

ORDER FOR SUPPLIES OR SERVICES

1. CONTRACT/PURCH. ORDER/ AGREEMENT NO. N6600120A0006	2. DELIVERY ORDER/ CALL NO.	3. DATE OF ORDER/CALL 2019 Nov 01	4. REQ./ PURCH. REQUEST NO.	5. PRIORITY
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6. ISSUED BY NAVAL INFORMATION WARFARE CENTER PACIFIC VERONICA L. BECK, CODE 22550 VERONICA.BECK@NAVY.MIL 53560 HULL STREET SAN DIEGO CA 92152-5001	CODE N66001	7. ADMINISTERED BY SEE ITEM 6	CODE	8. DELIVERY FOB <input type="checkbox"/> DEST <input checked="" type="checkbox"/> OTHER (See Schedule if other)
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9. CONTRACTOR RIGHTSTAR, INC. RIGHTSTAR SYSTEMS DUNS # 135910698 1951 KIDWELL DR STE 110 VIENNA VA 22182-3930	CODE 3H7F1	FACILITY	10. DELIVER TO FOB POINT BY (Date) SEE SCHEDULE	11. MARK IF BUSINESS IS <input type="checkbox"/> SMALL <input type="checkbox"/> SMALL DISADVANTAGED <input type="checkbox"/> WOMEN-OWNED
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14. SHIP TO SEE SCHEDULE	CODE	15. PAYMENT WILL BE MADE BY SEE SCHEDULE	CODE	13. MAIL INVOICES TO THE ADDRESS IN BLOCK See Individual Orders
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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: _____

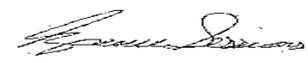
ACCEPTANCE. THE CONTRACTOR HEREBY ACCEPTS THE OFFER REPRESENTED BY THE NUMBERED PURCHASE ORDER AS IT MAY PREVIOUSLY HAVE BEEN OR IS NOW MODIFIED, SUBJECT TO ALL OF THE TERMS AND CONDITIONS SET FORTH, AND AGREES TO PERFORM THE SAME.

NAME OF CONTRACTOR	SIGNATURE	TYPED NAME AND TITLE	DATE SIGNED (YYYYMMDD)
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If this box is marked, supplier must sign Acceptance and return the following number of copies: **1**

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
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26. QUANTITY IN COLUMN 20 HAS BEEN <input type="checkbox"/> INSPECTED <input type="checkbox"/> RECEIVED <input type="checkbox"/> ACCEPTED, AND CONFORMS TO THE CONTRACT EXCEPT AS NOTED DATE _____ SIGNATURE OF AUTHORIZED GOVT. REP. _____	27. SHIP NO. <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL	28. DO VOUCHER NO.	29. DIFFERENCES	30. INITIALS
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36. I certify this account is correct and proper for payment. DATE _____ SIGNATURE AND TITLE OF CERTIFYING OFFICER _____	31. PAYMENT <input type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL	32. PAID BY	33. AMOUNT VERIFIED CORRECT FOR	34. CHECK NUMBER	35. BILL OF LADING NO.
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37. RECEIVED AT	38. RECEIVED BY	39. DATE RECEIVED (YYYYMMDD)	40. TOTAL CONTAINERS	41. S/R ACCOUNT NO.	42. S/R VOUCHER NO.
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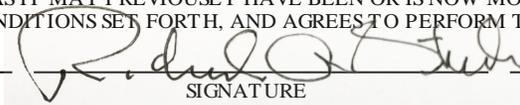
12. DISCOUNT TERMS

13. MAIL INVOICES TO THE ADDRESS IN BLOCK
See Individual Orders

14. SHIP TO SEE SCHEDULE	CODE	15. PAYMENT WILL BE MADE BY SEE SCHEDULE	CODE	MARK ALL PACKAGES AND PAPERS WITH IDENTIFICATION NUMBERS IN BLOCKS 1 AND 2.
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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 OR 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.

RightStar, Inc.  Richard A Stark 20191029
NAME OF CONTRACTOR SIGNATURE TYPED NAME AND TITLE DATE SIGNED (YYYYMMDD)

If this box is marked, supplier must sign Acceptance and return the following number of copies: 1

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: EMAIL: BY:	25. TOTAL
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26. QUANTITY IN COLUMN 20 HAS BEEN <input type="checkbox"/> INSPECTED <input type="checkbox"/> RECEIVED <input type="checkbox"/> ACCEPTED, AND CONFORMS TO THE CONTRACT EXCEPT AS NOTED DATE SIGNATURE OF AUTHORIZED GOVT. REP.	27. SHIP NO. <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL	28. DO VOUCHER NO.	30. INITIALS
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36. I certify this account is correct and proper for payment. DATE SIGNATURE AND TITLE OF CERTIFYING OFFICER	31. PAYMENT <input type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL	32. PAID BY	33. AMOUNT VERIFIED CORRECT FOR
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Section B - Supplies or Services and Prices

BPA Master Dollar Limit: \$820,500,000.00

BPA Call Limit: \$50,000,000.00

Period of Performance: 01-Nov-2019 to 07-Jul-2029

PSC Codes:

7030

BPA TERMS AND CONDITIONS

**DoD ESI
BLANKET PURCHASE AGREEMENT
GENERAL TERMS AND CONDITIONS
RIGHTSTAR, INC
N66001-20-A-0006**

Information Technology Asset Management Category

Introduction/Recitals

1.1. Federal Acquisition Streamlining Act

1.1.1. In the spirit of the Federal Acquisition Streamlining Act, Naval Information Warfare Center (NIWC PAC), on behalf of the U.S. Department of Defense (DoD) Enterprise Software Initiative (ESI) (referred to hereafter as the “Government” or “DoD”) and Rightstar, 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 SF 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(s) GS-35F-0592R - GSA Special Item Number(s) 132-32, 132-33, 132-34, and 132-44 (“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:

Product	Special Item Numbers (SIN)
Data Center Infrastructure Management	132-32
Connectors	132-32, 132-33
Modules	132-32, 132-44
Technology Asset Management	132-32, 132-33
Training and Consulting	132-34

1.5. Term

1.5.1. This BPA shall commence on the Effective Date and shall continue in force for period of 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 prorated base ordering period, to align with the ordering periods of the first awardees and 9 (one-year) option ordering periods.

BPA Base Period:	Ordering Period Date of Award – 07/07/2020
BPA Option 1:	Ordering Period 07/08/2020 – 07/07/2021
BPA Option 2:	Ordering Period 07/08/2021 – 07/07/2022

BPA Option 3:	Ordering Period 07/08/2022 – 07/07/2023
BPA Option 4:	Ordering Period 07/08/2023 – 07/07/2024
BPA Option 5:	Ordering Period 07/08/2024 – 07/07/2025
BPA Option 6:	Ordering Period 07/08/2025 – 07/07/2026
BPA Option 7:	Ordering Period 07/08/2026 – 07/07/2027
BPA Option 8:	Ordering Period 07/08/2027 – 07/07/2028
BPA Option 9:	Ordering Period 07/08/2028 – 07/07/2029

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 have option year 1 exercised 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 have the next option period exercised 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 to participate in this DoD ESI BPA Agreement, the Contractor may submit a request to the Contracting Officer to suspend the BPA. The PCO may at his or her sole discretion, accept the request 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	DoD Software License Agreement
4	Ordering Guide
5	Glossary
6	Report of Sales Format
7	Fees and Payments

EXHIBIT

A. RightStar End User License Agreement

3. Obligation

3.1. Extent of Obligation

3.1.1. The Government estimates, but does not guarantee, the volume of purchases through this ITAM category will be \$820M. 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.

4.2. 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 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 of the GSA FSS prices is 1% 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))

- 8.4.1 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 Clauses

- 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. On-line ordering may also be accomplished through DoD controlled web sites.
- 10.3.4. The Contractor shall maintain coordinated and integrated hypertext links to the DoD ESI web site from their World Wide Web site(s).
- 10.3.5. 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

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 6. 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.

- 11.5.2. 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.

11.6. Program Management Reviews (PMR)

- 11.6.1. 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.

11.7. Sales Leakage Prevention

- 11.7.1. 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.
- 11.7.2. 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.

11.8. Marketing and Promotion

- 11.8.1. 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.
- 11.8.2. The Contractor may obtain standardized DoD ESI marketing materials by requesting them from the SPM.
- 11.8.3. 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.

- 11.8.4. 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, ”

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 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 1155, 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.



Blanket Purchase Agreement – Attachment 1 – FAR/DFARS Clauses

Orders issued against this Blanket Purchase Agreement (BPA) are subject to the clauses included in the underlying General Services Administration (GSA) Federal Supply Schedule (FSS) Contract and the additional Federal Acquisition Regulation (FAR) and Defense Federal Acquisition Regulation Supplement (DFARS) clauses listed below that are incorporated in this BPA. Ordering Offices should consider the requirements of DFARS and the FAR supplement of the end user component, as it applies to commercial item acquisition and use of GSA schedules, in determining what additional clauses may be required for incorporation in the order issued by the Ordering Office.

The full text of a clause may be accessed electronically at these addresses:

<http://www.acq.osd.mil/dpap/dars/dfars/index.htm>

<http://acquisition.gov/far/index.html>

<http://farsite.hill.af.mil/>

The Contractor agrees to comply with the following FAR and DFARS clauses and are included in this BPA by reference to implement a provision of law or Executive orders applicable to acquisitions of commercial items or components.

***Additional agency level regulations may be included in the BPA Call to the extent they do not conflict with the FAR or DFARS.

CLAUSES INCORPORATED BY REFERENCE

52.204-25	Prohibition on Contracting for Certain Telecommunications and Video Surveillance (AUG 2019)
52.212-5	Contract Terms and Conditions Required to Implement Statutes or Executive Orders--Commercial Items (DEVIATION 2018-O0021)
52.232-37	Multiple Payment Arrangements (MAY 1999)
252.203-7000	Requirements Relating to Compensation of Former DoD Officials (SEP 2011)
252.203-7003	Agency Office of the Inspector General (DEC 2012)
252.203-7005	Representation Relating to Compensation of Former DoD Officials (NOV 2011)
252.204-7009	Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information (OCT 2016)
252.204-7012	Safeguarding of Unclassified Controlled Technical Information (OCT 2016)
252.204-7015	Disclosure of Information to Litigation Support Contractors (MAY 2016)
252.205-7000	Provision Of Information To Cooperative Agreement Holders (DEC 1991)
252.211-7007	Reporting of Government-Furnished Property (AUG 2012)
252.225-7027	Restriction on Contingent Fees for Foreign Military Sales (APR 2003)
252.225-7028	Exclusionary Policies and Practices of Foreign Governments (APR 2003)



Blanket Purchase Agreement – Attachment 1 – FAR/DFARS Clauses

- 252.225-7976 Contractor Personnel Performing in Japan (DEVIATION 2018-O0019)
- 252.225-7979 Additional Access to Contractor and Subcontractor Records in the United States Central Command Theater of Operations (DEVIATION 2018-O0008)
- 252.225-7980 Contractor Personnel Performing in the United States Africa Command Area of Responsibility (DEVIATION 2016-O0008)
- 252.225-7987 Requirements for Contractor Personnel Performing in the U.S. Southern Command Area of Responsibility (DEVIATION 2014-O0016)
- 252.225-7995 Contractor Personnel Performing in the United States Central Command Area of Responsibility (DEVIATION 2017-O0004)
- 252.227-7013 Rights in Technical Data, Non-Commercial Items (FEB 2014)
- 252.227-7014 Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation (FEB 2014)
- 252.227-7015 Technical Data--Commercial Items (FEB 2014)
- 252.227-7037 Validation of Restrictive Markings on Technical Data (SEP 2016)
- 252.232-7003 Electronic Submission of Payment Requests and Receiving Reports (JUN 2012)
- 252.232-7006 Wide Area WorkFlow Payment Instructions (MAY 2013)
- 252.232-7009 Mandatory Payment by Government-wide Commercial Purchase Card (MAY 2018)
- 252.232-7010 Levies on Contract Payments (DEC 2006)
- 252.237-7010 Prohibition on Interrogation of Detainees by Contractor Personnel (JUN 2013)
- 252.239-7010 Cloud Computing Services (OCT 2016)
- 252.239-7017 Notice of Supply Chain Risk (DEVIATION 2018-O0020)
- 252.239-7018 Supply Chain Risk (DEVIATION 2018-O0020)
- 252.243-7002 Requests for Equitable Adjustment (DEC 2012)
- 252.244-7000 Subcontracts for Commercial Items and Commercial Components (JUN 2013)
- 252.246-7008 Sources of Electronic Parts (MAY 2018)
- 252.247-7023 Transportation of Supplies by Sea (APR 2014)

CLAUSES INCORPORATED BY FULL TEXT

- 52.217-9 – OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000)



Blanket Purchase Agreement – Attachment 1 – FAR/DFARS Clauses

- (a) The Government may extend the term of this contract by written notice to the Contractor within 1 day of contract expiration, provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 10 days before the contract expires. The preliminary notice does not commit the Government to an extension.
- (b) If the Government exercises this option, the extended contract shall be considered to include this option clause.
- (c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed 10 years.

(End of Clause)

252.232-7003 ELECTRONIC SUBMISSION OF PAYMENT REQUESTS AND RECEIVING REPORTS (JUNE 2012)

(a) Definitions. As used in this clause–

- (1) Contract financing payment and invoice payment have the meanings given in section 32.001 of the Federal Acquisition Regulation.
- (2) Electronic form means any automated system that transmits information electronically from the initiating system to all affected systems. Facsimile, e-mail, and scanned documents are not acceptable electronic forms for submission of payment requests. However, scanned documents are acceptable when they are part of a submission of a payment request made using Wide Area WorkFlow (WAWF) or another electronic form authorized by the Contracting Officer.
- (3) Payment request means any request for contract financing payment or invoice payment submitted by the Contractor under this contract.
- (4) Receiving report means the data required by the clause at 252.246-7000, Material Inspection and Receiving Report.
- (b) Except as provided in paragraph (c) of this clause, the Contractor shall submit payment requests and receiving reports using WAWF, in one of the following electronic formats that WAWF accepts: Electronic Data Interchange, Secure File Transfer Protocol, or World Wide Web input. Information regarding WAWF is available on the Internet at <https://wawf.eb.mil/>.

(c) The Contractor may submit a payment request and receiving report using other than WAWF only when–

- (1) The Contracting Officer administering the contract for payment has determined, in writing, that electronic submission would be unduly burdensome to the Contractor. In such cases, the Contractor shall include a copy of the Contracting Officer's determination with each request for payment;
- (2) DoD makes payment for commercial transportation services provided under a Government rate tender or a contract for transportation services using a DoD-approved electronic third party payment system or other exempted vendor payment/invoicing system (e.g., PowerTrack, Transportation Financial Management System, and Cargo and Billing System);



Blanket Purchase Agreement – Attachment 1 – FAR/DFARS Clauses

- (3) DoD makes payment for rendered health care services using the TRICARE Encounter Data System (TEDS) as the electronic format; or
 - (4) When the Governmentwide commercial purchase card is used as the method of payment, only submission of the receiving report in electronic form is required.
 - (d) The Contractor shall submit any non-electronic payment requests using the method or methods specified in Section G of the contract.
 - (e) In addition to the requirements of this clause, the Contractor shall meet the requirements of the appropriate payment clauses in this contract when submitting payments requests.
- (End of clause)

RIGHTSTAR, INC. DEPARTMENT OF DEFENSE SOFTWARE LICENSE AGREEMENT

This document sets forth the Department of the Defense (DoD) Software License Requirements. Licensor's Software License Agreement is attached hereto as Exhibit A and made a material part hereof by this reference. This document, including the Software License Agreement attached as Exhibit A: RightStar, Inc. EULA GSA GS35F0592R constitutes the Agreement between the RightStar Inc. (Licensor) and the DoD. The terms and conditions set out below in these Software License Requirements, supplement, to the extent a conflict exists, supersede, and take precedence over the terms and conditions of Exhibit A. For clarification in this agreement, Publisher and Licensor are synonymous.

With regard to any conflict in license terms between the DOD ESI License Agreement and any GSA negotiated license agreement, the Order of Precedence is in the following order: 1) the DOD ESI License Agreement and 2) any GSA negotiated license agreement.

- 1. Enterprise Language:** The parties agree that more than one agency of the DoD may license products under this Agreement, provided that any use of products by any agency must be made pursuant to one or more executed purchase orders or purchase documents submitted by each applicable agency seeking to use the licensed product. The parties agree that, if the licensee is a "DoD Department or Agency" as defined by the 48 Code of Federal Regulations, section 202.101, and to include the Intelligence Community and the US Coast Guard, the terms and conditions of this Agreement apply to any purchase of products made by the DoD, and that the terms and conditions of this Agreement become part of the purchase document without further need for execution. The parties agree the terms of this Agreement supersede and take precedence over the terms included in any purchase order, terms of any shrink-wrap agreement included with the licensed software, terms of any click through agreement included with the licensed software, or any other terms purported to apply to the licensed software, including any Licensor's published policy or program documentation or customer ordering documents. It is also understood by both parties that any Licensor policies, URLs referencing other terms, conditions or policies or educational documents will not be considered part of this license agreement.
- 2. Choice of Law/Venue:** This Agreement shall be governed by and construed in accordance with the substantive laws of the US Code of Federal Regulations, Federal Acquisition Regulations and Defense Federal Acquisition Regulations (DFARS), without regard to principles of conflict of laws.
- 3. Indemnification:** The DoD does not have the authority to and shall not indemnify any entity. The DoD agrees to pay for any loss, liability or expense, which arises out of or relates to the DoD's acts or omissions with respect to its obligations hereunder, where a final determination of liability on the part of the DoD is established by a court of law or where settlement has been agreed to by the DoD agency and the Department of Justice. This provision shall not be construed to limit the DoD's rights, claims or defenses, which arise as a matter of law or pursuant to any other provision of this Agreement. This provision shall not be construed to limit the sovereign immunity of the DoD.
- 4. Patent, Copyright, Trademark, and Trade Secret Protection:**
 - a) The Licensor shall, at its expense, indemnify and hold the DoD harmless from any suit or proceeding which may be brought by a third party against the DoD, its departments,

BPA Attachment 3-DoD Software License Agreement

officers or employees for the alleged infringement of any United States patents, copyrights, or trademarks, or for a misappropriation of a United States trade secret arising out of performance of this Agreement (the "Claim"), including all licensed products provided by the Licensor. For the purposes of this Agreement, "indemnify and hold harmless" shall mean the Licensor's specific, exclusive, and limited obligation to (a) pay any judgments, fines, and penalties finally awarded by a court or competent jurisdiction, governmental/administrative body or any settlements reached pursuant to Claim and (b) reimburse the DoD for its reasonable administrative costs or expenses, including without limitation reasonable attorney's fees, it necessarily incurs in handling the Claim. The DoD agrees to give Licensor prompt notice of any such claim of which it learns. The DoD has the sole authority to represent itself in actions brought against the DoD. Licensor shall not, without the DoD's consent, which shall not be unreasonably withheld, conditioned, or delayed, enter into any settlement agreement which (a) states or implies that the DoD has engaged in any wrongful or improper activity other than the innocent use of the material which is the subject of the Claim, (b) requires the DoD to perform or cease to perform any act or relinquish any right, other than to cease use of the material which is the subject of the Claim, or (c) requires the DoD to make a payment which Licensor is not obligated by this Agreement to pay on behalf of the DoD. It is expressly agreed by the Licensor that, in the event it makes an appropriate request that the DoD to provide support to the Licensor in defending any such Claim, the Licensor shall reimburse the DoD for all necessary expenses (including attorneys' fees, if such are made necessary by the Licensor's request) incurred by the DoD for such support.

- b) The Licensor agrees to exercise reasonable due diligence to prevent claims of infringement on the rights of third parties. The Licensor certifies that, in all respects applicable to this Agreement, it has exercised and will continue to exercise due diligence to ensure that all licensed products provided under this Agreement do not infringe on the patents, copyrights, trademarks, trade secrets or other proprietary interests of any kind which may be held by third parties.
- c) If, in the Licensor's opinion, the licensed products furnished hereunder are likely to or do become subject to a claim of infringement of a United States patent, copyright, or trademark, or for a misappropriation of trade secret, then without diminishing the Licensor's obligation to satisfy any final award, the Licensor may, at its option and expense, substitute functional equivalents for the alleged infringing licensed products, or, at the Licensor's option and expense, obtain the rights for the DoD to continue the use of such licensed products.
- d) If any of the licensed products provided by the Licensor are in such suit or proceeding held to constitute infringement and the use thereof is enjoined, the Licensor shall, at its own expense and at its option, either procure the right to continue use of such infringing products, replace them with non-infringing items, or modify them so that they are no longer infringing.
- e) If use of the licensed products is enjoined and the Licensor is unable to do any of the preceding set forth in item (e) above, the Licensor agrees to, upon return of the licensed products, refund to the DoD the license fee paid for the infringing licensed products, pro-rated over a sixty (60) month period from the date of delivery plus any unused prepaid maintenance fees.
- f) The obligations of the Licensor under this Section continue without time limit and survive the termination of this Agreement.

BPA Attachment 3-DoD Software License Agreement

- g) Notwithstanding the above, the Licensor shall have no obligation under this Section 4 for:
- (1) Modification of any licensed products provided by the DoD or a third party acting under the direction of the DoD;
 - (2) any material provided by the DoD to the Licensor and incorporated into, or used to prepare the product;
 - (3) use of the Software after Licensor recommends discontinuation because of possible or actual infringement and has provided one of the remedy's under (e) or (f) above;
 - (4) use of the licensed products in other than its specified operating environment;
 - (5) the combination, operation, or use of the licensed products with other products, services, or deliverables not provided by the Licensor as a system or the combination, operation, or use of the product, service, or deliverable, with any products, data, or apparatus that the Licensor did not provide;
 - (6) infringement of a non-Licensor product alone;
 - (7) the DoD's use of the licensed product beyond the scope contemplated by the Agreement; or
 - (8) the DoD's failure to use corrections or enhancements made available to the DoD by the Licensor at no charge.
- h) The obligation to indemnify the DoD, under the terms of this Section, shall be the Licensor's sole and exclusive obligation for the infringement or misappropriation of intellectual property.

5. **Virus, Malicious, Mischievous or Destructive Programming:**

Licensor warrants that the licensed product as delivered by Licensor does not contain any viruses, worms, Trojan Horses, or other malicious or destructive code to allow unauthorized intrusion upon, disabling of, or erasure of the licensed products (each a "Virus"). However, the licensed products may contain a key limiting use to the scope and quantity of the license(s) granted, and license keys issued by Licensor for temporary use are time-sensitive.

The DoD's exclusive remedy, and Licensor's sole obligation, for any breach of the foregoing warranty shall be for Licensor to (a) replace the licensed products with a copy that does not contain Virus, and (b) if the DoD, has suffered an interruption in the availability of its computer system caused by Virus contained in the licensed product, reimburse the DoD for the actual reasonable cost to remove the Virus and restore the DoD's most recent back up copy of data provided that:

- the licensed products have been installed and used by the DoD in accordance with the Documentation;
- the licensed products have not been modified by any party other than Licensor;
- The DoD has installed and tested, in a test environment, which is a mirror image of the production environment, all new releases of the licensed products and has used a generally accepted antivirus software to screen the licensed products prior to installation in its production environment.

Under no circumstances shall Licensor be liable for damages to the DoD for loss of the DoD's data arising from the failure of the licensed products to conform to the warranty stated above.

6. **Delivery:** Publisher's delivery of the Products to DoD shall be by electronic download or as otherwise specified in Delivery Orders, FOB Destination.
7. **Program Warranty:** Licensor warrants for one (1) year from the date on which the Software specified in a Delivery Order Document is first used in production by Licensee that the Software will perform in all material respects the functions described in the Documentation when operated in accordance with the Documentation on a Supported Platform.
- a) **Noncomplying Product:** In the event DOD determines that the Product is a Noncomplying Product, during the one-year period specified above, DOD will notify Licensor and Licensor will have ten (10) business days thereafter to begin remedying the nonconformance. If Licensor is unable to remedy such nonconformance within a reasonable time, Publisher agrees that DOD may return the Product and Publisher shall promptly refund any moneys paid for such Noncomplying Product.
 - b) **Publisher Remedies:** Licensee must report to Licensor in writing any breach of the warranties during the relevant warranty period. Licensor shall use commercially reasonable efforts to correct or provide a workaround for reproducible Software errors that cause a breach of this warranty or, if Publisher is unable to make the Software operate as warranted within a reasonable time considering the severity of the error and its impact on Licensee, Licensee shall be entitled to return the Software to Publisher and recover the fees paid by Licensee to Licensor for the license to the non-conforming Software.
 - c) **Discontinuance of Support:** Licensor will give DOD one hundred eighty (180) days advance written notice before Licensor or its authorized Resellers discontinue support of any Product.
8. **Limitation of Liability:** The Licensor's liability to the DoD under this Agreement shall be limited to the greater of (a) the value of any purchase order issued; or (b) \$250,000. This limitation does not apply to damages for:
- a) Bodily injury;
 - b) death;
 - c) intentional injury;
 - d) damage to real property or tangible personal property for which the Licensor is legally liable; or
 - e) licensor's indemnity of the DoD for patent, copyright, trade secret, or trademark protection.

In no event will the Licensor be liable for consequential, indirect, or incidental damages unless otherwise specified in the Agreement. Licensor will not be liable for damages due to lost records or data.

9. **Termination:**
- a) The DoD may terminate this Agreement without cause by giving Licensor ninety (90) calendar day's prior written notice (Notice of Termination) whenever the DoD shall determine that such termination is in the best interest of the DoD (Termination for Convenience).

- 10. Background Checks:** This term will be applicable if required by local command policy and prior to the commencement of on-site professional services by Licensee employee who is proposed for assignment to perform services at your site or via remote access in or from the United States and only if the Licensor employee does NOT possess a Department of Defense (“DoD”) performed National Agency Check with Inquiries (“NACI”) or a DoD security clearance of SECRET or higher, Licensor, or its agent, will complete a criminal background check, or confirm that such a background check has been completed, on such employee. The criminal background check shall consist of a check of public records, to the extent available at the county level, where the employee has established credit in the United States as determined by a social security trace. The check is for felony and misdemeanor convictions within the seven (7) years preceding the date of the check. To the extent not prohibited by law, Licensor shall not assign any employee to perform such services for whom a criminal background check, at the time of its completion, uncovered conviction of a felony or conviction of a misdemeanor. In the event that DoD requires on-site support outside the United States, Licensor will make reasonable efforts to work with DoD in order to address its security concerns.
- 11. Confidentiality:** Each party shall treat the other party’s confidential information in the same manner as its own confidential information. The parties must identify in writing what is considered confidential information.
- 12. Publicity/Advertisement:** The Licensor must obtain DoD approval prior to mentioning the DoD or a DoD agency in an advertisement, endorsement, or any other type of publicity. This includes the use of any trademark or logo.
- 13. Territory:** Any Department of Defense (DoD) civilian or military installation or work site in the Continental United States (CONUS) or outside the Continental United States (OCONUS), regardless of where software was acquired.
- 14. Backup for User Documentation:** Licensor grants DoD to make a reasonable number of copies for DoD’s internal business purposes. DoD is responsible for ensuring that all copyright notices, trademarks and other restrictive legends are maintained on such copies. DoD is also responsible for reporting to Licensor if DoD learns of the misuse or mishandling of User Documentation provided under the contract to DoD personnel, contractors or Government employees.
- 15. Transfers and Assignments:** Licensee is authorized to transfer or assign the Software or Licensee’s rights in the Software, and such authorization would include sublicensing, assignment or transfer among or between DOD agencies, outsourcers, contractors or Licensee, (in support of the DoD mission) or authorize any portion of the Software to be copied onto or accessed from another individual's or entity's computer, except as may be explicitly provided in this Agreement.

 - a) Transfers: within the DoD and in the event that an Authorized User has a valid license under this Agreement and that Authorized User is reorganized or restructured such that its responsibilities and operations are transferred to another Authorized User agency, the agency shall have the right to assign the affected program licenses to a successor.
 - b) Assignments: Licensee is authorized to assign ownership of licenses when Licensee intends to designate an outsourcer, contractor (in support of the DoD mission), DoD Agency or other, as determined, to assume ownership of the license along Licensor

written concurrence. All activities by such Assignee shall be subject to the Licensor's Software License Agreement as modified herein. Any deviation shall be subject to a separate agreement between Licensor and such Assignee, specifying conditions for the management and maintenance of the Software, which agreement shall not impose any more restrictive covenants than are provided to Licensee in the Licensor's Software License Agreement, as modified herein. The assignment of licenses will be without cost to any party involved in the assignment of licenses. It is further understood that Assignee will be responsible for all future software maintenance costs of any assigned licenses.

- c) Licensee shall complete any required Licensor documentation required to facilitate the transfer or assignment of license and continuation of support for the transferee or assignee. All license transfers or assignments will be without cost to the Licensee, provided that the licenses are current with regard to Licensor annual maintenance, and the Licensee does not re-market or otherwise intend to resell the licenses to be transferred.

It is inherently understood Licensee and the successor transferee or assignee agree to be bound to this Software License Agreement.

- 16. Functionality Replacement and Extended Support.** If Licensor removes any or all of the material features or functionality to which DoD is being granted access hereunder from the Software without introducing replacement or substitute functionality such that the Software no longer performs its core operations as when initially released and Licensor subsequently offers those features or functionality in a new or different product (whether directly or indirectly or through a third party), then upon request by DoD the License will be deemed to include (i) the portion of those new or different products that contain the original features, or (ii) if those features cannot be separated out, the entire product, or (iii) another reasonable substitute as determined by DoD, will be provided to DoD under the terms of this Agreement at no additional charge to DoD. If the Software provided to DoD is updated as replacement, renamed or re-branded applications or products for any reason, then DoD shall be entitled to the same license to use the replacement, renamed or re-branded product as DoD had with respect to the Software that DoD had immediately prior to such replacement, renaming or re-branding, at no additional charge to DoD so long as (a) the new applications or products are functionally equivalent, at a minimum, and the same conditions of use apply as to the Software and (b) Licensor ceased or has advised DoD that Licensor intends to cease supporting the initial Software while DoD was still purchasing Maintenance and Support for such Software. If the form, fit, or functionality contained in any licensed products acquired hereunder is substantially reduced or if the product is replaced, and/or the Licensor provides the same or substantially similar functionality as a separate or renamed product, then the DoD is entitled to license such software without any additional license requirements or additional maintenance fees. However, throughout the term of this agreement, the Licensor will provide support services for at least a period of one year after the publisher declares an "end-of life" to the software.

- 17. Rights of Survivorship of the Agreement.** This Agreement shall survive unto Licensor, its Successor, rights and assigns. The software and agreement terms and conditions as covered under this agreement shall survive this agreement, in perpetuity, notwithstanding the acquisition or merger of Licensor by or with another entity. Any software name changes, re-packing or merger of similar products that carry forward the same or similar function of the

software shall be supported with updates, upgrades and new releases under this agreement at no additional cost.

18. Audit Responsibilities: This Section sets out the sole audit right under this agreement.

- a) DOD will maintain, and promptly provide to Publisher upon its request, but no more frequently than once in a twelve (12) month period, accurate records regarding use of the software by or for DOD. If DOD becomes aware of any unlicensed use of the software, DOD will notify Contractor and Publisher within 15 calendar days, providing reasonable details. The limit of DOD's responsibility for any unlicensed use of the software by any Users employed by or performing services for DOD is the requirement that DOD purchase additional licenses for the product through Contractor without any penalty or promptly stop using the software and delete any unauthorized copies.
- b) DOD will perform a self-audit, upon the request of the Publisher, but no more frequently than once in a twelve (12) month period, and report any change in software program use (hereinafter "True up number"). The Publisher may make such a request of an individual agency of the DOD and will notify the DOD in the event of such a request. If the Publisher requests a self-audit from a DOD agency, it will not make another request of that agency for at least 12 months. Any self-audit, which shall be certified by a DOD employee authorized to do so, shall include, but not be limited to, the number of copies of the programs installed and/or in use by the DOD, the designated system(s) on which the programs are installed and/or running, and if applicable, the number of users of the programs. DOD shall notify Contractor and Publisher of the True up number no later than 90 calendar days after completion of the self-audit. If the self-audit finds that DOD is under-licensed, DOD will either 1) cease use of the quantity in excess of the DoD licensed quantity and work with the Publisher and Contractor in good faith to account for such excess use or 2) make an additional purchase of the product through Contractor, wherein such pricing is in accordance with any current ESI pricing. The procurement of additional licenses, if required, will transpire no later than 60 days after DOD's aforementioned notification. There will be no penalties involved in the procurement of the additional licenses.

19. US Government Configuration Baseline: The Publisher shall comply with the requirements of the US Government Configuration Baseline (USGCB) as specified at <http://usgcb.nist.gov> to ensure applications are fully functional and operate correctly as intended. The standard installation, operation, maintenance, updates, and/or patching of software shall not alter the configuration settings from the approved USGCB configuration.

- a) Applications designed for normal end users shall run in the standard user context without elevated system administration privileges.
- b) Publisher shall also certify that any subsequent product/module for the life of the agreement is/are fully functional and operate correctly as intended on systems using USGCB prior to any product/module revisions being made available for Government use. Further, the Publisher shall maintain operability with USGCB standards as they evolve.
- c) DoD buyers may require compliance with additional baseline configuration requirements.

- 20. Net-Centricity:** The Department of Defense is transforming the way information is managed to accelerate decision-making, improve joint war fighting and create intelligence advantages. To reach this "Net-Centric" state, DoD must exploit advancing technologies that move the enterprise from an application centric to a data-centric paradigm. DoD ESI Contractor partners are encouraged to use the OSD NII DCIO Net-Centric Checklist, located at: http://DoDcio.defense.gov/Portals/0/Documents/NetCentric_Checklist_v2-1-3_.pdf to provide information on the Net-Centric posture of their IT products and services. Software products offered to and purchased by the DoD and Intelligence Community shall be licensed by the software publisher without restriction to information sharing among the DoD and IC in performing their missions.
- 21. Section 508 of the Rehabilitation Act Compliance:** All products and services provided under this agreement must meet the applicable accessibility standards at 36 CFR Part 1194 as required by FAR Case 1999-607. General information regarding the Section 508 Act can be found at the web site www.section508.gov. The Publisher's Section 508 compliancy information must be readily available at the Publisher's website.
- 22. Orders:** Any term or condition in an order to be placed that will expressly supersede a term or condition of this agreement must be approved in writing via email by the designated DOD PCO for this ESI BPA, a copy of which shall be attached to such order. Any term or condition in an order that has been placed that expressly supersedes a term or condition of this agreement is ineffective unless subsequently agreed to in writing via an email by the designated DOD PCO for this agreement attached to the order with an Administrative Modification.
- 23. Temporary Use of Software During Times of Conflict and/or Natural Disaster:** As part of Temporary Expeditionary Deployments (TEDs), during the term of this Agreement, DoD may temporarily deploy and install or use on, or access from qualified desktops or servers, a reasonable number of Licensor software products in addition to those previously licensed pursuant to this Agreement at no additional cost ("TED Licenses"). TEDs are limited to deployments away from in-garrison locations (any military post or government office where troops or civilian government personnel are at a permanent location), war games, exercises, real world contingencies, and emergency situations similar to the initiated domestic terrorist attacks of 19 April 1995 (i.e., the Timothy McVeigh Terry Nichols perpetrated 'Oklahoma City Bombing' involving the Alfred P. Murrah Federal Building'); the initiated international terrorist attacks, perpetrated on American soil, on 9/11/2001; and finally, the national inclement weather natural disasters perpetrated by Hurricane(s) Katrina and Rita during the August and September months of Calendar Year 2005, where temporary duty stations (TED's) and continuity of operations (COOP) alternative venues or sites were needed, for a substantial period of time, due to the destruction of federal or U.S. Government facilities, infrastructure, offices and work spaces. For licenses connected to a DoD network server, on a semi-annual basis, Licensor shall provide an additional temporary license pool equal to ten percent (10%) of the quantity of network versions purchased, which may be accessed during a TED event. For computers not connected to a DoD network server, The Licensor shall provide, on a quarterly basis, a pre-activated temporary (ninety) 90 day single seat network license which can be copied for use on any number of computers. After the TED, or six (6) calendar months, whichever is shorter ("Temporary Use Period"), unless a different time period is agreed to in writing by the Licensor, the DoD will provide a written certification that the TED Licenses have either been removed

from service, or payment has been made under this Agreement to purchase additional perpetual licenses equal to the number of TED Licenses not removed from service. DoD agrees to use the TED Licenses in accordance with the terms contained in this Agreement and the applicable version of the Software License Agreement.

- 24. Software Asset Management & ISO-IEC 19770:2015 Series:** The Licensor shall comply with ISO 19770:2009 Series Standards for all installable or distributable software products governed by this agreement. If any part of the ISO-IEC 19770:2009 standard is not approved by the ISO International Standards Committee at the time of contract execution, the Licensor shall make commercially reasonable efforts to comply with the standard upon approval by ISO.
- 25. Authorized Users:** An Authorized User includes, but is not limited to DoD government employees (military, civilian, reserves, national guard), contractors, non-human devices, detailed individuals that are included and accounted for in the DoD in support of DoD missions and those individuals or non-human devices who have access to, use or are tracked by Licensor's programs.
- 26. Data Sharing/Transfer:** Data transfer is: Batch Processing, Multiplexing and Flat File Environments. This license provides the DoD all rights concerning data sharing, data access, data transfer and data manipulation for authorized users associated with the DoD missions. The parties agree that as long as one party has a valid license, the transfer of data or the sharing of data is unrestricted. This license also provides for the ability of authorized users to access data from any US-owned datacenter with data owner granted permission and any appropriately licensed non-US owned datacenters.
- 27. Data Recovery and Virtualization:**

 - a) Data Recovery methods include four types of environments: Backup, Failover, Standby, and Remote Mirroring. All types of data recovery servers will not require additional licenses as long as the number of data recovery servers equals the number of primary servers.
 - b) For virtualized servers, both parties agree that only the primary server must be licensed. It is understood that advanced virtualization functions (soft partitioning including live migration) are incorporated herein by expressed written reference and by this license agreement. Thus, no additional licenses will be required to accommodate future data recovery and virtualization commercially accepted methods or practices.
- 28. Shelf Ware:** It is recognized, that in some instances, DoD may have excess Licensor software licenses that are not currently being used or needed by DoD. These licenses are commonly called Shelf Ware. At DoD's sole discretion, the DoD may transfer any these licenses as described in Section 13 of this document or DoD may terminate the license grant, as it deems necessary. The termination or transfer of licenses may result in a reduced license count and will be deducted from the next annual maintenance payment, in a prorated method. In no event, when a subset of licenses is terminated or if the level of support is reduced, support for the remaining licenses will not change in services or result in any type of fee recalculation.
- 29. Third Party Software:** Notwithstanding anything to the contrary, the Government shall not be subject to third party terms and conditions that are contrary to Federal law.

- 30. Additional Functionality:** Any additional functionality provided on Licensor Products shall not impose additional license terms and/or fees on the Government.
- 31. License copies for training, evaluation, research and development (including Research Labs) and back-up.**
During the term of this agreement (including any renewal term), an agency (as defined locally) may (i) run up to 50 complimentary copies of any additional product in a dedicated training facility on their premises; (ii) run up to 10 complimentary copies of any product that the Licensor make available to license as an additional product for a 120-day evaluation period; (iii) run complimentary copies of enterprise products and additional products on 5% (five percent) of Authorized Users desktops or processors for research and development purposes; and (iv) make and retain one complimentary copy of any licensed product for back-up or archival purposes for each of their distinct geographic locations.
- 32. Finality of Terms:** This agreement and any attachments to this agreement will be the sole document governing the granting of licenses between DoD and Licensor. There shall be no changes to this license agreement unless agreed to by both parties in writing.
- 33. Software Titles Incorporated by this License Agreement:** All software titles sold by Licensor will be incorporated into this agreement and any and all other software or software title which may be added through Licensor's in-house development or corporate acquisition. It is the DoD's anticipation this agreement will cover any and all software companies Licensor may purchase in the future.
- 34. Use of this Agreement by the Federal Government:** The parties agree that, if a federal agency implements another contracting vehicle for Licensor's products, and if the licensee is an agency of the Federal Government, then, the terms and conditions of this Agreement can apply to any purchase of software products by that agency, and that the terms and conditions of this Agreement become part of the purchase document without need for further execution. Additionally, should a Federal Government Agency desire to use this agreement, it will be without remuneration to any party.
- 35. DoD Enterprise License:** The parties agree, that in the spirit of cooperation, there may be an instance, during the course of this agreement, where DoD desires an Enterprise Agreement with the publisher. The parties agree that all will work towards implementation of a DoD Enterprise Agreements, that all terms contained in this agreement may become part of the Enterprise Agreement and the DoD and Publisher will work cooperatively on issues that may hamper such an agreement (legacy licenses and the accompanying support, Right-sizing the enterprise and so on).
- 36. Virtualization:** Publisher recognizes Virtualization through partitioning. Should DOD desire to implement virtualization for Publisher's software programs licensed pursuant to this agreement, partitioning shall be defined and executed as follows:
- a) **Soft Partition (also called Software Partition):** Soft Partition means to partition the operating system using system resource managers that limit the number of CPUs

running Publisher Programs. Soft Partitioning creates areas within the same operating system where CPU resources are specifically allocated to respective applications.

- b) Hard Partition (also called Hardware Partition): Hard Partition means to partition the server by physically separating the processors of a single server into distinct smaller servers, each of which acts as a physically independent, self-contained server, typically with its own dedicated CPUs, operating system, separate boot area, memory, input/output subsystem, and network resources.
- c) Implementation: If DOD partitions through either Soft Partitioning or Hard Partitioning then DOD is only required to license programs for the partitions on which DOD will be installing and/or running the software.

37. Deployment and Use of Perpetual, Subscription or Term Licenses in a Cloud Computing

Environment: Any licenses acquired under this agreement will have a perpetual Cloud Grant.

DOD can deploy and use any quantity of its perpetual or term Publisher licenses in any cloud computing environment (private or public) and with any third-party cloud service provider. The use of DOD licenses is limited to the mission and business of the DOD. The DOD retains all ownership responsibilities of the licenses. The DOD will maintain records of license deployment.

DOD can transfer its perpetual and term Publisher licenses between on-premises data centers and third party cloud service providers or to other third party cloud service providers without charge, limitation, or change in functionality. The DOD shall have the right to determine the version level for transfers.

For licensed programs used in Cloud Environments and for which software support or maintenance is current, DOD may upgrade or downgrade the version level without charge.

When counting Publisher processor license requirements in cloud computing environments, the Publisher Processor Core Factor Table is applicable. Deviations are not allowed to the Core Factor Table based on the cloud service provider used.

- 38. Ineffective Provisions:** If any document incorporated by reference into this agreement, and/or referenced therein, contains a provision (a) allowing for the automatic termination of your license rights or technical support services; (b) allowing for the automatic renewal of services and/or fees; (c) requiring the governing law to be anything other than Federal law, and/or (d) that otherwise violates applicable Federal law, then, such terms shall not apply and shall have no effect. If any document incorporated by reference into this agreement, including additional terms and conditions included and/or referenced therein, contains an indemnification provision, such provision shall not apply as to the United States indemnifying the Publisher or any other party.

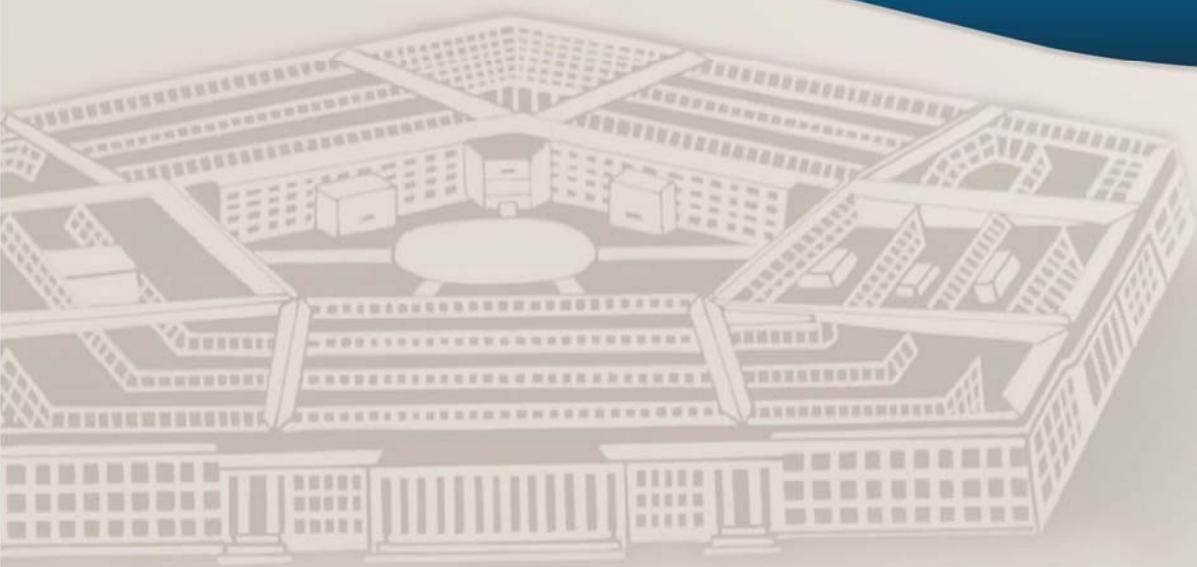
- 39. Previously Acquired Licenses:** All Publisher licenses, of any versions or releases, that were acquired and/or assigned to any DOD agency prior to the effective date of this Software License Agreement shall be converted and replaced with licenses subject to this Software License Agreement.

- 40. Data Ownership in a Cloud Environment:** When the term of services end, Licensee generally no longer has rights to access or use the services, including the associated Publisher

BPA Attachment 3-DoD Software License Agreement

programs and services environments. For a period of 90 days after the end of the services, Publisher will make available Licensee's content and applications then in the services environment for the purpose of retrieval by Licensee. At the end of the 90-day period, and except as may be required by law, regulation, or federal, DoD, or agency policy or directives, Publisher may delete or otherwise render inaccessible any of content and applications that remain in the services environment.

- 41. Professional Services:** Publisher may subcontract all or part of the Services to be performed, to a qualified third party only with the explicit written acceptance of the Licensor. Any subcontracting of services must be noted on the Order Form and acknowledged in the customer's delivery order.
- 42. Parallel Operations:** For no additional cost, the DOD agency shall have the ability to run Publisher's software on parallel systems for up to 180 days, or a longer mutually agreed upon timeframe, for system migrations, testing, and/or hardware refreshes. The DOD will ensure the duplicate Instances required during the Parallel Operation period are uninstalled and deleted once the parallel operation is no longer required. The DOD will only request the ability to run the same number of license Instances that are currently owned by the DOD. If additional licenses are required than the quantity owned by the DOD agency, the DOD will acquire the necessary licenses.



DoD ESI ORDERING GUIDE



**OEM
RESELLER**

**Blanket Purchase Agreement (BPA)
N66001-XX-X-XXXX**



Department of Defense Enterprise Software Initiative (DoD ESI) ORDERING GUIDE

This Ordering Guide has been developed by the DoD ESI team to assist IT buyers and contracting officials to order technology products and/or services from the DoD ESI Agreement holder. This Guide contains essential information about the DoD ESI Enterprise Agreement (EA), identifies the authorized users of the EA, summarizes the products and services available under the EA and instructions for users to place an order, and provides Points of Contact information for support.

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1. General Information

CONTRACT OR / VENDOR	[REDACTED]
GOVERNMENTWIDE ACQUISITION CONTRACT (GWAC) NUMBER (e.g. GSA, SEWP) AND WEB LINK	GS-XX-XXXX View [REDACTED]'s GSA Contract (click here)
EA NUMBER AND WEB LINK	N66001-XX-X-XXXX www.esi.mil
EA ISSUE DATE	Day Month Year
EA EXPIRATION DATE	Day Month Year



2. Authorized Users

a. DoD or Agencies

The EA is open for ordering by the “DoD Departments and Agencies” on a world-wide basis. “Departments and Agencies” are defined by the 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 EA, 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. If this EA is co-branded with GSA and is an OMB Designated Best in Class vehicle, it is open to all United States Federal Agencies.

b. 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 EA and must comply with DFARS 208.74.

c. Contractors and Integrators

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

3. Products and Services Overview

Publisher(s)	Category	Product Line	Service Line
	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	

(full list is available at www.esi.mil)



4. Ordering Officer Responsibilities

- a. Ordering is decentralized. Only U.S. Government Contracting Officers, Government Purchase Card Holders, or Contractors given FAR 51 Authorization are able to place orders against this EA.
- b. This EA was established competitively using the procedures under FAR 8.405-3. Refer to the DoD ESI website at www.esi.mil for the listing of the multiple award vendors.
- c. The Ordering office must:
 - i. Comply with the ordering procedures of FAR 8.4 and DFARS 208.4;
 - ii. Obtain competition and/or execute and publish a brand name or limited source justification as applicable;
 - iii. Provide fair opportunity to all EA holders who offer the applicable product and/or service required;
 - iv. Ensure compliance with all fiscal laws prior to issuing an order under the EA;
 - v. Incorporate into the order any regulatory and statutory requirements that are applicable to the agency for which the order is placed, if pertinent requirements are not already included in the EA; [Note: The FAR and DFARS clauses listed in Attachment 1 of the EA are those in effect as of the effective date of the EA. Ordering Officers are responsible for incorporating the most current version of the applicable FAR and DFARS clauses, at the ordering level, in the Delivery Order as appropriate]
 - vi. Obtain the required authorization to acquire the products or services through the DoD ESI EA in accordance with FAR Part 51 when a contractor is ordering on behalf of a DoD component;
 - vii. Ensure the vendor selected for the order represents the best value. (Note that the EA terms encourage spot discounting.);
 - viii. Review the license terms and conditions when ordering software or proprietary appliances provided in the EA Attachments. If required, ordering offices may secure additional terms and conditions at the Order level if those terms and conditions do not conflict with those at the EA level and represent best value to the Government.

5. Ordering Process

- a. DFARS Regulation 208.74
 - i. DFARS 208.74 requires authorized software buyers and requiring officials to review the DoD ESI website for DoD inventory or availability of an existing DoD ESI agreement before pursuing another acquisition method. DFARS procedures are:
 - 1. After requirements are determined, review the information at the DoD ESI website to



determine if the required product is available from DoD inventory. This can be done by visiting the DoD ESI website at www.esi.mil and selecting the “Agreements” tab. Choose the type of agreement for the product being ordered (Software, Hardware, Services or All) and check the inventory box. A list of EAs with DoD inventory will appear. If the product being ordered is on the list, the EA must be used to procure the product.

2. If the required commercial products or services are not available from inventory, but are available from an EA, buyers must follow the procedures in the DFARS Section 208.74 and DFARS PGI 208.7403.
3. If a DoD component must obtain the commercial products or services outside the DoD ESI EA, the component must seek a waiver from a management official designated by the DoD Component. After the steps in paragraphs (5)(i) and (5)(ii)(A) of the DFARS PGI 208.7403, Acquisition procedures have been completed.
4. If the required commercial products or services are not available from inventory or from an EA, the DoD component may use an alternate method of acquisition, subject to applicable laws and policy.

b. Ordering

- i. All orders must be competed amongst the EAA Holders unless an exception applies (see FAR 8.405-6 Limiting Sources).
- ii. Orders are subject to the ordering office’s local policy, the underlying Government-Wide Acquisition Contract (GWAC), if used, and the terms of the EA. The order may be placed directly with the vendor after ensuring compliance with the Ordering Officer Responsibilities specified in Section 4. The following is needed to place an order:
 1. Execution of a delivery order (SF1449) by the respective local contracting office:
 - A. Contracting Officers will need to create a EA shell using their respective contract writing system in order to execute delivery orders against this EA (see section 7).
 - B. If the Contracting Officer does not use an automated contract writing system, enter the EA number N66001-XX-X-XXXX in Block 2 and a locally assigned delivery order number in Block 4. Note: Ensure you complete the FPDS-NG report.
 2. Open Market items (i.e. not in the EA catalog) may be added to a EA call/delivery order for quoting purposes and shall be clearly labeled on the Quote as “Open Market”. The following actions apply for Open Market items:
 - A. For Open Market items under the Micro-purchase threshold, an ordering officer may add this item to an individual EA call/delivery order without following the procedures in FAR 8.402(f). The items must be clearly labeled "OPEN MARKET" on the Order.



- B. For Open Market items over the Micro-purchase threshold, the ordering officer will need to purchase the item(s) outside of the EA as a separate order using FAR and DFARS procedures as applicable to their purchase. The ordering activity will need to abide by FAR Parts 5 (Publicizing), Part 6 (Competition Requirements), Part 12, (acquisition of commercial items), Parts 13, 14, and 15 (contracting methods), and Part 19 (Small Business Program).
- C. The completed SF1449 will be forwarded to the contractor with the following information:

Contractor / Vendor Information

Address:

Remit To:

CAGE: XXXXX

DUNS: XX-XXXXXXXX

TIN: XX-XXXXXXXX

Business Size:

- D. A copy of the SF1449 must be sent to the servicing DFAS center.
- 3. Government-Wide Purchase Card orders can be submitted via telephone or the vendor’s website
 - A. Orders can be placed by calling ###-###-#### or via (enter URL here)
 - B. Information Required from the Ordering Office:
 - i. End User and Name
 - ii. End User Email Address
 - iii. End User Phone Number
- iii. Ordering Period – If orders issued within the EA Ordering Period(s) include options, the order options may be exercised after the EA ordering date(s) provided that:
 - 1. The initial order that includes the option was issued during the EA ordering period(s), and does not exceed 60 months past the expiration date of the EA;
 - 2. The Ordering Office determines that the underlying GWAC is still valid at the time the order option is exercised and still includes the applicable products, and



3. The Ordering Office satisfies all other applicable regulations for exercise of the option.

6. Points of Contact

a. Contracting Office

	Procuring Contracting Officer (PCO)	Alternate Point of Contact
POC		
Telephone		
Email		

b. Software Product Manager (SPM)

	Software Product Manager (SPM)	Alternate Point of Contact
POC		
Telephone		
Email		

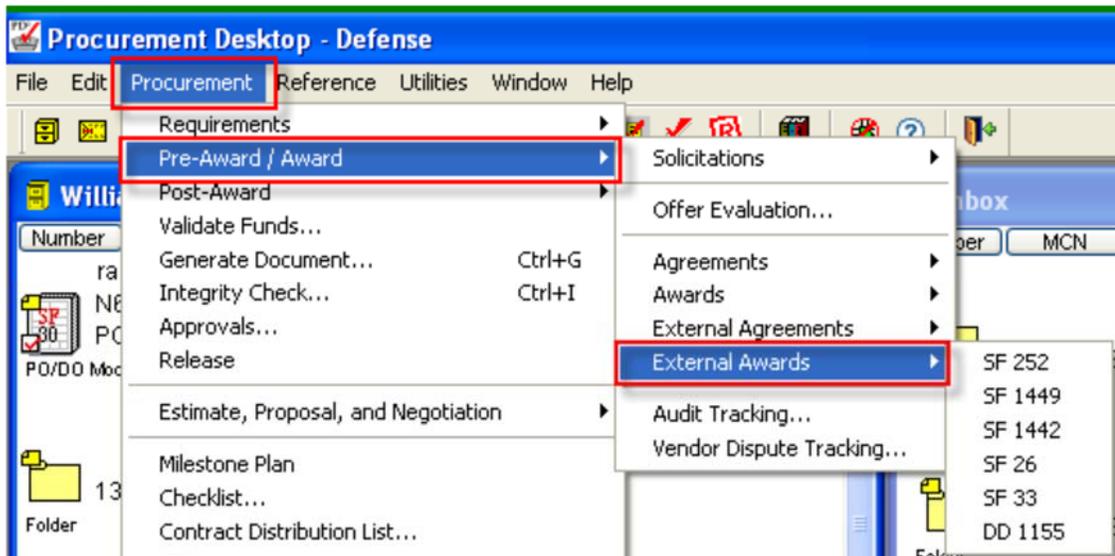
c. Vendor Points of Contact

	Program Manager (PM)	PM Alternate	Contracts Management	Sales & Ordering
POC				
Telephone				
Email				

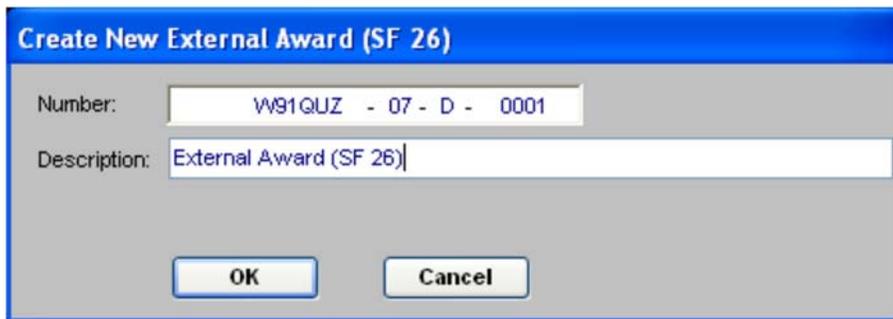
7. External Award / Agreement (for use in the Standard Procurement System (SPS))

Blanket Purchase Agreements awarded by other contracting offices can be entered in the system as external awards. External awards allow users to enter line item information and establish order constraints consistent with the original award. Once an external award is loaded in the system, it can be used as a reference when creating orders.

To create an external award, go to Procurement > Pre-Award / Award > External Awards (or Agreements) > select the desired form.



The Create New External Award window displays.



Enter the Agreement number for which the external award is being created. Click OK. The external award document is opened and displayed.



Ordering Guide

Items 1 - 12	Items 13 - 16	Items 17 - 21	BPA Items	Clauses	
EXTERNAL AWARD		1. AWARD TYPE SF 26	2. DPAS RATING	3. EFFECTIVE DATE	4. DATE OF CONTRACT
5. CONTRACT (Proc. Inst. Ident.) NO. W91QUZ-07-D-0001		6. REQUISITION/PURCHASE REQUEST/PROJECT NO.			
7. ISSUED BY CODE		8. ADMINISTERED BY CODE (if other than 7) See Item 7			
9. NAME AND ADDRESS OF CONTRACTOR CODE:		10. DELIVERY <input type="radio"/> FOB ORIGIN <input type="radio"/> OTHER <small>(See Below)</small>		11. DISCOUNT FOR PROMPT PAYMENT	
		12. SUBMIT INVOICES Submit <input type="checkbox"/> copies to the address shown in:			

Enter all relevant information on the tabs to replicate the award that the external award is representing. You must create CLINs for external awards in order to issue orders off of those CLINs. Agreements do not utilize CLINs. It is not necessary to replicate clauses.

When complete, simply approve the external award. This document type is not run through funds validation, not generated, and not released.



1. **Definitions.** The following definitions shall apply to the BPA General Terms and Conditions and all Attachments.
 - 1.1. "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.
 - 1.2. "Maintenance Services" shall mean the services provided by Contractor pursuant to its then-current Maintenance Services Policy.
 - 1.3. "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.
 - 1.4. "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)"
 - 1.5. "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.
 - 1.6. "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.
 - 1.7. "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.
 - 1.8. "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.
 - 1.9. "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.
 - 1.10. "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.



BPA Attachment 5- Glossary

- 1.11. "Subcontractor" means any and all third parties that have direct contracts with Contractor or with another subcontractor of Contractor to perform a portion of the Services under a Task Order.
- 1.12. "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.
- 1.13. "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.
- 1.14. "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.

BPA Attachment 7 Fees and Payments

1. **Government-wide Acquisition Contract (GWAC) fees.** The Enterprise Agreement (EA) unit prices include any applicable GWAC fees, such as the GSA Industrial Funding Fee or the NASA Solutions for Enterprise-wide Procurement fees. The contractor shall be responsible for all required filings to the GWAC holder and for payment of the fees in accordance with applicable GWAC holder instructions.
2. **Acquisition, Contracting, and Technical (ACT) Fee.** The cost of awarding, administering and managing this BPA is included in the prices for all products and/or services offered under this BPA.

The ACT fee is 1% and is assessed on all sales executed against the EA, 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.

Consistent with reporting and fee requirements delineated under GSA Clause 552.238-74, Industrial Funding Fee and Sales Reporting, the ACT does not apply to Open Market items as defined in FAR 8.402.(f).

3. **Remittance of Fees.** Payment is due thirty (30) days following approval of the Report of Sales for the completed quarter or as otherwise requested by the Procurement Contracting Office (PCO) or Software Product Manager (SPM). ACT fees that have not been paid within the prescribed thirty (30) days shall be considered a debt to the United States Government under the terms of FAR 32.6. The Government may exercise all its rights under the contract, including withholding or setting off payments and interest on the debt (see contract FAR clause 52.232-17, Interest). Failure of the Contractor to pay the ACT Fee in a timely manner may result in termination of the EA.
4. **Fee Transmittal.** The Contractor shall remit the 1% ACT fee in accordance with the report of sales instructions. Fee checks shall not be issued until written approval is received for the Report of Sales. The SPM or each Military Service or Agency participating in the management of a DoD EA will provide instructions for remittance of ACT fees collected by the Contractor. Provided below is an example of the Department of Navy instructions for fee submission:

The contractor shall remit ACT Fee to the address provided below by corporate or cashier's check made payable to "Treasurer of the United States". A transmittal letter is not required with submission of Navy fee checks.

EA (fill in applicable #)

Department of Defense Enterprise Software Initiative (DoD ESI) Agreement ACT Fee

For US Postal Service mail or USPS Express Mail, send check to:
Naval Information Warfare Center Pacific
Attn: Nick Thomas
Code 55350, Bldg. 81
53560 Hull Street
San Diego, CA 92152-5001

BPA Attachment 7 Fees and Payments

For Federal Express, United Parcel Service, DHL or Other Courier Services, send check to:
Naval Information Warfare Center Pacific
Shipping and Receiving
Receiving Officer (OT 7)
Attn: Nick Thomas
Code 55350, Bldg. 81
4297 Pacific Hwy.
San Diego, CA 92110

Email a copy of the ACT Fee remittance check to the Government Points of Contact found in Attachment 4 -Ordering Guide of this Agreement.