

## **FEDERAL ADDENDUM TO STANDARD CONTRACT FOR AWS MARKETPLACE**

This Federal Addendum to the Standard Contract for AWS Marketplace (the “Federal Addendum”) is made by and between the party offering the Software as a Standard Contract Listing on the AWS Marketplace (“Licensor”) and the U.S. Government ordering activity subscribing to the Software (“Buyer”) through the AWS Marketplace. This Federal Addendum amends and supplements the Standard Contract for AWS Marketplace (the “Standard Contract”), the terms and conditions of which are incorporated herein by reference, as expressly set forth herein, and form part of the Agreement (as defined in the Standard Contract).

Unless defined elsewhere in this Federal Addendum, terms in initial capital letters have the meanings set forth in the Standard Contract.

**1. Amendment of Standard Contract.** The Standard Contract is amended to include the following provision:

**12.15 U.S. Government End-Users.** Notwithstanding any other provision of the Standard Contract, when the end user is an agency or instrumentality of the U.S. Government (“Government”), the following shall apply:

**12.15.1 Applicability.** This Standard Contract is between Licensor and the Government.

**12.15.2 End User.** This Standard Contract shall bind the Government ordering activity as end-user but shall not operate to bind a Government employee or person acting on behalf of the Government in their personal capacity.

**12.15.3 Law and disputes.** This Standard Contract is governed by Federal law.

- a. Any language purporting to subject the Government to the laws of a U.S. state, U.S. territory, district, or municipality, or 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 any applicable underlying government contract and applicable Federal law is hereby deleted.
- c. Any language prescribing a different time period for bringing an action than that prescribed by any applicable underlying government contract and applicable Federal law in relation to a dispute is hereby deleted.
- d. Any language that is inconsistent with federal law, is hereby deleted.

**12.15.4 Continued performance.** Licensor shall not unilaterally revoke, terminate or suspend any rights granted to the Government except as allowed by this Standard Contract. If Licensor believes the Government ordering activity is in breach of the Standard Contract, it shall pursue its rights under the Contract Disputes Act or other applicable Federal statute while continuing performance.

**12.15.5 Arbitration; equitable or injunctive relief.** In the event of a claim or dispute arising under or relating to this Standard Contract, a binding arbitration shall not be used unless specifically authorized by Government guidance, and equitable or injunctive relief, including the award of attorney fees, costs, or interest, may be awarded against the Government only when explicitly provided by statute (e.g., Prompt Payment Act or Equal Access to Justice Act).

**12.15.6 Updating terms.** After award or execution of the Standard Contract, Licensor may unilaterally revise the Standard Contract terms if they are not material. A 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 the Standard Contract. Any other changes to this Standard Contract must be signed by a duly warranted Contracting Officer, in writing.

**12.15.7 No automatic renewals.** If any license or service tied to periodic payment is provided under this Standard Contract (e.g., annual software maintenance or annual lease term), such license or service shall not renew automatically upon expiration of its current term without prior express consent by an authorized Government representative.

#### **12.15.8 Indemnification.**

**12.15.8.1** Except as stated in Paragraph 12.15.8.2, any clause of the Standard Contract requiring the Government to pay any future fees, penalties, interest, legal costs, or to indemnify the Licensor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act (31 U.S.C. § 1341) violation (i) any such language, provision, or clause is unenforceable against the Government, (ii) neither the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the Standard Contract, and, if the Standard Contract is invoked through an “I agree” click box or other comparable mechanism (e.g., “click-wrap” or “browse-wrap” agreements), execution does not bind the Government or any Government authorized end user to such clause; and (iii) any such language, provision, or clause is deemed to be stricken from the Standard Contract.

**12.15.8.2** Paragraph 12.15.8.1 of this clause does not apply to indemnification or any other payment by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

**12.15.8.3** Any clause of this Standard Contract requiring 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.

**12.15.9 Audits.** Any clause of the Standard Contract permitting the Licensor to audit the end user’s compliance with the Standard Contract is hereby amended as follows:

**12.15.9.1** Discrepancies found in an audit may result in a charge by the Licensor to the Government ordering activity. Any resulting invoice must comply with the proper invoicing requirements specified in the Standard Contract

**12.15.9.2** This charge, if disputed by the Government ordering activity, will be resolved in accordance with the applicable disputes clause of the Standard Contract; no payment obligation shall arise on the part of the ordering activity until the conclusion of the dispute process.

**12.15.9.3** Any audit requested by Licensor will be performed at Licensor’s expense, without reimbursement by the Government.

**12.15.10 Taxes or surcharges.** Any taxes or surcharges which Licensor seeks to pass along to the Government as end user will be governed by the terms of any applicable underlying government contract or order and, in any event, must be submitted to the Government Contracting Officer for a determination of applicability prior to invoicing unless specifically agreed to otherwise in the applicable underlying government contract.

**12.15.11 Non-assignment.** The Standard Contract may not be assigned, nor may any rights or obligations thereunder be delegated, without the Government’s prior approval, except as expressly permitted under Federal Acquisition Regulation (“FAR”) 52.212-4(b) (48 C.F.R. § 52.212-4(b)).

**12.15.11 Confidential information.** If the Standard Contract includes a confidentiality clause, such clause is hereby amended to state that neither the agreement nor the contract price list, as applicable, shall be deemed “confidential information.” Issues regarding release of “unit pricing” will be resolved consistent with the Freedom of Information Act. Notwithstanding anything in this Standard Contract to the contrary, the Government may retain any confidential information as required by law, regulation or its internal document retention procedures for legal, regulatory or compliance purposes; provided, however, that all such retained confidential information will continue to be subject to the confidentiality obligations of this Standard Contract.

**12.15.12 Termination.** Termination of the Standard Contract by the Government will be in accordance with FAR 52.212-4.

**12.15.13 Affiliates and Contractors.** Government end-users may allow their contractors and affiliates to use the Software in accordance with this Standard Contract, provided that Buyer may remain liable for all acts and omissions of its Affiliates and Contractors as permitted under the Contract Disputes Act, 28 U.S.C. § 1498, or other applicable law or regulation.

**12.15.14 Insurance.** Any clause in the Standard Contract requiring Buyer to carry insurance is hereby deleted in its entirety.

- 2. Reaffirmation of Obligations.** The Parties expressly reaffirm their obligations pursuant to the Standard Contract and the Agreement.
- 3. No Other Changes.** Except as expressly modified by this Federal Addendum , all terms of the Standard Contract and the Agreement remain in full force and effect.

This Federal Addendum is effective contemporaneously with the Parties’ acceptance of the Standard Contract, their entry into the Agreement, and the Subscription purchase.