1. Definitions. The following definitions shall apply to the BPA General Terms and Conditions 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 Order

1.2. "Affiliate" means an entity that controls, is controlled by, or is under common control with, a party to this BPA, 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 BPA. 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 Task Order for the use or benefit of the DoD and identified in the applicable Task Order. A Deliverable shall not include a Product or Program.

1.5. "Delivery Order", "Task Order" or "Order" means a written (electronic, hardcopy or fax) order in the form set forth in issued by DoD to Contractor referencing the BPA.

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, 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. "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.

1.10. "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.

1.11. "Integrated Solutions" means the inclusion of Contractor's Products with DoD products and third party products and services for use by DoD.

1.12. "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 hereafter in force and effect for any of the rights referred to in clause (a).

1.13. “Licensee” shall mean the DoD or the DoD Affiliate executing an order using the DoD ESI BPA.

1.14. “Maintenance Services” shall mean the services provided by Contractor pursuant to its then-current Maintenance Services Policy.

1.15. “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.

1.16. "Noncomplying Product" means any Product received by DOD that, within one year following delivery by Contractor, does not comply with the Specifications, or otherwise does not comply with the provisions of this BPA.

1.17. “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.

1.18. “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.

1.19. “Pre-Existing Intellectual Property” means any Intellectual Property of a party existing prior to the commencement of any work performed pursuant to the BPA and all Intellectual Property that is conceived or developed outside of the scope of this BPA without the use of the other Party’s confidential information or materials.

1.20. “Professional Services” refers to the services delivered under a Task Order generally for implementation, training, consulting or similar services. The task order should include a Statement of Work (SOW)“

1.21. "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 BPA whether or not identified in Attachment B - Product Price List. For purposes of this BPA, a Product does not include Third Party Materials delivered with the Product.

1.22. "Program" or “Programs” means one or more of Contractor's software programs licensed under this BPA whether or not listed and described in Attachment B – Product Price List, including all Program Enhancements, Revisions, Versions, localized Versions and new or replacement Programs as further set forth below. For purposes of this BPA, a Program does not include Third Party Materials delivered with the Program.

1.23. "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.

1.24. “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.

1.25. “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).

1.26. “Services” means the services provided, or contracted to be provided, by Contractor, subject to the terms and conditions of this BPA and may include a Support and Maintenance Agreement, Professional Services Master Services Agreement, SaaS Subscription Services Agreement, and Training Services Agreement. Specific Services and Deliverables are defined in a Task Order and may include, but are not limited to, consulting, implementation, subscription, support and maintenance and educational services.

1.27. “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.

1.28. ”Software License Agreement” shall mean Contractor’s Software License and Services Agreement entered into between DoD and Contractor, substantially in the form attached as Attachment C to this BPA, 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 End User License Agreements (EULAs) executed by the parties in the form set forth in Attachment C.

1.29. “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.

1.30. "Specifications" means the technical and functional requirements for the Products as included in the Documentation or referenced in Attachment B – Product Price List, or as otherwise agreed to by the parties in writing.

1.31. “Subcontractor” means any and all third parties that have direct contrats with Contractor or with another subcontractor of Contractor to perform a portion of the Services under a Task Order.

1.32. “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 the Publisher, but does not include the Professional Services required to enable the Software underlying the Subscription Services.

1.33. “Subscription Term” means the period of time during which Contractor is required to provide DoD with the Subscription Services.

1.34. "Support and Maintenance" means the support and maintenance terms for the Product that Contractor is required to provide as specified in Attachment C.

1.35. "Supported Platform" shall mean the hardware and software platforms that operate with the Software, as expressly set forth in the Documentation.

1.36. "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.

1.37. "Third Level Support" means problem solving at the engineering or source code level.

1.38. "Third Party Materials" means any Open Source code or other Third Party Programs or materials.

1.39. "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.

1.40. "Training Materials" means Contractor's training guides, modules or other instructional materials for the Programs.

1.41. "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.

1.42. "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 BPA, 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 attachments.

1.43. "Contractor Materials" means any tangible or intangible materials originated, prepared or provided to DoD by Contractor in the course of performing Services under this BPA, 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 ; or (iii) any Documentation, Training Materials, or any Revisions ; however, Contractor Materials may from time to time incorporate Contractor's Pre-Existing Intellectual Property.

1.44. "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.

1.45. "Work Product" means object code, source code, flow charts, documentation, information, reports, test results, findings, ideas and any works and other materials developed by the Publisher in providing the Professional Services to DoD.