

SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS
OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24 & 30

1. REQUISITION NUMBER: PAGE 1 OF XX
 2. CONTRACT NO. **N00104-12-A-ZF44** 3. AWARD/EFFECTIVE DATE **10/22/12** 4. ORDER NUMBER
 5. SOLICITATION NUMBER **N00104-12-Q-ZF44** 6. SOLICITATION ISSUE DATE **08/30/2012**

7. FOR SOLICITATION INFORMATION CALL: a. NAME **Dennis Fellin** b. TELEPHONE NUMBER (No collect calls) **717-605-5659** 8. OFFER DUE DATE/ LOCAL TIME **09/12/2012 @10:00pm**

9. ISSUED BY CODE **N00104**
DEPARTMENT OF THE NAVY
NAVSUP WEAPON SYSTEMS SUPPORT
5450 CARLISLE PIKE
MECHANICSBURG, PA 17055-0788
 POC: **Dennis Fellin, CODE 0272.22**
 PHONE: **(717) 605-5659**
 EMAIL: **Dennis.fellin@navy.mil**

10. THIS ACQUISITION IS
 UNRESTRICTED
 SET ASIDE: % FOR
 SMALL BUSINESS
 EMERGING SMALL BUSINESS
 HUBZONE SMALL BUSINESS
 SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS
 8(A)
 NAICS:
 SIZE STANDARD:

11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED
 SEE SCHEDULE

12. DISCOUNT TERMS **Net 30**
 13a. THIS CONTACT IS A RATED ORDER UNDER DPAS (15 CFR 700)
 13b. RATING
 14. METHOD OF SOLICITATION
 RFQ IFB RFP

15. DELIVER TO CODE
 SPECIFIED ON EACH ORDER

16. ADMINISTERED BY CODE
 BASIC AGREEMENT - SAME AS BLOCK 9
 ORDERS - AS CITED ON EACH INDIVIDUAL ORDER

17a. CONTRACTOR/ OFFEROR CODE FACILITY
immixTechnology, Inc. CAGE 3CA29
8444 Westpark Drive DUNS: 098692374
Suite 200 TIN: 54-1912608
McLean, VA 22102
 POC: **Ron LeClerc**
 PHONE: **703-663-1934**
 EMAIL: **Ron_LeClerc@immixgroup.com**

18a. PAYMENT WILL BE MADE BY CODE
 SPECIFIED ON EACH ORDER

17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER

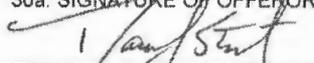
18b. SUMMIT INVOICES TO ADDRESS SHOWN IN BLOCOK 18a UNLESS BLOCK CHECKED. SEE ADDENDUM

19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
	REFER TO ATTACHED BPA Terms and Conditions GSA SCHEDULE GS-35F-0265X APPLIES				

25. ACCOUNTING AND APPROPRIATION DATA

26. TOTAL AWARD AMOUNT (For Govt. Use Only)

27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4, FAR 52.212-3 AND 52.212-5 ARE ATTACHED ARE ARE NOT ATTACHED.
 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4 and FAR 52.212-5 IS ATTACHED. ADDENDA ARE ARE NOT ATTACHED.
 28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN 1 COPY TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED HEREIN.
 29. AWARD OF CONTRACT: REFERENCE OFFER DATED . YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDES ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS:

30a. SIGNATURE OF OFFEROR/CONTRACTOR


31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER)


30b. NAME AND TITLE OF SIGNER (Type or Print)
DAVID J STEWART VP

31b. NAME OF CONTRACTING OFFICER (Type or print)
William Huber

30c. DATE SIGNED
10/16/12

31c. DATE SIGNED
10/19/12



1. Introduction/Recitals

1.1. Federal Acquisition Streamlining Act

1.1.1. In the spirit of the Federal Acquisition Streamlining Act, the NAVSUP, Weapon Systems Support – Mechanicsburg, PA, Code 027, on behalf of the U.S. Department of Defense (DoD) Enterprise Software Initiative (ESI) (referred to hereafter as the "Government" or "DoD") and immixTechnology, Inc. (the "Contractor") enter into this Blanket Purchase Agreement, which includes all Attachments (collectively referred to as the "BPA" or "Agreement") as of 10/22/2012 (the "Effective Date").

1.2. GSA FSS Contract

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

1.2.2. 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(s) GS-35F-0265X (the "FSS Contract").

1.2.3. All orders placed against this BPA are subject to the terms and conditions of the FSS Contract.

1.3. DoD ESI

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

2. Obligation

2.1. Extent of Obligation

2.1.1. The Government estimates, but does not guarantee, that the volume of purchases through this Agreement will be \$87M. The Government is obligated only to the extent of authorized purchases actually made under this Agreement.

2.2. Funds Obligation

2.2.1. This Agreement does not obligate any funds. Funds will only be obligated on each delivery order.

3. Authorized Users

3.1. DoD Components

3.1.1. The Agreement is open for ordering by all DoD Components. For the purposes of this Agreement, a DoD component is defined as follows: the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff, the Unified 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.

3.2. GSA / Ordering Organizations

3.2.1. GSA or other applicable ordering organizations/agencies are authorized to place orders under this Agreement on behalf of DoD end users and must comply with DFARS 208.7400.

3.3. Government Contractors

3.3.1. Government contractors performing work for a DoD Component (as defined above) may place Delivery Orders under this Agreement on behalf of and for the benefit of the DoD entity if authorized by their cognizant Contracting Officer in accordance with the requirements of FAR 51 and/or DFARS 251 as appropriate.

4. **Term and Survival**

4.1. Term

4.1.1. This BPA shall commence on the Effective Date, and shall continue in force for a period of three years after such date with two (one-year) option ordering periods, unless otherwise terminated as provided herein and is contingent on maintaining or renewing a GSA FSS Schedule.

4.1.2. The Government is not obligated to exercise the BPA option periods.

4.1.3. The following FAR clause is hereby incorporated:

52.217-9 -- Option to Extend the Term of the Contract (Mar 2000)

(a) The Government may extend the term of this contract by written notice to the Contractor no later than 10/21/2015 provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 5 days before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of the BPA's ordering period, including the exercise of any BPA options under this clause, shall not exceed 10/21/2017.

4.1.4. If orders issued within the BPA ordering Period(s) include options, the order options may be exercised after the BPA ordering end date(s) provided that:

(a) The initial order that includes the option was issued during the BPA ordering periods(s),



(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.

4.2. GSA Federal Supply Schedule Succession

4.2.1. This BPA is based on the Contractor's current GSA 70 schedule contract number GS-35F-0265X. In the event the current GSA 70 schedule contract is canceled or expires and a new GSA 70 schedule contract is awarded, this BPA shall automatically transfer to the new GSA 70 schedule contract to the extent the new schedule contract includes the same scope and items as the canceled or expired GSA contract.

4.3. Annual Review for Best Value

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

4.4. Survival

4.4.1. 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.

5. **Organization of this Agreement**

5.1. BPA Structure

5.1.1. This BPA is organized in two major segments:

5.1.1.1. The general terms and conditions

5.1.1.2. Attachments, which are binding master agreements entered into and made effective at the time of the award of this BPA.

5.2. Order of Precedence

5.2.1. The Order of Precedence for resolving any inconsistency between this Agreement and the GSA contract terms shall be as specified in the GSA contract's Commercial Item clause, FAR 52.212-4.

5.2.2. 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.

5.2.3. In the event of any inconsistency between the general terms and conditions of this Agreement and the terms and conditions of any Attachment to this Agreement, the general terms and conditions shall take precedence over the terms and conditions of any Attachment, unless the parties specifically agree in writing that a term or



condition of an Attachment has precedence over the corresponding term or condition in the general terms and conditions of the BPA.

5.2.4. 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 Contractor's 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.

5.3. Glossary

5.3.1. A glossary of all terms is contained in Attachment A.

5.4. Attachments List

5.4.1. The Attachments are set forth as follows:

ATTACHMENT #	TITLE
A	Glossary
B	Offering Catalog and Price List
C	Master Software Agreement
D	Ordering Guide
E	Applicable FAR and DFARS Provisions
F	Report of Sales Format
G	Fees and Payments

6. **Product and Service Offerings**

6.1. Catalog

6.1.1. The Contractor shall make available to all authorized users of this Agreement the products and services contained in *Attachment B*.

6.2. Master Agreements Applicable to Products and Services Ordered Under this BPA



6.2.1. The parties hereby enter the following master agreements to apply to all orders placed under this BPA and are incorporated herein as binding terms and conditions:

AGREEMENT TITLE	SUMMARY	ATT. #
Software License Agreement	To govern the provision and use of all software licensed to the DoD pursuant to this BPA	C

6.3. Technology Refreshment / Products and Services Improvement

6.3.1. The Contractor shall propose improvements to the products and services offered under this Agreement as products become commercially available. Proposals shall be submitted by the Contractor 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 provided under the original Agreement product and service prices.

6.3.2. 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 this BPA for most favored prices. Discounts shall be at the same or greater discount level as the original BPA product prices. Proposals shall be submitted to the Contracting Officer within seven (7) days of the BPA holder's awareness of the OEM's intent. Improvement of product includes new releases, updates, upgrades including additional features and functionality, and successor or upgrade products.

6.3.3. Changes proposed by the Contractor shall become effective only upon written acceptance by the Government.

7. **Pricing Terms**

7.1. Base Pricing

7.1.1. Prices for commercial products and services are specified in *Attachment B*. The Contractor shall not charge prices in excess of those listed in this Agreement.

7.1.2. Prices shall not escalate and are not subject to upward adjustment during the base period of this Agreement.

7.1.3. The prices in Attachment B will be reviewed annually or as required to determine whether a reduction is appropriate in accordance with section 7.2. Contractor shall include a 2.0% Acquisition, Contracting, and Technical (ACT) Fee in Contractor's prices for all products published in Attachment B. The Contractor shall be responsible for



the payment of all fees that are included in the product pricing (i.e. GSA IFF, ACT), as calculated on the customer orders, in accordance with Attachment G.

7.2. Most Favored Customer

7.2.1. 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.

7.3. Additional Price and Discount Terms

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

7.3.2. Additional price reductions may be negotiated for individual orders. DoD customers are encouraged to consolidate their purchases of Flexera products prior to releasing requests for quotes under a DoD Enterprise Software Agreement (ESA).

7.4. SmartBUY Program Extension

7.4.1. Office of Management and Budget (OMB) has announced the SmartBUY initiative to maximize cost savings and achieve best quality when acquiring commercial products and services. If during the term of this Agreement, Contractor and its resellers enter into a government-wide agreement with the GSA under the SmartBUY Initiative, which includes pricing for the specific products or services under similar terms and conditions as those licensed by the DoD under this Agreement, Contractor and its resellers agree to reduce the prices for the remaining term of this Agreement to meet the prices and fees under the SmartBUY agreement, or shall license the products and sell the services under the SmartBUY agreement for the same remaining term of this Agreement, at the discretion of the DoD. Neither the Contractor nor its resellers shall preclude the government from purchasing or licensing commercial products or services under a SmartBUY Agreement.

8. Product and Pricing Data Submission

8.1. Data Submission Format

8.1.1. Contractor shall submit and keep current all product, service and pricing data in the format described in Attachment B (as amended from time to time) for publication in all web and other methods for public and private display and access.

8.1.2. Changes to Contractor's products or prices shall only be effective upon receipt of written approval from the Procuring Contract Officer ("PCO").

8.2. UNSPSC

8.2.1. The United Nations Standard Products and Services Code (UNSPSC) is a required field in the submission format required by DoD for products and prices. 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>.

9. Ordering

9.1. Ordering Guide

- 9.1.1. Attachment D contains the ordering process and instructions that shall be followed by Ordering Offices and Contractor.
- 9.1.2. The Contractor shall post the Ordering Guide on its web site.
- 9.1.3. 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.

9.2. Applicability of FAR and DFARS Provisions

- 9.2.1. Orders issued against this BPA are subject to the FAR clauses included in the underlying GSA Schedule.
- 9.2.2. Orders issued against this BPA are subject to the DFARS clauses as indicated by a check mark in Attachment E. Additional DFARS clauses may apply to the Delivery Order.
- 9.2.3. The DFARS clauses listed in Attachment E 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.
- 9.2.4. Any additional DFARS clauses not checked in Attachment E should be considered by the Ordering Offices for inclusion in the Delivery Order.
- 9.2.5. 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.

9.3. Web Sites and Electronic Ordering

- 9.3.1. 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> and is publicly accessible. The Government may also post this Agreement to other federal government or DoD web sites, some of which may be publicly accessible.
- 9.3.2. 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.



- 9.3.2.1. On-line ordering may also be accomplished through DoD controlled web sites.
- 9.3.2.2. The Contractor shall ensure that the data and information relating to Contractor's 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 B-1.
- 9.3.2.3. The Contractor shall maintain coordinated and integrated hypertext links to the ESI web site from their World Wide Web site(s).
- 9.3.2.4. 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.
- 9.3.2.5. The Contractor shall use its commercially reasonable business efforts to adapt its business processes as technical requirements, environment and architecture evolve.

9.3.3. This BPA may also be loaded into publicly accessible electronic catalog systems of other DoD agencies.

9.4. BPA Ordering Suspension

- 9.4.1. 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).

10. **Contractor BPA Management Obligations**

10.1. Report of Sales

- 10.1.1. The Contractor shall provide a Report of Sales to the SPM and the PCO in electronic format within thirty (30) 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 F. 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. At the end of each calendar quarter, the written approval provided to the Contractor will be accompanied by a request to remit the ACT fees in accordance with Attachment G. The SPM or PCO will provide a copy of the approved quarterly Report of Sales to the DoD Components participating in fee sharing.

10.2. Fees and Payments

- 10.2.1. The Contractor shall pay the ACT fees to the parties described in Attachment G within 30 days after notification of approval from the applicable SPM or PCO for the sales report required pursuant to section 10.1.



10.3. Centralized Administration

10.3.1. 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 monthly/quarterly reports and approved fee payments.

10.4. Records

10.4.1. 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.

10.5. Program Management Reviews (PMR)

10.5.1. 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.

10.6. Sales Leakage Prevention

10.6.1. 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 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.

10.6.2. The Contractor shall 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.

10.7. Marketing and Promotion

10.7.1. The Contractor shall dedicate reasonable resources to this effort and market and advertise this Agreement, to include advertising the availability and benefits of this Agreement on the Contractor's web site, advertising this Agreement at relevant trade shows, participation in DoD Component sponsored events, and promotion through news media geared to Government/DoD IT personnel and leadership.



- 10.7.2. The Contractor may obtain standardized ESI marketing materials by requesting access from the SPM.
- 10.7.3. The Contractor's use of the ESI logo, seal or emblem shall be limited to materials describing the products and services which are specifically made available under this BPA. ESI reserves the right to review any materials that contain the ESI brand prior to use by the Contractor, and, at a minimum, requires the Contractor to follow these guidelines:
- 10.7.3.1. **Use Only The Approved Master Artwork.** Do not alter or distort the appearance of the logo in anyway, for example, by adding new design elements or colors or changing the font. The logo must always look sharp, clean, and well produced.
 - 10.7.3.2. **Allow A Minimum Clear Space Around The ESI Logo.** Always allow for a minimum clear space around the logo. Never violate the clear space with any graphic elements, words or charts.
 - 10.7.3.3. **Maintain Legibility.** Never reproduce the logo in a manner that causes the logo to become illegible or blurry, which may happen if the logo is reproduced too small.
- 10.7.4. All materials made available for public view must include the following statement:
"The ESI logo/marketing is used with permission. ESI procedures are explained in DFARS 208.74 and DoD CIO Guidance and Policy memorandum No. 12-8430 dated July 26, 2000."

11. Indemnity

11.1. Indemnification for Harmful Conduct

- 11.1.1. To the maximum extent permitted by law, Contractor will defend, indemnify, protect and hold harmless DOD and their respective officers, directors, employees, agents, and Affiliates from and against any and all claims, losses, liens, demands, attorneys' fees, damages, liabilities, costs, expenses, obligations, causes of action, or suits, (collectively "Claims") by a third party, that are caused by or arise out of: i) any wrongful act or omission, whether active or passive and whether actual or alleged, or willful misconduct of the Contractor or its employees, subcontractors or agents; and ii) property loss, damage, personal injury or death, caused by the Contractor, or any of the Contractor's employees, subcontractors or agents.

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 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

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 11 (Indemnity), Section 12 (Personal Data and Personally Identifiable Information), Section 13.1 (Effect of Termination), Section 13.2 (Surviving provisions), Section 15 (General Provisions) and any software licenses acquired pursuant to this BPA where usage rights extend beyond the expiration or termination date of this BPA.

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. General Provisions

15.1. YEAR 2000 Compliance

15.1.1. All products provided under this BPA shall be Y2K compliant as defined in FAR 39.106.

15.2. Headings

15.2.1. 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.

15.3. Notices

15.3.1. All notices required under this Agreement will be in writing and will be sent to the Government PCO and the Contractor's designated Program Manager for this



Agreement at the 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.

15.4. Reference to Days

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

15.5. Severability

15.5.1. 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.

15.6. Waiver

15.6.1. 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.

15.7. Dispute Resolution

15.7.1. 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.

15.8. Entire Agreement

15.8.1. This Agreement, together with all Attachments hereto, Service Delivery Orders, and Delivery Orders, constitutes the entire agreement between DOD 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.

Attachment A



1. Definitions. The following definitions shall apply to the BPA Master and all Attachments.
 - 1.1. "Adverse Effect" means any failure of (i) the Programs to perform in all material respects in accordance with the applicable Documentation, or (ii) the Custom Software to perform in all material respects in accordance with the specifications set forth in an applicable Service Delivery Order
 - 1.2. "Affiliate" means an entity that controls, is controlled by, or is under common control with, a party to this Agreement, for as long as such ownership or control continues to exist. For purposes of the definition as it relates to DoD, "control" means the organizational or operational authority granted to DoD over a U.S. Federal Government entity.
 - 1.3. "Custom Software" means a software Deliverable developed under this Agreement. Custom Software shall not include a Program.
 - 1.4. "Deliverable" means a written or recorded work product prepared or developed as part of the Services under a SERVICE DELIVERY ORDER for the use or benefit of the DOD and identified in the applicable SERVICE DELIVERY ORDER. A Deliverable shall not include a Product or Program.
 - 1.5. "Delivery Order" means a written (electronic, hardcopy or fax) order in the form set forth in Attachment A-2 issued by DOD to Contractor referencing the BPA Master Agreement.
 - 1.6. "Documentation" means such manuals and other standard end-user and technical documentation that Contractor ordinarily makes available with a Product or Subscription Service, including amendments and Revisions thereto, and any Training Materials.
 - 1.7. "DoD Materials" shall mean all files, programs and data belonging to DoD that DoD intends to use with the Software.
 - 1.8. "DoD Data" means any electronic information stored in the Software database.
 - 1.9. "End User License Agreement" ("EULA") shall mean a document executed by the parties substantially in the form found in Attachment C-2 by which DoD orders licenses to the Software. Each EULA shall incorporate the relevant BPA Master Agreement and SLSA by reference and should include, (i) the type of license granted by Contractor; (ii) the particular Software licensed; (iii) the number of authorized Users for the Software; (iv) any Third Party Programs provided to DoD by Contractor; (v) the method of delivery; (vi) the Software language; (vii) the Supported Platform; and (viii) the Territory within which DoD is licensed to use the Software identified in the EULA.
 - 1.10. "Enhancements" means modifications, improvements, updates, error corrections, bug fixes, or other enhancements with respect to the functionality or performance of a Product, which Contractor provides for the Product. Enhancements shall not include New Products.
 - 1.11. "First Level Support" means using commercially reasonable efforts to respond to and solve basic User problems, such as: (i) responding to questions from Users regarding the Documentation; (ii) responding to questions from Users regarding the Programs or Custom Software and attempting to diagnose failures; (iii) attempting to isolate the cause of the



problem (for example, determining if the failure is the result of a configuration problem or User error); (iv) attempting to determine if a problem is a known problem; and (v) recommending fixes or other methods to restore operations to the User's system.

- 1.12. "Integrated Solutions" means the inclusion of Contractor's Products with DOD products and third party products and services for use by DoD.
- 1.13. "Intellectual Property" or "Intellectual Property Rights" means any ideas, whether or not patentable, inventions, discoveries, processes, works of authorship, marks, names, know-how, and any and all rights in such materials throughout the world, whether existing under statute, common law or equity, now or hereinafter recognized, including but not limited to (a) patents, designs, inventor's certificates, utility models, copyrights, moral rights, trade secrets, mask works, trade names and marks, service marks, trade dress, domain names and know-how, and (b) any application or right to apply for any of the rights referred to in clause (a); and (c) all renewals, extensions, and restorations, now or hereinafter in force and effect for any of the rights referred to in clause (a).
- 1.14. "Licensee" shall mean the DoD or the DoD Affiliate executing a BPA Master and associated SLSA.
- 1.15. "Maintenance Services" shall mean the services provided by Contractor pursuant to its then-current Maintenance Services Policy.
- 1.16. "Master Agreement" means the BPA for Software and Services which establishes the organization of contract documents and attachments and establishes the General Terms and Conditions for all software and services acquisitions by DoD.
- 1.17. "New Product" means a Program that may include, as a component of such product, another Program or a portion thereof, but that has substantial additional features or functionalities that are not Enhancements, Revisions, Versions, rebundling or repackaging of pre-existing Programs, and is priced separately from a pre-existing Program.
- 1.18. "Noncomplying Product" means any Product received by DOD that, within one (1) year following delivery by Contractor, does not comply with the Specifications, or otherwise does not comply with the provisions of this Agreement.
- 1.19. "Open Source" means any software having license terms that require, as a condition of use, modification, or distribution of the software that such software or other software combined or distributed with such software be (i) disclosed or distributed in source code form, (ii) licensed for the purpose of making derivative works, or (iii) redistributable at no charge.
- 1.20. "Personnel" means all workers, including but not limited to Contractor's and DoD's employees, temporary personnel, flex-force and others employed or contracted by Contractor or DoD.
- 1.21. "Pre-Existing Intellectual Property" means any Intellectual Property of a party existing prior to the commencement of any work performed pursuant to the Agreement and all Intellectual Property that is conceived or developed outside of the scope of this Agreement without the use of the other Party's confidential information or materials.



- 1.22. "Professional Services" refers to the services delivered under a Professional Services Master Agreement, Attachment C-8, and a Service Delivery order generally for the implementation services required for initial implementation or subsequent upgrade of Software or Subscription Services.
- 1.23. "Product" or "Products" means one or more Programs in object code form, including Documentation, installation notes, a permanent password or license key to unlock usage of the Program licensed under this Agreement whether or not identified in Attachment B-1 – Offering Catalog. For purposes of this Agreement, a Product does not include Third Party Materials delivered with the Product.
- 1.24. "Program" or "Programs" means one or more of Contractor's software programs licensed under this Agreement whether or not listed and described in Attachment B-1 – Offering Catalog hereto, including all Program Enhancements, Revisions, Versions, localized Versions and new or replacement Programs thereto as further set forth below. For purposes of this Agreement, a Program does not include Third Party Materials delivered with the Program.
- 1.25. "Revision" means a version of a Program which contains Enhancements and is designated by Contractor, if applicable, by a number on the right of the decimal point (e.g. Version I.X). Revisions shall not include New Products.
- 1.26. "SaaS" means "Software as a Service", the software delivery model in which Vendor Software is hosted by Vendor or a qualified third party. DoD is granted access to the Software functionality and capabilities under a Subscription Services Agreement, Attachment G-1.
- 1.27. "Second Level Support" means responding to and using commercially reasonable efforts to solve significant end user problems that cannot be resolved under First Level Support, such as recommending fixes and methods to restore operations to the User's system and using commercially reasonable effort to reproduce the reported problem, finding viable workarounds and providing documentation regarding reproducibility to Third Level Support (if necessary).
- 1.28. "Services" means the services provided, or contracted to be provided, by Contractor, subject to the terms and conditions of this Agreement, including Attachment D-1, Support and Maintenance Agreement, Attachment F-1, Professional Services Master Services Agreement, Attachment F-2, Services Delivery Order, Attachment G-1, SaaS Subscription Services Agreement and Attachment I-1, Training Services Agreement. Specific Services and Deliverables are defined in a Services Delivery Order and may include, but are not limited to, consulting, implementation, subscription, support and maintenance and educational services. Contractor "Services Delivery Order" means a document signed by the parties in the form set forth in Attachment F-2, Services Delivery Order template, which describes the specific Services and Deliverables to be performed or provided under this Agreement.
- 1.29. "Site" means any DOD or third party location where Services are provided, as agreed upon by the parties and set forth in a Delivery Order.



- 1.30. "SLSA" shall mean Contractor's Software License and Services Agreement entered into between DOD and Contractor, substantially in the form attached as Attachment C-1 to this Agreement, defining the terms and conditions under which DOD can acquire licenses to use the Programs. Specific license grants are set forth in one or more EULAs executed by the parties in the form set forth in Attachment C-2, End User License Agreement.
- 1.31. "Software" shall mean the version of the Contractor software Products or Programs identified in a Delivery Order including Updates to such versions. "Software" shall not include Third Party Programs or Custom Software.
- 1.32. "Specifications" means the technical and functional requirements for the Products as included in the Documentation or referenced in Attachment B-1, Offering Catalog, or as otherwise agreed to by the parties in writing.
- 1.33. "Subcontractor" means any and all third parties that have direct contracts with Contractor or with another subcontractor of Contractor to perform a portion of the Services under a Services Delivery Order.
- 1.34. "Subscription Services" means the hosted DoD solutions identified in an Delivery Order Form offered as "Software as a Service" (SaaS), and any modifications periodically made by [VENDOR], but does not include the Professional Services required to enable the Software underlying the Subscription Services.
- 1.35. "Subscription Term" means the period of time during which Contractor is required to provide DoD with the Subscription Services.
- 1.36. "Support and Maintenance" means the support and maintenance terms for the Product that Contractor is required to provide as specified in Attachment D1, Support and Maintenance Agreement.
- 1.37. "Supported Platform" shall mean the hardware and software platforms that operate with the Software, as expressly set forth in the Documentation.
- 1.38. "Territory" shall mean the country, countries or other geographic area within which DoD is licensed to use the Software specified in a EULA and Delivery Order Document.
- 1.39. "Third Level Support" means problem solving at the engineering or source code level.
- 1.40. "Third Party Materials" means any Open Source code or other Third Party Programs or materials.
- 1.41. "Third Party Programs" shall mean any third party programs or materials, such as operating system programs (i.e., Windows NT, Unix, Solaris, AIC Serv, AIX, Linux, etc.) or other programs (i.e., Microsoft Office, Microsoft SQL, CITRIX, Oracle, etc.) supplied by Contractor.
- 1.42. "Training Materials" means Contractor's training guides, modules or other instructional materials for the Programs.
- 1.43. "Updates" shall mean new releases of the Software containing error corrections or new enhancements, features or functionality that Contractor makes generally available in object code form, and any corrections and updates to the associated documentation.



- 1.44. "User" shall mean the named or specified (by password or other user identification) individuals authorized by DOD to use the Programs in accordance with the terms and conditions of this Agreement, regardless of whether the individual is actively using the Software at any given time. DoD may replace authorized Users as necessary to reflect personnel changes. Users may include the employees of DoD or third parties; provided that such third party is limited to use the Software solely in connection with DoD's internal business operations as conducted by or through such third party. DoD agrees that it is responsible for ensuring that any usage by its employees and such third parties is in accordance with the terms and conditions of the relevant BPA Master Agreement, SLSA and EULA.
- 1.45. "Contractor Materials" means any tangible or intangible materials originated, prepared or provided to DOD by Contractor in the course of performing Services under this Agreement, as set forth in a Statement of Work. Contractor Materials shall not include (i) any Third Party Materials, whether or not incorporated into or embedded in the Contractor Materials; (ii) the Programs, or any modifications or derivative works thereof; or (iii) any Documentation, Training Materials, or any Revisions thereof; however, Contractor Materials may from time to time incorporate Contractor's Pre-Existing Intellectual Property.
- 1.46. "Version" means (i) a version of the Program which contains substantial and significant Enhancements, or other substantial change in functionality or performance as compared to the previous version (if any), and which is designated by Contractor, if applicable, by a number on the left of the decimal point (e.g. Version X.) or (ii) a software program that is a successor to the Program but is not a New Product.
- 1.47. "Work Product" means object code, source code, flow charts, documentation, information, reports, test results, findings, ideas and any works and other materials developed by [VENDOR] in providing the Professional Services to DoD.