LICENSE AGREEMENT addendum

[[**NOTE TO USER**: This LAA is for use in situations where an agency is planning to enter into a contract with a Supplier and Supplier is requiring the use of Supplier’s contract terms and license agreement. This LAA is intended to modify the terms of the contract and/or license agreement from that Supplier. If the Supplier will agree to modify or edit the terms and conditions of its contract and/or license agreement directly to address the agency’s concerns, that is always the preferred process. The LAA should be used only when the Supplier will not agree to modify or change the terms of the underlying contract and/or license agreement after discussion and negotiation between the agency and the Supplier.

If the Supplier will agree to modify the terms and conditions of its contract/licensing grant to directly address the agency’s concerns, that is always the preferred process. The LAA should be used only when the Supplier will not agree to modify or change the terms of the underlying contract/license document after discussion and negotiation between your agency and Supplier.]]

The Name of Agency/Institution/Locality (“**Acronym**”), an agency of the Commonwealth of Virginia (the “**Commonwealth**”), is this day entering into a contract with \_\_\_\_\_\_\_\_\_\_ (“**Supplier**”), a business incorporated in \_\_\_\_\_\_\_\_\_\_, with F.E.I.N. {---Federal ID---}, having its principal place of business at \_\_\_\_\_\_\_\_\_\_, for certain information technology goods and/or services.

The use of Supplier’s software or products is governed by the terms and conditions of Supplier’s contract (“**Contract**”) as modified by this License Agreement Addendum. As used in this License Agreement Addendum, the term “**Contract**” means Supplier’s standard form contract and any and all exhibits and attachments thereto. The term(s) “**Customer**”, “**You**” or “**you**” as used in the Contract and this LAA mean(s), as applicable, [[AGENCY]] or the Commonwealth, or any of their officers, directors, agents or employees.

This License Agreement Addendum (“**LAA**”), duly signed by [[AGENCY]] and the Supplier (each a “**Party**”), is attached to and made a part of the Contract by incorporation. This LAA, with the Contract, governs the use of any and all \_\_\_(name of)\_\_\_\_ Software (“**Software**”) licensed under the Contract and provided by Supplier, whether or not specifically referenced in the order document. The Contract, including all exhibits and attachments thereto, is attached to this LAA and incorporated by reference.[[**NOTE TO USER:** Attach the Supplier’s Contract and all exhibits and attachments to this LAA so that it is clear what is being agreed to. Do not refer to the Contract by using a link.]]

Supplier represents and warrants that it is a [[state and corporate entity]] authorized to do in business in Virginia. If Supplier is not a U.S.-based entity, Supplier shall maintain a registered agent and a certification of authority to do business in Virginia.

Any and all licenses granted or provided pursuant to the Contract and LAA will be held by:

1. the Commonwealth, if [[AGENCY]] is an agency as defined by [§ 2.2-2006](https://law.lis.virginia.gov/vacode/title2.2/chapter20.1/section2.2-2006/) of the Code; or a legislative, judicial, or independent agency of the Commonwealth; or a board, commission, or other state entity;
2. the applicable public body, if the [[AGENCY]] is a locality, municipality, school, school system, college, university, local board, local commission, or other local entity; or
3. the applicable private institution of higher education, if [[AGENCY]] is a private institution of higher education (see [§ 2.2-2012(F)](https://law.lis.virginia.gov/vacode/title2.2/chapter20.1/section2.2-2012/) of the Code and <https://cicv.org/Our-Colleges/Profiles.aspx.html>).

Supplier’s standard-form Contract is generally acceptable to [[AGENCY]], with the exceptions noted in this LAA below. Despite the general acceptability of the Contract, certain standard clauses may appear in, or be incorporated by reference into, the Contract which cannot be accepted by [[AGENCY]]. In consideration of the convenience of using Supplier’s standard form Contract without the necessity of specifically negotiating a separate contract document, the Parties specifically agree that if any of the following provisions appear in or are contained in the Contract, any such provisions are deemed void, and will not have any effect or be enforceable against [[AGENCY]] or the Commonwealth, nor any of their officers, directors, employees, or agents:

1. Requiring the application of the law of any state other than the Commonwealth of Virginia in interpreting or enforcing the Contract;
2. Requiring or permitting that any dispute under the Contract be resolved in any court other than the courts of the Commonwealth of Virginia;
3. Requiring any total or partial compensation or payment for lost profit or liquidated damages if the Contract is terminated before the end of its ordinary term;
4. Imposing any interest charge(s) inconsistent with applicable Commonwealth law, including [§ 2.2-4347](https://law.lis.virginia.gov/vacode/title2.2/chapter43/section2.2-4347/) *et seq.* of the Code;
5. Requiring [[AGENCY]] to maintain any type of insurance;
6. Granting Supplier a security interest in any property of [[AGENCY]];
7. Requiring [[AGENCY]] to indemnify, defend, or hold harmless the Supplier;
8. Establishing a time period within which claims can be made or actions can be brought that is inconsistent with applicable Commonwealth law;
9. Binding [[AGENCY]] to any arbitration or to the decision of any arbitration board, commission, panel, or other entity (see [§ 2.2-4366](https://law.lis.virginia.gov/vacode/title2.2/chapter43/section2.2-4366/) of the Code);
10. Obligating [[AGENCY]] to pay costs of collection or attorney’s fees;
11. Requiring claims or dispute resolution procedure(s) inconsistent with applicable law, including [§ 2.2-4363](https://law.lis.virginia.gov/vacode/title2.2/chapter43/section2.2-4363/) of the Code;
12. Permitting Supplier to use or access any Commonwealth or [[AGENCY]] records or data, except as required by law or court order and after notification to [[AGENCY]];
13. Permitting Supplier to use any information or data provided by [[AGENCY]] except for Supplier’s own internal administrative purposes;
14. Requiring [[AGENCY]] to limit or waive its rights in an action at law or in equity, including the right to a trial by jury;
15. Bestowing any right, or incurring any obligation, that is beyond the authority of [[AGENCY]] to bestow or incur under applicable law;
16. Permitting Supplier to assign, subcontract, delegate or otherwise convey the Contract, or any of its rights and obligations under the Contract, to any entity without the prior written consent of [[AGENCY]];
17. Enforcing the United Nations Convention on Contracts for the International Sale of Goods, UCITA, and all other laws and international treaties or conventions relating to the sale of goods, which are expressly disclaimed and shall apply to the Contract only to the extent required by applicable law;
18. Requiring that the Commonwealth or [[AGENCY]] waive sovereign immunity, including under the Eleventh Amendment to the United States Constitution;
19. Requiring [[AGENCY]] to be responsible for payment of any taxes, duties, or penalties from which the Commonwealth is tax exempt;
20. Requiring the use of any currency other than United States Dollars in connection with the Contract;
21. Obligating [[AGENCY]] beyond appropriated and available funding;
22. Permitting unilateral modification or termination of the Contract by the Supplier, or the licenses granted pursuant to the Contract, or permitting suspension of services by Supplier, except as required by applicable law and after notification to [[AGENCY]];
23. Requiring or stating that the terms of the Supplier’s standard form Contract will prevail over the terms of this LAA in the event of conflict;
24. Requiring further purchases in order for [[AGENCY]] to receive or maintain the benefits of Supplier’s indemnification against any claims of infringement on any third-party intellectual property rights;
25. Prohibiting [[AGENCY]] from transferring or assigning to any successor Commonwealth public entity the Contract or any license to Software granted pursuant to the Contract;
26. Granting Supplier or an agent of Supplier the right to audit or examine the books, records, or accounts of [[AGENCY]].

In addition to the provisions set forth above, the Parties further agree as follows:

1. Supplier shall comply with the applicable mandatory contractual provisions required by Commonwealth law or policy located at the following URL and which are hereby incorporated into this LAA by reference: <https://www.vita.virginia.gov/procurement/contracts/mandatory-contract-terms/>.
2. Supplier warrants that it is the owner of the Software or otherwise has the right to grant to [[AGENCY]] the license to use the Software granted under the Contract without violating or infringing any law, rule, regulation, copyright, patent, trade secret, or other proprietary right of any third party.
3. All payment obligations from Virginia public bodies are subject to the availability of funds (including any combination of federal, state, or local appropriations). In the event of non-appropriation of funds for goods or services under the Contract, [[AGENCY]] may terminate in whole or in part the Contract or any order for which funds have not been appropriated. This may extend to renewals of licenses or services. [[AGENCY]] shall provide written notice to the Supplier as soon as possible after legislative action is completed. There will be no time limit for termination due to termination for lack of appropriations.
4. Supplier shall indemnify and defend the Commonwealth, [[AGENCY]], their officers, directors, agents and employees (collectively, “**Commonwealth’s Indemnified Parties**”) from and against any and all third party claims, demands, proceedings, suits and actions, including any related liabilities, obligations, losses, damages, fines, judgments, settlements, expenses (including attorneys’ and accountants’ fees and disbursements) and costs (each, a “**Claim**” and collectively, “**Claims**”), incurred by, borne by or asserted against any of Commonwealth’s Indemnified Parties to the extent the Claims in any way relate to, arise out of or result from: (i) any negligent act, negligent omission, or intentional or willful conduct of any employee or subcontractor of Supplier, (ii) any breach of any representation, warranty or covenant of Supplier contained in the Contract and LAA, (iii) any defect in the Software, or (iv) any actual or alleged infringement or misappropriation of any third party’s intellectual property rights by any of the Software. Supplier will be solely responsible for all reasonable costs and expenses associated with the defense against any third party Claim. Pursuant to [§ 2.2-510](https://law.lis.virginia.gov/vacode/title2.2/chapter5/section2.2-510/) and [§ 2.2-514](https://law.lis.virginia.gov/vacode/title2.2/chapter5/section2.2-514/) of the Code, the selection of counsel and approval of any settlement will be subject to the approval of the Commonwealth.. In the event of a settlement between Supplier and a private institution of higher education who is an Authorized User of this Contract, the settlement will be subject to the approval of that institution.

The agreement, consisting of the Contract and this LAA, constitute the entire agreement between the Parties and may not be waived or modified except by a written agreement between the Parties signed by each of the Parties.

This LAA may be signed in one or more counterparts, and by facsimile, PDF, or other electronic signature, all of which taken together constitute a single agreement. Each signed counterpart, including a signed counterpart reproduced by reliable means (including facsimile and PDF), will be considered as legally effective as an original signature.

[SIGNATURE PAGE(S) TO FOLLOW]

IN WITNESS WHEREOF, the parties have caused this contract to be duly executed as of the last date set forth below by the undersigned authorized representatives of the parties, intending thereby to be legally bound.

[[SUPPLIER]] **[[AGENCY]], on behalf of the**

 **COMMONWEALTH OF VIRGINIA**

 By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (Signature) (Signature)

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_