

<b>SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS</b> <i>OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, AND 30</i>				1. REQUISITION NUMBER		PAGE 1 OF 35					
2. CONTRACT NO. W91QUZ-09-A-0003		3. AWARD/EFFECTIVE DATE 26-Mar-2009		4. ORDER NUMBER		5. SOLICITATION NUMBER		6. SOLICITATION ISSUE DATE			
7. FOR SOLICITATION INFORMATION CALL:		a. NAME				b. TELEPHONE NUMBER (No Collect Calls)		8. OFFER DUE DATE/LOCAL TIME			
9. ISSUED BY NCRCC - ITEC4 2461 EISENHOWER AVENUE ALEXANDRIA VA 22331-1700  TEL: FAX:		CODE W91QUZ		10. THIS ACQUISITION IS <input checked="" type="checkbox"/> UNRESTRICTED <input type="checkbox"/> SET ASIDE: % FOR <input type="checkbox"/> SB <input type="checkbox"/> HUBZONE SB <input type="checkbox"/> 8(A) <input type="checkbox"/> SVC-DISABLED VET-OWNED SB <input type="checkbox"/> EMERGING SB SIZE STD: NAICS:			11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED <input type="checkbox"/> SEE SCHEDULE  <input type="checkbox"/> 13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700) 13b. RATING 14. METHOD OF SOLICITATION <input type="checkbox"/> RFQ <input type="checkbox"/> IFB <input type="checkbox"/> RFP		12. DISCOUNT TERMS		
15. DELIVER TO  <b>SEE SCHEDULE</b>		CODE		16. ADMINISTERED BY  <b>SEE ITEM 9</b>						CODE	
17a. CONTRACTOR/OFFEROR CARAHSOFT TECHNOLOGY CORPORATION CRAIG ABOD 12369 SUNRISE VALLEY DR, STE. D2 RESTON VA 20191-5430  TEL. 703-871-8500		CODE 1P3C5		18a. PAYMENT WILL BE MADE BY DFAS-COLUMBUS CENTER SOUTH ENTITLEMENT OPERATIONS P.O. BOX 182264 COLUMBUS OH 43218-2264		CODE HQ0338					
<input type="checkbox"/> 17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER		<input type="checkbox"/> 18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a. UNLESS BLOCK BELOW IS CHECKED <input type="checkbox"/> SEE ADDENDUM									
19. ITEM NO.		20. SCHEDULE OF SUPPLIES/ SERVICES				21. QUANTITY		22. UNIT	23. UNIT PRICE	24. AMOUNT	
		<b>SEE SCHEDULE</b>									
25. ACCOUNTING AND APPROPRIATION DATA							26. TOTAL AWARD AMOUNT (For Govt. Use Only)				
							<b>\$0.00</b>				
<input type="checkbox"/> 27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1. 52.212-4. FAR 52.212-3. 52.212-5 ARE ATTACHED. ADDENDA <input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED											
<input type="checkbox"/> 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4. FAR 52.212-5 IS ATTACHED. ADDENDA <input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED											
28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN COPIES <input type="checkbox"/> TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED HEREIN.					29. AWARD OF CONTRACT: REFERENCE <input type="checkbox"/> OFFER DATED . YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS:						
30a. SIGNATURE OF OFFEROR/CONTRACTOR					31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER)			31c. DATE SIGNED			
					<i>Donna S. Harris</i>			26-Mar-2009			
30b. NAME AND TITLE OF SIGNER (TYPE OR PRINT)			30c. DATE SIGNED		31b. NAME OF CONTRACTING OFFICER (TYPE OR PRINT) DONNA S. HARRIS / CONTRACTING OFFICER TEL: 703-325-4625 EMAIL: Donna.Harris@itec4.army.mil						

**SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS  
(CONTINUED)**

19. ITEM NO.	20. SCHEDULE OF SUPPLIES/ SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
<p><b>SEE SCHEDULE</b></p>					

32a. QUANTITY IN COLUMN 21 HAS BEEN  
 RECEIVED  INSPECTED  ACCEPTED, AND CONFORMS TO THE CONTRACT, EXCEPT AS NOTED: \_\_\_\_\_

32b. SIGNATURE OF AUTHORIZED GOVERNMENT REPRESENTATIVE	32c. DATE	32d. PRINTED NAME AND TITLE OF AUTHORIZED GOVERNMENT REPRESENTATIVE
--------------------------------------------------------	-----------	---------------------------------------------------------------------

32e. MAILING ADDRESS OF AUTHORIZED GOVERNMENT REPRESENTATIVE	32f. TELEPHONE NUMBER OF AUTHORIZED GOVERNMENT REPRESENTATIVE
	32g. E-MAIL OF AUTHORIZED GOVERNMENT REPRESENTATIVE

33. SHIP NUMBER	34. VOUCHER NUMBER	35. AMOUNT VERIFIED CORRECT FOR	36. PAYMENT <input type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL	37. CHECK NUMBER
<input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL				

38. S/R ACCOUNT NUMBER	39. S/R VOUCHER NUMBER	40. PAID BY
------------------------	------------------------	-------------

41a. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT	42a. RECEIVED BY ( <i>Print</i> )		
41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER	41c. DATE	42b. RECEIVED AT ( <i>Location</i> )	
		42c. DATE REC'D ( <i>YY/MM/DD</i> )	42d. TOTAL CONTAINERS

Section SF 1449 - CONTINUATION SHEET

BPA TERMS AND CONDITIONS

## **Blanket Purchase Agreement DoD Enterprise Software Agreement (ESA)**

In the spirit of the Federal Acquisition Streamlining Act, the Department of Defense (DoD) and **Carahsoft Technology Corp.** enter into an agreement to further reduce the administrative costs of acquiring commercial items from the General Service Administration (GSA) Federal Supply Schedule (FSS) Contract **GS-35F-0131R**.

FSS Contract Blanket Purchase Agreements (BPAs) reduce contracting and open market costs such as: search for sources, the development of technical documents, solicitations, and the evaluation of bids and offers.

This BPA will further decrease costs, reduce paperwork, and save time by eliminating the need for repetitive, individual purchases from the schedule contract. The end result is to create a purchasing mechanism for the Government that works better and costs less.

The Enterprise Software Initiative (ESI) is a joint DoD project to develop and implement a DoD enterprise process. This BPA is issued in the spirit of the policy and guidelines provided in the Defense Federal Acquisition Regulation Supplement (DFARS) Section 208.74.

Attachments to this agreement are:

- Attachment A – Product and Price List
- Attachment B – License Agreement
- Attachment C – Report of Sales Format
- Attachment D – Fees and Payments
- Attachment E – Reserved
- Attachment F – Ordering Points
- Attachment G - Transmittal Letters

### **A. TERMS AND CONDITIONS**

1. Pursuant to GSA FSS Contract Number **GS-35F-0131R**, **Carahsoft Technology Corp.** agrees to the following terms of a BPA with the ACC/ITEC4. All orders placed against this BPA are subject to the terms and conditions of the FSS Contract. The items on this BPA are set forth in Attachment A. License terms and conditions applicable to products acquired under this BPA are defined in the **VMware License Agreement** included as Attachment B. The Order of Precedence for resolving any inconsistency between the Commercial License and the GSA contract terms shall be as specified in the GSA contract's Commercial Item clause, FAR 52.212-4, and the provisions of FAR 52.212-4 specified in FAR 12.302, as required by Federal law, shall prevail over any terms of the commercial license.

2. **Extent of Obligation.** The Government estimates, but does not guarantee, that the volume of purchases through this agreement will be \$100,000,000. The Government is obligated only to the extent of authorized purchases actually made under this BPA.

3. **Funds Obligation.** The BPA does not obligate any funds. Funds will be obligated on each delivery order.

4. **BPA Term.** The BPA expires five (5) years after award. This expiration is contingent upon the Contractor maintaining or renewing a GSA FSS Schedule. The BPA will be reviewed annually to ensure that it still represents a “best value”.

5. **Pricing Terms.** Attachment A provides unit prices as explained below. Prices shall not escalate, and Attachment A is not subject to upward adjustment during the term of the BPA. Spot discounting is encouraged. The prices will be reviewed annually, or as required to determine whether a reduction is appropriate in accordance with the price reduction provisions of the agreement. A 2.0% Acquisition, Contracting, and Technical (ACT) Fee shall be included in the prices. The contractor shall be responsible for the payment of all fees that are included in the product pricing (i.e. GSA, ACT), as calculated on the customer orders, in accordance with Attachment D.

5.1 **Enterprise License Agreements (ELA).** ESI BPA customers shall have the option, when buying in large quantities, to opt for additional benefits, terms, conditions and discounts under an ELA Schedule. Pricing under an ELA shall be considered as spot discounting and shall vary per custom offering.

5.2 **Special Solutions.** Ordering Officers may negotiate special solutions with Carahsoft under CLIN 11-SSCLIN, as set forth in Attachment A (Price Tables), and in accordance with the terms and conditions of the Carahsoft GSA Contract.

5.3 **Voluntary Price Reductions and Special Orders.** Carahsoft can voluntarily reduce prices and labor rates at any time by giving 24-hour advance notice (via FAX or E-mail) to the BPA Contracting Officer and the U.S. Army Small Computer Product Manager. In addition, Carahsoft may negotiate special discounts for specific orders for their respective CLINs. These special discounts shall be negotiated under CLIN 11-SSCLIN, Special Solutions.

6. **Discount Terms and Conditions.**

	With ACT FEE
License Orders under \$50,000	1/2%
License Orders over \$50,000	1%
License Orders over \$300,000	2%
License Orders over \$1,000,000	4%
License Orders over \$5,000,000	5%
License Orders over \$10,000,000	6%
License Orders over \$20,000,000	7%
License Orders over \$50,000,000	8%

Discounts are not cumulative across orders against this BPA and are available on software licenses only. Discounts are off of the GSA Schedule Prices in effect at time of order. Support/Subscription, Hardware, and Professional Services/PSO Prepaid Consulting Credits non-discountable and are offered on this BPA at the standard GSA discount.

7. **Out-Year Prices.** See Attachment A.

## 8. Price Reduction.

**8.1 Price Reduction (Most Favored Customer Prices).** The prices under this BPA shall be at least as low as the prices that Carahsoft offers under any other GSA Contract or BPA vehicle under same terms and conditions. If at any time during the term of this BPA the prices under any other GSA

Contract or BPA ordering vehicle held by Carahsoft become lower than the prices under this BPA, this BPA will be modified to include the lower prices.

**8.2 DoD Enterprise Software Initiative (ESI) Transition.** The Enterprise Software Initiative (ESI) is a joint DoD project to develop and implement a DoD enterprise process. This BPA is issued in the spirit of the policy and guidelines provided in the Defense Federal Acquisition Regulation Supplement (DFARS) Section 208.74.

**8.3 SmartBUY Transition.** OMB has announced the SmartBUY initiative to maximize cost savings and achieve best quality when acquiring software. The GSA is the designated Executive Agent for SmartBUY. The initiative will establish software enterprise licensing on a government-wide basis. If during the term of this ESA, **Carahsoft Technology Corp.** and its resellers enter into a government-wide agreement with the GSA under the SmartBUY Initiative, which includes pricing for the specific products or services under similar terms and conditions as those licensed by the DoD, neither **Carahsoft Technology Corp.** or its resellers will preclude the DoD from licensing products or purchasing services under a SmartBUY agreement.

**9. License Agreement.** Notwithstanding any provision to the contrary, licenses are non-transferable as defined in the VMware Master EULA (Section 2) incorporated as Attachment B. Software licenses purchased under this BPA are perpetual licenses subject to the terms and conditions of the licensing provisions of the Master EULA for the applicable product and are listed under GSA FSS Contract Special Item Number (SIN) 132-33. Additional products may be added in future modifications to the GSA FSS Contract and shall be available for purchase under this BPA upon proof of inclusion to the GSA FSS Contract. ESI BPA customers shall have the option, when buying in large quantities, to opt for additional benefits, terms, conditions and discounts under an ELA Schedule.

In order for VMware to facilitate proper license tracking and provide diligent Support and Subscription services (such as maintenance releases), on a case by case basis, VMware may allow Customers to transfer Licenses within the same agency or branch. Transfers must be requested and approved in writing by VMware. Any attempt to assign or transfer the licenses, without following the process outline above, shall be null and void and of no force and effect. In the event VMware consents to any assignment or transfer, any licenses granted hereunder on an enterprise-wide basis shall be limited to using the quantity and type of licenses deployed as of the date of such assignment.

**9.1 Functionality Replacement and Extended Support.** In the event VMware removes a material function ("Function") in a subsequent version of a Software Product provided to Customer through Support and Subscription Services purchased by Customer for a Software Product licensed by Customer ("Initial Product"), and VMware makes such Function(s) available in a new Software Product ("New Product") with similar features, functionality, and pricing, Customer shall be entitled to receive an equal quantity and type of licenses for the New Product as Customer has in the Initial Product, at no additional charge, as long as Customer is current on Support and Subscription Services at the time VMware removes the Function from the Initial

Product. In the event of this occurrence, customer will discontinue use of the Initial Product, and exchange the Initial Product for the New Product. VMware Support and Subscription terms and conditions shall apply and are available at the following link:

[http://www.vmware.com/files/pdf/support/support\\_terms\\_conditions.pdf](http://www.vmware.com/files/pdf/support/support_terms_conditions.pdf)

Extended Support provided by the manufacturer is detailed at the following link under their Support Life Cycle Policy – please see General Policy or VMware Infrastructure Policy:

[http://www.vmware.com/support/policies/life\\_cycle.html](http://www.vmware.com/support/policies/life_cycle.html)

**9.2 Rights of Survivorship of the Agreement.** This Agreement shall survive unto **Carahsoft Technology Corp.**, its Successor, rights and assigns. The software and agreement terms and conditions as covered under this agreement shall survive this agreement notwithstanding the acquisition or merger of **Carahsoft Technology Corp.** by or with another entity. Any software name changes, re-packing or merger of similar products that carry forward the same or similar function of the software shall be supported with updates, upgrades and new releases under this agreement at no additional cost, as long as the Customer is current on Support and Subscription Services at the time the manufacturer makes such changes.

**9.3 Audits.** Licensee may perform an internal audit and will use its best efforts to keep full and accurate accounts that may be used to properly ascertain and verify numbers of licenses in use. Licensee may permit **Carahsoft Technology Corp.** to have access to Licensee records and computer systems and the right to audit such systems to insure software use is in accordance with its license terms. All vendor personnel must have appropriate security clearances to gain access to Licensee site or data. VMware standard audit policy, along with any additional ELA audit provisions, shall apply and can be found in Attachment B, the EULA under Section 2.7

**10. Media.** This software is not currently available on hard copy media. Software must be downloaded from the VMware license download site. Upon Credit Card or Purchase Order Approval, the end-users will be sent an email confirmation and their **VMware** Customer ID (CID) will be validated for download capability. The end user can then go to the VMware license download site and enter their valid CID for download of the Software products.)

## **11. Support and Subscriptions.**

**11.1. Support.** VMware Support/Subscription is mandatory with all new license purchases at the standard GSA Contract rates and is subject to the terms and conditions of the then current VMware Support and Subscription Services and is offered under GSA FSS Contract SIN 132-34. VMware Support and Subscription terms and conditions are available at the following link: [http://www.vmware.com/files/pdf/support/support\\_terms\\_conditions.pdf](http://www.vmware.com/files/pdf/support/support_terms_conditions.pdf)

### **11.2. Subscriptions.**

*SEE 11.1 ABOVE*

**12. Professional Services.** Professional Services are available for purchase under this BPA as shown on Attachment A priced at the standard GSA Contract rates only and are subject to the terms and conditions of GSA FSS Contract SIN 132-51. ***Offering includes hourly rates, packaged consulting projects, and pre-paid consulting credits.***

VMware Professional Services offerings can be found at <http://www.vmware.com/services/>.

**13. Training.** Education & Training Services are available for purchase under this BPA as shown on Attachment A priced at the standard GSA Contract rates only, are offered under GSA FSS Contract SIN 132-50 and subject to the terms and conditions of specific offerings Datasheet. All enablement services and/or training purchases include travel cost in accordance with the Joint Travel Regulations (JTA) and must comply with the GSA Schedule terms and FAR and DFARS regulations. ***Offering includes on-site classes, open enrollment classes, and pre-paid consulting credits.***

VMware Education/Training offerings can be found at <http://www.vmware.com/services/>.

**14. Technology Improvement.** The Government may solicit and the BPA holder is encouraged to propose independently, technology improvements to the BPA. Proposals shall be submitted by the BPA holder and include a description of the products and/or services, an electronic copy of the pricing tables, technical literature that describes the products and/or services, and evidence of inclusion on GSA schedule. Discounts shall be at the same or greater discount level as the original BPA product prices.

**15. Substitution and Technology Refreshment.** If at any time during the life of this BPA, the original manufacturer of the equipment (includes software, hardware and firmware) schedules the products for discontinuation, improvement and/or replacement, the BPA holder shall provide a proposal to include the new or revised products on the BPA under the appropriate line items. Proposed prices for new or revised products shall be constructed in accordance with paragraph 8 of this BPA for most favored prices. Discounts shall be at the same or greater discount level as the original BPA product prices. Proposals shall be submitted to the Contracting Officer within seven (7) days of the BPA holder's awareness of the OEM's intent. Improvement of product includes new releases, updates, upgrades including additional features and functionality, and successor or upgrade products.

## **B. AUTHORIZED USERS AND POINTS OF CONTACT**

**1. Authorized Users.** The BPA is open for ordering by all Department of Defense (DoD) Components. For the purposes of this agreement, a DoD component is defined as: the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Inspector General of the Department of Defense (DoD IG), the Defense Agencies, the DoD Field Activities, the U. S. Coast Guard, NATO, the Intelligence Community and FMS with a Letter of Authorization. GSA or other applicable ordering organizations/agencies are authorized to place orders under this BPA on behalf of DoD end users and must comply with DFARS 208.7400. This BPA is also open to DoD Contractors authorized to order in accordance with the FAR Part 51.

**2. BPA Points of Contact:**

**a. Contracting Office:**

Point of Contact:

(ACC/ITEC4 Hoffman 1, Room 284 )  
(2461 Eisenhower Ave.,Alex. VA 2233-1700.)

POC: (Valerie M. Mills)  
Phone: (703-325-3348)  
Fax: (703-428-1684)  
Email: (valerie.m.mills@us.army.mil)

Procuring Contracting Officer (PCO):

(ACC/ITEC4 Hoffman 1, Room 284)  
(2461 Eisenhower Ave.,Alex. VA 2233-1700)

PCO: (Donna S. Harris)  
Phone: (703-325-4625)  
Fax: (703-428-1638)  
Email: (donna.s.harris@us.army.mil)

**b. Software Product Manager (SPM):**

Software Product Manager (SPM):

PEO EIS  
Assistant Project Manager, CHESS  
Squire Hall, Building 283  
Fort Monmouth, NJ 07703

SPM: Joe Simpson  
Phone: 732-532-7395  
Fax: 732-532-5185  
Email: [joseph.m.simpson@us.army.mil](mailto:joseph.m.simpson@us.army.mil)

or Alternate Point of Contact:

PEO EIS  
Assistant Project Manager, CHESS  
Squire Hall, Building 283  
Fort Monmouth, NJ 07703

POC: Dee Wardle  
Phone: 732-427-6793  
Fax: 732-532-5185  
Email: [adelia.wardle@us.army.mil](mailto:adelia.wardle@us.army.mil)

**c. Customer Point of Contact:** (To be specified on each order.)

**C. ORDERING**

1. DFARS Section 208.74 directs DoD software buyers and requiring officials to check the DoD ESI website for DoD inventory or an ESA before using another method of acquisition. These steps for the buyer are summarized from the DFARS:

- a. Check the Enterprise Agreement Summary Table to determine if software rights or maintenance have already been purchased and are available from DoD inventory. If they are available, purchase the designated software from DoD inventory and reimburse the SPM.
- b. If the required software rights or maintenance are not available from inventory or from an ESA, you may use an alternate method of acquisition, subject to laws and policy.
- c. If the required software rights or maintenance are not available from inventory but are available from an ESA, you must follow the procedure in the DFARS Section 208.74.
- d. If you must obtain the software or software maintenance outside the DoD ESA, you may seek a waiver from a management official designated by your DoD Component.

This BPA will be posted to the DoD ESI website as part of the ESI program. The web site can be viewed at <http://www.esi.mil>. The Government will also post this contract to <https://ascp.monmouth.army.mil/scp/index.jsp>.

2. **Delivery Orders.** The scope of this effort is worldwide. Delivery requirements and administration will be stipulated on Delivery Orders.

Ordering via this BPA is decentralized. Orders are prepared by an authorized Government Ordering Officer, in accordance with the terms and conditions of this BPA and the GSA Schedule, or prime contractor authorized by a Government Contracting Officer in accordance with FAR Part 51. Orders may be placed by EDI, credit card, facsimile, on an authorized form such as a Standard Form (SF) 1449 or Department of Defense (DD) Form 1155 or by logging on to the (*enter vendor name*) purchasing page at (*enter web site*). (*Add any DoD Component specific requirements*).

**Notice to Ordering Offices:**

Requiring officials and ordering officers are responsible for complying with applicable statutes, regulations and policies. Good business judgment in finding the best value to meet the needs of the United States should be exercised in all acquisitions.

DoD agencies: Follow the procedures in DFARS 208.405-70(b) and (c). Requests for Quotation (RFQs) may be posted to GSA's electronic RFQ system, e-Buy, which allows ordering activities to post requirements and obtain quotes electronically. Ordering activities may access e-Buy at <http://www.ebuy.gsa.gov>. While the use of performance specifications is preferred to encourage offerors to propose innovative solutions, the use of brand name or equal purchase descriptions may be advantageous under certain circumstances. Brand name or equal purchase descriptions must include, in addition to the brand name, a general description of those salient physical, functional, or performance characteristics of the brand name item that an "equal" item must meet to be acceptable for award. In competitive RFQs, include a description of the basis upon which the contracting officer will make the selection.

Government prime contractors: Follow the terms of this BPA, the GSA schedule, and your contract and the direction of its Government contracting officer in accordance with FAR Part 51 for ordering from Federal Supply Schedules.

Professional services: This single BPA may be used for acquiring IT Professional services when defined as individual tasks.

Contractor team arrangements per FAR 9.6 may be utilized under this BPA.

Open Market (non-contract) items may be added to a FSS BPA individual order, provided that the items are clearly labeled as such on the order, all applicable regulations have been followed, and price reasonableness has been determined by the ordering activity for the open market items.

3. **Users' Ordering Guide.** The Contractor shall develop a Users' Ordering Guide in coordination with the Government that will be posted to the Contractor web site and various

Government sites. The Ordering Guide shall be submitted to the SPM and PCO within thirty (30) days of BPA issuance and made available on the Contractor's home page upon written approval. This guide shall be continuously updated as required. The guide shall contain all information necessary for geographically dispersed activities to place orders, including, as a minimum:

- a. URL where a complete list of products available, with appropriate contract line item numbers (CLINs) and associated prices can be found
- b. Government and Contractor Points of Contact
- c. Description of the ordering process
- d. Program Terms and Conditions
- e. License Terms and Conditions
- f. Information such as CAGE, DUNS, TIN, Business Size, etc. necessary to complete a Contract Action Report (CAR) in the FPDS-NG system
- g. Range of discounts
- h. Links to DoD ESI and the Government web sites

4. **E-Commerce Site.** It is the intention of the Government to use existing and future capability of the DoD Standard Procurement System, Electronic Data Interchange (EDI) capability, Government procurement card, and vendor electronic ordering capability to create a paper-less ordering, invoicing and payment process. During the term of the BPA, the Contractor shall participate to achieve this objective.

- a. The Contractor shall maintain a database of prices with the required and relevant information and links to technical specifications to be accessible by ITEC Direct in a distributed database environment.
- b. The Contractor shall provide EC/EDI capabilities and accept and respond to secure on-line orders and customer requests consistent with the terms of this acquisition vehicle.
- c. The Contractor shall use its commercially reasonable business efforts to adapt its business processes as the ITEC Direct technical requirements, environment and architecture evolve.

This BPA may also be loaded into the electronic catalog systems of other DoD agencies.

5. **Delivery Schedule.** The Contractor shall make available the current version of software via electronic download within **thirty (30) business days** of receipt of order.

6. **Delivery Notice.** Unless otherwise agreed to, all deliveries ordered under this BPA must be accompanied by a delivery notice, ticket or sales slips that must contain at a minimum the following information:

- a. Name of Contractor
- b. GSA Contract Number
- c. BPA Number
- d. Product Description/Model numbers
- e. Delivery order number
- f. Date of purchase

- g. Quantity, unit price and extension of each item (unit prices need not be shown when incompatible with the use of automated systems; provided that the invoice is itemized to show the information)
- h. Date of shipment

#### **D. INVOICING AND PAYMENT**

1. **Invoicing.** The requirements of a proper invoice are as specified below as required by FAR 52.212-4 in the Federal Supply Schedule contract. Full text of this clause can be found on the web at URL: <http://farsite.hill.af.mil/>. The contractor shall submit an original invoice and three copies (or electronic invoice, if authorized), to the address specified on the delivery orders issued against the BPA. An invoice must include --

- a. Name and address of the Contractor;
- b. Invoice date and number;
- c. Contract number, contract line item number and, if applicable, the order number;
- d. Description, quantity, unit of measure, unit price and extended price of the items delivered;
- e. Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;
- f. Terms of any prompt payment discount offered;
- g. Name and address of official to whom payment is to be sent;
- h. Name, title, and phone number of the person to be notified in event of defective invoice;
- i. Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract; and
- j. Electronic funds transfer (EFT) banking information.

Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) Circular A-125. Prompt Payment Contractors are encouraged to assign an identification number to each invoice. Subscriptions will be invoiced per 13.302-5b and 52.213-2.

2. **Fast Payment Procedure.** The provisions of FAR 52.213-1 FAST PAYMENT PROCEDURE (MAY 2006) are incorporated in this BPA by reference and pertain to Credit Card purchases or other applicable order deliveries. Fast Payment procedures may be used when the conditions of FAR 13.402 are met and the delivery order authorizes Fast Payment. Full text of this clause can be found on the web at URL: <http://farsite.hill.af.mil/>.

3. **Precedence.** The terms and conditions included in this BPA apply to all purchases made pursuant to it. In the event of an inconsistency between the provisions of the BPA and the Contractor's invoice, the provisions of the BPA will take precedence.

#### **E. BPA MANAGEMENT AND OVERSIGHT**

1. The Contractor must provide centralized administration, in the form of a Program Manager, in support of all work performed under this BPA. The Program Manager, at a minimum, is

required to participate in periodic program management reviews (which may require travel to a Government named site). Additional functions would include customer service, periodic program management reviews, invoicing, payment and submission of monthly and quarterly reports.

As part of this response Carahsoft Technology Corp. is offering a special services to support the management of this Blanket Purchase Agreement (BPA) for VMware Software and Services. Carahsoft Technology Corp. holds multiple ESI BPAs for our vendor partners and intends to provide superior program management on this contract. Carahsoft Technology Corp. is providing services to support the management of this BPA for VMware Software. These services described below are included at no cost to the Government.

### **Dedicated Program Management**

In support of the BPA, Carahsoft Technology Corp. will provide a VMware focused Program Manager that will be dedicated to supporting your VMware requirements and this BPA. This Program Manager will be responsible for all aspects of BPA management and is fully trained in all the sales and configuration of VMware Software, Subscriptions, and Services. All sales, order management, and contracting functions will be overseen by this individual. Their role is to help you maximize your utility of your investments in VMware technology.

### **Quarterly Webcasts**

At no additional cost to the government, Carahsoft shall provide a quarterly VMware solutions-focused webcast to the DoD ESI Community. These webcasts shall include information regarding new product releases, product patch/upgrade information or short training webcasts should the need arise.

### **Dedicated BPA Line**

In further support of this BPA, in addition to the direct access you will have to VMware service representatives for maintenance and contract support, Carahsoft will provide a dedicated a phone line to be used exclusively for activities supporting this BPA. Both toll and toll-free lines will be made available. The number will be included on all quotations, emails, website(s), and other documentation regarding this BPA. Additionally, this phone line will be answered by a "pool" of individuals. Consequently, during regular business hours, this line will always be answered by a live person and customers will not be routed to voicemails. The use of this line helps to enable immediate customer service/ action to take place.

### **Dedicated BPA Website**

Carahsoft will develop and maintain a website, [www.carahsoft.com/VMwareBPA-DOD](http://www.carahsoft.com/VMwareBPA-DOD) that will be dedicated to this BPA. This website shall include materials such as:

- BPA Information
- BPA FAQ Document
- VMware Product Information
- VMware BPA Pricelist Information
- Additional Contractual Information

2. **Report of Sales.** Consistent with Clause C.22 of the GSA Schedule, a Report of Sales as described herein shall accompany the remittance of the ACT Fees to enable verification of the fee amounts rendered. Submission of the Report of Sales shall be submitted to the SPM and the PCO in electronic format within fifteen (15) days following the completion of the monthly reporting period, or as otherwise requested by the SPM. The report shall be submitted in the standard format shown in Attachment C. Negative reports are required. The SPM or PCO shall provide written approval of each report. At the end of each calendar quarter, the written approval provided to the contractor will be accompanied by a request to remit ACT fees. The SPM or PCO will provide copies of the Report of Sales on a quarterly basis to the DoD Components participating in fee sharing.

3. **United Nations Standard Products and Services Code.** The United Nations Standard Products and Services Code (UNSPSC) is a required field of the Report of Sales found in Attachment C. The UNSPSC code permits software asset management through a standard coding structure. The UNSPSC is a coding system used to classify both products and services for use throughout the global marketplace. The management and development of the UNSPSC Code is coordinated by GS1 US. The current version is available free as a download at <http://www.unspsc.org>.

4. **Records.** The Contractor shall maintain archival copies of all orders for the life of the BPA. Copies shall be made available to the Government upon request.

5. **Program Management Reviews (PMR).**

The Contractor shall participate in regular reviews of the progress of the BPA. Reviews shall be held at least twice yearly as scheduled by the Software Product Manager. During these reviews the Contractor shall report on among other things, status of BPA sales, marketing and any outstanding issues concerning the BPA. PMR agenda and presentation format shall be provided prior to each PMR. **These PMRs can take place via an online meeting between all parties using the Carahsoft Adobe Connect session or via Defense Connect Online (DCO).**

6. **Sales Leakage.** The goals of the ESI Program can only be realized through cooperation between the Government and the Contractor to direct appropriate sales through the ESI vehicles. The Contractor shall ensure that all sales personnel are aware of the ESI Program and enforce the policy that this BPA is the preferred procurement vehicle for the products within. The Contractor shall also establish a process to regularly audit sales to Government buyers, determine where sales outside the ESI vehicle are occurring, and take appropriate action to direct further sales through the ESI vehicle. Results of these audits will be presented as an agenda item during PMRs.

7. **Marketing.** The Contractor shall dedicate reasonable resources to this effort and work to market and advertise this agreement. Desired actions include: advertising resultant vehicles on the contractor's Internet site and advertising the agreement at relevant trade shows, participation in DoD Component sponsored events and news media geared to Government/DoD IT people.

8. **Enterprise Integration Toolkit.** The Enterprise Integration Toolkit is a program developed by the Assistant Deputy Under Secretary of Defense (L&MR) Logistics Systems Management (LSM) to assist DoD Program Managers, Contracting Officers and members of the Integrated

Project Team (IPT) in the acquisition and implementation of Commercial Off The Shelf (COTS) Business Systems software.

The Toolkit provides guidance, processes and tools to define program needs and determine how to best meet these needs through an external acquisition via a three-tiered Roadmap to guide the entire life-cycle from problem definition to solution roll-out. It provides a collection of best practice tools adopted from the commercial industry, and includes more than 100 best practice templates, guides, checklists, and samples.

Because the Toolkit is not vendor specific and may be applied across a variety of COTS software package implementations, including this BPA, the Contractor, shall be familiar with the Toolkit and include as part of the Marketing effort required above, a description of the Toolkit for their customers, and a link to the Enterprise Toolkit web site at: <https://acc.dau.mil/CommunityBrowser.aspx?id=153210&lang=en-US>.

## **F. Standards.**

1. **YEAR 2000 Compliance.** All products provided under this BPA shall be Y2K compliant as defined in FAR 39.002.

2. **DISR Compliance.** All products offered shall comply with appropriate standards enumerated in the DoD IT Standards Repository (DISR). The DISR is maintained by the DoD Executive Agent for IT Standards, and the mandated compendium can be obtained from Mr. Dave Brown 703-681-2645; [dave.brown@disa.mil](mailto:dave.brown@disa.mil). The DoD IT standards management tool, DISRonline is available for use by CAC-equipped authorized parties and can be accessed for account requests at <https://disronline.disa.mil>.

3. **Common Security Configurations.** The provider of information technology shall certify applications are fully functional and operate correctly as intended on systems using the Federal Desktop Core Configuration (FDCC). This includes Internet Explorer 7 configured to operate on Windows XP and Vista (in Protected Mode on Vista). For the Windows XP settings, see: [http://csrc.nist.gov/itsec/guidance\\_WinXP.html](http://csrc.nist.gov/itsec/guidance_WinXP.html), and for the Windows Vista settings, see: [http://csrc.nist.gov/itsec/guidance\\_vista.html](http://csrc.nist.gov/itsec/guidance_vista.html). The standard installation, operation, maintenance, updates, and/or patching of software shall not alter the configuration settings from the approved FDCC configuration. The information technology should also use an installer service for installation to the default "program files" directory and should be able to silently install and uninstall. Applications designed for normal end users shall run in the standard user context without elevated system administration privileges.

4. **Net-Centricity.** The Department of Defense is transforming the way information is managed to accelerate decision-making, improve joint warfighting and create intelligence advantages. To reach this "Net-Centric" state, DoD must exploit advancing technologies that move the enterprise from an application centric to a data-centric paradigm. DoD ESI vendor partners are encouraged to use the OSD NII DCIO Net-Centric Checklist, located at [http://www.defenselink.mil/cio-nii/docs/NetCentric\\_Checklist\\_v2-1-3\\_.pdf](http://www.defenselink.mil/cio-nii/docs/NetCentric_Checklist_v2-1-3_.pdf), to provide information on the Net-Centric posture of their IT products and services.

5. **Section 508 of the Rehabilitation Act Compliance.** All products provided under this BPA must meet the applicable accessibility standards at 36 CFR Part 1194 as required by FAR Case 1999-607. General information regarding the Section 508 Act can be found at the web site

[www.section508.gov](http://www.section508.gov). The Contractor's Section 508 compliancy information can be found at [www.vmware.com/help/accessibility.html](http://www.vmware.com/help/accessibility.html).

**6. Additional Clauses.** Orders issued against this BPA are subject to the clauses included in the underlying GSA Schedule and the additional DFARS clauses listed below that are incorporated by reference in this BPA. Ordering Offices should consider the requirements of DFARS and the FAR supplement of the end user component, as it applies to commercial item acquisition and use of GSA schedules, in determining what additional clauses may be required for incorporation in the delivery order issued by the Ordering Office.

The following FAR/DFARS clauses and provisions are hereby incorporated by reference with the same force and effect as if it was given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at these addresses:

<http://www.acq.osd.mil/dpap/dars/dfars/index.htm>

<http://acquisition.gov/comp/far/index.html>

<http://farsite.hill.af.mil/>

- 252.204-7000 Disclosure of Information (DEC 1991)
- 252.204-7004 Alternate A (Nov 2003) - substitute paragraph (a) of this clause for paragraph (a) of the clause at FAR 52.204-7 -Central Contractor Registration (OCT 2003)
- 252.209-7004 Subcontracting with Firms That Are Owned or Controlled by the Government of a Terrorist Country (DEC 2006)
- 252.232-7009 Mandatory Payment by Governmentwide Commercial Purchase Card (DEC 2006)
- 252.232-7010 Levies on Contract Payments (DEC 2006)
- 252.246-7000 Material Inspection and Receiving Report (MAR 2003)
- 252.212-7001 Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items (APR 2007)

(a) The Contractor agrees to comply with the following Federal Acquisition Regulation (FAR) clause, which, if checked, is included in this contract by reference to implement a provision of law applicable to acquisitions of commercial items or components.

52.203-3 Gratuities (APR 1984) (10 U.S.C. 2207)

(b) The Contractor agrees to comply with any clause that is checked on the following list of Defense FAR Supplement clauses, which, if checked, is included in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items or components.

- 252.205-7000 Provision of Information to Cooperative Agreement Holders (DEC 1991) (10 U.S.C. 2416).
- 252.219-7003 Small Business Subcontracting Plan (DoD Contracts) (APR 2007) (15 U.S.C. 637).
- 252.219-7004 Small Business Subcontracting Plan (Test Program) (APR 2007) (15 U.S.C. 637 note).
- 252.225-7001 Buy American Act and Balance of Payments Program (JUN 2005) (41 U.S.C. 10a-10d, E.O. 10582).
- 252.225-7012 Preference for Certain Domestic Commodities (JAN 2007) (10 U.S.C. 2533a).
- 252.225-7014 Preference for Domestic Specialty Metals (JUN 2005) (10 U.S.C. 2533a).
- 252.225-7015 Restriction on Acquisition of Hand or Measuring Tools (JUN 2005) (10 U.S.C. 2533a).
- 252.225-7016 Restriction on Acquisition of Ball and Roller Bearings (MAR 2006) (Section 8065 of Pub. L. 107-117 and the same restriction in subsequent DoD appropriations acts).
- 252.225-7021 Trade Agreements (MAR 2007) (19 U.S.C. 2501-2518 and 19 U.S.C. 3301 note).
- 252.225-7027 Restriction on Contingent Fees for Foreign Military Sales (APR 2003) (22 U.S.C. 2779).
- 252.225-7028 Exclusionary Policies and Practices of Foreign Governments (APR 2003) (22 U.S.C. 2755).
- 252.225-7036 Buy American Act--Free Trade Agreements--Balance of Payments Program (MAR 2007) (\_\_\_ Alternate I) (OCT 2006) (41 U.S.C. 10a-10d and 19 U.S.C. 3301 note).
- 252.225-7038 Restriction on Acquisition of Air Circuit Breakers (JUN 2005) (10 U.S.C. 2534(a)(3)).
- 252.226-7001 Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns (SEP 2004) (Section 8021 of Public Law 107-248 and similar sections in subsequent DoD appropriations acts).
- 252.227-7015 Technical Data--Commercial Items (NOV 1995) (10 U.S.C. 2320).
- 252.227-7037 Validation of Restrictive Markings on Technical Data (SEP 1999) (10 U.S.C. 2321).
- 252.232-7003 Electronic Submission of Payment Requests (MAR 2007) (10 U.S.C. 2227).
- 252.237-7019 Training for Contractor Personnel Interacting with Detainees (SEP 2006) (Section 1092 of Pub. L. 108-375).

- 252.243-7002 Requests for Equitable Adjustment (MAR 1998) (10 U.S.C. 2410).
- 252.247-7023 Transportation of Supplies by Sea (MAY 2002) ( Alternate I) (MAR 2000) ( Alternate II) (MAR 2000) ( Alternate III) (MAY 2002) (10 U.S.C. 2631).
- 252.247-7024 Notification of Transportation of Supplies by Sea (MAR 2000) (10 U.S.C. 2631).

(c) In addition to the clauses listed in paragraph (e) of the Contract Terms and Conditions Required to Implement Statutes or Executive Orders--Commercial Items clause of this contract (FAR 52.212-5), the Contractor shall include the terms of the following clauses, if applicable, in subcontracts for commercial items or commercial components, awarded at any tier under this contract:

- 252.225-7014 Preference for Domestic Specialty Metals, Alternate I (APR 2003) (10 U.S.C. 2533a).
- 252.237-7019 Training for Contractor Personnel Interacting with Detainees (SEP 2006) (Section 1092 of Pub. L. 108-375).
- 252.247-7023 Transportation of Supplies by Sea (MAY 2002) (10 U.S.C. 2631).
- 252.247-7024 Notification of Transportation of Supplies by Sea (MAR 2000) (10 U.S.C. 2631).

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0001	SEE ATTACHMENT A FFP FOB: Destination				\$0.00
<hr/>					
NET AMT					\$0.00

**INSPECTION AND ACCEPTANCE TERMS**

Supplies/services will be inspected/accepted at:

CLIN	INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
0001	N/A	N/A	N/A	Government

**DELIVERY INFORMATION**

CLIN	DELIVERY DATE	QUANTITY	SHIP TO ADDRESS	UIC
0001	N/A	N/A	N/A	N/A

**ATTACHMENT A**  
**ATTACHMENT A**

Product and Pricing List can be found at the below location.

<https://ascp.monmouth.army.mil/scp/esi/dodagreements.jsp>

**ATTACHMENT B**  
Attachment B- EULA

VMWARE MASTER END USER LICENSE AGREEMENT NOTICE: BY DOWNLOADING AND INSTALLING, COPYING OR OTHERWISE USING THE SOFTWARE, YOU AGREE TO BE BOUND BY THE TERMS OF THIS VMWARE MASTER END USER LICENSE AGREEMENT (“EULA”). IF YOU DO NOT AGREE TO THE TERMS OF THIS EULA, YOU MAY NOT DOWNLOAD, INSTALL, COPY OR USE THE SOFTWARE, AND YOU MAY RETURN THE UNUSED SOFTWARE TO THE VENDOR FROM WHICH YOU ACQUIRED IT WITHIN THIRTY (30) DAYS AND REQUEST A REFUND OF THE LICENSE FEE, IF ANY, ALREADY PAID UPON SHOWING PROOF OF PAYMENT. “YOU” MEANS THE NATURAL PERSON OR THE ENTITY THAT IS AGREEING TO BE BOUND BY THIS EULA, THEIR EMPLOYEES AND THIRD PARTY CONTRACTORS THAT PROVIDE SERVICES TO YOU. YOU SHALL BE LIABLE FOR ANY FAILURE BY SUCH EMPLOYEES AND THIRD PARTY CONTRACTORS TO COMPLY WITH THE TERMS OF THIS EULA.

1. DEFINITIONS

1.1 “Designated Administrative Access” means that access to the standard user interfaces of a given instance of the Software (designated in this section) that you may grant to a designated third party (a) for which you have provided advance written notice to VMware that you are providing outsourced services and (b) for whose dedicated benefit you have licensed such instance of the Software. Designated Administrative Access is applicable only where you are 1) an IT outsourcing company that is providing outsourced IT services to a client company and 2) applicable only to the following Software: VMware ESX, VMware Server and vCenter.

1.2 “GPL Software” means GPL software licensed to you under the GNU General Public License as published by the Free Software Foundation (GPL). A copy of the GPL is included on the media on which you received the Software or included in the files you downloaded, if you acquired the Software by electronic download.

1.3 “Guest Operating Systems” means instances of third-party operating systems licensed by you and installed in a Virtual Machine and run using the Software.

1.4 “Licensed Additional Module” means additional modules that may be provided with and/or used in conjunction with the Software for which you have paid the applicable license fee and accepted any applicable additional license terms.

1.5 “Open Source Software” means various open source software components licensed under the terms of applicable open source license agreements included in the materials relating to such software. Open Source Software is composed of individual software components, each of which has its own copyright and its own applicable license conditions. The Open Source Software licenses can be found in the open\_source\_licenses.txt file, other materials accompanying the software package, the documentation or corresponding source files available at [http://www.vmware.com/download/open\\_source.html](http://www.vmware.com/download/open_source.html). “Open Source Software” includes GPL Software.

1.6 “Processor” means a single, physical chip that houses no more than six (6) processor cores.

1.7 “Server” means a single physical computer of a type that meets the specifications as set forth in the applicable product documentation posted at <http://www.vmware.com/support/pubs/>. Multiple computers that share processing power or operate in a networked configuration as a single logical computer, such as a “server farm” or similar arrangement, constitute multiple Servers for the purpose of this EULA.

1.8 “Software” means software products that are licensed to you under this EULA, including, but not limited to, any related components purchased or provided with the Software, application programming interfaces, associated media, printed materials, online or electronic documentation, and any updates and maintenance releases thereto.

1.9 “Software License Key” means, if applicable, a serial number issued to you by VMware to activate and use the Software. A separate, additional Software License Key may be required to activate and use each Licensed Additional Module.

1.10 “VMware Tools” means a suite of utilities and drivers that may enhance the performance and functionality of your Guest Operating System. VMware Tools may include some or all of the following, depending on your Guest Operating System: an SVGA driver, a mouse driver, the VMware Tools control panel and support for features such as shared folders, drag and drop in Windows guests, shrinking virtual disks, time synchronization with the host, VMware Tools scripts, and connection and disconnection of devices while the virtual machine is running.

1.11 “Virtual Machine” means an instance of a Guest Operating System and any application programs installed thereon, running on a computing device on which the Software is installed, or suspended to disk or any other storage media accessible by the computing device.

## 2. GRANT AND USE RIGHTS FOR SOFTWARE.

2.1 License. The Software is licensed, not sold. Subject to the terms of this EULA, VMware hereby grants you a perpetual (except as otherwise expressly set forth in the License Type (as defined herein)), non-exclusive, non-transferable license, without rights to sublicense, to use the object code of the Software for your own internal information processing and computing needs, in accordance with the type of license applicable to such Software (“License Type”), as set forth in Section 8, for the purpose as set forth in the applicable documentation for the Software and to the extent permitted by your payment of applicable license fees under a VMware approved licensing model and/or your Software License Key, and subject further to the technical restrictions of the Software and/or any additional licensing terms specified by VMware via product documentation, and notification. Depending upon the model utilized to compute the applicable license fees paid by you to use the Software (whether per Processor, per Virtual Machine, per user, or any other VMware approved licensing model), an applicable Software License Key may limit your usage of the Software accordingly. You may use the documentation accompanying the Software in connection with permitted uses of the Software.

2.2 License Limitations. You may not copy the Software except for a reasonable number of machine-readable copies of the Software for backup or archival purposes and except as expressly permitted in this EULA. You may not remove any titles, trademarks or trade names, copyright notices, legends, or other proprietary markings on the Software. You are not granted any rights to any trademarks or service marks of VMware. VMware retains all rights not expressly granted to you in this EULA.

2.3 Restrictions. You may not (i) sell, lease, license, sublicense, distribute or otherwise transfer in whole or in part the Software or the Software License Key to another party; (ii) provide, disclose, divulge or make available to, or permit use of the Software in whole or in part by, any third party (except Designated Administrative Access) without VMware’s prior written consent; (iii) modify or create derivative works based upon the Software; (iv) create, develop, license, install, use, or deploy any third party software or services to circumvent, enable, modify or provide access, permissions or rights which violate the technical restrictions of the Software, any additional licensing terms provided by VMware via product documentation, notification, and/or policy change posted at <http://www.vmware.com>, and the terms of this EULA; or (v) use the Software to provide network, application hosting or other services to third parties, or otherwise use the Software on a service bureau or hosting basis for your customers, unless otherwise expressly permitted herein. Except to the extent expressly permitted by applicable law, and to the extent that VMware is not permitted by that applicable law to exclude or limit the following rights, you may not decompile, disassemble, reverse engineer, or otherwise attempt to derive source code from the Software, in whole or in part. Before you exercise any rights that you believe to be entitled to based on mandatory law, you shall provide VMware with thirty (30) days prior written notice at [info@vmware.com](mailto:info@vmware.com) and provide all reasonably requested information to allow VMware to assess your claim and, at VMware’s sole discretion, to provide alternatives that reduce any adverse impact on VMware’s intellectual property or other rights. You may use the Software to conduct internal performance testing and benchmarking studies, the results of which you (and not unauthorized third parties) may publish or publicly disseminate; provided that VMware has reviewed and approved of the methodology, assumptions and other parameters of the study. Please contact VMware at [benchmark@vmware.com](mailto:benchmark@vmware.com) to request such review. This performance and benchmark testing restriction applies to you only if you are a software or hardware vendor or if you are performing testing or benchmarking on the Software at the direction of or on behalf of a software or hardware vendor.

2.4 GPL Software. You can redistribute and/or modify the GPL Software under the terms of the GPL. You may obtain a copy of the source code corresponding to the binaries for the GPL Software (the “GPL Source Files”) by downloading the GPL Source Files from VMware’s Web site at [http://www.vmware.com/download/open\\_source.html](http://www.vmware.com/download/open_source.html), or by sending a request, with your name and address, to VMware at the address specified under the heading “Contact Information” below, in which case VMware will mail a copy of the GPL Source Files to you on a CD or equivalent physical medium. This offer to obtain a copy of the GPL Source Files is valid for three years from the date you acquired this Software product.

2.5 VMware Tools. You may distribute the VMware Tools to any third party provided that (i) you do not modify the VMware Tools; (ii) you distribute the VMware Tools in object code format only and solely in conjunction with, and as part of, the Virtual Machine you create with the Software; (iii) you do not use VMware’s name, logo or trademarks to market the Virtual Machine you create with the Software and (iv) you acknowledge that you are responsible for obtaining the necessary licenses to any third party software, copyrighted materials and other content for you to operate and distribute a Virtual Machine that you have created. Notwithstanding the foregoing, you may refer to VMware names, logos or trademarks to indicate that the Virtual Machine you create with the Software are compatible with or designed for use with the Software.

2.6 Licenses required for third-party software. The Software enables you to run multiple instances of third-party guest operating systems and application programs. You are responsible for obtaining and complying with any licenses necessary to operate any such third-party software, including Guest Operating Systems and/or application programs.

1 Audit Rights. You may perform an internal audit and will use best efforts to keep full and accurate accounts that may be used to properly ascertain and verify numbers of licenses in use. You shall permit VMware to have access to records and computer systems and the right to audit such systems to insure software use is in accordance with its license terms. All vendor personnel must have appropriate security clearances to gain access to Licensee site or data. You shall promptly pay to VMware any underpayments revealed by any such audit.

2 TITLE. VMware retains all right, title, and interest in and to the Software and the Software License Key and in all related copyrights, trade secrets, patents, trademarks, and any other intellectual and industrial property and proprietary rights, including registrations, applications, renewals, and extensions of such rights.

## 3 SUPPORT AND SUBSCRIPTION SERVICES NOT INCLUDED

VMware will not provide any support services under this EULA. This EULA does not give you any rights to any updates or upgrades to the Software or to any extensions or enhancements to the Software developed by VMware at any time in the future. VMware may offer support and

subscription services separately. If you have purchased VMware support and subscription services with the Software, these services are provided to you under the Support Contract Terms and Conditions posted on VMware's Web site at <http://www.vmware.com/support/> and by accepting the terms of this EULA you are accepting these Support Contract Terms and Conditions. Any supplemental software code or related materials that VMware provides to you as part of any support and subscription services are to be considered part of the Software and are subject to the terms and conditions of this EULA. VMware may use any technical information you provide to VMware for any VMware business purposes without restriction, including for product support and development. VMware will not use information in a form that personally identifies you.

## 5. TERMINATION

5.1 Termination. Subject to FAR 52.212-4(d) (Disputes), either party may, by written notice to the other party terminate this EULA if the other party is in material breach of any term, condition or provision of this EULA, which breach, if capable of being cured, is not cured within thirty (30) days after having been provided with written notice of such breach. Notwithstanding the foregoing, FAR 52.212-4(d) shall not apply in the event of a termination as a result of a breach of Section 6.3 (Confidentiality). You shall also have the right to terminate under FAR 52.212-4(l) (Termination for the Government's Convenience), however the parties acknowledge that upon delivery of the Software, all of VMware's obligations related to the Software and Services have been fulfilled.

1 Effect of Termination. In the event of termination, you must destroy all copies of the Software and Software License Key. In addition you must remove all copies of the Software, including all backup copies, from the Server and all computers and terminals on which it is installed.

## 2 LIMITED WARRANTY; INTELLECTUAL PROPERTY INDEMNIFICATION; LIMITATION OF LIABILITY; CONFIDENTIAL INFORMATION

6.1 Limited Warranty. VMware warrants that the media, if any, on which the Software is delivered will be free of defects and that the Software will substantially conform to the description contained in the applicable end user documentation with respect to the particular Software licensed under this EULA in each case for a period of ninety (90) days after the date of shipment of the Software License Key to you ("Warranty Period"). If during the Warranty Period the media is defective and the version of that Software is still commercially available, your sole remedy will be that VMware shall, at its option, repair or replace the defective media returned to VMware within the Warranty Period. If you are returning a defective media, please email VMware at [sales@vmware.com](mailto:sales@vmware.com) to request a Return Authorization number (RMA) and further instructions. If during the Warranty Period the Software does not substantially conform to the description contained in the applicable end user documentation, your sole remedy will be that VMware shall, at its option, correct the defects in the Software or refund the license fees you paid, if any, related to the Software provided that (a) the Software has been properly installed and used at all times and in accordance with the instructions in the applicable end user documentation; (b) no modification, alteration or addition has been made to the Software product by persons other than VMware or VMware's authorized representative; and (c) VMware receives written notice of the non-conformity within ninety (90) days following shipment. EXCEPT FOR THE PRECEDING EXPRESS LIMITED WARRANTY, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE MANDATORY LAW, VMWARE AND ITS LICENSORS PROVIDE THE SOFTWARE WITHOUT ANY WARRANTIES OF ANY KIND, EXPRESS, IMPLIED, STATUTORY, OR IN ANY OTHER PROVISION OF THIS EULA OR COMMUNICATION WITH YOU, AND VMWARE AND ITS LICENSORS SPECIFICALLY DISCLAIM ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

### 6.2 Intellectual Property Indemnification.

(a) Subject to the remainder of this Section, VMware shall defend you against any third party claim that the Software infringe a U.S. patent or copyright ("Infringement Claim"), and indemnify you from the resulting costs and damages awarded against you to the third party making such Infringement Claim, by a court of competent jurisdiction, or agreed to in settlement; provided that you: (i) notify VMware promptly in writing of such claim, (ii) grants VMware sole control over the defense and settlement, subject to definitive agreement by the Department of Justice, and (iii) reasonably cooperates in response to a VMware request for assistance. VMware will have the exclusive right to defend any such Infringement Claim and make settlements thereof at its own discretion, and you may not settle or compromise such Infringement Claim, except with prior written consent of VMware.

(b) Should any Software become, or in VMware's opinion be likely to become, the subject of such an Infringement Claim, VMware shall, at its option and expense: (i) procure for you the right to make continued use thereof, (ii) replace or modify such so that it becomes non-infringing, or (iii) request return of the Software and, upon receipt thereof, the corresponding licenses are terminated and VMware shall refund the price paid by you, less straight-line depreciation based on a three (3) year useful life.

(c) VMware shall have no liability if the alleged Infringement Claim is based on (i) combination with non-VMware products, provided, however, that third party products delivered by VMware with the Software and unmodified by Customer shall not be deemed to be non-VMware products, for purposes of the foregoing exclusion, (ii) use for a purpose or in a manner for which the Software was not designed, (iii) use of any older version of the Software when use of a newer VMware revision would have avoided the infringement, (iv) any modification not made with VMware's written approval,

(v) any modifications made by VMware pursuant to your specific instructions, unless otherwise mutually agreed to by the parties in writing, or (vi) any intellectual property right owned or licensed by Customer, excluding the Software.

(d) THIS SECTION STATES YOUR SOLE AND EXCLUSIVE REMEDY AND VMWARE'S ENTIRE LIABILITY FOR INFRINGEMENT CLAIMS.

### 6.3 Confidential Information

(a) The term "Confidential Information" means information or materials provided by one party to the other which are in tangible form and labeled "confidential" or the like, or, if disclosed orally, are identified as being confidential at the time of disclosure and, within two (2) weeks thereafter, are summarized, appropriately labeled and provided in tangible form. The following information shall be considered Confidential Information whether or not marked or identified as such: (i) the Software License Key; and (ii) information regarding VMware pricing, product roadmaps and strategic marketing plans..

(b) The receiving party shall not: (i) disclose any Confidential Information to any third party, except as otherwise expressly permitted herein; (ii) make any use of Confidential Information except:

(1) to exercise its rights and perform its obligations under this EULA; or (2) in connection with the parties' ongoing business relationship; or (iii) make Confidential Information available to any of its employees or consultants except those that have agreed to obligations of confidentiality at least as restrictive as those set forth herein and have a "need to know" such Confidential Information. The receiving party shall be held to the same standard of care as it applies to its own information and materials of a similar nature, and no less than reasonable care. The receiving party may disclose the other party's Confidential Information to the extent such disclosure is required by order or requirement of a court, administrative agency, or other governmental body, but only if the receiving party provides prompt written notice thereof to the disclosing party to enable the disclosing party to seek a protective order or otherwise prevent or restrict such disclosure. The receiving party shall protect Confidential Information in the manner provided herein for three (3) years after receipt thereof, unless such obligation ceases earlier pursuant to paragraph (c) below, provided, however, that the Software License Key shall be kept in confidence pursuant to this EULA in perpetuity. Subject to this Section 6.3, the obligations of the parties shall survive termination of this EULA.

(c) Confidential Information excludes information that: (i) was in the public domain at the time it was disclosed or has become in the public domain through no fault of the receiving party; (ii) was known to the receiving party, without restriction, at the time of disclosure, as demonstrated by files in existence at the time of disclosure; (iii) is disclosed with the prior written approval of the disclosing party; (iv) was independently developed by the receiving party without any use of Confidential Information of the disclosing party; or (v) becomes known to the receiving party, without restriction, from a source other than the disclosing party.

6.4 Limitation of Liability. WITHOUT LIMITING THE INDEMNIFICATION OBLIGATIONS HEREUNDER, AND EXCEPT FOR THE BREACH OF CONFIDENTIALITY OBLIGATIONS HEREUNDER, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE MANDATORY LAW, IN NO EVENT WILL VMWARE AND ITS LICENSORS BE LIABLE FOR ANY LOST PROFITS OR BUSINESS OPPORTUNITIES, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, OR ANY OTHER INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES UNDER ANY THEORY OF LIABILITY, WHETHER BASED IN CONTRACT, TORT, NEGLIGENCE, PRODUCT LIABILITY, OR OTHERWISE. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE PRECEDING LIMITATION MAY NOT APPLY TO YOU. WITHOUT LIMITING THE INDEMNIFICATION OBLIGATIONS HEREUNDER, AND EXCEPT FOR THE BREACH OF CONFIDENTIALITY OBLIGATIONS HEREUNDER, VMWARE AND ITS LICENSORS' LIABILITY UNDER THIS EULA WILL NOT, IN ANY EVENT, EXCEED THE LICENSE FEES, IF ANY, PAID BY YOU FOR THE SOFTWARE LICENSED TO YOU UNDER THIS EULA. THE FOREGOING LIMITATIONS SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, REGARDLESS OF WHETHER VMWARE OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. These terms represent VMware's customary commercial practices and are incorporated into VMware's standard terms for commercial and government customers worldwide.

## 7. GENERAL

7.1 Entire Agreement. This EULA sets forth VMware's entire liability and your exclusive remedy with respect to the Software and supersedes the terms of any purchase orders and any other communications or advertising with respect to the Software. You acknowledge that this EULA along with the BPA, where VMware is specifically indicated, is a complete statement of the agreement between you and VMware with respect to the Software, and that there are no other prior or contemporaneous understandings, promises, representations, or descriptions with respect to the Software.

7.2 Headings. Headings under this EULA are intended only for convenience and shall not affect the interpretation of this EULA.

7.3 Waiver and Modification. No failure of either party to exercise or enforce any of its rights under this EULA will act as a waiver of those rights. This EULA may only be modified, or any rights under it waived, by a written document executed by the party against which it is asserted.

7.4 Severability. If any provision of this EULA is found illegal or unenforceable, it will be enforced to the maximum extent permissible, and the legality and enforceability of the other provisions of this EULA will not be affected.

7.5 Governing Law. This EULA will be governed by United States Federal law and the United States of America, without regard to its choice of law principles. The United Nations Convention for the International Sale of Goods shall not apply.

7.6 Government Restrictions. You may not export or re-export the Software except in compliance with the United States Export Administration Act and the related rules and regulations and similar non-U.S. government restrictions, if applicable. The Software and accompanying documentation are deemed to be "commercial computer software" and "commercial computer software documentation," respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212(b), as applicable. Any use, modification, reproduction, release, performing, displaying, or disclosing of the Software by the U.S. Government shall be governed solely by the terms of this EULA.

7.7 Contact Information. If you have any questions about this EULA, or if you want to contact VMware for any reason, please direct all correspondence to: VMware, Inc., 3401 Hillview Avenue, Palo Alto, California 94304, United States of America or email [info@vmware.com](mailto:info@vmware.com).

7.8 Other. VMware is a registered trademark of VMware, Inc. in the United States and/or various jurisdictions.

7.9 Publicity. You agree that VMware may reference you as a customer of VMware, subject to your trademark and logo usage guidelines provided by you.

## 8. LICENSE TYPES

### Software

For Bundles, Packs or Kits, refer to the License Type for each individual component within each such Bundle, Pack or Kit. License Types

In the event of a conflict between the following License Type Notes and Sections 1 through 7 of the EULA, the License Type Notes shall prevail.

Note 1: The following section applies to VMware vCenter Converter Enterprise Edition only:

The VMware vCenter Converter Enterprise Software contains third party products, including, but not limited to the Microsoft WinPE Development Tool and Microsoft® Windows® Preinstallation Environment, Version 2005 (“MS Products”). You hereby agree to the following additional license terms and restrictions pertaining to your use of the VMware vCenter Converter Enterprise Software:

(i) The VMware vCenter Converter Enterprise Software is limited for use as a boot, diagnostic, disaster recovery, setup, restoration, emergency services, installation, test and/or configuration utilities program, and not for use as a general purpose operating system or as a substitute for a fully functional version of any operating system product. The MS Products are provided “as is”. The VMware vCenter Converter Enterprise Software contains a security feature that will cause the computer system to reboot without prior notification to the end-user after 24 hours of continuous use. All customer support issues pertaining to the VMware vCenter Converter Enterprise Software will be handled solely by VMware or its agents.

(ii) You shall not reverse engineer, decompile, or disassemble the MS Products, except to the extent expressly permitted by applicable law.

(iii) Limited Warranty. MICROSOFT AND ALL MICROSOFT AFFILIATES SPECIFICALLY DISCLAIM ANY AND ALL LIABILITY RELATED TO THE VMWARE vCENTER CONVERTER ENTERPRISE SOFTWARE AND THE MS PRODUCTS. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE PRECEDING LIMITATION MAY NOT APPLY TO YOU. THE FOREGOING SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, REGARDLESS OF WHETHER MICROSOFT AND ALL MICROSOFT AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. These terms represent VMware’s customary commercial practices and are incorporated into VMware’s standard terms for commercial and government customers worldwide.

Note 2: The following section applies to VMware ACE and VMware ACE Management Server only:

The license grants you the right to use the Software: (i) for the purpose of creating, provisioning and running assured computing environments for your own internal information processing and computing needs (which shall include the provision of services to your customers); (ii) distribute copies of the VMware ACE Software to one or more contractors or consultants, provided that each copy of the VMware ACE Software is distributed with a validly licensed copy of an operating system preinstalled in a virtual machine to be operated in conjunction with the VMware ACE Software; (iii) distribute copies of the VMware ACE Software to one or more potential customers solely for the purpose of evaluating your product(s), provided that each copy of the VMware ACE Software is distributed with a copy of one of your software products and a validly licensed operating system preinstalled in a virtual machine to be operated in conjunction with the VMware ACE Software; and (iv) redistribute in accordance with subparagraph (ii) or (iii), to one or more potential customers, consultants or contractors, copies of the VMware ACE Software previously distributed by you in accordance with subparagraph (ii) or (iii) that have expired or are returned to you by the third parties to which such copies were previously distributed. You acknowledge that you are responsible for obtaining the necessary licenses to any third party software, copyrighted materials and other content for you to operate and distribute the Software.

Note 3: The following section applies to VMware View, VMware View Manager and VMware View Composer:

Additional Definitions:

“Client” means a device which is used to interact and connect to a hosted Desktop Virtual Machine

“Connection Broker” is a device which: (a) accepts incoming connection requests from the Client(s), (b) locates an available hosted Desktop Virtual Machine, and (c) brokers the connection between the Client and the available hosted Desktop Virtual Machine.

“Desktop Virtual Machine” is a hosted Virtual Machine which is running one of the following operating systems: Windows 95/98, Windows 2000 Professional, Windows XP Professional, Windows Vista Ultimate, Windows Vista Business, or Windows Vista Enterprise.

“Linked Clone” means an image copy of a Desktop Virtual Machine created by VMware View Composer that shares virtual disks with a parent Virtual Machine.

“Physical and Blade PCs” means a physical PC or blade PC running any of the version of Windows operating systems specified at <http://www.vmware.com/info?id=739> that is used as a Client (as defined herein).

“Powered On” means a Desktop Virtual Machine which is receiving remote connections from a Client.

“Terminal Services Session” means a Windows terminal services session running on a valid Microsoft Windows 2000 (or above) Server license.

VMware View:

The license grants you the right to use the Software to connect to a hosted Desktop Virtual Machine from any devices provided that the total number of Desktop Virtual Machines which are Powered On, does not exceed the number of Desktop Virtual Machines for which you have paid the applicable license fee, each of which is running a validly licensed copy of the operating system for which the Software is designed as specified in the definition of Desktop Virtual Machine. Notwithstanding anything to the contrary herein, in the event that you have licensed VMware View which consists of VMware Infrastructure with any of the following components, vCenter Server, VMware View Manager, VMware View Composer, VMware ThinApp, or another Connection Broker, VMware licenses VMware ESX to you solely for hosting Desktop Virtual Machine(s), except you may run VMware View Manager itself, VMware vCenter Server, another Connection Broker, and/or any management and performance monitoring tools used solely for VMware ESX-hosted Desktop Virtual Machine(s) within an operating system of a Server.

VMware View Manager:

The license grants you the right to use the Software to connect to a hosted Desktop Virtual Machine or Terminal Services Session from any devices provided that the total number of Desktop Virtual Machines which are Powered On, connections to Physical and Blade PCs and Terminal Services Sessions do not exceed the number of concurrent connections for which you have paid the applicable license fee, each of which is running a validly licensed copy of the operating system for which the Software is designed as specified in the definition of Desktop Virtual Machine.

VMware is under no obligation to provide support for Offline Desktop in any way or to provide any updates to you. Feedback, suggestions, ideas and other information which is provided by you to VMware in connection with Offline Desktop will become the property of VMware and may be used by VMware to improve or enhance its products and, accordingly, VMware shall have a non-exclusive, perpetual, irrevocable, royalty-

free, worldwide right and license to use, reproduce, disclose, sublicense, distribute, modify, and otherwise exploit such feedback, suggestions, ideas and information without restriction.

LIMITATION OF LIABILITY. IT IS UNDERSTOOD THAT OFFLINE DESKTOP IS PROVIDED FOR LIMITED TESTING AND EVALUATION PURPOSES. ACCORDINGLY, WITHOUT LIMITING THE INDEMNIFICATION OBLIGATIONS HEREUNDER, IN NO EVENT SHALL VMWARE OR ITS SUPPLIERS HAVE LIABILITY FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION), HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, EVEN IF VMWARE AND ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS SHALL APPLY NOT-WITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

VMware View Composer:

The license grants you the right to install VMware View Composer for the purpose of creating Linked Clone(s) and to use the Software to connect to a Linked Clone from any devices provided that the total number of Desktop Virtual Machines and Linked Clones which are Powered On, connections to Physical and Blade PCs and Terminal Services Sessions do not exceed the number of concurrent connections for which you have paid the applicable license fee, each of which is running a validly licensed copy of the operating system for which the Software is designed as specified in the definition of Desktop Virtual Machine.

Note 4: The following section applies to VMware vCenter Lab Manager and VMware vCenter Stage Manager only:

Limited Warranty. WITH RESPECT TO ANY MICROSOFT SOFTWARE INCLUDED IN THE SOFTWARE, MICROSOFT'S LIABILITY UNDER THIS EULA WILL NOT, IN ANY EVENT, EXCEED \$5.00 FOR SUCH SOFTWARE LICENSED TO YOU UNDER THIS EULA.

Note 5: The following section applies to VMware Workstation only if you are not purchasing support and subscription services at the time you are purchasing the VMware Workstation license(s).

For VMware Workstation Software product, the purchase of support and subscription services at the time the license is purchased is optional. If you do not purchase support and subscription services at the time the licenses are purchased, VMware may provide limited web-based support services related to this Software product for a period of thirty (30) days from the date of shipment. In addition, VMware will provide you with error corrections or fixes for VMware Workstation, at no charge, for a period of eighteen (18) months from the date of shipment ("Limited Update Services"). You may renew directly from VMware the Limited Update Services for successive twelve (12) month periods by paying a renewal fee equal to ten percent (10%) of the license fee paid by you for VMware Workstation.

Note 6: The following section applies to VMware Fusion only if you are not purchasing support and subscription services at the time you are purchasing the VMware Fusion license(s)

Notwithstanding Section 4 of this EULA, VMware may provide limited web-based support services related to the Software for a period of thirty (30) days after the date of purchase. Upon expiration of such thirty (30) day period, VMware will not provide any support services to you under this EULA, unless you purchase support services separately. Furthermore, any rebates generally offered by VMware in connection with VMware Fusion shall not apply.

Note 7: The following section applies to VMware vCenter Lifecycle Manager, including VMware vCenter Lifecycle Manager – Customization Option:

Oracle Database JDBC Driver

The Software contains the Oracle Database JDBC Driver (version 10.1.0.2.0) and you hereby agree to the following additional licenses terms and conditions, which pertain to the Oracle Database JDBC Driver (version 10.1.0.2.0):

If you use open source software in conjunction with the Oracle Database JDBC Driver (version 10.1.0.2.0), you must ensure that your use does not create, grant, or purport to create or grant, to any third party any rights to or immunities under Oracle's intellectual property or proprietary rights in the Oracle Database JDBC Driver (version 10.1.0.2.0). You may not combine the Oracle Database JDBC Driver (version 10.1.0.2.0) with programs licensed under the GNU General Public License ("GPL") in any manner that could cause, or could be interpreted or asserted to cause, the Oracle Database JDBC Driver (version 10.1.0.2.0) or any modifications thereto to become subject to the terms of the GPL. Oracle Corporation is a third party beneficiary to this EULA solely to the extent necessary to enforce this provision with respect to the Oracle Database JDBC Driver (version 10.1.0.2.0). Upon request, VMware is obligated to permit Oracle Corporation the right to inspect this EULA and records of end users' names, addresses, date of distribution and identity of programs distributed.

Note 8: The following section applies to VMware vCenter Lifecycle Manager – Customization Option only:

The license for the VMware vCenter Lifecycle Manager -Customization Option is not based on Processor count but rather per VMware Lifecycle Manager Server. Customer can optionally add the VMware vCenter Lifecycle Manager -Customization Option on top of the standard product offering. In general, Customer will only need to deploy one (1) Lifecycle Manager Server for the VMware vCenter Lifecycle Manager – Customization Option. Notwithstanding anything to the contrary herein, in the event that you have licensed VMware vCenter Lifecycle Manager – Customization Option, VMware grants you, or a designated party of yours, permission to customize certain sets of editable library elements consisting of callback workflows, actions, policies, plug-ins, webviews and information panels, as more fully described in the applicable documentation for the Software ("Custom Library Elements") that are provided with the VMware vCenter Lifecycle Manager -Customization Option Software for furtherance of the purpose as set forth in the applicable documentation for the Software. If such customization is performed by VMware, any and all Custom Library Elements and intellectual property rights therein shall be owned by VMware, and VMware hereby grants you, at no additional charge, a non-exclusive, non-transferable, perpetual license to such Custom Library Elements solely for your internal business operation. If the customization is performed by a non-VMware party, any and all Custom Library Elements and intellectual property rights therein shall be owned by you, and you hereby grant VMware, at no charge, a non-exclusive, non-transferable, perpetual license to such Custom Library Elements for any purpose, including but not limited to the provisioning of professional services. All copies of such Custom Library Elements completed by VMware or a non-VMware party shall contain VMware's copyright and other proprietary notices. VMware makes no express or implied warranties with respect to the Custom Library Elements created by any non-VMware party, and Section 6.1 (Limited Warranty) and Section 6.2 (Intellectual Property Indemnification) shall not apply to any Custom Library Elements created by a non-VMware party.

Note 9: The following section applies to VMware vCenter Lab Manager, VMware vCenter Lifecycle Manager, VMware vCenter Stage Manager and VMware vCenter Site Recovery Manager only:

You must maintain enough licenses for the applicable Software so that the total number of Processors on all Servers installed with the VMware Virtualization Software ("Licensed Servers") running Virtual Machines never exceeds the number of Processors licensed by you for such

Software. Subject to the foregoing, you may transfer the Software licenses from one Licensed Server to another. If you transfer the Software license from one Licensed Server to another, then you may reassign the associated License Keys that had been assigned to the original Licensed Server to the new Licensed Server. However, you may not reassign License Keys from one Licensed Server to another Server for the purpose of temporarily managing the other Server. For the avoidance of doubt, under no circumstances shall the same Software license be uploaded to two (2) different Licensed Servers concurrently. With respect to the VMware vCenter Site Recovery Manager Software, software written by third party storage partners ("Storage Replication Adapters") that is intended to enable communication between VMware vCenter Site Recovery Manager and the third party storage partners' replication products are distributed with the permission of the third party storage partners and governed by their respective end user license agreements. Notwithstanding anything to the contrary herein, the term "Software" as defined under this EULA, shall not include Storage Replication Adapters.

Note 10: The following section applies to VMware ThinApp only:

The license is for use of the VMware ThinApp Packager Tool internally in order to package, combine or incorporate Customer Application(s) with the VOS for the sole purpose, and only to the extent necessary, to create a ThinApp and to distribute the ThinApp directly to authorized End Users, but only in accordance with: (i) the Documentation, (ii) this EULA, and (iii) solely for use only by such authorized End Users and without any right of redistribution. You may install VMware ThinApp Packager Tool on a Device and make or store as many copies of the VMware ThinApp Packager Tool on that particular Device. However, the VMware ThinApp Packager Tool is licensed only to that Device. Subject to the remainder of this provision, You may uninstall the VMware ThinApp Packager Tool and re-install it on another Device for your use. You must have a separate VMware ThinApp Client license for each Device of concurrent Desktop Virtual Machine, as applicable, which Runs ThinApp(s). You may Run an unlimited number of ThinApps on a licensed Device or concurrent Desktop Virtual Machine, as applicable. You must also have a valid license for each Customer Application packaged within ThinApp(s). Notwithstanding anything to the contrary herein, and for the avoidance of doubt, Dynamic Reassignment of VMware ThinApp Packager Tool licenses and/or VMware ThinApp licenses is prohibited. For purposes of the foregoing, "Dynamic Reassignment" means re-assigning VMware ThinApp at will for the purpose of sharing a single license between two (2) or more Devices Running a ThinApp or the VMware ThinApp Packager Tool, and "Desktop Virtual Machine" means a hosted Virtual Machine which is running one of the following operating systems: Windows 95/98, Windows 2000 Professional, Windows XP Professional, Windows Vista Ultimate, Windows Vista Business, or Windows Vista Enterprise.

Conditions on Distribution of ThinApp(s). Whether distributing the VMware ThinApp internally to your End Users, or as an ISV to your End Users (as defined above), each ThinApp must display the following notice when

Run: "Powered by VMware. Portions of this software contain VMware, Inc. technology. Copyright © 1999-2008 VMware, Inc. All Rights Reserved." You agree to be responsible for third party claims arising on account of your combination or incorporation of a Customer Application with the VOS to create a ThinApp or on account of your distribution of ThinApp(s). Additionally, your distribution rights are conditioned on your compliance with all terms and conditions of this EULA.

Additional ISV Distribution Requirements. Every ThinApp that you distribute to a third-party must include terms at least as restrictive as those set forth in this EULA. You agree to enforce such restrictions and notify VMware of any known breach of such restrictions.

### ATTACHMENT C

Ordering Activity Delivery Order #	Reseller Order #	End User Agency or Service	End User Ship-To Activity (Govt licensee)	UNSPSC Code	CLIN	Pr Desc
<b>ARMY SALES</b>						
xxxxxxx	xxxxx	ARMY	88TH REGIMENTAL SUPPORT CMD xxxxx, xx	xxxxxxx	000_	xxxxxx
xxxxxxx	xxxxx	ARMY	US ARMY CORPS OF ENGINEERS	xxxxxxx	000_	xxxxxx
xxxxxxx	xxxxx	ARMY	FORT MCNAIR xxxxx, xx	xxxxxxx	000_	xxxxxx
<b>AIR FORCE SALES</b>						
xxxxxxx	xxxxx	AIR FORCE	HILL AFB xxxxx, xx	xxxxxxx	000_	xxxxxx
xxxxxxx	xxxxx	AIR FORCE	EGLIN AFB xxxxx, xx	xxxxxxx	000_	xxxxxx
xxxxxxx	xxxxx	AIR FORCE	SCOTT AFB xxxxx, xx	xxxxxxx	000_	xxxxxx

**DLA SALES**

xxxxxxx	xxxxx	DLA	DSCC COLUMBUS, OH	xxxxxxx	000_	xxxxxx
xxxxxxx	xxxxx	DLA	DESC FORT BELVOIR, VA	xxxxxxx	000_	xxxxxx
xxxxxxx	xxxxx	DLA	DAPS MECHANICSBURG, PA	xxxxxxx	000_	xxxxxx

**DISA SALES**

xxxxxxx	xxxxx	DISA	ACQUISITION TECHNOLOGY AND LOGISTICS DISA CONUS	xxxxxxx	000_	xxxxxx
xxxxxxx	xxxxx	DISA	DEFENSE INFORMATION SYSTEMS AGENCY	xxxxxxx	000_	xxxxxx
xxxxxxx	xxxxx	DISA	DEFENSE INFORMATION SYSTEMS AGENCY PAC HQxx	xxxxxxx	000_	xxxxxx

**NAVY & OTHER DOD SALES**

xxxxxxx	xxxxx	NAVY	NAVICP CODE xx, MECHANICSBURG, PA	xxxxxxx	000_	xxxxxx
xxxxxxx	xxxxx	DOD	NATIONAL IMAGERY AND MAPPING	xxxxxxx	000_	xxxxxx
xxxxxxx	xxxxx	NAVY	SPAWAR PD15Q SAN DIEGO, CA	xxxxxxx	000_	xxxxxx

**ARMY  
AIR FC  
DLA A  
DISA /  
NAVY**

**TOTAL**

**ARMY  
AIR FC  
DLA A  
DISA /  
NAVY**

**TOTAL**

**TOTAL  
(OCT 2**

ATTACHMENT D**FEES AND PAYMENTS**

- 1. GSA Industrial Funding Fee (IFF).** The BPA unit prices include the applicable GSA IFF. The contractor shall be responsible for all required filings to GSA and for payment of this fee in accordance with applicable GSA instructions.
- 2. Acquisition, Contracting, and Technical (ACT) Fee.** The cost of awarding, administering and managing this BPA is included in the prices charged to ordering activities. The ACT fee is 2%. The contractor shall remit the ACT fee on a calendar quarterly basis (i.e. January – March, April – June, July – September, and October – December) or as otherwise requested by the Software Product Manager (SPM). Payment is due thirty (30) days following approval of the Report of Sales for the completed quarter. ACT fees that have not been paid within the prescribed thirty (30) days shall be considered a debt to the United States Government under the terms of FAR 32.6. The Government may exercise all its rights under the contract, including withholding or setting off payments and interest on the debt (see contract FAR clause 52.232-17, Interest). Failure of the Contractor to pay the ACT Fee in a timely manner may result in termination of the BPA.
- 3. Fee Distribution.** The Army, Air Force, DLA, DISA and Navy are participating in a fee-sharing program. The Contractor shall collect the 2% ACT fee and distribute in accordance with the following procedures. Fee sharing shall be determined by the End User Agency or Service identified in the monthly Report of Sales. This field shall be notated Army, Air Force, DLA, DISA, Navy or DOD as appropriate. Fee checks shall not be issued until written approval is received for the Report of Sales.

*(For a SmartBUY agreement, use the following: The Air Force, Army, DLA, DISA, Navy and GSA (for SmartBUY Federal government Civilian Agency orders) are participating in an ACT*

*fee-sharing program. For orders within DoD, the 2% ACT fee is split equally between the DoD Component whose customer places the order and the Component that manages the contract. The Contractor shall collect the 2% ACT fee and distribute in accordance with the following procedures. ACT fee sharing shall be determined by the End User Agency or Service identified in the monthly Report of Sales. This field shall be notated Air Force, Army, DLA, DISA, Navy, DoD or Non-DoD as appropriate. In the case of SmartBUY orders (Federal Government Civilian Agencies) non-DoD orders and non DoD support contractor orders, excluding the Intelligence Community and non Coast Guard orders or support vendors to same, the 2% ACT fee is split equally between the Agency that manages the contract and GSA SmartBUY Program Management Office.)*

*(Enter Service fee sharing arrangement here. If the vendor is collecting fees under a separate CLIN it should be addressed here. See Navy examples below at 3.1 through 3.4)*

### **3.1 ALL SALES:**

The 2% ACT fee is split equally between the DoD Component whose customer places the order and the DoD Component that manages the ESI agreement. For example, an Air Force order issued against an ESI agreement managed by the Navy results in one half (or 1%) of the 2% fee being returned to the Air Force acquisition organization (listed under Air Force Sales). The Navy will retain the entire 2% fee under orders issued for Navy activities or those activities that do not collect a fee under the ESI agreements managed by the Navy. The contractor is responsible for distributing the ACT fee to all applicable Services in accordance with the instructions herein. The amount of ACT Fee due the Navy shall be calculated at 1% for Army sales, 1% for Air Force sales, 1% for DLA sales, 1% for DISA sales and 2% for all other sales.

The contractor shall remit ACT Fee to the address provided below by corporate or cashier's check made payable to "Treasurer of the United States". No transmittal letter is required with submission of Navy fee checks.

Checks must include the following information to ensure proper crediting of the payment:  
BPA *(fill in applicable #)*  
DoD *(fill in name of agreement)* Enterprise Software Agreement  
ACT Fee

If using overnight or express mail, send check to:  
SPAWARSYSCEN ATLANTIC  
Attn: Elizabeth Vonasek  
Norfolk Office  
Code 5455, Bldg. V53  
9456 Fourth Avenue  
Norfolk, VA 23511-2130

If using regular mail, send check to:  
SPAWARSYSCEN ATLANTIC  
Attn: Elizabeth Vonasek  
Norfolk Office  
Code 5455, Bldg V53  
P.O. Box 1376  
Norfolk, VA 23501-1376

Email a copy of the FMO check to the SPM: Sandra.Sirbu@navy.mil

### **3.2 ARMY SALES:**

The amount of ACT Fee due the Army shall be calculated at 1% of all Army sales.

The contractor shall remit ACT Fee to the address provided below by corporate or cashier's check made payable to "Treasurer of the United States". Checks must be notated with the following information:

BPA (*fill in applicable #*)  
SCP Fee Reimbursement

\*\*\*Checks must be accompanied by a transmittal letter (format to be provided) that cites the applicable accounting data to ensure proper crediting of the payment.

Send check and transmittal letter to:  
Project Director, Computer Hardware, Enterprise Software and Solutions (PD CHESS)  
PEO Enterprise Information Systems  
SFAE-PS-SCP (Attn: Margaret Kirsch)  
Squier Hall, Bldg. 283  
Fort Monmouth, NJ 07703

Email a copy of the check and letter to: [MONM-EISASCPVndrRpts@Conus.army.mil](mailto:MONM-EISASCPVndrRpts@Conus.army.mil)

### **3.3 AIR FORCE SALES:**

The amount of ACT Fee due the Air Force shall be calculated at 1% of all Air Force sales.

The contractor shall remit ACT Fee to the address provided below by corporate or cashier's check made payable to "3801-LI". Checks must be notated with the following information:

BPA (*fill in applicable #*)  
ESI-SW Fee Sharing

\*\*\*Checks must be accompanied by a transmittal letter (format to be provided) that cites the applicable accounting data to ensure proper crediting of the payment.

Send check and transmittal letter to:  
Disbursing Operations Directorate  
FOR: 3801-Limestone Field Site  
8899 E 56th Street  
Indianapolis, IN 46249-9339

Email a copy of the check and letter to: [kabfinance@gunter.af.mil](mailto:kabfinance@gunter.af.mil)

Please include with the above documents the Customer Usage Check Report (CCR) and Delivery Order Status Report (DOSR) or the Report of Sales (per BPA requirements)

Subject Line Format of e-mail should be as follows:  
Contract Number with hyphens, CCR or DOSR Month Year, Contract Name, Contractor Name  
[Example: FA0000-00-A-0000, CCR June 2006, ESI SW, Vendor, Inc.]

Point of Contact regarding any questions: Ricky Blackmon by phone: 334-416-2888 or Email at :

ricky.blackmon@gunter.af.mil

Mail is also an alternative means of submitting copies. Please forward a copy to the address below:

HQ 754 ELSG/ESQ

Attention: Ricky Blackmon

<mailto:Karen.Molloy@gunter.af.mil> 490 East Moore Drive, Bldg 892

MAFB-Gunter Annex, AL 36114-3014

### **3.4 DLA SALES**

The amount of ACT Fee due DLA shall be calculated at 1% of all DLA sales.

The contractor shall remit ACT Fee to the address provided below by corporate or cashier's check made payable to "Treasurer of the United States". No transmittal letter is required with submission of DLA fee checks.

Checks must include the following information to ensure proper crediting of the payment:

BPA (*fill in applicable #*)

DoD (*fill in name of agreement*) Enterprise Software Agreement

Quarterly ACT Fee

Send check to:

Defense Logistics Agency

DES Acquisition Staff Directorate

Attn: Connie House, DES-A

8725 John J. Kingman Road, Room 1145

Fort Belvoir, VA 22060-6220

Mail a copy of the check to:

Defense Logistics Agency

Attn: Susan Lizzi, J-654

8725 John J. Kingman Road

Fort Belvoir, VA 22060-6221

Or email a copy of the check to:

Email: [Susan.Lizzi@dla.mil](mailto:Susan.Lizzi@dla.mil)

### **3.5 DISA SALES**

The amount of ACT Fee due DISA shall be calculated at 1% of all DISA sales.

The contractor shall remit ACT Fee to the address provided below by corporate or cashier's check made payable to "Treasurer of the United States". Checks must be notated with the following information:

BPA (*fill in applicable #*)

DoD (*fill in name of agreement*) Enterprise Software Agreement

Quarterly ACT Fee

\*\*\*\*Checks must be accompanied by a transmittal letter (format to be provided) that cites the applicable accounting data to ensure proper crediting of the payment.

Send check and transmittal letter to:

DFAS-CO  
Finance and Accounting Office  
Attn: Derek Ryder  
3990 East Broad St., Bldg. 21  
Columbus, Ohio 43213

Provide copies of this letter and check to: Jonnice.Medley@disa.mil

*For SmartBUY agreements add the below:*

### **3.6 GSA SALES**

The amount of ACT Fee due GSA shall be calculated at 1% of all Civilian agency sales.

The contractor shall remit ACT Fee by corporate or cashier's check made payable to "Treasurer of the United States". Checks must be notated with the following information:  
BPA (W91QUZ-09-A-0003)  
ESI-SW Fee Sharing

\*\*\*Checks must be accompanied by a transmittal letter (sample enclosed) that cites the applicable accounting data to ensure proper crediting of the payment.

Send check and transmittal letter to:

GSA  
P. O. Box 880908  
Dallas, TX 75388-0908

Mail a copy of the check and transmittal letter to:

GSA  
Attn: Pebble Randolph  
SmartBUY Program Management Office  
10304 Eaton Place  
Fairfax, VA 22310

#### ATTACHMENT F

##### **Attachment F- Ordering Points**

The following VMware partners are Participating Dealers under this BPA and are authorized to quote, accept orders, invoice and receive payment. The individual Order Points are subject to change, as authorized by Carahsoft and VMware, upon written notification to the Government.

Carahsoft Technology Corp.  
12369 Sunrise Valley Dr.  
Suite D2  
Reston, VA 20191

Additional ordering points will be added based upon future requirements from VMware and DOD.

**FOR ARMY**

Date:

MEMORANDUM FOR  
PEO Enterprise Information Systems  
Computer Hardware, Enterprise Software & Solutions (CHESS)  
SFAE-PS-CH (Attn: Margaret Kirsch)  
Building 283 (Squier Hall)  
Fort Monmouth, NJ 07703-5605

From: (Company name):  
(POC for this transaction):  
(Street Address):  
(City, State, and Zip Code):

SUBJECT: Collection of Checks for (name of company and BPA/contract #) –  
FY06, etc.

1. Collection of the check will include the following:

- a. Please make check payable to United States Treasury
- b. Mail original check to address below:

PEO Enterprise Information Systems  
Computer Hardware, Enterprise Software & Solutions(CHESS)  
SFAE-PS-CH (Attn: Margaret Kirsch)  
Building 283 (Squier Hall)  
Fort  
Monmouth, NJ 07703-5605

2. Direct questions to: Margie Kirsch, 732.427.6613

3. Provide copies of this letter and check to : CHESS-VndrRpts@conus.army.mil

**For Air Force**

(COMPANY NAME)

(Date)

MEMORANDUM FOR DEFENSE FINANCE and ACCOUNTING SERVICE

Disbursing Operations Directorate  
FOR: 3801 Limestone Field Site  
8899 E 56<sup>th</sup> Street  
Indianapolis, IN 46249-9339

FROM: (Company Name)  
(Street Address)  
(City, State and Zip Code)

SUBJECT: Collection of Checks for **ESI SW** – FY08 (CPEA00) For BPA  
(Contract # \_\_\_\_\_)

1. This transmittal letter is to be used in lieu of a cash collection voucher (DD Form 1131).

2. Line of accounting to collect this check into is as follows:

5783400 308 47MZ 4G4ZKW 040000 592RR 72806F 667100 SC: 97  
CSN: 007999

FSR: 035483 PSR: 996643 DSR: 619624

MORD: F2XTKB7277M007

**NOTE: Please do not alter any of the information above.**

3. Direct questions to (Company POC, Phone Number).

(Signature)

1 Atch: Check # -----

**Additional Requirements are as Follows:**

1. Make checks payable to: 3801-LI
2. Send both the check and this transmittal letter to above address.
3. E-mail both:
  - A copy of the check and transmittal letter to [kabfinance@gunter.af.mil](mailto:kabfinance@gunter.af.mil)
  - Please include with the above documents the CCR and DOSR(if applicable)
  - Subject Line Format of e-mail should be as follows:  
\_\_\_\_Contract Number with hyphens, CCR or DOSR Month Year, Contract Name, and Contractor Name  
Example: FA0000-00-A-0000, CCR June 2006, ESI SW, Vendor, Inc.
4. Mail is also an alternative means of submitting copies. Please forward a copy to the address below :

HQ 754 ELSG/KABS  
Bldg 892  
490 East Moore Drive  
MAFB-Gunter Annex, AL 36114-3014

**DISA Transmittal Letter****Defense Information Systems Agency (DISA) Sales**

The amount of ACT Fee due DISA shall be calculated at 1% of all DISA sales.

Remit ACT Fee to the address provided below by corporate or cashiers check made **payable to “Treasurer of the United States”** noted with the following information:

BPA (\_\_\_\_\_)

DoD (VENDOR: \_\_\_\_\_) Enterprise Software Agreement  
Quarterly ACT Fee

\*\*\*Checks must be accompanied by a transmittal letter that cites the applicable accounting data to ensure proper crediting of the payment.

**LOA: 9780100.4300 P848ZZDZ0 SI 2531 DSIMO86608 S12137**

Send check and transmittal letter to:

**DISA/CFE5**

P.O. Box 4502

Arlington, VA 22204-4502

Mail a copy of the check and transmittal letter to:

DISA

Attn: Jonnice Medley, SI33

P.O. Box 4502

Arlington, VA 22204-4502

Or send via email to: [jonnice.medley@disa.mil](mailto:jonnice.medley@disa.mil)