrop Grumman, render unreadable or undecipherable, all such Personal Information, including all hard-copy and electronic versions.

- (h) Seller will develop, implement and maintain a comprehensive written information security program that complies with applicable Privacy Requirements. Seller's information security program will include appropriate administrative, technical, physical, organizational and operational measures designed to (i) ensure the security and confidentiality of Personal Information; (ii) protect against any anticipated threats or hazards to the security and integrity of Personal Information; and (iii) protect against accidental or unlawful destruction, loss or alteration, unauthorized disclosure or access, and any other unlawful forms of Processing (hereinafter "Information Security Incident"). Seller's information security program will contain standards that are at least as stringent as those set forth in the Form C-137 relating to this Agreement. If the Processing involves the transmission of Personal Information over a network, Seller will implement appropriate measures to protect Personal Information against the specific risks presented by the Processing. Seller will immediately, but in no event later than 72 hours after Seller's discovery of the Information Security Incident, notify Northrop Grumman in writing of any Information Security Incident. Such notice will summarize in reasonable detail the effect on Northrop Grumman, if known, of the Information Security Incident and the corrective action taken or to be taken by Seller. Seller will promptly take all necessary and advisable corrective actions, and will cooperate fully with Northrop Grumman in all reasonable and lawful efforts to prevent, mitigate or rectify such Information Security Incident. The content of any filings, communications, notices, press releases or reports related to any Information Security Incident must be approved by Northrop Grumman prior to any publication or communication thereof.
- (i) Seller will exercise the necessary and appropriate supervision over its relevant Personnel to maintain appropriate privacy, confidentiality and security of Personal Information. Seller will restrict access to Personal Information to those Personnel who need the information to perform obligations under Seller's agreement with Northrop Grumman and who have explicitly agreed to legally enforceable and sound confidentiality obligations. Seller will ensure that

Personnel with access to Personal Information are periodically trained regarding privacy and security and the limitations on Processing of Personal Information as provided in this agreement.

- (j) Seller will engage an independent third-party to conduct a security evaluation/certification of Seller's systems that host Personal Information. Seller will provide Northrop Grumman copies of the audit report(s). Northrop Grumman reserves the right to conduct site surveys of Seller's hosting site and review its physical and information security policies, practices, and procedures on an annual or biennial basis, in Northrop Grumman's reasonable discretion.
- (k) Seller agrees that any Processing of Personal Information in violation of this agreement, Northrop Grumman's instructions or any applicable Privacy Requirement, or any Information Security Incident, may cause immediate and irreparable harm to Northrop Grumman for which money damages may not constitute an adequate remedy. Therefore, Seller agrees that Northrop Grumman may obtain specific performance and injunctive or other equitable relief for any such violation or incident, in addition to its remedies at law, without proof of actual damages.
- (l) Seller will not transfer Personal Information outside the country to which it originally was delivered to Seller for Processing (or, if it was originally delivered to a location inside the European Union, outside the European Union) without the explicit written consent of Northrop Grumman.
- (m) Seller will cooperate with Northrop Grumman if a data subject wants to access or amend Personal Information pertaining to him or her.
- (n) Seller will immediately inform Northrop Grumman in writing of any requests, complaints or investigations regarding Seller's Processing of Personal Information. Seller will respond to such requests, complaints or investigations in accordance with Northrop Grumman's instructions and Seller will fully cooperate with Northrop Grumman in responding to any such request, complaint or investigation.
- (o) Seller will enter into any further privacy or information security agreement requested by Northrop Grumman for purposes of compliance with applicable Privacy Requirements. In case of any conflict between this agreement and any such further privacy or information security agreement, such further agreement will prevail with regard to the Processing of Personal Information covered by it.
- (p) Seller agrees, within 30 days of termination, cancellation, expiration, or other conclusion of this agreement, Seller shall return to Northrop Grumman all copies of Personal Information Processed in connection with this agreement, or, upon Northrop Grumman's written request or receipt of Northrop Grumman's written approval in response to Seller's request, to securely destroy or, at the option of Northrop Grumman, render unreadable or undecipherable, all such Personal Information, including all hard-copy and electronic versions. Seller will provide an appropriate Certificate of Return/Destruction at Northrop Grumman's request.
- (q) Seller agrees to indemnify and hold harmless Northrop Grumman and its officers, employees, directors and agents from, and at Northrop Grumman's option defend against, any and all claims, losses, liabilities, costs and expenses, including without limitation third-party

claims, reasonable attorneys' fees, consultants' fees and court costs (collectively, "Claims"), to the extent that such Claims arise from, or may be in any way attributable to (i) any violation of this agreement; (ii) the negligence, gross negligence, bad faith, or intentional or willful misconduct of Seller or its Personnel in connection with the obligations set forth in this agreement; (iii) Seller's use of any contractor providing services in connection with or relating to Seller's performance under this agreement; or (iv) any Information Security Incident involving Personal Information in Seller's possession, custody or control, or for which Seller is otherwise responsible.

- (r) Seller's obligations under this agreement will survive the termination of Seller's agreement to provide services to Northrop Grumman and the completion of all services subject thereto.

#### **88. DATA BREACH NOTIFICATION.**

Seller will promptly notify Buyer of any actual or potential exposure or misappropriation of Buyer data ("breach") that comes to Seller's attention. Seller will cooperate with Buyer and in investigating any such breach, at Seller's expense. Seller will likewise cooperate with Buyer and, as applicable, with law enforcement agencies in any effort to notify injured or potentially injured parties, and such cooperation will be at Seller's expense, except to the extent that the breach was caused by Buyer. The remedies and obligations set forth in this subsection are in addition to any others Buyer may have, including, but not limited to, any requirements in the "Privacy, Confidentiality, and Security" provisions of this Agreement.

#### **89. DATA CONTROL.**

Seller will have policies and procedures in place to protect any data that Buyer provides, including destruction methods employed and how audit and system log information is protected. Buyer may upon request, review Seller's applicable policies and procedures.

#### **90. 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.

#### **91. – 96. RESERVED**

#### **97. PRODUCT VULNERABILITIES.**

Within 24 hours of confirming vulnerability in their product line, Seller shall notify Buyer and provide a corrective action plan to address the issue. This plan should include, but not be limited to: identification of the specific vulnerability; steps to isolate and prevent further occurrences; replacement of the defective product(s); enhanced quality control procedures.