

Expert Choice, Inc.
2111 Wilson Blvd. Suite 700
Arlington, VA 22201

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

1. **Scope.** This Rider and the attached Expert Choice, Inc. ("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 (*e.g.*, the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et. seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). 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extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions: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 (July 2016), 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 verbatim (not by reference) 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. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- 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.
- v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

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 – EXPERT CHOICE

1. Definitions.

- 1.1 "Active Decision Project" means a Decision Project (a) that is published or otherwise made available to users for the purpose of entering measurable data and/or judgments into such Decision Project; and (b) into which measurable data and/or judgments have been entered. A Decision Project becomes an "Active Decision Project" immediately upon the first time a user enters measurable data and/or a judgment into such Decision Project; provided, however, that a Decision Project will not be considered an "Active Decision Project" during any time period where such Decision Project is inactivated through the archiving feature of the Product.
- 1.2 "Confidential Information" means all non-public information, whether in oral, written or other tangible or intangible form, that a Party designates as being confidential or which, under the circumstances surrounding disclosure, the receiving Party knows or has reason to know should be treated as confidential, including, without limitation, the Software, and any Ordering Activity data. Notwithstanding the foregoing, Confidential Information does not include information that the receiving Party can establish: (i) is or becomes generally available to the public other than (a) as a result of a disclosure by the receiving Party or its employees or any other person who directly or indirectly receives such information from the receiving Party or its employees or (b) in violation of a confidentiality obligation to the disclosing Party known to the receiving Party; (ii) is or becomes available to the receiving Party on a non-confidential basis from a Third Party which is entitled to disclose it to the receiving Party; or (iii) was developed by employees or agents of the receiving Party independently of, and without reference to, any information communicated to the receiving Party by the disclosing Party.
- 1.3 "Decision Project" means the Web-based decision-making analytic tool generated by Ordering Activity using the Software and/or the Hosted Services that is designed to elicit data and judgments from users with respect to the business objectives and/or alternatives for which the Decision Project is created.
- 1.4 "Delivery" means the sooner of the date that Expert Choice: (i) delivers the Software on a CD to Ordering Activity; (ii) delivers the Software on a CD to a common carrier for shipment to Ordering Activity; or (iii) makes the Hosted Services available to Ordering Activity for its access and use, as the case may be.
- 1.5 "Documentation" means the then-current, generally available, written instructions, user guides, and user manuals for the Products, if applicable, whether in electronic, paper or other equivalent form, provided by Expert Choice and in connection with any updates, modifications and improvements to the Software, regardless of form or media.
- 1.6 "Hosted Services" means the provision of access over the Internet to the functionality of the Software.
- 1.7 "Intellectual Property Rights" means, collectively, all rights under patent, trademark, copyright and trade secret laws, and any other intellectual property or proprietary rights recognized in any country or jurisdiction worldwide, including moral rights and similar rights.
- 1.8 "Named User" means the employees, agents or authorized representatives of Ordering Activity that may be specifically named in the Order Form who are authorized to use the Products. Named Users may include Ordering Activity contractors performing work on Ordering Activity's behalf.
- 1.9 "Order Form" means the ordering documents, including a Government Purchase Order, representing the initial purchase of the Products as well as any subsequent purchases agreed to between the Parties submitted by Ordering Activity and agreed to by Expert Choice that specify, among other things, the Products purchased, the license type and license grant, the number of Named Users and the number of Active Decision Projects, as applicable, and the Term (as hereinafter defined) and the fees.
- 1.10 "Products" means one or more of the following products purchased by Ordering Activity as set forth in an Order Form: the Hosted Services, the enterprise version of the Software and/or the desktop version of the Software.
- 1.11 "Software" means the means the machine-readable, object-code version of Expert Choice's proprietary software, including all related Documentation.

- 1.12 "Third Party" means any department or division of Ordering Activity not specifically identified herein, or any person, entity or Party other than the Parties, regardless of relation or affiliation with either Party.

2. Reserved.

3. Reserved.

4. Audit Rights. The terms of this Section 4 only apply if Ordering Activity has purchased the desktop and/or enterprise version of the Software.

- 4.1 Audit. During the Term and subject to Government security requirements, Expert Choice may periodically conduct on-site audits of Ordering Activity's usage of the desktop and/or enterprise version of the Software licensed by Ordering Activity under each applicable Order Form. These audits will be conducted during regular business hours, and Ordering Activity agrees to permit Expert Choice and its representatives, subject to Government security requirements, reasonable access to the premises, facilities, data, and networks necessary to conduct such audits. Expert Choice will use reasonable efforts not to interfere unduly with Ordering Activity's regular business activities. At Expert Choice's option, Ordering Activity shall complete a self-audit questionnaire in a form Expert Choice may provide.
- 4.2 Additional Licenses. Expert Choice will promptly invoice Ordering Activity additional license fees sufficient to cover the unauthorized use revealed by the audit.

5. Ownership and Proprietary Rights Notices.

- 5.1 Title. Ordering Activity acknowledges and agrees that title to and ownership of the Products, including all corrections, enhancements, or other modifications to the Software, whether made by Expert Choice or any Third Party, and all Intellectual Property Rights therein, are and shall at all times be deemed the sole and exclusive property of Expert Choice.
- 5.2 Proprietary Rights Notices. Ordering Activity shall not delete, alter, cover, or distort any copyright, trademark, or other proprietary rights notice placed by Expert Choice on or in the Products, and shall ensure that all such notices are reproduced on all copies thereof.

6. Limited Warranty.

- 6.1 Assumption of Responsibility. Ordering Activity assumes all responsibility for the selection of, use of, and results obtained from the Products. All warranties, express or implied, extend solely to Ordering Activity and not to any Third Parties.

6.2 DISCLAIMER. Expert Choice warrants that the software will, for a period of sixty (60) days from the date of your receipt ("Warranty Period"), perform substantially in accordance with the software documentation accompanying it. If the software fails to perform substantially in accordance with the documentation during the Warranty Period, Expert Choice shall use commercially reasonable efforts to repair or replace the non-conforming software to make it perform in accordance with the documentation. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, THE PRODUCTS ARE PROVIDED "AS IS," WITHOUT ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT OR NON-MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, CUSTOM, TRADE, QUIET ENJOYMENT, ACCURACY OF INFORMATIONAL CONTENT OR RESULTS, OR SYSTEM INTEGRATION, OR ANY WARRANTIES ARISING UNDER ANY OTHER LEGAL REQUIREMENT. EXPERT CHOICE makes no warranty THAT THE SOFTWARE WILL RUN PROPERLY ON ALL HARDWARE, that the SOFTWARE OR THE HOSTED SERVICES WILL MEET the REQUIREMENTS OF THE ORDERING ACTIVITY OR USERS, WILL OPERATE IN THE COMBINATIONS WHICH MAY BE SELECTED FOR USE BY THE ORDERING ACTIVITY OR USERS, OR THAT THE HOSTED SERVICES OR OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT ALL ERRORS WILL BE CORRECTED.

7. Reserved.

8. Reserved.

9. Term and Termination.

9.1 Term. This Agreement shall commence upon the Effective Date and shall continue for the period set forth in the applicable Order Form ("Term"), unless earlier terminated.

9.2 Obligations Upon Termination. Upon the termination or expiration of this Agreement: (i) Ordering Activity shall promptly pay in full all outstanding payments to Expert Choice; (ii) all licenses granted hereunder (if any) will immediately terminate and Ordering Activity shall immediately cease all use of the Products; (iii) Ordering Activity shall remove all copies of the Software from its computer systems and shall return or destroy (at Expert Choice's option) all such copies to Expert Choice; and (iv) the receiving Party shall promptly return all Confidential Information of the disclosing Party in its the possession or control. With respect to (iii) and (iv) of the preceding sentence, Ordering Activity shall certify to Expert Choice in writing within ten (10) days of the date on which termination or expiration is effective that it has made no other copies, or has completely destroyed all copies, including backup or archive copies, of the Software or any portion thereof, and that no copies of any portion of the Software are in existence on any network, system, or equipment ever owned or used by Ordering Activity. The expiration or termination of this Agreement does not relieve either Party of any obligations that have accrued on or before the effective date of the termination or expiration.

10. General.

10.1 Export Restrictions. Ordering Activity acknowledges and agrees that the Software is subject to the export control laws and regulations of the United States, including but not limited to the Export Administration Regulations ("EAR"), and sanctions regimes of the U.S. Department of the Treasury, Office of Foreign Asset Controls. Ordering Activity will comply with these laws and regulations. Ordering Activity shall not without prior U.S. Government authorization, export, re-export, or transfer any goods, software, or technology subject to this Agreement, either directly or indirectly, to any country subject to a U.S. trade embargo (currently Cuba, Iran, North Korea, Sudan, and Syria) or to any resident or national of any such country, or to any person or entity listed on the "Entity List" or "Denied Persons List" maintained by the U.S. Department of Commerce or the list of "Specifically Designated Nationals and Blocked Persons" maintained by the U.S. Department of the Treasury.

SERVICE LEVEL AGREEMENT

Expert Choice bases its service level agreement on 'issues.' An 'issue' is defined as an unplanned interruption to Expert Choice Comparison® or Expert Choice Riskion® that causes an interruption or disruption in the Ordering Activity's ability to use either product for its intended purpose. Problems with customer internet service, connections, firewalls, networks, hardware, operating system software, browser software, or other foundational software are not covered under this SLA.

Issue Triage

Priority	Criteria	Initial Response Time *	Target Resolution Time *
Urgent	Users are continually unable to use the software and a workaround is not available.	1 hour	4 hours
High	Some functions of the software are impaired and no workaround is available.	2 hours	8 hours
Medium	The normal priority where some functions of the software are impaired, with a workaround available.	4 hours	Release Schedule – typically quarterly
Low	An information request or clarification that has no immediate operational impact.	4 hours	Release Schedule – typically quarterly

* Working hours are Monday – Friday 8:30 am to 5:00 pm Eastern U.S. time. Holidays are excluded from working hours. The clock for Response and Resolution Time does not run during non-working hours.

Hours of Operation and Contact Methods

Expert Choice's support is available as follows:

	Email	Phone
Contact Methods	support@expertchoice.com	(703) 243-5595 ext. 2 Or (321) 229-2959
Hours of Support Operation	Actively Monitored Monday – Friday 8:30 am to 5:00 pm Eastern U.S. time	
After Hours	Triaged Next Business Day	Triaged by an On-Call Person

1. Expert Choice considers all email-submitted issues as *Medium*.
2. Expert Choice requires five business day notice to support any issues that may result from client-initiated business practice changes, e.g. using the software in a different way.