

Special Terms and Conditions Applicable to Active Navigation Software

End User License Agreement (“EULA”). Each End User must agree to the terms of the Active Navigation, Inc. EULA as set forth below:



ACTIVE NAVIGATION INC. ENTERPRISE USER LICENSE AGREEMENT (EULA)

NOTE: In accordance with Clause 552.212-4(s), the Unenforceable Clauses provision of 552.212-4 takes precedence over any Commercial Supplier Agreement (CSA) incorporated into contract GS-03F-049GA. The language of Clause 552.212-4(w) *Commercial Supplier Agreements – Unenforceable Clauses* shall be deemed incorporated into all commercial supplier agreements associated with Contract GS-03F-049GA.

This agreement is between Active Navigation, Inc. a Delaware corporation (Active Navigation) and the ordering activity entering into this agreement (Customer), 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 and support 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 acting as agents of Customer may use and access the Software under the terms of this agreement. Customer is responsible for contractor compliance with the terms of this agreement.

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.
4. **PAYMENT.** Customer will pay all fees within 30 days of receipt of an invoice, unless otherwise provided on an order.
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 or Documentation. 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 Documentation.

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 of the Software 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. **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-day 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 Software maintenance (**Support**) may be purchased under an order by Customers with perpetual licenses. Support may be provided in subsequent years if Customer and Active Navigation agree on the support renewal for that year. Support is provided for Customers with term licenses during the license period. 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. More details on Support are located on **Exhibit A** which is incorporated into this agreement for all purposes.
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 within the 12 months prior to the event that gave rise to the claim. 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.**
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 Federal laws (without regard to conflicts of law principles) for any dispute between the parties or relating in any way to the subject matter of this agreement. Any action arising out of this Agreement shall be subject to the exclusive jurisdiction of the Federal Court in the Eastern District of Virginia. Nothing in this agreement prevents either party from seeking injunctive relief in a court of competent jurisdiction. The parties agree that the Uniform Computer Information Transactions Act (UCITA) as implemented in Virginia or any other state shall not apply to this Agreement.

12. PERIODS OF TERM LICENSES AND SOFTWARE MAINTENANCE

- a. The standard period for term licenses is twelve (12) months. The standard period for software maintenance for perpetual licenses is twelve (12) months.
- b. Annual Funding. When annually appropriated funds are cited on an order for term licenses or maintenance on perpetual licenses, the period of the term licenses or maintenance shall automatically expire on September 30 of the contract period, or at the end of the contract period, whichever occurs first, if requested by the Customer. In such cases, renewal of the term licenses or maintenance orders citing the new appropriation shall be required for the remainder of the term.
- c. Cross-Year Funding Within Contract Period. Where an ordering activity's specific appropriation authority provides for funds in excess of a 12-month (fiscal year) period, the ordering activity may place an order under this schedule contract for a period up to the expiration of the contract period, notwithstanding the intervening fiscal years.
- d. Ordering activities should notify the Contractor in writing thirty (30) calendar days prior to the expiration of an order, if the term licenses and/or maintenance is to be terminated at that time. Orders for the continuation of term licenses and/or maintenance will be required if the term licenses and/or maintenance is to be continued during the subsequent period.

13. CONVERSION FROM TERM LICENSE TO PERPETUAL LICENSE

The ordering activity may convert term licenses to perpetual licenses for any or all software at any time following acceptance of software. At the request of the ordering activity the Contractor shall furnish, within ten (10) calendar days, for each software product that is contemplated for conversion, the total amount of conversion credits which have accrued while the software was on a term license and the date of the last update or enhancement.

- a. Conversion credits which are provided shall, within the terms of this Agreement, continue to accrue from one contract period to the next, provided the software remains on a term license within the ordering activity.
- b. The term license for each software product shall be discontinued on the day immediately preceding the effective date of conversion from a term license to a perpetual license.
- c. The price the ordering activity shall pay will be the perpetual license price that prevailed at the time such software was initially ordered under a term license, or the perpetual license price prevailing at the time of conversion from a term license to a perpetual license, whichever is the less, minus an amount equal to 35 % of all term license payments during the period that the software was under a term license within the ordering activity.

14. TERM LICENSE CESSATION

- a. After a software product has been on a continuous term license for a period of 36 months, a fully paid-up, non-exclusive, perpetual license for the software product shall automatically accrue to the ordering activity. The period of continuous term license for automatic accrual of a fully paid-up perpetual license does not have to be achieved during a particular fiscal year; it is a written Contractor commitment which continues to

be available for software that is initially ordered under this contract, until a fully paid-up perpetual license accrues to the ordering activity. However, should the term license of the software be discontinued before the specified period of the continuous term license has been satisfied, the perpetual license accrual shall be forfeited.

Note: Each separately priced software product shall be individually enumerated, if different accrual periods apply for the purpose of perpetual license attainment.

- b. The Contractor agrees to provide updates and maintenance service for the software after a perpetual license has accrued, at the MAS-awarded terms and conditions, if the licensee elects to order such services. Title to the software shall remain with the Contractor.

15. SOFTWARE CONVERSIONS:

Full monetary credit will be allowed to the ordering activity when conversion from one version of the software to another is made as the result of a change in operating system, or from one computer system to another. Under a perpetual license, the purchase price of the new software shall be reduced by the amount that was paid to purchase the earlier version. Under a term license, conversion credits which accrued while the earlier version was under a term license shall carry forward and remain available as conversion credits which may be applied towards the perpetual license price of the new version.

16. OTHER TERMS.

- a. **Entire Agreement.** This agreement and the order 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. **Assignment.** Customer may not assign, delegate, sublicense, or otherwise transfer any of its rights under this Agreement without the prior written consent of Active Navigation. Active Navigation may not assign its rights under this Agreement without Government approval consistent with the procedures outlined in FAR 42.1204 and FAR 52.212-4(b).
- c. **Enforceability.** If any term of this agreement is invalid or unenforceable, the other terms remain in effect.
- d. **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.
- e. **Compliance Audit.** No more than once in any 12-month period and upon at least 30 days notice, Active Navigation (or its representative) may audit Customer's usage of the Software at any Customer facility. Customer will cooperate with such audit. Customer agrees to pay within 30 days of written notification any fees applicable to Customer's use of the Software in excess of the license.
- f. **Modification Only in Writing.** No modification or waiver of any term of this agreement is effective unless signed by both parties.

g. **Export Compliance.** Each party will comply with all applicable export control laws of the United States, foreign jurisdictions and other applicable laws and regulations.

h. **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 in subparagraph (c)(I)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software Restricted Rights at 48 C.F.R. 52.227-19, as applicable.

i. If any part of this Agreement and the terms and conditions of the GSA MAS for SIN 581210ERM is found by a court of competent jurisdiction or other competent authority to be invalid, unlawful or unenforceable, then such part shall be severed from the remainder of this Agreement which shall continue to be valid and enforceable to the fullest extent permitted by law.

j. This Agreement and the terms and condition of the GSA MAS for SIN 581210ERM together constitute the entire agreement between the parties concerning Licensee's use of the Software and supersede any and all communications, representations, and arrangements, whether written or oral concerning the subject matter hereof and Licensee hereby acknowledges that no reliance is placed on any representations made but not embodied in this Agreement. This Agreement may only be modified or supplemented in a writing signed by both parties. No purchase order, other ordering document or any hand written or typewritten text issued by Licensee which purports to modify or supplement the text of this Agreement shall add to or vary the terms of this Agreement unless signed by both parties. This Agreement is hereby executed on behalf of the parties on the date last below written.

For and on behalf of Licensee	Active Navigation Inc.
Signature:	Signature:
Printed Name:	Printed Name:
Title:	Title:
Date:	Date:
Address:	Address: 11720 Plaza America Drive Suite 150 Reston, Virginia 20190