

(The purpose of this attachment is to consolidate all Data Rights information applicable to this agreement. The specific data rights the vendor is furnishing for each Agreement “deliverable” is captured as part of the SOW.)

The Government, as the beneficiary to each Vendor’s Software Agreement, agrees and accepts to be bound to such terms and conditions to the extent such terms and conditions are consistent with Federal law. Any term or condition that conflicts with or is inconsistent with the End User License Agreement Governing Language (EULA) below shall be deemed stricken as it is applied to the Government and the term or condition in EULA Governing Language below shall take precedence and supersede any such conflicting or inconsistent term or condition.

END USER LICENSE AGREEMENTS (EULA) GOVERNING LANGUAGE

The Government as the beneficiary to each Vendor’s Software Agreement agrees and accepts to be bound to such terms and conditions to the extent such terms and conditions are consistent with Federal law. Any term or condition that conflicts with or is inconsistent with this Appendix, shall be deemed stricken as it is applied to the Government and the term or condition in this Appendix A shall take precedence and supersede any such conflicting or inconsistent term or condition.

Indemnification & Liability. Any terms or conditions requiring the Government to indemnify the party shall be deemed void and not binding against the Government as it would create an Anti-Deficiency Act violation (31 U.S.C. 1341). The Government agrees to pay for any loss, liability or expense, which arises out of or relates to the Government’s acts or omissions with respect to its obligations subject to a final determination of liability on the part of the Government as established by a court of law having competent jurisdiction or where settlement has been agreed to by the Government agency with, and where appropriate, coordination of the Department of Justice. This provision shall not be construed to limit the Government’s rights, claims or defenses which arise as a matter of law or pursuant to any other agreement.

Any clause of this agreement requiring the commercial supplier or licensor to defend or indemnify the end user is hereby amended to provide that the U.S. Department of Justice has the sole right to represent the United States in any such action, in accordance with 28 U.S.C. 516.

Law and disputes. This agreement is governed by Federal law.

(A) Any language purporting to subject the U.S. Government to the laws of a U.S. state, U.S. territory, district, or municipality, or a foreign nation, except where Federal law expressly provides for the application of such laws, is hereby deleted.

(B) Any language requiring dispute resolution in a specific forum or venue that is different from that prescribed by applicable Federal law is hereby deleted.

(C) Any language prescribing a different time period for bringing an action than that prescribed by applicable Federal law in relation to a dispute is hereby deleted.

Termination/ Continued performance. The supplier or licensor shall not unilaterally revoke, terminate or suspend any rights granted to the Government except as specifically agreed upon by all parties. If the supplier or licensor believes the ordering activity to be in breach of the agreement, it shall pursue its rights under the Contract Disputes Act or other applicable Federal statute while continuing performance.

Arbitration; equitable or injunctive relief. Any clause in the vendor’s software agreement (VSA) requiring binding arbitration in the event of claim or dispute arising under or relating to the VSA, is void and shall not apply to the Government.

Updating terms.

(A) Notwithstanding any contract terms in the VSA, after award, the contractor may unilaterally revise commercial supplier agreement terms if they are not material. Material change is defined as:

- (1) Terms that change Government rights or obligations;
- (2) Terms that increase Government prices;
- (3) Terms that decrease overall level of service; or
- (4) Terms that limit any other Government right addressed elsewhere in this contract.

(B) For revisions that will materially change the terms of the contract, the revised commercial supplier agreement must be incorporated into the contract using a bilateral modification.

(C) Any agreement terms or conditions unilaterally revised subsequent to award that are inconsistent with any material term or provision of this contract shall not be enforceable against the Government, and the Government shall not be deemed to have consented to them.

No automatic renewals. Any term or condition subjecting the Government to automatic renewal of payment terms is void and shall be deemed not binding against the Government.

Audits. Any terms permitting auditing of the Government's compliance shall be deemed not binding against the Government. The Government shall agree to the following audit terms: "Notwithstanding [VENDOR] audit provisions or practices to the contrary, the Government agrees it will perform an internal audit of software quantities in use not more than once a year and will use its best efforts to keep full and accurate accounts that may be used to properly ascertain and verify numbers of licenses and authorized use. Upon [VENDOR] written request, the Government may provide audit reports to [VENDOR] from the Government's internal audit records not more than once a year as the sole means of satisfying the [VENDOR] requests for audit."

Government Data. The Government's Data belongs exclusively to the Government, regardless of where the Data may reside at any moment in time, including but not limited to vendor's hardware, networks or other infrastructure and facilities where Data may reside, transit through or be stored from time to time. Any term of the vendor's software agreement that makes a claim to any right of ownership in Government Data is void and shall be deemed not binding against the Government.

Use of Government Logos or Name and Publicly. Any terms permitting use of the Government's name, logos, or any appearance of endorsement by the Government for the Licensor's or its Vendor's product or service shall be deemed void and deleted. The Licensor and its Vendors shall not be permitted to identify the Government by name or use a Government logo, in its website, sales and marketing materials, or press releases or any publicity without obtaining the separate written consent of the Government. Such request may be made to the Agreements Officer's Representative.

Click-Wrap. Any Software Agreement invoking an "I agree" click box or other comparable mechanism (e.g., "click-wrap" or "browse-wrap" agreements), shall not be binding against the Government or any Government Authorized User, even if such user purportedly accepted such agreements. Such click box agreement or its terms is only deemed accepted if incorporated (either as bilateral attachment or as a bilateral modification) into this Agreement.

Enclosures:

Enclosure	Vendor Name	Effective Date
A		Date of award
B		Date of award