

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT			1. CONTRACT ID CODE	PAGE OF PAGES
2. AMENDMENT/MODIFICATION NO. P00002		3. EFFECTIVE DATE 04-Jan-2008	4. REQUISITION/PURCHASE REQ. NO.	
6. ISSUED BY ARMY CONTRACTING AGENCY-ITEC4 2461 EISENHOWER AVE ALEXANDRIA VA 22331-1700		CODE W91QUZ	7. ADMINISTERED BY (If other than item 6) <b>See Item 6</b>	
8. NAME AND ADDRESS OF CONTRACTOR (No., Street, County, State and Zip Code) DLT SOLUTIONS EDWARD ABBOT 13861 SUNRISE VALLEY DRIVE SUITE 400 HERNDON VA 20170			9A. AMENDMENT OF SOLICITATION NO.	
			9B. DATED (SEE ITEM 11)	
CODE OS0H9			X 10A. MOD. OF CONTRACT/ORDER NO. W91QUZ-07-A-0002	
FACILITY CODE			X 10B. DATED (SEE ITEM 13) 26-Sep-2007	
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS				
<input type="checkbox"/> The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offer <input type="checkbox"/> is extended, <input type="checkbox"/> is not extended. Offer 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 amendment; (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)				
13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACT ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.				
A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.				
X B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, 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 <input checked="" type="checkbox"/> is not, <input type="checkbox"/> 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.) Modification Control Number: vmills08451 a. The purpose of this modification is to delete the BPA comments that were erroneously left in the basic document at the time of contract award. b. In addition, Local Clause "Army Electronic Invoicing" is hereby incorporated into subject contract as indicated on the attached Summary of Changes. c. All other terms and conditions remain unchanged.				
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) JOANN M. UNDERWOOD / CONTRACTING OFFICER TEL: 703-325-3327 EMAIL: Joann.Underwood@conus.army.mil	
15B. CONTRACTOR/OFFEROR  (Signature of person authorized to sign)		15C. DATE SIGNED	16B. UNITED STATES OF AMERICA BY <u>Joann M. Underwood</u> (Signature of Contracting Officer)	
			16C. DATE SIGNED 04-Jan-2008	

SECTION SF 30 BLOCK 14 CONTINUATION PAGE

**SUMMARY OF CHANGES**

SECTION C - DESCRIPTIONS AND SPECIFICATIONS

The following have been modified:

BPA TERMS AND CONDITIONS  
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 DLT Solutions, Inc. (DLT) enter into a cooperative agreement to further reduce the administrative costs of acquiring commercial items from the General Service Administration (GSA) Federal Supply Schedule Contract GS-35F-4543G.

Federal Supply Schedule Contract Blanket Purchase Agreements (BPA) 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.

This BPA has been designated as DoD ESI and GSA SmartBUY, which is open to all U.S. Executive Agencies (as defined in 48 CFR 2.1), including the DoD and authorized contractors, except as restricted herein. DLT acknowledges that the GSA and OMB have indicated their intent to issue regulations that make this BPA a mandatory source for DLT software products and services for agencies of the federal government. This understanding will be conveyed to all of DLT software assigned federal license sales personnel, pursuant to Section E.6 of this BPA.

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

**A. TERMS AND CONDITIONS**

1. Pursuant to General Services Administration (GSA) Federal Supply Services (FSS) Contract Number GS-35F-4543G, DLT agrees to the following terms of a

Blanket Purchase Agreement (BPA) with the Army Contract Agency Information Technology, E-Commerce, and Commercial Contracting Center (ACA 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 DLT 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. Funds Obligation.** The BPA does not obligate any funds. Funds will be obligated on each delivery order.

**3. BPA Term.** The BPA runs concurrently with the underlying GSA schedule. 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".

**4. Pricing Terms.** The unit prices and rates for this BPA shall be based on the GSA Contract pricing currently in effect at the time the order is placed. Attachment A provides unit prices. Spot discounting is encouraged. DLT agrees that in no case shall the prices specified in this BPA be more than the prices reflected in DLT's GSA Schedule Contract for identical items. No less than quarterly, DLT shall propose to adjust its BPA CLIN prices to reflect price adjustments made during the previous quarterly period under its GSA Contract for the identical items. No less than quarterly, DLT agrees to provide APM-ASCP with an electronic copy of its U.S. price list for software items. A 2.0% Acquisition, Contracting, and Technical (ACT) Fee is included in the pricing in Attachment A. 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. Discount Terms and Conditions.** Prices for software are provided at four discount levels as depicted in Attachment A. The purchase of Professional Services and Training are not currently offered under DLT's GSA Schedule Contract and are subsequently not offered under this BPA.

The current GSA Schedule price for the Inventory Software Application and 1<sup>st</sup> Yr Maintenance is \$67.10 (includes GSA fee) per Full Time Equivalent (FTE). Any government organization (Department, Agency, Bureau) of less than 10,000 FTE's who licenses BDNA for their entire enterprise may receive the next higher discount band, DLT will provide appropriate discount data for each Service/Agency to ASCP quarterly, or when the discount level changes.

**6. Out-Year Prices.** Discount levels are achieved by FTE count only and are not governed by agreement year. Purchased quantity that is credited towards the volume discount level is cumulative for the total term of the BPA. Any creditable purchases made in one year are credited in the subsequent agreement years to determine the applicable discount level. The unit price for the discount level on Attachment A is not subject to upward adjustment during the term of the BPA.

**7. Price Reduction.**

7.1 **Most Favored Customer Prices.** The prices under this BPA shall be at least as low as the prices that DLT has under any other contract instrument under like terms and conditions. If at any time the prices under any other contract instrument become lower than the prices in this BPA, this BPA will be modified to include the lower prices.

## 8. License Agreement.

Notwithstanding any provision to the contrary, licenses are transferable in accordance with Attachment B, section 2.e. within the authorized users as stated in paragraph B.1.

(Example: Software licenses purchased under this BPA are perpetual software licenses subject to the licensing provisions and the terms of the GSA Contract. A license may be hosted on the standard desktop and the same user's laptop (not to be used concurrently). Any delivery order issued hereunder will serve as proof of purchase. Upon validation and receipt of software, customers will be provided an electronic version of the license agreement.) Attachment B includes the Software License Terms and Agreement.

8.1 **Functionality Replacement and Extended Support.** If the form, fit, or functionality contained in any licensed products acquired hereunder is substantially reduced or if the product is replaced, and/or (the contractor), provides this same or substantially similar functionality as a separate or renamed product, then the DoD is entitled to license such software at no additional licenses or maintenance fees. However, throughout the term of this agreement, the contractor will provide support services for a period of one year.

8.2 **Rights of Survivorship of the Agreement.** This Agreement shall survive unto DLT, 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 (Enter vendor name) 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.

8.3 **Audits.** In lieu of any audit provisions in the license agreement, 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 DLT 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.

9. **Media.** BDNA supplies access to all ordered software via electronic delivery via download from the BDNA Support Site at

no cost to the customer. Software will be offered on hard copy media upon written request to DLT.

**10. Maintenance**

10.1 **Support.** Omitted.

10.2 **Maintenance.** Annual Technical Support for Programs is provided under BDNA's Technical Support policies, which are in effect on the date Technical Support services, are ordered. The current version of the technical support policies may be accessed at <http://www.BDNACorp.com>. BDNA's Technical Support policies are subject to change at BDNA's discretion; however, BDNA will maintain a materially equivalent level of services provided for supported programs during the period for which fees for technical support have been paid. Technical Support consists of Software Updates and Product Support. Software Updates provides an Ordering Activity with rights to new BDNA releases including product upgrades, maintenance releases and patches.

10.2 BDNA will provide twelve months notice prior to de-supporting any product acquired under this BPA through BDNA's support website or through other means.

10.3 If BDNA reduces or replaces the functionality contained in the licensed products ("Licensed Product"), and provides this functionality as a separate or renamed product ("Product") at no additional cost to customers currently under BDNA technical support for the Licensed Product, then an ordering Activity shall be entitled to the license of such Product which is generally available in production release at no additional license or maintenance fee, provided that such ordering Activity is under then current BDNA technical support for that Licensed Product, and subject to the terms and agreements of the applicable license agreement.

11. **Professional Services.** Services are currently not offered on the GSA Schedule Contract. Customer requesting these services should contact DLT Solutions.

12. **On-Site Training.** Services are currently not offered on the GSA Schedule Contract. Customer requesting these services should contact DLT Solutions.

13. **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.

14. **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 7.1 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, and 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.

This has been designated as a DoD ESI and GSA SmartBUY Contract and is open for ordering by all United States Federal Agencies, Department of Defense (DoD) Components, and authorized contractors.) 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:**

Procuring Contracting Officer (PCO):

*Ronald L. Hyde*

Information Technology, E-Commerce and  
Commercial Contracting Center (ITEC\$)

ATTN: SFAE-IT-A  
2461B Eisenhower Avenue  
Alexandria, VA 22331-1700

Phone: 703-325-4625

Fax: 703-428-9842

Email: Ron.Hyde@usa.army.mil

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

Software Product Manager (SPM):

PEO EIS

Assistant Project Manager, ASCP  
Squire Hall, Building 283  
Fort Monmouth, NJ 07703

SPM: Tom Seadeek

Phone: 732-427-6574

Fax: 732-532-5185

Email: tom.seadeek@us.army.mil

or Alternate Point of Contact:

PEO EIS

Assistant Project Manager, ASCP  
Squire Hall, Building 283  
Fort Monmouth, NJ 07703

POC: Joe Simpson

Phone: 732-532-3012

Fax: 732-532-5185

Email: joseph.m.simpson@us.army.mil

**c. SmartBUY Program Management Office**

PM: Pebble Randolph

Phone: 703-306-7594

Email: pebble.randolph@gsa.gov

d. **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 or SmartBUY 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 the Army Small Computer Program website, <https://ascp.monmouth.army.mil/scp/index.jsp>, as well as the SmartBUY website, [www.gsa.gov/smartbuy](http://www.gsa.gov/smartbuy).

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

**2.1 Notice to Ordering Offices:** When ordering services, ordering offices are responsible for compliance with GSA's ordering Procedures for Services and DFARS 208.404-70.

a. 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. Ordering process guidance is located at <https://ascp.monmouth.army.mil/scp/index.jsp>.

b. All requirements shall be submitted to the following ordering office <https://ascp.monmouth.army.mil/scp/index.jsp>.

**2.2 Notice to Ordering Offices:** This is a single award BPA established non-competitively against GSA Schedule. It is the responsibility of the Ordering Officer to --

- a. Comply with the ordering procedures of FAR 8.4 and DFARS 208.4
- b. Obtain competition and/or execute brand name or limited source justifications as applicable;
- c. Ensure compliance with all fiscal laws prior to issuing an order under this BPA;
- d. Incorporate into the order any regulatory and statutory requirements that are applicable to the agency for which the order is placed, if pertinent requirements are not already included in this BPA; and,
- e. Ensure the vendor selected for the order represents the best value and the lowest overall cost alternative.

**2.3 Notice to Ordering Offices:**

a. 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.

b. 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.

c. 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.

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

**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 necessary to complete a DD350 (such as CAGE, DUNS, TIN, Business Size, etc.)
- 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 ASCP 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.

4. **Delivery Schedule.** The Contractor shall make available the current version of software via electronic download within one day of receipt of order.

5. **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

6. **Suspension.** There may be occasions where the Government may suspend ordering (by CLIN up to and including the entire BPA.) If a suspension is announced, the Contractor shall adhere to this suspension by not accepting/processing delivery orders for the suspended item(s).

#### **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.

2. **Fast Payment Procedure.** the provisions of FAR 52.213-1 FAST PAYMENT PROCEDURE (FEB 1998) 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. Additionally, DLT shall provide a Contract Manager to support the Program Manager on contractual issues. Program and Contract manager point-of-contact information is as follows:

*Program Manager:*  
Adam McDowell  
Tel: 703-709-7172  
Fax: 866-419-7926  
E-mail:  
adam.mcdowell@dlt.com

*Contract Manager:*  
Edward Abbot  
Tel: 703-709-7172  
Fax: 866-708-6867  
E-mail: contracts@dlt.com

**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. If the BPA contains services, current ACT fee paid by Delivery Order and total ACT fees paid will be included in the report.

**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).** DLT 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 DLT 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. Travel expenses are the responsibility of DLT.

**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:  
<http://www.eitoolkit.com>.

## **F. Standards.**

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

**2. 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).

**3. 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 (MAR 1998)
- 252.232-7009 Mandatory Payment by Government wide Commercial Purchase Card (JUL 2000)
- 252.232-7010 Levies on Contract Payments (SEPT 2005)
- 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 (NOV 2006)

(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).

<u>X</u>	252.219-7003	Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DoD Contracts) (APR 1996) (15 U.S.C. 637).
<u>X</u>	252.225-7001	Buy American Act and Balance of Payments Program (JUN 2005) (41 U.S.C. 10a-10d, E.O. 10582).
<u>X</u>	252.225-7012	Preference for Certain Domestic Commodities (JUN 2004) (10 U.S.C. 2533a).
<u>X</u>	252.225-7014	Preference for Domestic Specialty Metals (JUN 2005) (10 U.S.C. 2533a).
<u>X</u>	252.225-7015	Restriction on Acquisition of Hand or Measuring Tools (JUN 2005) (10 U.S.C. 2533a).
<u>X</u>	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).
<u>X</u>	252.225-7021	Trade Agreements (NOV 2006) (19 U.S.C. 2501-2518 and 19 U.S.C. 3301 note).
<u>X</u>	252.225-7027	Restriction on Contingent Fees for Foreign Military Sales (APR 2003) (22 U.S.C. 2779).
<u>X</u>	252.225-7028	Exclusionary Policies and Practices of Foreign Governments (APR 2003) (22 U.S.C. 2755).
<u>X</u>	252.225-7036	Buy American Act--Free Trade Agreements--Balance of Payments Program (OCT 2006) (___ Alternate I) (OCT 2006) (41 U.S.C. 10a-10d and 19 U.S.C. 3301 note).
<u>X</u>	252.225-7038	Restriction on Acquisition of Air Circuit Breakers (JUN 2005) (10 U.S.C. 2534(a)(3)).
<u>X</u>	252.226-7001	Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns (SEP 2004) (Section 8021 of Pub. L. 107-248 and similar sections in subsequent DoD appropriations acts).
<u>X</u>	252.227-7015	Technical Data--Commercial Items (NOV 1995) (10 U.S.C. 2320).
<u>X</u>	252.227-7037	Validation of Restrictive Markings on Technical Data (SEP 1999) (10 U.S.C. 2321).
<u>X</u>	252.232-7003	Electronic Submission of Payment Requests (MAY 2006) (10 U.S.C. 2227).

- X   252.237-7019 Training for Contractor Personnel Interacting with Detainees (SEP 2006) (Section 1092 of Pub. L. 108-375).
- X   252.243-7002 Requests for Equitable Adjustment (MAR 1998) (10 U.S.C. 2410).
- X   252.247-7023 Transportation of Supplies by Sea (MAY 2002) (\_\_\_ Alternate I) (MAR 2000) (\_\_\_ Alternate II) (MAR 2000) (  X   Alternate III) (MAY 2002) (10 U.S.C. 2631).
- X   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).

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**Contractor Remittance Information:**

*By ACH/Wire:*

DLT Solutions, Inc.  
SunTrust Bank  
ABA #061000104  
Acct #1000032705898  
SWIFT Code  
Contract: ACH 800-221-9792  
303 Peachtree Street, NE  
Atlanta, GA 30308

*By Regular Mail:*

DLT Solutions, Inc.  
PO Box 102549  
Atlanta, GA 30368

Software (includes first year software maintenance)

Department/Agency Headcount	Discount off GSA <sup>1</sup>	\$'s/FTE
Under 10,000	<b>5.00%</b>	\$65.03
10,001 - 40,000	<b>25.48%</b>	\$51.00
40,001 - 100,000	<b>40.39%</b>	\$40.80
> 100,001	<b>50.00%</b>	\$34.22

Follow-on annual software maintenance (post-first year)<sup>2</sup>

Department/Agency Headcount	\$'s/FTE
Under 10,000	\$10.62
10,001 - 40,000	\$8.33
40,001 - 100,000	\$6.66
> 100,001	\$5.59

Notes:

<sup>1</sup> Discounts are based on a per order basis.

<sup>2</sup> Pricing only applies to customers that purchased software/maintenance at pricing and quantities included in the BPA. A 2% discount off the previous software maintenance price will be offered to customers where initial software and/or maintenance purchases are inconsistent with the price and quantity breaks offered in the BPA.

**1. DEFINITIONS.**

**"Fingerprints"** means the data products to be used with the Licensed Software, including without limitation those libraries referred to in the Documentation as "fingerprints".

**"Certified Operating Environment"** or **"COE"** means hardware, operating system, middleware, database products and other software on which BDNA indicates a Licensed Product will operate.

**"Documentation"** means the user and reference manuals, in whatever form recorded, provided by BDNA with the related Licensed Product.

**"Error"** means a material failure of a Licensed Product to conform to its functional specifications described in the Documentation.

**"Error Correction"** means any bug fixes, modifications, additions, or routines intended to correct the practical adverse effect of an Error.

**"Intellectual Property Rights"** means patent rights (including patent

applications and disclosures), copyrights, moral rights, trademarks, service marks, trade secrets, know-how and any other intellectual property rights recognized in any country or jurisdiction in the world, now or hereafter existing, and whether or not perfected, filed or recorded.

**"License Period"** means the period for which the license is granted to Licensee for each Licensed Product, as shown in an Order Form.

**"Licensed Products"** means the specific Licensed Software, Fingerprints, and Documentation licensed by Licensee under an Order Form, and Updates thereto.

**"Licensed Software"** means the object code version of the software products listed in the Order Form.

**"Support"** means technical support services described in **Exhibit B**.

**"Territory"** means the certain geographic areas specified in the Order Form.

**"Updates"** means the Error Corrections, updates, modifications or enhancements to the Licensed Products that BDNA develops after the effective date of the Order Form and makes generally available to its

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customers for no additional charge. Updates exclude new products, features, or enhancements in which BDNA generally charges a separate fee.

**"Warranty Period"** shall mean the period starting at the signature date of an applicable Order Form and ending thirty (30) calendar days thereafter.

## **2. LICENSE.**

a. License Grant. Subject to Licensee's compliance with the terms of this Agreement and the license scope limitations set forth in the applicable Order Form, BDNA grants Licensee a personal, non-transferable, non-assignable, and non-exclusive license to use for the License Period in the Territory the Licensed Product for the purposes of serving its internal business needs. The Fingerprints may be used only in connection with the Licensed Software. The Licensed Product may be used only in the COE specified in the Order Form. Licensee may, upon BDNA's advanced written consent, change a Licensed Product to a different COE. A change in the COE may be subject to an additional fee at BDNA's then current rates.

b. Protection of Licensed Products. Licensee will take all reasonable steps to protect the Licensed Products from unauthorized copying or use and to immediately notify BDNA if it becomes aware of such unauthorized copying or use. If provided by BDNA with the Licensed Products, Licensee shall implement and use, and shall not in any way disable, the license monitoring software provided by BDNA and shall provide the output files created by this software to BDNA upon written request.

c. Copies. Licensee may make two (2) copies of the Licensed Product for archival and testing purposes. Licensee may make a reasonable number of copies of the Documentation solely for its own internal business purposes to support Licensee's use of the Licensed Products. All Intellectual Property rights and notices must be reproduced and included on such copies. Licensee may not copy the Fingerprints without the prior written consent of BDNA.

d. Ownership. Ownership of, and title to, the Licensed Products, and all Intellectual Property Rights therein, shall be owned by BDNA and/or its licensors. Licensee shall not reverse engineer, de-compile, modify in any way, or create derivative works from the Licensed Products, or any portion thereof (subject to any inalienable rights which Licensee may have under prevailing law). If de-compilation is permitted by applicable law to obtain information necessary to achieve interoperability of Licensed Software with other software or hardware, Licensee may only attempt such de-compilation after Licensee has requested the necessary information in writing from BDNA and BDNA has failed to make such information available to Licensee within a reasonable period of time. All improvements and modifications to the Licensed Product or any part thereof (whether developed by BDNA, Licensee or any third party acting on behalf of them) shall be and remain the sole and exclusive property of BDNA and Licensee agrees to promptly assign, or have promptly assign all rights, title and interest in such improvements or modifications. The Licensed Software may contain software which originated with third party vendors and without limiting the general applicability of the other provisions of this Agreement, (a) the title to any third party software incorporated in the Licensed Software shall remain with the third party which supplied the same; and (b) Licensee will not distribute any such third party software available with the Licensed Software in any manner.

e. Restrictions. The Licensed Products may be used only with respect to IT assets owned or used by Licensee, to serve the internal needs of Licensee. Except as expressly authorized in this Agreement, Licensee shall not (i) rent, lease, sublicense, distribute, copy, reproduce, display, modify or timeshare the Licensed Products or any portion thereof, (ii) use the Licensed Products as a component of or a base for products or services prepared for commercial or non commercial sale, sublicense, lease, access, hosting, service bureau, application service providing or distribution outside the Licensee' organization, (iii) use the Licensed Products as a component of or a

basis for a database prepared for commercial sale, lease, access or distribution outside the Licensee's organization, (iv) transfer licensed product without ten (10) days prior written notification to and acknowledgement from DLT/BDNA for unique events such as, but not limited to Base Realignment and Closure (BRAC), or (v) prepare any derivative work based on the Licensed Products. Licensee shall not allow any third party or unlicensed user or computer system to access or use the Licensed Products. All rights not expressly granted herein are expressly reserved by BDNA and all uses accrue solely to the benefit of BDNA.

g. Audit. During the term of this Agreement and for a period of one (1) year following (i) its termination or expiration, or (ii) the last payment obligation pursuant to this Agreement, whichever occurs last, BDNA reserves the right to inspect audit and make copies of Licensee's records as reasonably necessary to ascertain their compliance with the terms of this Agreement and any Order Form. Any audit and the results thereof will be conducted and maintained on a confidential basis. BDNA will notify Licensee of an intended audit to arrange for a mutually agreed time and date which in no event will be later than ten (10) days following Licensee's receipt of BDNA's notice. All such audits shall be scheduled during normal business hours. If any audit establishes that: (i) Licensee have misreported or underpaid BDNA by five percent (5%) or more the sums established by such audit to have been owed to BDNA for the period examined; or (ii) Licensee are in violation of any other material obligation of the Agreement, then the entire costs of the audit shall be paid by Licensee.

### **3. LIMITED WARRANTY.**

a. Warranty. During the Warranty Period, BDNA warrants that the most current version of the Licensed Product conforms in all material respects to the Documentation.

b. Warranty Remedies. As Licensee's exclusive remedy for any claim under the warranty set forth in Section 3(a).

Licensee shall promptly notify BDNA in writing of its claim. Provided that such claim is determined by BDNA to be BDNA's responsibility, BDNA shall, within thirty (30) days of its receipt of Licensee's written notice, (i) correct such failure or error; (ii) provide Licensee with a plan reasonably acceptable to Licensee for correcting the failure or error; or (iii) if neither (i) nor (ii) can be accomplished with reasonable commercial efforts from BDNA, then BDNA or Licensee may terminate the license. Upon return of the Licensed Product, BDNA shall refund the license fees paid to BDNA under this Agreement for the affected portion of the Licensed Product. The preceding warranty cure shall constitute BDNA's entire liability and Licensee's exclusive remedy for cure of the warranty set forth in Section 3(a). BDNA shall not be obligated to correct any such failure or error if Licensee has not reported to BDNA the specific existence and nature of the failure or error promptly in writing upon discovery thereof. If Licensee elects to not terminate the license for the affected portion of the Licensed Product, Licensee waives all rights for the applicable warranty cure set forth herein.

c. Exclusions. The limited warranty in Section 3(a) will not extend to any non-conformities that result from: (i) Licensee's failure to implement all Error Corrections and Updates to the Licensed Product made available by BDNA, or (ii) use of the Licensed Product other than in accordance with this Agreement and the Documentation.

d. Disclaimer of Warranty. EXCEPT AS SET FORTH IN THIS SECTION 3, NEITHER BDNA NOR ITS LICENSORS MAKE ANY WARRANTY, REPRESENTATION, CONDITION OR AGREEMENT WITH RESPECT TO THE LICENSED PRODUCTS OR THE SERVICES. BDNA AND ITS LICENSORS EXPRESSLY DISCLAIM AND EXCLUDE TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. BDNA AND ITS LICENSORS DO NOT WARRANT OR MAKE ANY REPRESENTATIONS OF CORRECTNESS, COMPLETENESS, ACCURACY, RELIABILITY, CURRENTNESS, OR OTHERWISE WITH RESPECT TO THE USE OF THE FINGERPRINTS. BDNA MAKES NO WARRANTY THAT THE LICENSED PRODUCTS ARE ERROR-FREE, WILL

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OPERATE WITHOUT INTERRUPTION, OR THAT ALL ERRORS WILL BE CORRECTED.

#### 4. INTELLECTUAL PROPERTY INDEMNIFICATION.

a. BDNA will defend Licensee from and against any suit or proceeding brought against Licensee to the extent that it is based on a claim that the Licensed Products infringe any U.S. patent or copyright, and will indemnify and hold harmless Licensee from any damages, costs and expenses (including but not limited to reasonable attorneys' fees), awarded in any such suit or proceeding or paid in settlement; provided that: Licensee notifies BDNA promptly of each such claim; BDNA is given sole control of the defense and/or settlement; and Licensee fully cooperates with BDNA in the defense or settlement. BDNA shall have no obligation under this Section 4(a) with respect to any claim of infringement or misappropriation to the extent that it is based upon: (i) the combination of the Licensed Products with products, programs or data not furnished by BDNA; (ii) any modification of the Licensed Products not performed by BDNA; or (iii) failure of Licensee to use Updates, Error Corrections, or replacement Licensed Products provided by BDNA to avoid such claim of infringement or misappropriation.

b. If the exercise by Licensee of any of its rights in the Licensed Products is enjoined as a result of a claim of infringement or misappropriation of the type specified in Section 4(a) or, in the opinion of BDNA, is likely to be so enjoined, BDNA at its option and expense will: (i) procure for Licensee the right to continue to exercise all rights granted under this Agreement with respect to the Licensed Products; (ii) modify the affected portion of the Licensed Products to avoid the claim of infringement or misappropriation, without materially altering the conformance of the Licensed Products with the Documentation or (iii) if neither (i) nor (ii) can be accomplished despite BDNA's reasonable efforts, BDNA may terminate this Agreement and Licensee's rights and BDNA's obligations hereunder with respect to the affected portion of the Licensed Products, and refund to Licensee the applicable fees paid for the Licensed

Products, amortized over a four (4) year period commencing as of the date of execution of the Order Form.

c. THE PROVISIONS OF THIS SECTION 4 SET FORTH BDNA'S SOLE AND EXCLUSIVE OBLIGATIONS AND LICENSEE'S SOLE AND EXCLUSIVE REMEDIES WITH RESPECT TO INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OF ANY KIND.

#### 5. SUPPORT OF LICENSED PRODUCTS.

Terms and conditions of Support services are set forth in Exhibit B. When ordered, Support must be ordered for all copies of the same Licensed Products and for all elements of the Licensed Products under an Order Form, which are used conjunctively by Licensee.

#### 6. FEES; TAXES; PAYMENT TERMS; SHIPPING.

a. Fees. BDNA's fees or other charges for Licensed Products, Support, or other services shall be as specified in the Order Form. Unless explicitly set forth in this Agreement, any and all discounts extended by BDNA under this Agreement shall not automatically apply to fees due when Licensee orders additional Licensed Products, Support or other services.

b. Taxes. BDNA's fees are exclusive of, and Licensee is responsible for, duties and taxes (other than BDNA's taxes on income). If any taxes on BDNA's income are required to be withheld on payments, Licensee may deduct such taxes from the amount owed BDNA and Licensee shall promptly secure and deliver to BDNA an official receipt for any such taxes withheld and any other related documents.

c. Invoicing and Payment. All payments of fees or charges under this Agreement shall be made in U.S. dollars within thirty (30) days of the date of the applicable BDNA invoice. Any amount payable by Licensee hereunder which is past due shall be subject to a late payment charge equal to 1.5% per month or the highest lawful rate, whichever is the highest.

d. Shipping. BDNA fees are exclusive of, and Licensee is responsible for, shipping costs. BDNA, without liability to Licensee, reserves the right to refuse

shipment/delivery of a Licensed Product should the Order Form received be incomplete, improperly completed, or contain unacceptable terms.

**7. CONFIDENTIALITY.**

a. By virtue of this Agreement, the parties may be exposed to or be provided with certain confidential and proprietary information of the other party ("**Confidential Information**"). Confidential Information shall be designated as confidential in writing or, if disclosed orally, designated as confidential at the time of disclosure and confirmed as confidential in writing within thirty (30) days of disclosure. Notwithstanding the foregoing, the following are Confidential Information of BDNA: the Licensed Products, the terms of this Agreement and any Order Form, BDNA's product roadmap as well as the results of any testing or bench-marking of BDNA products and services.

b. Each party will protect the other's Confidential Information from unauthorized dissemination and use with the same degree of care that each such party uses to protect its own non-public and confidential information, but in no event less than a reasonable amount of care. Neither party will use the other's Confidential Information for purposes other than those necessary to directly further the purposes of this Agreement. Neither party will disclose to third parties the other's Confidential Information without prior written consent of the other party.

c. Information shall not be considered Confidential Information to the extent, but only to the extent, that the disclosing party can establish that such information (i) is or becomes generally known or available to the public through no fault of the receiving party; (ii) was in the receiving party's possession before receipt from the disclosing party; (iii) is lawfully obtained from a third party who has the right to make such disclosure; (iv) has been independently developed by one party without reference to any Confidential Information of the other; or (v) is required to be disclosed by law provided the receiving party has

promptly notified the disclosing party of such requirement and allowed the disclosing party a reasonable time to oppose such requirement.

d. Notwithstanding anything to the contrary contained herein, BDNA is hereby authorized to use and publish aggregated data pertaining to Licensee IT assets, provided that the source of such aggregated data shall at all times be considered Confidential Information of Licensee.

**8. LIMITATIONS OF LIABILITY.**

a. Limitation of Damages. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW AND NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, IN NO EVENT SHALL BDNA AND ITS LICENSORS BE LIABLE HEREUNDER FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE, INCLUDING, WITHOUT LIMITATION, LOST BUSINESS, LOSS, CORRUPTION OR INACCURACY OF DATA, SERVICES OR TECHNOLOGY, LOST PROFITS, OR LIABILITY OR INJURY TO THIRD PERSONS, HOWEVER CAUSED UNDER ANY THEORY OF LIABILITY WHETHER FORESEEABLE OR NOT AND REGARDLESS OF WHETHER LICENSEE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

b. Limitation of Liability. IN NO EVENT WILL BDNA'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE SUM OF FEES PAID BY LICENSEE TO BDNA FOR THE SOFTWARE OR SERVICES GIVING RISE TO THE LIABILITY. THE FOREGOING LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND WHETHER THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THE PARTIES AGREE THAT THIS SECTION REPRESENTS A REASONABLE ALLOCATION OF RISK.

**9. TERM AND TERMINATION.**

a. The term of this Agreement shall commence on the Effective Date, and shall continue, unless earlier terminated as set forth herein until the end of the License Period. The term for Support is set forth in Exhibit B.

b. Either party may terminate this Agreement for cause if (i) the other party has materially breached this Agreement and has not corrected such breach within

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thirty (30) days of receipt of specific written notice of same, or (ii) if Licensee has a receiver appointed, or an assignee for the benefit of creditors, or in the event of any insolvency or inability to pay debts as they become due. Upon termination, all scheduled payments by Licensee shall be automatically accelerated such that they become immediately due and payable on the effective date of termination, even if longer terms have been provided previously. Termination shall not relieve Licensee from its obligation to pay the total fees that remain unpaid and shall not relieve any party from pursuing any other available remedies. Upon termination by BDNA, BDNA shall have no obligation to refund to Licensee any fees paid and Licensee agrees to waive unconditionally and in perpetuity any and all claims for refunds.

c. Upon termination or expiration, Licensee shall immediately discontinue all use of the Licensed Products and return or destroy all copies of same to BDNA. Licensee shall deliver a letter signed by a duly authorized officer of Licensee certifying compliance with the requirements set forth herein.

d. The following provisions will survive any termination or expiration of this Agreement: 2(d), 3(d), 7, 8, 9 and 10.

## 10. GENERAL CONDITIONS.

a. Entire Agreement. This Agreement, including applicable Order Form, sets forth the entire understanding and agreement between Licensee and BDNA and supersedes all communications, oral or written, between the parties relating to the subject matter hereof. No modification of the Agreement shall be binding unless it is in writing and is signed by authorized representatives of both parties.

b. Waiver. No waiver of any right under this Agreement shall be deemed effective unless contained in writing signed by a duly authorized representative of BDNA, and no waiver of any past or present right arising from any breach or failure to perform shall be deemed to be a waiver

of any future right arising under this Agreement.

c. Severability. If any provision in this Agreement is invalid or unenforceable, that provision shall be construed, limited, modified or, if necessary, severed, to the extent necessary, to eliminate its invalidity or unenforceability, and the other provisions of this Agreement shall remain in full force and effect.

d. Assignment. This Agreement and the use of the Licensed Products are not assignable without the prior written consent of BDNA, which consent shall not be unreasonably withheld. Any attempt at assignment without such consent shall be null and void and of no force and effect.

e. Export. Licensee shall not to knowingly, directly or indirectly, without prior written consent, if required, of the office of Export Administration of the US Department of Commerce, export or transmit any of the Licensed Products to any country to which such transmission is restricted by applicable regulations or statutes.

f. Notice of U.S. Government Restricted Rights. If the Licensee hereunder is the U.S. Government, or if the Licensed Products are acquired hereunder on behalf of the US Government with U.S. Government federal funding, notice is hereby given that the Licensed Product are commercial computer software and documentation developed exclusively at private expense and are furnished as follows: "U.S. GOVERNMENT RESTRICTED RIGHTS. Licensed Products delivered subject to the FAR 52.227-19. All use, duplication and disclosure of the Licensed Product by or on behalf of the U.S. Government shall be subject to this Agreement and the restrictions contained in subsection (c) of FAR 52.227-19, Commercial Computer Software - Restricted Rights (June 1987). Owner and Licensor is BDNA Corporation, 339 N. Bernardo Avenue, Suite 206, Mountain View, CA 94043.

g. Purchase Orders. Nothing contained in any Order Form, purchase order, purchase order acknowledgement, or invoice shall in any way modify or add any additional terms

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or conditions to this Agreement; provided, however, that such standard variable terms such as price, quantity, tax exempt status, shipping instructions and the like shall be specified on each Order Form. Orders are non-cancelable, non-refundable, non-returnable.

h. Force Majeure. If by reason of labor disputes, strikes, lockouts, riots, war, inability to obtain labor or materials, earthquake, fire or other action of the elements, accidents, governmental restrictions, appropriation or other causes beyond the control of a party hereto, either party is unable to perform in whole or in part its obligations as set forth in this Agreement, then such party shall be relieved of those obligations to the extent it is so unable to perform and such inability to perform shall not make such party liable to the other party. Neither party shall be liable for any loss, injury, delay or damages suffered or incurred by the other party due to the above causes.

i. Notices. Any notice required or permitted to be sent under this Agreement shall be delivered by hand, by overnight courier, by facsimile, or by registered mail, return receipt requested, to the address of the parties first set forth in this Agreement or to such other address of the parties designated in writing in accordance with this subsection.



LICENSED PRODUCT DESCRIPTION:

Certified Operating Environment:

Territory

Server Location

LICENSE PERIOD

LICENSE SCOPE

FEES

License fees are based on the number of active Internet Protocol addresses owned or used by Licensee ("IPs"), with a minimum license requirement of \_\_\_\_\_ IPs. Ninety days prior to each anniversary date, Licensee shall report to BDNA the number of IPs increase during the previous 12 months period. BDNA shall invoice for any incremental license and support fees. Licensee agrees that it will not receive any refunds or credits for any IPs decreases.

**License fees for term license.**

[insert payment terms]

IP Range	License Fees

<b>Support fees.</b>	
Fees for Support are payable annually in advance.	
<b>Terms for conversion to perpetual license</b>	

SECTION I - CONTRACT CLAUSES

The following have been added by full text:

ARMY ELECTRONIC INVOICING INSTRUCTIONS (FEB 2006)

**(NOTE: WIDE AREA WORKFLOW REQUIREMENTS FOR INDIVIDUAL BPA CALLS WILL BE PLACED IN ACCORDANCE WITH ACTIVITIES REQUIREMENTS)**

Contractor shall submit payment request using the following method(s) as mutually agreed to by the Contractor, the Contracting Officer, the contract administration office, and the payment office.

\_\_\_\_\_ Wide Area Workflow (WAWF) (see instructions below)

\_\_\_\_\_ Web Invoicing System (WInS)(<https://ecweb.dfas.mil>)

\_\_\_\_\_ American National Standards Institute (ANSI) X.12 electronic data interchange (EDI) formats (<http://www.X12.org> and <http://www.dfas.mil/ecedi>)

\_\_\_\_\_ Other (please specify \_\_\_\_\_)

\_\_\_\_\_

DFAS POC and Phone: \_\_\_\_\_

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\_\_\_\_\_

**WAWF is the preferred method to electronically process vendor requests for payment.** This application allows DOD vendors to submit and track Invoices and Receipt/Acceptance documents electronically. Contractors electing to use WAWF shall (i) register to use WAWF at <https://wawf.eb.mil> and (ii) ensure an electronic business point of contact (POC) is designated in the Central Contractor Registration site at <http://www.ccr.gov> within ten (10) calendar days after award of this contract/order.

### WAWF Instructions

Questions concerning payments should be directed to the Defense Finance and Accounting Service (DFAS) [Contracting Office fill in DFAS location here as indicated on your purchase order/contract] at [Contracting Office fill in DFAS vendor pay phone number here] or faxed to [Contracting Office fill in DFAS vendor pay fax phone number here]. Please have your purchase order/contract number ready when calling about payments.

You can easily access payment and receipt information using the DFAS web site at <http://www.dfas.mil/money/vendor>. Your purchase order/contract number or invoice number will be required to inquire about the status of your payment.

The following codes and information will be required to assure successful flow of WAWF documents.

TYPE OF DOCUMENT [Check the appropriate block]

\_\_\_\_\_ Commercial Item Financing

\_\_\_\_\_ Construction Invoice (Contractor Only)

\_\_\_\_\_ Invoice (Contractor Only)

\_\_\_\_\_ Invoice and Receiving Report (COMBO)

\_\_\_\_\_ Invoice as 2-in-1 (Services Only)

\_\_\_\_\_ Performance Based Payment (Government Only)

\_\_\_\_\_ Progress Payment (Government Only)

\_\_\_\_\_ Cost Voucher (Government Only)

\_\_\_\_\_ Receiving Report (Government Only)

\_\_\_\_\_ Receiving Report With Unique Identification (UID) Data (Government Only)

UID is a new globally unique "part identifier" containing data elements used to track DoD parts through their life cycle.

\_\_\_\_\_ Summary Cost Voucher (Government Only)

CAGE CODE: [Enter Contractor CAGE Code here]

ISSUE BY DODAAC: [Enter Contracting Office DoDAAC here]

ADMIN BY DODAAC: [Enter office administering contract here]

INSPECT BY DODAAC: [Enter Inspector's DoDAAC here if applicable]

ACCEPT BY DODAAC: [Enter Acceptor's DoDAAC here if applicable]

SHIP TO DODAAC: [Enter Ship To DoDAAC here if applicable]

LOCAL PROCESSING OFFICE DODDAC: [Enter LPO DoDAAC here if applicable]

PAYMENT OFFICE DoDAAC: [Enter DoDAAC]

EMAIL POINTS OF CONTACT LISTING: (Use Group e-mail accounts if applicable)

INSPECTOR: [Enter Inspector's email address here]

ACCEPTOR: [Enter Acceptor's email address here]

RECEIVING OFFICE POC: [Enter receiving office POC email address here]

CONTRACT ADMINISTRATOR: [Enter Contract Administrator's email address here]

CONTRACTING OFFICER: [Enter Contracting Officer's email address here]

ADDITIONAL CONTACT: [Enter email address(es) here]

For more information contact [Enter Contract Specialist's and/or Contracting Officer's name, email and phone here]

(End of Summary of Changes)