

**CRISM©
SOFTWARE LICENSE AGREEMENT**

THE TERMS AND CONDITIONS CONTAINED HEREIN CONSTITUTE A LEGAL AGREEMENT.

THIS AGREEMENT CONTAINS THE ENTIRE AGREEMENT BETWEEN YOU (“**YOU**” OR “**YOUR**”) AND OLD DOMINION UNIVERSITY, A PUBLIC ENTITY IN THE COMMONWEALTH OF VIRGINIA (“**ODU**”) WITH RESPECT TO THE TERMS AND CONDITIONS DESCRIBED HEREIN. READ THIS AGREEMENT CAREFULLY BEFORE YOU CLICK THE “I AGREE TO THE LICENSE TERMS” BUTTON. BY CLICKING ON THE “I AGREE TO THE LICENSE TERMS” BUTTON, YOU ACKNOWLEDGE THAT (1) YOU ARE AUTHORIZED TO ENTER INTO THIS AGREEMENT FOR AND ON BEHALF OF YOUR COMPANY, AND ARE DOING SO, AND (2) YOU HAVE READ, UNDERSTAND AND AGREE THAT YOU AND THE COMPANY SHALL BE BOUND BY THESE TERMS AND CONDITIONS AND ALL MODIFICATIONS AND ADDITIONS PROVIDED FOR. IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, CLICK ON THE “RETURN” BUTTON AND INSTALLATION WILL TERMINATE. IF YOU ARE NOT AUTHORIZED TO ENTER INTO AND BIND YOUR INSTITUTION TO THIS AGREEMENT, CLICK ON THE “I AM NOT THE AUTHORIZED SIGNATORY” BUTTON.

You and ODU are sometimes referred to in this Agreement as a “**Party**” and collectively, as the “**Parties**.”

In consideration of the premises and mutual covenants set forth below, the Parties hereby agree as follows:

1. Definitions. As used in this Agreement, the following terms shall have the meanings set forth in this Section:

1.1 “Effective Date” means the date You enter into this Agreement with ODU by clicking the “I Agree to the License Terms” button.

1.2 “Modify” or Modifications” means any changes or extensions introduced into the Software or otherwise based on or derived from the Software source statements. Modifications may include, but are not limited to, corrections of program errors, translations and stylistic restructuring of the Software, addition or deletion of functions or enhancement of existing functions of the Software, changes or additions required to integrate the Software into other applications or to allow the Software to run under alternative operating systems or computer hardware configurations, and other adaptations of the Software.

1.3 “Site” means Your single street address listed on your application for this Software License at which You will maintain the computers onto which You load the Software and make it available for use by Authorized Users.

1.4 “Software” means the *CRISM*® collection of programs, in version 1.0 in machine readable object code to run in Linux or Mac architectures, and subsequent error corrections and updates of version 1.0 that may be supplied to You by ODU, if any.

2. Grant of Rights.

2.1 Subject to payment of the License Fee (defined below) in accordance with Section 3 of this Agreement, ODU hereby grants to You a limited, non-exclusive, non-transferable license for the Term (defined below) to install and use the Software, at the Site for internal screening use only to detect vulnerability to Cyberattacks (the “**Purposes**”), without the right to sublicense, and to make such copies of the Software as are necessary for use at the Site, subject to the limitations, terms and conditions of this Agreement. You are not permitted to use the Software in any manner not expressly authorized by this Agreement. This grant is limited to use on no more than 128 personal computers located at the Site by no more than 128 concurrent users, all of whom shall be employees of You (“**Authorized Users**”). It does not authorize Software use by third parties at the Site or by anyone not located at the Site via the Internet or any other means. You may not make the Software available to anyone but Authorized Users. No sublicensing rights whatsoever are granted. No rights to make any Modifications or derivative works of the Software whatsoever are granted.

2.2 You acknowledge that the Software is the exclusive property of ODU and that ODU has and shall retain at all times all ownership rights, including all trademarks, patent rights, if any, and copyrights in, and to the Software, and all subsequent releases and copies thereof regardless of the form or media. Upon ten (10) days written notice, ODU or its designee may audit your use of the Software. You agree to cooperate with ODU’s audit and provide reasonable assistance and access to information. Any such audit shall not unreasonably interfere with your normal business operations. You shall pay to ODU for Your use of the Software in excess of your license rights, as liquidated damages, within thirty (30) days of written notification an amount equal to the most recent past installment of the License Fee payable by You. If you do not pay, then in addition to such other legal and equitable remedies available to it, ODU may terminate Your license to the Software and/or this Agreement. ODU shall not be responsible for any of Your costs incurred in cooperating with the audit.

2.3 You may not (a) distribute, publish, or otherwise transfer or allow to be transferred to third parties, the Software or copies thereof, in whole or in part, or (b) perform services for any third parties using the Software, including, without limitation, on a service bureau basis or with an online hosted service.

2.4 The license granted hereunder shall not include the right to use any other intellectual property or proprietary information or material of ODU.

2.5 ODU and its faculty, employees and students have no obligation to assist You in the use, correction, modification, or enhancement of the Software or to provide any Software error corrections, bug fixes, updates, upgrades, new versions, maintenance or support of any kind under this Agreement.

3. Payment.

3.1 **License Fees.** You shall pay ODU a non-refundable license fee in the amount of \$3,000 (the “**License Fee**”) prior to downloading the Software, and each year thereafter in accordance with Section 8.1 prior to the commencement of any Renewal Term.

3.2 **Late Fees; Collection.** Late payments of any License Fees or other sums owed ODU by You shall be subject to a late fee calculated at one and one-half percent (1%) per month of the delinquent balance and shall begin accruing on the first day of delinquency. A payment shall be considered delinquent if not paid in full by its due date. You shall be deemed to have consented to the balance stated in any invoice therefor unless You object to the invoice in writing within that thirty (30) day period. You shall reimburse ODU for all its reasonable attorney fees, and its costs and expenses, if ODU engages legal counsel to assist in the collection of any amounts past due to ODU pursuant to this Agreement, without regard to whether settlement is reached or formal proceedings are commenced to effect collection. ODU shall be entitled to recover from You all such attorney fees, costs and expenses in any arbitration or legal proceedings related thereto, including any and all appeals of any arbitration award or court determination.

3.3 **Remedies.** If the License Fees and any late fees are not received when due, in addition to exercising such other rights and remedies as are available to ODU under this Agreement, at law and in equity, the license granted under this Agreement shall automatically terminate without notice.

4. Protection of Software.

4.1 You shall respect and not remove, obliterate, or cancel from view any copyright, trademark, confidentiality or other proprietary notice, mark, or legend appearing on any of the Software or output generated by the Software, and shall reproduce and include same on each copy of the Software. You shall secure and protect all Software to the extent that You protect Your own software but shall use no less than reasonable effort to protect ODU’s proprietary rights therein.

4.2 You shall maintain and place on any copy of the Software that you reproduce, the following notice, or such other reasonable notice as ODU shall from time to time require, on each copy of the Software. Such notice shall be loaded in the computer memory for use, display, or reproduction and shall be embedded in program source code and object code, in the video screen display, and on the physical medium embodying the Software copy:

5. Warranties; Limitation of Liability.

5.1 THIS SOFTWARE IS DELIVERED “AS IS.” ODU DOES NOT MAKE ANY WARRANTIES CONCERNING THE SOFTWARE COVERED BY THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ODU MAKES NO WARRANTY OR REPRESENTATION AS TO THE VALIDITY OR SCOPE OF THE SOFTWARE OR ANY INTELLECTUAL PROPERTY RIGHT CONTAINED THEREIN, THAT THE SOFTWARE WILL BE ERROR FREE, FREE FROM AN INFRINGEMENT ON PATENTS, COPYRIGHTS OR OTHER INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES, OR THAT NO THIRD PARTIES ARE INFRINGING PATENT, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHTS COVERED BY THIS AGREEMENT. NO AGENT OF ODU IS AUTHORIZED TO ALTER OR EXCEED THE WARRANTY OBLIGATIONS OF ODU SET FORTH IN THIS AGREEMENT.

5.2 EXCEPT TO THE EXTENT PROHIBITED BY LAW, YOU ASSUME ALL LIABILITY FOR DAMAGES THAT MAY ARISE FROM THE USE OF THE SOFTWARE. ODU WILL NOT BE LIABLE TO YOU FOR ANY LOSS, CLAIM OR DEMAND MADE BY YOU OR MADE AGAINST YOU BY ANY THIRD PARTY DUE TO OR ARISING FROM YOUR USE OF THE SOFTWARE. THE MAXIMUM LIABILITY OF ODU TO ANY PERSON, FIRM OR CORPORATION WHATSOEVER ARISING OUT OF, OR IN CONNECTION WITH, YOUR USE OF THE SOFTWARE SHALL IN NO CASE EXCEED ONE THOUSAND U.S. DOLLARS (\$1,000 U.S.).

6. Indemnification.

6.1 You shall at all times during the Term and thereafter indemnify, defend, and hold ODU, and its trustees, directors, officers, employees and affiliates, harmless against all claims, proceedings, demands and liabilities of any kind whatsoever, including legal expenses and reasonable attorney fees, with regard to claims arising out of (a) the death of, or injury to, any person or persons; (b) any damage to property arising out of Your use of the Software; and (c) or resulting from, the exercise or practice of the license granted to You hereunder.

7. Confidential Information.

7.1 Confidential Information Defined. The term “**Confidential Information**” means (a) the Software, (b) any documentation, instruction and training manuals, diagrams, flow charts, and business processes, and (c) all other information disclosed by ODU to You; provided, however, that to be considered Confidential Information under this Agreement, information disclosed in writing or in electronic or

other tangible form must bear a “secret,” “confidential,” or other similar designation, or if communicated orally, be followed with a written memorandum delivered to You within thirty (30) days of the disclosure describing the information disclosed and the circumstances of disclosure and asserting a claim of confidentiality with respect thereto. You acknowledge that the Confidential Information is the sole and exclusive property of ODU and that the Confidential Information contains the valuable property and trade secrets of ODU. You shall not disclose any of Your or any third party’s confidential or proprietary information to ODU in connection with this Agreement.

7.2 Duty of Security. You shall maintain the Confidential Information in a safe, secure place to which only Your authorized employees with a need to know the Confidential Information to fulfill the Purposes are permitted access. You shall maintain the Confidential Information in confidence, employing measures of security reasonable under the circumstances, but in no event less stringent than the measures You employ to protect your own most valuable trade secrets and not use the Confidential Information except to fulfill the Purposes. The Confidential Information may be disclosed only to those employees of You who have a reasonable need to know to fulfill the Purposes, in light of their duties as employees and only if such employees are warned of the confidential nature of the Confidential Information. You will be responsible for the consequences of any injury resulting from disclosure of the Confidential Information by You or third parties to whom You allow access to the Confidential Information.

7.3 Exclusions. The obligations of Article 7 shall not apply to information that:

7.3.1 is, at the time of disclosure, in the public domain or that, after disclosure, falls into the public domain through no fault or neglect of You;

7.3.2 is lawfully disclosed to You by a third party who is under no obligation of secrecy or confidentiality with respect to the information; or

7.3.3 information that You can demonstrate, through written contemporaneously dated documents in Your files, was either in Your possession or independently developed by You by persons without access to the Confidential Information prior to the Effective Date.

8. **Term; Termination.**

8.1 This Agreement and the rights licensed hereunder shall terminate on the first anniversary of the Effective Date (the “**Initial Term**”). You may renew this Agreement for up to three (3) additional one-year terms (each, a “**Renewal Term**”; the Initial Term and all Renewal Terms, collectively, the “**Term**”) by giving ODU written notice of your intent to renew this Agreement and paying to ODU an additional amount equal to the License Fee at least thirty (30) days prior to the end of the Term then in effect.

8.2 ODU may terminate this Agreement upon written notice to You if You are in material breach of this Agreement and fail to cure such breach within thirty (30) days of a written demand for performance.

8.3 Upon termination of this Agreement:

8.3.1 You shall immediately pay to ODU any unpaid License Fee and accrued late fees in full, without deduction or set-off;

8.3.2 You shall discontinue all use of the Software;

8.3.3 You shall immediately remove the Software from all computers at the Site and from all hard drives and media in Your possession;

8.3.4 You shall certify in writing to ODU within thirty (30) days from the termination or expiration of this Agreement that You have complied with this Section; and

8.3.5 You shall return to ODU within thirty (30) days from the termination or expiration of this Agreement upon written notice all Confidential Information, including, without limitation, materials, samples, documents, notes and other materials that embody or disclose Confidential Information, including all copies of any of the foregoing You made or permitted others to make.

9. Export Controls.

9.1 You understand and acknowledge that the transfer of certain commodities and technical data is subject to United States laws and regulations controlling the export of certain commodities and technical data, including, without limitation, all Export Administration Regulations of the United States Department of Commerce. These laws and regulations, among other things, prohibit or require a license for the export of certain types of technical data to certain specified countries. You hereby agree and give ODU written assurance that You will comply with all United States laws and regulations controlling the export of commodities and technical data, that You will be solely responsible for any violation of such by You, and that You will defend, indemnify and hold ODU and its employees, officers and agents harmless in the event of any legal action of any nature occasioned by such violation.

10. Notices.

10.1 All notices and other communications in connection with this Agreement shall be in writing and shall be sent by postage prepaid certified mail return receipt requested, overnight delivery service or fax to ODU at the address set forth below, and to You, at the email address you provided to ODU with Your application for this license, or to such other addresses as may be designated by either Party by like notice:

To ODU:

Sheila Flanagan,
Virginia Modeling, Analysis & Simulation Center
1030 University Blvd.
Suffolk, VA 23435
Fax: 757-686-6214

11. United States Government.

11.1 The Software and related explanatory written materials are “Commercial Items” as that term is defined at 48 C.F.R. §2.101, consisting of “Commercial Computer Software” and “Commercial Computer Software Documentation,” as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users, including, without limitation, rights to use, disclose, modify, distribute and reproduce the Software, pursuant to the terms and conditions herein.

12. General Provisions.

12.1 This Agreement shall be governed by, construed and enforced exclusively in accordance with the internal laws of the Commonwealth of Virginia without reference to any of its conflict of laws rules. Any action brought regarding or arising out of this Agreement shall be in the state and federal courts located in Norfolk, Virginia and the parties hereby submit to the exclusive personal and subject matter jurisdiction and venue of such courts. The laws of the Commonwealth of Virginia excluding its conflict of law rules shall govern the validity, interpretation and performance of this Agreement.

12.2 If any formal acts of registration or recordation of this Agreement are required under the laws of any governmental authority to which You are subject, or if You are required by any such law to take any other action as a result of this Agreement, You shall take all necessary steps to immediately undertake and fully comply with same and promptly furnish to ODU proof of registration, recordation and/or compliance therewith.

12.3 Neither Party, absent written approval of the other, shall have any right to use any name, trade name, or trademark of the other.

12.4 Neither Party, absent written approval of the other, shall assign any rights under this Agreement to any third party.

12.5 Nothing contained in this Agreement shall require or permit ODU or You to do any act inconsistent with the requirements of any United States law, regulation or executive order as the same may be in effect from time to time.

12.6 The following Sections and Articles shall survive the expiration or earlier termination of this Agreement: 2.2; 2.3; 3.2; 3.3; 5.2; 6; 7; 8.3; 9 and 12

12.7 This Agreement (a) contains the entire understanding between You and ODU and supersedes all prior agreements with respect to the subject matter hereof, and (b) may only be amended by another writing expressly referring to this Agreement signed by both You and ODU. This Agreement shall be binding upon and inure to the benefit of You and ODU and their respective successors and permitted assigns.

[end of CRISM© Software License]