



MASTER SOFTWARE LICENSE AGREEMENT

(FOR USE FOR ALL COMMERCIAL SOFTWARE ACQUIRED BY THE US ARMY)

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Master Software License Agreement



This Master Software License Agreement (the "Master SWLA", or "Agreement") is made and entered into as of _____, 20__ (the "Effective Date") by and among the Parties defined below.

1. Parties to this Agreement (the Parties)

a. Contact and Entity Information

Publisher Entity Name ("Publisher")	Reseller Entity Name ("Reseller")	Licensee ("US Army", "Army" or "Licensee")
XYZ Publishing, Inc.	ABC Reselling, Inc.	United States Army
Address	Address	Address
Street City, State, Zip	Street City, State, Zip	Street City, State, Zip
POC	POC	POC
Name Phone Email	Name Phone Email	Name Phone Email
Notification Info	Notification Info	Notification Info

b. Enterprise Treatment

The parties agree that the Army is an enterprise comprised of multiple agencies, services, departments, coalition forces where authorized, and organizations where the Army is the designated executive agent, and components, each of which is considered an "Affiliate" of the Army

2. Background / Purpose

Business purpose, Licensee goals, and intent (refer to Exhibit)

Requirements and Gap Analysis Report (refer to Exhibit)

Vendor proposal and other relevant documentation (refer to Exhibit)

Features and benefits / Why this software was selected (refer to Exhibit)

Glossary (refer to Exhibit)



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3. Grant of License

The Publisher shall grant licenses to Licensee using the structure shown below at the time an order is placed.

a. Software Product Name(s) and short description	List each software product name and number licensed under this MSLA.
b. License Type	(example: perpetual)
c. To (Authorized Users)	(defined organization-enterprise) (the “Authorized Users”) and Authorized Contractors. Authorized Users include military, reserves, civilians, contractors supporting the Army, and coalition forces
d. Transfer	With the right to transfer to any Affiliate of the Army.
e. License Categories (purpose) and copies	Trial/Demo/Evaluation of the Software
	Development and Test
	Operational production Use
	Disaster Recovery / COOP
f. In (Geography)	[Note: The default geography is “worldwide” unless there are compelling reasons to limit the geography. Geography should have no impact on price.]
g. Language(s)	List all the languages required for file names, documentation, support desk and training classes. (example English for support desk, documentation and training but will require software in multiple languages to support coalition forces and authorized foreign nationals supporting the Army)
h. To perform (List Functionality)	List Functionality from Requirements and Publisher Documentation (refer to attachment – see Exhibits C and D)
	<u>New Program Features.</u> If Army suggests any new features, functionality or performance for the Programs and based upon such suggestions Publisher subsequently incorporates new features, functionality or performance into its Programs (“New Features”), such New



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	Features shall be available to Army through a royalty free, perpetual, world-wide no charge license to the Army.
i. For (Duration)	Perpetuity
	Term _____(years)
	Subscription ____(monthly/quarterly/annual)
j. Basis for Quantity and Quantity	[Examples are shown below. Select the correct type]: Named Users, Concurrent Users, Unlimited Users, Processors, Enterprise, Site. If enterprise is selected, include a statement which defines the enterprise, for example, the U.S. Army to include active military, reserves, civilian, coalition forces (when authorized) and contractors supporting the Army including all civilian and military locations and personnel worldwide. If site is selected, include a statement which provides for relocations, name changes and successor organizations to continue using the license.
	[Note: Add Quantity Here for the Order]
	Temporary Use of Software During Times of Conflict.
k. Supported Platforms	If required by the software

4. Maintenance & Support Services

a. Maintenance	Describe what is included example upgrades, bug fixes etc.
b. Support Services Levels X, Y, and Z	See sample table below
c. Key Metrics / Measurements	See sample table below

A sample Service Level Agreement table for Support response times:

Issue Severity	Response Time to Acknowledge Issue	Response Time to Fix Issue
Level 1 (Low) Does not have significant impact on users.	Return call or email within 8 hours.	Provide fix within 30 days.



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Level 2 (Moderate) Causes some user issues, but most processes are functional.	Return call or email within 4 hours.	Provide fix within 5 days.
Level 3 (High) Significant impact on system use.	Return call or email within 1 hour.	Provide fix ASAP—24 hours or less.

5. Payments

The fees for licenses ordered shall be defined in each Order as full consideration for all rights granted hereunder and services to be provided by Licensor:

a. License or Subscription Fees	\$_____ per _____ (processor/user/?)
b. Maintenance and Support Fees Year 1	\$_____
c. Start Date for Maintenance/Support Fees	Date
d. 0% Escalation on Maintenance/Support for <u>X</u> Years	___ Years
e. Escalation cap of X % for ___ years Y through Z.	___% Beginning Year __, Ending Year ___

6. General Provisions

6.1 License Assignment and Transfer

6.1.1 The Army shall have the right, without the prior written consent of the Publisher or the Reseller, to assign, reassign, or transfer software licenses or Army's rights in the Software to an "Affiliate" of the Army, to include any governmental organization or commercial entity that is managed, operated or controlled by the Army.

6.1.2 The Army is authorized to sublicense, assign or transfer the Software



or the Army's rights in the Software, and such authorization includes sublicensing, assignment or transfer among or between "Authorized Users". In the event an Authorized User is reorganized or restructured such that its responsibilities and operations are transferred to another Army agency, the agency shall have the right to assign the affected program licenses to a successor. The licensed agency and the successor agency agree to be bound to this Agreement. The transferee shall be bound by the license metrics and limitations in this Agreement.

6.2 Data Ownership

6.2.1 The Army Data belongs exclusively to Army. Publisher makes no claim to any right of ownership in Army Data. If Publisher is granted access to Army Data, Publisher agrees to keep the Army Data Confidential as that term is defined in the Glossary (Exhibit X) and the relevant FAR and DFARS provisions pertaining to Confidential Information and Confidentiality. Upon Army's request, for any reason whatsoever, Contractor must promptly return all Army Data in Contractor's possession in comma separated value (CSV) format.

6.3 Rights to Derivative Works

6.3.1 NOTE: This is the default clause. Licensee may create modifications, customizations or other enhancements to Licensee's software designed to work together with the software, generally referred to as "Derivative Works". In cases where Licensor's software is wholly or partly a Software Development Kit (SDK), the essence of the license agreement is to permit Licensee to create applications or other Derivative Works designed to work with Licensor's software. In recognition of Licensee's unique requirements for confidentiality and mission integrity, whether Licensee creates Derivative Works directly, through Licensor or through other third parties, whether they are "Works for Hire" or not, whether they are based on SDKs or transactional software or other types of software, Licensee shall retain all right, title and interest to such Derivative Works free of any claims by Licensor to title, restrictions on use, royalties, or other fees. Licensor has no claim to these Derivative Works and hereby covenants to keep them confidential, to not incorporate them into Licensor's products or to otherwise distribute them in whole or in part to any third party.

6.4 Temporary Use of Software During Times of Conflict

6.4.1 As part of Temporary Expeditionary Deployments (TEDs), during the term of this Agreement, Army may temporarily deploy and install or use on, or access from qualified desktops. Laptops, mobile devices or servers, a reasonable number of Licensor software products in addition to those previously licensed pursuant to this Agreement at no additional cost ("TED Licenses"). TEDs are limited to deployments away from in-garrison locations (any military post or government office where troops or civilian government personnel are at a permanent location), war games, exercises, real world contingencies, and emergency situations such as Hurricane Katrina or similar to the terrorist attacks on 9/11/2001 where



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temporary duty stations were needed due to the destruction of government offices or government mission to support the emergency situation.

6.4.2 For licenses connected to an Army network server, on an semi-annual basis, Licensor shall provide an additional temporary license pool equal to the quantity of network versions purchased, which may be accessed during a TED event.

6.4.3 For computers not connected to an Army network server, The Licensor shall provide, on a quarterly basis, a pre-activated temporary (ninety) 90 day single seat network license which can be copied for use on any number of computers.

6.4.4 After the TED, or twelve (12) calendar months, *whichever is shorter* ("Temporary Use Period"), unless a different time period is agreed to in writing by the Licensor, the Army will provide a written certification that the TED Licenses have either been removed from service, or payment has been made under this Agreement to purchase additional perpetual licenses equal to the number of TED Licenses not removed from service. Army agrees to use the TED Licenses in accordance with the terms contained in this Agreement and the applicable version of the Software License Agreement.

6.5 Licenses for Software Evaluation

6.5.1 If Licensee wishes to evaluate any Software generally available from Publisher, Licensee may order trial Software which Licensee may use for trial non-production purposes only.

6.5.2 Licensee's right to use such Software shall be at no additional charge and shall be: (i) subject to the terms of this Agreement, (ii) solely for trial, non-production purposes only, and (iii) on an "AS IS" basis, without warranties or Maintenance Services of any kind. Publisher shall specify the duration of time for the evaluation. Following the end of the evaluation period, Licensee will cease using and will delete any such trial software from its computer systems. Use of the evaluation software does not constitute an agreement to purchase the software.

6.6 Self-Audit

6.6.1 Notwithstanding Publisher audit provisions or practices to the contrary, the Army is obligated to only perform an internal audit of Software use not more than once a year and will use its best efforts to keep full and accurate accounts that may be used to properly ascertain and verify numbers of licenses, users or subscription parameters in use. Upon Publisher written request, the Army may provide audit reports to Publisher from Licensee's internal audit records not more than once a year as the sole means of satisfying Publisher's requests for audit.

6.7 Warranties



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- 6.7.1 [NOTE TO FINAL DRAFTER]: Tie the baseline warranty to the original requirements documents in 2.a and b above (attached).
- 6.7.2 Publisher warrants, in a form and to the extent required by FAR, for one (1) year from the date on which the Software is first used in production by Licensee that the Software will perform in all material respects the functions described in the Documentation when operated on a Supported Platform.
- 6.7.3 In the event Licensee determines that the Product is a Noncomplying Product during the one-year period specified above, Licensee will notify Publisher and Publisher will have ten (10) business days thereafter to begin remedying the non-conformance. If Publisher is unable to remedy such non-conformance within a reasonable time, Publisher agrees that Licensee may return the Product and Publisher shall promptly refund any moneys paid for such Noncomplying Product.
- 6.7.4 Licensee must report to Publisher in writing any breach of the warranties during the relevant warranty period. Publisher shall use commercially reasonable efforts to correct or provide a workaround for reproducible Software errors that cause a breach of this warranty, or, if Publisher is unable to make the Software operate as warranted within a reasonable time considering the severity of the error and its impact on Licensee, Licensee shall be entitled to return the Software to Publisher and recover the fees paid by Licensee to Publisher for the license to the non-conforming Software.

6.8 Functionality Replacement and Extended Support

- 6.8.1 If the form, fit, or functionality contained in any licensed products acquired hereunder is substantially reduced or if the product is replaced, and/or Publisher provides this same or substantially similar functionality as a separate or renamed product, then the Licensee is entitled to license such substitute software at no additional license or maintenance fees.
- 6.8.2 If following the period in which Publisher or its Resellers are required to offer Support and Maintenance services, Publisher or its authorized Resellers shall have ceased providing Support and Maintenance services to Licensee (hereafter, the "Unsupported Product"), then Publisher or its authorized Resellers will deliver, at no additional cost to Licensee, a substitute Product which is generally available and is licensed by Publisher or its authorized Resellers to its other licensees and which provides equivalent features and functionality as the Unsupported Program.
- 6.8.3 For a minimum period of one year from the date of productive use of the substitute product by the Licensee, Publisher or its authorized Resellers shall extend support to the Licensee for the substitute product under either (a) the same terms and conditions as were originally offered or provided to the Licensee in the original license or support agreement for the unsupported product; or (b) the same terms and conditions as are offered to its other



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- licensees for the substitute product. The choice of support terms will be at the discretion of the Licensee.
- 6.8.4 The Publisher is prohibited from repackaging, re-bundling, renaming or merging existing or new products having the same or similar function as the products listed in Exhibit D as a means of re-pricing or re-licensing such listed products.
- 6.8.5 If Publisher repackages, re-bundles, renames or merges existing or new products having the same or similar function as the products listed in Exhibit D, Publisher shall provide updates, upgrades and new releases of said products under this Agreement at no additional cost.
- 6.8.6 Publisher will give Licensee one hundred eighty (180) days advance written notice before Publisher or its authorized Resellers discontinue support of any Product.
- 6.9 Intellectual Property Warranty
- 6.9.1 Publisher represents and warrants that, as of the Effective Date:
- 6.9.1.1 Publisher has full power and authority to grant Licensee the rights granted herein or in any Delivery orders issued hereunder including the right to use, display and distribute each Product to the extent set forth in this Agreement or any Delivery Order and that each Product is free of any and all restrictions, settlements, judgments or adverse claims;
 - 6.9.1.2 Publisher has obtained all necessary licenses for Licensee to any Third Party Materials (including without limitation, all Open Source licenses) provided with each Product. Publisher hereby discloses all Third Party and Open Source Software included in or with Licensor's software products licensed in this MSLA. Such disclosure includes the Third Party Software Publisher Name(s), Address(es) and Product(s) included with or in Licensor's software;
 - 6.9.1.3 Publisher complies with and shall continue to comply with all third party licenses (including, without limitation, all Open Source licenses) associated with any Third Party Materials provided with each Product;
 - 6.9.1.4 To the extent any Third Party Materials are provided with a Product, Licensee's use of such Product as provided by Publisher and in accordance with this Agreement will not be in conflict with any third party license requirements and will satisfy all conditions on use, modification or distribution of any such Third Party Materials without the need for any additional, unanticipated action or license fees on Licensee's part;
 - 6.9.1.5 Licensee does not and will not need to procure any rights or licenses to any patents or other third-party intellectual property rights to use as intended in this Agreement or any Delivery Orders issued hereunder the Product delivered by Publisher; provided, however, Licensee acknowledges and agrees that Publisher is not responsible for providing licenses



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to the third party operating system, database, and other components of the required operating environment for the Product as specified in the Documentation;

- 6.9.1.6 the Product does not constitute and will not constitute a misuse or misappropriation of the trade secrets of any third party;
 - 6.9.1.7 any Marks on the Product or its packaging do not infringe any third party trademark rights;
 - 6.9.1.8 the Product and the use thereof, does not infringe on any US patent, copyright, trade secret or other proprietary right of any third party and that Publisher is not aware of any facts upon which such a claim for infringement could be based;
 - 6.9.1.9 the Product will not (i) contain lock out devices or have any virus, disabling device, time bomb, Trojan horse, back door or any other harmful component, (ii) replicate, transmit or activate itself without control of a person operating the computing equipment on which it resides, (iii) alter, damage or erase any data or other computer programs without control of a person operating the computing equipment on which it resides or (iv) contain any code, key, node lock, time-out or other function whether implemented by electronic, mechanical or other means which restricts or may restrict use or access to programs or data based on residency on a specific hardware configuration, frequency or duration of use, or other limiting criteria; provided, however, that Publisher shall be entitled to include in the Products a license key that activates the Programs for use in accordance with this Agreement or any Delivery Orders issued hereunder, which license key is not disabling code and shall not be deemed a virus or other code in violation of this sub-paragraph (i); and
 - 6.9.1.10 If Publisher breaches this Intellectual Property Warranty, Licensee's remedy, and Publisher's liability, shall be the infringement indemnification provided by Publisher.
- 6.9.2 Escrow of Source Code (if applicable- include Exhibit)
- 6.10 Patent, Copyright, Trademark, and Trade Secret Protection
- 6.10.1 Publisher shall, at its expense, defend, indemnify and hold the Army harmless from any suit or proceeding which may be brought by a third party against the Army, its departments, officers or employees for the alleged infringement of any United States patents, copyrights, or trademarks, or for a misappropriation of a United States trade secret arising out of performance of this Agreement (the "Claim"), including all licensed products provided by the Licensor. For the purposes of this Agreement, "indemnify and hold harmless" shall mean the Licensor's specific, exclusive, and limited obligation to (a) pay any judgments, fines, and penalties finally awarded by a court or competent jurisdiction, governmental/administrative body or any settlements reached pursuant to Claim and (b) reimburse the Army for its



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reasonable administrative costs or expenses, including without limitation reasonable attorney's fees, it necessarily incurs in handling the Claim.

6.10.2 The Army agrees to give Licensor prompt notice of any such claim of which it learns. The Army has the sole authority to represent itself in actions brought against the Army. The Army may, however, in its sole discretion, delegate to Licensor its right of defense of a Claim and the authority to control any potential settlements thereof. Licensor shall not without the Army's consent, which shall not be unreasonably withheld, conditioned, or delayed, enter into any settlement agreement which (a) states or implies that the Army has engaged in any wrongful or improper activity other than the innocent use of the material which is the subject of the Claim, (b) requires the Army to perform or cease to perform any act or relinquish any right, other than to cease use of the material which is the subject of the Claim, or (c) requires the Army to make a payment which Licensor is not obligated by this Agreement to pay on behalf of the Army. If the Army delegates such rights to the Licensor, the Army will cooperate with all reasonable requests of Licensor made in the defense and or settlement of a Claim. In all events, the Army shall have the right to participate in the defense of any such suit or proceeding through counsel of its own choosing at its own expense and without derogation of Licensor's authority to control the defense and settlement of a Claim. It is expressly agreed by the Licensor that, in the event it requests that the Army to provide support to the Licensor in defending any such Claim, the Licensor shall reimburse the Army for all necessary expenses (including attorneys' fees, if such are made necessary by the Licensor's request) incurred by the Army for such support. If Army does not delegate to Licensor the authority to control the defense and settlement of a Claim, the Licensor's obligation under this section ceases. If Army does not delegate the right of defense to Licensor, upon written request from the Army, the Licensor will, in its sole reasonable discretion, cooperate with Army in its defense of the suit.

6.10.3 If the right of defense of a Claim and the authority to control any potential settlements thereof is delegated to the Licensor, the Licensor shall pay all damages and costs finally awarded therein against the Army or agreed to by Licensor in any settlement. If information and assistance are furnished by the Army at the Licensor's written request, it shall be at the Licensor's expense, but the responsibility for such expense shall be only that within the Licensor's written authorization.

6.10.4 If, in the Licensor's opinion, the licensed products furnished hereunder are likely to or do become subject to a claim of infringement of a United States patent, copyright, or trademark, or for a misappropriation of trade secret, then without diminishing the Licensor's obligation to satisfy any final award, the Licensor may, at its option and expense, substitute functional equivalents for the alleged infringing licensed products, or, at the Licensor's option and expense, obtain the rights for the Army to continue the use of such licensed products.

6.10.5 If any of the licensed products provided by the Licensor are in such suit or proceeding held to constitute infringement and the use thereof is enjoined, the Licensor shall, at its own



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expense and at its option, either procure the right to continue use of such infringing products, replace them with non-infringing items, or modify them so that they are no longer infringing.

6.10.6 If use of the licensed products is enjoined and the Licensor is unable to do any of the preceding set forth in item (e) above, the Licensor agrees to, upon return of the licensed products, refund to the Army the license fee paid for the infringing licensed products, pro-rated over a sixty (60) month period from the date of delivery plus any unused prepaid maintenance fees. The obligations of the Licensor under this Section continue without time limit and survive the termination of this Agreement.

6.10.7 Notwithstanding the above, the Licensor shall have no obligation under this Section 6.10 for:

6.10.7.1 modification of any licensed products provided by the Army or a third party acting under the direction of the Army;

6.10.7.2 any material provided by the Army to the Licensor and incorporated into, or used to prepare the product;

6.10.7.3 use of the Software after Licensor recommends discontinuation because of possible or actual infringement and has provided one of the remedy's under (e) or (f) above;

6.10.7.4 use of the licensed products in other than its specified operating environment;

6.10.7.5 the combination, operation, or use of the licensed products with other products, services, or deliverables not provided by the Licensor as a system or the combination, operation, or use of the product, service, or deliverable, with any products, data, or apparatus that the Licensor did not provide;

6.10.7.6 infringement of a non-Licensor product alone;

6.10.7.7 the Army's use of the licensed product beyond the scope contemplated by the Agreement; or

6.10.7.8 the Army's failure to use corrections or enhancements made available to the Army by the Licensor at no charge.

6.10.8 The obligation to indemnify the Army, under the terms of this Section, shall be the Licensor's sole and exclusive obligation for the infringement or misappropriation of intellectual property.

6.11 Army Indemnification

6.11.1 The Army does not have the authority to and shall not indemnify any entity. The Army agrees to pay for any loss, liability or expense, which arises out of or relates to the Army's acts



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or omissions with respect to its obligations hereunder, where a final determination of liability on the part of the Army is established by a court of law or where settlement has been agreed to by the Army agency. This provision shall not be construed to limit the Army's rights, claims or defenses which arise as a matter of law or pursuant to any other provision of this Agreement. This provision shall not be construed to limit the sovereign immunity of the Army.

6.12 Order of Precedence

6.12.1 The parties agree that the terms of this Agreement supersede and take precedence over the terms included in any purchase order, terms of any shrink-wrap agreement included with the licensed software (whether presented in writing or electronically), terms of any click through agreement included with the licensed software, or any other terms purported to apply to the licensed software including publishers commercial End User License Agreement.

6.12.2 The Army and its users shall not be bound by the terms of a Click Wrap license encountered during Software installation or at any time thereafter, notwithstanding Army users clicking 'Accept' in order to continue using the Software.

6.13 Term

6.13.1 (copy to come)

6.14 Termination

6.14.1 Licensor may not terminate this Agreement for non-payment.

6.14.2 The Army may terminate this Agreement without cause by giving Licensor thirty (30) calendar days prior written notice whenever the Army shall determine that such termination is in the best interest of the Army.

6.15 Backup for User Documentation

6.15.1 Licensor grants Army permission to make a reasonable number of copies for Army's internal business purposes. Army is responsible for ensuring that all copyright notices, trademarks and other restrictive legends are maintained on such copies. Army is also responsible for reporting to Licensor if Army learns of the misuse or mishandling of User Documentation provided under the contract to Army personnel, contractors or Government employees.

6.16 Rights of Survivorship of the Agreement

6.16.1 This Agreement shall survive unto Licensor, its Successor, rights and assigns. The software and agreement terms and conditions as covered under this agreement shall survive this agreement, in perpetuity, notwithstanding the acquisition or merger of Licensor by or with another entity. Any software name changes, re-packing or merger of similar products that



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carry forward the same or similar function of the software shall be supported with updates, upgrades and new releases under this agreement at no additional cost.

6.17 FAR and DFARs Provisions

6.17.1 (copy to come)

6.18 PII

6.18.1 (copy to come)

6.19 Limitation of Liability

6.19.1 (copy to come)

6.20 Relationship of the Parties

6.20.1 (copy to come)

6.21 Governing Law

6.21.1 (copy to come)

6.22 Dispute Resolution

6.22.1 (copy to come)



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7. Exhibits

- A. Glossary
- B. Business Purpose Documents
- C. Requirements List
- D. Licensed Product Names / Modules List
- E. Training Services
- F. Consulting Services
- G. Source Code Escrow Agreement (if applicable)