

Pratt & Whitney Rocketdyne, Inc. (PWR)
A United Technologies Company

SOFTWARE LICENSE TERMS AND CONDITIONS
(Non-Profit Institutions)

1. TERMS AND CONDITIONS

This Agreement is Buyer's offer to Seller. Acceptance of this Agreement is strictly limited to its terms. Buyer shall not be bound by and specifically objects to any term or condition whatsoever that is different from or in addition to the provisions of this Agreement, whether or not such term or condition will materially alter this Agreement. Seller commencement of performance, or acceptance of this Agreement in any manner, shall conclusively evidence agreement to this Agreement as written. Opening of a software package or the performance of any other act that would otherwise constitute acceptance of terms and conditions in Seller's end-user Agreement shall have no effect whatsoever.

2. DEFINITIONS

As used in this Agreement, the following terms, when capitalized, have the following meanings:

"Agreement" means these terms and conditions, each and every Contract, all exhibits now or hereafter made part of the Agreement that are incorporated by this reference and all of the specifications, technical descriptions, statements of work, designs, documents, and other requirements, provisions attached to, incorporated, or otherwise specified in these terms and conditions or any Contract.

"Buyer" means Pratt & Whitney Rocketdyne, Inc. (PWR) or its divisions or Pratt & Whitney Rocketdyne acting as agent for any of its affiliates or wholly owned subsidiaries. All references in this Contract to Pratt & Whitney Rocketdyne, Inc. (PWR) and any of its affiliates, divisions, or wholly owned subsidiaries shall mean "Buyer."

"Contract" means Buyer's written order or change order to Seller, which references this Agreement, for the delivery of goods.

"Documentation" means user manuals for the Goods, all addenda, corrections, and new editions of these materials and any other materials in any form that Seller customarily provides to end-users of the Goods. Documentation includes, without limitation, all the published specifications for the Goods on the date that the applicable Contract takes effect.

"Goods" means all of the Licensed Software, data, software, and any other services related to the Licensed Software.

"Key" means any key, node lock, time-out, or other function, whether implemented by electronic, mechanical, or other means that restricts or may restrict exercise of any of the licenses granted under this Agreement, based on residency on certain computing equipment, frequency, or duration of use or other limiting criteria.

"Licensed Software" means the Program and its Documentation that has been authorized for Buyer use as defined by the terms of this Agreement.

"Program" means each and every copy of the computer program or programs and all corrections, updates, new releases, and new versions of such program or programs, if any, ordered under this Agreement, in any form.

"Seller" means the entity identified in the Contract who agrees to sell goods.

3. DELIVERY AND RISK OF LOSS

- a. Delivery. Unless the Contract specifies a different delivery point, all deliveries under this Agreement shall be F.O.B. origin. Title and risk of loss of all of the Goods except the program shall pass to Buyer on delivery. Only risk of loss, not title, of the program shall pass to Buyer on delivery.
- b. Delivery Schedule. Shipment and delivery under this Agreement shall be strictly in accordance with the quantities and schedules

specified in the Contract and with the other requirements of this Agreement. Seller shall promptly notify Buyer in writing of any delay in delivery, the reasons therefore, and the actions being taken by Seller to overcome or minimize the delay. If requested by Buyer, Seller shall, at Seller's expense, ship by air or other fast transportation to avoid or minimize the delay to the maximum extent possible.

- c. Packing and Shipment. Seller shall prepare and pack the Goods to prevent damage and deterioration and to comply with carrier tariffs. Charges for preparation for shipment (including packing and crating) are included in the price unless separately specified in the Contract. Seller shall not include vermiculite or other hazardous substance in any packing material included with the Goods.

4. ACCEPTANCE

- a. Acceptance. The Goods shall be accepted when they meet all the conditions and requirements of this Agreement.
- b. Conditions. Acceptance of the Goods is subject to inspection and acceptance testing by Buyer in accordance with this Agreement.
- c. Acts Not Constituting Acceptance. Trial use, testing of the Goods, incremental or final payment, and passage of title do not constitute acceptance or prejudice Buyer's right to reject or revoke acceptance of all or any portion of the Goods.

5. PRICES AND PAYMENT

- a. Price. Any price specified in the Contract for the purchase of Goods is a firm-fixed price. Any price specified in the Contract for the purchase of a license to any of the Licensed Software is for a fully paid-up, perpetual license under the clause entitled "License."
- b. Payment. Seller shall issue a separate invoice for each delivery. The invoice, however, shall not be issued before shipment. Payment will be mailed thirty (30) days after receipt of a correct invoice. If the Goods have not been accepted by the close of this period, however, payment will be made promptly after acceptance of the Goods. For purposes of prompt payment discounts, if any, the payment due date will be computed from acceptance or receipt of a correct invoice, whichever is later, to the date Buyer's check is mailed or otherwise tendered. Seller will prominently display notice of any applicable prompt payment discounts on the invoice. Unless taxes or other applicable charges are itemized, any discount may be taken on the full amount of the invoice.

6. TAXES

- a. If any federal, state, or local sales or use tax (or its equivalent) is legally due on taxable Goods purchased, Seller will separately bill such tax on its invoice to Buyer. Buyer agrees to pay Seller for such tax or if such tax is not applicable to the Goods purchased, it will be so noted on the Contract and Buyer shall provide appropriate exemption statements and information on its Contract acceptable to the taxing authority.
- b. All other taxes, including, but not limited to federal, state, and local income taxes, franchise taxes, gross receipts taxes, federal, state, and local sales and use taxes, and property taxes shall be the responsibility of the party who incurs the tax liability.
- c. For tax purposes, the items purchased under this contract by Shared Services Group, Supplier Management and Procurement may be purchased for Buyer or as agent for one of Buyer's subsidiaries.

7. LICENSE

- a. Grant. With respect to all copies of the program in object code form and all copies of the Documentation in any form, Seller hereby grants and shall grant to Buyer and its subsidiaries a non-exclusive, perpetual, worldwide license to
- (1) Use the program on any computing equipment. This use right includes the right to share use of the program by multiple central processing units or by multiple users, provided Buyer tenders the applicable license fee, if any, to Seller. If the anticipated number of users of the program will exceed the number of licenses purchased from Seller with respect to such companies ("Licenses"), Buyer shall have a reasonable mechanism or process in place to monitor that the number of persons using the program concurrently does not exceed the total number of Licenses.
 - (2) Transfer the program between computing equipment. This transfer right includes the right to upgrade any copy of the Licensed Software, provided Buyer tenders either the applicable object code upgrade fee or a sum equal to the difference between the then-current license fees for the current and the upgraded versions of the Licensed Software, whichever is less.
 - (3) Make additional copies of the Licensed Software as reasonably necessary for backup or archival purposes or for benchmark or other temporary testing.
 - (4) Combine the program with one or more other programs, provided any portion of the program involved continues to be subject to the terms and conditions of this Agreement.
 - (5) Make, or have made, as many additional copies of the Licensed Software as may be required to satisfy Buyer requirements within the site, provided the Contract specifies "Site License."
 - (6) Change the form of the Documentation. This conversion right includes the right to edit and reformat any of the Documentation. It also includes the right to convert any of the Documentation into machine-readable form, whether for online or other kinds of electronic access to it, provided Buyer tenders the aggregate purchase price, if any, of those tangible copies of the Documentation supplanted by the conversion.

This license includes the right to authorize employees or agents of Buyer, Sellers, or subcontractors who are performing work for Buyer on Buyer premises to perform any of the activities described in paragraphs 7.a.(1) through (6) above.

- b. License of Prior Releases or Versions of Licensed Software.

Seller hereby grants Buyer the right and option to license a release or version of the Licensed Software that it has previously licensed, when it is other than the current release or version and when it is no longer available from Seller. The Buyer may exercise this option through issuance of a Contract. The Contract shall specify the prior release or version and the number of copies, whereupon Seller hereby grants and shall grant Buyer the right to make or have made as many additional copies of the Licensed Software as may be required to satisfy Buyer requirements for the prior release or version of the Licensed Software, provided Buyer tenders the applicable license fee for each copy to Seller.

- c. Surplus or Disposal. No license granted under this Agreement is transferable except to another party in connection with the surplus or disposal of any computing equipment, provided the transferee agrees to assume and comply with all of Buyer's obligations under this Agreement with respect to the Licensed Software involved or has a license agreement with Seller covering the Licensed Software.
- d. Object Code. Buyer is not obligated to keep confidential the Licensed Software in object code or written form. Nothing in the Agreement is intended to establish, or should be construed as establishing, any kind of confidential relationship between Buyer

and Seller with respect to the Licensed Software in object code form, regardless of any markings, screen display, or other notices given by Seller at any time. Except in the event of a breach of any representation or warranty set forth in the paragraph entitled "No Restrictions," Buyer shall refrain from any reverse compilation, disassembly, or other attempt to obtain the Licensed Software in source code form.

- e. No Restrictions. Except for the functions and features expressly disclosed in the Documentation, Seller represents and warrants that the program
- (1) Contains no hidden files.
 - (2) Will not replicate, transmit, or activate itself without control or a person operating the computing equipment on which it resides.
 - (3) Will not alter, damage, or erase any data or computer programs without control of a person operating the computing equipment on which it resides.
 - (4) Contains no key.

Provided and to the extent the program has any of the foregoing attributes, Seller further represents and warrants that this Agreement and the documentation together provide Buyer with the algorithms, specifications, and other code or information required to exercise any license granted under this Agreement without restriction. In the event Seller breaches either of these warranties for any reason and fails to cure the breach within the first six (6) hours of its normal prime shift period, Monday through Friday, following receipt of Buyer's deficiency notice, Buyer may reverse compile, disassemble, or otherwise obtain such algorithms, specifications, other code, or formation from the Licensed Software or any other program materials. The Buyer then may use them to restore the Licensed Software to the condition first warranted under paragraphs 7.e.(1) through (4) inclusive.

- f. Misuse of Licensed Software. In the event Seller has knowledge or has reason to believe that Buyer is using the Licensed Software beyond the scope of the license granted under this Agreement, Seller shall notify Buyer of the alleged misuse, in writing, in accordance with the clause entitled "Notices." Upon receipt of such notice, or in the event Buyer itself has reason to believe that the Licensed Software is being misused, Buyer shall promptly investigate the alleged misuses. Buyer shall destroy any unauthorized copies of the Licensed Software or submit a written request to any Seller for authorization to continue using some or all of them. In either case, the Buyer shall pay any license fees owed for such copies. Buyer shall provide Seller with a written report that summarizes the results of Buyer's investigation into the alleged misuse and what actions Buyer took to correct it. THIS IS SELLER'S SOLE AND EXCLUSIVE REMEDY FOR MISUSE OF THE LICENSED SOFTWARE SO LONG AS BUYER PERFORMS ITS INVESTIGATION AND MAKES PAYMENT TO SELLER IN A TIMELY FASHIION.

8. GENERAL PERFORMANCE

Seller represents and warrants that Seller has the legal right to enter into and perform its obligations under this Agreement, including, without limitation, the right to deliver, pass title to, and grant a license with respect to the Goods, support services, and any other services related to the Licensed Software.

9. PROPRIETARY INFORMATION

Seller shall keep confidential and otherwise protect from disclosure all information and property obtained from Buyer in connection with this Agreement and identified as Confidential or Proprietary. Unless otherwise expressly authorized herein or by Buyer, Seller shall use such information and property only in the performance and for the purpose of this Agreement. Upon Buyer's request, and in any event upon the completion, termination, or cancellation of this Agreement or any Contract, Seller shall return all such information and property to Buyer or make such other disposition thereof as is directed by Buyer.

10. INFRINGEMENT INDEMNIFICATION

Seller shall defend, indemnify, and hold harmless Buyer and its subsidiaries and their respective directors, officers, employees, and agents from and against all actions, causes of action, liabilities, claims, suits, judgments, liens,

awards, and damages of any kind and nature whatsoever (hereinafter referred to as "Claims") and expenses, costs of litigation (including without limitation clerk, paralegal, and expert witness costs), and reasonable attorneys' fees related thereto or incident to establishing the right to indemnification, whether or not specifically awardable under any court rules, to the extent such Claims arise out of the infringement of any patent or copyright by the Goods, or involve the wrongful use of any trade secret or confidential information. Buyer shall give Seller notice of all Claims made against Buyer or any of its subsidiaries and shall cooperate with Seller (at Seller's expense) in the defense or settlement of such Claims. In no event shall Seller's obligations hereunder be limited to the extent of any insurance available to or provided by Seller or any Subcontractor.

11. TERMINATION FOR CONVENIENCE

Buyer may terminate any Contract without cause, in whole or in part, by giving Seller notice of termination and specifying the extent and effective date of termination at any time before delivery. On the specified termination date, Seller shall (1) stop work under the Contract to the extent specified in the termination notice and (2) cease shipment of all Goods covered by the termination notice, other than those already delivered and accepted in accordance with the Agreement. In the event and to the extent of any termination under this clause, Seller's sole remedy and Buyer's total liability shall be to pay Seller the purchase price for all Goods delivered and accepted, but not paid for under the Contract on or before the termination date specified in the termination notice.

12. COMPLIANCE

- a. **With Applicable Laws.** Seller warrants that in the performance of its obligations under this Agreement, it has complied with or will comply with chapters 6, 7, and 12 of the Fair Labor Standards Act, as amended, and the regulations of the U.S. Department of Labor issued thereunder. The provision entitled "Equal Opportunity" set forth in FAR 52.222-26 is incorporated herein by this reference, except that "Contractor" means Seller. Upon request, Seller shall submit certification that it performed its obligations under this Agreement in accordance with the foregoing warranty.
- b. **With Export Laws and Regulations.** Buyer shall comply with the laws and regulation of the United States and its departments and agencies, relating to the export of technical data.

13. NOTICES

Any notice, authorization, designation, request, or instruction under or in connection with this Agreement to be effective shall be in writing and shall be deemed duly given or served upon delivery, addressed as set forth in the Contract.

14. RELATIONSHIP OF THE PARTIES

Nothing in this Agreement shall be construed as creating any relationship between Seller and Buyer other than that of seller and buyer or licensor and licensee, respectively. This Agreement is not intended to be, nor shall it be construed as, a joint venture, association, partnership, franchise, or other form of business organization or agency relationship. Neither party shall have any right, power, or authority to assume, create, or incur any expense, liability, or obligation, expressed or implied, on behalf of the other, except as expressly provided herein.

15. GOVERNING LAW

This Agreement shall be construed under and governed by the laws of the state of New York, without regard to conflict of law provisions. The venue for any such litigation shall be King County, Washington.

16. DISASTER RECOVERY

In the event of a disaster or catastrophe totally or partially disabling Buyer's computing or telecommunications capability, whether due to natural or man-made causes, Seller agrees to use its best efforts to aid in the prompt restoration of computing or telecommunications capability, including but not limited to furnishing emergency replacements of Goods upon request by overnight delivery, providing maintenance services, and providing technical assistance to Buyer in its attempts to recover data. Buyer shall be treated at least as favorably as Seller's most favored customer in the event that the disaster or catastrophe affects others. Buyer and Seller shall negotiate in good

faith to provide reimbursement to Seller for the actual costs of time, materials, and shipping involved in such emergency response.

17. GENERAL PROVISIONS

- a. **Severability.** If any provision of the Agreement shall be held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining provisions shall remain in full force and effect.
- b. **Assignment.** Neither this Agreement nor any other obligations under it may be assigned or delegated by either party without the prior written consent of the other party, except that Buyer may unilaterally assign this Agreement, in whole or in part, to any subsidiary or affiliate of Buyer or from a subsidiary to the parent company. In the sale or transfer of one of its businesses or assets thereof, Buyer may transfer its rights and responsibilities under this Agreement.
- c. **Publicity.** Neither party shall use the name of the other party in any news release, public announcement, advertisement, or other form of publicity without securing the prior written consent of the other. Nor shall either party disclose any of the terms of this Agreement to any third party without the prior written consent of the other, except to the party's auditors or attorneys or under subpoena duly issued by a court of competent jurisdiction. Notwithstanding the foregoing, Buyer hereby consents to Seller's inclusion of Buyer's name in a customer listing published in a prospectus or annual report, provided Buyer is not the sole customer listed.
- d. **Survival.** Except for any licenses expressly terminated or canceled, all licenses granted under this Agreement; all indemnities, warranties, and representations made under this Agreement; and all accrued obligations under the clause entitled "Proprietary Information" will survive cancellation or termination of this Agreement. Cancellation or termination of this Agreement or any Contract will not affect operation of those provisions of this Agreement which, by their terms, survive or are required to effectuate the intent of the parties, as reflected by this Agreement.
- e. **Third Party Beneficiary.** Every subsidiary of Buyer is an intended third-party beneficiary of this Agreement with rights of enforcement.
- f. **Rights and Remedies.** Except as limited under this Agreement, the rights and remedies afforded to each party under this Agreement are in addition to any other rights or remedies, at law or in equity or otherwise, including, without limitation, the rights and remedies of Buyer as a licensee of intellectual property under 11USC 365(n) (e.g., to retain its rights under this Agreement and to request and obtain a copy of the source code and associated programmer's notes of any computer software provided to Buyer under this Agreement in object code form as the embodiment of such intellectual property).
- g. **Waiver.** Either party's failure to exercise any of its rights under this Agreement shall not constitute a waiver of any past, present, or future right or remedy.
- h. **Litigation.** The prevailing party in any litigation arising out of this agreement shall be entitled to recover its expenses, costs of litigation (including without limitation clerk, paralegal, and expert witness costs), and reasonable attorneys' fees from the losing party, whether or not specifically awardable under any court rules.
- i. **Amendments.** These terms and conditions may not be changed, amended, or modified, except by an amendment in writing executed by the Buyer's Authorized Procurement Representative and an authorized representative of the Seller.
- j. **Code of Conduct.** Buyer is committed to conducting its business fairly, impartially, and in an ethical and proper manner. Buyer's expectation is that Seller also will conduct its business fairly, impartially, and in an ethical and proper manner. Buyer's further expectation is that Seller will have (or will develop) and adhere to a code of ethical standards. If Seller has cause to believe that Buyer or any employee or agent of Buyer has behaved improperly

or unethically under this contract, Seller shall report such behavior to Pratt & Whitney Rocketdyne, Inc. Ethics hotline. Copies of Pratt & Whitney Rocketdyne Code of Conduct and contacts for such reports are available on www.utc.com under "Ethics and Business Conduct." Although Buyer will not use the failure to report improper or unethical behavior as a basis for claiming breach of contract by Seller, Seller is encouraged to exert reasonable effort to report such behavior when warranted.

- k. **Complete Agreement.** This Agreement contains the complete and exclusive statement of the terms of the Agreement between Buyer and Seller with respect to the Goods and merges any prior contemporaneous agreements, commitments, proposals, representations, or communications, oral or written, with respect to the Goods.