

## NNDATA Corporation

### **EC America Rider to Product Specific License Terms and Conditions (for U.S. Government End Users)**

1. **Scope.** This Rider and the attached NNDATA Corporation (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
  - a) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.
  - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
  - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
  - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
  - e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.
  - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
  - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
  - h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe

weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

- i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
- j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
  - t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
  - u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- 3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

## **ATTACHMENT A – NNDATA CORPORATION**

### **NNCOMPASS TERMS & CONDITIONS**

These Terms & Conditions (“Agreement” or “Terms”) govern your acquisition and use of NNData’s NNCompass software. You agree to the terms and conditions outlined herein. This Agreement replaces any prior agreement(s) and is effective between the Ordering Activity under GSA Schedule contracts (“Ordering Activity”, “You” or “Your”) and the GSA Multiple Award Schedule Contractor acting by and through its supplier, NNData, as of the date of execution of a proper Order of NNCompass.

#### **INTELLECTUAL PROPERTY**

The Software, including without limitation all copyrights, patents, trademarks, trade secrets, and other intellectual property rights are, and shall remain, the sole and exclusive property of NNData. The Software incorporates confidential and proprietary information developed or acquired by or licensed to NNData and that in performing under this Agreement you will learn additional information that is confidential and proprietary to NNData and the NNCompass software (the “Confidential Information”). The User will take all commercially reasonable precautions necessary to safeguard the confidentiality of the Confidential Information, including (i) those taken to protect your own confidential information and (ii) those which NNData may reasonably request from time to time. The User will take all commercially reasonable precautions necessary to not allow the removal or defacement of any confidentiality or proprietary notice placed on the Software or other items of Confidential Information. The placement of copyright notices on these items will not constitute publication or otherwise impair their confidential nature.

#### **LIMITED LICENSE TO USERS**

NNData grants you a revocable, non-exclusive, non-transferable, limited license to (i) download, install, and use the Software solely to perform internal testing, development, and use inside your corporate environment or (ii) use the Software solely to perform internal testing, development, and use inside the NNCompass cloud computing environment, and for purposes strictly in accordance with the terms of this Agreement, so long as you have satisfied your obligations under it. NNData retains all rights to NNData Software not granted to you in this Paragraph. “NNData Software” means any software programs, tools, add-ons, databases, libraries, guides, manuals, documentation, code including source code, object code, and binary code, and other related materials developed by NNData including any modifications, enhancements, or upgrades made thereto at any time.

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### **RESTRICTIONS**

You agree not to perform any of the following prohibited activities, including but not limited to:

- license, sell, rent, lease, assign, distribute, transmit, host, outsource, disclose, access, or otherwise commercially exploit the Software or make the Software available to any third party;
- copy or use the Software for any purpose other than as permitted under the above section 'License';
- modify, make derivative works of, disassemble, decrypt, reverse compile, or reverse engineer any part of the Software;
- remove, alter, deface, or obscure any proprietary notice (including any notice of patent, copyright, or trademark) of NNData or its affiliates, partners, suppliers, or the licensors of the Software;
- use the Software to distribute viruses, scripts, Trojan horses, worms, malware, timebombs, or other harmful components to or from NNData's or other systems; and
- transmit, store, or distribute any material that violates any applicable law, including export or encryption laws or regulations.

### **LIMITED RIGHT TO USE**

You must only use the Software for your own lawful internal business purposes, in accordance with these Terms and any notice sent by NNData. You may use the Software on behalf of others or in order to provide services to others but if You do so you must ensure that You are authorized to do so and that all persons for whom or to whom services are provided comply with and accept all terms of this Agreement that apply to You. The viewing, printing or downloading of any content, graphic, form or document from the Site grants you only a limited, nonexclusive license for use solely by you for your own personal use and not for republication, distribution, assignment, sublicense, sale, preparation of derivative works or other use. No part of any content, form or document may be reproduced in any form or incorporated into any information retrieval system, electronic or mechanical, other than for your personal use (but not for resale or redistribution). NNData reserves the right to revoke the authorization to view, download, and print the NNData Content and User Content available on this Site at any time, and any such use shall be discontinued immediately upon notice from NNData. The rights granted to you constitute a license and not a transfer of title.

### **NONTRANSFERABLE**

Your right to use the Software is not transferable. Any password or right given to you to obtain information or documents is not transferable.

### **DISCLAIMER AND LIMITS**

NNData warrants that the software will, for a period of sixty (60) days from the date of your receipt, perform substantially in accordance with the NNData written materials accompanying it. Except as expressly set forth in the foregoing, the NNCompass software is provided "as-is," "as available," and all warranties, express or implied, are disclaimed (including but not limited to the disclaimer of any implied warranties of merchantability and fitness for a particular purpose). The software may contain bugs, errors, problems or other limitations. No advice or information, whether oral or written, obtained by

you from us through the use of the software shall create any warranty, representation or guarantee not expressly stated in this agreement.

#### **MISCELLANEOUS**

This Agreement shall be governed by and construed in accordance with the Federal law of the United States. Should any part of this Agreement be held invalid or unenforceable, that portion shall be construed consistent with applicable law and the remaining portions shall remain in full force and effect. Our failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision nor of the right to enforce such provision.