

PSS/T-70
NORTHROP GRUMMAN SYSTEMS CORPORATION
PURCHASE ORDER TERMS AND CONDITIONS
SOFTWARE LICENSE AGREEMENT

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1. DEFINITIONS.

- A. BUYER, LICENSEE or LESSEE means the entity name listed on the Purchase Order/Subcontract.
- B. SELLER, LICENSOR, or LESSOR means the party with whom Buyer is contracting. The Buyer and Seller are sometimes hereinafter referred to individually and collectively as the Party or Parties respectively.
- C. PURCHASE ORDER means the name and/or title of the instrument of contracting, including all documents, exhibits and attachments referenced therein.

2. ACCEPTANCE.

- A. The issuance of a Purchase Order and the execution of Seller's Software License and/or Lease Agreement as may be amended by Buyer constitute the Buyer's offer. Acceptance is expressly limited to the terms and conditions of the Purchase Order and as stated in Seller's Software License/Lease Agreement to the extent that such terms and conditions are consistent with and do not in any way conflict with the terms and conditions as stated herein. In the event of any inconsistencies between the terms and conditions of the Purchase Order and the Software License/Lease Agreement the terms and conditions of the Purchase Order shall prevail. The Purchase Order, Software License and/or Lease Agreement shall sometimes hereinafter be referred to collectively as the "Agreement". The Buyer hereby objects to any and all additional or different terms and conditions in the Seller's acceptance.
- B. The Purchase Order is accepted as written by executing the Acknowledgment or Acceptance copy of the Purchase Order, and/or by beginning performance.

- C. No modification of the Agreement (including any additional terms and conditions or different terms and conditions contained in the Seller's acceptance) shall be binding upon either Party unless and until agreed to in writing signed by the appropriate duly authorized representatives of the Parties.

3. ENTIRE AGREEMENT.

This Agreement, which shall include the Purchase Order and all appendices or other attachments referenced herein (which may include Seller's Software License/Lease Agreement if so referenced), constitutes the entire Agreement between Buyer and Seller and supersedes all prior oral and written agreements and/or proposals between the Parties relating to this subject.

4. TRANSFERS, PROVISIONS AND RIGHT-TO-USE SOFTWARE.

- A. Licensee shall have the unrestricted right to transfer the Software License(s) to its parent and/or any subsidiary of Licensee upon written notification to Licensor of such transfer without payment of additional costs or fees provided that the total number of Software Licenses purchased or leased by Licensee is not exceeded. In the event that Licensee Software License usage exceeds the total number of Software License(s) purchased or leased the Licensor and Licensee hereby agree to enter into good faith negotiations for the purchase and/or lease of the additionally required Software License(s) or Licensee shall comply with the previously established Software License(s) usage limits. Licensee shall have the right to reproduce the Software and Documentation described in the Purchase Order as reasonably required for its internal use, disaster recovery, or archival purposes, provided that all copies shall include Licensor's copyright and any other proprietary notices and be

subject to the restrictions of this Agreement and any exceptions to this provision as mutually agreed by the Parties in writing.

- B. Licensee as part of a prime contract with a non-entity (Government or Commercial), may use the Licensed Software in support of that prime contract. The terms and conditions of the Purchase Order shall not change or otherwise be affected by the use of the Software in this manner, provided that at no time shall Licensee attempt to or allow the Software to be transferred in whole or in part to any non-Buyer entity. Any access to or use of the Software by any non-Buyer entity representatives shall be for the sole and express purpose of accomplishing Buyer's prime contract obligations. Licensee expressly confirms that it shall not use the Licensed Software in the operation of a service bureau.
- C. Licensor shall ensure that unless otherwise specifically specified in the Purchase Order that the Software License(s) purchased and/or leased hereunder 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.

5. SOFTWARE MAINTENANCE.

This Agreement does not include any current or future maintenance provisions with Licensor. If the Parties agree to enter into a separate contractual maintenance agreement any current or future maintenance Agreement(s) which is terminated for any reason, shall not affect the continuation of the Agreement and/or the incorporated Software License and/or Lease Agreement(s).

6. PAYMENT SCHEDULE; FEES AND CHARGES.

- A. Upon Software delivery, installation, and successful validation of performance including any other agreed to obligations of Licensor for which performance is then due and receipt of a properly executed and accurate invoice, Licensee shall pay the fees and charges as specified in the Purchase Order to Licensor within thirty (30) days. If for whatever reason after receipt of a properly executed invoice Licensee fails to make payment or formally dispute the invoice Licensor may at its option request interest be accrued in an amount not to exceed the maximum amount allowed by law.
- 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/corp/pss/docs/InvoiceInstructions.pdf>.

7. CONFIDENTIALITY OF LICENSOR'S INFORMATION.

- A. Licensee hereby agrees that it shall use its 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 Licensee's proprietary data and a need to know. Licensor hereby agrees that all such proprietary/confidential

information provided to Licensee shall be marked with a stamp or legend indicating its confidential/proprietary nature.

- B. For the purposes of this Agreement, the term "reasonable efforts" shall mean that Licensor's proprietary/confidential information shall be preserved, maintained, and managed in accordance with the same policies and procedures by which Licensee protects its own proprietary/confidential information. Licensee shall not be liable for the use or disclosure of any such proprietary/confidential information if such information is:
 - (1) In the public domain at the time it was disclosed.
 - (2) Known to the Party receiving it at the time of disclosure.
 - (3) Used or disclosed inadvertently provided the appropriate degree of care is exercised.
 - (4) Used or disclosed with prior written approval of the Licensor.
 - (5) Independently developed by the receiving Party.
 - (6) Becomes known to the receiving Party without similar restrictions from a source other than the disclosing Party having the right to disclose.

8. VALIDATION OF SOFTWARE PERFORMANCE.

Unless otherwise agreed to by the Parties in advance, the Licensee shall install or cause to be installed the Licensed product(s) within fifteen (15) days of receipt. Once the Licensed Product(s) is installed, Licensee shall have the opportunity to validate the Licensed Product(s) performance to determine whether it functions substantially in accordance with the applicable documentation. Licensee shall validate the Licensed Product(s) performance pursuant to the procedures, criteria and descriptions set forth in Licensor's documentation and shall complete such tests as quickly as practical within no more than thirty (30) days after installation. Such validation shall be conducted on Licensee's site and equipment in order to determine whether the Software can be effectively utilized in Licensee's operating business environment. Licensee will provide a written "listing" identifying in reasonable detail, all known defects discovered during performance validation to Licensor. Within ten (10) days of receipt of such "listing" Licensor shall correct the items on the "listing" and/or shall commence corrective action(s) reasonably acceptable to Licensee and shall proceed with due diligence to correct the defects. All defect corrections shall be subject to re-validation. If Licensor fails to make the corrections or initiate corrections as set forth above such failure shall be deemed a material breach of this Agreement.

9. ACCEPTANCE OF SOFTWARE.

The Licensed Product(s) shall be accepted as conforming to the requirements of the Purchase Order (including the Software License and/or Lease Agreement) only upon successful completion of the validation process. If the Licensor fails within thirty (30) calendar days to correct the defects contained in the "listing", Licensee may; (a) issue a "partial acceptance"

of the Licensed Product(s), after Licensor and Licensee enter into good faith negotiations to determine the equitable adjustment in the price to account for such deficiency; (b) conditionally accept the Licensed Product(s) 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 this Agreement. In all cases, in which corrections and/or modifications are required to correct deficiencies discovered during validation of the Licensed Product(s) the date upon which such Licensed Product(s) are re-validated shall for all intents and purposes be the "Acceptance Date."

10. INDEMNIFICATION.

- A. Licensor warrants that the Software does not infringe upon or violate any patent, copyright or trade secret. Licensor shall defend and hold harmless, at its expense any action or demand brought against Licensee to the extent that it is based on a claim that the Software infringes a patent, copyright or trade secret and will pay any and all costs and damages incurred by the Licensee, including reasonable attorney fees which are attributable to such claim, provided that Licensee notifies Licensor promptly in writing of the claim and allows Licensor to fully control the defense and any settlement of such claim. Provided that such settlement does not require Licensee to pay any monetary or other type of compensation of any kind to the Licensor, claimant, or any other party. Licensee hereby agrees to reasonably participate in the defense of such claim if reasonably necessary and requested to do so by the Licensor, subject to Licensor paying all of Licensee's reasonable expenses associated with such participation. Licensee may appear through counsel at its own expense. Should the Software become, or if in Licensor's opinion is likely to become, the subject of any claim of infringement, Licensor may procure for the Licensee the right to continue using the Software, replace or modify the Software to make it non-infringing at no additional cost to Licensee. If neither of the aforementioned alternatives can be reasonably and/or timely accomplished Licensor and Licensee shall enter into good faith negotiations to derive the equitable adjustment to be provided to Licensee.
- B. Licensor shall not be liable for any claim of infringement based upon (i) use of other than the latest unmodified release of the Software made available to Licensee by Licensor if such infringement would have been avoided by the use of such release of the Software, or (ii) use or combinations of the Software with non-Licensor, programs or data if such infringements would not have occurred without such use or combinations.

11. GOVERNING LAW.

This Agreement shall be governed by and construed under the laws of the state from which this Purchase Order was issued, without reference to its conflicts of law principles. Unless otherwise agreed to in writing by the Parties, venue and jurisdiction for all legal

proceedings of any kind or nature brought to enforce any provisions of this Purchase Order shall lie within the state from which this Purchase Order was issued. The Parties hereby waive any right to a trial by jury.

12. COMPLIANCE WITH LAWS.

- A. Federal, State and Local Laws. Licensor 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 Licensee, Licensor 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.
- B. Equal Opportunity. Licensee is an "Equal Opportunity" employer and Licensor shall, therefore comply with provisions of the Presidents Executive License 11246 as supplemented and all related regulations of the Department of Labor.

13. NONWAIVER.

A Party's failure at any time to enforce any provision of any Order shall not constitute a waiver of the provision or prejudice a Party's right to enforce that provision at any subsequent time.

14. SEVERABILITY.

Any invalidity, in whole or in part, of any provision of this Agreement shall not affect the validity of any other part or provision of this Agreement, provided that the basic purpose of this Agreement can still be achieved.

15. CONFIDENTIAL TERMS AND CONDITIONS.

Neither Party shall disclose the terms and conditions of this Agreement to any third-parties, nor shall either Party use the name of the other party in publicity, advertising, or similar activity, without the prior written consent of the other.

16. TAXES.

All pricing provided hereunder shall include all applicable Federal, State and Local taxes as may be assessed against Licensor except those sales and/or use taxes required by law to be paid by Licensee.

17. WARRANTIES.

- A. Licensor warrants that all Licensed products, including Licensor provided updates, are free of Viruses or any other programmed device that could impair the Licensee's use of the Software or the equipment on which the Software resides.
- B. Unless expressly agreed to in writing between the Parties and incorporated into this Agreement, Licensor warrants that all Licensed Products(s) developed and/or otherwise provided by Licensor to Licensee shall (1) contain no hidden files, (2) not replicate, transmit, or activate itself without control of a person operating computing equipment on which it resides, (3) not alter, damage, or erase any date or computer programs without control of a person operating the computing equipment on which it resides, (4) contains on 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

program(s) or data developed and/or otherwise provided by Licensor to Licensee under this Agreement. Notwithstanding anything in the Agreement to the contrary, if Licensor provides any Licensed Product(s) to Licensee which contains any of the above mentioned condition(s) and such condition(s) were not disclosed and agreed to in writing by the Parties Licensor shall be deemed in default of this Agreement, and no cure period shall apply. In addition to any other remedies available to it under this Agreement, Licensee reserves the right to pursue any civil and/or criminal penalties available to it against the Licensor without limitation.

- C. The media on which the Licensed Software is provided shall be free of defects in material and workmanship.
- D. The Licensed product(s) shall possess all material functions and features contemplated by the supporting documentation.
- E. The Licensed product(s) shall substantially perform in accordance with the user manuals and the documentation.
- F. The Licensed product(s) shall be compatible with the operating system, application programs, computing equipment and networks contemplated by the documentation.
- G. Licensor hereby agrees to pass through or assign to Licensee any third party's warranty which Licensor receives in connection with any product(s) provided to Licensee.
- H. Licensor warrants there are no actions, suits or proceedings pending or threatened, which will have a material adverse effect on Licensor's ability to fulfill its obligations under this Agreement. Licensor further warrants it will immediately notify Licensee if during the term of this Agreement, Licensor becomes aware of any action, suit, or proceeding pending or threatened, which will have a material adverse effect of Licensor's ability to fulfill its obligations under this Agreement.
- I. Licensor warrants that it has the full right, title, and interest in the subject Software and/or is authorized to license the subject Software.
- J. Except as set forth above and as otherwise mutually agreed to by the Parties in writing all other warranties express or implied, are disclaimed, including without limitation, any implied warranty of merchantability or fitness for a particular purpose except to the extent that any warranties implied by law cannot be validly waived.

18. TERMINATION.

- A. This Agreement and the License(s) granted hereunder shall terminate upon the earliest to occur of the following: (i) thirty (30) days after Licensee gives Licensor written notice of Licensee's desire to terminate this Agreement, for any reason, subject to payment of all License fees then due and owing; (ii) thirty (30) days after Licensor gives Licensee notice of Licensee's breach of any material provision of this Agreement, (iii) immediately if either Party files for bankruptcy, becomes insolvent, or makes an assignment for the benefit of

creditors or (iv) expiration of the term of this Agreement.

- B. Within thirty (30) days of any termination Licensee shall either return to Licensor at Licensee's expense, delete and/or destroy all Licensed product(s) and any proprietary documentation related thereto except that Licensee may retain an archival copy. If requested, Licensee shall provide written certification that all Licensed product(s) and/or proprietary documentation has been returned, deleted and/or destroyed with the exception of the copy which is retained for archival purposes.

19. OTHER SUPPORT SERVICES.

Support or maintenance of the Licensed Product(s) beyond any warranty coverage described in Section 17 ("Warranties") if any, shall be provided under a separate contractual agreement.

20. DISPUTES AND LIABILITIES.

- A. In addition to the other remedies provided for hereunder and except as expressly limited herein, both Parties to this Agreement shall have the full benefit of all applicable remedies generally available to a Licensor/ Licensee of products under the Uniform Commercial Code.
- B. In the event of any disputes between the Parties associated with this Agreement, the Parties hereby agree to work toward resolution and negotiate in good faith for a period of not less than thirty (30) days. The Parties shall both assign individuals whose responsibility it shall be to review and interpret the events and circumstances of the dispute and to resolve and/or propose to the Parties' Senior Management a viable mutually acceptable resolution. If at any time during the resolution process the assigned individuals determine for whatever reason that the dispute cannot be resolved at the assigned level the Parties agree to escalate the dispute to ascending levels of management up to and including the Vice President of the respective organizations. If after thirty (30) days resolution has not been achieved the Parties may exercise any and all courses of resolution prescribed herein, unless the Parties otherwise mutually agree to extend the negotiation/resolution period.
- C. Neither Party to this Agreement shall be liable for any claim arising out of this Agreement in an amount exceeding the total contract price with the exception of the damages and costs described in Section 10 ("Indemnification") and Section 17 ("Warranties"). In no other event shall either Party be liable hereunder for any indirect, incidental or consequential damages (including lost business profit) sustained by the other Party or any other individual or entity for any matter arising out of or pertaining to the subject matter of this Agreement.
- D. The Parties hereby expressly acknowledge that the foregoing limitations were fully considered by each Party to this Agreement and appropriately reflects a fair allocation of risks.
- E. No action arising under or related to this Agreement may be brought by one Party against

the other more than two (2) years after the cause of the cause of the action arose.

- F. The Parties agree that this Agreement is the result of negotiations between the Parties and that no term or provision shall be construed against a Party merely because the term or provision is contained in a document drafted, prepared, written or pre-printed by that Party.

21. ASSIGNMENT.

Neither the Licensor or Licensee shall assign its rights or obligations under this Agreement without the expressed prior written consent of the other Party. Such consent shall not be unreasonably withheld. Any permitted assignment of this Agreement shall provide that the provisions of this Agreement shall continue in full force and effect and that the assigning Party shall guaranty the performance of its assignee and shall remain liable for all obligations hereunder.

22. NOTICE.

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

23. EXPORT AND IMPORT

- A. Export Compliance. Seller is advised that its performance of this Order may involve the use of or access to articles, technical data or software this is subject to export controls under 22 United States Code 2751-2796(Arms Export Control Act) and 22 Code of Federal Regulations 120-130(International Traffic in Arms Regulations) or 50 United States Code 2401-2420(Export Administration Act) 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) that it has disclosed to Buyer's Representative in writing the country in which it is incorporated or otherwise organized to do business, or if a natural person, all citizenships and US immigration status. Seller shall comply with any and all Export Laws and Regulations, and any license(s) issued there under.
- B. 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 Office of Defense Trade Controls, as required by the ITAR

and it maintains an effective export and import compliance program in accordance with the ITAR.

- C. Foreign Personnel/Person. Seller shall not give any Foreign Person access to Technical Data, software or Defense Articles, or provide an unauthorized Defense Service as those terms are defined in the applicable Export Laws and Regulations without the prior written consent of Contractor/Buyer. Any request for such consent must state the intended recipient's citizenship(s) and status under 8 U.S.C 1324 (the "Immigration and Naturalization Act"), and such other information as Buyer may reasonably request. No consent granted by Buyer in response to Seller's request under this paragraph C. 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.
- D. Indemnification. Seller shall indemnify and save harmless Buyer from and against 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. 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 performance of any part of work under this order.

24. 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.