

# DOD ESI SOFTWARE LICENSE AGREEMENT TEMPLATE

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## Exhibit 1

### Glossary

1. Definitions. The following definitions shall apply to the \_\_\_\_\_.
  - 1.1. "Click-Through License," also known as "Click-wrap License," is a term derived from the license-agreement screen that requires a user to click the "Agree" button before being able to access and use newly acquired software. It is commonly used in commercial shrink-wrapped software or software purchased and downloaded via the Internet.
  - 1.2. "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.
  - 1.3. "Delivery Order" means a written order (electronic, hardcopy or fax) for software placed against and referencing the BPA Master Agreement.
  - 1.4. "DFAR" or "DFARS" means Defense Federal Acquisition Regulation Supplement (DFARS) which provides DOD implementation and supplementation of the Federal Acquisition Regulation (FAR). The DFARS contains requirements of law, DOD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect on the public.
  - 1.5. "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.
  - 1.6. "End User License Agreement" ("EULA") shall mean this document executed by the parties by which DOD orders licenses to the Software. This 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.
  - 1.7. "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.
  - 1.8. "FAR" means the Federal Acquisition Regulation (FAR) which is the regulation for use by federal executive agencies for acquisition of supplies and services with appropriated funds. The FAR is supplemented by the DOD, the military departments, the Defense Audit Agency (DCAA), the Defense Information Systems Agency (DISA), and the Defense Logistics Agency (DLA). The DOD supplement is called the DFARS (Defense FAR Supplement).
  - 1.9. "Intellectual Property" or "Intellectual Property Rights" means any ideas, whether or not patentable, inventions, discoveries, processes, works of authorship, marks, names, and any and all rights in such materials throughout the world, whether existing under statute,

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common law or equity, now or hereinafter recognized, including but not limited to patents, designs, utility models, copyrights, recorded trade secrets, mask works, trade names and marks, service marks, trade dress, and domain names.”

- 1.10. “Maintenance Services” shall mean the services provided by Contractor pursuant to its then-current Maintenance Services Policy.
- 1.11. “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.
- 1.12. “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.
- 1.13. “Professional Services” typically refers to implementation services required for initial software implementation or subsequent upgrade of Software or Subscription Services.
- 1.14. “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. For purposes of this Agreement, a Product does not include Third Party Materials delivered with the Product.
- 1.15. “Program” or “Programs” means one or more of Contractor's software programs licensed under this Agreement, 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.
- 1.16. “Services” means the services provided, or contracted to be provided, by Contractor, subject to the terms and conditions of this Agreement, including a Support and Maintenance Agreement, Professional Services Agreement, Services Delivery Order, SaaS Subscription Services Agreement and a 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 and which describes the specific Services and Deliverables to be performed or provided under this Agreement.
- 1.17. “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.
- 1.18. “SLSA” shall mean Contractor’s Software License and Services Agreement entered into between DOD and Contractor, defining the terms and conditions under which DOD can acquire licenses to use the Programs.
- 1.19. “Specifications” means the technical and functional requirements for the Products as included in the Documentation or as otherwise agreed to by the parties in writing.
- 1.20. “Subscription Services” means the hosted DOD solutions identified in a Delivery Order Form offered as “Software as a Service” (SaaS), and any modifications periodically made by

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[VENDOR], but does not include the Professional Services required to enable the Software underlying the Subscription Services.

- 1.21. "Support and Maintenance" means the support and maintenance terms for the Product that Contractor is required to provide as specified in the Support and Maintenance Agreement.
- 1.22. "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.
- 1.23. "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.
- 1.24. "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.
- 1.25. "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.