

## UPGRADE ENTITLEMENT AGREEMENT

**Program:** \_\_\_\_\_ **Version No.** \_\_\_\_\_

This Upgrade Entitlement Agreement (“**Agreement**”) is entered into by and between BAE SYSTEMS National Security Solutions Inc., a Delaware corporation, (“**Licensor**”) and the party identified on the signature page hereto (“**Customer**”) as of the date of last signature below (“**Commencement Date**”).

### Recitals

Licensor has developed and has licensed to Customer the software program identified at the head of this Agreement. (Such program, together with the related documentation, instructions, user’s guides, and subsequent updates are independently and collectively referred to herein as “**Program**” and the license agreement for the Program as the “**License**”.) The parties agree that any and all support services (“**Services**”) shall be provided pursuant to and governed by this Agreement.

### Agreement

#### 1. Telephone and Upgrade Support Services.

**1.1 Program Updates.** Any updates of the Program currently licensed to Customer (“**Program Updates**”) developed during the term of this Agreement will be made available to Customer on appropriate medium. The Program Update will consist of the object code of the Program and/or any associated documentation. **Note: Program Updates received pursuant to this Agreement give Customer only the right to upgrade the existing Program, not install the Program Update on a second computer while continuing to operate earlier versions on the computer in which originally installed. If Customer desires to run the Program Update on another computer, while continuing to run earlier versions on other computers, it must purchase a new license.**

**1.2 Error Correction.** Licensor, or an individual or organization authorized by licensor to perform Services will use reasonable efforts to attempt to correct errors or problems which cause the Program to fail to perform substantially in accordance with the Program specifications (such error or defect referred to as a “**Substantial Defect**”). Licensor’s obligation to attempt to correct a Substantial Defect is subject to Customer providing licensor with a sufficient description of the Substantial Defect to enable licensor to replicate it. Licensor is under no obligation to correct Substantial Defects in any given releases that have been fixed in a subsequent release.

**1.3 Telephone Assistance.** Licensor, or an individual or organization authorized by licensor to perform the Services shall maintain a telephone line and/or e-mail address that allows Customer to report problems and seek assistance in use of the Programs.

**1.4 Business Hours.** All Services covered by this Agreement will be performed during the regular business hours of licensor, unless agreed to otherwise. “**Regular business hours**” shall mean from 8:00 a.m. to 5:00 p.m., U.S. Pacific Standard or Pacific Daylight Savings Time, from Monday through Friday, not including holidays observed by licensor. Customer is advised licensor typically observes the same holidays as the U.S. Government and, additionally, the period between December 24 and January 2.

**1.5 Additional Services.** If Customer requests that licensor perform other services, they will be subject to a separate negotiation and contract.

#### 2. Responsibilities of Customer.

Customer shall designate at the foot of this Agreement one individual who shall be the principal contact and one individual who shall be the secondary contact for the Services. Customer shall provide written notice of any change of such contact personnel. Customer is responsible for providing, at its own sole cost and expense:

- (i) an installation environment which complies with the Program’s specifications relating to capabilities, performance, and computer type,
- (ii) proper installation of the Programs and
- (iii) access to and use of all information necessary to provide Services.

## Upgrade Entitlement Agreement

### 3. Term, Extension and Termination.

**3.1 Term.** This Agreement commences on the later of either date of last execution, as evidenced by the dates set forth in the signature block below, or expiration of any warranty period set forth in the supported License, and terminates on the date specified on the Licensor's contract or purchase order.

**3.2 Options to Extend Term.** For so long as Licensor continues to support the Program, the Agreement Term may be extended for additional periods of twelve (12) calendar months by Customer giving Licensor not less than thirty (30) day's notice in writing prior to expiration date of the current term of this Agreement. Such extension shall be contingent upon Customer paying the then current Upgrade Entitlement Fee as published in Licensor's price catalog or price list for such Program.

**3.3 Termination.** Without prejudice to any other of its rights or remedies, either party may elect to terminate the rights and obligations contained in this Agreement upon thirty (30) days' written notice if the other party has failed to perform any material obligation required to be performed by it pursuant to this Agreement and such failure has not been cured within such 30 day period.

### 4. Upgrade Entitlement Fee.

**4.1 Upgrade Entitlement Fee.** The fee for Services ("Upgrade Entitlement Fee") is payable on an annual basis, in advance, and shall be due upon execution of this Agreement. The upgrade entitlement fee for each module is published in licensor's price catalog. Upgrade Entitlement Fees do not include any federal, state, country, county, local, or other taxes, if any. Any such taxes, excluding taxes based on net invoice of licensor, shall be borne by the Customer.

**4.2 Adjustments for Additional Modules.** If Customer licenses additional modules during the Term of this Agreement, the Upgrade Entitlement Fee shall be adjusted by adding the Upgrade entitlement fee for the new modules as published in licensor's price catalog, pro-rated for the duration of the term remaining.

### 5. Disclaimer of Warranty.

LICENSOR MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED (INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE), WITH RESPECT TO THE SERVICES, PROGRAMS, SOFTWARE AND DOCUMENTATION PROVIDED (OR TO BE PROVIDED) HEREUNDER.

### 6. Limitation of Liability.

**6.1** Licensor's total liability for any damages suffered in connection with, or arising out of, this Agreement or Customer's use of any documentation, the Program or Services provided, or to be provided hereunder, regardless of whether such liability is based upon contract, in tort or on any other basis, shall not exceed the amount of Upgrade Entitlement Fees paid by Customer. **IN NO EVENT SHALL EITHER PARTY (INCLUDING ANY PARTIES ACTING ON BEHALF OF LICENSOR) BE LIABLE TO THE OTHER, OR ANY THIRD PARTY, FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS, REVENUE, DATA OR USE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

**6.2** No action, regardless of form, related to transactions occurring under, or contemplated by, this Agreement may be brought by either party more than one (1) year after the cause of action has accrued.

### 7. Indemnification.

Licensor shall not be liable to the Customer, or to any third party, for any damages suffered by that third party in connection with, or arising out of, this Agreement or Customer's use of any documentation, Program(s) or Services provided, regardless of whether such liability is based upon contract, in tort or on any other basis. Customer agrees to indemnify and hold licensor harmless from any and all claims, suits, actions and proceedings brought or filed by any third parties relating or arising out of Customer's use of the Programs, documentation or the Services provided, or to be provided hereunder.

**Upgrade Entitlement Agreement**

**8. General.**

**8.1 No Assignment.** Customer may not assign its rights or obligations under this Agreement without the prior written consent of licensor. Any such attempt to assign without licensor’s consent shall be void. Licensor may delegate its obligation to initially provide Services to a third party; provided, however, that licensor shall continue to provide backup support for such Services through such third party.

**8.2 No Waiver.** Neither party shall, by mere lapse of time, without giving notice or taking other action hereunder, be deemed to have waived any breach by the other party of any of the provisions of this Agreement. Further, the waiver by either party of a particular breach of this Agreement by the other shall neither be construed as nor constitute a continuing waiver of such breach or of other breaches of the same or any other provision of this Agreement.

**8.3 Invalidity.** In the event any provision of this Agreement is determined to be invalid or unenforceable to any extent, such provision shall be severed from the Agreement, which shall continue to be valid to the fullest extent permitted by law.

**8.4 Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of California without regard to its conflict of law rules. Any dispute of any nature whatsoever that arises under or relates to this Agreement or the performance of Services pursuant hereto shall be resolved in the federal or state courts located in San Diego County, California and each party agrees to submit to the jurisdiction thereof.

**8.5 Entire Agreement.** This Agreement constitutes the entire Agreement between the parties hereto with respect to the subject matter hereof, and no written or oral understandings or representations predating the date hereof shall be of any affect. This Agreement may not be varied, amended or supplemented except by written instrument executed by both parties hereto.

In consideration of the aforementioned promises and undertakings the parties agree and accept the terms herein.

**Customer**

**BAE SYSTEMS National Security Solutions Inc.**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name  
(printed): \_\_\_\_\_

Name  
(printed): \_\_\_\_\_

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

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

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

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

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

**Designated Point of Contact**

Primary: \_\_\_\_\_

Secondary: \_\_\_\_\_