Software License Terms - Addendum

This Software License Terms - Addendum applies whenever Contractor licenses Software to WMATA. For clarity, this Addendum does not apply to the extent the Purchase Order provides for the delivery of cloud-based or any managed or hosted service offerings ("**Subscription Services**"). Capitalized terms used but not defined below in this Software License Addendum will have the same meanings given to them in the Standard IT Terms and Conditions.

1.   **LICENSE GRANT.**

(a)   <u>License Grant</u>. Except as otherwise set forth in a Purchase Order, Contractor hereby grants WMATA the License (as defined below) on a non-exclusive, irrevocable, non-transferable, worldwide, and fully paid-up basis for the license duration set out in the Purchase Order. WMATA and its Authorized Users may use, copy, install, access, perform, operate, display, and execute an object code (executable) version of the Software for its business purposes and may distribute (to Authorized Users), make a reasonable number of copies of, and modify or adapt the related documentation (collectively, the "**License**"). If the Software includes the delivery of source code, then the License permits WMATA to modify and create derivative works from the source code. For purposes hereof, "**Authorized Users**" means all employees, agents and subcontractors authorized by WMATA to access and use the Software through or on behalf of WMATA.

(b)   <u>License Scope</u>. Unless a limited license grant or other restrictions are set forth in a Purchase Order, the License permits WMATA to use the Software on an unlimited number of computers or other devices for an unlimited number of users in an unlimited number of locations throughout the world. If Contractor discovers that WMATA exceeds the scope where a limited License is set forth under a Purchase Order, Contractor will provide written notice to WMATA and the parties will discuss in good faith their understanding of then-current use levels in relation to the License usage limitations set forth in the applicable Purchase Order. Contractor may not seek recovery for any excess usage related to any period greater than one (1) year prior to the date of such written notice. To the extent helpful to clarify usage calculations, Contractor will in good faith inform WMATA as to how License usage is calculated under its standard documentation for the appliable Software and provide all back-up data that is reasonable and necessary to substantiate its License usage calculations. Contractor will not rely upon a third party to perform any audit or forensics on WMATA's usage of the Software without WMATA's prior written consent. WMATA will have a reasonable period to reduce its use of the applicable Software and comply with the License usage limitations set forth under the applicable Purchase Order (which shall in no event be less than sixty (60) days) before it may be expected to pay for any expanded use (which will be pursuant to the rates set forth in the applicable Purchase Order unless a lower rate is mutually-agreed by the parties). Any discrepancy or dispute regarding calculation of License usage will, to the extent necessary, be resolved in accordance with the procedures outlined in Section 29(a) and Section 29(c) of the Standard IT Terms and Conditions.

(c)   <u>Use Restrictions</u>. Except as provided in subsection 1(a) above with respect to licensed source code, WMATA will not modify, decompile, reverse engineer or create derivative works from the Software unless otherwise provided in the Purchase Order. Nor may WMATA: (a) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make the Software available to any third party, except as expressly permitted by this Contract (including in any Purchase Order); or (b) use or authorize the use of the Software or documentation in any manner or for any purpose that is unlawful under applicable laws. WMATA will reproduce any copyright notices or other proprietary notices in copies of the Software.

(d)   Reservation of Rights. Contractor and its licensors retain all rights, title and interest in and to the Software. Except for the limited licenses expressly above, nothing contained in this Addendum shall be construed as granting WMATA or any third party any right, title, or interest in or to the Software.

2.   **NON-PRODUCTIVE USE AND COPIES OF SOFTWARE.**   Except as otherwise set forth in a Purchase Order, the License includes the right for WMATA to store and use copies of the Software for testing, quality assurance, backup, archival, emergency restart, disaster recovery and similar purposes on-site or off-site. Copies for those uses will not be counted among the number of copies or the amount of use under any per-copy, per-transaction, per-location or other similar pricing scheme.

3.   **INTERFACES WITH OTHER PRODUCTS.**   To the extent WMATA develops or builds any application programming interfaces ("**APIs**") or other interfaces, including to extract, export, adapt, convert, format, and incorporate the Software in connection with other software programs or technology owned or licensed by WMATA so as to permit that other software or technology (collectively, "**Other Software**") to interoperate with the Software, WMATA retains all rights, title and interest in the APIs and other interfaces, as well as such Other Software, and any and all intellectual property therein, and Contractor will not obtain any ownership interest in any such APIs or other interfaces or such Other Software.

4.   **ACCEPTANCE TESTING**

(a)   Contractor shall, at its own expense, conduct appropriate tests in accordance with Contractor's standard practices to establish that the Software performs in accordance with the specifications and service levels set forth or referenced in the Contract and the other quality requirements in any related documentation provided by Contractor (collectively, the "**Specifications**"). Contractor shall provide the test results promptly to WMATA in writing, in a form and manner to be agreed upon by the parties. If Contractor's tests establish that the Software does not perform in accordance with the Specifications, or WMATA reports to Contractor prior to acceptance or deemed acceptance thereof that it is not performing in accordance with the Specifications, Contractor shall promptly commence and diligently and continuously pursue efforts to bring it into compliance with the Specifications. Upon completion of these efforts, Contractor shall tender the Software to WMATA, which will remain subjected to the acceptance procedures set forth in this clause. Billing for any Software shall not commence until the Software is accepted by WMATA in accordance with the procedure described herein.

(b)   When Contractor notifies WMATA in writing that the Software is ready for delivery, WMATA shall have at least three (3) weeks from such delivery to test the Software in a production representative environment to determine whether it complies with the Specifications. Upon completion of WMATA's testing, WMATA shall notify Contractor of its acceptance or, if it has identified any noncompliance with the Specifications, its rejection of the Software. If WMATA rejects the Software, WMATA shall provide a written list of items that must be corrected. On receipt of WMATA's notice, Contractor shall promptly commence, at no additional cost or charge to WMATA, all reasonable efforts to complete, as quickly as possible and in any event within five (5) business days from receipt of WMATA's notice (or such other period as may be agreed upon by the parties in writing), such necessary corrections, repairs, and modifications to the Software to bring it into full compliance with the Specifications. If any further corrective measures are required, upon its completion of all such measures, Contractor shall notify WMATA in writing and the process set forth herein shall be repeated. If WMATA determines that the Software, as corrected, repaired or modified, still does not comply with the Specifications, WMATA, in addition to any other rights and remedies it has under this Contract, at law or in equity, shall have the right:

i. To direct the Contractor, at no increase in Contract price, to correct, repair or modify the defective or nonconforming Software in accordance with a reasonable delivery schedule as may be agreed upon between the parties. The Contracting Officer ("**CO**") may reduce the Contract price if the Contractor fails to meet such delivery schedule; or

ii. Within a reasonable time after the Contractor's receipt of a notice of defects or nonconformance, the CO may in lieu of correction of the Software reduce the Contract price, as is equitable under the circumstances or terminate this Contract with no liability, obligation or penalty.

5. **PERFORMANCE WARRANTIES.**

(a) In addition to any representations and warranties set out in the Standard IT Terms and Conditions (including, to the extent relevant to any software licensed by WMATA, under the Artificial Intelligence (AI) Terms – Annex), Contractor represents, warrants and covenants to WMATA that:

i. The Software, including any Improvements and associated documentation, will be free from material programming and other errors and from defects in materials and workmanship.

ii. The Software will conform to the applicable performance capabilities, characteristics, hardware and software compatibility and other descriptions and standards set forth in the Specifications.

iii. No portion of any Software provided or made available to WMATA, contains any "back door," "time bomb," "worm," "drop dead device," "Trojan Horse", "virus" or other computer software routines or harmful code designed to permit access to or use of such software or WMATA's computer systems by unauthorized parties, disable, damage or erase any software or data processed therewith, or otherwise interfere with WMATA's rights hereunder.

iv. Software provided or made available to WMATA will not include any item of software that requires or that conditions any rights granted in such license upon: (a) the disclosure, distribution or licensing of any other software (other than such item of software as provided by a third party in its unmodified form); (b) a requirement that any disclosure, distribution or licensing of any other software (other than such item of software in its unmodified form) be at no charge; (c) a requirement that any other licensee of the software be permitted to access the source code of, modify, make derivative works of, or reverse-engineer any such other software; (d) a requirement that such other software be redistributable by other licensees; or (e) the grant of any patent rights (other than patent rights in such item of software), including non-assertion or patent license obligations (other than patent obligations relating to the use of such item of software).

v. All Software delivered by Contractor shall remain compatible and interoperable with all Equipment provided, recommended, or otherwise approved by Contractor under the Contract, and Contractor shall ensure that the Software supplied to WMATA remain compatible at all times with WMATA's cybersecurity and network data security standards.

(b) The warranties set forth in Section 5(a) shall apply from the time of installation until the later of (i) thirty-six (36) months, or (ii) "end-of-life" for the applicable Software has occurred (per the Contractor's documented lifecycle management policy) (the "**Warranty Period**").

(c)   Contractor, at no charge to WMATA, will promptly correct any Software, including any Improvements and associated documentation, that during the Warranty Period does not conform with any of the representations, warranties or covenants contained in this Section 5 and the corrected Software will be subject to an additional warranty period which shall end upon the later of (i) the expiration of the remaining Warranty Period for the Software being corrected thereby, or (ii) one hundred eighty (180) days following correction and re-installation.

(d)   If Contractor fails to correct any Software experiencing any material error, defect, problem or deficiency during the Warranty Period within a commercially reasonable time after acceptance thereof by WMATA, then WMATA may elect to receive a *pro rata* refund of all undepreciated (calculated based on WMATA's market research) amounts paid with respect to the affected Software (as well as a *pro rata* refund of all amounts paid with respect to any Products as to which the defective Software is necessary in order for such other Products to operate in accordance with their Specifications). Such refund shall be paid by Contractor within thirty (30) days of WMATA's written demand for the same pursuant to this clause.

(e)   EXCEPT AS OTHERWISE STATED IN THIS CONTRACT, CONTRACTOR MAKES NO WARRANTIES (EXPRESS OR IMPLIED) WITH RESPECT TO THE PERFORMANCE OF THE SOFTWARE, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

6.   THIRD-PARTY MATERIALS.

Subject to the foregoing, Contractor agrees to obtain (or assist WMATA to obtain in its own name), prior to the delivery date for any Software all licenses, consents, approvals, and authorizations necessary for WMATA to use all such Third-Party Materials incorporated into the Software by Contractor. All such licenses for Third-Party Materials incorporated into the Software shall be transferrable to WMATA, unless otherwise approved by WMATA prior to entering into such license. Copies of any license agreements for, and a list of, such Third-Party Materials shall be provided to WMATA upon request, provided that where confidentiality restrictions would preclude such direct sharing, Contractor will provide a true and accurate abstract of the license provisions. "**Third-Party Materials**" means any products, tools, materials, computer programs, software (including, without limitation, any software, tool, utility or template), warranty, support or similar services or other tangible or intangible item belonging to any third party that Contractor may incorporate into any Products.

6.   PREVENTATIVE SOFTWARE MAINTENANCE.

(a)   WMATA may request Software related maintenance and support ("**Software Maintenance**") through e-mail or Contractor's telephone support line or as otherwise mutually-agreed. Unless otherwise set forth in Contractor's standard documentation or as specifically agreed in writing, telephone support will be available on business days, during the hours of 7:00 a.m. to 7:00 p.m., in the time zone where WMATA is using the Software ("**Software Support Standard Hours**").

(b)   Contractor shall provide preventative maintenance and support, and will respond to WMATA and resolve problems, in a timely manner and in any event as to meet or exceed the required levels of quality, responsiveness, availability, capacity, reliability or other characteristics of the Software Maintenance set forth in the Purchase Order and no less than those levels set forth in any documentation ("**Service Levels**"), and shall measure and report to WMATA on its performance of the Software Maintenance against the applicable Service Levels. Contractor shall in any event perform Software Maintenance in such a manner as to minimize the adverse impact on the Software and shall notify WMATA as far in advance as practicable of any planned Improvements.

7. **REMEDIAL SOFTWARE MAINTENANCE.**

Contractor will promptly notify WMATA of any Errors or other nonconformities in the Software. "**Error**" means any error, defect or malfunction in the Software that: (i) compromises or corrupts the integrity of the Software or any data; (ii) causes an unexpected error to occur while using the Software; or (iii) causes the Software to fail to conform to the Specifications or any of the applicable warranties. Contractor will promptly correct all Errors, repair or replace all defective or inoperable Software and cause the Software to be in compliance with Specifications and all of the applicable warranties, including as to meet or exceed the Error Response Intervals set out in Attachment 1 of this Addendum.

8. **IMPROVEMENTS TO SOFTWARE.**

(a)   Contractor may change or improve the Software from time to time, and will provide notices to WMATA of any significant Improvements. Upon release, all such Improvements will become a part of the Software. Contractor shall make available to WMATA, at no additional charge, those Improvements that Contractor makes available to any of its customers without additional charge.

(b)   Contractor represents and warrants that each Improvement will be compatible with each preceding version of the Software. Contractor will continue to provide Software Maintenance for: (a) each Improvement for at least forty-eight (48) months after delivery to WMATA; and (b) at least the two (2) immediately prior major updates provided to WMATA. The term "**major update**" (also sometimes referred to as "**new version**") means an Improvement containing substantially enhanced business functionality not previously included in the Software and comes at an additional licensing fee for all of the Contractor's customers.

(c)   There will be no charge for Improvements (other than Optional Improvements). Fees for Optional Improvements will be set forth in the applicable Purchase Order or provided at Contractor's prevailing license fees (less applicable WMATA discounts) (whichever fees are lowest). The term "**Optional Improvement**" means an Improvement that: (a) is not required for the Software to meet Specifications; (b) Contractor licenses separately from each component of the Software for all of its customers; (c) Contractor does not provide to any other customer without additional charge under any maintenance arrangement; and (d) provides substantially enhanced business (not merely technical) functionality.

9. **CANCELLATION OF SOFTWARE MAINTENANCE.**

WMATA may terminate Software Maintenance at any time for convenience. If termination is only with respect to certain items of Software, the termination notice will identify those items. Upon termination, WMATA will receive a refund of all fees paid in advance for Software Maintenance not then-provided by Contractor.

10. **REINSTATEMENT OF SOFTWARE MAINTENANCE.**

WMATA may reinstate any terminated Software Maintenance by giving Contractor at least thirty (30) days' prior notice and agreeing to pay a reinstatement fee equal to no more than 25% of the cumulative maintenance fees that would have been paid at the rates in effect at the time of termination for the period of time that WMATA did not receive Software Maintenance. WMATA's agreement to pay the reinstatement fee entitles WMATA to all Improvements, releases and other deliverables issued by Contractor during the period WMATA did not have the Software Maintenance coverage.

11. **DECOMMISSIONING OF LICENSED SOFTWARE.**

In the event Contractor decommissions or sunsets the Software according to Contractor's documented lifecycle management policy, Contractor will provide WMATA with written notice no less than ninety (90) days prior to the effective date of decommissioning. Contractor will promptly provide WMATA a pro-rata refund of fees paid in advance for Software Maintenance not provided by Contractor as of the effective date of the decommissioning.

12. SOURCE CODE ESCROW

(a)   In the event that and at such time as: (i) the source code for any or all material part of the Software is generally made publicly available by Contractor without additional cost to other users of comparable software; (ii) Contractor ceases, for any reason, to do business in the ordinary course; (iii) Contractor is not willing or able to offer Software Maintenance for the Software; (iv) Contractor merges with or into another entity, or Contractor sells all or substantially all of its assets, and the successor entity does not assume all of Contractor's obligations under the Contract; or (v) Contractor institutes or has instituted against it, any insolvency, receivership or bankruptcy proceedings, or makes an assignment for the benefit of creditors, and the same has not been discharged or terminated without any prejudice to Contractor's rights or interests under the Contract within sixty (60) days (each on its own a "**Release Event**," and collectively, the "**Release Events**"), WMATA shall be entitled to obtain, and Contractor shall deliver to WMATA, a copy of the current Source Materials for the Software as necessary to maintain and use such Software for its intended purpose(s). As used herein, "**Source Materials**" shall mean the source code for the Software in the internally documented form actually used for the development and maintenance of the Software together with all programmer notes, roadmaps, specifications, software tools, development aids, technical documentation and other relevant information or documentation sufficient to enable a reasonably qualified programmer to make use of the source code and allow WMATA to exercise all of its rights under the Contract with respect to the Software (including post-termination rights) and to perform all support and maintenance of the Software.

(b)   Within thirty (30) days following the Effective Date, Contractor shall deposit into escrow with a mutually agreeable escrow agent ("**Escrowee**") one (1) copy of the Source Materials to be held in accordance with Escrowee's standard escrow agreement which will reflect the Release Events and terms set out in this Section 12 ("**Escrow Agreement**") and promptly deliver updates into escrow upon delivery to WMATA of any Improvements to the Software. The Escrow Agreement shall be entered into by and among Contractor, WMATA, and Escrowee, and the Source Materials shall be released upon the occurrence of one or more of the Release Events.

(c)   If any of the Release Events are satisfied, WMATA shall have and is hereby granted the non-exclusive, perpetual, irrevocable and sublicensable right, directly or through one or more service providers, to use, maintain, support, reproduce, or prepare derivative works or any improvements based on the Source Materials as necessary to maintain and use the Software for its intended purpose(s). WMATA agrees not to exercise the foregoing right and license until the occurrence of a Release Event at which time it will be entitled to do so without restriction or compensation to Contractor. WMATA may permit its agents and subcontractors to exercise those rights and licenses, provided that it requires them to agree to maintain the confidentiality of the Source Materials.

(d)   Contractor shall be responsible for all the fees and costs associated with maintaining the escrow, including the fees associated with deposit of the Source Materials into escrow. The parties acknowledge and agree that the Escrow Agreement is an agreement supplementary to this Contract for purposes of Section 365(n) of the United States Bankruptcy Code.

(e)   In the event a Release Event occurs, upon WMATA's request, Contractor will provide WMATA with knowledge transfer training of the Source Materials to enable WMATA or its third party nominee to rebuild, maintain, support and enhance the Software.

(f)   All rights and licenses granted under this Contract are and shall be deemed to be rights and licenses to "intellectual property" as such term is used in and interpreted under Section 365(n) of the United States Bankruptcy Code.

13.   SURVIVAL

Each party's obligations under this Addendum which are not, by the express terms of this Addendum, fully to be performed during the term of the Contract (including, without limitation, Performance Warranties; Third-Party Materials; Source Code Escrow), shall survive the expiration or termination of the Contract for any reason.

Attachment 1
Error Response Intervals

Capitalized terms used but not defined below in this Attachment 1 will have the same meanings given to them in the Standard IT Terms and Conditions.

1.1 **Error Classification.**
- **Priority 1:** The Error renders the Software inoperative or causes a complete failure of the Software.
- **Priority 2:** The Error affects the performance of the Software, or restricts the use of the Software (for example, important Software features are unavailable with no acceptable workaround).
- **Priority 3:** The Error causes only a minor impact on use of the Software but no acceptable workaround is available.
- **Priority 4:** Although an Error exists, the Error causes minor inconveniences (such as cosmetic problems) and it does not impact the operation of the Software because an acceptable workaround is available. Priority 4 Errors include all Errors that are not classified as Priority 1, Priority 2, or Priority 3.

1.2 **Error Corrections; Response Times.**
   "**Error Correction**" means a bug fix, error correction, patch, or other modification or addition that, when made or added to the Software, corrects an Error. Contractor will comply with the following response times and resolution deadlines for any Error:
- **Priority 1 Error**. In the event of a Priority 1 Error, Contractor will, within one (1) hour of notification, acknowledge and commence work on resolving the Error with an Error Correction. Contractor will work continuously around-the-clock to provide a workaround for the Error within two (2) hours after such notification and an Error Correction within twenty-four (24) hours after such notification. Contractor will provide WMATA with periodic reports (no less frequently than once every two (2) hours) on the status of the Error Correction.
- **Priority 2 Error**. In the event of a Priority 2 Error, Contractor will, within two (2) hours of notification, acknowledge and commence work on resolving the Error with an Error Correction. Contractor will provide a workaround for the Error within twenty-four (24) hours after such notification and an Error Correction within forty-eight (48) hours after such notification. Contractor will provide WMATA with periodic reports (no less frequently than every four (4) hours) on the status of the Error Correction.
- **Priority 3 Error**. In the event of a Priority 3 Error, Contractor will, within twenty-four (24) hours of notification, acknowledge and commence work on resolving the Error with an Error Correction. Contractor will provide a workaround for the Error within forty-eight (48) hours after such notification and an Error Correction within two (2) weeks after such notification. Contractor will provide WMATA with periodic reports on the status of the Error Correction.
- **Priority 4 Error**. In the event of a Priority 4 Error, Contractor will acknowledge and commence work on resolving the Error with an Error Correction within one (1) week of notification. Contractor will use best efforts to provide an Error Correction with the next maintenance release of the applicable software.

1.3 **Escalation.** WMATA may escalate any unresolved Errors or Error Correction issues as follows and Contractor shall provide the applicable contact information for the Personnel identified below: (a) Contractor's network operations center; (b) Contractor's manager level representative assigned to the management of WMATA's account; (c) Contractor's VP or equivalent; and (d) Contractor's EVP/COO or equivalent.

1.4 **Cooperation.** Contractor shall cooperate with WMATA and any other third-party vendor of WMATA to the extent reasonably required for the identification and efficient resolution of any Errors or other problems or defects with respect to the Software.

2. **Reporting and Payment.** Contractor will provide WMATA a monthly report for its Error Correction response times for each month by the fifth (5th) business day of the following month.