

CT-77
NORTHROP GRUMMAN SYSTEMS CORPORATION
PURCHASE ORDER TERMS AND CONDITIONS
AGREEMENT FOR SOFTWARE DEVELOPMENT

Title and Clause Number		Title and Clause Number	
Acceptance of System	8.	Independent Contractor	32.
Changes	17.	Insurance	20.
Choice of Law	26.	Invoice and Payment	9.
Clearance of Materials Intended for Public Release	24.	Noncompetition	13.
Complete Agreement	27	Notices	30.
Confidentiality of Licensor's Information	4.	Ownership	11.
Consequential Damages	18.	Patent, Trademark and Copyright Indemnity	21.
Continuing Vendor Support to Customer	14.	Performance Delay	7.
Cumulation of Remedies	29	Performance Standards	5.
Customer's Instructions	28	Progress Report	6.
Definitions and Acceptance of Order	1.	Right to Defend in Actions	23.
Delegation and Assignment	25.	Taxes	19.
Development of the Software	3.	Term of Agreement	12.
Disputes	33.	Termination / Cancellation	16.
Entire Agreement	2.	Waiver	31.
Improvements and Other Modifications	10.	Waiver of Right to Jury Trial	34.
Indemnification	22.	Warranties	15.

1. DEFINITIONS AND ACCEPTANCE OF ORDER.

- A. "Customer," "Buyer," "Licensee" or "Lessee" means the entity name listed on the Purchase Order/Subcontract. "Licensor," "Seller," 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 documents, exhibits and attachments referenced thereon.
- B. This Order constitutes Customer's offer. Acceptance is expressly limited to the terms of the 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 any appendices or other attachments hereto, constitutes the entire agreement between the parties in relation to this subject matter.

3. DEVELOPMENT OF THE SOFTWARE.

Vendor agrees to develop and provide software (the "Developed Software") in accordance with the

provisions, specifications, conditions, warranties and agreements set forth herein and in the Purchase Order, exhibits and appendices hereto.

4. 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.

5. PERFORMANCE STANDARDS.

Vendor hereby consents and warrants that the Developed Software provided for herein shall comply with the specifications and performance standards set forth in the Purchase Order shall be designed to operate on the equipment therein described, subject to the limits on times of operation and equipment utilization stated in the Purchase Order or other attachment.

6. PROGRESS REPORT.

Upon completion of each phase, Vendor shall submit to Customer a progress Report certifying that Vendor has completed all the tasks relating to development and testing of the Developed Software, documentation and other materials required to be completed in such phase. The Progress Report shall be signed by an authorized officer of Vendor, who shall certify that the representations contained therein are complete and accurate. The Progress Report shall also set forth in detail any recommended changes with respect to remaining phases of development in view of Vendor's experience with the completed phase(s).

7. PERFORMANCE DELAY.

Time is of the essence in the Vendor's performance of this Agreement. If at any time it appears to Vendor 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, Vendor 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, Vendor 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 Vendor, unless the delay in performance arises out of causes beyond the control and without the fault or negligence of Vendor 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.

8. ACCEPTANCE OF SYSTEM.

- A. Delivery and Installation. Immediately upon the completion of each phase of development enumerated and described in the Purchase Order, Vendor shall deliver and install the Developed Software and deliver all products, documentation and other materials required to be provided under such phase including the Progress Report provided for in Section 5 hereof. Vendor shall inform Customer of its readiness for testing by Customer (the date of such notification hereinafter being referred to as the "Installation Date").
- B. Acceptance Tests; Corrections. Promptly after the Installation Date Customer shall perform the tests specified in the Purchase Order or other attachments (hereinafter referred to as the

"Acceptance Tests"), during the time period specified to determine whether: (i) the Developed Software meets the specifications and performance standards and (ii) the system performs repetitively on a variety of data without failure. Upon completion of the last phase, the Acceptance Tests shall be performed on the system as a whole in order to determine whether the integration of the Developed Software and any necessary equipment meets the specifications for the system set forth herein and operates with internal consistency. In the event that the Acceptance Tests establish that the Developed Software does not perform in accordance with such specifications and performance standards, or the system as a whole fails to satisfy performance specifications appropriate to its stage of completion when tested, Customer shall forthwith notify Vendor and Vendor shall within the time period set forth in the Purchase Order or other attachments, modify or improve the Developed Software delivered to Customer, at Vendor's expense, to ensure that the Developed Software and the system as a whole perform in accordance with the aforesaid specifications and performance standards. Customer shall thereafter have a second test period of equal duration to reconduct the Acceptance Tests. Failure of the Developed Software to meet the aforesaid specifications and performance standards after the second set of Acceptance Tests shall constitute a default by Vendor under Section 15(B) hereof.

- C. Acceptance Date. If and when the Acceptance Tests establish that the Developed Software delivered upon completion of any phase of development is performing in accordance with the provisions hereof, Customer shall promptly notify Vendor that it accepts the Developed Software.

9. INVOICE AND PAYMENT.

- A. 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.
- B. 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.

10. IMPROVEMENTS AND OTHER MODIFICATIONS.

- A. Improvements. Improvements in the Software (which shall mean any additions or modifications made by the Licensor to or in the Software at any time after the acceptance test) which improve the efficiency and effectiveness of the basic program

function(s) described in the Purchase Order shall be furnished to the Customer at no charge.

- B. Program Changes. If, at any time after the Acceptance Date, Vendor shall develop any changes in the Software which significantly changes the basic program function(s) of the Software or add one or more new ones, Customer shall have the right to obtain such program changes at the lesser of (i) Vendor's standard prices then in effect for installing such changes, or (ii) the difference between the then current price of the Software including such changes and the applicable fees and charges for the Software reflected herein. All applicable site or multiple copy discounts shall also apply.

11. OWNERSHIP.

Transfer of Title. Upon completion of each phase and the delivery and acceptance of the Developed Software (and associated documentation) required to be delivered under such phase, and payment by Customer, the Developed Software (and associated documentation) required to be delivered under such phase shall be the sole and exclusive property of Customer, free from any claim, lien for balance due or rights of retention thereto on the part of Vendor; title to such Developed Software and associated documentation shall pass to Customer upon successful completion of the Acceptance Tests applicable to each phase of development. Vendor shall have no right to disclose or use any Developed Software required to be delivered hereunder for any purpose whatsoever, and Vendor acknowledges that such Developed Software (and associated documentation) is proprietary to Customer and has been specially developed for Customer for its own and sole use pursuant to this Agreement.

Seller agrees to release, transfer and assign and does hereby release, transfer and assign to Buyer all right, title, and interest to Buyer 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 Buyer in all lawful acts which may be necessary or desirable or become necessary or desirable in the judgment of Buyer including execution and acknowledgment of all specific, subsequent, confirming, and implementing assignment documents in order to perfect such transfer to Buyer of the Rights contemplated hereunder. Buyer agrees to reimburse Seller for reasonable costs, including attorney's fees which Seller may incur performing such efforts.

12. TERM OF AGREEMENT.

The term of this Agreement commences on the date this Agreement is executed or as otherwise agreed. The term extends for the duration specified, unless earlier terminated in accordance with other provisions of this

Agreement or unless extended by mutual written agreement for additional terms.

13. NONCOMPETITION.

During the performance of this Agreement and for two years thereafter Vendor agrees not to perform the same or similar services as are described in the Purchase Order for any person or entity who competes in the business described in the Purchase Order.

14. CONTINUING VENDOR SUPPORT TO CUSTOMER.

Vendor agrees promptly to provide Customer with all assistance reasonably required to permit Customer to use and operate the Developed Software in the system contemplated by this agreement. During the warranty period set forth in Section 14 hereof, such Vendor support shall include, but not be limited to, assistance with site planning, installation of equipment, training, design, programming, software support and modification, data base design and data conversion for both the Developed Software and any licensed software, together with other support services set forth in the Purchase Order. Thereafter, Vendor shall provide maintenance service for the term and at the price therein specified. Vendor represents that any personnel it supplies to assist Customer pursuant to this section shall be fully qualified to provide the necessary assistance.

15. WARRANTIES.

- A. Software and Services. Vendor warrants that for twelve (12) months following the acceptance of the total system, the Developed Software (and associated documentation) to be delivered to Customer hereunder shall be free from significant programming errors and from defects in workmanship) and materials; shall conform to the performance capabilities, characteristics, specifications, functions and other descriptions and standards applicable thereto as set forth in the Purchase Order or attachments; and that, in general, the services to be performed by Vendor shall be performed in a timely and professional manner by qualified technicians totally familiar with such Developed Software. In the event that defects are discovered during the warranty period, Vendor shall promptly remedy such defects at no additional expense to Customer.
- B. Original Development. Vendor warrants that the Developed Software and all products, documentation and other materials required to be delivered to Customer hereunder will be of original development by Vendor and will be specifically developed for the fulfillment of this agreement and that the Developed Software does not infringe upon or violate any patent, copyrights, trade secret, trademark, invention, proprietary information, nondisclosure, or other rights of any third party.
- C. Compliance with Laws.
- (1) Federal, State and Local Laws. Vendor Warrants that in the performance of this Agreement, it shall comply with all applicable Federal, state and local laws. On its invoice or in other form satisfactory to

Customer, Vendor shall submit certification that the products 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.

- (2) Equal Opportunity. Customer is an "Equal Opportunity" employer and Vendor shall, therefore, comply with the provisions of the President's Executive Order 11246 as supplemented and all related regulations of the Department of Labor.

16. 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 work, work in process, materials directly related to the Agreement, for orderly phase out of performance as requested by Customer 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 work 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 Software program 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. Refund of Payments After Acceptance. The Vendor shall, upon termination by Customer due to default after acceptance of the Software, return payments it received for the Software and the services according to the following schedule. The refund of monies paid hereunder shall not be deemed the exclusive remedy of Customer in the event of a default or breach of this Agreement by Vendor.

Termination Date After Acceptance	Percentage of License Fee to be Refunded
less than 6 months	90%
within 6-12 months	75%
within 13-24 months	50%
within 25-36 months	25%
within 37-48 months	10%
more than 48 months	0%

- G. Return of Properties. Upon the termination of this Agreement by either party, or its expiration, each party forthwith shall return to the other all papers, materials and other properties of the other held by it in connection with the performance of this Agreement or certify to the destruction of same; provided, however, that if Customer terminates because Vendor is in default or unable to perform, Customer shall have the right to keep such papers, materials and other properties until such time as Customer has found a comparable replacement for the Vendor.

17. CHANGES.

Customers 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 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 Vendor for adjustment under this clause, must be asserted within thirty (30) days from the date of receipt by Vendor 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 Vendor'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 Vendor from proceeding with this Agreement as changed.

18. CONSEQUENTIAL DAMAGES.

In no event shall either of the parties hereto be liable to the other for payment of any consequential damages resulting from the default in the performance of their respective obligations under this Agreement. However, the provisions of this section shall not apply in any way to Vendor's obligation to indemnify any Indemnified Party pursuant to Section 21 hereof.

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. INSURANCE.

Vendor shall maintain in effect at all times during the term hereof insurance (including, without limitation, workman's compensation, public liability, product liability, property damage and automobile liability insurance) against all losses, claims, demands, proceedings, damages, costs, charges and expenses for injuries or damage to any person or property arising out of or in connection with this Agreement which are the result of the fault or negligence of Vendor, its agents and subcontractors. Vendor shall name Customer, its officers, agents and employees as an additional insured on all policies of insurance.

21. 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.

22. INDEMNIFICATION.

The Vendor does hereby indemnify and shall hold harmless (including reasonable attorney's fees) the Customer and any employee or agent thereof (each of the foregoing being hereinafter referred to individually as "Indemnified Party") against all liability to third parties (other than liability solely the fault of the Indemnified Party) arising from or in connection with the violation of any third party's trade secrets, proprietary information, trademark, copyright, or patent right in connection with the performance of the services hereunder. The Vendor's obligation to indemnify any Indemnified Party will survive the expiration or termination of this Agreement by either party for any reason. Customer shall promptly notify Vendor of any third party claim and Vendor may, at its option, participate in the defense in any such third party action arising as described herein and Customer promises fully to cooperate with such defense.

23. RIGHT TO DEFEND IN ACTIONS.

Vendor agrees to notify Customer immediately upon the commencement of any actions brought against Vendor whose outcome may affect the rights of the Customer herein granted and Customer shall have the right at its own expense to appear in and defend such actions.

24. 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.

25. 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.

26. 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.

27. COMPLETE AGREEMENT.

This Agreement constitutes the entire agreement and understanding between the parties relating to the license and use of the products, and all other prior agreements, arrangements or understandings, oral or written, are merged into and superseded by the terms of this Agreement.

28. CUSTOMER'S INSTRUCTIONS.

During the term of this Agreement, Vendor will be responsible for ensuring that its employees, servants, and agents will, whenever on Customer's premises, obey all reasonable instructions and directions issued by Customer. Vendor acknowledges its responsibility to comply with all United States Government security regulations.

29. 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.

30. NOTICES.

Any notice or other communication hereunder shall be in writing.

31. 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.

32. INDEPENDENT CONTRACTOR.

It is expressly understood that Vendor and Customer are contractors independent of one another, and that neither has the authority to bind the other to any third person or otherwise to act in any way as the representative of the other, unless otherwise expressly agreed to in writing signed by both parties hereto.

33. 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.

34. 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.