

VETERANS AFFAIRS CONTRACTOR FORTIFY USAGE AGREEMENT

This Agreement is made and entered into this ____ day of _____, 20____, (the “Effective Date”) by and between the U.S. DEPARTMENT OF VETERANS AFFAIRS. (hereinafter referred to as “V.A.”) and _____ a corporation duly organized and existing under the laws of _____ and having a principal office at _____ (hereinafter referred to as “CONTRACTOR”).

WHEREAS, V.A. is the license holder for the computer program entitled “Hewlett-Packard Fortify Static Code Analyzer,” and related documentation and wishes to have this program utilized in support of the development of software for use at the V.A.;

WHEREAS, CONTRACTOR wishes to obtain a license to use the Program upon the terms and conditions hereinafter set forth;

WHEREAS, V.A. intends this Agreement to confer a license for government purposes only, and further intends that no rights, expressed or implied, for use other than herein set out shall be transferred hereby.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants, terms and conditions herein contained, the parties agree as follows:

1. LICENSE

1.1 V.A. hereby grants to CONTRACTOR rights to use and distribute the Program according to a Contributing Developer license model listed in Paragraph 1.7 below, solely to perform CONTRACTOR’s rights and obligations under the Government Contract listed in Paragraph 1.4 below. CONTRACTOR shall load the Program only on the computers at the following location:

Location: _____

Site Coordinator: _____

Phone: _____

(hereinafter called “RIGHTS GRANTED”).

1.2 The license granted herein shall not be construed to confer any rights upon CONTRACTOR by implication or otherwise except as specifically set forth herein.

1.3 CONTRACTOR agrees that the Program shall not be used for other software development to circumvent the need for obtaining a license from Hewlett-Packard for use of the Program other than as specified by this Agreement.

1.4 CONTRACTOR shall use the Program under the following Government Contract:

Government Contract Number: _____ Completion Date: _____

1.5 The term of this Agreement shall commence with the Effective Date and terminate upon completion of the Government Contract cited in Paragraph 1.4.

1.6 V.A. reserves the right to inspect CONTRACTOR's use of the Program for the purpose of verifying CONTRACTOR's compliance with this Agreement.

1.7 *The Program and accompanying materials are provided with RESTRICTED RIGHTS. Use is subject to restrictions according to a Contributing Developer license model. All developers who contribute code to a source code base to be scanned must be counted for license utilization, including the highest historical peak headcount, plus any additional security, test and management users. The V.A. must be notified for license counting (Fortify@va.gov) of all the developers who contributed code, as well as any security, test, or management users who use Fortify for each source code base scanned with Fortify. Each licensed team member is then granted unlimited deployment to scanning servers, audit workbench clients, Visual Studio and Eclipse IDE plug-ins, and the collaboration portal for the source code base.*

2. LICENSE ISSUE FEE

In consideration of the RIGHTS GRANTED herein, CONTRACTOR is issued a free license to use the Program as a Contractor for the V.A. for the project referenced above and for the stated length of time, only.

3. DELIVERY OF MATERIALS

3.1 Upon execution of the Agreement, V.A. shall deliver to CONTRACTOR one (1) copy of the Program, one (1) copy of the Program license, and accompanying documentation.

3.2 CONTRACTOR accepts the above materials on an "AS IS" basis. Accordingly, V.A. shall not be required to load the Program onto LICENSEE's machines, test for proper operation, perform any scans, make any corrections, provide maintenance, provide any updates, or assist in the understanding or use of the Program. V.A. does not represent that use of the Program will guarantee obtaining an Authority to Operate (ATO).

4. WARRANTIES

CONTRACTOR AGREES THAT THE RIGHTS GRANTED HEREUNDER ARE MADE AVAILABLE WITHOUT WARRANTY OF ANY KIND EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, FITNESS FOR A PARTICULAR PURPOSE, AND FURTHER INCLUDING NO WARRANTY. NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED AS A REPRESENTATION MADE OR WARRANTY GIVEN BY V.A. THAT THE PRACTICE BY LICENSEE OF THE LICENSE GRANTED HEREUNDER SHALL NOT INFRINGE THE PATENT RIGHTS, COPYRIGHTS, OR OTHER INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

IN NO EVENT SHALL V.A., ITS TRUSTEES, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND ASSOCIATES BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING ECONOMIC DAMAGE OR INJURY TO PROPERTY AND LOST PROFITS, REGARDLESS OF WHETHER V.A. SHALL BE ADVISED, SHALL HAVE OTHER REASON TO KNOW, OR IN FACT SHALL KNOW OF THE POSSIBILITY.

5. LIMITATION OF LIABILITY

CONTRACTOR shall at all times during the term of this Agreement and thereafter, indemnify, defend and hold harmless V.A., its trustees, directors, officers, employees, agents and affiliates, against all claims, proceedings, demands, and liabilities of any kind whatsoever, including legal expenses and reasonable attorneys' fees, arising out of, connected with, resulting from or sustained as a result of use of the Program by CONTRACTOR subject to the statutory authority of the Justice Department (28 USC § 516) to conduct litigation in which a federal agency is a party . In no event shall V.A. be liable for special, direct, indirect or consequential damages, losses, costs, charges, claims, demands, fees or expenses of any nature or kind.

6. TERMINATION

Upon any material breach of this Agreement by CONTRACTOR, V.A. shall have the right to terminate this Agreement by giving thirty (30) days written notice thereof to CONTRACTOR. Such termination shall become effective unless CONTRACTOR shall have cured any such breach prior to the expiration of said thirty (30) day period. Upon termination for any reason, CONTRACTOR shall provide V.A. with written assurance that the original and all copies of the Program, including partial copies in modifications, have been destroyed, except that, upon prior written authorization from V.A., LICENSEE may retain a copy for archive purposes.

7. NOTICES

Any notice required or permitted under this Agreement shall be sufficiently made or given on the date of mailing if in writing and sent to such party by registered or certified mail, postage prepaid, addressed to it at its address below, or as it shall designate by written notice given to the other party:

In the case of V.A.:

Office of Cyber Security
U.S. Department of Veterans
Affairs
1100 1st Street NE
Washington, DC 20002
Attention: Director, Office of
Cyber Security
Telephone: 202-632-7538

In the case of CONTRACTOR:

Attention: _____

Telephone: _____

Email (required for software delivery): _____

8. MISCELLANEOUS

8.1 This Agreement shall be construed, governed, interpreted and applied in accordance with the internal laws of the District of Columbia, U.S.A.

8.2 The parties hereto acknowledge that this Agreement sets forth the entire Agreement and understanding of the parties hereto as to the subject matter hereof, and shall not be subject to any change or modification except by the execution of a written instrument subscribed to by the parties hereto. This Agreement supersedes any and all provisions on the face and reverse side of any Purchase Order or any attachment thereto inconsistent with or additional to the provisions hereof.

8.3 The provisions of this Agreement are severable, and in the event that any provisions of this Agreement shall be determined to be invalid or unenforceable under any controlling body of the law, such invalidity or unenforceability shall not in any way affect the validity or enforceability of the remaining provisions hereof.

8.4 The failure of either party to assert a right hereunder or to insist upon compliance with any term or condition of this Agreement shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other party.

IN WITNESS WHEREOF, the parties have duly executed this Agreement the day and year set forth below.

U.S. DEPARTMENT OF VETERANS
AFFAIRS

CONTRACTOR

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____