



Defense Systems
Information Analysis Center

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MEMORANDUM OF AGREEMENT FOR THE RELEASE OF GOVERNMENT-OWNED OR DEVELOPED SOFTWARE

Distribution of the Enhanced Surface-to-Air Missile Simulation (ESAMS) is performed by DSIAC on behalf of AFLCMC/EZJA.

The requestor agrees that they may only use ESAMS within 3 years of a completed, signed, and valid MOA and within an approved contract's period of performance.

I/We understand and agree to the following:

- a. **NON-DISCLOSURE AGREEMENT.** The Requester requests some or all of the following from AFLCMC/EZJA: data, technical data, computer software, computer software documentation, source code, and other information of like kind, type, or quality, either commercial or non-commercial, all of which may be subject to limited rights, restricted rights, government-purpose license rights, patents, copyrights, trade secret rights, or other confidential or proprietary constraints (collectively, the "Data"). In consideration therefore, the Requester agrees:
 - 1) That the Data shall be used only for government purposes.
 - 2) To strictly abide by and adhere to any and all restrictive markings placed on the Data, and the Requester shall not knowingly disclose or release the Data to third parties.
 - 3) That any restrictive markings on the Data shall be included on all copies, modifications, and derivative works, or any parts or portions thereof; in any form, manner or substance, which are produced by the Requester including but not limited to incorporation of the Data into any other data, technical data, computer software, computer software documentation, source code, or other information of like kind, type or quality. In all such events, the Requester shall clearly denote where such Data initiates and concludes by use of annotations or other standard markings.
 - 4) That the U.S. Government is entitled to royalty-free use of the government-owned or developed software that is released.
 - 5) Copies of any modifications or enhancements made to the Data must be provided to AFLCMC/EZJA or respective Model Managers for configuration management purposes. It is suggested that this information be provided annually.



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- 6) The Data will not be used for any purpose other than shown above.
 - 7) The Data will not be further released by the Requester without prior documented approval of AFLCMC/EZJA.
- b. WAIVER OF WARRANTIES AND LIMITATIONS OF DAMAGES AGREEMENT. The Requester and the Approving Authority agree that:
- 1) No guaranties, representations, or warranties either expressed or implied shall be construed to exist in any language, provision, or term contained in these materials or in any other documentation provided herewith (all such items are collectively referred to as the “Agreement”), and furthermore, the releasing organization disclaims and the Requester waives and excludes any and all warranties of merchantability and any and all warranties of fitness for any particular purpose.
 - 2) The Requester shall obtain from the releasing organization all of the “Data” (defined in the Non-Disclosure Agreement above), or any other products or services contemplated by the Agreement, in an “as is” condition.
 - 3) The Requester agrees to hold harmless and indemnify the Air Force against any and all loss, liability, cost, or expense arising out of the use of any Data released under this agreement, to include, but not limited to, litigation costs or expenses.
- c. The Requester’s use of the Data shall not prevent the government from releasing the Data at any point in the future.
- d. The Requester shall not offer the released Data or any modified version thereof for resale to the government, in whole or as part or subpart of a government deliverable, without explicitly stating that he is doing so by providing certification documentation (e.g., Section K of the Government Solicitation) to the contracting officer before contract award.
- e. The Requester may use the released Data in a contract with the government but understands that the government shall not pay the Requester for rights of use of such Data in performance of government contracts or for the later delivery to the government of such Data. The Requester may be entitled to compensation for converting, modifying, or enhancing the Data into another form for reproduction and delivery to the government, if authorized under a contract with the government.
- f. The Requester is not entitled to any released Data that are subject to national defense security classification or the proprietary rights of others. The Requester shall report promptly the discovery of any such restricted Data to the USAF release Approving Authority below, and follow all instructions concerning the use, safeguarding, or return of such Data. The Requester shall not copy or make future study or use of any released Data later found to be subject to such restrictions.
- g. As required, the Requester shall be responsible for compliance with any proscriptions on foreign disclosure of the released Data (contained, for example, in the Department of State International Traffic in Arms Regulations or the Department of Commerce Export Administration Regulations).
- h. There may be a fee to cover the copying and shipping of the Data and any documentation.
- i. The Requester and the Approving Authority intend that all agreements under this Memorandum of Agreement shall be governed by the laws of the United States of America.