SOFTWARE LICENSE AGREEMENT –SOA

1.   Limited Right to Use
(a) Subject to the additional licensing terms contained in the License Agreement Addendum - Licensed Products Exhibit which accompanies the Software (the "Licensed Product Exhibit"), SOA grants Licensee a limited, non-exclusive, non-transferable, nonsublicenseable license to install and use solely for Licensee's internal business purposes, the machine readable object code version of the software ("Software") and its accompanying documentation ("Documentation") defined in the Licensed Product Exhibit.
(b) If the Licensed Product Exhibit indicates that the license granted herein is for EVALUATION, SOA grants Licensee a limited, non-exclusive, non-transferable, nonsublicensable license to install and use the machine readable object code version of the Software and its Documentation defined in the Licensed Product Exhibit solely for Licensee's internal evaluation for the number of days in the Licensed Product Exhibit (the "Evaluation Period"),. The Software is licensed to Licensee "AS IS", without any representations or warranties whatsoever. SOA SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OR NONINFRINGEMENT. SOA SHALL HAVE NO LIABILITY TO LICENSEE OR ANY THIRD PARTY ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING ANY LIABILITY OR DAMAGES RELATED TO LICENSEE'S USE OF THE SOFTWARE, AND ALL USE OF THE SOFTWARE IS AT LICENSEE'S SOLE RISK. LICENSEE AGREES THAT THIS LIMITATION IS A REASONABLE AND AN ESSENTIAL PART OF THE BARGAIN IN EXCHANGE FOR OBTAINING THE LICENSE GRANTED HEREIN. WITHOUT LIMITING THE FOREGOING, IN NO EVENT SHALL SOA BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, MULTIPLE OR INCIDENTAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOST PROFITS, BUSINESS INTERRUPTION AND/OR LOST DATA, REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY ARISING OUT OF THIS AGREEMENT OR THE USE OF OR INABILITY TO USE OR ACCURACY OF THE DATA GENERATED BY, AND/OR OUTPUT PRODUCED FROM THE SOFTWARE OR DOCUMENTATION EVEN IF SOA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE. Licensee is hereby notified that the evaluation copy of the Software provided may include a "time-out" mechanism that will automatically disable use of the Software at the end of the Evaluation Period. In addition, the following sections of this Agreement are NOT APPLICABLE TO YOU:
i)   Section 1(a) above of Limited Right to Use
ii)   Section 1(d) of Limited Right to Use
iii)   Section 3 -Limited Warranty; Disclaimer of Warranty vi) Section 7(a) – Term
(c) Licensee may make the number of copies of the Software and Documentation corresponding to the indicated quantities and licensing restrictions contained in the Licensed Product Exhibit.
(d)   Licensee may make a reasonable number of archival copies of the Software and Documentation, provided that all copies include SOA's copyright and any other proprietary notices as included in the delivery of the Software and Documentation. Any copy of the Software and Documentation made by Licensee is the exclusive property of SOA.
(e)   Except as expressly authorized herein, Licensee shall not: (i) copy the Software or Documentation; (ii) permit any parent, subsidiaries, affiliated entities or third parties to use the Software or Documentation; (iii) cause, aid or permit reverse compilation, reverse engineering or reverse assembly of all or any portion of the Software; (iv) modify, alter, translate, disassemble, decompile or create derivative works based upon the Software or Documentation or otherwise attempt to gain access to the source code to the Software; (v) distribute, disclose, publish, market, sell, loan, provide, demonstrate, rent, lease, transfer, sublicense or assign to any third party any portion of the Software or the Documentation; or (vi) use the Software or Documentation to provide services to third parties (i.e., in the operation of a service bureau, commercial time-sharing or third-party training). Licensee further agrees that the Software will be used only by Licensee and Licensee's employees or consultants solely in compliance with the rights granted in this Agreement.
2.   Ownership
SOA and its applicable licensors shall retain (i) all rights, title and interest in and to the Software (in object and source code forms) and Documentation, copies thereof, corrections thereto (whether made by SOA or others) and related materials, (ii) all rights, title, interest and goodwill associated with SOA's service marks, trademarks, trade names or any other designations, and (iii) all copyrights, patent rights, trade secret rights and all other intellectual property and proprietary rights in the Software (in object and source code forms) and Documentation.
3.   Limited Warranty; Disclaimer of Warranty
SOA warrants to Licensee that for a period of ninety (90) days from the date of shipment (or delivery if done electronically) of the Software, the Software will substantially conform to its Documentation. Licensee's sole and exclusive remedy under the foregoing warranty shall be for Licensee to use commercially reasonable efforts to correct any substantial non-conformity of the Software reported to SOA in writing during the period of warranty. The warranty herein shall not apply to any defect in the Software that is caused by (i) the use or operation of the Software with an application or in an environment other than that intended or recommended by Licensee, (ii) modification to the Software not made by SOA, (iii) third party hardware or software or (iv) Licensee's failure to implement all error corrections which are issued by SOA.
4.   Infringement
SOA shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided SOA is reasonably notified of such claims and proceedings. Pursuant to 28 U.S.C. §

516, in the event of any claim against an Ordering Activity arising out of use of the Manufacturer software, Manufacturer cannot assume responsibility for or control of the litigation or any settlement negotiations, provided however, that Ordering Activity (i) agrees that any litigation or settlement negotiation shall not bind Manufacturer, in any way, to the final outcome of any such litigation or settlement; (ii) shall not impair Manufacturer's own rights, defenses, or claims against the claimant, (iii) shall not have the right to settle any claim, make any admissions, or waive any defenses on behalf of Manufacturer; and (v) shall in good faith reasonably cooperate and consult with Manufacturer during the course of settlement negotiations and prosecution of the claim and shall afford Manufacturer free access to all communications and documents with all parties, witnesses, and judicial or administrative body(ies) associated with such claim upon Manufacturer's request. In compliance with the Anti-Deficiency Act, 31 U.S.C. § 1341(a)(1)(B), the U.S. Government does not agree to pay any costs, fees, or damages arising from claims against Manufacturer relating to use of the software by any Ordering Activity.

5.   Limitation of Liability

Neither Manufacturer nor an Ordering Activity shall be liable for any indirect, incidental, special, or consequential damages, or any loss of profits, revenue, data, or data use. Further, neither Manufacture nor an Ordering Activity shall be liable for punitive damages except to the extent this limitation is prohibited by applicable law. This clause shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to this GSA Contract under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733, nor impair nor prejudice the U.S. Government's right to EXPRESS remedies provided in the Solicitation FCIS-JB-980001-B (i.e. Clause 552.238-72 – Price Reductions, clause 52.212-4(h) – Patent Indemnification, Liability for Injury or Damage (Section 3 of the Price List), and GSAR 552.215-72 – Price Adjustment – Failure to Provide Accurate Information).

6.   Protection and Security

Licensee is solely responsible for any authorized or unauthorized access to the Software. Licensee agrees to comply with all laws and regulations applicable to the gathering, processing, storing, transmitting and dissemination of business or personal information.

7.   Term and Termination

1. Termination or cancellation of this Software License Agreement shall be governed by the FAR

and the Contract Disputes Act, 41 U.S.C. §§ 601-613. Subject to the following exceptions:

a.   Manufacturer is entitled to cancel or terminate the License Agreement if such remedy is granted to it after conclusion of the Contracts Disputes Act dispute resolutions process referenced in Section 14 above or if such remedy is otherwise available to Manufacturer under United States federal law.

b.   Manufacturer is entitled to cancel or terminated the License Agreement if one of the events identified in Section 8 below apply.

8.   Remedies

Pursuant to 28 U.S.C. § 1498, any provisions of the License Agreement providing for equitable remedies against the U.S. Government, including an injunction, in the event of a dispute concerning patent or copyright infringement are hereby deleted. Pursuant to Contract clause 52.233-1(i), any provisions of the License Agreement which would preclude continued performance of the contract during resolution of any disputes are hereby deleted, including any provisions requiring the U.S. Government to agree that an injunction is appropriate in the event of a breach of the License Agreement. Notwithstanding the foregoing, any License Agreement clause providing for equitable remedies against the US Government, including an injunction, in the event of dispute concerning patent or copyright infringement or any other breech of the License Agreement shall continue to apply if any equitable remedy is available under the US Federal law, such as (without limitation) the Freedom of Information Act (FOIA) under one of the exemptions to disclosure under FOIA. If the Ordering Activity breaches one of the following: (a) reverse engineers, decompiles, disassembles, or otherwise attempts to discover the source code of the software, (b) unbundles the constituent component parts of the software, or (c) provides use of the software in a computer service business, third party outsourcing facility or service bureau arrangement, or time sharing basis, Manufacturer may terminate the License Agreement; however prior to terminating this License Agreement, Manufacture shall inform the Ordering Activity of one of the breaches named above as soon as possible, and provide Ordering Activity sixty (60) days from notice to cure such breach. If the breach is not cured in sixty (60) days, the Ordering Activity may terminate the Order for convenience of the Government in accordance with FAR 52.212-4(1); however, Ordering Activity has no rights to a refund, in whole or in party of any License Fee paid if this License Agreement is terminated for such breach. Nothing in this paragraph shall prevent Manufacturer from filing a claim or limit Manufacturer's damages under the Contract Disputes Act 41 USC §§ 7101-7109.

9.   Confidential Information

To the extent allowed under applicable Federal law (e.g. the Freedom of Information Act, 5 USC 552), for purposes of this Agreement, "Confidential Information" shall include all trade secrets and confidential information of SOA and its licensors, including the Software (both source and object code) and Documentation, algorithms, development techniques, the results of all evaluations, testing, benchmarking and the like of the Software by Licensee, support techniques, methodologies, formulae, business plans, research and development strategies, SOA's internal personnel, financial, marketing and other business information, and product and service prices, as well as know-how and proprietary information related to the foregoing (collectively, the "Confidential Information"). Licensee acknowledges that such Confidential Information constitutes highly valuable information of SOA not generally known by SOA's competitors, and that disclosure of such Confidential Information to competitors of SOA or other third parties would cause undue harm to SOA. As such, except as otherwise expressly provided herein, Licensee will retain in strict confidence the Confidential Information and use commercially reasonable efforts to protect the same by preventing any unauthorized disclosure, copying, use, distribution, installation, or transfer of possession of the Confidential Information. If Licensee violates any of the provisions of this Agreement, including, but not limited to this Section, SOA (in addition to any other and additional rights or remedies it may have at law, in equity, or by statute) may be entitled to immediate and temporary or permanent injunctive relief, it being

agreed that the damages that SOA would sustain upon such violation are difficult or impossible to ascertain in advance. The confidentiality provisions of this Section shall survive termination of this Agreement for a period of five (5) years.

10.   United States Federal Government Acquisitions

This Section applies to all acquisitions of this Software by or for the federal government of the United States, or by any prime contractor or subcontractor (at any tier) under any contract, grant, cooperative agreement or other activity with the federal government of the United States. By accepting delivery of the Software, the government hereby agrees that the Software and related documentation qualifies as "commercial" computer software and "commercial" computer software documentation within the meaning of the acquisition regulation(s) applicable to this procurement. The terms and conditions of this Agreement shall pertain to the government's use and disclosure of this Software. If this Agreement fails to meet the government's needs or is inconsistent in any respect with Federal law, the government agrees to return this Software, unused, to SOA and notify SOA in writing of any such failure or inconsistency.

11.   No Export

Licensee acknowledges and agrees that the Software may be subject to restrictions and controls imposed by the United States Export Administration Act and the regulations there under. Licensee agrees that it will not export or re-export either the Software or any directly related materials to or into any country in violation of such controls or any other laws, rules or regulations of any country, state or jurisdiction.

12.   Audit Rights

Manufacturer is permitted to audit, inspect, or monitor use of the software for compliance with the License Agreement shall be contingent upon reasonable notice to the Ordering Activity and adherence to any security measures the Ordering Activity deems appropriate, including any requirements for personnel to be cleared prior to accessing sensitive facilities.

13.   Force Majeure

SOA shall not be responsible for any delays or inability to perform any of its obligations under this Agreement due to any Act of God, fire, casualty, flood, earthquake, war, strike, lockout, epidemic, destruction of production facilities, riot, insurrection material unavailability, or any other cause beyond the reasonable control of SOA.

14.   Miscellaneous

The License Agreement shall be governed by the laws of the United States, unless there is no applicable Federal law of the United States which would apply, in which case the laws of the STATE of CALIFORNIA shall apply. Any disputes relating to the License Agreement shall be resolved in accordance with the FAR, and the Contract Disputes Act, 41 U.S.C. §§ 6016137101-7109. GSA and Ordering Activity expressly acknowledge the Manufacturer shall have standing to bring such claim under the Contract Disputes Act under this License Agreement. Manufacturer agrees that the License Agreement contain no confidential or proprietary information and acknowledges the License Agreement will be available to the public with the FAR, and the Contract Disputes Act, 41 U.S.C. §§ 6016137101-7109. GSA and Ordering Activity expressly acknowledge the Manufacturer shall have standing to bring such claim under the Contract Disputes Act under this License Agreement. Manufacturer agrees that the License Agreement contain no confidential or proprietary information and acknowledges the License Agreement will be available to the public.