

TERMS AND CONDITIONS

1. The Government shall have the right to require delivery of any technical data or computer software item identified in this agreement as “deferred delivery” data or computer software, at any time during the performance of this agreement or within two (2) years after acceptance of all items (other than data or computer software), whichever is later, unless the agreement has been terminated. The obligation to furnish such technical data required to be prepared by a sub-contractor and pertaining to an item obtained from him shall expire two (2) years after the date Vendor accepts the last delivery of that item from that subcontractor for use in performing this agreement.

2. In addition to technical data or computer software specified elsewhere in this agreement to be delivered hereunder, the Government may, at any time during the performance of this agreement or within a period of three (3) years after acceptance of all items (other than technical data or computer software) to be delivered under this agreement or the termination of this agreement, order any technical data or computer software generated in the performance of this agreement or any sub- contractor hereunder. When the technical data or computer software is ordered, the Vendor shall be compensated for converting the data or computer software into the prescribed form, for reproduction and delivery. The obligation to deliver the technical data of a subcontractor and pertaining to an item obtained from him shall expire three (3) years after the date the Vendor accepts the last delivery of that item from that subcontractor under this agreement.

3. All designs, drawings, specifications, notes, and other work products, developed in the performance of this agreement shall become the sole property of the Government and may be used on any other design or construction without additional compensation to the Vendor. The Government shall be considered the “person for whom the work was prepared” for the purpose of authorship in any copyrightable work under 17 U.S.C. 201(b). With respect thereto, the Vendor agrees not to assert or authorize others to assert any rights nor establish any claim under the design patent or copyright laws. The Vendor for a period of three (3) years after completion of the project agrees to furnish all retained works on the request of the Agreement Officer. Unless otherwise provided in this contract, the Vendor shall have the right to retain copies of all works beyond such period.

4. The Government shall have unlimited rights, in all drawings, designs, specifications, notes and other works developed in the performance of this agreement, including the right to use same on any other Government design or construction without additional compensation to the Vendor. The Vendor hereby grants to the Government a paid-up license throughout the world to all such works to which he may assert or establish any claim under design patent or copyright laws. The Vendor for a period of three (3) years after completion of the project agrees to furnish the original or copies of all such works on the request of the Agreements Officer.

5. In the performance of this agreement, the Vendor shall, to the extent practicable, make maximum use of structures, machines, products, materials, construction methods, and equipment that are readily available through Government or competitive commercial channels, or through standard or proven production techniques, methods, and processes. Unless approved by the Agreement Officer, the Vendor shall not produce a design or specification that requires in this construction work the use of structures, products, materials, construction equipment, or processes that are known by the Vendor to be available only from a sole source. The Vendor shall promptly report any such design or specification to the Agreement Officer and give the reason why it is considered necessary to so restrict the design or specification.

6. If technical data specified to be delivered under this agreement, is not delivered within the time specified by this agreement or is deficient upon delivery (including having restrictive markings not identified in the technical proposal for this agreement), the Agreement Officer may until such data is accepted by the Government, withhold payment to the Vendor of ten percent (10%) of the total agreement price. Payments shall not be withheld nor any other action taken pursuant to this paragraph when the Vendor failure to make timely delivery or to deliver such data without deficiencies arises out of causes beyond the control and without the fault or negligence of the Vendor.

7. The Vendor or subcontractor at any tier is responsible for maintaining records sufficient to justify the validity of its markings that impose restrictions on the Government and others to use, duplicate, or disclose technical data delivered or required to be delivered under the agreement. The Vendor or subcontractor shall be prepared to furnish to the Agreement Officer a written justification for such restrictive markings in response to a challenge. The Government may review the validity of any restriction on technical data, delivered or to be delivered under an agreement, asserted by the Vendor or subcontractor. During the period within three (3) years of final payment on an agreement or within three (3) years of delivery of the technical data to the Government, whichever is later, the Agreement Officer may review and make a written determination to challenge the restriction. The Government may, however, challenge a restriction on the release, disclosure or use of technical data at any time if such technical data:

(1) Is publicly available;

(2) Has been furnished to the United States without restriction; or

(3) Has been otherwise made available without restriction. Only the Agreement Officer's final decision resolving a formal challenge by sustaining the validity of a restrictive marking constitutes "validation" as addressed in 10 U.S.C. 2321.

8. Notwithstanding inspection and acceptance by the Government of technical data furnished under this agreement, and notwithstanding any provision of this agreement concerning the conclusiveness of acceptance, the Vendor warrants that all technical data delivered under this contract will at the time of delivery conform to the specifications and all other requirements of this agreement. The warranty period shall extend for three years after completion of the delivery of the line item of data of which the data forms a part. The Vendor agrees that any commercial computer software delivered under this agreement may be:

(1) Used or copied for use with the computer(s) for which it was acquired, including use at any Government installation to which the computer(s) may be transferred;

(2) (ii) Used or copied for use with a backup computer if any computer for which it was acquired is inoperative;

(3) (iii) Reproduced for safekeeping (archives) or backup purposes;

(4) (iv) Modified, adapted, or combined with other computer software, provided that the modified, adapted, or combined portions of the derivative software incorporating any of the delivered, commercial computer software shall be subject to same restrictions set forth in this agreement;

- (5) (v) Disclosed to and reproduced for use by support service Contractors or their subcontractors, subject to the same restrictions set forth in this agreement; and
- (6) (vi) Used or copied for use with a replacement computer

END USER LICENSE AGREEMENTS (EULA)

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.