

Next Earth, LLC

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

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extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions: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



Next Earth, LLC.

License Terms
Next Earth Platform

These license terms are an agreement between Next Earth, LLC (DBA: Next Earth Solutions) (Virginia, U.S.) ("NES"), and the Ordering Activity under GSA Schedule contracts identified in the Order (state, U.S.) ("Licensee"). They apply to the Software named above, which includes all associated media, printed materials, and "online" or electronic documentation. The terms also apply to any NES:

- updates
- supplements
- Internet-based services, and
- support services

for this Software unless other terms accompany those items. If so, those terms apply.

By executing a written order for the Software, you agree to accept these terms. If you do not accept the terms, you are legally not allowed to use the Software. If you use the Software, the following terms apply (which will bind you and your employees):

1. Installation and Use Rights

In consideration of you agreeing to abide by these terms and for payment in full of the license fee, NES grants to you with effect from the date of installation by you of the Software a non-exclusive, nontransferable license to use the Software on these terms.

2. License Terms

Subject to the terms and conditions of this agreement, NES hereby grants the Licensee and Licensee's affiliates a non-transferable, non-exclusive, royalty-free, irrevocable and limited license to use the software and documentation for the permitted use, namely:

- a. Concurrent User License Model. Software license allows an aggregate number of individuals to simultaneously access, use, and benefit from one or more system(s) and total number of concurrent users may not exceed the number of Software Licenses granted to the licensee. A license will only be installed on one machine/operating system. Licensee shall implement a system to ensure that the number of individuals accessing or using the Software does not exceed the number of Software Licenses granted to Licensee. The Software may be used and accessed by Licensee, its Affiliates, its Clients, and its Partners. The Licensee shall respect all concurrent user terms. The licensee will be provided with login credentials/access keys to support concurrent users of system.
- b. To use the Software on Licensee's designated computer system(s) for the licensee business purposes making software available to Licensee, its Affiliates, its Clients, and its Partners. The software may be loaded and executed on an unlimited number of servers.
- c. To copy the documentation and copy the Software into any machine-readable form for back-up, archival or training purposes in support of the Licensee's use of the Software on the Designated Computer System PROVIDED THAT:
 - i. one (1) copy of the Software solely is allowed for backup or archival purposes. You may not copy the printed materials accompanying the Software. Such copy must be promptly erased when no longer in use or necessary;
 - ii. the copies, together with the original, shall remain the property of NES; and
 - iii. the licensee has not removed or obscured any copyright, trademark or other proprietary notices from the documentation, Software and related materials supplied by NES.

The licensee maintains the rights to the functionality that was originally licensed, even if that functionality later gets renamed or rebundled but nothing herein automatically gives a right to the licensee to a new version of the Software.

License term is an annual term commencing on the day of installing the software for the licensee/granting the licensee an access to the software. During the Term, NES shall provide Licensee, at no additional charge, with all updates, maintenance releases, patches and the like, each of which will constitute software and be subject to the terms and conditions of this Agreement.

The Software and related materials supplied by NES are protected by copyright and trademark laws. Title, ownership rights and intellectual property rights in the Software and related materials supplied by NES remain with NES and any rights not expressly granted are reserved. Use of the Software and related materials supplied by NES is subject to the applicable copyright laws and the express rights and restrictions of this agreement.

3. Restriction on Use

Electronic Devices: You shall not permit any computer or other electronic devices (each a "Device") to use, access, or display the Software or run other executable Software residing on the workstation computer or any computer in connection with the Software, nor may you permit any Device to display the Software's user interface, unless the Device has a separate license for the Software. Hardware or Software that reduces the number of Devices directly accessing or using the Software shall not reduce the number of licenses required for the Software. If the Software is used in a clustered environment, you may use the Software on a temporary basis on a server employed solely for failover support.

Application Programming Interface and Access by Non-Licensees: The Software (or certain functionality) may be provided with an application programmable interface ("API"). This agreement provides access to API for the sole use to automate manual steps in the normal functionality of the Software that otherwise would be performed through its user interface and to integrate third party ASR engines to enable broader language support. Without limiting the foregoing, you are prohibited from giving access to the Software (or to its functionality) to non-licensees (e.g. through terminal server technology or a Web interface to the Software running on a server).

Notwithstanding the above restrictions, Licensee may utilize the software with Licensee's clients as needed, so long as such use occurs in the presence of, and in coordination with, a licensed user and does not

otherwise violate any other ancillary limitations of this Agreement.

Should a valid sales order between NES and you provide for different limits on any use, access or functionality of Software or EULA, those limits shall apply.

4. Proprietary Formats

The Software may use proprietary formats for passing on information between the Software's components. You may only make use of such formats in the course of using the Software.

5. Full payment

You shall pay the license fees in such amounts and at such times as set forth in the sales order/sales invoice in accordance with the GSA Schedule Pricelist.

6. Scope of License

This Software is licensed, not sold. Any use of the Software except as expressly permitted by this agreement requires the prior written consent of NES in its sole and absolute discretion. NES reserves all rights not expressly granted to you in this agreement.

7. Ownership

NES retains all right, title and interest in and to the Software including all intellectual property rights therein. Therefore, you may not use, copy or distribute the Software without NES's authorization, except that you may make one (1) copy of the Software solely for backup or archival purposes. You may not copy the printed materials accompanying the Software.

8. Intellectual Property Infringement Indemnification

NES will have the right to intervene to defend you against any third-party claim(s) that the Software or Documentation infringes that third party's patent, copyright, or trademark, or misappropriates its trade secrets, and will pay the amount of any resulting adverse final judgment (or settlement to which we consent). You must notify us promptly within thirty days of such claim(s) in writing and give us control over its defense or settlement. You agree to provide us with reasonable assistance, cooperation, and information in defending the claim at our expense. Nothing contained herein 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 28 U.S.C. §516.

9. Open Source Software

The Software may be accompanied by certain open source software (in source code and executable forms, as applicable) (the "Open Source Software") that works with the Software. The Open Source Software forms, and is distributed as, a separate and independent Software program from the Software (and the Software is not a modification of, or a work based on, the Open Source Software), even though the Open Source Software may have been aggregated or packaged with the Software for purposes of distribution. The Open Source Software is distributed under and subject to the terms and conditions of the applicable open source licenses and notices set out at <http://www.apache.org/licenses/LICENSE-2.0>, and <http://www.gnu.org/licenses/old-licenses/lgpl-2.1.html>. Licensee hereby agrees to the terms and conditions of the Open Source Licenses as they relate to the applicable Open Source Software.

10. Other Restrictions

You may not modify, copy or adapt the Software; merge the Software into another program; reverse engineer, disassemble, decompile, or otherwise attempt to derive source code from the Software; or combine the Software with any other Software or hardware, except as expressly permitted in this agreement or to the extent permitted by law.

You may not under any circumstance, remove or alter copyright notices, registration numbers, or other features serving to identify the Software.

You may not hire out the Software (or any part thereof) to any third party for commercial purposes or for service bureau use; or transfer, sublicense, rent, lease, loan, or otherwise indirectly (such as by consignment) permit aNESess to any portion of the Software to any third party, other than the limited licensee client usage described in Section 3 of this Agreement, supra.

11. Support

NES will provide the following support and maintenance services:

- a. Priority response on support requests regarding the Software, as described in the table below.
- b. Remote diagnosis of operational issues related to the Software, provided that the licensee has obtained, at its cost, the necessary Software, hardware and instruction to allow NES to provide such assistance.

Priority Response table:

Priority	Definition	Response Time*
(High)	Operation/Service down or critically impacted. Business process impacted. No known workaround.	4 Hours
(Medium)	Operation affected, but not down. Business process is not affected. Workaround may be available.	6 Hours
(Normal)	Moderate to negligible impact. No impact to business.	24 Hours
(Info.)	Request for information, documentation issues, and enhancement requests.	48 Hours

* Response time targets are during business hours only.

NES wants to be as responsive as possible to your support needs. To accomplish this goal, the NES customer support staff relies on your knowledge, self-sufficiency, and thoroughness during the troubleshooting process. You reap the benefits from this effort — it allows NES to focus on the more difficult problems and make the product more robust. It also helps NES provide this support inclusively with the license fee (i.e. at no additional charges).

- i. **Knowledge:** You should be experienced in the installation, operation, and maintenance of the hardware, desktop, and network operating systems, and applications in your environment before you install Next Earth.
- ii. **Self-sufficiency:** Please be as self-sufficient as possible when you encounter problems. You can do this by referring to technical documentation for your environment and by searching our Next Earth Help site to determine if your issue is addressed before you submit it to our customer support staff.
- iii. **Complete information:** As with any troubleshooting process, accurate and timely resolution depends on information. When you request support, please provide a detailed problem description, and attach any appropriate log files.
- iv. **Preparation:** If you call us for support, be prepared to provide a detailed problem description. In addition, please have immediate access to the computer(s) on which Next Earth products are running.

If support staff is needed on premise of the licensee, the licensee will incur additional costs plus travel and accommodation expenses per one instance.

12. Assignment

You may assign all (but not part only) of your rights and obligations under this agreement to your owner or successor in business by giving notice in writing to NES. In no other way may this agreement nor any rights under this agreement be assigned or otherwise transferred by you, without the prior written consent of NES, which consent shall not be unreasonably withheld. This agreement is binding upon you and any of your successors and permitted assignees.

13. Limited Warranty

NES warrants that, for a period of ninety (90) days after delivery of the Software to you (the "Warranty Period"): (a) the medium on which the Software is furnished under normal use will be free from defects in materials and workmanship; and (b) the Software will perform in all material respects in accordance with the user documentation and any other associated materials. This warranty is valid only for you as the original purchaser and any approved owner or successor in business per Section 12 of this Agreement, supra. If you properly notify NES of any warranty claim during the Warranty Period, NES shall (at its sole option) fix, replace, or refund the purchase price of the Software and in the case of refund terminate this license, without any additional charge and this shall constitute your sole remedy for breach of this warranty. Any supplements or updates to the Software, including, without limitation, any service packs or hot fixes provided to you after the expiration of the Warranty Period shall not be covered by any warranty or condition, express, implied, or statutory. The foregoing warranties are void if failure of the Software has resulted from accident, abuse, misapplication, abnormal use, or a virus.

14. NO OTHER WARRANTIES

The Software is provided as-is and save as set out in clause 13 above all warranties, conditions or other terms concerning the Software or accompanying written materials whether express or implied by statute, common law or otherwise (including those relating to satisfactory quality and fitness for purposes) are excluded to the extent permitted by law. you acknowledge that the Software has not been developed to meet your individual requirements and therefore you assume all

responsibilities for selection of the Software and for determining that the facilities and functions of the Software meet your requirements.

Notwithstanding the above, NES shall provide all software and services hereunder in a timely, skillful, professional, and workmanlike manner by qualified personnel exercising care, skill, and diligence consistent with best practices in the industry, and will devote adequate resources to meet its obligations hereunder, in accordance with the terms and conditions of this Agreement.

14.5 Limitation of Liability

To the maximum extent permitted by law, neither NES (or any of its affiliates) nor licensee (or any of its affiliates) shall be liable in contract or tort (including negligence or breach of statutory duty) or otherwise for any loss, injury, claim liability or damage of any kind or arising out of, or in connection with, this agreement even if such losses and/or damages were foreseen, foreseeable or known, for any indirect, special, incidental or consequential loss or damage howsoever caused. Additionally, NES (or any of its affiliates) shall not be liable in contract or tort (including negligence or breach of statutory duty) or otherwise for any loss, injury, claim liability or damage of any kind or arising out of, or in connection with, this agreement even if such losses and/or damages were foreseen, foreseeable or known, for any : (a) loss of, damage to or corruption of data, (b) economic loss, (c) loss of actual or anticipated profits, (d) loss of business revenue, (e) loss of anticipated savings, (f) loss of business, (g) loss of opportunity, or (g) loss of goodwill. Licensee assumes the entire cost of any damage resulting from the information contained in or compiled by the Software.

Subject to the remainder provisions of this clause 14, in no event will NES's aggregate liability in contract, tort (including negligence or breach of statutory duty) or otherwise for any default (or series of related events or default) under or in connection with this agreement exceed the amount paid by customer for the Software.

Nothing in this agreement shall exclude or limit either party's liability to the other for (i) death or personal injury caused by its negligence, fraud, or (ii) any other liability to the extent that it cannot be excluded or limited as a matter of law.

Exceptions: The exclusions and limitations set forth in this Section do not apply to the following:

(a) Losses arising out of or relating to a Party's failure to comply with its obligations under the Intellectual Property Rights and/or Confidentiality terms of this Agreement

(b) A Party's indemnification obligations under this Agreement.

(c) Losses arising out of or relating to a Party's gross negligence or more culpable conduct, including any willful misconduct or intentionally wrongful acts.

(d) Losses to the extent covered by a Party's insurance.

15. Term and Termination

When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, NES shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

On termination (a) all rights granted to you under this agreement shall cease (b) you must cease all activities authorized by this agreement and (c) you must immediately delete or remove the Software from all Devices and immediately destroy all copies of the Software and all of its component parts and accompanying written materials in your possession.

16. Confidentiality

(a) Confidential Information. In connection with this Agreement, each Party (the "Disclosing Party") may disclose or make available Confidential Information to the other Party (the "Receiving Party"). Subject Section (b), "Confidential Information" means information in any form or medium (whether oral, written, electronic, or other) that the Disclosing Party considers confidential or proprietary, including information consisting of or relating to the Disclosing Party's algorithms, protocols, or interfaces, technology, trade secrets, know-how,

business operations, plans, strategies, customers, and pricing, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations, in each case whether or not marked, designated or otherwise identified as "confidential."

(b) Exclusions. Confidential Information does not include information that the Receiving Party can demonstrate by written or other documentary records: (i) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information's being disclosed or made available to the Receiving Party in connection with this Agreement; (ii) was or becomes generally known by the public other than by the Receiving Party's or any of its Representatives' non-compliance with this Agreement; (iii) was or is received by the Receiving Party on a non-confidential basis from a third party that, to the Receiving Party's knowledge, was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (iv) the Receiving Party can demonstrate by written or other documentary records was or is independently developed by the Receiving Party without reference to or use of any Confidential Information.

(c) Compelled Disclosures. If the Receiving Party or any of its Representatives is compelled by applicable Law to disclose any Confidential Information then, to the extent permitted by applicable Law, the Receiving Party shall: (a) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy, or waive its rights; and (b) provide reasonable assistance to the Disclosing Party, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this Section, the Receiving Party remains required by Law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that, on the advice of the Receiving Party's legal counsel, the Receiving Party is legally required to disclose and, upon the Disclosing Party's request, shall use commercially reasonable efforts to obtain assurances from the applicable court or other presiding authority

that such Confidential Information will be afforded confidential treatment. recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as “confidential” by the vendor

17. No Unbundling

The Software may include multiple applications, utilities, and components, may support multiple platforms and languages, and may be provided to you on multiple media or in multiple copies. Nonetheless, the Software is designed and provided to you as a single product bundle to be used as a bundle. You are not required to use all component parts of the Software, but you shall not unbundle the component parts of the Software for use on different servers.

18. Waiver

No failure or delay by either party to exercise any right or remedy existing under, or in connection with this agreement will act as a waiver, or otherwise prejudice or restrict the rights of that party.

A waiver by either party of any default shall not constitute a waiver of any subsequent default.

19. Severability

If any of the terms of this agreement are determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision will to that extent be severed from the remaining terms, conditions and provisions, which will continue to be valid to the fullest extent permitted by law.

20. Third Parties

A person who is not NES or licensee shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

21. Applicable Law

This agreement shall be governed by the Federal laws of the United States, without reference to conflict of laws principles.

22. Reserved

23. Marketability Restrictions

Neither Party shall issue or release any announcement, statement, press release, or other publicity or marketing materials relating to this Agreement or otherwise use the other Party's trademarks, service marks, trade names, logos, domain names, or other indicia of source, affiliation, or sponsorship, in each case, without the prior written consent of the other Party.

24. Entire Agreement

This agreement is the entire agreement between the licensee and NES concerning the Software and supersedes any other communications or advertising with respect to the Software and documentation. If any provision of this agreement is held invalid, the remainder of this agreement will continue in full force and effect.

Nothing in this agreement shall restrict or exclude any party's liability (or remedy in respect of) for fraud or fraudulent misrepresentation.