

SOFTWARE LICENSE AGREEMENT

NO. _____

This License AGREEMENT is entered into as of the ____ day of _____, 200____ by and between _____, a _____ corporation (hereinafter referred to as Licensor) and Lockheed Martin Corporation acting by and through Space Systems Company, Missiles & Space Operations with offices at 1111 Lockheed Martin Way, Sunnyvale, CA 94088-3504, (hereinafter referred to as "LOCKHEED MARTIN", "LMSSC-MSO", or "BUYER").

In consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. LICENSE

Subject to the terms and conditions of this Agreement, Licensor hereby grants to LMSSC-MSO a fully paid-up, non-exclusive perpetual license to use the software identified in the Purchase Order referencing this Agreement, hereinafter called "Software".

2. CONSIDERATION

As consideration for the license in the Software granted in Paragraph 1, LMSSC-MSO shall pay to Licensor the dollar amount as mutually agreed upon, such amount being specified in the Purchase Order referencing this Agreement.

3. TITLE

Title and full ownership rights to the Software, and any copies or portions thereof licensed under this Agreement, remain with Licensor.

4. TAXES

A. Licensor at its sole cost and expense agrees to pay all fees and taxes of whatever kind or nature imposed by the Federal Government, State, or any local body politic against the charges, use, possession, or ownership of the property regardless of how designated or levied, except as otherwise provided in the following sentence. LMSSC-MSO shall reimburse Licensor for any State Sales Tax imposed, measured as a percentage of charges payable hereunder, provided that (1) Licensor notifies LMSSC-MSO of the assessment of any such tax (including with such notice a copy of the applicable assessment documents) promptly after such assessment and at least 90 days prior to the expiration of the statute of limitations limiting claims for refund of such tax, or (2) Licensor notifies LMSSC-MSO of the potential imposition of such tax (including in such notice the pertinent facts regarding such potential tax) prior to the imposition thereof and at least 90 days prior to the expiration of the statute of limitations limiting claims for refund of such tax, and provided, further, that (3) Licensor cooperates fully with LMSSC-MSO, upon LMSSC-MSO' written request and at LMSSC-MSO' sole expense, in contesting the imposition of such tax or in paying such tax and making a claim for refund thereof, as the case may be. LMSSC-MSO agrees to make any and all property tax declarations that may be required.

B. (1) Unless exempt under (2) below, or upon receipt of a Notice to Withhold for the State of California, LMSSC-MSO shall withhold and transmit to the California State Franchise Tax Board an amount equal to 7% (or such other rate as authorized in writing by the Franchise Tax Board) of Licensor's submitted invoice:

(a) For services performed by Licensor in the State of California and Licensor is an individual or a corporation.

(b) For software licensed by Licensor to LMSSC-MSO where the State of California is the business or taxable situs of the software and Licensor is an individual.

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(2) Exempt from the provisions of this clause are:

(a) Individuals who are California residents and claim a waiver of the withholding requirements by submitting California State Franchise Tax Board Form 590. If a Licensor claims to be a California resident the Licensor shall submit an executed Form 590 to LMSSC-MSO, upon execution of this License Agreement or no later than the first invoice or upon renewal of this Agreement. Where license fees are paid annually and/or where Licensor will be providing service annually, Licensor shall submit a new Form 590 for each calendar year, no later than October 31, for the duration of this Agreement. Failure of the Licensor to provide a current Form 590 for any year will result in withholding as indicated above.

(b) Corporations who have a permanent place of business in the State of California.

(3) Licensor shall notify LMSSC-MSO within 10 days of any change which would affect Licensor's status under this clause.

5. COPIES OF SOFTWARE

LMSSC-MSO shall have the right to make copies of the Software and documentation to be used only for purpose of backup, archival storage, or placing the Software in a form for execution on the computer. All copies, or portions thereof, must bear any proprietary notice which may appear on the Software copy furnished by Licensor under this Agreement.

6. ASSIGNMENT

LMSSC-MSO shall not assign its interest under this license without written consent from Licensor, which shall not be unreasonably withheld. LMSSC-MSO shall have the right, however, without the consent of Licensor to assign this license to any financially responsible corporation or company in which Lockheed Martin Corporation or LMSSC-MSO shall have a substantial ownership interest or which shall have a substantial ownership interest in LMSSC-MSO. This license shall be binding upon assignee.

7. PROTECTION OF PROPRIETARY DATA

A. LMSSC-MSO will receive and maintain in confidence for a period of two (2) years from the date LMSSC-MSO executes this Agreement, all information and data it receives from Licensor pertaining to the Software which Licensor designates in writing as being proprietary to Licensor.

B. LMSSC-MSO' obligation to maintain the information and data of Clause 7.A. in confidence shall terminate in the event and to the extent that: (1) the information and data are known to LMSSC-MSO prior to receipt of same from Licensor as evidenced by the written records of LMSSC-MSO, or (2) the information and data are within or through no fault of LMSSC-MSO later fall within the public domain, or (3) the information and data are or become available on a non-confidential and unrestricted basis to LMSSC-MSO from other sources not a party to this agreement who in making this disclosure breach no legal obligation to Licensor, or (4) the information and data are disclosed by Licensor to others on an unrestricted basis.

C. LMSSC-MSO further agrees that it will not lend, lease, give, sell or otherwise dispose of said Software licensed hereunder without prior written consent from Licensor provided however, that LMSSC-MSO may assign its interest in accordance with Clause 6.

8. RETURN OF SOFTWARE ON TERMINATION

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Upon any termination of this agreement, LMSSC-MSO shall return Software to Licensor in the same condition as received, normal wear and tear excepted or warrant the destruction thereof, and shall warrant that all copies thereof have been returned to Licensor or destroyed.

9. TRANSFER OF SOFTWARE TO REPLACEMENT COMPUTER

LMSSC-MSO shall have the right to transfer the Software to a replacement computer, provided the replacement computer is one for which Licensor offers the Software. Licensor acknowledges that during the transfer period, a Software copy may be running on the replaced computer simultaneously with a Software copy running on the replacement computer.

10. WARRANTY

A. Licensor warrants that the Software will conform to its published specifications and be in good working order and is free from design defects.

B. Licensor's obligations under this warranty are limited to making the necessary corrections or replacements in a reasonable period of time to cause the Software to perform in accordance with the written specifications. Licensor further warrants that it has the right to grant the license granted under this Agreement.

C. EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, LICENSOR GRANTS NO WARRANTIES, EITHER EXPRESS OR IMPLIED, ON ANY LICENSED SOFTWARE, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

12. ADDITIONAL INSTALLATION

LMSSC-MSO and its affiliated companies shall have the right to obtain additional Software Licenses under this Agreement by payment of additional License Fees at the same rate accorded second and/or multiple entity users.

13. INDEMNIFICATION

In the event Licensor, its employees, agents, subcontractors and/or lower-tier subcontractors enter premises occupied by or under the control of LMSSC-MSO or third parties in the performance of this Agreement, Licensor shall reimburse, indemnify and hold harmless LMSSC-MSO, its officers and employees for and from any claim, suit, loss, cost, damage, expense (including Attorney's fees) or liability by reason of property damage (including damage to LMSSC-MSO' property) or personal injury (including death) to any person, including Licensor's employees of whatsoever nature or kind arising out of, as a result of, or in connection with such performance occasioned in whole or in part by the actions or omissions of Licensor, its employees, agents, subcontractors, and/or lower-tier subcontractors. Without in any way limiting the foregoing undertakings, Licensor and its subcontractors and lower-tier subcontractors shall maintain public liability and property damage insurance in reasonable limits covering the obligations set forth above, and shall maintain proper Worker's Compensation insurance covering all employees performing this Agreement.

14. PATENT, TRADE SECRETS, AND COPYRIGHT INDEMNITY

Licensor agrees that it will at its own expense defend any suit instituted against LMSSC-MSO and indemnify LMSSC-MSO against any award of damages and costs made against LMSSC-MSO by a final judgment of a Court of Last Resort (or a lower court from which no appeal is taken) in any such suit insofar as the same are

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based on a claim that the items licensed hereunder constitute an infringement or misappropriation of any United States or Foreign Patent, copyrights, trademarks or trade secrets, provided LMSSC-MSO gives Licensor prompt notice in writing of the institution of such suit and permits Licensor through its counsel to defend the same and provides at Licensor expense all available information, assistance and authority to enable Licensor to do so. Licensor shall have control of the defense of any such suit including appeals and of all negotiations therefor, including the right to affect the settlement or compromise thereof. In case an item in any suit is held to constitute infringement or misappropriation and its use is enjoined, Licensor shall at its option and expense (1) procure for LMSSC-MSO the right to continue using the item, or (2) replace or modify the same so that it becomes non-infringing, or (3) grant LMSSC-MSO a credit for such item, less a reasonable depreciation for use, damage and obsolescence upon its return to Licensor.

15. NOTICES

All written notices to be given hereunder whether pursuant to the Agreement or a provision of law, shall be in person, by prepaid telegraph, or by the United States Mail postage prepaid. Notices shall be addressed as follows or at such other place as may be designated from time to time in writing:

To Licensor

To LMSSC-MSO

LOCKHEED MARTIN SPACE SYSTEMS COMPANY,
MISSILES & SPACE OPERATIONS

P. O. Box 3504

Sunnyvale, CA 94086-3504

Attn: _____ Orgn. _____, Bldg. _____

FOR INVOICING PURPOSES:

Accounts Payable - LMSSC-MSO
P. O. Box 3645
Sunnyvale, CA 94086-3645

UPDATES & USER INFORMATION:

ATTN: _____

ORGN: _____ BLDG.: _____

16. GENERAL

A. This Agreement shall be governed by the laws of the State of California.

B. Licensor agrees to comply with all applicable local, state and federal laws and executive orders and regulations issued pursuant thereto and agrees to indemnify LMSSC-MSO against any loss, cost, damage or liability by reason of Licensor's violation thereof.

C. This Agreement shall not be deemed or construed to be modified, amended, rescinded, canceled or waived in whole or in part, except by written amendment by the parties hereto. No change, amendment, or deviation to this Agreement shall be effective unless it is issued in writing by LMSSC-MSO' authorized procurement representative.

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D. Licensor shall not be liable for delays in any of its performance hereunder due to causes beyond its reasonable control, including, but not limited to acts of God, strikes, or failure to deliver by supplier.

E. No waiver of any rights caused by breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof and no waiver shall be effective unless made in writing.

F. In the event that any provision of this Agreement shall be illegal or otherwise unenforceable, such provision shall be severed and the entire Agreement shall not fail on account thereof and the balance of the Agreement shall continue in full force and effect.

G. Lockheed Martin Terms and Conditions per Corpdoc 3 document entitled, "General Provisions and FAR Flowdown Provisions for Subcontracts/Purchase Orders (All Agencies) for Non-Commercial Items Under a U.S. Government Prime Contract" dated 11/01, is incorporated herein by reference. Clauses 2, 3, 6, 12, 13, 19, 21, 25 and F.1.(f) 52.222-26, F.1.(k) 52.242-15, F.1.(q) 52.249-2, F.1.(r) 52.249-8, F.2.(a) 52.222-36 and F.3.(a) 52.222-35 are the only clauses which apply to this agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement in duplicate on the day and year first above written.

LOCKHEED MARTIN CORPORATION
Space Systems Company, Missiles & Space Operations

Date _____

By _____

Name _____

Title _____

LICENSOR

Date _____

By _____

Name _____

Title _____