Ordering Instrument
GS-35F-0119Y

ORDER FOR SUPPLIES OR SERVICES

1. CONTRACT/PURCH. ORDER/ AGREEMENT NO.	2. DELIVERY ORDER/ CALL NO.	3. DATE OF ORDER/CALL	4. REQ./ PURCH. REQUEST NO.	5. PRIORITY
N6600118A0010		2018 May 22		

6. ISSUED BY CODE N66001
SPAWAR SYSTEMS CENTER PACIFIC
AZARIAH M. ELLINGTON, CODE 22550
AZARIAH.ELLINGTON@NAVY.MIL
53560 HULL STREET
SAN DIEGO CA 92152-5001

7. ADMINISTERED BY CODE
SEE ITEM 6

8. DELIVERY FOB
☐ DEST
☒ OTHER
(See Schedule if other)

9. CONTRACTOR CODE 1P3C5 FACILITY
CARAHSOFT TECHNOLOGY CORP.
DUNS# 088365767
1860 MICHAEL FARADAY DR, SUITE 100
RESTON VA 20190-5328

10. DELIVER TO FOB POINT BY (Date)
SEE SCHEDULE

11. MARK IF BUSINESS IS
☐ SMALL
☐ SMALL DISADVANTAGED
☐ WOMEN-OWNED

12. DISCOUNT TERMS
Net 30

13. MAIL INVOICES TO THE ADDRESS IN BLOCK
See Item 15

14. SHIP TO CODE
SEE SCHEDULE

15. PAYMENT WILL BE MADE BY CODE HQ0338
DFAS COLUMBUS CENTER
DFAS-CO/SOUTH ENTITLEMENT OPERATIONS
P.O. BOX 182317
COLUMBUS OH 43218-2317

MARK ALL PACKAGES AND PAPERS WITH IDENTIFICATION NUMBERS IN BLOCKS 1 AND 2.

16. TYPE OF ORDER
DELIVERY/CALL ☐ This delivery order/call is issued on another Govt. agency or in accordance with and subject to terms and conditions of above numbered contract.
PURCHASE ☐ Reference your quote dated
Furnish the following on terms specified herein. REF:

ACCEPTANCE. THE CONTRACTOR HEREBY ACCEPTS THE OFFER REPRESENTED BY THE NUMBERED PURCHASE ORDER AS IT MAY PREVIOUSLY HAVE BEEN OR IS NOW MODIFIED, SUBJECT TO ALL OF THE TERMS AND CONDITIONS SET FORTH, AND AGREES TO PERFORM THE SAME.

NAME OF CONTRACTOR | SIGNATURE | TYPED NAME AND TITLE | DATE SIGNED (YYYYMMMDD)

☐ If this box is marked, supplier must sign Acceptance and return the following number of copies:

17. ACCOUNTING AND APPROPRIATION DATA/ LOCAL USE

18. ITEM NO.	19. SCHEDULE OF SUPPLIES/ SERVICES	20. QUANTITY ORDERED/ ACCEPTED*	21. UNIT	22. UNIT PRICE	23. AMOUNT
	SEE SCHEDULE				

** If quantity accepted by the Government is same as quantity ordered, indicate by X. If different, enter actual quantity accepted below quantity ordered and encircle.*

24. UNITED STATES OF AMERICA
TEL: 619-553-4523
EMAIL: spencer.sessions@navy.mil
BY: Spencer Sessions
Spencer Sessions
CONTRACTING / ORDERING OFFICER

25. TOTAL
29. DIFFERENCES

26. QUANTITY IN COLUMN 20 HAS BEEN
☐ INSPECTED ☐ RECEIVED ☐ ACCEPTED, AND CONFORMS TO THE CONTRACT EXCEPT AS NOTED

DATE | SIGNATURE OF AUTHORIZED GOVT. REP.

27. SHIP NO.
28. DO VOUCHER NO.
30. INITIALS
☐ PARTIAL
☐ FINAL
32. PAID BY
33. AMOUNT VERIFIED CORRECT FOR
31. PAYMENT
☐ COMPLETE
☐ PARTIAL
☐ FINAL
34. CHECK NUMBER
35. BILL OF LADING NO.

36. I certify this account is correct and proper for payment.

DATE | SIGNATURE AND TITLE OF CERTIFYING OFFICER

37. RECEIVED AT	38. RECEIVED BY	39. DATE RECEIVED (YYYYMMMDD)	40. TOTAL CONTAINERS	41. S/R ACCOUNT NO.	42. S/R VOUCHER NO.

Section B - Supplies or Services and Prices

BPA Master Dollar Limit: $37,590,130.00
BPA Call Limit: $6,278,499.00

Period of Performance: 17-May-2018 to 16-May-2023

FSC Codes:
7030

Section H - Special Contract Requirements

GENERAL BPA TERMS AND CONDITIO

1. **Introduction/Recitals**

1.1. Federal Acquisition Streamlining Act

1.1.1. In the spirit of the Federal Acquisition Streamlining Act, the SPAWAR Systems Center Pacific, on behalf of the U.S. Department of Defense (DoD) Enterprise Software Initiative (ESI) (referred to hereafter as the "Government" or "DoD") and Carahsoft Technologies, Corp. (the "Contractor") enter into this Blanket Purchase Agreement, which includes all Attachments (collectively referred to as the "BPA") as of the Effective Date as identified on SF 1449.

1.2. GSA FSS Contract

1.2.1. General Services Administration (GSA) Federal Supply Schedule (FSS) Contract BPAs 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 GSA FSS 70 Contract(s) GS35F0119Y) [132-52 and 132-51] (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 BPA is issued in accordance with the policy and guidelines provided in the Defense Federal Acquisition Regulation Supplement (DFARS) Section 208.74.

1.4. Scope:

1.4.1. This BPA is to provide the most current commercially available Qadium brand name software, and services to the DoD, Intelligence Community, and U.S. Coast Guard via licenses and Technical Support and Maintenance. Software offered through this DoD ESI Qadium BPA will meet the functional requirements and capabilities including, but not limited to, the following categories: Expander, Global Internet Scanning, Digital Asset Map, Reporting, API Access, and Support Services.

1.5. Term

1.5.1. This BPA shall commence on the Effective Date, and shall continue in force for period of five (one-year base with four one-year options) years after such date, unless otherwise modified or terminated as provided herein and is contingent on maintaining or renewing a GSA FSS Schedule.

1.5.2. This BPA includes a one-year base ordering period, with four (one-year) option ordering periods.

BPA Base Period:	Date of Award Through 12 Months Thereafter
BPA Option 1:	Date of Exercise Through 12 Months Thereafter
BPA Option 2:	Date of Exercise Through 12 Months Thereafter
BPA Option 3:	Date of Exercise Through 12 Months Thereafter

BPA Option 4: Date of Exercise Through 12 Months Thereafter

1.5.3. This BPA expires upon completion of all orders issued within the specified BPA ordering periods, inclusive of any exercised BPA option periods. BPA is contingent upon the Contractor maintaining or renewing its GSA FSS Schedule.
The Government is not obligated to exercise the BPA options periods.

1.5.4. Other

1.5.4.1. On-ramp procedures: The Government reserves the right to reopen competition at any time during the term of the BPA based on its assessment of the marketplace. When an on-ramp is used, the Government will advertise the reopening of the competition on GSA ebuy, and awardees shall meet the criteria established in the initial solicitation.
Existing BPA holders will not be required to resubmit quotes. The evaluation and selection of awardees for any on-ramp will be the same as the evaluation and award criteria used for the initial BPA award(s). New awardees will be expected to compete with the existing Contractors for orders. All BPAs awarded as an on-ramp will have the same period of performance (POP) as the earliest awarded BPA for the OEM or category.

1.5.4.2. Off-ramp procedures: To ensure success of DoD ESI, each Contractor is expected to participate and perform in accordance with the terms and conditions of the BPA. If the Contractor is not meeting the terms and conditions of the BPA the Government reserves the right to terminate the agreement.

2. List of Attachments to the BPA

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

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

2.3. The Attachments are set forth as follows:

ATTACHMENT #	TITLE
1	Applicable FAR and DFARS Clauses
2	BPA Product Price List
3	Software License Agreement
4	Ordering Guide (To be included at a later date via Modification)
5	Glossary
6	Report of Sales Format
7	Fees and Payments

3. Obligation

3.1. Extent of Obligation

3.1.1. The Government estimates, but does not guarantee, that the volume of purchases through this BPA will be $37.6 Million. The Government is obligated only to the extent of authorized purchases actually made under this BPA.

3.2. Funds Obligation

3.2.1. This BPA does not obligate any funds. Funds will only be obligated on each Order.

4. Authorized Users

4.1. DoD or Agencies

4.1.1. The BPA is open for ordering by the "DoD or Agencies" on a world-wide basis. "DoD or Agencies" are defined by the 48 Code of Federal Regulations, Section 202.202. In addition, "DoD or Agencies" includes the Intelligence Community (IC) and the U.S. Coast Guard. For the purposes of this BPA, 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 (when Authorized), IC and FMS with a Letter of Authorization.

4.2. GSA, Other Ordering Organizations, and Organizations

GSA or other applicable ordering agencies /organizations, ordering on behalf of the DOD and/or Foreign Military Sales (FMS), are authorized to place orders under this BPA and must comply with DFARS 208.74.

4.2.1. Contractors and Integrators

Government contractors performing work for a DoD Component (as defined above) may place Orders under this BPA 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.

4.3. Federal Agencies and Authorized Contractors

4.3.1 Government contractors performing work for "DoD or Agencies" (as defined above) may place Orders under this BPA 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

5. **Ordering Period and Survival**

5.1. Ordering Period

5.1.1. 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:

5.1.1.1 The initial order that includes the option was issued during the BPA ordering period(s), and does not exceed 60 months past the expiration date of the BPA;

5.1.1.2 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

5.1.1.3 The Ordering Office satisfies all other applicable regulations for exercise of options.

5.2. GSA Federal Supply Schedule Succession

5.2.1. This BPA is based on the Contractor's current GSA schedule contract number as referenced in section 1.2.2. In the event the current GSA schedule contract is canceled or expires and a new GSA schedule contract is awarded, this BPA shall automatically transfer to the new GSA schedule contract to the extent the new schedule contract includes the same scope and items as the canceled or expired GSA contract.

5.3. Annual Review for Best Value

5.3.1. This BPA will be reviewed annually to ensure that it still represents "best value" as referenced in FAR 8.405-3e.

5.4. Acquisitions and Mergers

5.4.1. This BPA shall survive unto Contractor, its Successors, rights and assigns. The terms and conditions in this BPA 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 BPA.

6. Organization of this BPA

6.1. BPA Structure

6.1.1. This BPA is organized in two major segments:

6.1.1.1. The general terms and conditions

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

6.2. Order of Precedence

6.2.1. The Order of Precedence for resolving any inconsistency between this BPA and the GSA contract terms shall be as specified in the GSA contract's Commercial Item clause, FAR 52.212-4 and GSAM 552.212-4.

6.2.2. The provisions of FAR 52.212-4 specified in FAR 12.302 and GSAM 552.212-4, as required by Federal law, shall prevail over any terms of the commercial license or any additional negotiated terms at the order level.

6.2.3. In the event of any inconsistency between the general terms and conditions of this BPA and the terms and conditions of any Attachment to this BPA, 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.

6.2.4. 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 or Contractor's license, support, maintenance or services agreement, the provisions of FAR 52.212-4(s) control.

6.2.5. Additional terms and conditions contained in quotes or invoices shall not apply if the terms are more restrictive than those in the BPA.

6.3. Glossary

6.3.1 A glossary of all terms is contained in Attachment 5.

7. Product and Service Offerings

7.1. Catalog

7.1.1. The Contractor shall make available to all authorized users of this BPA the products and services contained in Attachment 2.

7.1.2 All products offered by Contractor shall comply with appropriate standards enumerated in the DoD IT Standards Repository (DISR). The DISR is maintained by the DoD Executive Agent for IT Standards, and the mandated compendium can be obtained from the DoD IT standards management tool, DISR online is available for use by CAC-equipped authorized parties and can be accessed for account requests at https://gtg.csd.disa.mil

7.1.3 The License Agreement attached as Attachment 3 shall govern the grant, provision and use of all software licensed to and ordered by the DoD pursuant to this BPA.

7.2. Technology Refreshment / Products and Services Improvement

7.2.1. The Contractor shall propose improvements to the products and services offered under this BPA 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 BPA product and service prices.

7.2.2. 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, and upgrades including additional features and functionality, and successor or upgrade products.

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

7.2.4. In the event the Contractor's catalog changes are not timely updated in Attachment 2 to this BPA, the ordering office is authorized to issue an Order under this BPA for items listed on the Contractors GSA FSS catalog provided the required items are within the scope of this BPA and included on the Contractor's GSA FSS catalog at time of purchase. Contractor shall quote their applicable BPA discounted price at the same or greater discount level as the original BPA product prices.

8. Pricing Terms

8.1. Base Pricing

8.1.1. Prices for commercial products and services are specified in Attachment 2. The Contractor shall not charge prices in excess of those listed in this BPA.

8.1.2. Prices shall not escalate and are not subject to upward adjustment during the term of this BPA. Technology refreshes shall be subject to paragraph 7.2.2. The prices in Attachment 2 will be reviewed annually or as required to determine whether a reduction is appropriate in accordance with section 8.2. Contractor shall include ACT Fees in Contractor's prices in accordance with Section 11.4.

8.2. Most Favored Customer

8.2.1. Contractor shall ensure the prices under this BPA are as low as the prices Contractor has under any other contract instrument with any customer under like terms and conditions.

8.3. Additional Price and Discount Terms

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

8.3.2. Attachment 2 may contain additional discounts for volume-based or transaction-based discounts.

8.3.3.

8.4. GSA Program Extension

8.4.1. Office of Management and Budget (OMB) is leading the Federal Wide Category Management effort by collaborating with agencies such as DoD and GSA initiative to maximize cost savings and implement the best practices for acquiring commercial products and services. If during the term of this BPA such an initiative comes to

fruition, the government reserves the right to expand the scope of this BPA to include customers associated with the initiative. The BPA holder agrees to extend pricing and terms and conditions of this BPA to newly identified customers associated with the effort.

NOTE: This scenario does not refer to the award of Government Wide Acquisition Contracts (GWAC) under the authority of section 5112(e) of the Clinger-Cohen Act (40 U.S.C. 11302(e).

9. Product and Pricing Data Submission

9.1. Data Submission Format

9.1.1. Contractor shall submit and keep current all products, service and pricing data in the format described in Attachment 2 (as amended from time to time) for publication in all web and other methods for public and private display and access.

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

10. Ordering

10.1. Ordering Guide

10.1.1. Attachment 4 contains the ordering process and instructions that shall be followed by Ordering Offices and Contractor.

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

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

10.1.4. This guide shall be continuously updated as required and shall not require formal modification to the BPA. All changes to the ordering guide shall be reviewed and approved by the PCO prior to posting. Administrative changes may be reviewed and approved by the SPM prior to posting.

10.2. Applicability of FAR and DFARS Provisions

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

10.2.2. Orders issued against this BPA are subject to the FAR and DFARS clauses as indicated in Attachment 1. Additional FAR and DFARS clauses may apply to the Order.

10.2.3. The DFARS clauses listed in Attachment 1 are those in effect as of the effective date of this BPA. Ordering Offices are responsible for incorporating the most current or superseding version of the applicable DFARS clauses in the Order if required.

10.2.4. 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 Oder issued by the Ordering Office.

10.3. Web Sites and Electronic Ordering

10.3.1. 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 BPA to other federal government or DoD web sites, some of which may be publicly accessible.

10.3.2.

10.3.2.1. During the term of the BPA, the Government may incorporate future capabilities as it relates to electronic ordering and the Contractor agrees in participate in achieving this objective The Contractor shall partner with the Government to ensure any required electronic-commerce (EC) capabilities are implemented where applicable and accept and respond to secure on-line orders and customer requests consistent with the terms of this acquisition vehicle.

10.3.3.

10.3.3.1. On-line ordering may also be accomplished through DoD controlled web sites.

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

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

10.4. Suspension

10.4.1. There may be occasions where the Government may suspend ordering (by catalog line item or CLIN and may include the entire BPA) or cancel the BPA for cause. Reasons for suspension or cancellation can include but are not limited to delinquent sales report submission, failure to submit quotes on RFQs, and non-compliance to BPA terms and conditions. If a suspension is announced, the Contractor shall adhere to this suspension by not accepting/processing Orders for the suspended item(s).

10.5. Dealer Relationship

10.5.1. If a dealer is specifically named and authorized by the BPA Holder's GSA Contract, the authorized dealer may act as an agent of this BPA. The responsibilities of the BPA holder in this dealer relationship are as follows:

10.5.1.1. Receive all orders issued against the BPA.

10.5.1.2. Submit invoices for payment.

10.5.1.3. Track and report sales from their dealers in accordance with 11.3 and 11.6.

10.5.2. <Insert List of Authorized Dealers here>

10.5.3. The terms and conditions of this BPA and the underlying GSA Schedule contract shall also apply to the dealer.

11. Invoicing and Payment

11.1. The requirements of a proper invoice will be specified in the in the order. Invoices will be submitted to the address specified within the order issued against this BPA.

11.2. 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 this BPA and the Contractor's invoice, the provisions of this BPA will take precedence (see Section 6.2.5) Contractor BPA Management Obligations

11.3. Report of Sales

11.3.1. The Contractor shall provide a Report of Sales, Attachment 6, to the SPM and the PCO in electronic format within fifteen (15) days following completion of the quarterly reporting period, or as otherwise requested by the SPM. The report shall be submitted in the standard format shown in Attachment 6. 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 7. The SPM or PCO will provide a copy of the approved quarterly Report of Sales to the DoD Components participating in fee sharing.

11.4. Fees and Payments

11.4.1. The Contractor shall pay the ACT fees to the parties described in Attachment 7 within 30 days after notification of approval from the applicable SPM or PCO for the sales report required pursuant to section 11.3.

11.4.2. Attachment 7 will be updated as required concerning Points of Contact and related information, and shall not require formal modification to the BPA. All changes to Attachment 7 will be reviewed and approved by the applicable SPM or PCO.

11.4.3 ACT Fees of 2% will be assessed on all software, subscriptions, services and hardware.

11.5. Centralized Administration

11.5.1. 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, educating the sales force and submission of monthly/quarterly reports and approved fee payments.

11.6. Records

11.6.1. The Contractor shall maintain archival copies of all orders for the term of the BPA in accordance with FAR Subpart 4.7 requirements. Copies shall be made available to the Government upon request.

11.7. Program Management Reviews (PMR)

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

11.8. Sales Leakage Prevention

11.8.1. 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. Sales leakage is considered a sale of products under the BPA that are executed outside the BPA. The Contractor shall ensure that all sales personnel are aware of the ESI Program and enforce the policy that this BPA is mandatory for consideration vehicle in accordance with Subpart 208.74 for the products within. Within sixty (60) days of the effective date of this BPA, Contractor shall submit its plan of action and define the processes required to conform to the requirements of this BPA and shall keep current the plan throughout the Term of this BPA.

11.8.2. 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.

11.9. Marketing and Promotion

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

11.9.2. The Contractor may obtain standardized ESI marketing materials by requesting access from the SPM.

11.9.3. 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:

11.9.3.1. **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.

11.9.3.2. **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.

11.9.3.3. **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.

11.9.4. All materials made available for public view must include the following statement: "The ESI logo/marking 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."

12. Indemnity/Liquidated Damages/Infringement Claims

12.1. To the maximum extent permitted by law, Contractor will, 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.

12.2. Liquidated Damages may be assessed in accordance with FAR Subpart 11.5 – Liquidated Damages, as specified in a Sales or Order.

12.3. Claims of infringement handled in accordance with DFARS 227.70.

12.4. Under any circumstances related to claims, damages and/or indemnification, the Department of Justice, unless otherwise permitted by law, is the settlement authority for any Claim against the government.

13. Personal Data and Personally Identifiable Information (PII)

13.1. Compliance with Privacy Act

13.1.1. 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 there under including, for example, DFARS Subpart 224.1, Protection of Privacy, may also be amended from time to time or superseded.

14. **Termination**

14.1. Effect of Termination.

14.1.1. Effect of Termination by Contractor. The Contractor shall continue to perform the orders prior to termination executed under the BPA. The Government shall have the right to continue use of any product The Government shall have the right to continue use of any Products that were purchased by an Order issued prior to the termination of the BPA.

14.2. Surviving Provisions.

14.2.1. The following sections shall survive the termination or expiration of this BPA: Section 12 (Indemnity), Section 13 (Personal Data and Personally Identifiable Information), Section 14.1 (Effect of Termination), Section 14.2 (Surviving provisions), Section 16 (General Provisions) and any software licenses acquired pursuant to this BPA where usage rights extend beyond the expiration or termination date of this BPA.

15. **Relationship of the Parties**

15.1. Relationship

15.1.1. 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 venture. Neither party assumes any liability for personal injury or property damage arising out of the other party's performance of this BPA or Orders. (The Contractor will be responsible for all obligations in this BPA 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 BPA.

16. **General Provisions**

16.1. Headings

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

16.2. Notices

16.2.1. All notices required under this BPA will be in writing and will be sent to the Government PCO and the Contractor's designated Program Manager for this BPA at the address set forth in the SF 1449, unless otherwise agreed to by the parties in writing. Notices are considered to be "issued" when copies are either deposited in the mail, transmitted by facsimile, or sent by other electronic commerce methods, such as email.

16.3. Reference to Days

16.3.1. All references in this BPA to "days" will, unless otherwise specified, mean calendar days.

16.4. Severability

16.4.1. If any term or provision of this BPA is held to be illegal or unenforceable, the validity or enforceability of the remainder of this BPA 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 BPA or provide an equitable adjustment in the event no such provision can be added.

16.5. Waiver

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

16.6. Dispute Resolution

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

16.7. Entire Agreement

16.7.1. This BPA, together with all Attachments and individual orders issued against the BPA, 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 BPA. No modifications to the terms of this BPA shall be valid unless in writing and authorized, in accordance with FAR Part 43.