

**GSC/T-77**  
**NORTHROP GRUMMAN SYSTEMS CORPORATION**  
**PURCHASE ORDER TERMS AND CONDITIONS**  
**AGREEMENT FOR SOFTWARE DEVELOPMENT**

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**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.

- D. PERSONNEL, for the purposes of the Privacy, Confidentiality and Security clause of this contract, means employees, agents, consultants or contractors of Seller or Northrop Grumman, as applicable
- E. PERSONAL INFORMATION, is any information relating to an identified or identifiable natural person (such as name, postal address, email address, telephone number, date of birth, Social Security number (or its equivalent), driver's license number, account number, credit or debit card number, personal identification number, health or medical information, or any other unique identifier or one or more factors specific to the individual's physical, physiological, mental, economic or social identity), whether such data is in individual or aggregate form and regardless of the media in which it is contained, that may be (i) disclosed at any time to Supplier or its Personnel by Northrop Grumman or its Personnel in anticipation of, in connection with or incidental to the performance of services for or on behalf of Northrop Grumman; (ii) Processed at any time by Supplier or its Personnel

in connection with or incidental to the performance of services for or on behalf of Northrop Grumman; or (iii) derived by Supplier or its Personnel from the information described in (i) or (ii) above.

F. **PROCESS** or **PROCESSING** means any operation or set of operations performed upon Personal Information, whether or not by automatic means, such as creating, collecting, procuring, obtaining, accessing, recording, organizing, storing, adapting, altering, retrieving, consulting, using, disclosing or destroying the data.

**2. 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.

**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. 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.

**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. 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): <http://www.northropgrumman.com/suppliers/OASISDocuments/InvoiceInstructions.pdf>

**7. 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.

**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. 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).

**10. 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.

**11. 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.

**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. DISPUTES.**

Either party may litigate any dispute arising under or relating to this order. Such litigation shall be brought and jurisdiction and venue shall be proper only in a state or federal district court in Los Angeles County. Pending resolution of any such dispute by settlement or by final judgment, the parties shall proceed diligently with performance.

**14. TERMINATION/CANCELLATION.**

- A. Termination-Convenience. The performance of services under this Agreement may be terminated,

in whole or in part, by Customer for Customer's convenience at any time and for any reason on Customer giving written termination notice to 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	Percentage of License Fee to be Refunded
After Acceptance	
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.

**15. 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.

**16. 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.

**17. RESERVED**

**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. RESERVED**

**20. 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.

**21. DELEGATION AND ASSIGNMENT.**

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

**22. SUBCONTRACTING.**

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

**23. 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. RESERVED**

**25. 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.

**26. INSURANCE.**

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

cost and expense, Employer Liability insurance in the amount of \$1,000,000.

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

**27. PERFORMANCE DELAY.**

Time is of the essence in the 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.

**28. COMPLIANCE WITH LAWS.**

Seller warrants that it shall comply with all applicable federal, state, or local laws, rules, and regulations in the performance of this Agreement. Seller shall not discriminate against any employee or applicant for

employment because of race, color, religion, sex or national origin and warrants compliance with Section 508 of the Rehabilitation Act. Where applicable, the Supplier agrees to provide products and services which are Section 508 compliant and agrees to provide a Voluntary Product Accessibility Template® (VPAT®) to Customer Representatives, if requested.

**29. CHOICE OF LAW.**

This Order and any dispute arising hereunder shall be governed by the substantive and procedural laws of the State of California, except, however, that California's Choice of Law provisions shall not apply.

**30. 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.

**31. RESERVED**

**32. EXPORT AND IMPORT**

**A. Export Compliance.**

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

1. Registration. If Seller is a U.S. entity and is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services, Seller represents that it is registered with the U.S. Department of State's Directorate of Defense Trade Controls, as required by the ITAR, and it maintains an effective export and import compliance program in accordance with the ITAR.
2. Foreign Persons. Seller shall not re-transfer any export-controlled information (e.g. technical data) to any other non-US person or entity (including the Seller's dual and/or third-country national employees) without first complying with all the requirements of the applicable Export Laws and Regulations. Prior to any proposed re-transfer, Seller shall first obtain the written consent of the Buyer. No consent granted by Buyer in response to

Seller's request shall relieve Seller of its obligations to comply with the provisions of paragraph A. of this Clause or the Export Laws and Regulations, nor shall any such consent constitute a waiver of the requirements of paragraph A. hereinabove, nor constitute consent for Seller to violate any provision of the Export Laws and Regulations.

**B. Import Compliance.**

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

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

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

**C. Indemnification.**

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

**D. Subcontracts.**

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

**E. Notification.**

Seller agrees to provide prompt notification to Buyer in the event of changes in circumstances such as ineligibility to contract with US Government, debarment, assignment of consent agreement, and initiation or existence of a US Government investigation, that could affect Seller's performance under this contract.

**33. RESERVED**

**34. CLEARANCE OF MATERIALS INTENDED FOR PUBLIC RELEASE.**

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

**35. – 37. RESERVED**

**38. 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.

**39. 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.

**40. 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.

**41. – 42. RESERVED**

**43. PATENT, TRADEMARK, AND COPYRIGHT INDEMNITY.**

Seller shall defend, indemnify, and hold Buyer, Buyer's officers, agents, employees, and customers harmless against all claims and liabilities, including costs, for infringement of any United States patent, trademark, or copyright by any Products delivered under this Order or, at Seller's option and expense, Seller shall obtain such licenses as are necessary to remove such infringement, provided that Seller is reasonably notified of such claims and liabilities. Seller's obligation shall not apply to Products manufactured by Seller pursuant to detailed designs developed by Buyer and furnished to Seller under an Order which does not require research, development, or design work by Seller. Seller's obligation shall also not apply to any infringement arising from the use or sale of Products in combination with items not delivered by Seller if such infringement would not have occurred from the use or sale of such Products solely for the purpose for which they were designed or sold to Buyer. Seller's obligation shall extend to the U.S. Government only if and to the extent Buyer has agreed to indemnify the U.S. Government.

**44. INDEPENDENT CONTRACTOR.**

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.

**45.-65. RESERVED**

**66. NOTICES.**

Any notice or other communication hereunder shall be in writing.

**67. – 79. RESERVED**

**80. RESPONSE TO AUDIT.**

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

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

A. Upon Buyer's divestiture of any affiliate, division, business unit, line of business or sector ("divested entity"), Buyer may assign in whole or in part the software and/or maintenance services that are the subject of this order to that divested entity. Upon execution of an assignment, Buyer shall have no further rights or obligations with respect to the assigned licenses and/or services (with the exception of any unpaid license and/or maintenance service fees which remain due on the effective date of such assignment) and the divested entity shall become the "customer" of record for those assigned licenses and/or services. Any such assignment or other transfer of licenses to the software and/or maintenance services made to a third party will be subject to the prior written consent of Seller/licensor which consent will not be unreasonably withheld or delayed.

B. Divested entities will have the right, for a period of twelve (12) months post-divestiture, to continue to purchase the software products and/or maintenance services covered under this order, or Buyer may purchase such licenses under this order on behalf of the divested entities. If a divested entity wishes to order from Seller directly, Seller reserves the right to require such divested entity to provide financial information sufficient to determine creditworthiness before accepting any orders.

C. For software. In the event of a divestiture, Buyer shall be permitted to use the software products to provide managed services for the divested entity during a period of transition, provided that Buyer's use in such case is only for the divested entity. Once the transition period ceases, Buyer shall assign the licenses to the divested entity as provided in the "divestiture" provision in this purchase order.

D. Buyer shall have the unrestricted right to transfer the software license(s) to its parent and/or any subsidiary or affiliate of Buyer upon written notification to Seller/licensor of such transfer without payment of additional costs or fees provided that the number of licenses transferred does not exceed the Buyers total licensed count. In each such instance, Buyer shall inform Seller/licensor of the transfer, and shall provide details on the name and address of assignee, including which products (and how many licenses of each) are being transferred.

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

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

provided; however, that Buyer will true up the merged or acquired licenses to match Buyer's software configuration and license type(s). Maintenance will continue on the combined number of users. Buyer may, at its option, permit an acquired entity to continue to operate its existing software as a standalone operation, but subject to the terms of this purchase order at no additional cost other than continued maintenance fees.

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

### **83. RESERVED**

### **84. CONFIDENTIALITY OF LICENSOR'S INFORMATION.**

Notwithstanding any other provisions of this Agreement to the contrary, Customer hereby agrees that it shall use reasonable efforts to avoid disclosure of 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.

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

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

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

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

### **87. PRIVACY, CONFIDENTIALITY AND SECURITY**

Supplier will ensure that it provides the services under this agreement in accordance with the following requirements:

- (a) Supplier will hold in strict confidence any and all Personal Information.
- (b) Supplier will Process Personal Information only on behalf of Northrop Grumman and in accordance with Northrop Grumman's written instructions, and only in connection with the services it provides for Northrop Grumman and to fulfill its obligations to Northrop Grumman.
- (c) Supplier will comply with all applicable laws and regulations relating to the privacy, confidentiality or security of Personal Information and applicable provisions of Northrop Grumman's privacy policies, statements or notices that are attached hereto (collectively, "Privacy Requirements").
- (d) In the event a Privacy Requirement, enforcement action, investigation, litigation or claim, or any other circumstance, is reasonably likely to adversely affect Supplier's ability to fulfill its obligations under this agreement, Supplier will promptly notify Northrop Grumman in writing and Northrop Grumman may, in its sole discretion and without penalty of any kind to Northrop Grumman, suspend the transfer or disclosure of Personal Information to Supplier or access to Personal Information by Supplier, terminate any further Processing of Personal Information by Supplier, and terminate Supplier's agreement to provide services to Northrop Grumman, if doing so is necessary to comply with applicable Privacy Requirements.
- (e) Subject to applicable law, in the event Supplier is required by law or legal process to disclose Personal Information, it will give prior written notice of the disclosure to Northrop Grumman, so that Northrop Grumman may, in its discretion, seek to block the disclosure. Northrop Grumman will have the right to defend such action in lieu of and on behalf of Supplier. Northrop Grumman may, if it so chooses, seek a protective order. Supplier will reasonably cooperate with Northrop Grumman in such defense.
- (f) Supplier may disclose Personal Information to a third party if, and only if, it obtains the written consent of Northrop Grumman and (1) the disclosure is made to a party that performs services on behalf of Northrop Grumman and the disclosure is made in order to perform the Supplier's services to Northrop Grumman; or (2) the disclosure is made to a third party performing clerical, administrative, technical, or security-related services for Supplier, and such disclosure is incidental to the performance of such services. In either case, Supplier will enter into a written agreement with such third party under which the third party agrees it will (i) maintain the confidentiality of the disclosed Personal Information; (ii) not disclose the Personal Information to other third parties without the prior written agreement of Northrop Grumman; (iii) use the Personal Information only in connection with performing its obligations under its agreement with Supplier; (iv) disclose the Personal Information only to its own personnel who need the information to perform the obligations under the agreement with Supplier, and who have been fully advised as to the confidentiality requirements set forth

- herein; (v) promptly notify Supplier of any Information Security Incident (as defined below); and (vi) return to Supplier all copies of Personal Information Processed in connection with the relevant services for which the third party was retained or, upon Supplier's written request (provided that Supplier receives Northrop Grumman's prior written approval), securely destroy or, at the option of Northrop Grumman, render unreadable or undecipherable, all such Personal Information, including all hard-copy and electronic versions.
- (g) Supplier will develop, implement and maintain a comprehensive written information security program that complies with applicable Privacy Requirements. Supplier's information security program will include appropriate administrative, technical, physical, organizational and operational measures designed to (i) ensure the security and confidentiality of Personal Information; (ii) protect against any anticipated threats or hazards to the security and integrity of Personal Information; and (iii) protect against accidental or unlawful destruction, loss or alteration, unauthorized disclosure or access, and any other unlawful forms of Processing (hereinafter "Information Security Incident"). Supplier's information security program will contain standards that are at least as stringent as those set forth in Supplier's attached "Information Security-Supplier Hosting Requirements". If the Processing involves the transmission of Personal Information over a network, Supplier will implement appropriate measures to protect Personal Information against the specific risks presented by the Processing. Supplier will immediately, but in no event later than 72 hours after Supplier's discovery of the Information Security Incident, notify Northrop Grumman in writing of any Information Security Incident. Such notice will summarize in reasonable detail the effect on Northrop Grumman, if known, of the Information Security Incident and the corrective action taken or to be taken by Supplier. Supplier will promptly take all necessary and advisable corrective actions, and will cooperate fully with Northrop Grumman in all reasonable and lawful efforts to prevent, mitigate or rectify such Information Security Incident. The content of any filings, communications, notices, press releases or reports related to any Information Security Incident must be approved by Northrop Grumman prior to any publication or communication thereof.
- (h) Supplier will exercise the necessary and appropriate supervision over its relevant Personnel to maintain appropriate privacy, confidentiality and security of Personal Information. Supplier will restrict access to Personal Information to those Personnel who need the information to perform obligations under Supplier's agreement with Northrop Grumman and who have explicitly agreed to legally enforceable and sound confidentiality obligations. Supplier will ensure that Personnel with access to Personal Information are periodically trained regarding privacy and security and the limitations on Processing of Personal Information as provided in this agreement.
- (i) Supplier will engage an independent third-party to conduct a security evaluation/certification of Supplier's systems that host Personal Information. Supplier will provide Northrop Grumman copies of the audit report(s). Northrop Grumman reserves the right to conduct site surveys of Supplier's hosting site and review its physical and information security policies, practices, and procedures on an annual or biennial basis, in Northrop Grumman's reasonable discretion.
- (j) Supplier agrees that any Processing of Personal Information in violation of this agreement, Northrop Grumman's instructions or any applicable Privacy Requirement, or any Information Security Incident, may cause immediate and irreparable harm to Northrop Grumman for which money damages may not constitute an adequate remedy. Therefore, Supplier agrees that Northrop Grumman may obtain specific performance and injunctive or other equitable relief for any such violation or incident, in addition to its remedies at law, without proof of actual damages.
- (k) Supplier will not transfer Personal Information outside the country to which it originally was delivered to Supplier for Processing (or, if it was originally delivered to a location inside the European Union, outside the European Union) without the explicit written consent of Northrop Grumman.
- (l) Supplier will cooperate with Northrop Grumman if a data subject wants to access or amend Personal Information pertaining to him or her.
- (m) Supplier will immediately inform Northrop Grumman in writing of any requests, complaints or investigations regarding Supplier's Processing of Personal Information. Supplier will respond to such requests, complaints or investigations in accordance with Northrop Grumman's instructions and Supplier will fully cooperate with Northrop Grumman in responding to any such request, complaint or investigation.
- (n) Supplier will enter into any further privacy or information security agreement requested by Northrop Grumman for purposes of compliance with applicable Privacy Requirements. In case of any conflict between this agreement and any such further privacy or information security agreement, such further agreement will prevail with regard to the Processing of Personal Information covered by it.
- (o) Supplier agrees, within 30 days of termination, cancellation, expiration, or other conclusion of this agreement, Supplier shall return to Northrop Grumman all copies of Personal Information Processed in connection with this agreement, or, upon Northrop Grumman's written request or receipt of Northrop Grumman's written approval in response to Supplier's request, to securely destroy or, at the option of Northrop Grumman, render unreadable or undecipherable, all such Personal Information, including all hard-copy and electronic versions. Supplier will provide an appropriate Certificate of Return/Destruction at Northrop Grumman's request.
- (p) Supplier agrees to indemnify and hold harmless Northrop Grumman and its officers, employees, directors and agents from, and at Northrop Grumman's option defend against, any and all claims, losses, liabilities, costs and expenses, including without limitation third-party claims, reasonable attorneys' fees, consultants' fees and court costs (collectively, "Claims"), to the extent that such Claims arise from, or may be in any way attributable to (i) any violation of this agreement; (ii) the negligence, gross negligence, bad faith, or intentional or willful misconduct of Supplier or its Personnel in connection with the obligations set forth in this agreement; (iii) Supplier's use of any contractor providing services in connection with or relating to Supplier's performance under this agreement; or (iv) any Information Security Incident involving Personal

Information in Supplier's possession, custody or control, or for which Supplier is otherwise responsible.

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

**88. DATA BREACH NOTIFICATION.**

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

**89. DATA CONTROL**

Seller will have policies and procedures in place to protect any data that Buyer provides, including destruction methods employed and how audit and

system log information is protected. Buyer may upon request, review Seller's applicable policies and procedures

**90. WAIVER OF RIGHT TO JURY TRIAL.**

Buyer and Seller hereby waive their respective right to trial by jury of any cause of action, claim, counterclaim or cross-complaint in any action, proceeding or hearing brought by either Seller against Buyer or Buyer against Seller on any matter whatsoever arising under, relating to, or in any way connected with this Order, the relationship of Seller and Buyer or any claim of injury or damage, or the enforcement of any remedy under any law, statute or regulation now or hereafter in effect.

**91. – 96. RESERVED**

**97. PRODUCT VULNERABILITIES.**

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