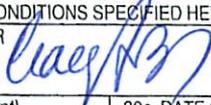
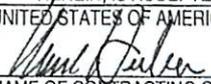


SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24 & 30				1. REQUISITION NUMBER	PAGE 1 OF 12
2. CONTRACT NO. N00104-13-A-ZF47	3. AWARD/EFFECTIVE DATE 08 April 2013	4. ORDER NUMBER	5. SOLICITATION NUMBER N00104-13-Q-ZF45	6. SOLICITATION ISSUE DATE 10/12/2012	
7. FOR SOLICITATION INFORMATION CALL:		a. NAME Dennis Fellin	b. TELEPHONE NUMBER (No collect calls) 717-605-5659	8. OFFER DUE DATE/ 11/12/2012 LOCAL TIME 8:00PM	
9. ISSUED BY DEPARTMENT OF THE NAVY NAVSUP WEAPON SYSTEMS SUPPORT 5450 CARLISLE PIKE MECHANICSBURG, PA 17055-0788 POC: Dennis Fellin, CODE 0272.22 PHONE: (717) 605-5659 EMAIL: Dennis.fellin@navy.mil		CODE N00104	10. THIS ACQUISITION IS <input checked="" type="checkbox"/> UNRESTRICTED <input type="checkbox"/> SET ASIDE: % FOR <input type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> EMERGING SMALL BUSINESS <input type="checkbox"/> HUBZONE SMALL BUSINESS <input type="checkbox"/> SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS <input type="checkbox"/> 8(A) NAICS: SIZE STANDARD:		
11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED <input type="checkbox"/> SEE SCHEDULE		12. DISCOUNT TERMS Net 30	<input type="checkbox"/> 13a. THIS CONTACT IS A RATED ORDER UNDER DPAS (15 CFR 700)		13b. RATING 14. METHOD OF SOLICITATION <input checked="" type="checkbox"/> RFQ <input type="checkbox"/> IFB <input type="checkbox"/> RFP
15. DELIVER TO SPECIFIED ON EACH ORDER		CODE	16. ADMINISTERED BY BASIC AGREEMENT - SAME AS BLOCK 9 ORDERS - AS CITED ON EACH INDIVIDUAL ORDER		
17a. CONTRACTOR/ OFFEROR Carahsoft Technology Corp. 12369 Sunrise Valley Drive, Ste D2, Reston, Virginia 20191 POC: Jessica Robertson PHONE: 703.889.9725 EMAIL: Jessica.robertson@carahsoft.com		CODE 1P3C5	FACILITY	18a. PAYMENT WILL BE MADE BY SPECIFIED ON EACH ORDER	
<input type="checkbox"/> 17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER		18b. SUMMIT INVOICES TO ADDRESS SHOWN IN BLOCk 18a UNLESS BLOCK CHECKED. <input type="checkbox"/> SEE ADDENDUM			
19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
	REFER TO ATTACHED BPA Terms and Conditions GSA SCHEDULE GS-35F-0119Y APPLIES			Refer to Attachment B	Refer to Attachment B
25. ACCOUNTING AND APPROPRIATION DATA			26. TOTAL AWARD AMOUNT (For Govt. Use Only)		
<input type="checkbox"/> 27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4, FAR 52.212-3 AND 52.212-5 ARE ATTACHED <input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED.					
<input checked="" type="checkbox"/> 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4 and FAR 52.212-5 IS ATTACHED. ADDENDA ARE NOT ATTACHED.					
28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN 1 COPY <input checked="" type="checkbox"/> TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED HEREIN.			29. AWARD OF CONTRACT: REFERENCE OFFER <input type="checkbox"/> DATED . YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDES ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS:		
30a. SIGNATURE OF OFFEROR/CONTRACTOR 			31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER) 		
30b. NAME AND TITLE OF SIGNER (Type or Print) Craig P. Abod, President		30c. DATE SIGNED 04/04/13	31b. NAME OF CONTRACTING OFFICER (Type or print) Wm Huber		31c. DATE SIGNED 3/28/13

AUTHORIZED FOR LOCAL REPRODUCTION
1449 (REV 3/2005)
PREVIOUS EDITION IS NOT USABLE
FAR (48CFR) 53.212

STANDARD FORM
Prescribed by GSA -

SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24 & 30				1. REQUISITION NUMBER		PAGE 1 OF 12						
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15. DELIVER TO CODE SPECIFIED ON EACH ORDER			16. ADMINISTERED BY CODE BASIC AGREEMENT – SAME AS BLOCK 9 ORDERS – AS CITED ON EACH INDIVIDUAL ORDER						14. METHOD OF SOLICITATION <input checked="" type="checkbox"/> RFQ <input type="checkbox"/> IFB <input type="checkbox"/> RFP			
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**DOD ESI
ITAM SOFTWARE
BLANKET PURCHASE AGREEMENT
Publisher: ServiceNow
Reseller: Carahsoft Technology Corp.**

1. Introduction/Recitals

1.1. Federal Acquisition Streamlining Act

1.1.1. In the spirit of the Federal Acquisition Streamlining Act, the Department of Navy, NAVSUP, Weapon Systems Support – Mechanicsburg, PA, Code 027, on behalf of the U.S. Department of Defense (DoD) Enterprise Software Initiative (ESI) (referred to hereafter as the “Government” or “DoD”) and Carahsoft Technology Corp. (the “Contractor”) enter into this Blanket Purchase Agreement, which includes all Attachments (collectively referred to as the “BPA” or “Agreement”) as of 08 April 2013 (the “Effective Date”).

1.2. GSA FSS Contract

1.2.1. GSA Federal Supply Schedule (FSS) Contract Blanket Purchase Agreements reduce contracting and open market costs such as: search for sources, development of technical documents, solicitations, and the evaluation of offers.

1.2.2. This BPA is entered to reduce the administrative costs of acquiring commercial products and services from the General Service Administration (GSA) Federal Supply Schedule (FSS) Contract(s) [GS-35F-0119Y] (the “FSS Contract”).

1.2.3. All orders placed against this BPA are subject to the terms and conditions of the FSS Contract.

1.3. DoD ESI

1.3.1. The DoD ESI is a joint DoD project designed to develop and implement a DoD enterprise procurement process. This ESI Agreement is issued in the spirit of the policy and guidelines provided in the Defense Federal Acquisition Regulation Supplement (DFARS) Section 208.74.

2. Obligation

2.1. Extent of Obligation

2.1.1. The Government estimates, but does not guarantee, that the volume of purchases through this Agreement will be \$87M. The Government is obligated only to the extent of authorized purchases actually made under this Agreement.



Blanket Purchase Agreement – General Terms and Conditions

2.2. Funds Obligation

- 2.2.1. This Agreement does not obligate any funds. Funds will only be obligated on each delivery order.

3. Authorized Users

3.1. DoD Components

- 3.1.1. The Agreement is open for ordering by all DoD Components. For the purposes of this Agreement, 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, NATO, the Intelligence Community and FMS with a Letter of Authorization.

3.2. GSA / Ordering Organizations

- 3.2.1. GSA or other applicable ordering organizations/agencies are authorized to place orders under this Agreement on behalf of DoD end users and must comply with DFARS 208.7400.

3.3. Government Contractors

- 3.3.1. Government contractors performing work for a DoD Component (as defined above) may place Delivery Orders under this Agreement on behalf of and for the benefit of the DoD entity if authorized by their cognizant Contracting Officer in accordance with the requirements of FAR 51 and/or DFARS 251 as appropriate.

4. Term and Survival

4.1. Term

- 4.1.1. This BPA shall commence on the Effective Date, and shall continue in force for a period of three years after such date with two (one-year) option ordering periods, unless otherwise terminated as provided herein and is contingent on maintaining or renewing a GSA FSS Schedule.
- 4.1.2. The Government is not obligated to exercise the BPA option periods.
- 4.1.3. The following FAR clause is hereby incorporated:
52.217-9 -- Option to Extend the Term of the Contract (Mar 2000)
 - (a) The Government may extend the term of this contract by written notice to the Contractor within 5 days; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 60 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 the BPA's ordering period, including the exercise of any BPA options under this clause, shall not exceed 5 years, 6 months.
- 4.1.4. 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:



Blanket Purchase Agreement – General Terms and Conditions

- (a) The initial order that includes the option was issued during the BPA ordering periods(s),
- (b) 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
- (c) The Ordering Office satisfies all other applicable regulations for exercise of options.

4.2. GSA Federal Supply Schedule Succession

- 4.2.1. This BPA is based on the Contractor's current GSA 70 schedule contract number GS-35F-0119Y. In the event the current GSA 70 schedule contract is canceled or expires and a new GSA 70 schedule contract is awarded, this BPA shall automatically transfer to the new GSA 70 schedule contract to the extent the new schedule contract includes the same scope and items as the canceled or expired GSA contract.

4.3. Annual Review for Best Value

- 4.3.1. This Agreement will be reviewed annually to ensure that it still represents a "best value."

4.4. Survival

- 4.4.1. This Agreement shall survive unto Contractor, its Successors, rights and assigns. The terms and conditions in this Agreement 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 Agreement.

5. Organization of this Agreement

5.1. BPA Structure

- 5.1.1. This BPA is organized in two major segments:
 - 5.1.1.1. The general terms and conditions
 - 5.1.1.2. Attachments, which are binding master agreements entered into and made effective at the time of the award of this BPA.

5.2. Order of Precedence

- 5.2.1. The Order of Precedence for resolving any inconsistency between this Agreement and the GSA contract terms shall be as specified in the GSA contract's Commercial Item clause, FAR 52.212-4.
- 5.2.2. The provisions of FAR 52.212-4 specified in FAR 12.302, as required by Federal law, shall prevail over any terms of the commercial license.
- 5.2.3. In the event of any inconsistency between the general terms and conditions of this Agreement and the terms and conditions of any Attachment to this Agreement, 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.



Blanket Purchase Agreement – General Terms and Conditions

5.2.4. All orders placed against this BPA shall incorporate the terms and conditions of this BPA, including all Attachments. In the event of a conflict between an ordering document (including the Contractor’s license, support, maintenance, or services agreements) and this BPA, the BPA and its Attachments shall take precedence over the Order unless the parties specifically agree in writing that a term or condition of an Order has precedence over the corresponding term or condition in the general terms and conditions of the BPA or its Attachments.

5.3. Glossary

5.3.1. A glossary of all terms is contained in Attachment A.

5.4. Attachments List

5.4.1. The Attachments are set forth as follows:

ATTACHMENT	TITLE
A	Glossary
B	Offering Catalog and Price List
C	Software License Agreement *** this will be attached and made a material part of this contract after agreement with the Publisher
D	Ordering Guide
E	Applicable FAR and DFARS Provisions
F	Report of Sales Format
G	Fees and Payments

6. Product and Service Offerings

6.1. Catalog

6.1.1. The Contractor shall make available to all authorized users of this Agreement the products and services contained in *Attachment B*.

6.2. Master Agreements Applicable to Products and Services Ordered Under this BPA

6.2.1. The parties hereby enter the following master agreements to apply to all orders placed under this BPA and are incorporated herein as binding terms and conditions:

AGREEMENT TITLE	SUMMARY	ATT. #
Software License Agreement	To govern the provision and use of all software licensed to the DoD pursuant to this BPA	C



6.3. Technology Refreshment / Products and Services Improvement

- 6.3.1. The Contractor shall propose improvements to the products and services offered under this Agreement 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 Agreement product and service prices.
- 6.3.2. If at any time during the life of this BPA, the original manufacturer of the equipment (includes software, hardware and firmware) schedules the products for discontinuation, improvement and/or replacement, the BPA holder shall provide a proposal to include the new or revised products on the BPA under the appropriate line items. Proposed prices for new or revised products shall be constructed in accordance with this BPA for most favored prices. Discounts shall be at the same or greater discount level as the original BPA product prices. Proposals shall be submitted to the Contracting Officer within seven (7) days of the BPA holder's awareness of the OEM's intent. Improvement of product includes new releases, updates, upgrades including additional features and functionality, and successor or upgrade products.
- 6.3.3. Changes proposed by the Contractor shall become effective only upon written acceptance by the Government.
- 6.3.4. In the event the Contractor's catalog changes are not timely updated in Attachment B-1 to this BPA, the ordering office is authorized to issue a Delivery Order under this BPA 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.

7. Pricing Terms

7.1. Base Pricing

- 7.1.1. Prices for commercial products and services are specified in Attachment B. The Contractor shall not charge prices in excess of those listed in this Agreement.
- 7.1.2. Prices shall not escalate and are not subject to upward adjustment during the base period of this Agreement.
- 7.1.3. The prices in Attachment B will be reviewed annually or as required to determine whether a reduction is appropriate in accordance with section 7.2. Contractor shall include a 2.0% Acquisition, Contracting, and Technical (ACT) Fee in Contractor's prices for all products published in Attachment B. The Contractor shall be responsible for the payment of all fees that are included in the product pricing (i.e. GSA IFF, ACT), as calculated on the customer orders, in accordance with Attachment G.

7.2. Most Favored Customer

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



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at any time the prices under any other contract instrument with any customer become lower than the prices in this BPA, this BPA will be immediately modified to include the lower prices.

7.3. Additional Price and Discount Terms

- 7.3.1. The government may secure additional discounts at the time of placing an order. Spot discounts are authorized and encouraged.
- 7.3.2. Additional price reductions may be negotiated for individual orders. DoD customers are encouraged to consolidate their purchases of ServiceNow products prior to releasing requests for quotes under a DoD Enterprise Software Agreement (ESA).

7.4. SmartBUY Program Extension

- 7.4.1. Office of Management and Budget (OMB) has announced the SmartBUY initiative to maximize cost savings and achieve best quality when acquiring commercial products and services. If during the term of this Agreement, Contractor and its resellers enter into a government-wide agreement with the GSA under the SmartBUY Initiative, which includes pricing for the specific products or services under similar terms and conditions as those licensed by the DoD under this Agreement, Contractor and its resellers agree to reduce the prices for the remaining term of this Agreement to meet the prices and fees under the SmartBUY agreement, or shall license the products and sell the services under the SmartBUY agreement for the same remaining term of this Agreement, at the discretion of the DoD. Neither the Contractor nor its resellers shall preclude the government from purchasing or licensing commercial products or services under a SmartBUY Agreement.

8. Product and Pricing Data Submission

8.1. Data Submission Format

- 8.1.1. Contractor shall submit and keep current all product, service and pricing data in the format described in Attachment B (as amended from time to time) for publication in all web and other methods for public and private display and access.
- 8.1.2. Changes to Contractor's products or prices shall only be effective upon receipt of written approval from the Procuring Contract Officer ("PCO").

8.2. UNSPSC

- 8.2.1. The United Nations Standard Products and Services Code (UNSPSC) is a required field in the submission format required by DoD for products and prices. The UNSPSC code permits software asset management through a standard coding structure. The UNSPSC is a coding system used to classify both products and services for use throughout the global marketplace. The management and development of the UNSPSC Code is coordinated by GS1 US. The current version is available free as a download at <http://www.unspsc.org>.

9. Ordering

9.1. Ordering Guide

- 9.1.1. Attachment D contains the ordering process and instructions that shall be followed by Ordering Offices and Contractor.
- 9.1.2. The Contractor shall post the Ordering Guide on its web site.



Blanket Purchase Agreement – General Terms and Conditions

- 9.1.3. 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.

9.2. Applicability of FAR and DFARS Provisions

- 9.2.1. Orders issued against this BPA are subject to the FAR clauses included in the underlying GSA Schedule.
- 9.2.2. Orders issued against this BPA are subject to the DFARS clauses as indicated by a check mark in Attachment E. Additional DFARS clauses may apply to the Delivery Order.
- 9.2.3. The DFARS clauses listed in Attachment E are those in effect as of the effective date of this BPA. Ordering Offices are responsible for incorporating the most current version of the applicable DFARS clauses in the Delivery Order as appropriate.
- 9.2.4. Any additional DFARS clauses not checked in Attachment E should be considered by the Ordering Offices for inclusion in the Delivery Order.
- 9.2.5. The Ordering Offices should consider the requirements of the FAR supplement of the end user component (local requirements), as they apply to commercial item acquisition and use of GSA schedules, in determining what additional clauses may be required for incorporation in the Delivery Order issued by the Ordering Office.

9.3. Web Sites and Electronic Ordering

- 9.3.1. This BPA will be posted to the DoD ESI website as part of the ESI program. The web site can be viewed at <http://www.esi.mil> and is publicly accessible. The Government may also post this Agreement to other federal government or DoD web sites, some of which may be publicly accessible.
- 9.3.2. It is the intention of the Government to use existing and future capability of the DoD Standard Procurement System, Electronic Data Interchange (EDI) capability, Government procurement card, and Contractor electronic ordering capability to create a paper-less ordering, invoicing and payment process. During the term of the BPA, the Contractor shall participate to achieve this objective.
 - 9.3.2.1. On-line ordering may also be accomplished through DoD controlled web sites.
 - 9.3.2.2. The Contractor shall ensure that the data and information relating to Contractor's products, technical specifications, services, prices and other information related to this BPA is current, accurate, complete, and delivered by the Contractor in the standard format(s) described in Attachment B-1.
 - 9.3.2.3. The Contractor shall maintain coordinated and integrated hypertext links to the ESI web site from their World Wide Web site(s).
 - 9.3.2.4. The Contractor should provide electronic-commerce (EC)/EDI capabilities and accept and respond to secure on-line orders and customer requests consistent with the terms of this acquisition vehicle.
 - 9.3.2.5. The Contractor shall use its commercially reasonable business efforts to adapt its business processes as technical requirements, environment and architecture evolve.



Blanket Purchase Agreement – General Terms and Conditions

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

9.4. BPA Ordering Suspension

9.4.1. There may be occasions where the Government may suspend ordering (by CLIN up to and including the entire BPA.) If a suspension is announced, the Contractor shall adhere to this suspension by not accepting/processing delivery orders for the suspended item(s).

10. Contractor BPA Management Obligations

10.1. Report of Sales

10.1.1. The Contractor shall provide a Report of Sales 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 F. Sales reports are required even in those instances where no sales are made. The SPM or PCO shall provide written approval of each report to the Contractor. At the end of each calendar quarter, the written approval provided to the Contractor will be accompanied by a request to remit the ACT fees in accordance with Attachment G. The SPM or PCO will provide a copy of the approved quarterly Report of Sales to the DoD Components participating in fee sharing.

10.2. Fees and Payments

10.2.1. The Contractor shall pay the ACT fees to the parties described in Attachment G within 30 days after notification of approval from the applicable SPM or PCO for the sales report required pursuant to section 10.1.

10.3. Centralized Administration

10.3.1. The Contractor must provide centralized administration, in the form of a Program Manager, in support of all work performed under this Agreement. The Program Manager, at a minimum, is required to participate in periodic program management reviews (which may require travel to a Government named site). Additional functions would include customer service, educating the sales force and submission of monthly/quarterly reports and approved fee payments.

10.4. Records

10.4.1. The Contractor shall maintain archival copies of all orders for the term of the Agreement and for 7 years after its expiration or termination. Copies shall be made available to the Government upon request.

10.5. Program Management Reviews (PMR)

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

10.6. Sales Leakage Prevention



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10.6.1. The goals of the ESI Program can only be realized through cooperation between the Government and the Contractor to direct appropriate sales through the ESI vehicles. The Contractor shall ensure that all sales personnel are aware of the ESI Program and enforce the policy that this Agreement is the preferred procurement vehicle for the products within. Within sixty (60) days of the effective date of this BPA, Contractor shall submit its plan of action and define the processes required to conform to the requirements of this BPA and shall keep current the plan throughout the Term of this BPA.

10.6.2. The Contractor shall establish a process to regularly audit sales to Government buyers, determine where sales outside the ESI vehicle are occurring, and take appropriate action to direct further sales through the ESI vehicle. Results of these audits will be presented as an agenda item during PMRs.

10.7. Marketing and Promotion

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

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

10.7.3. The Contractor's use of the ESI logo, seal or emblem shall be limited to materials describing the products and services which are specifically made available under this BPA. ESI reserves the right to review any materials that contain the ESI brand prior to use by the Contractor, and, at a minimum, requires the Contractor to follow these guidelines:

10.7.3.1. **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.

10.7.3.2. **Allow A Minimum Clear Space Around The ESI Logo.** Always allow for a minimum clear space around the logo. Never violate the clear space with any graphic elements, words or charts.

10.7.3.3. **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.

10.7.4. All materials made available for public view must include the following statement: "The ESI logo/marketing is used with permission. ESI procedures are explained in DFARS 208.74 and DoD CIO Guidance and Policy memorandum No. 12-8430 dated July 26, 2000."

11. Indemnity

11.1. Indemnification for Harmful Conduct

11.1.1. To the maximum extent permitted by law, Contractor will defend, 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,



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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. Personal Data and Personally Identifiable Information (PII)

12.1. Compliance with Privacy Act

12.1.1. 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 therein including, for example, DoD Directive 5400-11, DoD Program dated May 8, 2007, as may also be amended from time to time or superseded.

13. Termination

13.1. Effect of Termination.

13.1.1. Effect of Termination by Contractor. Notwithstanding any termination of this Agreement, by Contractor, including any Attachments to this Agreement, DOD shall have the right to continue use of any Products and Documentation that were purchased by a Delivery Order issued prior to the termination of the Agreement.

13.2. Surviving Provisions.

13.2.1. The following sections shall survive the termination or expiration of this Agreement: Section 11 (Indemnity), Section 12 (Personal Data and Personally Identifiable Information), Section 13.1 (Effect of Termination), Section 13.2 (Surviving provisions), Section 15 (General Provisions) and any software licenses acquired pursuant to this BPA where usage rights extend beyond the expiration or termination date of this BPA.

14. Relationship of the Parties

14.1. Independent Contractors.

14.1.1. Each party will act solely as an independent contractor. Nothing contained herein will be construed to create the relationship of principal and agent, employer and employee, partners or joint ventures. Neither party assumes any liability for personal injury or property damage arising out of the other party's performance of this Agreement.

14.1.2. The Contractor will be responsible for all obligations in this Agreement 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 Agreement.

15. General Provisions

15.1. YEAR 2000 Compliance

15.1.1. All products provided under this BPA shall be Y2K compliant as defined in FAR 39.106.

15.2. Headings



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

15.3. Notices

15.3.1. All notices required under this Agreement will be in writing and will be sent to the Government PCO and the Contractor's designated Program Manager for this Agreement at the address set forth on page 1 of this Agreement, unless otherwise agreed to by the parties. 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.

15.4. Reference to Days

15.4.1. All references in this Agreement to "days" will, unless otherwise specified, mean calendar days.

15.5. Severability

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

15.6. Waiver

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

15.7. Dispute Resolution

15.7.1. In the event of disagreement with respect to any aspect of this Agreement, 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.

15.8. Entire Agreement

15.8.1. This Agreement, together with all Attachments hereto, Service Delivery Orders, and Delivery Orders, 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 Agreement. No modifications of, or amendments to, the terms of this Agreement shall be valid unless in writing and signed by an authorized representative of each party.