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
N6600119A0052		2019 Apr 01		

6. ISSUED BY CODE N66001

NAVAL INFORMATION WARFARE CENTER PACIFIC
DENNIS J. FELLIN, CODE 22550
DENNIS.FELLIN@NAVY.MIL
53560 HULL STREET
SAN DIEGO CA 92152-5001

7. ADMINISTERED BY CODE

SEE ITEM 6

8. DELIVERY FOB
- [ ] DEST
- [X] OTHER

(See Schedule if other)

9. CONTRACTOR CODE 1UTC5 FACILITY

ADACEL SYSTEMS INC
9677 TRADEPORT DR
ORLANDO FL 32827-5318

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

11. MARK IF BUSINESS IS
- [ ] SMALL
- [ ] SMALL DISADVANTAGED
- [ ] WOMEN-OWNED

12. DISCOUNT TERMS

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

14. SHIP TO CODE

SEE SCHEDULE

15. PAYMENT WILL BE MADE BY CODE

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
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.
- [ ] PARTIAL
- [ ] FINAL

28. DO VOUCHER NO.

30. INITIALS

32. PAID BY

33. AMOUNT VERIFIED CORRECT FOR

31. PAYMENT
- [ ] COMPLETE
- [ ] PARTIAL
- [ ] FINAL

34. CHECK NUMBER

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

DATE | SIGNATURE AND TITLE OF CERTIFYING OFFICER

35. BILL OF LADING NO.

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

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

1. REQUISITION NUMBER

2. CONTRACT NO.	3. AWARD/EFFECTIVE DATE	4. ORDER NUMBER	5. SOLICITATION NUMBER	6. SOLICITATION ISSUE DATE
			N6600119Q0012	11-Oct-2018

7. FOR SOLICITATION INFORMATION CALL:	a. NAME	b. TELEPHONE NUMBER (No Collect Calls)	8. OFFER DUE DATE/LOCAL TIME
	DENNIS J. FELLIN	717-329-6588	05:00 PM 02 Nov 2018

9. ISSUED BY CODE N66001

SPAWAR SYSTEMS CENTER PACIFIC
DENNIS J. FELLIN, CODE 22550
DENNIS.FELLIN@NAVY.MIL
53560 HULL STREET
SAN DIEGO CA 92152-5001

TEL: 717-329-6588
FAX:

10. THIS ACQUISITION IS [X] UNRESTRICTED OR [ ] SET ASIDE: ____ % FOR:

[ ] SMALL BUSINESS
[ ] WOMEN-OWNED SMALL BUSINESS (WOSB) ELIGIBLE UNDER THE WOMEN-OWNED SMALL BUSINESS PROGRAM
[ ] HUBZONE SMALL BUSINESS
[ ] EDWOSB
[ ] SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS
[ ] 8(A)

NAICS: 511210
SIZE STANDARD: $38,500,000

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

12. DISCOUNT TERMS

[ ] 13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)

13b. RATING

14. METHOD OF SOLICITATION
[X] RFQ [ ] IFB [ ] RFP

15. DELIVER TO CODE

SEE SCHEDULE

16. ADMINISTERED BY CODE

17a. CONTRACTOR/ OFFEROR CODE 1UTC5 FACILITY CODE

Steven Seder
Director of Contracts
Adacel System,s, Inc.
9677 Orlando, FL 32827

TELEPHONE NO. (407) 581-1533

18a. PAYMENT WILL BE MADE BY CODE

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

18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a. UNLESS BLOCK BELOW IS CHECKED [ ] SEE ADDENDUM

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

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. 52.212-5 ARE ATTACHED. ADDENDA [ ] ARE [ ] ARE NOT ATTACHED

[ ] 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4. FAR 52.212-5 IS ATTACHED. ADDENDA [ ] ARE [ ] ARE NOT ATTACHED

[X] 28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN 1 COPIES 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.

[ ] 29. AWARD OF CONTRACT: REF. OFFER DATED . YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS:

30a. SIGNATURE OF OFFEROR/CONTRACTOR

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

30b. NAME AND TITLE OF SIGNER	30c. DATE SIGNED	31b. NAME OF CONTRACTING OFFICER (TYPE OR PRINT)	31c. DATE SIGNED
Steven Seder, Director of Contracts	02 Nov 2018	TEL: EMAIL:	

Section A - Solicitation/Contract Form

BPA DOD ESI TERMS AND CONDITIO

DoD ESI
BLANKET PURCHASE AGREEMENT
GENERAL TERMS AND CONDITIONS
Adacel Systems, Inc
N66001-19-A-0052

Computer-Aided Design & Manufacturing, Modeling, Simulation & Engineering Software and Solutions

1. **Introduction/Recitals**

1.1. Federal Acquisition Streamlining Act

1.1.1. In the spirit of the Federal Acquisition Streamlining Act, SPAWAR Systems Center Pacific (SSC PAC), on behalf of the U.S. Department of Defense (DoD) Enterprise Software Initiative (ESI) (referred to hereafter as the "Government" or "DoD") and Adacel Systems, Inc. (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 DD 1155.

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 issued to reduce the administrative costs of acquiring commercial products and services from the GSA FSS 70 Contract GS-35F-0597T "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 initiative designed to develop and implement a DoD enterprise procurement process. This DoD 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:

SIN / NAICS / PSC Matrix

SIN CODE	NAICS	PSC
SIN 132-32 Term Software License	511210 - Software Publishers, Applications development and publishing, except on a custom basis	7030 Information Technology Software
SIN 132-33 Perpetual Software License	511210 Software Publishers, Applications development and publishing, except on a custom basis	7030 Information Technology, Software

SIN 132-34 Maintenance of Software as a Service	541511, Custom Computer Programming Services, Applications software programming services, custom computer	D305 IT and Telecom-Teleprocessing, Timeshare, and Cloud Computing, Includes: Software As A Service, Infrastructure As A Service
SIN 132-40 Cloud Computing Services	541512 - Computer Systems Design Services	7379 Computer Related Services, not elsewhere classified
SIN 132-50 Training Courses	611420 - Computer Training, Computer software training	U012 – Education/Training – Information Technology and Telecommunications Training
SIN 132-51 Information Technology Professional Services	541512 - Computer Systems Design Services, Computer software consulting services or consultants	R415 - Support – Professional, Technology Sharing and Utilization
SIN 132-44 CDM Tools (Continuous Diagnostics and Mitigation)	Determined by what is purchased	Determined by what is purchased

Requirement	Capability
Computer-Aided Design software	Used by engineers and architects to mock up designs for products and buildings
3D Modelling	Used to develop a mathematical representation of any three-dimensional surface of objects
2D Drafting	Helps the user explore design ideas, visualize concepts through photorealistic renderings, and simulate how a design will perform in the real world
Product Data Management	System can help manage engineering files more efficiently so that they may be searchable faster for the most up-to-date design files
Simulation/ Computer-Aided Engineering	Broad term for software used in aiding engineering analysis. CAE software can perform complex tasks such as Finite Element Analysis (FEA) and Computational Fluid Dynamics (CFD), among others.
Product Life-Cycle Management	Process of managing complex product information, engineering and manufacturing workflows, and collaboration
Concurrent Engineering	Method of designing and developing products in which the different stages run simultaneously rather than consecutively. Decreases product development time as well as the time to market, leading to improved productivity and reduced costs.
Computer-Aided Machining	Subsequent computer-aided process performed after CAD and sometimes after CAE, as the model generated by both can be input into CAM software, which then controls the machine tool
Building Information Modeling	An intelligent 3D model-based process that gives architecture, engineering, and construction (AEC) professionals the insight and tools to more efficiently plan, design, construct, and manage buildings and infrastructure
Advanced Real Time Rendering	Realistic rendering of a model that can often give a product team or prospective client a clearer vision of a conceptual design than a drawing may

Mobile Access to CAD	Drawing and drafting tool that lets you view, create, edit, and share AutoCAD drawings on mobile devices anytime, anywhere
Augmented/ Virtual Reality	Interactive 3D modeling that allows the manipulation of the model to test the effect of changes before making them in the real world
3D Printing	Software and Processes used to create a three-dimensional object in which layers of material are formed under computer control to create an object
Licenses & Support Services	
License/ Subscription option:	• Stand-alone licenses (included in subscriptions with single-user access) • Network licenses (included in subscriptions with multi-user access)
Subscription Benefits	Technical support: Software support specialists, remote desktop assistance, online resources, access to the latest software

1.5. Term

1.5.1. Subject to the provisions detailed at 1.5.4, this BPA shall commence on the Effective Date and shall continue in force for period of up to 10 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 1-year base ordering period, with 9 (one-year) option ordering periods.
BPA Base Period: Ordering Period 04/01/2019 – 03/31/2020
BPA Option 1: Ordering Period 04/01/2020 – 03/31/2021
BPA Option 2: Ordering Period 04/01/2021 – 03/31/2022
BPA Option 3: Ordering Period 04/01/2022 – 03/31/2023
BPA Option 4: Ordering Period 04/01/2023 – 03/31/2024
BPA Option 5: Ordering Period 04/01/2024 – 03/31/2025
BPA Option 6: Ordering Period 04/01/2025 – 03/31/2026
BPA Option 7: Ordering Period 0 4/01/2016 – 03/31/2027
BPA Option 8: Ordering Period 04/01/2027 – 03/31/2028
BPA Option 9: Ordering Period 04/01/2028 – 03/31/2029

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

1.5.3. Other

1.5.3.1. 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, regardless of the BPA effective start date. This may result in a base year period of less than one year for the on-ramped BPA in order to achieve co-termination.

For example:
Scenario #1: Company X is awarded a BPA on 01 Jan 2020 with a 12-month base period. Company Y is "on-ramped" 01 Mar 2020 with a base period of 10 months. On 01 Jan 2021, both companies will be eligible to exercise option year 1 and remain co-termed for the remainder of the BPA ordering periods.
Scenario #2: Continuing the above example, Company Z is awarded a BPA 01 Jul 2022, while other awardees are in the middle of option year 2, the base period of Company Z will be shortened 6 months so that all awardees will be eligible to exercise the next option period on the same date. Company Z will be eligible for two less option periods so that all BPAs conclude on the same date.

1.5.3.2 Off-ramp procedures: If at any point during the period of performance the Contractor decides that it no longer prefers not to participate in this DoD ESI BPA Agreement, the Contractor may submit a request to the Contracting Officer to suspend the BPA. If the PCO accepts the Contractor's request for suspension, the PCO may at his or her sole discretion, permit the Contractor to cease active participation in the BPA. If a Contractor receives this permission and is currently under contract to perform under any Order, the Contractor will be required to continue to perform under the terms of the specific Order. This provision is independent of any other action permitted under the contract terms and conditions.

2. List of Attachments to the BPA

2.1. All attachments to this BPA will be deemed a part of this BPA and are incorporated by reference. Definitions and terms will be common throughout the document and Attachments.

2.2. The parties agree the Attachments listed in Section 2.3 apply to all orders placed under this BPA and are binding terms and conditions.

2.3. The Attachments are set forth as follows:

ATTACHMENT #	TITLE
1	Applicable Federal Acquisition Regulation (FAR) and DFARS Clauses
2	Product and Price List
3	Software License Agreement
4	Ordering Guide
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 $238.6M. 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. This BPA is open for ordering by the "DoD Departments and Agencies" on a world-wide basis. "Departments and Agencies" are defined by the Title 48 Code of Federal Regulations, Section 202.101. 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, Intelligence Communities (IC) and Foreign Military Sales (FMS) with a Letter of Authorization.

4.1.2. If this Agreement is co-branded with GSA and is OMB Designated Best in Class, it is open to all United States Federal Agencies

4.2. GSA, Other Ordering Organizations, and Organizations

GSA or other applicable ordering agencies /organizations, ordering on behalf of the DOD and/or 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.

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 transfer to the new GSA schedule contract to the extent the new schedule contract includes the same or substantially 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 8.405-3(e).

5.4. Acquisitions and Mergers

5.4.1. This BPA shall survive unto Contractor, its Successors, rights and assignments. 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 Items clause, FAR 52.212-4 and the General Services Administration Acquisition Regulation (GSAR) Deviation thereto 552.212-4.

6.2.2. The provisions of FAR 52.212-4 and GSAR 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 hereby 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 Order of Precedence provisions of FAR 52.212-4(s) and GSAR 552.212-4(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 Gig Technical Guidance Federation (GTG-F). The GTG-F is an online repository of Information Technology (IT) standards. GTG-F online supports the continuing evolution of the DoD Information Technology Standard Registry (DISR) and the automation of all its processes and is the repository for information related to DOD IT and National Security Systems (NSS) standards. GTG-F should be used by anyone involved in the management, development, or acquisition of new or improved systems within DoD.
IT Standards, and the mandated compendium can be obtained from the DoD IT standards management tool, which 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 be subject to the terms of the Order of Precedence, 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 Original Equipment Manufacturer (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 Contractor's 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 are not subject to upward adjustment during the base period. The minimum BPA discount off the GSA FSS prices is 2% and must remain at this level for the life of the BPA.

8.1.3. 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 quantities, 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.

8.4. GSA Program Extension

8.4.1 The Office of Management and Budget (OMB) Federal Wide category management as well as DoD ESI and the GSA Software Purchase Agreements initiative are working to maximize cost savings and achieve the best practices for acquiring commercial products and services. If during the BPA Ordering Period, the OEM enters into a government-wide agreement with another organization (such as GSA), which includes pricing for the specific products or services under similar terms and conditions as those licensed by this DoD ESI BPA, the Contractor will reduce the prices in Attachment 2 (if a reduction is applicable) for the

remaining BPA Ordering Period to match the new prices and fees. If applicable, this BPA may be designated for expanded ordering as described in 4.3

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

8.4.2. Future Initiatives: The Office of Management and Budget (OMB) is leading the Federal Wide Category Management effort by collaborating with agencies such as DoD and GSA to maximize cost savings and implement the best practices for acquiring commercial products and services. If during the BPA Ordering Period such an initiative comes to fruition, the government reserves the right to expand the scope, the pricing and terms and conditions of this BPA to include these authorized customers. NOTE: This scenario does not apply to the award of Government Wide Acquisition Contracts (GWAC) under the Clinger-Cohen Act (40 U.S.C. 11302(e) section 5112 (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 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.

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. Ordering Offices will include applicable end user component (local requirements) FAR supplement requirements, as required, for incorporation in the Delivery Order.

10.3. Web Sites and Electronic Ordering

10.3.1. This BPA will be posted to the DoD ESI website http://www.esi.mil . 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. During the BPA term, the Government may incorporate future electronic ordering improvements/capabilities. 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 BPA terms.

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 DoD 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 Contract Line Item Number (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.

11. Invoicing and Payment

11.1. The proper invoice requirements will be specified 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).

11.3. Report of Sales

The Contractor shall provide a Report of Sales, Attachment 6, 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 6. Sales reports are also required even in those instances where no sales are made during the reporting period.

11.3.1. At the end of each reporting period, the written report 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. The ACT fee is 1% and is assessed on all sales executed against the BPA, including, but not limited to: all software license types, software subscriptions, software maintenance as a product, software maintenance as a service, purchase of new hardware equipment, maintenance of equipment, repair services or spare parts, cloud computing services, continuous diagnostics and mitigation tools, training courses and information technology professional services.

11.5. Centralized Administration

11.5.1. The Contractor must provide a Program Manager for centralized administration to support this BPA. The Program Manager, at a minimum, is required to participate in periodic Program Management Reviews (PMRs) 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 annually as scheduled by the SPM. 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. All travel and PMR associated expenses are the responsibility of the Contractor.

11.8. Sales Leakage Prevention

11.8.1. The DoD ESI Program goals can only be realized if the Government and the Contractor direct all authorized customer sales through the DoD ESI vehicles. Sales leakage is the sale of BPA products executed outside the BPA. The Contractor shall ensure that all sales personnel are aware of the DoD ESI Program and enforce the policy that this BPA is mandatory for consideration in accordance with DFARS Subpart 208.74 for the products within it. Within sixty (60) days of the effective BPA date, Contractor shall submit its plan of action and processes required to minimize/prevent sales leakage throughout the BPA Ordering period.

11.8.2. The Contractor shall establish a process to regularly audit sales to Government buyers, determine if sales outside the DoD ESI vehicle are occurring, and take corrective action to properly direct further sales through the DoD ESI vehicle. Audit results will be presented as a PMR agenda item and otherwise (i.e., quarterly) as predetermined by the Government.

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 DoD ESI marketing materials by requesting them from the SPM.

11.9.3. The Contractor's use of the DoD ESI logo, seal or emblem shall be limited to materials describing the products and services which are specifically made available under this BPA. DoD ESI reserves the right to review any materials that contain the DoD 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 DoD ESI Logo.** Always allow for a clear space around the logo and 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 DoD ESI logo/marking is used with permission. DoD 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 are 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, which may be amended from time to time or superseded.

14. **Termination**

14.1. Effect of Termination.

14.1.1. Effect of Termination by the Government. 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 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**

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 a 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. Confidential or Propriety Information

16.7.1. The Product and Price List (Attachment 2), the Software License Agreement, (Attachment 3) and any prices paid data shall not be deemed "confidential or "proprietary" information notwithstanding any marking to that effect. The Freedom of Information Act (FOIA) governs what information must be disclosed and what information may be withheld by the Government.

16.8 Entire Agreement

16.8.1 This BPA, the underlying GSA FSS Contract, 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.

BPA Master Dollar Limit: $238,600,000.00
BPA Call Limit: $50,000,000.00

Period of Performance: 01-Apr-2019 to 31-Mar-2029

PSC Codes:
7030