

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT1. Contract ID Code
Firm-Fixed-Price

Page 1 Of 11

2. Amendment/Modification No.

P00002

3. Effective Date

2012OCT05

4. Requisition/Purchase Req No.

SEE SCHEDULE

5. Project No. (If applicable)

6. Issued By

ROCK ISLAND CONTRACTING CENTER
CCRC-TA
STEVEN A. SZALO (309)782-8568
ROCK ISLAND, IL 61299-8000
BLDGS 60 & 390

EMAIL: STEVEN.A.SZALO.CIV@MAIL.MIL

Code

W52P1J

7. Administered By (If other than Item 6)

Code

SCD

PAS

ADP PT

8. Name And Address Of Contractor (No., Street, City, County, State and Zip Code)

FOUR POINTS TECHNOLOGY, L.L.C.
14900 CONFERENCE CENTER DR STE 100
CHANTILLY, VA 20151-3813

TYPE BUSINESS: Other Small Business Performing in U.S.

Code 1YS78

Facility Code

9A. Amendment Of Solicitation No.

9B. Dated (See Item 11)

10A. Modification Of Contract/Order No.

W52P1J-12-A-0018

10B. Dated (See Item 13)

2012AUG03

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS The above numbered solicitation is amended as set forth in item 14. The hour and date specified for receipt of Offers is extended, is not extended.Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended by one of the following methods:
(a) By completing items 8 and 15, and returning _____ copies of the amendments; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. **FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER.** If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. Accounting And Appropriation Data (If required)

NO CHANGE TO OBLIGATION DATA

13. THIS ITEM ONLY APPLIES TO MODIFICATIONS OF CONTRACTS/ORDERS

It Modifies The Contract/Order No. As Described In Item 14.

KIND MOD CODE: 7

- A. This Change Order is Issued Pursuant To: _____ The Changes Set Forth In Item 14 Are Made In _____
The Contract/Order No. In Item 10A.
- B. The Above Numbered Contract/Order Is Modified To Reflect The Administrative Changes (such as changes in paying office, appropriation data, etc.) Set Forth In Item 14, Pursuant To The Authority of FAR 43.103(b).
- C. This Supplemental Agreement Is Entered Into Pursuant To Authority Of:
- D. Other (Specify type of modification and authority)

E. IMPORTANT: Contractor is not, is required to sign this document and return _____ copies to the Issuing Office.

14. Description Of Amendment/Modification (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

SEE SECOND PAGE FOR DESCRIPTION

BPA Expiration Date: 2016MAR02

Except as provided herein, all terms and conditions of the document referenced in item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. Name And Title Of Signer (Type or print)

16A. Name And Title Of Contracting Officer (Type or print)

JILL M. SOMMER
JILL.M.SOMMER.CIV@MAIL.MIL (309)782-3582

15B. Contractor/Offeror

15C. Date Signed

16B. United States Of America

16C. Date Signed

(Signature of person authorized to sign)

By _____ /SIGNED/
(Signature of Contracting Officer)

2012OCT05

NSN 7540-01-152-8070

30-105-02

STANDARD FORM 30 (REV. 10-83)

PREVIOUS EDITIONS UNUSABLE

Prescribed by GSA FAR (48 CFR) 53.243

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SECTION A - SUPPLEMENTAL INFORMATION

This modification replaces the language identified in Section A and Section J, Attachment A, in its entirety and adds the following products and pricing to Four Points Technology's product offering list.

SIN	132-33	132-33
MFR PART NUMBER	PKG-8603E-F	PKG-8621E-F
DESCRIPTION	WQS FRACAS (ENT ED)	WQS FAILURE MODE AND EFFECTS ANALYSIS (ENT ED)
CONTRACT LIST PRICE	\$2,995.00	\$3,295.00
IMMIX GSA PRICE GS-35F-0265X	\$1,991.44	\$2,190.91
Four Points BPA PRICE	\$1,852.04	\$2,037.55
BPA DISCOUNT VS. GSA	7.00%	7.00%

1. In the spirit of the Federal Acquisition Streamlining Act, the Army and the Department of the Navy and Optimal Solutions Incorporated, Inc enter into this Blanket Purchase Agreement (BPA) which includes the Attachments identified under Paragraph 2.

This BPA is entered to reduce the administrative costs of acquiring commercial products and services from the General Service Administration (GSA) Federal Supply Schedule (FSS) Contract GS-35F-0265X for Windchill products.

All orders placed against this BPA are subject to this BPA, the FSS Contract, and the applicable Order.

2. List of Attachments to the BPA:

- 0001 Product and Price List
- 0002 Ordering Guide
- 0003 Applicable DFARS Provisions
- 0004 Report of Sales Format with Instructions
- Exhibit/Attachment A Supplemental Pricelist Information and Terms

3. Obligation of Funds.

This BPA does not obligate any funds. Funds will be obligated on each delivery order. The Government is obligated only to the extent of authorized purchases actually made through orders issued under this BPA.

4. Authorized Users

4.1. Army and Department of the Navy Components.

4.1.1. The Agreement is open for ordering by all Army and Department of the Navy Components.

4.2. Government Contractors

4.2.1. Government contractors performing work for an Army or Department of the Navy Component may place Delivery Orders under this Agreement on behalf of and for the benefit of the Army / Department of the Navy entity if authorized by their cognizant Contracting Officer in accordance with the requirements of FAR 51(Use of Government Sources by Contractors) and/or DFARS 251 (Use of Government Sources by Contractors) as appropriate.

5. Effective Date and Duration of BPA.

5.1 The effective date of this BPA shall coincide with the effective period of GSA Schedule GS-35F-0265X. The ordering period for all items under this BPA shall be the same.

If orders issued within the BPA Ordering Period include options, the order options may be exercised after the BPA ordering end date provided that:

- (a) The initial order that includes the option was issued during the BPA ordering period,
- (b) The Ordering Office determines that the underlying GSA Schedule is still valid at the time the order option is exercised and still includes the applicable products, and
- (c) The Ordering Office satisfies all other applicable regulations for exercise of options.

5.2. GSA Federal Supply Schedule Succession

5.2.1. This BPA is based on the Contractors current GSA 70 schedule contract number GS-35F-0265X. In the event the current GSA 70 schedule contract is cancelled or expires and a new GSA 70 schedule contract is awarded, this BPA shall be modified to transfer to the new GSA 70 schedule contract to the extent the new schedule contract includes the same scope and items as the cancelled or expired GSA

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contract.

5.3. Annual Review for Best Value

5.3.1. This Agreement will be reviewed annually to ensure that it still represents a best value.

5.4. Survival

5.4.1. This Agreement shall survive unto Contractor, its Successors, rights and assigns. The Terms and Conditions in this Agreement shall survive the acquisition or merger of Contractor by or with another entity. Contractor shall ensure these survivorship terms are included in any such merger or acquisition agreement, including a duty on the part of the surviving entity to abide by the terms of this Agreement.

6. Organization of this Agreement

6.1. BPA Structure

6.1.1. This BPA is organized in two major segments:

6.1.1.1. The General Terms and Conditions

6.1.1.2. Attachments, which are binding Master Agreements entered into and made effective at the time of the award of this BPA.

6.2. Order of Precedence

6.2.1 The Order of Precedence for resolving any inconsistency between this Agreement and the GSA contract terms shall be as follows: (1) The Schedule of supplies/services, including PTC-specific terms attached to this Contract; (2) The Assignments, Disputes, Payments, Invoice, Other Compliances, and Compliance with Laws Unique to Government Contracts paragraphs of FAR 52.212-4; (3) The clause at 52.212-5; (4) Addenda to this Contract, including any license agreements for computer software; (5) the provisions of the Solicitation; (6) Other paragraphs of 52.212-4; (7) The Standard Form 1449; (8) other documents, exhibits, and attachments.

6.2.2 Software licenses purchased under this BPA shall be subject to the license terms of ImmixTechnology GSA Contract, this BPA, and any resultant Order. However, the license terms in an Order shall prevail over the applicable GSA Contract and this BPA.

6.2.3 All orders placed against this BPA are subject to the terms and conditions of ImmixTechnology GSA Schedule Contract as specified above. The terms and conditions included in this BPA apply to all purchases made pursuant to it.

6.2.4 In the event of an inconsistency between the provisions of the BPA and the applicable GSA Contract, the provisions of the BPA will take precedence.

6.2.5. All orders placed against this BPA shall incorporate the terms and conditions of this BPA, including all Attachments. In the event of a conflict between an ordering document (including the Contractors license, support, maintenance, or services agreements) and this BPA, the BPA and its Attachments shall take precedence over the Order unless the parties specifically agree in writing that a term or condition of an Order has precedence over the corresponding term or condition in the general terms and conditions of the BPA or its Attachments.

6.3. Attachments

6.3.1. All attachments to this Agreement will be deemed a part of this Agreement and incorporated herein by reference. Terms defined in this Agreement and used in any Attachment will have the same meaning as in this Agreement.

6.3.2. The parties hereby agree the Attachments listed in Section 2 apply to all orders placed under this BPA and are incorporated herein as binding terms and conditions.

7. Product and Service Offering

7.1 Product Account & Licensing Information.

7.1.1 The instructions included below are intended for the person responsible for installing the software and any required license(s). If that person is someone other than you, please forward these instructions to that person as it contains important information required during installation. If you require assistance, please contact Customer Care at <http://www.ptc.com/olm/contacts.htm>

7.1.2 Create a PTC.com Support Account An upgraded PTC Support Account is needed to perform the remaining steps, unless instructed otherwise in Section ___ below. If you do not have one, you may create one on the New Account page at <https://www.ptc.com/appserver/common/account/create.jsp?support=y>. If you already have a basic account, use the Customer # in

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combination with either Service Contract # (SCN), Sales Order # (SON) or Site # mentioned below to Upgrade Your PTC.com Account at <http://www.ptc.com/appserver/common/account/secure/premiumAccount.jsp>.

Customer # ORDER_CUSTOMER_NUM
Service Contract # SERVICE_CONTRACT_NO
Sales Order # ORDER_NUM
Site # SHIP_TO_LOCATION

Please use the following information to access your e-learning material:

Precision LMS website URL: <http://www.ptc.com/precisionlms>

E-learning Administrator Email: [Training Contact Email]

You should be able to access your eLearning using your existing PTC account or through the administrator named above. If you are the administrator and have not previously logged in, follow the forgot password link to receive your initial password.

7.1.3\~ Download your software or wait for media shipment for electronic delivery, you can immediately download your software at the following

URL: http://www.ptc.com/appserver/auth/it/esd/salesordernumber.jsp?son={ORDER_NUM}. Otherwise, you will need to wait for your CDs and/or DVDs to arrive.

7.1.4\~ Request License Codes. Many PTC products require that the license pack file be available prior to installing the software. You can determine whether you require license codes by looking at the column Codes Required? on the next page. If you do require license codes, you can obtain them using one of the two choices below via the Web or via telephone or fax.

7.1.4.1\~ Via the Web

\'b7For Windchill, your order does not require a license pack file. You may proceed with the next step (Sect. 7.1.5, below).

\'b7For Arbortext products go to <https://www.ptc.com/appserver/lm/secure/ati/licenseLanding.jsp> to obtain, return, and track your licenses

\'b7For Arbortext for Aerospace & Defense (S1000D/S2000M) products, click [\~Email Customer Care](#) to [obtain, return, and track your licenses](#) \~

\'b7For CoCreate & Creo Elements/Direct products, go to <https://www.ptc.com/appserver/lm/secure/cocreate/initialpwd/initialPwdIndex.jsp>

\'b7Your order contains Floating licenses for PTC products managed via FlexNet. A Web Based Installer is available here ([Hyperlink](#)) to guide you through the license generation and the installation process for the PTC FlexNet license server. In order to complete the installation successfully, you must be on the Windows-based machine which will act as the license server and be connected to the internet.

\'b7Your order contains both Floating licenses and Locked licenses for PTC products managed via FlexNet. A Web Based Installer is available here ([Hyperlink](#)) to guide you through the license generation for both license types and the installation process for the PTC FlexNet license server for the floating licenses. In order to complete the installation successfully, you must be on the Windows-based machine which will act as the license server and be connected to the internet.

For the Locked licenses which need to be configured to a designated computer, run the Web Based Installer from the desired client computer appending the letter L to the Sales Order Number (SON) above when prompted. Alternatively, you can use the following link to perform the process manually (you will not need to append the L when using this tool). <https://www.ptc.com/cgi/cs/apps/lmni/lmni.pl> \~

\'b7Your order contains Locked licenses for PTC products managed via FlexNet. A Web Based Installer is available here ([Hyperlink](#)) to guide you through the license generation process. Locked licenses must be configured to a designated computer and no License Server installation is required. In order to complete the license generation successfully, you must be on the Windows-based machine where you will be installing the application software and connected to the internet. Alternatively, you can use the following link to perform the licensing process manually. <https://www.ptc.com/cgi/cs/apps/lmni/lmni.pl>

\'b7Your order contains licenses requiring special handling. Contact License Management at uslm@ptc.com or eurlm@ptc.com for assistance.

\'b7Your order contains only Upgrades which are being installed on your behalf. You should be able to request your new licenses codes approximately 2 days after receiving this letter. Request them through the Retrieve Existing License Packs tool at <https://www.ptc.com/cgi/cs/apps/lpg/lpg.pl> using your existing license server CPU ID (host ID).

\'b7For Mathcad products, you may proceed directly to the software installation step and the software installer will assist you with license installation process.

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\b7For Integrity and Implementer products, you will receive a separate email containing instructions regarding your license codes. Creating a PTC.COM account is optional for these products, which are supported through the www.mks.com web site. The Serial Numbers associated with these products appear on the next page below the item descriptions. Software downloads, if needed, are available by visiting the Downloads section of the customer community.\~ <http://www.mks.com/community>

If you need technical assistance, please contact MKS Customer Care via email at support@mks.com or by phone:

North America: 800-219-4842 or 519-884-2270
Globally: 800-2194-8424 (outside North America)
Fax: 519-884-8861 / 630-629-9167

\b7For MKS Toolkit products, if you requested that media be shipped, your license codes will be enclosed inside the media case. If you requested a download, you will receive a separate email containing instructions regarding your license codes and download links. Creating a PTC.COM account is optional for these products, which are supported through the www.mkssoftware.com web site.\~ If you need technical assistance, please contact MKS Toolkit Customer Support using any of the following:
Technical Support Form: <http://www.mkssoftware.com/support/support.asp>Email: tk_support@mkssoftware.comTelephone: +1-703-803-7660Fax: +1-703-803-3344

7.1.4.2\~ Via Telephone or Fax

Have the following information available: Sales Order # (SON), CPU ID (host ID), installation address and contact person. Go to the Contact Us page at <http://www.ptc.com/olm/contacts.htm>

For instructions on finding your CPU ID (host ID) click
http://www.ptc.com/appserver/wcms/standards/freefull_cskdb.jsp?&im_dbkey=90575&im_language=en.

7.1.5\~ Begin Software Installation

Please refer to the installation guide for your particular software package which can be found on the PTC Reference Documents page at <http://www.ptc.com/appserver/cs/doc/refdoc.jsp>.

7.1.6 Maintenance Plan; Levels of Maintenance Services.\~ Upon Contractors acceptance of Customers order for Maintenance Services in respect of the Licensed Products, Contractor and/or its authorized subcontractors shall provide Maintenance Services in accordance with these terms for a time period of twelve (12) months or for such other period specified in Customers order accepted by Contractor (a Maintenance Plan).\~ All Maintenance Services are provided subject to Customers payment for such services at rates quoted by Contractor. If Customer does not order Maintenance Services to commence on shipment of the Licensed Product(s), or if Customer at any time discontinues Maintenance Services, and in either case subsequently wishes to obtain Maintenance Services, Customer must pay (i) the then current fees for Maintenance Services and (ii) the fees for Maintenance Services for any period for which Customer has not purchased Maintenance Services. The then current levels of Maintenance Services offered and the corresponding services provided thereunder are described on <http://www.ptc.com> at http://www.ptc.com/support/maintenance/maintenance_support_policies.htm

Without impairing the Governments right to terminate a contract for its own convenience, a Maintenance Plan may not be cancelled by Customer following Contractors acceptance of an order for such Maintenance Plan.\~ With respect to Registered User Products, e-Learning products and Integrity Concurrent User and Server Licensed Products, annual Maintenance Services ordered by Customer must cover all Licenses granted to Customer for such Licensed Products.\~ Contractor is obligated to provide Maintenance Services only during periods for which Customer has paid the applicable Maintenance fees and only in accordance with the level of Maintenance Services Customer has purchased.

7.1.6.1. Telephone Support.\~ If Customer purchases Maintenance Services at a level that includes telephone support, Customer may utilize Contractors telephone support service to report problems and seek assistance in use of the Licensed Products.\~ The hours during which Contractor will provide telephone support will vary depending upon the level of Maintenance Services ordered by Customer. For all levels of Maintenance Services that include telephone support, Contractor will provide telephone support in the languages, and during normal business hours for the countries, listed on Contractors website at the website URL listed above.\~ For levels of Maintenance Services that include telephone support during non-business hours, Contractor will provide such support in the English language only.\~ Regardless of the total number of the Licensed Products licensed by Customer. Customer is entitled to telephone support only in direct connection with Licenses that are covered by a Maintenance Plan at a level that includes telephone support.

7.1.6.2 Repair of Errors.\~ If Customers Maintenance Plan includes repair or workaround of Errors, Contractor shall use diligent efforts to repair Errors or provide workarounds as required in such Maintenance Plan, provided notice of the Error is received by Contractor during the term of a Maintenance Plan and Customer supplies such additional information regarding the Error as Contractor may reasonably request.

7.1.6.3 New Releases.\~ Contractor will provide Customer with one copy of each New Release for each Licensed Product for which Customer is entitled to Maintenance Services at the time the applicable language version of the New Release is made generally available.\~

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Subject to different terms for particular products set forth at http://www.ptc.com/support/maintenance/maintenance_support_policies.htm, following shipment of the New Release, the previous release shall remain current for purposes of this Agreement for a period of ninety (90) days; thereafter only such New Release will be current.

7.1.6.4 Exclusions.

(1) Contractor is not obligated to perform investigation and/or repair of Errors (i) found by Contractor to be in other than a current (as described above), unaltered release of the Licensed Products; (ii) caused by changes to the Customers operating systems, \~ environment, databases or other system components which adversely affect the Licensed Products; (iii) caused by Customers modification of the Licensed Product or use thereof in combination or interconnection with software not provided by Contractor; (iv) use of the Licensed Product on a computer, operating system, software or peripherals other than a computer, operating system, software or peripherals for which such Licensed Product was designed for and licensed for use on; (v) caused by improper or unauthorized use of the Licensed Products; (vi) due to external causes such as, but not limited to, power failures or electric power surges; or (vii) \~ due to a failure by the Customer to implement recommendations in respect of solutions to Errors previously provided by Contractor to Customer.

(2) Contractor shall only be responsible for responding to problems reported by one of the two (2) technical contacts for Customers main location (which technical contacts and main location have previously been identified in writing to Contractor by Customer), and for sending New Releases to the Central Support Location designated by Customer in writing. \~ Customer is responsible for the distribution of New Releases to any of Customers additional locations where Licensed Products are authorized to be used. \~ Customer is responsible for providing to Contractor in writing the name, address, phone number, fax number, and e-mail address for each of Customers designated contacts and Customers Central Support Location.

(3) Contractor is not obligated to perform any Maintenance Services with respect to modifications or customizations of the Licensed Products, nor with respect to any developments resulting from Customers use, development or customization of functionality contained within the Licensed Products, all of which are Customers sole responsibility.

8. Pricing Terms

8.1. Base Pricing

8.1.1. Prices for commercial products and services are specified in Attachment 0001. BPA prices shall only escalate in accordance with the GSA Economic Price Adjustment clause. The same discount relationship (Discount Percentage off GSA Schedule price) shall be maintained during the term of this BPA.

8.1.2. The prices in Attachment 0001 will be reviewed annually or as required to determine whether a reduction is appropriate in accordance with section 8.2.

8.2. Most Favored Customer

8.2.1. Contractor shall ensure the prices under this BPA are as low as the prices Contractor has under any other contract instrument with any customer under like terms and conditions. If at any time the prices under any other contract instrument with any customer become lower than the prices in this BPA, this BPA will be immediately modified to include the lower prices.

8.3. Additional Price and Discount Terms

8.3.1. The government may secure additional discounts at the time of placing an order. Spot discounts are authorized and encouraged.

8.3.2. Special solutions and voluntary price reductions may be negotiated for individual orders. ARMY / Department of the NAVY customers are encouraged to consolidate their purchases of PTC WINDCHILL products prior to releasing requests for quotes under a CHESSE Enterprise Licensing Agreement (ELA). Ordering Officers should contact CHESSE for further details. CHESSE will evaluate consolidated requirements and may negotiate special terms/solutions and price reductions for specific orders as warranted by large volume purchases or other special circumstances.

9. Product and Pricing Data Submission

9.1. Data Submission Format

9.1.1. Contractor shall submit and keep current all products, service and pricing data in the format described in Attachment 0001 (amended as required) for publication in all web and other methods for public and private display and access.

9.1.2. Changes to Contractors products or prices shall only be effective upon receipt of written approval from the Procuring Contract Officer (PCO).

10. Ordering

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10.1. Ordering Guide

10.1.1. Attachment 0002 contains the ordering process and instructions that shall be followed by Ordering Offices and Contractor.

10.1.2. The Contractor shall post the Ordering Guide on its web site.

10.1.3. The Contractor shall immediately notify the Contracting Officer in the event of any changes to Contractor POC information, Contractor physical address, Contractor web address, or any other relevant information in the Ordering Guide.

10.2. Applicability of FAR and DFARS Provisions

10.2.1. Orders issued against this BPA are subject to the FAR clauses included in the underlying GSA Schedule.

10.2.2. Orders issued against this BPA are subject to the DFARS clauses as indicated by a check mark in Attachment 0003. Additional DFARS clauses may apply to the Delivery Order.

10.2.3. The DFARS clauses listed in Attachment 0003 are those in effect as of the effective date of this BPA. Ordering Offices are responsible for incorporating the most current version of the applicable DFARS clauses in the Delivery Order as appropriate.

10.2.4. Any additional DFARS clauses not checked in Attachment 0003 should be considered by the Ordering Offices for inclusion in the Delivery Order.

10.2.5. The Ordering Offices should consider the requirements of the FAR supplement of the end user component (local requirements), as they apply 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.

10.3. Web Sites and Electronic Ordering

10.3.1. This BPA will be posted to the PD CHESSE website as part of the CHESSE program. The web site can be viewed at *HYPERLINK " http : / / w w w . c h e s s . a r m y . m i l "<http://www.chess.army.mil> and is publicly accessible.

10.3.2. 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 Contractor 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.

10.3.2.1. On-line ordering may also be accomplished through CHESSE controlled web sites.

10.3.2.2. The Contractor shall ensure that the data and information relating to Contractors products, technical specifications, services, prices and other information related to this BPA is current, accurate, complete, and delivered by the Contractor in the standard format(s) described in Attachment 0001.

10.3.2.3. The Contractor shall maintain coordinated and integrated hypertext links to the CHESSE web site from their World Wide Web site(s).

10.3.2.4. The Contractor should provide electronic-commerce (EC)/EDI capabilities and accept and respond to secure on-line orders and customer requests consistent with the terms of this acquisition vehicle.

10.3.2.5. The Contractor shall use its commercially reasonable business efforts to adapt its business processes as technical requirements, environment and architecture evolve.

10.4. Delivery Schedule.

10.4.1. The Contractor shall be required to deliver all products within 30 business days of receipt of order. More expedient delivery terms may be proposed on individual orders, and are encouraged. Deliveries will be made to the address specified on the delivery orders issued against the BPA.

10.5. Delivery Notice.

10.5.1 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

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- 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

10.6. BPA Ordering Suspension

10.6.1. There may be occasions where the Government may suspend ordering (by CLIN up to and including the entire BPA) or cancel the BPA for cause. Reasons for suspension or cancellation can include but are not limited to delinquent sales report submission, non-compliance to BPA terms and conditions, failure to maintain PTC WINDCHILL Authorized Licensing Center CHES reseller status; and/or PTC WINDCHILL partnering or teaming program Gold maintenance certification. (Note: Upon launch of the PTC WINDCHILL BPA, Contractor must hold a Gold level maintenance to retain their BPA. Any BPA holder that fails to retain a BPA will not have an opportunity for another BPA for the remaining duration of the BPA Ordering Period, inclusive of any exercised option ordering periods.) If a suspension is announced, the Contractor shall adhere to this suspension by not accepting or processing delivery orders for the suspended item(s).

11. Contractor BPA Management Obligations

11.1. Report of Sales

11.1.1. The Contractor shall provide a Report of Sales to the SPM and the PCO in electronic format within fifteen (15) days following completion of the quarterly reporting period, or as otherwise requested by the SPM. The report shall be submitted in the standard format shown in Attachment 0004. Sales reports are required even in those instances where no sales are made. The SPM or PCO shall provide written approval of each report to the Contractor.

11.2. Centralized Administration

11.2.1. The Contractor must provide centralized administration, in the form of a Program Manager, in support of all work performed under this Agreement. 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, educating the sales force and submission of quarterly reports.

11.3. Records

11.3.1. The Contractor shall maintain archival copies of all orders for the term of the Agreement and for 7 years after its expiration or termination. Copies shall be made available to the Government upon request.

11.4. Program Management Reviews (PMR)

11.4.1. The Contractor shall participate in regular reviews of the progress of the Agreement. Reviews shall be held at least twice yearly as scheduled by the Software Product Manager. During these reviews the Contractor shall report on status of Agreement sales, sales leakage, marketing and any outstanding issues concerning the Agreement, among other things. PMR agenda and presentation format shall be provided by the SPM to Contractor prior to each PMR. Travel expenses are the responsibility of the Contractor.

11.5. Sales Leakage Prevention

11.5.1. The goals of the CHES Program can only be realized through cooperation between the Government and the Contractor to direct appropriate sales through the CHES vehicles. The Contractor shall ensure that all sales personnel are aware of the CHES Program and enforce the policy that this Agreement is the preferred procurement vehicle for the products within. Within sixty (60) days of the effective date of this BPA, Contractor shall submit its plan of action and define the processes required to conform to the requirements of this BPA and shall keep current the plan throughout the Term of this BPA.

11.5.2. The Contractor shall establish a process to regularly audit sales to Government buyers, determine where sales outside the CHES vehicle are occurring, and take appropriate action to direct further sales through the CHES vehicle. Results of these audits will be presented as an agenda item during PMRs.

12. Personal Data and Personally Identifiable Information (PII)

12.1. Compliance with Privacy Act

12.1.1. Contractor must comply with the Personally Identifiable Information (PII) requirements as set forth in the Privacy Act of 1974, Public Law 93-579, as amended, including all policies and directives issued therein including, for example, DoD Directive 5400-11, DoD Program dated May 8, 2007, as may also be amended from time to time or superseded.

13. Termination

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13.1. Effect of Termination.

13.1.1. Effect of Termination by Contractor. Notwithstanding any termination of this Agreement, by Contractor, including any Attachments to this Agreement, DOD shall have the right to continue use of any Products and Documentation that were purchased by a Delivery Order issued prior to the termination of the Agreement.

13.2. Surviving Provisions.

13.2.1. The following sections shall survive the termination or expiration of this Agreement: Section 5.4 (Term & Survival); Section 12 (Personal Data and Personally Identifiable Information); Section 13.1 (Effect of Termination); Section 13.2 (Surviving provisions); Section 16 (General Provisions) and any software licenses acquired pursuant to this BPA where usage rights are perpetual.

14. Relationship of the Parties

14.1. Independent Contractors.

14.1.1. Each party will act solely as an independent contractor. Nothing contained herein will be construed to create the relationship of principal and agent, employer and employee, partners or joint ventures. Neither party assumes any liability for personal injury or property damage arising out of the other party's performance of this Agreement.

14.1.2. The Contractor will be responsible for all obligations in this Agreement whether or not Contractor provides them directly. Further, the Contractor is the sole point of contact with regard to all contractual matters, including payment of any and all charges under orders executed under this Agreement.

15. On Ramp Procedures.

15.1 The Government reserves the right to reopen competition at any time during the term of the BPA. The Government will review the need for additional Contractors as needed. When an on-ramp is used, the Government will advertise the reopening of the competition on FedBizOpps and GSA ebuy, and awardees shall meet the criteria established in the initial solicitation. The evaluation and selection of awardees for any on-ramp will be exactly the same as the evaluation and award criteria used for the initial basic BPA awards. Any new awardees will compete with any existing or remaining Contractors for all delivery orders.

16. General Provisions

16.1. YEAR 2000 Compliance

16.1.1. All products provided under this BPA shall be Y2K compliant as defined in FAR 39.002.

16.2. Headings

16.2.1. The section captions and headings used in this Agreement are for reference only, and are not to be construed in any way as terms or be used to interpret the provisions of this Agreement.

16.3. Notices

16.3.1. All notices required under this Agreement will be in writing and will be sent to the Government PCO and the Contractors designated Program Manager for this Agreement at the email address set forth on page 1 of this Agreement, unless otherwise agreed to by the parties. Notices are considered to be "issued" when copies are either deposited in the mail, transmitted by facsimile, or sent by other electronic commerce methods, such as email.

16.4. Reference to Days

16.4.1. All references in this Agreement to days will, unless otherwise specified, mean calendar days.

16.5. Severability

16.5.1. If any term or provision of this Agreement is held to be illegal or unenforceable, the validity or enforceability of the remainder of this Agreement shall not be affected. In such event, the parties will negotiate a valid, enforceable substitute provision that most nearly achieves the parties original intent in entering into this Agreement or provide an equitable adjustment in the event no such provision can be added.

16.5.2. The Government does not agree to any Terms and Conditions that violate federal law or regulations including any Terms and Conditions contained in any third party software license agreement.

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16.6. Waiver

16.6.1. Neither party's failure to exercise or delay in exercising any of its rights under this Agreement shall constitute or be deemed to constitute a waiver, forfeiture, or modification of such rights or any others. Waiver of a breach of this Agreement shall not be deemed a waiver of any future breach. Any waiver must be in writing and signed by each party's representative.

16.7. Dispute Resolution

16.7.1. In the event of disagreement with respect to any aspect of this Agreement, the parties agree to discuss in good-faith to reach an amicable resolution, and to escalate such resolution process to the appropriate members of their respective management organization who have the power and authority to achieve a successful resolution.

16.8. Entire Agreement

16.8.1. This Agreement, together with all Attachments hereto, and Delivery Orders, constitutes the entire Agreement between the ARMY and the Department of the NAVY and Contractor and supersedes all prior or contemporaneous communications, representations, and Agreements, whether oral or written, regarding the subject matter of this Agreement. No modifications of, or amendments to, the terms of this Agreement shall be valid unless in writing and signed by an authorized representative of each party.

*** END OF NARRATIVE A0004 ***

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SECTION J - LIST OF ATTACHMENTS

<u>List of</u> <u>Addenda</u>	<u>Title</u>	<u>Date</u>	<u>Number</u> <u>of Pages</u>	<u>Transmitted By</u>
Exhibit A	ATTACHMENT A SUPPLEMENTAL PRICE LIST TERMS	13-AUG-2012	007	DATA

Exhibit/ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

Parametric Technology CORPORATION (PTC)

PTC License, warranty and support terms

Definitions

Manufacturer means Parametric Technology Corporation (PTC).

Customer means Ordering Activity. For the avoidance of doubt, an Ordering Activity under this BPA may be any activity within the Army or Navy (which includes military, civilian, and contractor personnel) that is authorized to place orders under a GSA Schedules. Additionally, the Ordering Activity may be any authorized Army or Navy Contractor(s) purchasing on behalf of the Army or Navy. The coverage of this definition applies to Continental United States (CONUS) and Outside the Continental United States (OCONUS) sites.

Concurrent User Products means the Licensed Products licensed on a concurrent user basis.

Designated Computer means the central processing unit(s) designated by Customer in connection with the installation of the Licensed Products (as may be modified in accordance with this Attachment A).

Designated Country means the country of the installation address specified on the applicable Product Schedule. The Designated Country may be changed only in accordance with this Attachment A.

Designated Network means the network designated by Customer in connection with the installation of the Licensed Products (as may be modified in accordance with this Attachment A).

Designated Server means a computer server designated by Customer in connection with the installation of the Licensed Products (as may be modified in accordance with this Attachment A) that has one unique instance of the applicable installed Licensed Product application.

Designated Server Products means the Licensed Products licensed on a Designated Server basis.

Documentation means the applicable Licensed Software user manuals provided or made available by electronic means at the time of shipment of the Licensed Software.

Error means a failure of the Licensed Software to conform substantially to the applicable Documentation, provided that Customer informs Contractor or Manufacturer of such failure in writing and Contractor through the Manufacturer is able to replicate such failure after making reasonable efforts.

License means the non-exclusive, non-transferable right, without any right to sub-license, to use a Licensed Product during the applicable License Term subject to the terms and conditions hereof and in accordance with the applicable restrictions set forth in the Product Schedule.

License Term means the time period during which the License shall be in effect as specified in the applicable Product Schedule (subject to earlier termination pursuant to the terms hereof).

Licensed Products means collectively the Licensed Software and the Documentation.

Licensed Software means, collectively, the computer software products specified in a Product Schedule as well as (i) any Error corrections pursuant to Attachment A hereof, (ii) any updates, Error corrections and/or New Releases provided to Customer by PTC pursuant to Maintenance Services purchased by Customer and (iii) any computer software provided to Customer in the course PTC's delivery of Training Services.

Maintenance Services means the provision of New Releases and, depending on the level of Maintenance Services ordered, may also include telephone support, web-based support tools, and correction of Errors, all as more fully described on this Attachment A.

New Release means a modified or enhanced version of a Licensed Product that is designated by PTC as a new release of that product and that PTC makes generally available to its Maintenance Services customers.

Permitted User means an individual who is authorized by Customer to use the Licensed Products, such use to be solely in accordance with the terms and conditions hereof. Permitted Users are limited to Customer's employees, consultants, subcontractors, suppliers, business partners and customers who are directly involved in the utilization of the Licensed Products solely in support of Customer's internal product development and information management operations. Customer shall at all times be responsible for its Permitted Users compliance with this Attachment.

Product Schedule means order form as may be submitted by Customer that specifies (i) the Licensed Products and/or Services ordered; and (ii) for Licensed Products, the installation address (including the Designated Country) and the License Term.

Registered User means a Permitted User for whom Customer has purchased a License to use a Registered User Product and for whom Customer has issued a password or other unique identifier to enable such individual to use the Registered User Product.

Registered User Products means the Licensed Products licensed on a Registered User basis.

Services means collectively, Maintenance Services and Training Services.

Subscription License Fee or Usage License Fee mean a periodic fee payable beginning upon shipment of Licensed Products that are specified in the applicable Product Schedule as being subject to a Subscription License Fee or Usage License Fee and that, only during the period for which the Subscription License Fee or Usage License Fee is paid, entitles Customer to (i) use the Licensed Products pursuant to the applicable License and (ii) if applicable, receive Maintenance Services at the Maintenance Services level specified in the applicable Product Schedule.

Training Services means instruction or other training in the use of the Licensed Products.

Uplift Fee means a fee based upon the difference between the License fee applicable to installation in the original Designated Country and the License fee applicable to the installation in the Designated Country to which Customer is transferring the Licensed Product.

License to Licensed Products.

License Grant. Contractor grants to Customer a License to install and use the Licensed Products solely for Customers internal product development and information management operations during the applicable License Term. The License shall be subject to the applicable restrictions in this Attachment A, to the other terms and conditions hereof, and to any limitations or other terms and conditions contained in the Product Schedule.

Certain Restrictions on Use Applicable to All Licensed Products. Customer may only install and operate Licensed Products on computer systems and networks situated in the applicable Designated Country. Customer may, from time to time, change the Designated Country in which Customer seeks to install or operate a Licensed Product, provided that (i) in each case Customer shall give prior written notice of any such change, and (ii) upon transferring the Licensed Products to a different Designated Country, Customer shall pay all applicable transfer fees and/or Uplift Fees, as well as any taxes, tariffs or duties that may be payable on such transfer (collectively, the Relocation Charges).

Only Permitted Users may access or operate the Licensed Products. Customer shall not and shall not permit any third party to:

- (i) modify or create any derivative work of any part of the Licensed Products;
- (ii) rent, lease, or loan the Licensed Products;
- (iii) use the Licensed Products, or permit them to be used, for third-party training, commercial time-sharing or service bureau use;
- (iv) disassemble, decompile, reverse engineer the Licensed Products or otherwise attempt to gain access to its source code;
- (v) sell, license, sublicense, loan, assign, or otherwise transfer (whether by sale, exchange, gift, operation of law, or otherwise) to a third party the Licensed Products, any copy thereof, or any License or other rights thereto, in whole or in part, without prior written consent;
- (vi) alter, remove, or obscure any copyright, trade secret, patent, trademark, logo, proprietary and/or other legal notices on or in copies of the Licensed Products; and
- (vii) copy or otherwise reproduce the Licensed Products in whole or in part, except as may be required for their installation into computer memory for the purpose of executing the Licensed Products in accordance with this Attachment A, and except to make a reasonable number of copies solely for back-up purposes (provided that any such permitted copies shall be the property of Manufacturer and shall reproduce all copyright, trade secret, patent, trademark, logo, proprietary and/or other legal notices contained in the original copy.

Additional Restrictions on Use Applicable to Concurrent User Products. Customer may only install and operate Concurrent User Products on the applicable Designated Computers or Designated Networks on computer systems and networks situated in the applicable Designated Country. Only Permitted Users located in the Designated Country may access or operate the Licensed Products. Permitted Users who are not employees of Customer shall use the Concurrent User Products on Customers site only. The number of Permitted Users accessing or operating a Concurrent User Product at any point in time may not exceed the number of Licenses in effect at such time for that particular Licensed Product. Customer may, from time to time, change the Designated Computer or the Designated Network for a Licensed Product, and/or the location thereof, provided that in each case (a) Customer shall give prior written notice of any such change, and (b) upon transferring the Licensed Products to a different Designated Country, Customer pays all applicable Relocation Charges.

Additional Restrictions on Use Applicable to Registered User Products. Registered User Products may only be used by Registered Users. Customer may add and/or substitute from time to time new Registered Users as long as the aggregate number of Registered Users does not

exceed at any point in time the number of Licenses in effect at such time for that particular Licensed Product and, provided further, that if a person who was previously a Registered User returns to Registered User status, a new License fee must be paid.

Additional Restrictions on Use Applicable to Designated Server Products. Customer may only install and operate Designated Server Products on the applicable Designated Server(s) situated in the applicable Designated Country. Customer may, from time to time, change the Designated Server(s) for a Designated Server Product, and/or the location thereof, provided that in each case (a) Customer shall give prior written notice of any such change, and (b) upon transferring the Designated Server Products to a different Designated Country, Customer pays all applicable Relocation Charges.

Warranty; Disclaimer of Warranties.

Warranty. Contractor warrants to Customer that it is authorized to grant the License(s) and that, subject to this Attachment A, for a period of ninety (90) days following initial shipment to Customer or Customer's designee of the computer software described in a Product Schedule (the Warranty Period), such computer software will be free from errors.

Warranty. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in the task order or delivery order issued.

Warranty Exceptions. Contractor shall have no warranty obligations hereunder with respect to (i) New Releases (for which the terms of Maintenance Services shall apply), (ii) computer software provided to Customer in the course of delivery of Training Services; (iii) any Error attributable to the use of the Licensed Product in an application or environment for which it was not designed or contemplated, or attributable to modifications of the Licensed Product by anyone other than Contractor, Manufacturer or its employees or agents; and/or (iv) Bundled Third Party Products.

Remedy. Contractors and its licensors entire liability and Customers remedy for any breach of the warranty given in Attachment A shall be, at Contractors sole discretion, either to (a) replace the Licensed Product(s) or (b) use diligent efforts to repair the Error. Contractors obligations set forth in the preceding sentence shall apply only if notice of the Error is received within the Warranty Period and Customer supplies such additional information regarding the Error as may be reasonably requested. If Contractor does not replace the applicable Licensed Product(s) and/or does not repair the Error (either by providing a bug fix, a workaround or otherwise) within a reasonable time after notice of the Error and associated information from Customer is received by Contractor through the Manufacturer, Contractor will provide a refund of the license fees paid by Customer for the applicable Licensed Product(s) upon return of such Licensed Product(s) and any copies made thereof.

Disclaimer of Warranties. EXCEPT AS EXPRESSLY STATED IN THIS ATTACHMENT A, CONTRACTOR DISCLAIMS (AND CUSTOMER WAIVES) ALL WARRANTIES, INCLUDING NON-INFRINGEMENT, AND/OR ANY WARRANTY THAT CUSTOMER WILL ACHIEVE ANY PARTICULAR RETURN ON INVESTMENT. THE LICENSED PRODUCTS ARE INTENDED TO BE USED BY TRAINED PROFESSIONALS AND ARE NOT A SUBSTITUTE FOR PROFESSIONAL JUDGMENT, TESTING, SAFETY AND UTILITY. CUSTOMER IS SOLELY RESPONSIBLE FOR ANY RESULTS OBTAINED FROM USING THE LICENSED PRODUCTS, INCLUDING THE ADEQUACY OF INDEPENDENT TESTING OF RELIABILITY AND ACCURACY OF ANY ITEM DESIGNED USING LICENSED PRODUCTS. Contractor does not warrant that the operation or other use of the Licensed Products will be uninterrupted or error free or will not cause damage or disruption to Customers data, computers or networks. Contractor disclaims all warranties of any kind, express or implied, with respect to Sun Software, Oracle Software and any Bundled Third Party Products, and if any such products are supplied by Contractor through the Manufacturer, they are provided without any warranties except as expressly stated above.

Maintenance Services

Maintenance Plan; Levels of Maintenance Services. Contractor through the Manufacturer shall provide Maintenance Services in accordance with these terms for a time period of twelve (12) months or for such other period specified in Customer's order (a Maintenance Plan). All Maintenance Services are provided subject to Customer's payment for such services. If Customer does not order Maintenance Services to commence on shipment of the Licensed Product(s) and on a continuing basis thereafter, and subsequently wishes to obtain Maintenance Services, Customer must pay (i) the then current fees for Maintenance Services and (ii) the fees for Maintenance Services for any period for which Customer has not purchased Maintenance Services. With respect to Registered User Products, annual Maintenance Services ordered by Customer must cover all Licenses granted to Customer for such Licensed Products. Contractor through the Manufacturer is obligated to provide Maintenance Services only during periods for which Customer has paid the applicable Maintenance fees and only in accordance with the level of Maintenance Services Customer has purchased. Notwithstanding the foregoing, PTC will remain obligated to perform services during the entire period of any Maintenance Plan for which PTC has accepted an order from Customer.

(a) Telephone Support. If Customer purchases Maintenance Services at a level that includes telephone support, Customer may utilize Manufacturer's telephone support service to report problems and seek assistance in use of the Licensed Products. The hours during which telephone support will be provided vary depending upon the level of Maintenance Services ordered by Customer. Regardless of the total number of the Licensed Products licensed by Customer, Customer is entitled to telephone support only in direct connection with Licenses that are covered by a Maintenance Plan at a level that includes telephone support.

(b) Repair of Errors. If Customers Maintenance Plan includes repair of Errors, Contractor through the Manufacturer shall use diligent efforts to repair Errors or provide workarounds, provided notice of the Error is received during the term of a Maintenance Plan and Customer supplies such additional information regarding the Error as may be reasonably requested.

(c) New Releases. Contractor through the Manufacturer will provide Customer with one copy of each New Release for each Licensed Product for which Customer is entitled to Maintenance Services at the time the applicable language version of the New Release is made generally available. Contractor reserves the right to charge a nominal amount for computer media, shipping and handling with respect to New Releases. Following shipment of the New Release, the previous release shall remain current for purposes of this Attachment for a period of ninety (90) days; thereafter only such New Release will be current.

(d) Exclusions.

(1) Contractor through the Manufacturer is not obligated to perform investigation and/or repair of Errors (i) found by Manufacturer to be in other than a current, unaltered release of the Licensed Products; (ii) caused by Customers modification of the Licensed Product or use thereof in combination with software not provided by Contractor or Manufacturer; (iii) caused by improper or unauthorized use of the Licensed Products; or (iv) due to external causes such as, but not limited to, power failures or electric power surges.

(2) Contractor through the Manufacturer shall only be responsible for responding to problems reported by one of the two (2) technical contacts for Customers main location (which technical contacts and main location have previously been identified in writing by Customer), and for sending New Releases to the Central Support Location designated by Customer in writing. Customer is responsible for the distribution of New Releases to any of Customers additional locations where Licensed Products are authorized to be used. Customer is responsible for providing in writing the name, address, phone number, fax number, and e-mail address for each of Customers designated contacts and Customers Central Support Location.

(3) Contractor through the Manufacturer is not obligated to perform any Maintenance Services with respect to modifications or customizations of the Licensed Products, nor with respect to any developments resulting from Customers use, development or customization of functionality contained within the Licensed Products, all of which are Customers sole responsibility.

Third Party Component Terms

Sun Components

The following terms apply to software and documentation provided by Sun Microsystems, Inc. (Sun) to the extent any Sun software or documentation (Sun Software) is included in the Licensed Products, including without limitations Java™ Runtime Environment, Java Naming and Directory Interface™ 1.2.1, JavaMail™ 1.2, JavaBeans™ Activation Framework 1.0.1, Java™ Secure Socket Extension 1.0.2, and Java™ Software Developers Kit:

Customer may not modify the Java Platform Interface (JPI, identified as classes contained within the java package or any subpackages of the java package), by creating additional classes within the JPI or otherwise causing the addition to or modification of the classes in the JPI.

In the event that Customer creates an additional class and associated API(s) which (i) extends the functionality of a Java platform and (ii) is exposed to third party software developers for the purpose of developing additional software which involves such additional API, Customer must promptly publish broadly an accurate specification for such API for free use by all developers. However, this publication requirement does not apply to Customers who do not expose any such additional API to third party software developers for the purpose of developing additional software which involves such additional API.

Sun Software is confidential copyrighted information of Sun and title to all copies is retained by Sun and/or its licensors. Sun Software is not designed, licensed or intended for use in the design, construction, operation or maintenance of any nuclear facility and Sun expressly disclaims any implied warranty of fitness for such uses.

SUN SOFTWARE MAY NOT BE FAULT TOLERANT AND WHEN USED IN CONNECTION WITH EQUIPMENT OR SYSTEMS IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, SUCH AS IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION, AIR TRAFFIC CONTROL, DIRECT LIFE SUPPORT MACHINES, OR WEAPONS SYSTEMS, THE FAILURE OF THE LICENSED PRODUCTS COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE.

Sun disclaims all express or implied conditions, representations and warranties, including any implied warranty of merchantability, fitness for a particular purpose or non-infringement, except to the extent that these disclaimers are held to be legally invalid. To the extent not prohibited by law, in no event will Sun or its licensors be liable for any lost revenue, profit or data, or for direct, indirect, special, consequential, incidental or punitive damages, however caused and regardless of the theory of liability, arising out of or related to the use of or inability to use Sun Software, even if Sun has been advised of the possibility of such damages.

Oracle Components

The following terms apply to software and documentation provided by Oracle Corporation (Oracle) to the extent any Oracle software or

documentation is included in or with the Licensed Products (the Oracle Software): Customer understands and agrees that the Oracle Software may only be used in conjunction with the Licensed Products and that Customer will not modify the Oracle Software or publish the results of any benchmark tests run on the Oracle Software.

Open Source Components

If any open source software is included in the Licensed Products, such open source software is identified in the notices which accompany the Licensed Products. The warranty and support services provided herein apply to such open source software and are provided by Contractor through the Manufacturer alone and not by the original licensor. The original licensor of the open source software provides it on an as is basis and without any liability whatsoever to Customer.

Bundled Third Party Product Terms

Certain third party products that are provided with the License Products are provided under a separate license directly from the manufacturer of the applicable third party products (Bundled Third Party Products). Use of third party products is optional. Customer agrees and acknowledges that, to the extent that any such Bundled Third Party Products are provided with the Licensed Products: (i) such Bundled Third Party Products are provided on an as-is, pass-through basis, and as such are provided to Customer without warranty, indemnification, support or other representation by Contractor or Manufacturer; (ii) Contractor bears no liability with respect to such Bundled Third Party Products and Maintenance Services for such software will be provided at Contractor or Manufacturers discretion; and (iii) Customer may be required to purchase new versions of such Bundled Third Party Products as they become available and supported by their respective manufacturer.

Currently the following Bundled Third Party Products are provided by Contractor through the Manufacturer with certain of the Licensed Products as integrated components or as optional applications by separate purchase:

- Adobe\ae Acrobat\ae Reader. Customer agrees that any copies of Adobe\ae Acrobat\ae Reader it receives from Contractor through the Manufacturer are subject to the terms and conditions of the Adobe\ae Systems Incorporated Electronic End-User License Agreement for Adobe\ae Acrobat\ae Reader included therewith.
- Citrix Systems Presentation Manager and Lakeside Software SysTrack are available as optional applications furnished with certain Arbortext Licensed Products. Customer agrees that any copies of Citrix Systems Presentation Manager and/or of Lakeside Software SysTrack it purchases from Contractor are subject to the terms and conditions of the respective Citrix Systems and Lakeside Software license agreements furnished therewith.

New Releases of Manufacturer Licensed Products may be accompanied by additional Bundled Third Party Products.