

SPECIALIZED TERMS AND CONDITIONS
Software License Order Addendum

THE FOLLOWING TERMS AND CONDITIONS SHALL PREVAIL TO THE EXTENT THEY CONFLICT WITH THE APPLICABLE NG CTM-P-ST SERIES 001-412 TERMS AND CONDITIONS GOVERNING THE ORDER. FURTHERMORE, THIS ADDENDUM CONTAINS ADDITIONAL TERMS AND CONDITIONS UNIQUE TO THIS ADDENDUM. ALL NON-CONFLICTING TERMS AND CONDITIONS IN THE APPLICABLE NG CTM-P-ST SERIES 001-412 TERMS AND CONDITIONS GOVERNING THE ORDER SHALL REMAIN IN FULL FORCE UNLESS OTHERWISE INDICATED HEREIN.

CLAUSE TITLE AND NUMBER

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1. DEFINITIONS

- A. "Licensed Software" means that computer software Products purchased under the terms of the Order and this Addendum.
 B. "Software License" means the license governing the use of the Licensed Software, attached as an exhibit to this Addendum.

2. ACCEPTANCE OF SOFTWARE

- A. The issuance of an Order, and the execution of the Software License as may be amended by Buyer, constitute Buyer's offer. Acceptance of Buyer's offer is expressly limited to the terms and conditions of the Order, which may include the Software License, as amended by Buyer, to the extent that such license is attached as an exhibit and the terms and conditions of the Software License are consistent with and do not in any way conflict with Buyer's terms and conditions as stated in this Addendum and the herein. In the event of any inconsistencies between the terms and conditions of Buyer and the Software License the terms and conditions of Buyer shall prevail.
 B. The Licensed Software shall be accepted as conforming to the requirements of the Order (including the Software License) only upon successful completion of the validation process attached as an exhibit to this Addendum. If Seller fails within thirty (30) calendar days to correct the defects contained in the "listing", Buyer may; (a) issue a "partial acceptance" of the Licensed Software, after Seller and Buyer enter into good faith negotiations to determine the equitable adjustment in the price to account for such deficiency; (b) conditionally accept the Licensed Software for a specified period of time while reserving its right to revoke acceptance if timely correction(s)/modification(s) are not forthcoming during the agreed to time period, or (c) pursue whatever other remedies are available under the Order. In all cases, in which corrections and/or modifications are required to correct deficiencies discovered during validation of the Licensed Software the date upon which such Licensed Software are re-validated shall for all intents and purposes be the "Acceptance Date."

3. APPLICABILITY OF SOFTWARE LICENSE

During the warranty period of any agreement between Seller and Buyer pertaining to the Licensed Software, all of the provisions of the Order shall be applicable without additional charge.

4. CONFIDENTIALITY OF SELLER'S INFORMATION (Applicable to Forms CTM-P-ST-005 through 007)

"Software Proprietary Information" shall mean (i) the Licensed Software, and (ii) documentation which is provided or otherwise made available by Seller to Buyer to support the Licensed Software and is marked proprietary or bears a marking of like import. Buyer shall hold all Software Proprietary Information in confidence and restrict disclosure thereof to only its employees, contract labor and agents who have a need to know so that Buyer may perform its obligations and exercise its rights under the Order and are under obligations to hold such information in confidence under terms and conditions at least as restrictive as the terms and conditions of the Order. Further, Buyer shall have the right to copy the Licensed Software for backup and archival purposes.

Buyer shall not be liable hereunder for use or disclosure of Software Proprietary Information which occur after such Software Proprietary Information:

1. is or becomes publicly known through no wrongful act of Buyer; or
2. is known to or in the possession of Buyer without restriction on disclosure or use through no wrongful act of Buyer, as evidenced by competent proof; or
3. is rightfully received by Buyer from a third party without restriction and without breach of the Order; or
4. is independently developed by Buyer without the use of or reference to the Proprietary Information.

In addition, Buyer shall not be liable hereunder for use or disclosure of Software Proprietary Information if such Software Proprietary Information is disclosed to satisfy a legal order by a court of competent jurisdiction or United States Government action; provided, however, that Buyer shall first advise Seller within sufficient time prior to the disclosure so that Seller has the opportunity to seek appropriate relief from the court or governmental order, and provided further that Buyer shall disclose only those portions of the Software Proprietary Information legally required to be disclosed and request confidential treatment of the Software Proprietary Information by the court or governmental entity.

5. 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 arising from Buyer's use of the Licensed Software. Seller will cooperate with Buyer 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 terms and conditions governing the order.

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6. DATA CONTROL

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

7. INDEMNIFICATION – SOFTWARE LICENSE

Seller shall not be liable for any claim of intellectual property infringement based upon (i) use of other than the latest unmodified release of the Software made available to Buyer by Seller if such infringement would have been avoided by the use of such release of the Software and Buyer could have reasonably updated the Software in compliance with the law and its contractual obligations, or (ii) use or combinations of the Software with non-Seller programs or data if such infringements would not have occurred, but for, such use or combinations.

8. MERGERS AND ACQUISITIONS – IT PRODUCTS AND SERVICES

- A. If Buyer merges with or acquires entities that have existing licenses to the Licensed Software, the merged, or acquired entity's licenses will terminate upon completion of the acquisition or merger, and the merger/acquired entity's licenses will be combined with Buyer's existing Software Licenses of the same license type under the terms of the Order, provided that there are no outstanding receivables against either Buyer or the merged/acquired entity's account related to the Licensed Software. 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). 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 the Order at no additional cost.
- B. 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 the Order and utilize any of Buyer's pricing discounts in support of the acquired entity.
- C. In the event Buyer acquires a company that has a pre-existing contract with Seller at lower pricing than incorporated in the Order, the Parties shall amend the Order to incorporate the lower pricing.

9. NOTICE

Any notice or other communication hereunder required or that may be given pursuant to the Order shall be deemed received three (3) days after transmittal provided the correspondence is appropriately addressed as follows, using confirmed electronic mail, registered mail, return receipt requested, or any of the express mail services.

10. NO AUTOMATIC RENEWAL OF LICENSES

Notwithstanding any terms to the contrary, the Software Licenses purchased under the Order shall not be extended beyond the purchased license term without express written consent of Buyer.

11. SOFTWARE MAINTENANCE

The Order does not include any current or future maintenance provisions with Seller. If the Parties agree to enter into a separate contractual maintenance order, and such maintenance order is terminated, such termination shall not affect the software licenses granted under the Order.

12. TRANSFERS AND RIGHT-TO-USE SOFTWARE

- A. Buyer shall have the unrestricted right to transfer the Software License(s) to its parent and/or any subsidiary of Buyer upon written notification to Seller of such transfer without payment of additional costs or fees provided that the total number of Software Licenses purchased by Buyer is not exceeded. In the event that Buyer's Software License(s) usage exceeds the total number of Software License(s) purchased, Seller and Buyer hereby agree to enter into good faith negotiations for the purchase of the additionally required Software License(s) or Buyer shall comply with the previously established Software License(s) usage limits.
- B. Buyer shall have the right to reproduce the Licensed Software and documentation described in the Order as reasonably required for its internal distribution of software to users, disaster recovery, or archival purposes, provided that all copies shall include Seller's copyright and any other proprietary notices and be subject to the restrictions of the Order and any exceptions to this provision as mutually agreed by the Parties in writing.
- C. Buyer, as part of a prime contract with a third party (Government or Commercial), may use the Licensed Software in support of that prime contract. The terms and conditions of the Order shall not change or otherwise be affected by the use of the Licensed Software in this manner. Any access to or use of the Licensed Software by any non-Buyer representatives shall be for the sole and express purpose of accomplishing Buyer's prime contract obligations. Buyer expressly confirms that it shall not use the Licensed Software in the operation of a service bureau.
- D. Seller shall ensure that, unless otherwise specifically specified in the Order, the Licensed Software shall be the latest production version of the software which shall include the most recent attachments, definitions, improvements, enhancements, additions and/or modifications to the software.

13. WARRANTIES – SOFTWARE LICENSE

- A. Seller warrants that (i) all Licensed Software, including Seller provided updates, are free of Viruses or any other programmed device that could impair Buyer's use of the Software or the equipment on which the Software resides; (ii) all Licensed Software developed and/or otherwise provided by Seller to Buyer shall (a) contain no hidden files, (b) not replicate, transmit, or activate itself without control of a person operating computing equipment on which it resides, (c) not alter, damage, or erase any data or computer programs without control of a person operating the computing equipment on which it resides, and (d) contain no key, node lock, time-out, or other function, whether implemented by electronic, mechanical or other means, which restricts or may restricts use or access to any software or data developed and/or otherwise provided by Seller to Buyer under the Order; (iii) the media on which the Licensed Software is provided shall be free of defects in material and workmanship; (iv) Licensed Software shall conform to the performance capabilities, specifications, functions and other descriptions and standards set forth in the supporting documentation; (v) the Licensed Software shall substantially perform in accordance with the user manuals and the documentation; and (vi) the Licensed Software shall be compatible with the operating system, application programs, computing equipment and networks contemplated by the applicable documentation.
- B. The foregoing warranties shall survive inspection and acceptance of, and payment for, the Licensed Software and shall remain in effect for the term of the Software License as to each Licensed Software furnished and shall run to Buyer, its successors, assigns, and customers under a prime contract. These warranties shall not be deemed to limit any warranties of additional scope given to Buyer by Seller, nor limit Buyer's rights or Seller's obligations under any other provision of the Order, at law or in equity. No warranties are waived by Buyer supplying, reviewing, commenting upon, or approving plans, specifications, or Data, issuing changes to the Order, or inspecting or accepting the Licensed Software.

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14. TERMINATION/CANCELATION – SOFTWARE LICENSE

- A. In addition to the termination and cancellation provisions of the Order, the Software License(s) granted hereunder shall terminate thirty (30) days after Buyer gives Seller written notice of Buyer's desire to terminate the Order, for any reason, subject to payment of all Software License fees then due and owing.
- B. Seller shall also be deemed in default if the Licensed Software continues to exhibit defects causing serious disruption of use and/or repeated periods of downtime, notwithstanding Seller's remedial or maintenance efforts, over a continuous period of three months or more.
- C. Refund of Payments. The Seller shall, upon termination by Buyer due to default by Seller, and in addition to any other remedies at law or in equity available to Buyer, return payments it received under the Order.

**15. APPLICABILITY OF TERMS WHEN SOFTWARE SUPPLIED UNDER U.S. GOVERNMENT CONTRACT OR SUBCONTRACT
(Applicable to Forms CTM-P-ST-001 through 004)**

- A. If the Licensed Software is being supplied in connection with or pursuant to a contract with the U.S. Government or a subcontract thereunder, the applicable U.S. Federal Law and Procurement Regulations shall apply as appropriate in connection with the Order (as hereby amended by this Addendum) and with the rights and obligations of the U.S. Government, including those regulations referenced in the Order.
- B. Without limiting the general applicability of subsection A above, if the Licensed Software is being supplied in connection with or pursuant to a contract with the U.S. Government or a subcontract thereunder, no provision of the Order (as hereby amended by this Addendum) shall apply with respect to the U.S. Government insofar as such provision conflicts with applicable U.S. Federal Law, Federal Procurement Regulations, or applicable published procurement policies and practices of the relevant U.S. Government agency.