

**GENERAL SERVICES ADMINISTRATION
FEDERAL SUPPLY SERVICE AUTHORIZED
FEDERAL SUPPLY SCHEDULE PRICE LIST**

Online access to contract ordering information, terms and conditions, up to date pricing, and the option to create an electronic delivery order are available through GSA Advantage!®, a menu driven database system. The internet address for GSA Advantage!® is: GSAAdvantage.gov.

MULTIPLE AWARD SCHEDULE

FSC/PSC: DA01, 7A21, T099



Planet Labs PBC

Address: 645 Harrison St. Floor 4, San Francisco, CA 94107

Phone: (415) 829-3313

Fax: E-Fax Used

Website: <https://www.planet.com>

Contact for Contracts: Thomas Murphy
(thomas.murphy@planet.com)

Business Size: Large

Contract Number: GS-35F-309GA

Period Covered by Contract: March 22, 2022 – March 21, 2027

Current through Modification Refresh 19

For more information on ordering from Federal Supply Schedules go to the GSA Schedules page at: GSA.gov

1. Customer Information:

1.a Table of awarded special item number(s) with appropriate cross-reference to item descriptions and awarded price(s).

Special Item No. 54137GEO – Earth Observations
Descriptions and Awarded Prices are found at pages 8-15

1.b Identification of the lowest priced model number and lowest unit price for that model for each special item number awarded in the contract. This price is the Government price based on a unit of one, exclusive of any quantity/dollar volume, prompt payment, or any other concession affecting price. Those contracts that have unit prices based on the geographic location of the customer, should show the range of the lowest price, and cite the areas to which the prices apply.

1.c If the Contractor is proposing hourly rates, a description of all corresponding commercial job titles, experience, functional responsibility and education for those types of employees or subcontractors who will perform services shall be provided. If hourly rates are not applicable, indicate “Not applicable” for this item. **N/A**

2. Maximum Order:

Special Item Number 54137GEO – Earth Observations - \$1,000,000

3. Minimum Order: \$100

4. Geographic Coverage (delivery area): Worldwide/Domestic, 48 states, Washington, DC, Puerto Rico, US Territories and to a CONUS port or consolidation point for orders received from overseas activities.

5. Point(s) of production (city, county, and State or foreign country): N/A

6. Discount from list prices or statement of net price: Prices shown are NET prices; Basic discounts have been taken.

7. Quantity discounts: None offered.

8. Prompt payment terms. 0% Net 30. Note- Information for Ordering Offices:
Prompt payment terms cannot be negotiated out of the contractual agreement in exchange for other concessions.

9. Foreign items (list items by country of origin): N/A

10a. Time of delivery: Specified in the Task Order

10b. Expedited Delivery: Contact Contractor, Items available for expedited delivery are noted in this price list (**currently none**).

10c. Overnight and 2-day delivery: Overnight and 2-day delivery not available for standard orders.

Ordering Office may contact Contractor for rates.

10d. Urgent Requirements: Please note the Urgent Requirements clause of this contract and contact Contractor.

11. F.O.B. point(s): Destination

12a. Ordering address(es):

Planet Labs PBC
645 Harrison St. Floor 4
San Francisco, CA 94107

12b. Ordering procedures: For supplies and services, the ordering procedures, information on Blanket Purchase Agreements (BPAs) are found in Federal Acquisition Regulation (FAR) 8.405-3.

13. Payment address(es):

Banking and payment information as included in accordance with FAR 52.232-33 (Oct 2018), *Payment by Electronic Funds Transfer- System for Award Management* in Planet Labs' SAM profile

14. Warranty provision: Contractor's standard commercial warranty

15. Export packing charges, if applicable: N/A

16. Terms and conditions of rental, maintenance, and repair (if applicable): N/A

17. Terms and conditions of installation (if applicable): N/A

18a. Terms and conditions of repair parts indicating date of parts price lists and any discounts from list prices (if applicable): N/A

18b. Terms and conditions for any other services (if applicable): Planet Labs Terms and Conditions included in this FSS Price List

19. List of service and distribution points (if applicable): N/A

20. List of participating dealers (if applicable): N/A

21. Preventive maintenance (if applicable): N/A

22a. Special attributes such as environmental attributes (e.g., recycled content, energy efficiency, and/or reduced pollutants): N/A

22b. If applicable, indicate that Section 508 compliance information is available on Electronic and Information Technology (EIT) supplies and services and show where full details can be found (e.g. contractor's website or other location.) The EIT standards can be found at: www.Section508.gov/: N/A

23. Unique Entity Identifier number: DFVEL86MHBN3

24. Notification regarding registration in System for Award Management (SAM) database: Planet Labs is registered in the SAM database.

Introduction to Planet Labs Products and Programs

Overview of Planet Labs

Planet Labs PBC (Planet) is a vertically integrated aerospace and software company that operates the world's largest constellation of Earth Observation (EO) satellites in history. Planet has proven that novel approaches toward satellite research and development, satellite mass manufacturing and automated mission control for disaggregated satellite systems enable new earth imaging capabilities. Planet's goal is to image the whole world, every day and make global change visible, accessible, and actionable.

To date, Planet has launched the largest earth observation constellation of privately-owned satellites ever deployed. Currently, Planet operates Dove satellites and SkySat satellites.

Planet's "always on" approach to satellite remote sensing translates to a proactive ability to collect events as they happen; consistent imagery collections for analytics and change detection; and the ability to "cross-cue" or "tip-and-cue" with a variety of different high-resolution (or other) sensors for more detailed investigations in areas that might have gone unnoticed under traditional tasking operations.

All imagery captured by Planet's constellations are automatically downlinked, processed into Planet's data pipeline and Platform, and made available to users. Users can download this data over the web via graphical user interface and application programming interface in three formats: basic (unrectified) imagery, orthorectified, color balanced imagery intended for on-the-spot visual analysis, or orthorectified, calibrated imagery intended for analytic purposes.

Additionally, Planet frequently produces large area basemaps (mosaics) from imagery collected via an automated process. Access to imagery via the Platform is dictated by product purchased

and associated licensing types, outlined in the remainder of this document.

PlanetScope Monitoring Access

Access newly acquired data and associated metadata, via Planet Explorer or Planet API, of your AOI(s) for 1 year (or duration of contract).

PlanetScope Monitoring Starter Download

Download newly acquired data and metadata within your "Access" AOI(s). For legacy customers only. PlanetScope Monitoring Download (starter, no clipping; charged for first download only) for Enterprise; Single-Entity; Internal Use Rights.

PlanetScope Monitoring Preferred Download

For current customers (mid-contract) that want to upgrade to Preferred Download and need additional Download Quota. The Preferred Download Expansion provides customers additional Download Quota. Any customer that purchases the Preferred Expansion, must also purchase the Preferred Add On SKU.

PlanetScope Monitoring Premium Download

For current customers (mid-contract) that want to upgrade to Premium Download and need additional Download Quota. The Premium Download Expansion provides customers additional Download Quota. Any customer that purchases the Premium Expansion, must also purchase the Premium Add On SKU.

PlanetScope Archive Access

Access archive data and metadata, via Planet Explorer or Planet API, of your AOI(s) for 1 year.

PlanetScope Archive Starter Download

Download any archive data and metadata within your "Access" AOI(s). PlanetScope Archive Download (starter, no clipping; charged for first download only) for Enterprise; Single-Entity; Internal Use Rights.

PlanetScope All-Time Access

Access newly acquired data and archive data of your AOI(s) for 1 year (or duration of contract).

PlanetScope All-Time Preferred Download

Download newly acquired data and archive data and metadata within your "Access" AOI(s).

Clip to minimum 100 sqkm order per scene (charged for each download).

PlanetScope All-Time Premium Download

Download newly acquired data and archive data and metadata within your "Access" AOI(s).
Clip to minimum 1 hectare minimum order per scene (charged for each download).

PlanetScope Archive Discrete Imagery Products

One-time purchase and download of archive data. PlanetScope Archive Discrete Imagery Download (charged for each download).

Basic Tile View

PlanetScope Monitoring Global All-time Access, Monthly Global Visual Basemap Streaming, Quarterly Global Visual Basemap Streaming, 20,000 Tile Views per month.

Standard Tile View

PlanetScope Monitoring Global All-time Access, Monthly Global Visual Basemap Streaming, Quarterly Global Visual Basemap Streaming, 50,000 Tile Views per month.

Premium Tile View

PlanetScope Monitoring Global All-time Access, Monthly Global Visual Basemap Streaming, Quarterly Global Visual Basemap Streaming, 150,000 Tile Views per month.

Basemap Products

Basemap are products created by Planet, using the Planet Platform to automatically create frequent mosaics, matching the rate at which the PlanetScope constellation is capturing new imagery. Planet presents historical pricing evidence in the table below from a single early contract, signed with a customer before this product was fully brought to market. Basemap products are offered over a large AOI, made available through the Planet API and GUI.

A customer can choose to receive over their specified AOI:

- **Quarterly Basemap** - where input imagery for each is derived over a calendar quarter.
- **Monthly Basemap** - where input imagery for each is derived over a calendar month.
- **Weekly Basemap** - where input imagery for each is derived over a calendar week.
- **Basemap (one-time)** - where input imagery for each is derived over the time of interest of the customer's choice.

SkySat Flexible Tasking

Flexible Tasking: Customer purchases a bucket of tasking and can choose AOI/TOI at the time

of interest. Collection types of Point and Area can all be utilized with a Flexible Tasking purchase (collects can be delivered as Stereo, and Tri-Stereo).

- Point: one image
- Area: multiple images collected to cover an area, can utilize multiple passes/sats to cover broader areas

Skysat Flexible Tasking is feasibility dependent.

SkySat Archive

SkySat Archive is a one-time, discrete imagery purchase of specific images, delivered for download.

SkySat Video

Full motion video collected between 30 and 120 seconds using the panchromatic half of the camera. SkySat video is feasibility dependent.

Payment Terms for Planet Products

Planet standard payment terms for the above products are as follows: 100% of the total contract value shall be due net 30 from effective date/contract execution.

End User License Agreements (EULAs)

On the following pages, Planet presents its EULAs for:

- Master Platform Access and Content License Agreement - Federal Agency End Use

PLANET LABS PBC
MASTER PLATFORM ACCESS AND CONTENT LICENSE AGREEMENT FEDERAL
AGENCY END USER

This MASTER PLATFORM ACCESS AND CONTENT LICENSE AGREEMENT (“Agreement”) is entered into as of the date of the Contract (defined in this paragraph) (the “Effective Date”), by and between Planet Labs PBC, a Delaware public benefit corporation, with its principal place of business at 645 Harrison St. Floor 4 San Francisco, CA 94107 (“Planet Labs”), and the Federal agency customer (the “Ordering Activity”) referenced in the GSA Schedule **CONTRACT NO. GS-35F-309GA** (the “Contract”) at the address on the applicable order to which this Agreement is attached (“Order”) (“Licensee”) (each of Planet Labs and Licensee are referred to herein as a “Party” and collectively as the “Parties”).

WHEREAS, Planet Labs owns or has the right to grant licenses to those certain satellite-generated images, analysis, and other services described herein (collectively, the “Content”); and

WHEREAS Licensee is a Federal agency who will access the Content for as permitted under this Agreement; and

WHEREAS Licensee desires to obtain a license, and Planet Labs desires to grant such license, to access the Platform and Content in connection with the permitted uses identified in this Agreement on the terms and conditions set forth herein and in the Contract.

NOW, THEREFORE, in consideration of the mutual promises, agreements, and conditions stated herein and, in the Contract, the Parties agree as follows:

1. Definitions

“Authorized Recipient” means (i) an employee of Licensee and (ii) any other party explicitly agreed to by Planet and listed on **Exhibit A** or on an Order placed under the Contract, each of whom has been authorized by Licensee to receive Derivative Products, solely in connection with the Internal Use and in a manner permitted under this Agreement.

“Authorized User” means (i) an employee of Licensee and (ii) any other party explicitly agreed to by Planet and listed on **Exhibit A** or on an Order placed under the Contract, each of whom has been authorized by Licensee to access the Platform and use the Content solely in connection with the Internal Use and in a manner permitted under this Agreement; the licensed number of Authorized Users is outlined on **Exhibit A** or on an Order placed under the Contract.

“Content” means the PlanetScope, and RapidEye Imagery Data collected in the Territory as outlined in **Exhibit A** or on an Order placed under the Contract, and also includes Permitted Imagery (as defined herein), if applicable.

“Content Years” means the years Content is/was collected and which are ordered by and made available to Licensee hereunder as outlined in **Exhibit A** or on an Order placed under the Contract.

“Derivative Product” means any derivative product or information developed by the Licensee from the Content, which does not contain any quantitatively exploitable imagery data files from the Content and is irreversible and uncoupled from the source imagery data. Derivative Products may include annotated imagery, alone or in combination with other government information; thematic analytic products derived from Planet imagery; and simple screen captures of Planet imagery (“Permitted Imagery”).

“Imagery Data” means any digital representation preserving the Red Green Blue (RGB), red-edge (RE), and Near infrared (NIR) values, or resampled resolutions thereof, as provided in the Content.

“Independent Delivery Mechanism(s)” means the delivery mechanisms used by Provider to distribute Derivative Products to Authorized Recipients and is not the Platform.

“Internal Use” means use of the Content and Derivative Products for Licensee’s internal, non-commercial use that is in accordance with and limited by this Agreement, and not for distribution to third parties.

“PlanetScope” means the Earth imagery gathered by the Planet Labs developed satellite system (“Doves”) that is available through the Platform.

“Platform” means the Planet Labs application programming interface that enables Licensee to access the Content and consisting of tools and services designed for searching, viewing, and downloading imagery and includes certain search tools as provided therein.

“RapidEye” means the Earth imagery collected by the constellation of five (5) RapidEye satellites.

“Term” means the term of this Agreement as outlined in **Exhibit A** or on an Order placed under the Contract

“Territory” means: (i) the geographic location of Content that may be accessed by Licensee (the “Content Territory”); and (ii) the geographic locations that Licensee can distribute Derivative Products (the “Distribution Territory”), both as further defined in **Exhibit A**.

2. **Delivery of Content.** During the Term, Planet Labs will use commercially reasonable efforts to provide or make the Content available to Licensee by way of the Platform (or as otherwise agreed to in writing by the Parties). Content will be deemed delivered when it is first made available for access via the Planet Labs Platform. Planet Labs will have no responsibility for retaining archival copies of any Content after such Content has been made available to Licensee. To the extent the number of calls generated by Authorized Users is negatively impacting the Platform or its service, then Planet Labs shall notify Licensee in writing (email acceptable) and the parties shall work together to resolve the impact to the Platform. Planet Labs reserves the right to change or refine the Platform in its sole discretion, provided that any such change shall not materially reduce service.

3. **License**

3.1 License Grant. Subject to the terms and conditions of this Agreement, Planet Labs hereby grants to Licensee a limited, nontransferable, nonexclusive, nonsublicensable license for the Term outlined herein to allow its Authorized Users to:

- (i) access and view Content through the Platform for Internal Use only;
- (ii) reproduce, store, and display the Content for Internal Use only;
- (iii) print and make copies (including digital copies) of the Content for Internal Use only; and
- (iv) use Content to create Derivative Products for Internal Use only, and not for distribution.

To the extent Licensee has purchased a license which includes the right to distribute Derivative Products, then the following license rights shall also apply:

- (a) distribute Derivative Products to Authorized Recipients without the right of resale or further distribution (except amongst Authorized Recipients), through Licensee’s Independent Delivery Mechanisms, solely for such Authorized Recipient’s own Internal Use; and
- (b) in accordance with Section 7.3, retain copies of the Derivative Products and Content as required by law. Except as outlined in Section 7.3, in no event shall Content be used for continued operational or research and development purposes.

3.2 Restrictions. Licensee may not use the Content for any purpose except as expressly set forth in this Section 3.1. Without limitation of the preceding sentence, Licensee

will not, and will not allow any Authorized User, Authorized Recipient or any other third party to: (a) alter, remove, or obscure any proprietary notices, watermarks, or legends included or embedded in the Content; (b) use the Content in violation of applicable laws or regulations; (c) adapt, alter, publicly display, publicly perform, translate, create derivative works of, or otherwise modify the Content except as expressly authorized under this Agreement; (d) sublicense, lease, rent, loan, transfer, or distribute the Content to any third party; (e) sell or otherwise distribute Derivative Products to a third party for the purpose of resale or further distribution; (f) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for the Platform; (g) allow third parties to access or use the Content or the Platform, including without limitation, any use in any application service provider environment, service bureau, or time-sharing arrangements; (h) release Content for non-Government use; (i) transfer Content to commercial entities for commercial use or non-US Government use; or (j) Content may not be provided as Government Furnished Information (GFI) to commercial companies producing derivative and value-added products and services as a commercial product.

3.3 Reservation of Rights. Except for the license granted to Licensee under Section 3.1 of this Agreement, Planet Labs retains all right, title, and interest, including all intellectual property rights, in and to the Content, the Platform and all other Planet Labs intellectual property. All rights not expressly granted in this Agreement are hereby reserved.

3.4 Terminology. Planet Labs licenses access to the Platform and to the Content rather than transferring title. Therefore, wherever the terms “purchase,” “sell,” “selling,” “sale,” “sold,” “resale,” “resell,” and “resold” are used within the context of transferring rights of use under the license terms set forth in Section 3.1, and otherwise consistent with the terms of this Agreement.

4. Use of Name, Attributions and Press Releases

4.1 Right to Use the Other’s Name. Planet Labs will not use the Licensee’s name, initials or seal without prior authorization. See also Section 4.5 for public release. All goodwill related to use of the granting Party’s trademarks will inure to the granting Party.

4.2 Attributions. Licensee will include an attribution that identifies Planet Labs as the provider of the Content and the Platform in all legal notices, “about” screen, user documentation, or other location that the Licensee uses to identify third-party licensors. Licensee will use the phrase “powered by Planet Labs” or such other language mutually agreed upon by the Parties in writing in an Order placed under the Contract to provide Planet Labs with such attribution, subject to branding guidelines and restrictions.

4.3 Legend. All Derivative Products must include the legend as included on Exhibit B.

4.4 Watermarking. All Derivative Products which include Permitted Imagery must be marked in accordance with the watermarking guidelines included in Exhibit C.

4.5 Press Releases and other Co-Promotions. Each party may issue press releases only with the express written permission of the other party.

5. Notice of Unauthorized Use

Licensee will immediately notify Planet Labs in writing if Licensee discovers or suspects any unauthorized use, access, to or disclosure of the Content or the Platform, in whole or in part.

6. Consideration

6.1 Fees and Payment. License fees are set forth in Exhibit A (“Fees/Payment”) or on an Order issued under the Contract, and unless expressly indicated otherwise in Exhibit A or on the Order, all fees are in U.S. dollars. Payments shall be made to the account in accordance with the invoicing and payment terms of the Contract or as located in the Planet Labs *Payment by Electronic Funds Transfer- System for Award Management* listing.

6.2 Records and Audits. Licensee acknowledges that Planet Labs has a substantial and legitimate business interest in preventing the illegal use of its Content and Platform. During the term of this Agreement, Licensee shall monitor the use of the licenses using its internal tracking procedures. Licensee shall use its best efforts to keep full, true and accurate books of accounts and other records containing all particulars, which may be necessary to properly ascertain and verify the number of licenses in use in Licensee. At Planet Labs’ request, not more often than annually (except to the extent that the audit results evidence a discrepancy in compliance), Licensee shall perform an internal audit in accordance with its standard audit procedures, in order to confirm compliance with the terms of this Agreement and provide the audit results promptly to Planet Labs. Planet Labs may initiate a request for audit, in addition to its annual audit rights, only if it has reasonable cause to believe that Licensee may be out of compliance.

7. Term and Termination

7.1 Term. This Agreement will commence as of the Effective Date and will expire at the end of the Term or concurrently with the Contract. This Agreement may be extended upon mutual, written agreement of the parties and the payment of additional fees for such extension. In the event of a termination for convenience or cancellation (if and as such termination for convenience or cancellation is permitted by the Contract) no refunds for any and all Orders placed prior to the date of such termination for convenience or cancellation are due. All undisputed outstanding amounts under each Order affected by the termination for convenience or cancellation are due and payable per the payment terms of the GSA Schedule contract.

7.2 Termination for Cause or under the Cancellation terms of the Contract. In accordance with GSAM 552.212-4 (l), (m)

7.3 Effect of Termination. Immediately upon any termination or expiration of any Order issued under this Agreement: (i) Licensee's access to the Platform shall cease, and Licensee shall pay any outstanding amounts (that are not in dispute) owed to Planet under such Order; (ii) the licenses granted under the terminated Order shall immediately terminate, and Licensee shall immediately cease all use of the Platform. Upon natural expiration of the Term of the Agreement, Licensee may: (i) retain copies of the Derivative Products and Content as required by law and, (ii) solely for a period of one (1) month thereafter, continue to use the already-downloaded Content for continued operational or research and development purposes, provided that after such one-month period has elapsed, no such use is permitted. If the Contract or this Agreement is terminated, all Orders not terminated will continue to be governed by the terms of the Contract, including this Agreement.

8. **Representations and Warranties**

8.1 By Planet Labs. Planet Labs represents and warrants that (a) it has the full right and authority to enter into this Agreement and to grant to Provider the rights granted hereunder; (b) the Content, as provided to Provider without modification, does not and will not infringe the copyrights rights of any third party. Planet Labs further warrants that the Platform will be free from material defects and operate substantially as described in the associated technical Documentation for a period of sixty (60) days after initial access credentials are issued to Provider. In the event the Platform fails to comply with the foregoing warranty, Planet Labs shall promptly repair the non-conforming items.

8.2 By Licensee. Licensee represents, warrants, and covenants that (a) it has the full right and authority to enter into this Agreement and to meet its obligations hereunder; and (b) the Derivative Products shall not infringe the intellectual property rights of any Third Party.

8.3 Disclaimer of Warranties. **EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE CONTENT AND THE Platform ARE PROVIDED "AS IS" WITHOUT**

ANY WARRANTY OF ANY KIND, AND PLANET LABS EXPRESSLY DISCLAIMS ALL WARRANTIES WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, ACCURACY, UNINTERRUPTED PERFORMANCE OR SECURITY. PROVIDER ACKNOWLEDGES THAT IT HAS NOT RELIED ON ANY REPRESENTATIONS OR WARRANTIES IN ENTERING INTO THIS AGREEMENT. IN THE EVENT OF A BREACH OF WARRANTY, SUCH DISPUTE SHALL BE RESOLVED UNDER THE CONTRACT DISPUTES ACT, 41 U.S.C. 7101-7109.

8.4 **U.S. Government Rights.** No technical data or computer software is developed under this Agreement. The Content, Platform and all supplemental materials provided hereunder (collectively, for purposes of this Section 8.4, the “Licensed Materials”) are “commercial items” as that term is defined at FAR 2.101. If Licensee is the US Federal Government (Government) Executive Agency (as defined in FAR 2.101), Planet Labs provides the Licensed Materials in accordance with the following: If acquired by or on behalf of any Executive Agency (other than an agency within the Department of Defense (DoD), the Government acquires, in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Computer Software), only those rights in technical data and software customarily provided to the public as defined in this Agreement. If acquired by or on behalf of any Executive Agency within the DoD, the Government acquires, in accordance with DFARS 227.7202-3 (Rights in commercial computer software or commercial computer software documentation), only those rights in technical data and software customarily provided in this Agreement. In addition, if DFARS Subpart 227.72 is applicable, DFARS 252.227-7015 (Technical Data – Commercial Items) applies to technical data acquired by DoD agencies. Any Federal Legislative or Judicial Agency shall obtain only those rights in technical data and software customarily provided to the public as defined in this Agreement. If any Federal Executive, Legislative, or Judicial Agency has a need for rights not conveyed under the terms described in this Section, it must negotiate with Planet Labs to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement to be effective. If this Agreement fails to meet the Government’s needs or is inconsistent in any way with Federal law, and the parties cannot reach a mutual agreement on terms for this Agreement, the Government agrees to terminate its use of the Licensed Materials and return the Licensed Materials and any other software or technical data delivered as part of the Licensed Materials, unused, to Planet Labs. This U.S. Government Rights clause in this Section is in lieu of, and supersedes, any other FAR, DFARS, or other clause, provision, or supplemental regulation that addresses Government rights in computer software or technical data under this Agreement.

9. Limitation of Liability

IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER ANY THEORY OF LIABILITY (WHETHER IN CONTRACT, TORT, STATUTE, OR OTHERWISE) FOR CONSEQUENTIAL, SPECIAL, EXEMPLARY, PUNITIVE, OR OTHER INDIRECT DAMAGES OF ANY KIND (INCLUDING LOST PROFITS), REGARDLESS OF THE FORM OF ACTION, EVEN IF THE CLAIM WAS REASONABLY FORESEEABLE OR IF THE OTHER PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL THE AGGREGATE LIABILITY OF PLANET LABS UNDER ANY AND ALL CLAIMS ARISING OUT OF THIS AGREEMENT EXCEED THE FEES PAID BY PROVIDER TO PLANET LABS UNDER THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD PRECEDING THE CLAIM. THIS CLAUSE SHALL NOT IMPAIR THE U.S. GOVERNMENT'S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OF OR RELATED TO THIS CONTRACT UNDER ANY FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT, 31 U.S.C. 3729-3733. FURTHERMORE, THIS CLAUSE SHALL NOT IMPAIR NOR PREJUDICE THE U.S. GOVERNMENT'S RIGHT TO EXPRESS REMEDIES PROVIDED IN THE GSA SCHEDULE CONTRACT (E.G., CLAUSE 552.238-75 – PRICE REDUCTIONS, CLAUSE 552.212-4(H)– PATENT INDEMNIFICATION, AND GSAR 552.215-72 – PRICE ADJUSTMENT – FAILURE TO PROVIDE ACCURATE INFORMATION).

10. Indemnity

10.1 Licensee Indemnity. Subject to the Anti-Deficiency Act and all other Federal laws and regulations, if and as applicable to this Agreement, Licensee may agree to indemnify, defend, and hold Planet Labs harmless from and against any and all costs, damages, liabilities, and expenses (including, but not limited to, reasonable attorneys' fees) arising out of or in connection with a claim, suit, action, or proceeding (a "Claim") brought by any third party against Planet Labs to the extent that such Claim arises out of or results from:

(i) Licensee's use of the Content or the Platform in violation of the terms and conditions of this Agreement; (ii) Licensee's use of the Content or Platform in violation of applicable state, local, national, or other applicable laws or regulations; or (iii) Licensee's use of the Content or the Derivative Products provided by Licensee to end users infringes the intellectual property rights of any third party.

10.2 Planet Labs Indemnity. Subject to 28 USC §516 and all other applicable Federal laws and regulations, if and as applicable to this Agreement, Planet Labs shall indemnify, defend and hold harmless Licensee and its Authorized Users from and against any and all third party claims, liabilities, damages, expenses, fines, penalties or costs of whatsoever nature, (including reasonable attorney's Fees and expenses) adjudicated (or provided in settlement of the matter) to be owing to a third party claimant), to the extent directly arising out of the infringement of any U.S. patent issued as of the Effective Date, or copyrights, trademark rights by any Content (a "Planet Labs Infringement Claim"). A Planet Labs Infringement

Claim shall not include claims related to (i) the Licensee Concepts which are incorporated or embodied in the Derivative Products or which the Derivative Products are based upon or derived from, where “Licensee Concepts” means Licensee’s business plans, product designs, instructions, specifications, Licensee information and/or other ideas that are provided to Planet Labs; (ii) Planet Labs’ compliance with the Licensee Concepts, (ii) any modification by any party, other than Planet Labs, to any Content, (iii) any combination of any Content with product(s) of Licensee or of any third party, or (iv) any use of any Content by or on behalf of or at the direction or upon instruction of Licensee which Content is not, in and of itself and apart from such use thereof, the subject of a Planet Labs Infringement Claim. In the event that any Content becomes or in Planet Labs’ opinion appears likely to become the subject of a Planet Labs Infringement Claim, then Planet Labs reserves the right, to procure for Licensee the right to enable Licensee to continue to use the Content in question, or to modify or replace the Content in question with non-infringing and functionally equivalent material. The foregoing provisions of Section 10.2 (a) herein state Planet Labs’ entire liability and Licensee’s exclusive remedies for third-party claims with regard to the infringement or misappropriation of their intellectual property rights by Planet Labs.

10.3 Indemnity Procedures: As a condition to the foregoing indemnity obligations of the parties, and subject to the Anti-Deficiency Act and all other applicable Federal laws and regulations, if and as applicable to this Agreement, the indemnifying party (the “Indemnifying Party”) agrees to pay any allowable costs and damages finally awarded (including any settlement amounts) against the party seeking indemnification (the “Indemnified Party”), provided that (a) the Indemnified Party notifies the Indemnifying Party promptly, in writing, of the action, provided that any delay or failure of the Indemnified Party to give prompt notice of any such claim shall not affect the rights of the Indemnified Party hereunder unless, and only to the extent that, such delay or failure is prejudicial to or otherwise adversely affects the Indemnifying Party; (b) provides the Indemnifying Party with all reasonable information and assistance to settle and/or defend the action (at the Indemnifying Party’s expense); (c) subject to 28 USC §516, grants the Indemnifying Party sole authority and control of the defense or settlement of the action, provided that no compromise or settlement of any claim admitting liability of or imposing duties of performance or that is in any way prejudicial to the Indemnified Party may be effected without the prior written consent of such party, which consent shall not be unreasonably withheld; and (d) the Indemnified Party shall have the right to participate in but not to control the defense and/or settlement of any claim covered by this Section 11 with counsel of its own choosing at its own expense. The Indemnifying Party agrees to keep the Indemnified Party regularly and completely informed of the status of any claim hereunder.

11. Confidentiality

11.1 Confidential Information. “Confidential Information” means all information disclosed by one Party (“Discloser”) to the other Party (“Recipient”) (in writing, orally, or in any other form) that is designated, at or before the time of disclosure, as confidential, or is provided under circumstances reasonably indicating that the information is confidential, including, without limitation, trade secrets, customer lists, business plans, technical data, product ideas, personnel, content, and financial information. Confidential Information does not include information or material that (a) is now, or hereafter becomes, through no act or failure to act on the part of the Recipient, generally known or available; (b) is or was known by the Recipient without obligation of confidentiality at or before the time such information or material was received from the Discloser, as evidenced by the Recipient’s tangible (including written or electronic) records; (c) is furnished to the Recipient by a third party that is not under an obligation of confidentiality to the Discloser with respect to such information or material; or (d) is independently developed by the Recipient without any breach of this Agreement, as evidenced by the Recipient’s contemporaneous tangible (including written or electronic) records. The parties hereby further agree that Content and Imagery Data are proprietary and trade secret information that is exempt from release under the Freedom of Information Act (5 U.S.C. §552(b)(4)) and is subject to the Federal Trade Secrets Act (18 U.S.C. §1905).

11.2 Confidentiality Obligations. Each Party will take all reasonable measures to protect the confidentiality of the other Party’s Confidential Information in a manner that is at least protective as the measures it uses to maintain the confidentiality of its own Confidential Information of similar importance. Recipient will hold Confidential Information in strict confidence and will not disclose, copy, reproduce, sell, assign, license, market, transfer, or otherwise dispose of such information, or give or disclose such information to third parties, or use such information for any purposes whatsoever other than as necessary in order to fulfill its obligations or exercise its rights under this Agreement. Notwithstanding the foregoing, Recipient may disclose the other Party’s Confidential Information to employees that have a need to know such information, provided that Recipient will advise each such employee of their obligations to keep such information confidential pursuant to the requirements of the Trade Secrets Act. To the extent Recipient is legally compelled to disclose such Confidential Information, Recipient agrees that it will give advance notice of such compelled disclosure to the other Party, and will cooperate with the other Party in connection with any efforts to prevent or limit the scope of such disclosure and/or use of the Confidential Information. Each Party’s obligations under this Section 11 will last for the Term of this Agreement and for a period of three (3) years thereafter. For the avoidance of doubt, Content is subject to the license terms set forth in Section 3 above, and the restrictions on disclosure and use contained therein are not subject to expiration or termination pursuant to this Section 11.

12. Compliance with Laws

Licensee will comply fully with all applicable laws and regulations, including, without limitation, the laws and regulations of the United States, and all export laws and regulations to assure that the Content (or any part or derivation thereof) is not (a) provided to any persons or countries that have sanctions or restriction imposed upon them; (b) exported, directly or indirectly, in violation of any applicable laws or regulations, or (c) intended to be used for any prohibited purpose.

13. Miscellaneous

13.1 No Exclusivity. This Agreement is non-exclusive, and Planet Labs retains the right to license or otherwise provide the Content licensed under this Agreement to any third party at any time in Planet Labs' sole discretion.

13.2 Notices. Each Party will send any notice under this Agreement in writing to the other Party at the address stated above via registered mail return receipt requested, or an internationally recognized express mail carrier, and such notice will be deemed to have been given when received. The notices provision of the Contract will take precedence over this Section.

13.3 Governing Law. This Agreement shall be governed by the laws of the United States and where no such law exists for the relevant issue to which such law is to be applied, the laws of the State of California, without regard to its conflicts of law provisions shall be used to interpret this Agreement.

13.4 Arbitration. N/A to Federal agency customers.

13.5 Assignment. Neither Party may assign or delegate any rights or obligations under this Agreement to any third party without the prior written consent of the other Party. Notwithstanding the foregoing, unless a novation is required under FAR 42.12, Planet Labs may assign or delegate its rights or obligations under this Agreement, without Licensee's consent, in conjunction with an internal reorganization, merger, sale, or transfer of all or substantially all of Planet Labs' assets associated with performance under this Agreement. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of the Parties hereto and their respective successors, permitted assigns and legal representatives.

13.6 Third Party Beneficiaries. Except as expressly stated herein, nothing in this Agreement is intended to confer any rights or remedies on any person or entity that is not a Party to this Agreement. The Parties expressly reserve the right to modify, amend, terminate, or otherwise modify any provision of this Agreement without the consent of, or notice to, any third party.

13.7 Amendment. No modification of this Agreement or waiver of the terms and conditions hereof will be binding upon the Parties unless approved in writing by both Parties.

13.8 No Waiver. Failure by either Party to enforce any term of this Agreement will not be deemed a waiver unless the waiver is in writing, signed by a duly authorized representative of the Party to be bound and such waiver shall not affect the right of the Party for future enforcement of that or any other term of this Agreement.

13.9 Severability. If any provision of this Agreement is held invalid or unenforceable at law, such provision will be deemed stricken from this Agreement and the remainder of this Agreement will continue in effect and be valid and enforceable to the fullest extent permitted by law.

13.10 Independent Contractors. The parties to this Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise or agency created hereby between the parties. Neither party will have the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent.

13.11 Survival. All provisions of this Agreement which by their nature contemplate performance after termination shall survive any termination of this Agreement, including Sections **3.2** (Restrictions), 5 (Notice of Unauthorized Use), 6 (Consideration), 8.3 (Disclaimer of Warranties), 9 (Limitation of Liability), 11 (Confidentiality) and 13 (Miscellaneous) will remain intact, notwithstanding any termination.

13.12 Entire Agreement. This Agreement (including the Exhibits attached hereto) together with the GSA Schedule Contract to which it is attached represents the entire agreement between the Parties and supersedes any and all prior understanding, agreements, or representations by or among the Parties, written or oral, related to the subject matter hereof. These terms are applicable to all Orders placed under the Contract referencing these terms. A separately signed Agreement is not necessary for each Order.

EXHIBIT A

- 1. Authorized Users:**
- 2. Authorized Recipients:**
- 3. Term**
- 4. Number of licenses:**
- 5. Content:**
- 6. Content Years:**
- 7. Content Territory:**
- 8. Distribution Territory**

EXHIBIT B

DERIVATIVE PRODUCTS LEGEND

In accordance with 4.3 (Legend), all Derivative Products must include the following legend, which may be included in the footer of the Derivative Product or on the attribution page (as determined by Licensee):

This is a “Derivative Product” under Contract No. GS-35F-309GA (“Contract”). Use of this Derivative Product is subject to the rights and restrictions set forth in the Contract and no further distribution is permitted. This Derivative Product includes proprietary and trade secret information that is exempt from release under the Freedom of Information Act (5 U.S.C. §552(b)(4)) and is subject to the Federal Trade Secrets Act (18 U.S.C. §1905).

EXHIBIT C

Watermarking Guidelines

The following copyright notice shall also be included: © 2023; Planet Labs PBC

Enterprise License
Agreement (Federal Agency
End User)

This ENTERPRISE LICENSE AGREEMENT (the “Agreement”) is entered into effective as of the date of the Contract (defined herein) (the “Effective Date”) by and between Planet Labs PBC a Delaware public benefit corporation, with offices at 645 Harrison St. Floor 4 San Francisco, CA (“Licensor”) and the Federal agency referenced in an order (“Order”) under **CONTRACT NO. GS-35F- 309GA (“Contract”)** (each ordering entity is a “Licensee”). Each Licensor and Licensee are referred to herein as a “Party” and collectively as the “Parties.”

1. License and Support. Subject to Licensee’s compliance with the terms of the Contract, including this Agreement (including, among other things, timely payment to Licensor of all amounts due hereunder), Licensor hereby grants to Licensee during the period of performance (“POP”) of an Order a non-exclusive, non-transferable, non-sublicensable, non-assignable, revocable license to install, execute, and use of Licensor’s Direct Access Service Software (the “Software” or the “DAS”) and the documentation delivered in connection therewith (the “Documentation”) solely for (i) Licensee’s internal purposes and (ii) to access certain Licensor content, which content must be licensed under and is subject to a separate agreement between the parties, which agreement shall include user limits, territory restrictions and the like. The Software and Documentation are referred to hereinafter collectively as the “Licensed Materials.” Licensors shall provide technical support during the hours of 5AM to 5PM Pacific Time by phone [+1\(800\)-940-3617](tel:+18009403617) or by support@planet.com. Licensor will provide Licensee with 14 days’ notice if any change to support phone number or email is planned. Licensor shall provide a mechanism by which users can report problems or issues.
2. Restrictions. Except as expressly set forth in this Agreement, Licensee shall not, directly or indirectly: (i) sublicense, sell, rent, lease, distribute, assign or otherwise transfer the Licensed Materials to a third party without the express written consent of an authorized officer of Licensor; (ii) host the Software for the benefit of third parties; (iii) disclose to or permit any third party to access to the Software, except as expressly permitted hereunder; (iii) modify or create derivative works of the Licensed Materials, or merge the Software with other software; (iv) disassemble, decompile, bypass any code obfuscation, or otherwise reverse engineer the Software or attempt to derive any of its source code in whole or in part; (v) modify, obscure, or delete any proprietary rights notices, legends or attribution included in or on the Licensed Materials; or (vi) do anything which adversely affects Licensor’s right, title and interest in and to the Licensed Materials.
3. Delivery. Licensor will deliver the Licensed Material specified in an Order electronically, as set forth below or as otherwise agreed to by the parties in writing. Customer shall promptly provide to Licensor all information that is necessary to enable Licensor to transmit electronically all such items to Customer and Licensor make such items available to Customer on a specific Licensor server (or as otherwise

agreed to by the parties in writing) ("Delivery"). In furtherance of the purpose of Delivery, Licensor will not provide to Customer, and Customer will not accept, any Software or Documentation deliverable under this Agreement in any tangible medium including, but not limited to, CD-ROM, tape or paper. Customers will be deemed to have unconditionally and irrevocably accepted the Licensed Materials upon Delivery.

4. Consideration

4.1 Fees and Payment. Fees are set forth in Exhibit A ("Fees/Payment") or on an Order issued under the Contract, and unless expressly indicated otherwise in Exhibit A or on the Order, all fees are in U.S. dollars. Payments shall be made to the account in accordance with the invoicing and payment terms of the Contract or as located in the Planet Labs *Payment by Electronic Funds Transfer- System for Award Management* listing.

4.2 Records and Audits. Licensee acknowledges that Planet Labs has a substantial and legitimate business interest in preventing the illegal use of its Licensed Materials. During the term of this Agreement, Licensee shall monitor the use of the licenses using its internal tracking procedures. Licensee shall use its best efforts to keep full, true and accurate books of accounts and other records containing all particulars, which may be necessary to properly ascertain and verify compliance herewith. At Planet Labs' request, not more often than annually (except to the extent that the audit results evidence a discrepancy in compliance), Licensee shall perform an internal audit in accordance with its standard audit procedures, in order to confirm compliance with the terms of this Agreement and provide the audit results promptly to Planet Labs. Planet Labs may initiate a request for audit, in addition to its annual audit rights, only if it has reasonable cause to believe that Licensee may be out of compliance.

5. Ownership. Licensee acknowledges and agrees that as between Licensor and Licensee, Licensor owns all right, title, and interest in and to the Licensed Materials, including without limitation all Intellectual Property Rights therein, and except for the license granted to Licensee under Section 1 of this Agreement, Licensor retains all right, title and interest, including all Intellectual Property Rights, in and to the Licensed Materials. All rights not expressly granted in this Agreement are hereby reserved by Licensor. For purposes of this Agreement, the term "Intellectual Property Rights" means any and all right, title and interest in and to any and all trade secrets, patents, copyrights, service marks, trademarks, know-how, trade names, rights in trade dress and packaging, moral rights, rights of privacy, publicity,

database rights, data protection rights and similar rights of any type, including any applications, continuations or other registrations with respect to any of the foregoing, under the laws or regulations of any foreign or domestic governmental, regulatory or judicial authority.

6. U.S. Government Rights. No technical data or computer software is developed under this Agreement. The Licensed Materials are “commercial items” as that term is defined at FAR 2.101. If Customer is the US Federal Government (Government) Executive Agency (as defined in FAR 2.101), Licensor provides the Licensed Materials in accordance with the following: If acquired by or on behalf of any Executive Agency (other than an agency within the Department of Defense (DoD), the Government acquires, in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Computer Software), only those rights in technical data and software customarily provided to the public as defined in this Agreement. If acquired by or on behalf of any Executive Agency within the DoD, the Government acquires, in accordance with DFARS 227.7202-3 (Rights in commercial computer software or commercial computer software documentation), only those rights in technical data and software customarily provided in this Agreement. In addition, if DFARS Subpart 227.72 is applicable, DFARS 252.227-7015 (Technical Data – Commercial Items) applies to technical data acquired by DoD agencies. Any Federal Legislative or Judicial Agency shall obtain only those rights in technical data and software customarily provided to the public as defined in this Agreement. If any Federal Executive, Legislative, or Judicial Agency has a need for rights not conveyed under the terms described in this Section, it must negotiate with Licensor to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement to be effective. If this Agreement fails to meet the Government’s needs or is inconsistent in any way with Federal law, and the parties cannot reach a mutual agreement on terms for this Agreement, the Government agrees to terminate its use of the Licensed Materials and return the Licensed Materials and any other software or technical data delivered as part of the Licensed Materials, unused, to Licensor. This U.S. Government Rights clause in this Section is in lieu of, and supersedes, any other FAR, DFARS, or other clause, provision, or supplemental regulation that addresses Government rights in computer software or technical data under this Agreement.

7. Term and Termination.

- 7.1 Term. This Agreement will commence as of the Effective Date and will expire at the end of the Term or concurrently with the Contract. This Agreement may be extended upon mutual, written agreement of the parties and the payment of additional fees for such extension. In the event of a termination for convenience or cancellation (if and as such termination for convenience or cancellation is permitted by the Contract) no refunds for any and all Orders placed prior to the date of such termination for convenience or cancellation are due. All undisputed outstanding amounts under each Order affected by the termination for convenience or cancellation are due and payable per the payment terms of the GSA Schedule contract.

7.2 Termination for Cause or under the Cancellation terms of the Contract. In accordance with GSAM 552.212-4 (l), (m)

7.3 Effect of Termination. Immediately upon expiration or termination of an Order for any reason: (i) the License Term (i.e. POP) for the Licensed Materials will terminate; (ii) Licensee shall no longer have the right to use the Licensed Materials, and all licenses from Licensor contained herein shall automatically cease to exist as of the date of termination/expiration; (iii) Licensee shall pay Licensor all unpaid amounts due in connection with this Agreement that are not in dispute; (iv) Licensee shall destroy all copies of the Licensed Materials in its possession or control, and shall certify to Licensor in writing that such destruction has occurred; and (v) each Party shall promptly return to the other Party or destroy all Confidential Information of the other Party in its possession or control. If the Contract or this Agreement is terminated, all Orders not terminated will continue to be governed by the terms of the Contract, including this Agreement.

8. Disclaimer; Limitation of Liability.

8.1 WARRANTY. The Contractor warrants that the Software will be free from material defects and operate substantially as described in the associated technical Documentation for a period of sixty (60) days after Delivery. In the event the Software fails to comply with the foregoing warranty, Contractor shall promptly repair or replace the non-conforming Software.

8.2 DISCLAIMER OF WARRANTIES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, LICENSOR DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT. THE LICENSED MATERIALS ARE PROVIDED "AS IS." LICENSOR DOES NOT WARRANT THAT THE LICENSED MATERIALS WILL MEET LICENSEE'S REQUIREMENTS OR BE ERROR-FREE, ACCURATE, CURRENT OR COMPLETE. IN THE EVENT OF A DISPUTE REGARDING THE EXISTENCE OF A BREACH OF WARRANTY, SUCH DISPUTE SHALL BE RESOLVED UNDER THE CONTRACT DISPUTES ACT, 41 U.S.C. 7101-7109.

8.3 Limitations of Liability. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL LICENSOR OR ITS AFFILIATES BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR INDIRECT DAMAGES, OR DAMAGES FOR LOST PROFITS, BUSINESS INTERRUPTION, OR LOSS OR INACCURACY OF INFORMATION, ARISING FROM OR RELATING TO THIS AGREEMENT OR LICENSEE'S USE OF THE LICENSED MATERIALS, REGARDLESS OF THE FORM OF ACTION, EVEN IF THE CLAIM WAS REASONABLY FORESEEABLE OR IF LICENSOR WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY ESSENTIAL PURPOSE OF ANY REMEDY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL LICENSOR'S AGGREGATE LIABILITY UNDER ANY AND ALL

CLAIMS RELATING TO THE LICENSED MATERIALS OR OTHERWISE ARISING OUT OF THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID TO LICENSOR IN CONNECTION WITH THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE CLAIM GIVING RISE TO SUCH LIABILITY. THIS CLAUSE SHALL NOT IMPAIR THE U.S. GOVERNMENT'S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OF OR RELATED TO THIS CONTRACT UNDER ANY FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT, 31 U.S.C. 3729-3733. FURTHERMORE, THIS CLAUSE SHALL NOT IMPAIR NOR PREJUDICE THE U.S. GOVERNMENT'S RIGHT TO EXPRESS REMEDIES PROVIDED IN THE GSA SCHEDULE CONTRACT (E.G., CLAUSE 552.238-75 – PRICE REDUCTIONS, CLAUSE 552.212-4(H) – PATENT INDEMNIFICATION, AND GSAR 552.215-72 – PRICE ADJUSTMENT – FAILURE TO PROVIDE ACCURATE INFORMATION).

9. Indemnity.

9.1 Licensee Indemnity. Subject to the Anti-Deficiency Act and all other applicable Federal laws and regulations, if and as applicable to this Agreement, Licensee may agree to indemnify, defend, and hold Planet Labs harmless from and against any and all costs, damages, liabilities, and allowable expenses (including, but not limited to, reasonable attorneys' fees) arising out of or in connection with a claim, suit, action, or proceeding (a "Claim") brought by any third party against Licensor to the extent that such Claim arises out of or results from: (i) Licensee's use of the Licensed Materials in violation of the terms and conditions of this Agreement; (ii) Licensee's use of the Licensed Materials in violation of applicable state, local, national, or other applicable laws or regulations; or (iii) Licensee's use of the Content or the Derivative Products (if applicable) provided by Licensee to end users infringes the intellectual property rights of any third party.

9.2 Licensor Indemnity. Subject to 28 USC §516 and all other applicable Federal laws and regulations, if and as applicable to this Agreement, Licensor shall indemnify, defend and hold harmless Licensee and its Authorized Users from and against any and all third party claims, liabilities, damages, expenses, fines, penalties or costs of whatsoever nature, (including reasonable attorneys' fees and expenses) adjudicated (or provided in settlement of the matter) to be owing to a third party claimant), to the extent directly arising out of the infringement of any U.S. patent issued as of the Effective Date, or copyrights, trademark rights by any Licensed Materials (a "Licensor Infringement Claim"). A Licensor Infringement Claim shall not include claims related to (i) the Licensee Concepts which are incorporated or embodied in the Derivative Products or which the Derivative Products are based upon or derived from, where "Licensee Concepts" means Licensee's business plans, product designs, instructions, specifications, Licensee information and/or other ideas that are provided to Licensor; (ii) Licensor's compliance with the Licensee Concepts, (ii) any modification by any party, other than Licensor, to any Licensed Materials, (iii) any combination of any Licensed Materials with product(s) of

Licensee or of any third party, or (iv) any use of any Licensed Materials by or on behalf of or at the direction or upon instruction of Licensee which Licensed Material is not, in and of itself and apart from such use thereof, the subject of a Licensor Infringement Claim. In the event that any Licensed Material becomes or in Licensor's opinion appears likely to become the subject of a Licensor Infringement Claim, then Licensor reserves the right, to procure for Licensee the right to enable Licensee to continue to use the Licensed Material in question, or to modify or replace the Licensed Material in question with non-infringing and functionally equivalent material. The foregoing provisions of Section 10.2 (a) herein state Licensor's entire liability and Licensee's exclusive remedies for third-party claims with regard to the infringement or misappropriation of their intellectual property rights by Licensor.

9.3 Indemnity Procedures: As a condition to the foregoing indemnity obligations of the parties, and subject to the Anti-Deficiency Act and all other applicable Federal laws and regulations, if and as applicable to this Agreement, the indemnifying party (the "Indemnifying Party") agrees to pay any allowable costs and damages finally awarded (including any settlement amounts) against the party seeking indemnification (the "Indemnified Party"), provided that (a) the Indemnified Party notifies the Indemnifying Party promptly, in writing, of the action, provided that any delay or failure of the Indemnified Party to give prompt notice of any such claim shall not affect the rights of the Indemnified Party hereunder unless, and only to the extent that, such delay or failure is prejudicial to or otherwise adversely affects the Indemnifying Party; (b) provides the Indemnifying Party with all reasonable information and assistance to settle and/or defend the action (at the Indemnifying Party's expense); (c) subject to 28 USC §516, grants the Indemnifying Party sole authority and control of the defense or settlement of the action, provided that no compromise or settlement of any claim admitting liability of or imposing duties of performance or that is in any way prejudicial to the Indemnified Party may be effected without the prior written consent of such party, which consent shall not be unreasonably withheld; and (d) the Indemnified Party shall have the right to participate in but not to control the defense and/or settlement of any claim covered by this Section 11 with counsel of its own choosing at its own expense. The Indemnifying Party agrees to keep the Indemnified Party regularly and completely informed of the status of any claim hereunder.

10. Confidentiality.

10.1 Confidential Information. “Confidential Information” means all information disclosed by one Party (“Discloser”) to the other Party (“Recipient”) (in writing, orally, or in any other form) that is designated, at or before the time of disclosure, as confidential, or is provided under circumstances reasonably indicating that the information is confidential, including, without limitation, trade secrets, customer lists, business plans, technical data, product ideas, personnel, content, and financial information. Confidential Information does not include information or material that (a) is now, or hereafter becomes, through no act or failure to act on the part of the Recipient, generally known or available; (b) is or was known by the Recipient without obligation of confidentiality at or before the time such information or material was received from the Discloser, as evidenced by the Recipient’s tangible (including written or electronic) records; (c) is furnished to the Recipient by a third party that is not under an obligation of confidentiality to the Discloser with respect to such information or material; or (d) is independently developed by the Recipient without any breach of this Agreement, as evidenced by the Recipient’s contemporaneous tangible (including written or electronic) records. The parties hereby further agree that Licensed Materials are proprietary and trade secret information that is exempt from release under the Freedom of Information Act (5

U.S.C. §552(b)(4)) and is subject to the Federal Trade Secrets Act (18 U.S.C. §1905).

10.2 Confidentiality Obligations. Each Party will take all reasonable measures to protect the confidentiality of the other Party’s Confidential Information in a manner that is at least protective as the measures it uses to maintain the confidentiality of its own Confidential Information of similar importance. Recipient will hold Confidential Information in strict confidence and will not disclose, copy, reproduce, sell, assign, license, market, transfer, or otherwise dispose of such information, or give or disclose such information to third parties, or use such information for any purposes whatsoever other than as necessary in order to fulfill its obligations or exercise its rights under this Agreement. Notwithstanding the foregoing, Recipient may disclose the other Party’s Confidential Information to employees that have a need to know such information, provided that Recipient will advise each such employee of their obligations to keep such information confidential pursuant to the requirements of the Trade Secrets Act. To the extent Recipient is legally compelled to disclose such Confidential Information, Recipient agrees that it will give advanced notice of such compelled disclosure to the other Party, and will cooperate with the other Party in connection with any efforts to prevent or limit the scope of such disclosure and/or use of the Confidential Information. Each Party’s obligations under this Section 10 will last for the Term of this Agreement and for a period of three (3) years thereafter. For the avoidance of doubt, the Licensed Materials are subject to the license terms set forth in Section 1 above, and the restrictions on disclosure and use contained therein are not subject to expiration or termination pursuant to this Section 10.

11. Compliance with Laws. Licensee will comply fully with all applicable laws and regulations, including, without limitation, the laws and regulations of the United States, and all export laws and regulations to assure that the Content (or any part or derivation thereof) is not (a) provided to any persons or countries that have sanctions or restriction imposed upon them; (b) exported, directly or indirectly, in violation of any applicable laws or regulations, or (c) intended to be used for any prohibited purpose.
12. Miscellaneous.
- 12.1 No Exclusivity. This Agreement is non-exclusive, and Licensors retains the right to license or otherwise provide the Content licensed under this Agreement to any third party at any time in Licensors sole discretion.
- 12.2 Notices. Each Party will send any notice under this Agreement in writing to the other Party at the address stated above via registered mail return receipt requested, or an internationally recognized express mail carrier, and such notice will be deemed to have been given when received. The notices provision of the Contract will take precedence over this Section.
- 12.3 Governing Law. This Agreement shall be governed by the laws of the United States and where no such law exists for the relevant issue to which such law is to be applied, the laws of the State of California, without regard to its conflicts of law provisions shall be used to interpret this Agreement.
- 12.4 Arbitration. N/A to Federal agency customers.
- 12.5 Assignment. Neither Party may assign or delegate any rights or obligations under this Agreement to any third party without the prior written consent of the other Party. Notwithstanding the foregoing, unless a novation is required under FAR 42.12, Licensors may assign or delegate its rights or obligations under this Agreement, without Licensees consent, in conjunction with an internal reorganization, merger, sale, or transfer of all or substantially all of Licensors assets associated with performance under this Agreement. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of the Parties hereto and their respective successors, permitted assigns and legal representatives.
- 12.6 Third Party Beneficiaries. Except as expressly stated herein, nothing in this Agreement is intended to confer any rights or remedies on any person or entity that is not a Party to this Agreement. The Parties expressly reserve the right to modify, amend, terminate, or otherwise modify any provision of this Agreement without the consent of, or notice to, any third party.

12.7 Amendment. No modification of this Agreement or waiver of the terms and conditions hereof will be binding upon the Parties unless approved in writing by both Parties.

12.8 No Waiver. Failure by either Party to enforce any term of this Agreement will not be deemed a waiver unless the waiver is in writing, signed by a duly authorized representative of the Party to be bound and such waiver shall not affect the right of the Party for future enforcement of that or any other term of this Agreement.

12.9 Severability. If any provision of this Agreement is held invalid or unenforceable at law, such provision will be deemed stricken from this Agreement and the remainder of this Agreement will continue in effect and be valid and enforceable to the fullest extent permitted by law.

12.10 Independent Contractors. The parties to this Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise or agency created hereby between the parties. Neither party will have the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent.

12.11 Survival. All provisions of this Agreement which by their nature contemplate performance after termination shall survive any termination of this Agreement, including Sections 2 (Restrictions), 3 (Delivery), 5 (Ownership), 6 (U.S. Government Rights), 7.3 (Effect of Termination), and 8 (Disclaimer; Limitation of Liability), 9 (Indemnity), 10 (Confidentiality), 11 (Compliance with Laws) and 12 (Miscellaneous) shall survive the termination or expiration of an Order incorporating this Agreement or termination or expiration of this Agreement for any reason.

Entire Agreement. This Agreement (including the Exhibits attached hereto) together with the GSA Schedule Contract to which it is attached represents the entire agreement between the Parties and supersedes any and all prior understanding, agreements, or representations by or among the Parties, written or oral, related to the subject matter hereof. These terms are applicable to all Orders placed under the Contract referencing these terms. A separately signed Agreement is not necessary for each Order.

Revisions to Tailored Clause 552.212-4 approved with Award, the approved Tailored Clause to the current version of the FAR (FAC 2024-02, Effective January 22, 2024) and GSAM (Change 173 GSAM Case 2024-G501, Effective Date: January 18, 2024).

52.212-4 Contract Terms and Conditions—Commercial Products and Commercial Services (November 2023) (TAILORED)

This 552.212-4 Clause governs all of the Contractor's offered items. Contractor does not offer any T&M / LH services.

As prescribed in [12.301\(b\)\(3\)](#), insert the following clause:

Contract Terms and Conditions—Commercial Products and Commercial Services (Nov 2023)

(a) *Inspection/Acceptance.* The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Ordering activity reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The parties hereby agree that the deliverables under the Master Platform Access and Content License Agreement (Federal Agency End User) included as an attachment to the Contract ("Master Platform and Content Agreement") shall be deemed accepted when access is made available to Government. The parties hereby agree that the deliverables under the Enterprise License Agreement (Federal Agency End User) included as an attachment to the Contract ("Enterprise License Agreement") shall be deemed accepted when access for delivery is made available to Government in accordance with Section 3 (Delivery) thereof.

(b) *Assignment.* The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act ([31 U.S.C. 3727](#)). However, when a third party makes payment (e.g., use of the Governmentwide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.

(c) *Changes.* Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) *Disputes.* This contract is subject to [41 U.S.C. chapter 71](#), Contract Disputes. Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at Federal Acquisition Regulation (FAR) [52.233-1](#), Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) *Definitions.* The clause at FAR [52.202-1](#), Definitions, is incorporated herein by reference. The FAR definitions will be used to interpret the FAR and agency supplement clauses incorporated into the prime contract. Definitions in the Master Platform and Content Agreement or the Enterprise License Agreement (as applicable) apply to terms used in that document and Exhibits thereto.

(f) *Excusable delays.* The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or

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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 the 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.

(g) Invoice.

(1) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include-

- (i) Name and address of the Contractor;
- (ii) Invoice date and number;
- (iii) Contract number, line item number and, if applicable, the order number;
- (iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;
- (v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;
- (vi) Terms of any discount for prompt payment offered;
- (vii) Name and address of official to whom payment is to be sent;
- (viii) Name, title, and phone number of person to notify in event of defective invoice; and
- (ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.
- (x) Electronic funds transfer (EFT) banking information.
 - (A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.
 - (B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (e.g., [52.232-33](#), Payment by Electronic Funds Transfer-System for Award Management, or [52.232-34](#), Payment by Electronic Funds Transfer-Other Than System for Award Management), or applicable agency procedures.

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(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(2) The due date for making invoice payments by the designated payment office is the later of the following two events:

- (i) The 10th day after the designated billing office receives a proper invoice from the Contractor. If the designated billing office fails to annotate the invoice with the date of receipt at the time of receipt, the invoice payment due date shall be the 10th day after the date of the Contractor's invoice; provided the Contractor submitted a proper invoice and no disagreement exists over quantity, quality, or Contractor compliance with contract requirements.
- (ii) The 10th day after Government acceptance of supplies delivered or services performed by the Contractor.

(h) *Patent indemnity.* The Contractor shall indemnify the Ordering activity and its officers, employees and agents in accordance with Section 9 (Indemnity) of the *Master Platform and Content Agreement* or Section 9 (Indemnity) of the *Enterprise License Agreement*, as applicable.

(i) *Payment.-*

(1) *Items accepted.* Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

(2) *Prompt payment.* The Government will make payment in accordance with the Prompt Payment Act ([31 U.S.C.3903](#)) and prompt payment regulations at 5 CFR Part 1315.

(3) *Electronic Funds Transfer (EFT).* If the Government makes payment by EFT, see [52.212-5\(b\)](#) for the appropriate EFT clause.

(4) *Discount.* In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(5) *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall-

(i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the-

(A) Circumstances of the overpayment (*e.g.*, duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(B) Affected contract number and delivery order number, if applicable;

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(C) Affected line item or subline item, if applicable; and

(D) Contractor point of contact.

(ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(6) *Interest.*

(i) All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in [41 U.S.C. 7109](#), which is applicable to the period in which the amount becomes due, as provided in (i)(6)(v) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(ii) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(iii) *Final decisions.* The Contracting Officer will issue a final decision as required by [33.211](#) if—

(A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt within 30 days;

(B) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(C) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see [32.607-2](#)).

(iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(v) Amounts shall be due at the earliest of the following dates:

(A) The date fixed under this contract.

(B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(vi) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—

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(A) The date on which the designated office receives payment from the Contractor;

(B) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(vii) The interest charge made under this clause may be reduced under the procedures prescribed in FAR [32.608-2](#) in effect on the date of this contract.

(j) *Risk of loss.* Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Ordering activity upon: delivery of the deliverables in accordance with Section 2 (Delivery of Content) of the Master Platform and Content Agreement or Section 3 (Delivery) of the Enterprise License Agreement, as applicable.

(k) *Taxes.* The contract price includes all applicable Federal, State, and local taxes and duties.

(l) *Termination for the Government's convenience.* The Ordering activity reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. This paragraph does not give the Ordering activity any right to audit the Contractor's records. Further, Section 7 (Term and Termination) of the Master Platform and Content Agreement or Section 7 (Term and Termination) of the Enterprise License Agreement, as applicable, governs the termination of this contract.

(m) *Termination for cause.* The Ordering activity may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Ordering activity, upon request, with adequate assurances of future performance. If it is determined that the Ordering activity improperly terminated this contract for default, such termination shall be deemed a termination for convenience. Either Party may provide notice to the other Party if a Party believes that the other Party has committed any material breach of the contract, including, without limitation, the Master Platform and Content Agreement or the Enterprise License Agreement, as applicable (including without limitation, failure by the Ordering activity to pay Contractor any Fees due thereunder). The party receiving notice of such material breach will have thirty (30) days to cure such breach after receiving written notice of the breach from the other Party (the "Cure Period"). Any disputed breach under this Section shall be subject to the Contract Disputes Act. If the breach is not disputed, the non-breaching party may terminate this Agreement for cause. In the event of any such termination for cause by Contractor resulting from an undisputed breach by

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the Ordering activity, the Ordering activity shall return or destroy the deliverables ordered pursuant to the applicable agreement.

(n) *Title.* This contract is for commercial item deliverables. Rights to use the deliverables and the license rights and restrictions in the deliverables are set forth in Section 3 (License) of the Master Platform and Content Agreement and Sections 1 and 2 (License and Support; and Restrictions) of the Enterprise License Agreement, as applicable.

(o) *Warranty.* Contractor's warranties and disclaimer of warranties are as set forth in Section 8.1 (By Planet Labs) and Section 8.3 (Disclaimer of Warranties) of the Master Platform and Content Agreement and Section 8.1 (Warranty) and Section 8.2 (Disclaimer of Warranties) of the Enterprise License Agreement, as applicable.

(p) *Limitation of liability.* Limitation of Liability is governed by Contractor's commercial terms as set forth in Section 9 (Limitation of Liability) of the Master Platform and Content Agreement and Section 8.3 (Limitation of Liability) of the Enterprise License Agreement, as applicable.

(q) *Other compliances.* The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

(r) *Compliance with laws unique to Government contracts.* The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. chapter 37, Contract Work Hours and Safety Standards; 41 U.S.C. chapter 87, Kickbacks; 49 U.S.C. 40118, Fly American; and 41 U.S.C. chapter 21 relating to procurement integrity.

(s) *Order of precedence.* Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

- (1) The schedule of supplies/services.
- (2) The Assignments, Disputes, Payments, Invoice, Other Compliances, Compliance with Laws Unique to Government Contracts, Unauthorized Obligations, and Commercial Supplier Agreements - Unenforceable Clauses paragraphs of this clause.
- (3) The clause at 52.212-5.
- (4) Addenda to this solicitation or contract, including any commercial supplier agreements as amended by the Commercial Supplier Agreements -Unenforceable Clauses provision.
- (5) Solicitation provisions if this is a solicitation.
- (6) Other paragraphs of this clause.
- (7) The Standard Form 1449. (8)
- (8) Other documents, exhibits, and attachments.

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(9) The specification.

(t) *Reserved.*

(u) *Unauthorized Obligations.*

(1) Except as stated in paragraph (u)(2) of this clause, when any supply or service acquired under this contract is subject to any commercial supplier agreement (as defined in [502.101](#)) that includes any language, provision, or clause requiring the Government to pay any future fees, penalties, interest, legal costs or to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation ([31 U.S.C. 1341](#)), the following shall govern:

(i) Any such language, provision, or clause is unenforceable against the Government.

(ii) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the commercial supplier agreement. If the commercial supplier agreement is invoked through an “I agree” click box or other comparable mechanism (e.g., “click-wrap” or “browse-wrap” agreements), execution does not bind the Government or any Government authorized end user to such clause.

(iii) Any such language, provision, or clause is deemed to be stricken from the commercial supplier agreement.

(2) Paragraph (u)(1) of this clause does not apply to indemnification or any other payment by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

(v) *Incorporation by reference.* The Contractor’s representations and certifications, including those completed electronically via the System for Award Management (SAM), are incorporated by reference into the contract.

(w) *Commercial supplier agreements unenforceable clauses.* When any supply or service acquired under this contract is subject to a commercial supplier agreement (as defined in [502.101](#)), the following language shall be deemed incorporated into the commercial supplier agreement. As used herein, “this agreement” means the commercial supplier agreement:

(1) Notwithstanding any other provision of this agreement, when the end user is an agency or instrumentality of the U.S. Government, the following shall apply:

(i) *Applicability.* This agreement is a part of a contract between the commercial supplier and the U.S. Government for the acquisition of the supply or service that necessitates a license or other similar legal instrument (including all contracts, task orders, and delivery orders under FAR 12).

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(ii) *End user.* This agreement shall bind the ordering activity as end user but shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

(iii) *Law and disputes.* This agreement is governed by Federal law.

(A) Any language purporting to subject the U.S. Government to the laws of a U.S. state, U.S. territory, district, or municipality, or a foreign nation, except where Federal law expressly provides for the application of such laws, is hereby deleted.

(B) Any language requiring dispute resolution in a specific forum or venue that is different from that prescribed by applicable Federal law is hereby deleted.

(C) Any language prescribing a different time period for bringing an action than that prescribed by applicable Federal law in relation to a dispute is hereby deleted.

(iv) *Continued performance.* The supplier or licensor shall not unilaterally revoke, terminate or suspend any rights granted to the Government except as allowed by this contract. If the supplier or licensor believes the ordering activity to be in breach of the agreement, it shall pursue its rights under the Contract Disputes Act or other applicable Federal statute while continuing performance as set forth in subparagraph (d) (Disputes).

(v) *Arbitration; equitable or injunctive relief.* In the event of a claim or dispute arising under or relating to this agreement, a binding arbitration shall not be used unless specifically authorized by agency guidance, and equitable or injunctive relief, including the award of attorney fees, costs or interest, may be awarded against the U.S. Government only when explicitly provided by statute (e.g., Prompt Payment Act or Equal Access to Justice Act).

(vi) *Updating terms.*

(A) After award, the contractor may unilaterally revise commercial supplier agreement terms: if they are not material. A material change is defined as:

(1) Terms that change Government rights or obligations;

(2) Terms that increase Government prices;

(3) Terms that decrease overall level of service; or

(4) Terms that limit any other Government right addressed elsewhere in this contract.

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(B) For revisions that will materially change the terms of the contract, the revised commercial supplier agreement must be incorporated into the contract using a bilateral modification.

(C) Any agreement license terms or conditions unilaterally revised subsequent to award that are inconsistent with any material term or provision of this contract shall not be enforceable against the Government, and the Government shall not be deemed to have consented to them.

(vii) *No automatic renewals.* If any license or service tied to periodic payment is provided under this agreement (e.g., annual software maintenance or annual lease term), such license or service shall not renew automatically upon expiration of its current term without prior express consent by an authorized Government representative.

(viii) *Indemnification.* Any clause of this agreement requiring the commercial supplier or licensor to defend or indemnify the end user is hereby amended to provide that the U.S. Department of Justice has the sole right to represent the United States in any such action, in accordance with [28 U.S.C. 516](#).

(ix) *Audits.* Any clause of this agreement permitting the commercial supplier or licensor to audit the end user's compliance with this agreement is hereby amended as follows:

(A) Discrepancies found in an audit may result in a charge by the commercial supplier or licensor to the ordering activity. Any resulting invoice must comply with the proper invoicing requirements specified in the underlying Government contract or order.

(B) This charge, if disputed by the ordering activity, will be resolved in accordance with subparagraph (d) (Disputes) through the Disputes clause at [552.212-4\(d\)](#); no payment obligation shall arise on the part of the ordering activity until the conclusion of the dispute process.

(C) Any audit requested by the contractor will be performed at the contractor's expense, without reimbursement by the Government.

(x) *Taxes or surcharges.* Any taxes or surcharges which the commercial supplier or licensor seeks to pass along to the Government as end user will be governed by the terms of the underlying Government contract or order and, in any event, must be submitted to the Contracting Officer for a determination of applicability prior to invoicing unless specifically agreed to otherwise in the Government contract.

(xi) *Non-assignment.* This agreement may not be assigned, nor may any rights or obligations thereunder be delegated, without the Government's prior approval, except as expressly permitted under subparagraph (b) of this clause.

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(xii) *Confidential information.* If this agreement includes a confidentiality clause, such clause is hereby amended to state that neither the agreement nor the contract price list, as applicable, shall be deemed “confidential information.” Issues regarding release of “unit pricing” will be resolved consistent with the Freedom of Information Act. Notwithstanding anything in this agreement to the contrary, the Government may retain any confidential information as required by law, regulation or its internal document retention procedures for legal, regulatory or compliance purposes; provided, however, that all such retained confidential information will continue to be subject to the confidentiality obligations of this agreement.

(2) If any language, provision, or clause of this agreement conflicts or is inconsistent with the preceding paragraph (w)(1), the language, provisions, or clause of paragraph (w)(1) shall prevail to the extent of such inconsistency.

(End of clause)