

CT-75
NORTHROP GRUMMAN CORPORATION
PURCHASE ORDER TERMS AND CONDITIONS
AGREEMENT FOR COMPUTER HARDWARE MAINTENANCE

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1. DEFINITIONS AND ACCEPTANCE OF ORDER.

- A. "Customer," "Buyer," "Licensee" or "Lessee" means the entity name on the Purchase Order/Subcontract. "Licensor," "Seller," "Vendor" or "Lessor" means the party with whom the Customer is contracting. The term "Purchase Order" means the name or title of the instrument of contracting, including all documents, exhibits and attachments referenced thereon.
- B. This Order constitutes Customer's offer. Acceptance is expressly limited to the terms of Order and Customer hereby objects to any additional or different terms in the acceptance. This Order is accepted as written by executing the Acknowledgement or Acceptance copy of the Order, or by beginning performance.
- C. No modification of this Order (including any additional terms or different terms contained in the acceptance) shall be binding on Customer unless agreed to in writing and signed by Customer's duly authorized Purchase Representative.

2. ENTIRE AGREEMENT.

This Agreement, together with the Purchase Order and all attachments or documents referenced herein, constitutes the entire agreement between Vendor and Customer on the subject matter of services to be performed as described herein ("Services").

3. SERVICES TO BE PERFORMED BY VENDOR.

- A. Scope. For the charges stated herein Vendor shall furnish on-call maintenance Service during the Call Window specified in the Purchase Order hereto and as defined in this section. In fulfillment thereof, Vendor shall:

- (1) Provide scheduled preventive maintenance (PM), based on the specific needs of the equipment in the minimum number of hours and at the frequency set forth herein. PM shall include adjustments, lubrication, cleaning, replacement of defective parts, and retrofitting for engineering changes.
- (2) Provide unscheduled on-call remedial maintenance as required in response to calls placed during the Call Window.
- (3) Provide maintenance materials, tools, documentation, site management guide, diagnostic and test equipment necessary for the maintenance Services described herein; such items at all times to remain the exclusive property of Vendor.

- B. Service Calls. The "Call Window" is defined as the time within which the Customer may notify Vendor that the equipment covered under this Agreement is inoperative and remedial maintenance is required. All equipment shall have the Call Window specified herein covering such equipment, which Call Window excludes customer holidays unless otherwise stated. The basic coverage is 8:00 a.m. to 5:00 p.m. (Pacific Time) Monday through Friday (hereafter, "basic coverage"). Extensions beyond the basic coverage may result in twelve (12), sixteen (16) or twenty-four (24) hours of coverage per day, Monday through Friday; and include eight (8), twelve (12), sixteen (16) or twenty-four (24) hours per day Saturday, and/or Sunday, and/or holidays. The Call Window on Monday through Friday shall be

the same each day, and the Call Window on Saturday and Sunday shall be the same on all Saturdays and/or Sundays. The Call Window for basic coverage shall begin at 8:00 a.m. daily and shall consist of consecutive hours selected.

- C. Parts and Labor. In response to calls placed during the Call Window, Vendor will provide and bear the cost or parts and labor required to maintain the equipment in accordance with the warranty and services provisions hereof, provided that such labor and parts are needed because of normal wear-and-tear. Maintenance will include replacement of parts as necessary in order to conform with the warranty provisions hereof. All parts will be furnished on an exchange basis and will be new standard parts; exchanged parts removed from the system become the property of Customer.
- D. Change Orders. Vendor will install all change orders on the vendor-supplied equipment covered by this Agreement subject to Customer's right of refusal of any order. The installation shall be at no charge if done concurrently with preventive maintenance, at another time in response to a call placed within the Call Window, or as mutually agreed upon.
- E. Reconditioning. At the end of twelve (12) months of maintenance service or any time thereafter, if individual item(s) cannot, in Vendor's opinion, be properly or economically repaired on site due to excessive wear or deterioration, Vendor shall supply the Customer with a quote for reconditioning at Vendor's product repair center or other factory repair location. However, failure to accept Vendor's offer to recondition shall not relieve Vendor of its maintenance obligations under and during the term of this Agreement.
- F. Response Time.
 - (1) Within Call Window. Vendor will respond to telephone remedial maintenance requests received during the Call Window within a response time of fifteen (15) minutes. This response will consist of telephone-initiated diagnostic assistance and advice for all service requests in which this service will aid in problem resolution. If the equipment cannot be promptly restored to good working order without maintenance assistance on site, Vendor will supply repair personnel on site within the response time (from the time of the return telephone call by Customer so notifying him) provided in the Purchase Order. Such Vendor personnel will then commence and diligently prosecute efforts to correct the noticed problems and to restore the equipment to good working order, and will continue such efforts until the equipment is satisfactorily repaired.
 - (2) Outside of Call Window. Vendor will respond to telephone remedial maintenance requests outside of the Call Window in the same response time and manner as if inside the Call Window and will, outside the Call

Window, supply repair personnel on site for noticed problems not solved by telephone remedial assistance within the time period and for the additional charges set forth in the Purchase Order.

- (3) Vendor Reimbursement. In the event that the problems leading to Vendor's on-site assistance, whether inside or outside the Call Window, are caused by Customer's gross misuse of the equipment, Customer shall be liable to Vendor for reimbursement at Vendor's then prevailing time and materials charges.

- G. Maintenance Log. The Vendor shall maintain, at the Customer's site (with a copy thereof furnished to Customer at Customer's request) a written maintenance and repair log and record therein each incident of equipment defect or malfunction, the date, time, and duration of all maintenance work performed on the equipment, and a description of the cause for the work, either by description of the defect or malfunction or as regular maintenance and diagnostic reports of correction, adjustments, or updates. The information in the log shall be aggregated into a management report which shall be provided on a monthly basis or as otherwise indicated to the Customer.

4. SERVICE LIMITATIONS.

- A. This Agreement covers all causes of equipment malfunction resulting in downtime, except for those malfunctions caused by negligent acts of persons other than Vendor or Vendor's subcontractors.
- B. The Services do not include operating supplies or accessories, cleaning supplies necessary for Customer preventive maintenance, paint, or refinishing the equipment or furnishing materials for this purpose; or electrical work external to the machines or maintenance of accessories, alterations, attachments or other devices not furnished by Vendor unless specifically noted herein.

5. 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 Vendor's proprietary/confidential information to any third party other than Customer's consultants, agents and representatives having access to Customer proprietary data. Further, Vendor 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.

6. RESPONSIBILITIES OF CUSTOMER.

The Customer shall promptly notify Vendor of equipment failure and thereafter allow Vendor full and free access to the equipment at a time mutually agreeable to Vendor and Customer. Also, the Customer will allow Vendor to use such machines, communications facilities, features and other equipment (except as normally supplied by Vendor), consistent with Customer's normal business practices, at no charge, as in the reasonable opinions of Customer and Vendor are necessary in order to enable Vendor to perform the Services hereunder. Customer's representative shall be on the premises during Vendor's performance of the Services. To facilitate Vendor's performance of the Services, the Customer agrees to provide reasonable facilities with adequate heat and light, and access to a telephone line in accordance with Customer's business practices. These facilities are to be provided upon request and at no charge to Vendor. Throughout the term of this Agreement, Customer shall control site environmental conditions as specified herein or, in the absence of specification, according to standards of the industry.

7. CHARGES AND ADJUSTMENTS.

- A. Monthly charges will be invoiced one (1) month in advance pursuant to the schedule of charges in the Purchase Order. Charges for a partial month's service will be prorated on a thirty (30) day month.
- B. Charges for any of the Services resulting from Vendor performance, the Customer request for which shall have been made outside the applicable Call Window, or for reasons other than normal wear-and-tear, will be invoiced after completion of the call at the rates stated in the Purchase Order and are payable upon receipt of correct invoice.
- C. Vendor may increase monthly charges as specified herein by no more than ten percent (10%) on the yearly anniversary date of any such Purchase Order by giving ninety (90) days prior written notice. The increased monthly charges shall not exceed Vendor's published charges for maintenance service on the effective date of the adjustment. The charges for equipment added to this Agreement will not exceed the current published rate at the time the equipment is added.
- D. Failure of Vendor to meet his response time obligations, either for telephone diagnostic assistance or on-site, shall result, at Customer's option, in either (i) a percentage credit against subsequent monthly maintenance charges, as provided in the Purchase Order, (ii) Customer's retention of a third party maintain or to conduct such repair work on-site where Vendor is more

than six hours late, in which event Vendor shall be obligated to reimburse Customer for the reasonable charges therefore, or (iii) Customer's termination of this Agreement, for failure to meet response time obligations on three successive occasions or two or more times in any month, in which case Customer shall have all remedies at law and equity for material breach.

- E. Failure of Vendor to meet its obligations to satisfactorily complete its repair work within the time period provided in the Purchase Order shall result, at Customer's option, in either (i) a percentage credit against subsequent monthly maintenance charges, as provided in the Purchase Order or (ii) Customer's retention of a third party maintain or to conduct such repair work on-site, in which event Vendor shall be obligated to reimburse Customer for the reasonable charges therefore, or (iii) Customer's termination of this Agreement without further liability by Vendor.
- F. Invoices. One each month (or more frequently if approved by Customer), Vendor shall submit to Customer, 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 Vendor's invoices shall be subject to adjustment for any amounts subsequently found upon audit or otherwise to have been improperly invoiced.
- G. 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/nu_cp_oasis.htm.

8. RIGHT TO RESCHEDULE MAINTENANCE.

If Customer, because of operational or other needs, shall desire to reschedule preventive maintenance, engineering changes, or remedial maintenance, either in single instances or in patterns, the Vendor shall use its best efforts to accommodate such changes. In any event, Customer shall have the right to require Vendor to adjourn such maintenance from any scheduled time, to a date and time not later than ten (10) days thereafter, by offering to Vendor at least three (3) adjourned times within the adjournment period, out of which Vendor may select any one most convenient time to him. In the event the Customer decides that equipment performance warrants an increase or reduction in the preventive maintenance hours, Vendor shall so increase or decrease such maintenance, provided such requested increase or decrease is reasonable.

9. SPARE PARTS AVAILABILITY.

Vendor shall maintain a supply of spare parts to make emergency repairs. Vendor shall maintain all spare parts necessary to repair the equipment (so as to restore it to its proper operating condition).

10. RIGHT TO PURCHASE SPARES.

Vendor agrees, for as long as the equipment shall remain in use by Customer and spare parts for such equipment shall be available, to sell to Customer, at prevailing delivery and payment terms, all necessary

spare parts required for the maintenance of the equipment. Vendor further guarantees the availability of all spare parts for five years following the sale date of the equipment. Such sales shall be made at prices then in effect, but in the case of spare parts manufactured by Vendor, prices shall not be increased by more than ten percent (10%) per year for each year between any order for such portion of the cost of such spare parts in excess of such ten percent (10%) increase per year as Vendor shall demonstrate (by presentation of supplier's invoice) shall have been charged to Vendor by Vendor's suppliers.

11. TRAINING OF CUSTOMER'S PERSONNEL.

Vendor agrees that any training provided by Vendor shall be usable by any person(s) designated by Customer, irrespective of whether such person(s) are employed at the site where such equipment is, or is to be, located.

12. MOVEMENT OF EQUIPMENT EXTERNAL TO THE PLANT.

A. To permit continuity of provision of the Services under this Agreement, the Customer shall give Vendor prior written notice of its intent to move the equipment from the site of installation to a location outside the plant. Equipment moved outside the continental United States shall be eligible for continued service under Vendor's local terms and conditions then in effect for like equipment in the territory or country of reinstallation.

B. Vendor's personnel shall supervise the dismantling and packing/unpacking of the equipment and shall inspect and reinstall the equipment at the new location, and charge the Customer for all such labor and materials provided at its then current rates and terms. Said charges shall be authorized by separate purchase order. The monthly charges shall be suspended when the system is dismantled and reinstated on the day following equipment reinstallation and acceptance by Vendor at the new location.

13. WARRANTIES.

A. In addition to any other warranties of Vendor applicable to the equipment, Vendor warrants that it will maintain the equipment, both during the warranty period and thereafter for the duration of this Agreement, in such a manner so that the equipment shall be ninety-five percent (95%) operationally available. For purpose of this section, "operational availability" is defined as "the time the system/subsystem, for which the equipment specified in any Purchase Order hereto was purchased, is available to the users to do useful work." Percentage of operational availability ("OA") as so defined shall be determined by application of the formula

$$OA = \frac{A - (B + C)}{A - C} \text{ where}$$

A = the hours of the Call Window during the given month.

B = the hours in that month during which the system/subsystem is unavailable to the

user to do useful work, due to a Vendor-supplied hardware malfunction (measured from the time Vendor is notified of the problem until the time repair is completed, provided such notification is received during the hours of contract coverage).

C = scheduled Preventive Maintenance for that month. If PM is scheduled by mutual agreement of Vendor and Customer but the system/subsystem is not released by the Customer, then any downtime prior to the next scheduled PM shall be excluded from the availability calculation.

B. In the event that the Vendor is the manufacturer of the equipment, Vendor warrants that all engineering changes generally adopted hereafter by Vendor on similar equipment shall be made to the equipment to be maintained hereunder at no cost to the Customer, provided however, that if such an engineering change is an enhancement which Vendor generally markets at extra cost or which by its addition increases the price of later-marketed equipment, then Customer shall be charged the lowest price for such enhancement which Vendor charges any of its other customers or purchasers of its equipment.

C. The Services will be performed in a timely and workmanlike manner, using only qualified maintenance technicians, totally familiar with the equipment and its operation.

D. Vendor warrants that the performance of the Services by Vendor will not in any way constitute an infringement or other violation of any copyright, trade secret, trademark, patent, invention, proprietary information or non-disclosure rights of any third party.

E. The Vendor will not be in violation of any applicable law, rule or regulation and it shall comply with and be responsible for ensuring that its employees comply with all statutory provision, regulations, orders and by-laws of any governmental authority relating to the carrying out of the Services.

14. TERM.

This Agreement is effective from the date of execution until the scheduled termination date as set forth in the Purchase Order hereto unless earlier terminated by either party for any of the causes set forth herein, subject to the notice and other requirements herein set forth. Vendor shall, if requested in writing, continue to provide maintenance Services for the duration of the equipment lease if the same has been leased from Vendor.

15. 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 Vendor and shall pay to Vendor 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 Vendor 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 Vendor's termination claim and (2) a reasonable profit on such Services performed; provided, however, that Customer shall not be liable to Vendor 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 products.

- B. Cancellation Default. Except in the case of delay or failure resulting from circumstances beyond the control and without the fault or negligence of Vendor or of its suppliers or subcontractors, Customer shall be entitled by written cancellation notice to Vendor 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 Vendor by reason of Vendor's default as provided by law. If it be found that Vendor 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 15.A above, Termination-Convenience.
- C. Other. By written notice to Vendor, Customer may cancel the whole or part of this Agreement in the event of suspension of Vendor's business, insolvency of Vendor, institution of bankruptcy, reorganization, arrangement, liquidation proceedings by or against Vendor or proceedings for the benefit of creditors or for any failure by Vendor 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.
- D. Vendor shall also be deemed in default if the hardware continues to exhibit defects causing serious disruption of use and/or repeated periods of downtime, notwithstanding Vendor's remedial or maintenance efforts, over a continuous period of three months or more.
- E. Maintenance Termination. Customer may immediately terminate this Agreement upon termination or breach of any maintenance agreement between Vendor and Customer.
- F. Rights and Obligations of the Parties on Termination. In the event that this Agreement is terminated, each party shall forthwith return to the other all papers, materials, and other properties of the other party then in its possession or certify to the destruction of same.

16. CLEARANCE OF MATERIALS INTENDED FOR PUBLIC RELEASE.

No news release, including photographs and films, advertisement, public announcement, denial or confirmation of same, or 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.

17. CONSEQUENTIAL DAMAGES.

The parties shall not be liable to the other party for consequential damages, including lost profits, arising from default in the performance of this Agreement.

18. 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.

19. TAXES.

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

20. DELEGATION AND ASSIGNMENT.

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

21. 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.

22. CUSTOMER'S INSTRUCTIONS.

During the course of the Services the Vendor will be responsible for ensuring that its employees, servants and agents will, whenever on the Customer's premises, obey all reasonable instructions and directions issued by the Customer. Continued failure of Vendor's personnel to follow reasonable instructions by Customer will entitle Customer to terminate this Agreement.

23. INSURANCE.

Vendor warrants that it has insured against all losses, claims, demands, proceedings, damages, costs, charges and expenses for injuries or damage to any person or property which are the result of the fault or negligence of the Vendor in the carrying out of the Services including, without limitation, workman's compensation, public liability, property damage and automobile liability.

24. 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 inclusion of other remedies.

25. NOTICES.

Any notice or other communication hereunder shall be in writing.

26. 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.

27. 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.

28. 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.