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Addendum to License Agreement or Terms of Use

The offeror,_____, hereby submits this Addendum as an attachment to the License Agreement submitted with its proposal in response to _____("Solicitation"), whether called an End User License Agreement, Terms of Use, or some other name ("License Agreement"). If and when the Government enters into a binding contract with the offeror as a result of its proposal, the offeror agrees that, in the event of any conflict or inconsistency between the terms in this Addendum and the terms of the License Agreement, the terms of this Addendum will supersede and be controlling. The offeror acknowledges that this Addendum will become a binding part of its contract with the Government in the event its proposal is accepted and selected for award.

The Government accepts commercial terms in a License Agreement only to the extent that those terms do not conflict with Federal law or the language appearing in the solicitation and resulting contract, and only to the extent those terms meet the Government's needs. The following terms, when they appear in a License Agreement, have been determined unacceptable to the Government as a result of a conflict with Federal law or as a result of incompatibility with the Government's needs. Any such terms in the offeror's License Agreement will be null and void as between the offeror and the Government, and those terms will have no force or effect in any resulting contract.

General Indemnity (by the government)	The Government does not agree to indemnify any party because such agreements may violate the Anti-Deficiency Act, 31 U.S.C. § 1341(a)(1)(B). **Instead, recourse against the United States for any alleged breach of this agreement must be as a dispute under the contract disputes clause (Contract Disputes Act). While a dispute is pending, the Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.**
Patent Indemnity (by the contractor)	Clauses giving the contractor control over any claims or disputes involving patent or other intellectual property infringement are not allowable, insofar as only the U.S. Department of Justice is authorized to represent the U.S. Government, per 28 U.S.C. § 516. Any clause giving entire

	control of litigation to a contractor is hereby modified as follows: **If a third party claims that products or services delivered under this contract infringe that party's patent or copyright, the contractor will indemnify the Government against liability, at the contractor's expense, and pay all costs, damages, and attorney's fees that a court finally awards or that are included in a settlement approved by the contractor, provided that the Government promptly notifies the contractor of the claim and gives the contractor such opportunity as is offered by applicable laws, rules, and regulations to participate in the defense thereof. The Government shall make every effort to fully participate in the defense and/or in any settlement of such claim. However, the contractor understands that such participation will be under the control of the U.S. Department of Justice, per 28 U.S.C. § 516.**
Automatic renewals (e.g., term licenses for software or software maintenance that renew automatically, and renewal charges are due automatically unless the government takes action to opt out or terminate)	The Government does not agree to any automatic renewal provisions because such agreements may violate the Anti-Deficiency Act, 31 U.S.C. § 1341(a)(1)(B). **If any license or service tied to periodic payment is provided under this agreement (e.g., annual software maintenance), such license or service shall not renew automatically upon expiration of its current term without prior express Government approval by a warranted contracting officer.**
Audit	Any clauses that give the contractor the right to audit the government's use of software licenses do not meet the Government's needs as a matter of security. **The contractor can request that the Government conduct a self-audit (conducted at the Government's discretion), but the contractor will not have access to the government's systems to conduct the audit.**
Attorney fees and costs; equitable relief; arbitration	The Government does not agree to any clauses relating to the award of attorney's fees and costs or equitable relief because they may violate the Anti-Deficiency Act, 31 U.S.C. § 1341(a)(1)(B).

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	Equitable relief and the award of attorney's fees, costs, or interest are only allowed to the extent permitted by statute (e.g., the Prompt Payment Act or Equal Access to Justice Act). Disputes will be resolved according to the disputes clause. Binding arbitration will not be used.
Taxes	The Government does not agree to any clauses purporting to make the Government responsible for all taxes. Any taxes the vendor believes to be payable by the Government must be submitted individually to the contracting officer for adjudication prior to contract award or included in the firm-fixed price.
Incorporating other License Terms by Reference, Including Reference to a Website	Terms provided in other documents or websites do not bind the Government or its users unless those terms are submitted with the proposal and made an attachment to the contract. **Any license agreement provisions or terms of use unilaterally revised subsequent to award that are inconsistent with any term or provision of this contract are not enforceable against the Government.**
Venue; Choice of Law	The Government does not agree to any venue, jurisdiction, or choice of law clauses and does not consent to jurisdiction in any U.S. state courts. The Government does not agree to any language prescribing a different time period for bringing an action than that prescribed by applicable federal law in relation to a dispute. **Venue and jurisdiction for any disputes are determined by the applicable federal statute (e.g., Contract Disputes Act) or by the Federal Acquisition Regulation. Any disputes arising under or related to this contract and license agreement will be governed by applicable federal statutes and regulations, not the laws of any particular U.S. state.**
Arbitration	The Government does not agree to any provisions relating to mandatory arbitration or any other form of dispute resolution. Disputes must be resolved in accordance with applicable federal statutes (e.g., Contract Disputes Act) and regulations.
Equitable remedies, injunctions	The Government does not agree to any clauses consenting to or entitling the contractor to equitable relief or injunctions. Equitable relief for copyright, trademark, or

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	patent infringement by the Government is only available to the extent permitted by federal statutes.
Unilateral termination by contractor for breach	The Government does not agree to any clauses permitting unilateral termination of the contract or license agreement by the contractor. **Recourse against the United States for any alleged breach of this agreement must be made under the terms of the contract disputes clause (Contract Disputes Act). While a dispute is pending, the Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and must comply with any decision of the Contracting Officer.**
Unilateral modification	The Government does not agree to any provisions giving the contractor the right to unilaterally change the license terms, with or without notice to the customer.
Assignment by licensor	The Government does not agree to any license terms providing for assignment by the licensor. **Assignment of government contracts without the government's prior approval is prohibited by statute, except for assignment of payment to a financial institution, which must comply with the Assignment of Claims Act (31 U.S.C. § 3727, 41 U.S.C. § 15) and Federal Acquisition Regulation Subpart 32.8.**
Confidentiality	The Government does not agree to any clauses asserting that unit prices or license agreement terms are confidential or proprietary information. **Neither the license agreement nor the price list shall be deemed "confidential" or "proprietary" information notwithstanding any marking to that effect. The Freedom of Information Act (FOIA) governs what information must be disclosed and what information may be withheld by the Government.**
User obligations	The Government does not agree to any provisions obligating its users. The Government and its users will not be bound by any such terms and conditions even if a user's access to the service is conditioned upon an "I agree" click box or other comparable mechanism.

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	Any reference to "You," "the User," or any similar term in the License Agreement shall mean the Government itself and shall not apply to, nor bind (i) the individual(s) who utilize the service on the Government's behalf, or (ii) any individual users who happen to be employed by, or otherwise associated with, the Government. The contractor will look solely to the Government to enforce any violation or breach of the License Agreement by such individuals, subject to federal law.
Posting and availability of this Addendum	Any provision of the License Agreement requiring modifications of its terms to be posted on the contractor's site is inapplicable since this Addendum is of limited, not general, application, and is otherwise waived for this contract. The contractor agrees this Addendum contains no confidential or proprietary information, and the Government may release it to the public upon request and to other agencies interested in using the services.
Entire agreement	This Addendum constitutes a modification to the License Agreement; any language in the License Agreement indicating it may not be modified or that it alone is the entire agreement with the Government is waived. If there is any conflict between this Addendum and the License Agreement, or between this Addendum and other terms, rules or policies on the contractor's site or related to its services, this Addendum and the contract awarded by the Government shall prevail.

The offeror agrees to all the terms of this Addendum and will abide by its provisions if awarded a contract as a result of the submission of its proposal.

_____ _____

Signature of Authorized Representative Date

_____

Name of Authorized Representative

_____

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Name of Offeror