



SOFTWARE LICENSE PROVISIONS

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These Software Licensing Provisions (hereinafter "Licensing Provisions") shall apply to Software acquired by LMC (hereinafter "Licensee") from Supplier (hereinafter "Licensor") when this document is incorporated into an Ordering Document issued by Licensee or executed by the parties.

RECITALS

WHEREAS, LICENSOR represents that it has developed certain software programs and is desirous of licensing its use to LICENSEE; and

WHEREAS, LICENSOR may incorporate in said program(s) information which LICENSOR considers to be of a proprietary nature; and

WHEREAS, LICENSEE is desirous of using said software program(s), subject to the restrictions and limitations set forth herein; and

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows.

1. DEFINITIONS

(a) "Divested Entity" means an affiliate, business unit, division, or organization that Lockheed Martin has sold, transferred or otherwise divested, in whole or in part, all or substantially all of its interest, to another entity.

(b) "Documentation" means the explanatory materials such as installation or operating instructions, owner or user manuals, diagnostics, prompts, etc. necessary or desirable to assist the user to understand, use, or operate the Software.

(c) "Object Code" means a series of instructions in machine executable form, which cause a computer to perform its functions or to perform specific tasks in a pre-assigned order.

(d) "Order Document" means the instrument(s) of contracting, such as "PO", "Purchase Order", "Release", "Contract", "Subcontract", "Task Order", or other such type designation, into which these Software License Provisions are incorporated.

(e) "Software" means the software programs, which are provided by LICENSOR and set forth in an Order Document(s) issued by LICENSEE, or executed by the parties, for the acquisition of licenses. Software includes, but is not limited to, software programs, media and Documentation provided in machine executable or human readable form, including modifications, enhancements, updates and translations thereto.

(f) "Source Code" means a series of machine instructions in human readable form from which Object Code may be generated.

2. GRANT OF LICENSE

(a) LICENSOR hereby grants to LICENSEE a fully paid-up, nonexclusive perpetual license to use and have used on its behalf, the Software subject to the terms and conditions of these Licensing Provisions.

(b) LICENSEE shall have the further right to modify the Software and related information and/or combine same with, or merge same into, other programs and program materials to form enhancements or derivative works. Those portions of such enhancements or derivative works developed by LICENSEE shall be owned by LICENSEE.

(c) LICENSEE shall have the right to make copies of the Software equal to the number of licenses granted.

(d) LICENSEE shall have the right to make additional copies of the Software and Documentation to be used only for purposes of backup, archival storage, test, disaster recovery, development, training, and for other non-production purposes. All such copies shall bear any proprietary notice, which may appear on the Software copy furnished by LICENSOR.

(e) LICENSEE shall have the right to move the Software to a machine owned, leased, controlled, or operated by LICENSEE. LICENSOR acknowledges that during the move the Software may run temporarily on both machines.

(f) Except as otherwise provided in these Licensing Provisions, LICENSEE acknowledges that it is acquiring a license only and nothing contained in this license grant shall be construed as granting LICENSEE ownership of the Software.

3. TERMINATION OF THE LICENSE

(a) In the event that LICENSEE or LICENSOR fail to perform any material provision of these Licensing Provisions, and if such default is not cured within thirty (30) days after LICENSEE or LICENSOR gives the other party written notice thereof, the party not in default may terminate these Licensing Provisions upon thirty (30) days written notification to the defaulting party.

(b) If the notice of default alleges that LICENSEE has breached the clause entitled Use and Protection of Software, LICENSEE shall use commercially reasonable efforts to cure the default. If LICENSEE is unable to cure the default, and is requested by LICENSOR in writing to destroy or return the Software, LICENSEE shall destroy or return all remaining copies of the Software in LICENSEE's possession to LICENSOR.

(c) If any dispute arises between the parties, LICENSOR shall not disable LICENSEE's use of the Software.

4. USE AND PROTECTION OF SOFTWARE

(a) The Software shall be used exclusively by LICENSEE, its authorized employees, subcontractor personnel, and consultants under contract to LICENSEE, working solely for the benefit of LICENSEE.

(b) Notwithstanding the foregoing, LICENSEE may continue to use the software, without incurring any additional license fee, on behalf of a "Divested Entity" as of the effective date following LICENSEE's divestiture of its ownership interest in such Divested Entity; provided that such use shall only be permitted for the period ending on the earlier of (i) three (3) years from the date of such divestiture, or (ii) the date on which LICENSEE ceases to process transactions for such Divested Entity. In the event that the Divested Entity wishes to use the software for its own purposes beyond the period specified in this section, LICENSOR agrees to negotiate in good faith a license and fees with the Divested Entity.

(c) Except as provided otherwise in these Licensing Provisions, LICENSEE shall not, without the express written consent of LICENSOR, provide, disclose, or otherwise make available the Software, or copies thereof, to any third party.

(d) LICENSEE shall take reasonable steps to safeguard the Software marked with Licensor's restricted use legend from disclosure to third parties.

5. PATENT, COPYRIGHT AND TRADE SECRET INFRINGEMENT

(a) LICENSOR agrees to defend, indemnify, and hold harmless LICENSEE and its customers from and against any claims, damages, losses, costs, and expenses, including reasonable attorneys' fees, arising out of any action by a third party that is based upon a claim that any work performed or Software provided infringes or otherwise violates the intellectual property rights of any person or entity.

(b) If LICENSEE's use of the Software is held to constitute infringement or is enjoined, LICENSOR shall at its option and expense (a) procure for LICENSEE the right to continue using the Software, or (b) replace or modify the same with Software that is non-infringing and provides equivalent functionality acceptable to the LICENSEE.

(c) LICENSOR's obligation to indemnify LICENSEE under this Article shall not apply if the alleged infringement is based upon LICENSEE's unauthorized modification of the Software or the use of the Software in combination with other Software or devices, where such combination caused the infringement and where infringement would not have occurred from LICENSEE'S use of the Software alone.

6. **WARRANTY**

(a) LICENSOR warrants that the Software and any maintenance and support provided will not infringe or otherwise violate the intellectual property rights of any third party.

(b) LICENSOR warrants that the Software will conform to LICENSOR's published specifications. In the event of defects in the Software LICENSOR shall correct such defects so that the Software conforms to the LICENSOR's published specifications, and if unable to correct such defects LICENSOR shall refund the license fees paid.

(c) LICENSOR warrants that it has the right to grant the license under these Licensing Provisions and that there are no limiting or disabling mechanisms in the Software, which prevent or restrict LICENSEE's use of the Software in accordance with these Licensing Provisions.

7. **ASSIGNMENT AND TRANSFER**

(a) LICENSEE may assign and transfer all or certain of its licenses, and associated rights and responsibilities under these Licensing Provisions:

- (i) To any subsidiary, joint venture or affiliate of LICENSEE;
- (ii) To the third party resulting from the merger, reorganization or sale of all or substantially all of LICENSEE's assets or stock;
- (iii) To a Divested Entity in accordance with Article 4.2.2;
- (iv) To a customer of LICENSEE in accordance with Article 9;
- (v) To a third-party providing outsourcing services to LICENSEE which shall have the right to use the Software for the benefit of LICENSEE;
- (vi) To a third party to provide outsourcing services to LICENSEE'S customer in lieu of LICENSEE providing such service;

(b) Transfer and assignment under any of the above is subject to the assignee/transferee assuming all obligations under these Licensing Provisions.

8. **MAINTENANCE AND SUPPORT**

(a) LICENSOR will provide, at no additional cost to LICENSEE, maintenance support for first twelve months following initial installation of Software.

(b) Beginning one year after initial installation, LICENSOR shall offer optional maintenance support for the Software. If LICENSEE elects to have LICENSOR provide this maintenance support, the parties shall negotiate the cost for such maintenance. .

(c) For purposes of these Licensing Provisions, maintenance and support is defined as the provision of new releases, corrections, patches, enhancements, upgrades, updates, and improvements to the Software and related Documentation. Maintenance shall also include reasonable assistance and consultation to assist LICENSEE in resolving problems with the use of the Software, including the verification, diagnosis and correction of errors and defects in the Software.

(d) In performing maintenance and support to LICENSEE, the LICENSOR, its employees, independent contractors and agents may have access to information and proprietary data of LICENSEE. LICENSOR agrees to take reasonable steps to protect and safeguard LICENSEE'S information and proprietary data from disclosure to third parties, and to use such information and proprietary data only in the performance of its obligations hereunder.

(e) If LICENSOR abandons, elects not to maintain or support the Software, LICENSOR will provide to LICENSEE one complete copy of the then current Documentation and Source Code corresponding to the Software.

9. **TRANSFER TO CUSTOMERS**

(a) LICENSEE may transfer to its customers the Software and associated software licenses, including any enhancements or derivative works, provided by LICENSOR or LICENSEE.

(b) LICENSEE may transfer Commercial Software, as marked by LICENSOR, to the United States Government directly or through a higher tier United States Government contractor. LICENSOR must properly mark the Software in accordance with the appropriate and applicable United States government agency regulations.

10. **PRE-PACKAGED SOFTWARE LICENSE/SUPPORT AGREEMENTS**

(a) These Licensing Provisions are in lieu of and supercede a) any subsequent software license agreements, or other terms and conditions, which may be delivered with the Software; and/or b) any additional terms and conditions subsequently presented by LICENSOR and accepted by a user through any electronic method.

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(c) These Licensing Provisions can only be amended by written amendment by an authorized procurement representative of LMC and an authorized representative of LICENSOR.

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(d) Unless SELLER has obtained LOCKHEED MARTIN's prior written consent, which LOCKHEED MARTIN may withhold in its sole discretion, SELLER shall not use in connection with this Contract, or deliver to LOCKHEED MARTIN, any Prohibited Software.

(e) **SELLER agrees to defend, indemnify, and hold harmless LOCKHEED MARTIN, its customers and suppliers from and against any claims, damages, losses, costs, and expenses, including reasonable attorneys' fees, relating to use in connection with this Contract or the delivery of Prohibited Software.**