

**IP-006 (04/13)**

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This Addendum is made by and between Raytheon Company or its affiliate designated either in the software license agreement ("Agreement") identified below or in the associated Purchase Order ("Associated Purchase Order") and the software vendor identified below ("Licensor") in connection with and as an amendment to said Agreement. Raytheon Company or its designated affiliate are hereinafter referred to as "Licensee".

The Licensor is \_\_\_\_\_.

The Agreement is the software license agreement which is applicable to the software identified below ("Software") and which software license is either attached to this Addendum or which is a shrink-wrap, click-wrap, browse-wrap or similar license which is made applicable by acceptance on the internet or by incorporation in the Software, Software packaging, Licensor's proposal, or other similar means.

The Software is \_\_\_\_\_.

The Software which is the subject of this Addendum is as described either in the attached Agreement, in a separate attachment to this Addendum, or in the Associated Purchase Order which either has this Addendum attached or incorporated by reference. All references to Software herein shall, as appropriate by the context, include related documentation and any updates, upgrades, modifications, and bug fixes provided by Licensor.

In connection with the Agreement and the Software, Licensor and Licensee agree to the following provisions which shall take precedence over any conflicting provision in the Agreement:

I. Use of Software

- A. Licensee shall be permitted to transfer the Software and licenses granted with respect to the Software as set forth in Section XI below.
- B. Licensee shall be permitted to grant access to the use of the Software to its affiliates, consultants, subcontractors, team members, customers, agents and similar parties and to their respective employees ("Authorized Users") in connection with Licensee's authorized uses thereof provided that all such parties have suitable obligations protecting Licensor's rights in the Software which are in substance consistent with the provisions of the Agreement (as hereby amended).
- C. Licensee shall be permitted to transfer the rights and licenses granted by the Agreement (as hereby amended) to any affiliate of Licensee which agrees in writing to be bound by the terms of the Agreement (as hereby amended) provided that Licensee shall be responsible for the affiliate's compliance with all applicable terms and conditions of the Agreement (as hereby amended).
- D. Licensee shall be permitted to assign the license to any party which acquires all or substantially all of Licensee's business and assets related to the activities for which the Software is licensed provided that Licensee gives Licensor notice of any such assignment and that the assignee agrees in writing to be bound by all applicable terms and conditions of this Agreement (as hereby amended).
- E. Licensee shall be permitted to use the Software with a backup computer or system if the computer or system for which it was acquired is inoperative or malfunctioning.
- F. Licensee shall be permitted to copy the Software solely for archival or backup purposes in accordance with Licensee's standard disaster recovery practices.

- G. Subject to applicable prohibitions against reverse engineering and if the Software is a development tool or is provided with source code, Licensee shall be permitted to modify the Software as necessary to use the Software for its intended purpose.
- H. Licensee shall be permitted to combine the Software with other software as necessary to use the Software for its intended purpose.
- I. Licensee shall be permitted to use the Software on the computer(s) or system(s) for which it was acquired at any location to which the computer(s) or system(s) may be installed or relocated by Licensee.
- J. Unless otherwise expressly provided in writing on the Associated Purchase Order, if the Software is a development tool then Licensee may deploy and distribute any resulting application software prepared by Licensee without obligation to Licensor with respect to such application software.

## II. Liability

- A. In no event shall Licensee, Authorized Users, or their respective customers, employees or agents be liable (whether in contract, tort or otherwise) for any special, exemplary, indirect, incidental, speculative or consequential damages.
- B. Licensor's liability shall be the greater of any limits of liability specified in the Agreement or the amounts recoverable from Licensor's insurance but in no event shall Licensor's liability, howsoever arising in connection with the subject matter of the Agreement, be less than the amounts paid to Licensor in connection therewith. Any limits on Licensor's liability shall not apply with respect to liability arising out of Licensor's gross negligence or willful misconduct or with respect to any breach of warranty or indemnity under Section IV below or to any breach of warranty under Section VI. B, Section VI. C, or Section VI. D below.

## III. Confidentiality

- A. Licensee's duty to protect the Software shall not exceed the use of the customary degree of care Licensee uses to protect its own proprietary information of similar character and in no event shall Licensee be liable for inadvertent disclosure if such standard of care is used. It is also understood that Licensee shall be permitted to exercise such rights with respect to the Software and related documentation as may be permitted under applicable copyright law and to treat Software and related documentation which bears a copyright notice as a published copyrighted work. Licensee's obligations of confidentiality shall cease five (5) years after the effective date of the Agreement. Nothing contained in this Section III is intended to or shall modify or obviate any rights which Licensor may have under applicable copyright law which protects Licensor's rights in the Software.
- B. In order for the Software to be treated as confidential and proprietary, the Software must be identified with appropriate markings in human readable form with Licensor's name and a statement of its proprietary nature. There shall be no restrictions applicable to Software, portions thereof, or any other information supplied by Licensor which (i) has been or is independently developed by or on behalf of Licensee; (ii) was in Licensee's possession prior to receipt from Licensor; (iii) has been or is rightfully obtained from a third party; (iv) is or becomes publicly available other than through the fault or negligence of Licensee; or (v) has been or is released without restriction by Licensor.
- C. Notwithstanding anything in the Agreement to the contrary, (i) latent data such as deleted files, and other non-logical data types, such as memory dumps, swap files, temporary files, printer spool files, and metadata that can only be retrieved by computer forensics experts and that is generally considered inaccessible without the use of specialized tools and techniques and (ii) back up files of the Software made in the normal course of business as part of Licensee's disaster recovery plan will not be subject to requirements for return or destruction of proprietary information.

- D. Notwithstanding anything in the Agreement to the contrary, Licensee shall have the right to perform such activities in relation to the Software as may be reasonably necessary to satisfy security requirements and to confirm the absence of malware, latent defects and the like. Information obtained by Licensee as the result of such activities shall be used by Licensee only for the aforementioned purposes and shall otherwise be treated as Licensor's proprietary information.

#### IV. Intellectual Property Warranty and Indemnity

Licensor warrants that the Software as licensed and any other deliverable supplied by Licensor does not infringe any third party intellectual property rights. Provided that Licensee shall give prompt written notice to Licensor of any claims against Licensee, its affiliates, and/or their customers that the Software and/or related documentation and/or any other deliverable supplied by Licensor infringes any patent, copyright or other intellectual property right of a third party, Licensor shall, at Licensor's expense, defend, indemnify and hold-harmless Licensee, its affiliates and their customers from any such claim and from any resulting costs and expenses. Failure by Licensee to give prompt written notice shall not relieve Licensor of its obligations hereunder unless such failure is material to Licensor's ability to defend or settle the claim.

#### V. Governing Law and Export Controls

- A. By adoption of the parties, the State of Delaware, United States of America, is deemed to be the place of contracting and, by agreement of the parties, any claim or controversy relating to the Agreement (as hereby amended), its interpretation, performance, or validity shall, except as otherwise provided in Sections IX and XI below related to the application of US Federal law when applicable, be construed and interpreted in accordance with the laws of the State of Delaware without giving effect to its internal principles of conflict of laws. The parties agree that the Uniform Computer Information Transaction Act, or any version thereof, adopted by any state in any form ("UCITA") shall not apply to the Agreement. To the extent that UCITA is otherwise applicable, the parties agree to opt out of the applicability of UCITA pursuant to the opt-out provisions contained therein.
- B. In the event that the Software is subject to export control limitations under the Export Control Regulations of the United States and/or under the International Traffic in Arms Regulations (ITAR) of the United States, Licensor shall be responsible to advise Licensee in writing and with specificity of the applicable limitations and controls, including advising Licensee whether ITAR applies and advising Licensee of applicable control number on the Commodity Control List under the Export Administration Regulations.

#### VI. Warranties

- A. Licensor warrants that the Software shall, when delivered, perform substantially in accordance with the applicable specifications and related documentation and Licensor shall correct or replace any defective Software within thirty (30) days of Licensee's written notification of the claimed defect. If Licensor is unable to promptly correct the defective Software, Licensee may, at its option, terminate the Agreement and receive a prompt refund of all amounts paid to Licensor in connection therewith. Licensor further warrants that any media or other tangible items supplied by Licensor shall be free from defects in materials and workmanship for a period of one (1) year from the date of receipt by Licensee, and Licensor shall promptly repair or replace any item which does not conform to such warranty.
- B. Licensor warrants that it owns the Software or otherwise has all necessary rights to grant the licenses thereunder which are the subject of this Addendum.
- C. Licensor warrants that the Software furnished to Licensee shall not contain any Malicious Code which is defined as (i) any undisclosed program routine, device or other feature or hidden file, including, without limitation, a time bomb, virus, software lock, trojan horse, drop-dead device, worm, malicious logic or trap door, that is designed to delete, disable, deactivate, interfere with or otherwise harm the Software or any hardware, software, data or other programs of Licensee or its customers, or (ii) any transmitting or activating computer program, any communication feature or tool

which enables Licensor to collect information regarding Licensee's activities or data, or any hardware-limiting, software-limiting, or services-limiting function (including, but not limited to, any key, node lock, time-out or other similar functions), whether implemented by electronic or other means. Notwithstanding the foregoing, it is understood that access to the Software may be limited by means of specific number of keys as expressly set forth in the Agreement (as hereby amended) or Associated Purchase Order.

- D. If any third party software is incorporated or embedded in the Software, Licensor represents and warrants that it has all rights and licenses with respect to the third party software necessary to license the Software to Licensee on the terms provided in the Agreement (as hereby amended) and that in no event is there any third party software incorporated or embedded in the Software which would impose on Licensee any obligations which are not expressly provided in the Agreement (as hereby amended) or which would require Licensee to provide source code to any third party. Licensor shall defend, indemnify and hold harmless Licensee, its customers and permitted transferees from and against any claims, damages, losses, costs and expenses including reasonable attorneys' fees howsoever arising as the result of breach of the warranty in this Section VI.D.
- E. Licensor's warranties under the Agreement and under Sections IV and VI hereof shall extend to the benefit of any permitted transferees as set forth in Section XI below.

#### VII. Conflicting Provisions and Order of Precedence

Except as provided below, the provisions of this Addendum shall take precedence over any conflicting provision in Licensor's proposal, in the Agreement, in any pre-printed terms and conditions contained in the Associated Purchase Order issued by Licensee, or elsewhere in connection with the licensing of the Software. Any provisions which have been typed or written in the Associated Purchase Order (as issued by Licensee) shall take precedence over any conflicting provisions in any other document. The provisions of the Agreement (other than provisions in the Agreement which state that the Agreement contains the entire understanding between the parties or which state that additional provisions do not apply or provisions having similar meaning), as hereby amended, shall take precedence over conflicting pre-printed terms and conditions in the Associated Purchase Order. This Addendum may not be modified or amended except by a written amendment executed by an authorized representative of each party. Unless otherwise expressly set forth on the face of the Associated Purchase Order, no provision of the Agreement which purports to grant rights or immunities under Licensee's patent rights or other intellectual property of Licensee shall apply.

#### VIII. Outsource Providers and Transition Services

- A. Licensee may enter into contractual arrangements, either directly or through an affiliate, with an information technology service ("outsource") provider ("ITSP") whereby the ITSP shall provide certain software products and related services to Licensee. Licensor agrees that (a) Licensee may permit the ITSP to act on behalf of Licensee in exercising rights under the Agreement (as hereby amended) as Licensee believes necessary to allow the ITSP to provide outsource services to Licensee; and (b) the ITSP may acquire Software and related services for Licensee on the basis provided for in the Agreement (as hereby amended); and (c) Licensee may grant access to the Software and related documentation and to the use thereof to the ITSP as necessary to allow the ITSP to provide outsource services.
- B. Should Licensee sell or otherwise transfer ("Transfer") assets or equity ownership of any business unit of Licensee or of any affiliate of Licensee and should Licensee agree in connection with such Transfer to provide the transferee with transition services in connection with such Transfer to perform such activities previously performed by Licensee or its affiliate in connection with the operation of the relevant business which require the use of the Software to perform such transition services, then Licensor agrees that, notwithstanding anything contained elsewhere in the Agreement to the contrary, Licensee shall have the right to utilize the Software to provide such transition services to the transferee for a reasonable period of time not to exceed twelve (12) months.

IX. Federal Law and Procurement Regulations

- A. If the Software and / or other deliverables are being supplied in connection with or pursuant to a contract with the U.S. Government or a subcontract thereunder, the applicable U.S. Federal Law and Procurement Regulations shall apply as appropriate in connection with the Agreement (as hereby amended) and with the rights and obligations of the U.S. Government, including those regulations referenced in the Associated Purchase Order.
- B. Without limiting the general applicability of Section IX, A above, if the Software and/or deliverables are being supplied in connection with or pursuant to a contract with the U.S. Government or a subcontract thereunder, no provision of the Agreement (as hereby amended) shall apply with respect to the U.S. Government insofar as such provision conflicts with applicable U.S. Federal Law, Federal Procurement Regulations, or applicable published procurement policies and practices of the relevant U.S. Government agency, including by way of example:
- (i) Provisions which conflict with 31 USC 1341 and 41 USC 11 (Anti-Deficiency Laws).
  - (ii) Provisions which conflict with 28 USC 516 (DOJ Jurisdictional Statute).
  - (iii) Provisions providing for payment of interest on late payments which are not in accordance with 31 USC 3901 et seq. (Prompt Payment Act) and 5 CFR1315.
  - (iv) Provisions requiring payment of attorneys' fee by the U.S. Government except as provided in 5 USC 504 (Equal Access To Justice Act).
  - (v) Provisions which, directly or indirectly, make the U.S. Government responsible for federal, state, or local taxes.
  - (vi) Provisions which obligate the U.S. Government to be bound by terms imposed by third party suppliers where such terms are not expressly set forth in the Agreement.
  - (vii) Governing law or dispute resolution provisions which conflict with applicable United States Federal law or provisions which make the United States Government subject to equitable remedies.
  - (viii) Provisions which provide for unilateral termination or modification of the Government's rights or which are inconsistent with FAR 52.233-1, FAR 12.302(b), FAR 1.601(a), or FAR 43.102.
  - (ix) Provisions which are inconsistent with 5 USC 552 (Freedom of Information Act).

X. Invoices and Audit

- A. Licensor shall reference the Associated Purchase Order number on all invoices. Any provision in the Agreement providing for payment of interest shall not be applicable. Any provision in the Agreement requiring payment of invoices sooner than forty-five (45) days after receipt, shall not apply. Any taxes to be paid to Licensor (e.g., sales taxes) must be separately stated in Licensor's quote and invoices, and in lieu of payment of such taxes, Licensee may provide a direct payment permit or evidence of exemption.
- B. Notwithstanding anything contained in the Agreement to the contrary, any right which Licensor may have to audit compliance with the Agreement shall be limited to once per each semiannual period during the term of the Agreement, shall require reasonable prior written notice, and shall be subject to all security and confidentiality requirements applicable to the facility or facilities in question. It is understood that the United States Government may prohibit audits at United States Government facilities as necessary for security reasons. Information acquired during any such audit shall be used solely for purposes of confirming Licensee's compliance with the Agreement (as hereby amended). In the event the license granted by the Agreement is terminated, any final audit shall be completed within one (1) year of termination.

XI. Transfer of Software

- A. In addition to such rights as are set forth in the Agreement or in Section I above, Licensee may transfer the Software and applicable rights and licenses thereto to Licensee's customers in connection with the transfer of the computer(s), system(s), or application(s) for which the Software was acquired provided that:
- (i) In the case of transfers to parties other than agencies of the United States Government, such transfer may be made either (a) by assignment of the Agreement (as hereby amended) to the transferee provided that such assignment is made in writing or under other conditions which obligate the transferee to be bound by all applicable provisions of the Agreement (as hereby amended), (b) by causing the transferee to execute a license agreement directly with Licensor or to otherwise acknowledge acceptance of either Licensor's standard commercial license terms or the subject Agreement as hereby amended, or (c) pursuant to a contract with the transferee which provides in substance that (1) title to software provided by third party suppliers remains with the third party supplier, (2) transferee shall have only a non-exclusive license to use software provided by third party suppliers in connection with the equipment, system(s) or application(s) supplied by Licensee, (3) transferee shall not reverse engineer or decompile software provided by third party suppliers, (4) transferee shall not copy software provided by third party suppliers except to make appropriate back-up or archival copies, (5) the license granted with respect to software provided by third party suppliers is limited to transferee's use of such software for the authorized purposes and transferee is prohibited from sublicensing, timesharing, rental, facility management or service bureau usage of such software, and (6) transferee acknowledges that the third party supplier of such software is an intended third party beneficiary of the applicable provisions of the contract protecting third party software and may enforce such provisions against the transferee; and
  - (ii) In the case of transfers of commercial computer software to agencies of the United States Government such transfers may be made by any of the means described in Section XI. A. (i) above or by transfer which identifies the Software as commercial computer software subject to the applicable Federal Acquisition Regulations or supplements thereto which are applicable to supply of commercial computer software; provided, however, that Licensor agrees that in no event shall the United States Government have less than the rights provided for in FAR 52.227.19 (Dec. 2007) or equivalent successor regulation and provided that Licensor shall be responsible to ensure that Software delivered to Licensee shall be properly marked as commercial computer software where applicable in accordance with the requirements of applicable Federal Acquisition Regulations. In the event that the subject Software is not commercial computer software as defined by the applicable Federal Acquisition Regulations, then Licensor agrees that, if the Software is to be delivered to an agency of the United States Government, the United States Government shall have such rights as are required by the applicable laws and regulations. Transfers to agencies of the United States Government shall also be subject to Section IX above.
- B. In the event that Licensee transfers the Software to a third party which is a contractor or subcontractor pursuant to a contract with an agency of the United States Government where the United States Government is the intended end-user of the Software, then such transferee and any intermediate transferees may transfer the Software and applicable license rights to the U.S. Government on the same basis as Raytheon is permitted to do pursuant to Section XI. A. (ii) above. Licensee may also transfer the Software to intermediate parties where the End User is not an agency of the United States Government for ultimate transfer to an End User provided that the intermediate parties are subject to substantially the same obligations as Licensee under the Agreement (as hereby amended) and such intermediate parties may transfer the Software to the End User in the same way Licensee is permitted to do so under Section XI A(i) above.
- C. Transfers to agencies of foreign governments may be made in accordance with the applicable procurement laws and regulations of the government in question.
- D. In the event of permitted assignment as provided in this Addendum, Licensee shall remain bound by its continuing confidentiality obligations as set forth in the Agreement (as hereby amended) and its obligations to make any payments due prior to assignment; but in the event of any such assignment or other permitted transfer as provided above,

Licensor shall otherwise look solely to the assignee or to the permitted transferee for performance of the assignee's or transferee's obligations with respect to the use and protection of the Software. In the event the assignee or transferee is an agency of the United States Government, Licensor agrees that any claim against or dispute with such agency shall be subject to applicable United States law such as the Federal Tort Claims Act and the Contract Disputes Act and to the jurisdiction of the federal courts as provided in the United States Code.

- E. In addition to the foregoing, any special requirements or mandatory provisions, which may be required by Licensee's customer and which are set forth or referenced in the Associated Purchase Order, shall apply.
- F. For the avoidance of doubt, it is understood that, if Licensee has a license for multiple copies of the Software or has a multiple seat license for the Software, Licensee's rights to transfer the Software and the applicable rights and licenses as provided in this Addendum shall include the right to transfer the applicable rights and licenses in whole or only with respect to a portion of the licensed copies or licensed seats.

XII. Publicity

Licensor shall not use Licensee's name in any promotional material, advertising, customer list, or the like without Licensee's express prior written consent.

XIII. Third Party Software

Upon request by Licensee, Licensor shall provide Licensee with a written list of all third party software incorporated in the Software or necessary to use the Software and with copies of the applicable license agreements.

XIV. Termination

In the event the Agreement is terminated in accordance with the provisions thereof, it is agreed that (a) such termination shall not effect any provisions of the Agreement (as hereby amended) which by their nature are inherently intended to survive termination, (b) except in the case of willful and intentional material breach of the Agreement (as hereby amended), Licensee shall be entitled to a reasonable period of time to wind down its use of the Software in an orderly fashion, and (c) such termination shall not effect any licenses previously transferred to third parties.

XV. Notices

Any notice under, or in connection with, the Agreement or this Addendum shall be in writing and shall be deemed to have been given when received by the party to which said communication is directed at its address set forth in the Agreement, Associated Purchase Order, or at such other address as such party may have theretofore, designated in writing to the other party hereto. A receipt evidencing delivery by certified or registered mail or by recognized commercial courier service shall constitute evidence of receipt. Any notice requiring prompt action shall be contemporaneously sent by facsimile transmission or electronic mail with the receipt confirmed by answer back or similar confirmation of receipt by the receiving terminal.

IN WITNESS WHEREOF, the parties have caused this Addendum to be executed by their duly authorized representatives as set forth below. The effective date of this Addendum shall be the date of last signature set forth below.

**Licensee**

**Licensor**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_