

## LICENSE AGREEMENT ADDENDUM

Fairfax County ( "the County") and \_\_\_\_\_ ("Supplier"), a business incorporated in \_\_\_\_\_, F.E.I.N. \_\_\_\_\_, having its principal place of business at \_\_\_\_\_, are this day entering into a contract and, for their mutual convenience, the parties are using the standard form contract(s) ("**INSERT CONTRACT DESCRIPTION**") provided by Supplier. This Addendum, duly executed by the parties, is attached to and made a part of Supplier's standard form contract(s). Together these documents govern the use of any and all products or agreements whether or not specifically referenced in the order document.

The term "contract" means the Supplier's standard form contract(s) and any and all exhibits and attachments thereto, and any additional terms and conditions incorporated or referenced therein. The term(s) "Customer," "You," and/or "you," as used in the contract mean, as applicable, Fairfax County, or any of its officers, directors, agents or employees.

Supplier's standard form contract is, with the exceptions noted in this Addendum, acceptable to the County. But certain standard clauses that may appear in, or be incorporated by reference into, Supplier's standard form contract cannot be accepted by the County. In consideration of the convenience of using the standard form contract and this Addendum without the necessity of specifically negotiating a separate contract document, the parties specifically agree that none of the following terms has any effect or is enforceable against the County or any of its officers, directors, employees or agents, even if that term or provision appears in the attached Supplier's standard form contract(s),

1. Requiring the application of the law of any state other than the Commonwealth of Virginia in interpreting or enforcing the contract or requiring or permitting that any dispute under the contract be resolved in any court other than a circuit court of the Commonwealth of Virginia;
2. Requiring any total or partial compensation or payment for unperformed services, anticipated profit, or liquidated damages by the County, or its officers, directors, employees or agents if the contract is terminated before its ordinary period;
3. Imposing any interest charge(s) contrary to that specified by § 2.2-4352 of the Code of Virginia;
4. Requiring the County to maintain any type of insurance either for the benefit of the County or for Supplier's benefit;
5. Granting Supplier a security interest in property of the County, the Commonwealth, or any of their officers, directors, employees or agents;
6. Requiring the County or any of its officers, directors, employees or agents to indemnify or to hold harmless Supplier for any act or omission;
7. Limiting or adding to the time period within which claims can be made or actions can be brought (Reference *Code of Virginia* §8.01 et seq.);
8. Permitting approval of any settlement in any claim arising under the contract and in which the County or any of its officers, directors, employees or agents is a named party without the County's written consent;
9. Binding the County or any of its officers, directors, employees or agents to any arbitration or to the decision of any arbitration board, commission, panel or other entity;
10. Obligating the County, or any of its officers, directors, employees or agents, to pay costs of collection or attorney's fees;
11. Requiring any dispute resolution procedure(s) other than those set forth in the Fairfax County Purchasing Resolution and the Code of Virginia;

12. Requiring the County to limit its rights or waive its remedies at law or in equity, including the right to a trial by jury;
13. Bestowing any right or incurring any obligation that is beyond the duly granted authority of the undersigned representative of the County to bestow or incur on behalf of the County.
14. Establishing a presumption of severe or irreparable harm to Supplier by the actions or inactions of the County;
15. Requiring the County to agree to third-party terms and conditions.
16. Permitting Supplier to assign, subcontract, delegate or otherwise convey the contract, or any of its rights and obligations thereunder, to any entity without the prior written consent of the County except as follows: Supplier may assign all or any of its rights and obligations to: a third party as a result of a merger or acquisition or sale of all or substantially all of its assets to such third party provided assignee agrees in writing to be bound by the terms and conditions set forth in the contract and provided such third party is a U.S.-based entity or maintains a registered agent and, if necessary, a certification of authority to do business in Virginia; or to an affiliate of Supplier, provided Supplier remains liable for affiliate's compliance with the terms and conditions set forth in this Contract;
17. Not complying with the contractual provisions in Articles 3 and 5 of the Fairfax County Purchasing Resolution, which are incorporated by reference.
18. Enforcing the United Nations Convention on Contracts for the International Sale of Goods and all other laws and international treaties or conventions relating to the sale of goods. They are expressly disclaimed. UCITA shall apply to this contract only to the extent required by [§ 59.1-501.15](#) of the Code of Virginia;
19. Not complying with all applicable federal, state, and local laws, regulations, and ordinances;
20. Requiring that the County waive any immunity to which it is entitled by law;
21. Requiring that the County, which is tax exempt, be responsible for payment of any taxes, duties, or penalties;
22. Requiring or construing that any provision in this contract conveys any rights or interest in County data to Supplier;
23. Obligating the County beyond approved and appropriated funding. All payment obligations under the contract are subject appropriations by the Fairfax County Board of Supervisors for this purpose. In the event of non-appropriation of funds for the items under this contract, the County may terminate, in whole or in part, the contract or any order, for those goods or services for which funds have not been appropriated. This may extend to the renewal of maintenance services for only some of the licenses granted by Supplier. Written notice will be provided to the Supplier as soon as possible after legislative action is completed. There shall be no time limit for termination due to termination for lack of appropriations;
24. Permitting unilateral modification of the contract by Supplier;
25. Requiring or stating that the terms of the Supplier's standard form contract shall prevail over the terms of this addendum in the event of conflict;
26. Renewing or extending the contract beyond the initial term or automatically continuing the contract period from term to term;
27. Defining "perpetual" license rights to have any meaning other than license rights that exist in perpetuity unless otherwise terminated in accordance with the applicable provisions of the contract;
28. Permitting modification or replacement of the contract pursuant to any new release, update or upgrade of Software or subsequent renewal of maintenance. If Supplier provides an update or upgrade subject to additional payment, the County shall have the right to reject such update or upgrade;

29. Requiring purchase of a new release, update, or upgrade of Software or subsequent renewal of maintenance in order for the County to receive or maintain the benefits of Supplier's indemnification of the County against any claims of infringement on any third-party intellectual property rights;
30. Granting Supplier or an agent of Supplier the unilateral right to audit or examine the books, records, or accounts of the County;

The parties further agree as follows:

31. If, pursuant to Title 13.1 or Title 50 of the Code of Virginia, Supplier is required to obtain a certificate of authority to transact business in Virginia, Supplier represents and warrants that it is so authorized. If Supplier is not a U.S.-based entity, Supplier maintains a registered agent and a certification of authority to do business in Virginia.
32. Supplier warrants that it is the owner of the Software or otherwise has the right to grant to the County the license to use the Software granted hereunder without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party.
33. Supplier agrees to indemnify, defend and hold harmless the County or its officers, directors, agents and employees ("County's Indemnified Parties") from and against any and all third party claims, demands, proceedings, suits and actions, including any related liabilities, obligations, losses, damages, fines, judgments, settlements, expenses (including attorneys' and accountants' fees and disbursements) and costs (each, a "Claim" and collectively, "Claims"), incurred by, borne by or asserted against any of County's Indemnified Parties to the extent such Claims in any way relate to, arise out of or result from: (i) any intentional or willful conduct or negligence of any employee or subcontractor of Supplier, (ii) any act or omission of any employee or subcontractor of Supplier, (iii) breach of any representation, warranty or covenant of Supplier contained herein, (iv) any defect in the Software, or (v) any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Software. Selection and approval of counsel and approval of any settlement shall be accomplished in accordance with all applicable laws, rules and regulations. In all cases the selection and approval of counsel and approval of any settlement shall be satisfactory to the County against whom the claim has been asserted.
34. The County may rely on independent contractors, acting on behalf of the County, to perform functions requiring the use of and access to the Supplier's Software. Nothing in the Supplier's standard form contract shall limit such third parties from using or accessing the Software in order to perform such functions. If any invention, work of authorship, or confidential information is developed exclusively by an employee, consultant, or third-party contractor or subcontractor of the County during the performance of Services by Supplier, Supplier shall have no ownership claim to such invention, work of authorship, or confidential information.
35. Any travel expenses incurred by Supplier in the course of performing the services must be pre-approved by the County and shall be reimbursed at the then-current per diem rates used by the federal government.
36. Supplier will comply with all applicable laws regarding safeguarding and protection of personally identifiable information made available through this contract. Supplier must report to the County all breaches that result in exposure of the County's data or other incidents compromising the security of the County's data. For purposes of this section "County data" means data that the Supplier accesses, stores, or hosts pursuant to this contract and includes "personal information" defined by Virginia Code § 18.2-186.6 or "medical information" defined by Virginia Code § 32.1-127.1:05. Such reports must be made to the County immediately upon discovery of the breach and no later than three days from when Supplier discovered the breach. The requirements of this paragraph are in addition to and do not relieve Supplier of its obligation to comply with any requirements imposed by law regarding data breaches. If any notices to individuals or third parties are required by applicable law due to a data breach, the parties will cooperate to ensure that such notice is timely provided. If Supplier experiences a breach of protected health information governed under HIPAA, or substance use

disorder information governed under 42 CFR Part 2, the terms of any Business Associate or Qualified Service Organization Agreement between the parties will control.

37. All information technology, which is purchased or upgraded by the County under this contract, must comply with the following access standards from the date of purchase or upgrade until the expiration of the Contract:
- A. Effective, interactive control and use of the technology (including the operating system), applications programs, and format of the data presented, shall be readily achievable by nonvisual means;
  - B. the technology equipped for nonvisual access shall be compatible with information technology used by other individuals with whom the blind or visually impaired individual interacts;
  - C. Nonvisual access technology shall be integrated into networks used to share communications among employees, program participants, and the public; and
  - D. The technology for nonvisual access shall have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired. A covered entity may stipulate additional specifications in any procurement.
  - E. Compliance with the nonvisual access standards set out this Section is not required if the Purchasing Agent determines that (i) the information technology is not available with nonvisual access because the essential elements of the information technology are visual and (ii) nonvisual equivalence is not available.

This contract, consisting of this Fairfax County License Agreement Addendum and the Supplier's standard form contract(s), constitute the entire agreement between the parties and may not be waived or modified except by written agreement between the parties.

IN WITNESS WHEREOF, the parties have caused this contract to be duly executed as of the last date set forth below by the undersigned authorized representatives of the parties, intending thereby to be legally bound.

Supplier	Fairfax County
By: _____ (Signature)	By: _____ (Signature)
Name: _____ (Print)	Name: _____ (Print)
Title: _____	Title: Director/County Purchasing Agent
Date: _____	Date: _____