

# YumaWorks License Agreement

## YumaBench User License Agreement

### License Version: 2.0

YumaWorks, Inc., Licensor, ("YumaWorks") is willing to license the software contained herein ("Licensed Software") to you ("Licensee") only on the condition that you accept all of the terms in this Agreement.

PLEASE READ THE TERMS CAREFULLY. BY LOADING, DOWNLOADING, MODIFYING, OR OTHERWISE USING THE LICENSED SOFTWARE, YOU AGREE TO BE BOUND BY THIS LICENSE AGREEMENT.

If you do **not** agree to these terms, YumaWorks is unwilling to license the software to you. In such event, you may **not** use the licensed software, and you should promptly contact YumaWorks for instructions on erasing and/or inactivating it.

#### NOTE:

- THE LICENSED SOFTWARE IS LIMITED TO USE BY LICENSEE.
- THE LICENSED SOFTWARE MAY INSTALLED ON ONE COMPUTER. SEE EXHIBIT B.
- THE LICENSED SOFTWARE CANNOT BE DISTRIBUTED TO OTHERS.
- DESCRIPTIONS OF (INCLUDING SCREENSHOTS), THE USE OF, AND TEST RESULTS FROM USE OF THE LICENSED SOFTWARE CANNOT BE DISSEMINATED.
- THE SOFTWARE AND ACCOMPANYING USER DOCUMENTATION ARE PROTECTED BY UNITED STATES COPYRIGHT LAW AND INTERNATIONAL TREATY. UNAUTHORIZED REPRODUCTION OR DISTRIBUTION IS SUBJECT TO CIVIL AND CRIMINAL PENALTIES.
- THE SOFTWARE USES EXTERNAL LIBRARIES WHICH HAVE THEIR OWN LICENSE.

This License Agreement (the "Agreement") is made as of the purchase date (the "Effective Date"), by and between YumaWorks, Inc., a California corporation that may be contacted at 685 Cochran St. #160, Simi Valley, CA 93065 ("YumaWorks") and you ("Licensee").

## RECITALS

A. YumaWorks owns the rights to grant licenses to certain computer software modules used in implementing certain networking protocols described in **Exhibit A**.

B. YumaWorks desires to grant and Licensee desires to receive a non-exclusive license to such YumaWorks computer software modules in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

## 1. DEFINITIONS

1.1 **Licensed Software** means YumaWorks's computer software modules and documentation thereof, as specified in **Exhibit A**, including bug fixes and updates thereto provided to Licensee in connection with this Agreement.

1.2 **Intellectual Property Rights** means patent rights, copyright rights, trade secret rights, and any other intellectual property rights.

1.3 **Binary Code** means the portion of the Licensed Software which is licensed to Licensee in machine executable binary form, as specified in **Exhibit A**.

1.4 **Source Code** means the portion of the Licensed Software which is licensed to Licensee in human-readable form, as specified in **Exhibit A**.

## 2. LICENSE GRANTS

2.1 **Binary Code Use License**. Subject to the terms and conditions of this Agreement, and upon payment by Licensee to YumaWorks of the license fees set forth in Section 6.1, YumaWorks grants Licensee a non-exclusive, non-transferable license to use the Binary Code (if any) as specified in **Exhibit B**. Licensee agrees to comply with all reasonable monitoring requirements imposed by YumaWorks to ensure compliance with the license restrictions.

2.2 **No Sublicense Right**. Licensee has no right to transfer, sublicense or otherwise distribute the Licensed Software to any third party.

**2.3 Other Restrictions in License Grants.** Licensee may not: (i) disassemble, decompile or reverse engineer the Binary Code nor permit any third party to do so; (ii) copy the Licensed Software, except as necessary to use the Licensed Software in accordance with the license granted under Sections 2.1 and 2.2, and except for a reasonable number of backup copies; or (iii) use the Licensed Software in any manner to provide testing or other computer services to third parties.

**2.4 No Trademark License.** Licensee has no right or license to use any trademark of YumaWorks or its suppliers during or after the term of this Agreement. In particular, and without limiting the foregoing, Licensee may not use any trademark of YumaWorks or the name "YumaWorks", without consent of YumaWorks, in making any statement or representation concerning results of testing and verification performed using the Licensed Software.

**2.5 Proprietary Notices.** The Licensed Software is copyrighted. All proprietary notices incorporated in, marked on, or affixed to the Licensed Software by YumaWorks or its suppliers shall be duplicated by Licensee on all copies, in whole or in part, in any form and not altered, removed, or obliterated.

**2.6 Reservation.** YumaWorks and its suppliers reserve all rights and licenses to the Licensed Software not expressly granted to Licensee under this Agreement.

### **3. DELIVERY OF LICENSED SOFTWARE**

Licensee may access the Licensed Software upon acceptance of this agreement.

### **4. WARRANTIES**

#### **4.1 No Warranty.**

THIS SOFTWARE IS PROVIDED BY THE COPYRIGHT HOLDERS AND CONTRIBUTORS "AS IS" AND ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE DISCLAIMED. IN NO EVENT SHALL YUMAWORKS, INC. BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOSS OF USE, DATA, OR PROFITS; OR BUSINESS INTERRUPTION) HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STRICT LIABILITY, OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE) ARISING IN ANY WAY OUT OF THE USE OF THIS SOFTWARE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

#### 4.2 **Warranty Exclusion and Disclaimer.**

THE WARRANTY WITH RESPECT TO THE LICENSED SOFTWARE WILL BE VOID AND OF NO EFFECT IF LICENSEE MODIFIES THE SOURCE CODE. THE WARRANTIES SET FORTH IN SECTION 4.1 ARE IN LIEU OF, AND YumaWorks EXPRESSLY DISCLAIMS, ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, WRITTEN AND ORAL, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. YumaWorks DOES NOT WARRANT THAT OPERATION OF THE LICENSED SOFTWARE WILL BE ERROR FREE. SOME MODULES OF THE LICENSED SOFTWARE ARE DERIVED FROM THIRD PARTY SOFTWARE AND NO SUCH THIRD PARTY WARRANTS THE MODULES, ASSUMES ANY LIABILITY REGARDING USE OF THE MODULES, OR UNDERTAKES TO FURNISH ANY SUPPORT OR INFORMATION RELATING TO THE MODULES.

### 5. MAINTENANCE AND UPDATES

5.1 **Maintenance.** Subject to YumaWorks's limited resources, YumaWorks will, at no additional charge to Licensee, provide Licensee with reasonable technical support for the warranty period as specified in Section 4.1 via e-mail during YumaWorks's normal business hours.

5.2 **Updates.** If and when YumaWorks develops updates to the Licensed Software from time to time, YumaWorks, at its sole discretion, may, but has no obligation to, provide Licensee with separately priced updates for the Licensed Software at the request of Licensee. All such updates will be considered "Licensed Software" and subject to all terms and conditions of this Agreement.

### 6. LICENSE FEE

6.1 **License Fee.** In consideration of the licenses granted in Section 2, above, Licensee shall pay YumaWorks a non-refundable license fee in accordance with YumaWorks's then current price list within thirty (30) days after the Effective Date.

6.2 **Update Fee.** In the event YumaWorks provides Licensee with an update to the Licensed Software in accordance with Section 5.2, Licensee shall pay YumaWorks the then-current YumaWorks standard update fee within thirty (30) days after receipt of such update.

6.3 **Taxes and Duties.** In addition to the license and update fees set forth above, Licensee shall pay all sales, use, or other taxes and fees imposed as a result of payment of the fees set forth above, if any, other than taxes measured by YumaWorks's net income.

## **7. INTELLECTUAL PROPERTY RIGHTS**

7.1 **Title.** All right, title and interest in and to the Licensed Software, and all Intellectual Property Rights embodied therein shall at all times remain with YumaWorks or its suppliers, as applicable.

7.3 **Confidential Information.** Licensee acknowledges and agrees that the Licensed Software contains confidential, proprietary information and trade secrets of YumaWorks. For the longer of: (i) a period of five (5) years after the date of disclosure or (ii) the expiration or termination of this Agreement, Licensee shall not disclose or make available any portion of the Licensed Software or any information derived from the Licensed Software to any person or entity except to those of Licensee's employees for whom access is necessary in order to perform their jobs in accordance with this Agreement. The standard of care Licensee must exercise to meet these obligations is the standard it exercises with respect to its own confidential information of a similar nature, but in no event less than due care. This obligation does not apply to information: (a) known by Licensee prior to its receipt from YumaWorks and not subject to restriction on disclosure; (b) rightfully received by Licensee from a third party without restriction on disclosure; or (c) publicly available other than as a result of any act or omission of Licensee.

## **8. LIMITATION OF LIABILITY**

IN NO EVENT SHALL THE TOTAL CUMULATIVE LIABILITY OF YumaWorks IN CONNECTION WITH THIS AGREEMENT FOR ALL CAUSES OF ACTION OF ANY KIND, INCLUDING THOSE BASED UPON CONTRACT AND TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), EXCEED THE LICENSE FEES RECEIVED BY YumaWorks FROM LICENSEE. IN NO EVENT WILL YumaWorks OR ITS SUPPLIERS BE LIABLE FOR LOSS OF USE, DATA, OR PROFITS, BUSINESS INTERRUPTION OR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, HOWEVER CAUSED, AND ON ANY THEORY OF LIABILITY, WHETHER CONTRACT OR TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), ARISING IN ANY WAY OUT OF THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY.

## 9. TERM AND TERMINATION

9.1 **Term.** The term of this Agreement shall be for an initial period of one (1) year from its Effective Date of the Agreement, unless earlier terminated or canceled in accordance with the provisions of this Agreement. Thereafter, this Agreement shall automatically renew for consecutive one (1) year periods on the anniversary of the Effective Date unless either party shall have given the other no less than ninety (90) days written notice of termination.

### 9.2 Termination.

9.2.1 **Material Breach.** Either party may terminate this Agreement if the other party breaches any material term or condition of this Agreement and fails to cure that breach within thirty (30) days after receiving written notice of the breach. Notwithstanding the foregoing, YumaWorks may terminate this Agreement effective immediately upon written notice to Licensee without any cure period in the event of breach of confidentiality obligation herein.

9.2.2 **Financial Difficulties.** Either party may terminate this Agreement effective immediately upon written notice to the other party if the other party files a voluntary petition in bankruptcy or otherwise seeks protection under any law for the protection of debtors; has a proceeding instituted against it under any provision of the bankruptcy laws which is not dismissed within sixty (60) days; is adjudged to be bankrupt; has a court assume jurisdiction of its assets under a reorganization act; has a trustee or receiver appointed by a court for all or a substantial portion of its assets; becomes insolvent, suspends or ceases to do business; makes an assignment of all or a substantial portion of its assets for the benefit of its creditors; or admits in writing its inability to pay its debts as they become due.

9.3 **Effect of Termination/Expiration.** Upon termination or expiration of this Agreement: (i) the rights and licenses granted to Licensee pursuant to this Agreement automatically terminate; (ii) Licensee shall, within thirty (30) days, ship to YumaWorks or destroy (including the purging from any system or storage media) all items and information in Licensee's possession that are confidential or proprietary to YumaWorks or its suppliers, including but not limited to all Licensed Software and all copies thereof, if any, and an officer of Licensee shall certify in writing to YumaWorks that all such confidential or proprietary items and information have been returned to YumaWorks or destroyed; and (iii) all outstanding invoices for amounts owed to YumaWorks by Licensee shall automatically accelerate and become due and payable on the effective date of termination.

9.4 **Survival.** The provisions of Sections 2.3, 2.5, 4.2, 7, 8, 9.3, 10.1, 10.5, and 10.8 shall survive the expiration, cancellation, or termination of this Agreement.

## 10. GENERAL PROVISIONS

10.1 **Governing Law.** This Agreement shall be governed by the internal laws of the State of California, excluding its conflict of laws rules. The parties consent to the personal and exclusive jurisdiction and venue of the northern district of California federal and state courts, as applicable.

10.2 **Assignment.** Licensee shall not assign this Agreement or any right hereunder, or delegate any obligation created under this Agreement to any third party without prior written consent of YumaWorks. YumaWorks, however, may assign this Agreement to any person or entity with which it has merged or which has otherwise succeeded to all or substantially all of the business and assets of YumaWorks, and which has assumed in writing or by operation of law its obligations under this Agreement. Any attempted assignment or delegation without the required written consent shall be null and void.

10.3 **Modification.** No modification to this Agreement nor any waiver of any rights shall be effective unless consented to in writing and the waiver of any breach or default shall not constitute a waiver of any other right or of any subsequent breach or default.

10.4 **Force Majeure.** Neither YumaWorks nor any of its suppliers shall be liable for any loss, expense, or damage caused by delays or failures in performance resulting from acts of God, supplier delay, or any other cause beyond the reasonable control of YumaWorks or its suppliers.

10.5 **Attorneys' Fees.** In the event of any dispute resolution proceeding between the parties, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees. A "prevailing party" shall mean a party who receives all or substantially all of the relief sought by such party.

10.6 **Severability.** If any provision of this Agreement is ruled unenforceable, it shall be enforced to the extent permissible, the parties shall negotiate a substitute valid provision which most nearly effects the parties' original intent, and the remainder of the Agreement shall remain in effect.

10.7 **Independent Contractor.** The parties are each independent contractors and not joint venturers, partners, agents, or representatives of the other. Neither party has any right to create any obligation on the part of the other party.

10.8 **Equitable Relief.** Licensee acknowledges that any breach of its obligations under this Agreement with respect to the intellectual property rights or confidential information of YumaWorks will cause YumaWorks irreparable injury for which there are inadequate remedies at law, and therefore, YumaWorks will be entitled to equitable relief in addition to all other remedies provided by this Agreement or available at law.

10.9 **Notice.** All notices and requests required or authorized hereunder, shall be given in writing either by personal delivery to the party to whom notice is given, or by registered or certified airmail, postage prepaid, return receipt requested. The date upon which any such notice is so personally delivered, or if the notice is given by registered or certified airmail, the date upon which it is received as set forth on the returned receipt, shall be deemed to be the date of such notice, irrespective of the date appearing therein.

If to YumaWorks:

YumaWorks, Inc.

685 Cochran St. #160

Simi Valley, CA 93065

Attn: Legal Department

Phone: 805.297.8277

If to Licensee:

Per information provided by Licensee.

The address of the parties may be changed by notice given in accordance with this section.

11. **ENTIRE AGREEMENT.** This Agreement constitutes the entire and exclusive agreement between the parties with respect to the subject matter hereof. All previous and contemporaneous discussions and oral and written agreements with respect to this subject matter are superseded by this Agreement.

12. **RESTRICTED RIGHTS LEGEND.** This software is provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the U.S. Government is subject to restrictions set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software - Restricted Rights at 48 CFR 52.227-19, as applicable. The "Manufacturer" for purposes of these regulations is YumaWorks Inc, 685 Cochran St. #160, Simi Valley, CA 93065 U.S.A



## **EXHIBIT A**

### **Networking Protocols**

1. YANG Data Modeling Language (based on IETF RFC 6020)
2. Network Configuration Protocol (based on IETF RFC 6241)

### **Licensed Software**

#### **1. YumaBench Package (Binary Code: Distribution not allowed)**

- **yuma-bench**
- **All YumaBench user documentation**

#### **2. YumaBench YANG Modules (Source Code)**

## EXHIBIT B

Licensed Software	Restrictions on Usage
YumaBench	<ul style="list-style-type: none"><li>• Licensee may install YumaBench binary package identified in <b>Exhibit A</b> on one computer</li><li>• The computer must be owned or leased by Licensee</li><li>• Licensee is the only authorized user of this software</li></ul>