

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

1. **Scope.** This Rider and the attached Active Navigation, 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 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extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions: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 4800.21, 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.

LICENSE, SUPPORT AND SERVICES AGREEMENT

This agreement is between the GSA Multiple Award Schedule Contractor acting by and through its supplier, Active Navigation, Inc. a Delaware corporation (**Active Navigation**) and the Ordering Activity under GSA Schedule contracts identified in the Purchase Order, Statement of Work, or similar document (**Customer or "Ordering Activity"**), effective as of the date of the last signature below. The Active Navigation software, updates, documentation and license keys provided to Customer (**Software**) are licensed and are not sold.

1. **SCOPE.** This agreement describes the licensing of the Software, support and implementation services.
2. **LICENSE.** Subject to the other terms of this agreement, Active Navigation grants Customer, under an order, a non-exclusive, non-transferable license for the duration specified and up to the license capacity purchased to:
 - a. Use the Software only in Customer's internal business operations; and
 - b. Make one copy of the Software for archival and backup purposes.

Third party contractors and Affiliates of Customer may use and access the Software under the terms of this agreement. Customer is responsible for their compliance with the terms of this agreement. **Affiliate means** any company controlled by or under common control with Customer, directly or indirectly, with an ownership interest of at least 50%.

3. **RESTRICTIONS.** Customer may not:
 - a. Transfer, assign, sublicense, rent the Software, create derivative works of the Software, or use it in any type of service provider environment;
 - b. Reverse engineer, decompile, disassemble, or translate the Software; or
 - c. Evaluate the Software for the purpose of competing with Active Navigation.
4. **PAYMENT.** Customer will pay all fees within 30 days of receipt of an invoice, unless otherwise provided on an order, plus applicable sales, use and other similar taxes.
5. **PROPRIETARY RIGHTS AND MUTUAL CONFIDENTIALITY.**
 - a. **Proprietary Rights.** The Software, workflow processes, user interface, designs, know-how and other technologies provided by Active Navigation as part of the Software are the proprietary property of Active Navigation and its licensors, and all right, title and interest in and to such items, including all associated intellectual property rights, remain only with Active Navigation and its licensors. The Software is protected by copyright and other intellectual property laws. Customer may not remove any product identification, copyright, trademark or other notice from the Software. Active Navigation reserves all rights not expressly granted.
 - b. **Mutual Confidentiality.** Recipient may not disclose Confidential Information of Discloser to any third party or use the Confidential Information in violation of this agreement.

Confidential Information means all information that is disclosed to the recipient (**Recipient**) by the discloser (**Discloser**), and includes, among other things:

- any and all information relating to products or services provided by a Discloser, software code, flow charts, techniques, specifications, and software roadmap;
- as to Active Navigation the Software and the terms of this agreement, including without limitation, all pricing information.

Confidential Information excludes information that:

- was rightfully in Recipient's possession without any obligation of confidentiality before receipt from the Discloser;
- is or becomes a matter of public knowledge through no fault of Recipient;
- is rightfully received by Recipient from a third party without violation of a duty of confidentiality; or
- is independently developed by or for Recipient without use or access to the Confidential Information.

Recipient may disclose Confidential Information if required by law, but it will attempt to provide notice to the Discloser in advance so it may seek a protective order. Each party acknowledges that any misuse of the other party's Confidential Information may cause irreparable harm for which there is no adequate remedy at law. Either party may seek immediate injunctive relief in such event.

6. **WARRANTY.**
 - a. **SOFTWARE PERFORMANCE WARRANTY.** Active Navigation warrants that the Software will perform in substantial accordance with its accompanying technical documentation for a period of 90 days from the date of the order. This warranty will not apply to any problems caused by software not licensed to Customer by Active Navigation, use other than in accordance with the technical documentation, or misuse of the Software. The warranty only covers problems reported to Active Navigation during the warranty period or 30 days after. Customer will cooperate with Active Navigation in resolving any warranty claim. Active Navigation will use commercially reasonable efforts to remedy covered warranty claims within a reasonable period of time or replace the Software, or if

Active Navigation cannot do so it will refund to Customer the license fee paid. THIS REMEDY IS CUSTOMER'S EXCLUSIVE REMEDY, AND ACTIVE NAVIGATION'S SOLE LIABILITY FOR THESE WARRANTY CLAIMS.

- b. **IMPLEMENTATION SERVICES WARRANTY.** Active Navigation warrants that it will perform the implementation services in conformance with generally accepted practices within the software services industry and in accordance with the applicable statement of work (**SOW**), for a period of 90 days after completion of the implementation services under the SOW. If Customer believes there is a breach of the above warranty, then Customer must notify Active Navigation no later than 30 days after the end of the warranty period, and provide reasonable cooperation to Active Navigation. Active Navigation will use commercially reasonable efforts to remedy covered warranty claims within a reasonable period of time or replace the non-conforming services, or if Active Navigation cannot do so it will refund the fee paid for the non-conforming services. THIS REMEDY IS CUSTOMER'S EXCLUSIVE REMEDY, AND ACTIVE NAVIGATION'S SOLE LIABILITY FOR THESE WARRANTY CLAIMS.
 - c. **DISCLAIMER OF WARRANTIES. ACTIVE NAVIGATION DISCLAIMS ALL OTHER EXPRESS AND IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CUSTOMER UNDERSTANDS THAT THE SOFTWARE MAY NOT BE ERROR FREE AND USE MAY BE INTERRUPTED.**
7. **TERMINATION.** This agreement expires at the end of the license period specified in the order. Either party may terminate this agreement upon a material breach of the other party after a 30 days' notice/cure period, if the breach is not cured during such time period. Upon termination of this agreement or a license, Customer must discontinue using the Software, de-install and destroy or return the Software and all copies, within 5 days. Upon Active Navigation's request, Customer will provide written certification of such compliance.
8. **ANNUAL SUPPORT.** Active Navigation's annual technical support and maintenance services (**Support**) may be purchased under an order. Support may be provided in subsequent years if Customer and Active Navigation agree on the support renewal for that year. Support is provided under the Support policies then in effect. Active Navigation may change its Support terms, but Support will not materially degrade during any Support term. Full details of our Support Terms can be found at <http://support.activenavigation.com/>
9. **LIMIT ON LIABILITY.** There may be situations in which (as a result of material breach or other liability) Customer is entitled to make a claim against Active Navigation. In each situation (regardless of the form of the legal action (e.g. contract or tort claims)), Active Navigation is not responsible for any damage and does not have any liability beyond the greater of the amount paid or payable by Customer to Active Navigation. Even if it knows of the possibility of such damage or liability, in no circumstance is Active Navigation responsible for any: loss of, or damage to, data or information; lost profits, revenue, or productivity; or other special, consequential, incidental or indirect damages. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.
10. **DEFENSE OF THIRD PARTY CLAIMS.** Active Navigation will defend or settle any third party claim against Customer to the extent that such claim alleges that the Software violates a copyright, patent, trademark or other intellectual property right, if Customer, promptly notifies Active Navigation of the claim in writing, cooperates with Active Navigation in the defense, and allows Active Navigation to solely control the defense or settlement of the claim. **Costs.** Active Navigation will pay infringement claim defense costs incurred as part of its obligations above, and Active Navigation negotiated settlement amounts, and court awarded damages. **Process.** If such a claim appears likely, then Active Navigation may modify the Software, procure the necessary rights, or replace it with the functional equivalent. If Active Navigation determines that none of these are reasonably available, then Active Navigation may terminate the Software and refund (as applicable) any prepaid and unused fees subscription license, Support and service fees and the license fee for perpetual licenses (amortized over a 5-year period from the date of the order). **Exclusions.** Active Navigation has no obligation for any claim arising from: Active Navigation's compliance with Customer's specifications; A combination of the Software with other technology where the infringement would not occur but for the combination; or Technology not provided by Active Navigation. THIS SECTION CONTAINS CUSTOMER'S EXCLUSIVE REMEDIES AND ACTIVE NAVIGATION'S SOLE LIABILITY FOR INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS.
11. **GOVERNING LAW AND EXCLUSIVE FORUM.** This agreement is governed by the Federal laws of the United States.
12. **OTHER TERMS.**
- a. **Entire Agreement.** This agreement and the order together with the underlying GSA Schedule Contract, and Schedule Pricelist, constitute the entire agreement between the parties and supersede any prior or contemporaneous negotiations or agreements, whether oral or written, related to this subject matter. Customer is not relying on any representation concerning this subject matter, oral or written, not included in this agreement. No representation, promise or inducement not included in this agreement is binding.
 - b. **Non-Assignment.** Neither party may assign or transfer this agreement to a third party, nor delegate any duty, except that the agreement and all orders may be assigned, without the consent of the other party, as part of a merger, or sale of all or substantially all of the business or assets, of a party.
 - c. **Independent Contractors.** The parties are independent contractors with respect to each other.
 - d. **Enforceability.** If any term of this agreement is invalid or unenforceable, the other terms remain in effect.
 - e. **Survival of Terms and Force Majeure.** All terms that by their nature survive termination of this agreement for each party to receive the benefits and protections of this agreement, will survive. Neither party is liable for events beyond its reasonable control, including, without limitation force majeure events.
 - f. **Compliance Audit.** No more than once in any 12-month period and upon at least 30 days advance notice, Active Navigation (or its representative) may audit Customer's usage of the Software at any Customer facility, subject to Government security requirements.

Customer will cooperate with such audit. Customer agrees to pay within 30 days of written notification receipt date any fees applicable to Customer's use of the Software in excess of the license.

- g. **Modification Only in Writing.** No modification or waiver of any term of this agreement is effective unless signed by both parties.
- h. **Export Compliance.** Each party will comply with all applicable export control laws of the United States, foreign jurisdictions and other applicable laws and regulations.
- i. **US GOVERNMENT Restricted Rights.** The Software and documentation are provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the U.S. government or any agency thereof is subject to restrictions as set forth Rights in Data clause at 48 C.F.R. 52.227-14.

_____ (Customer)	Active Navigation, Inc.
Signature:	Signature:
Printed Name:	Printed Name:
Title:	Title:
Date:	Date:
Address:	Address: 11720 Plaza America Drive, Suite 150, Reston, Virginia 20190