On-line access to contract ordering information, terms and conditions, up-to-date pricing, and the option to create an electronic delivery order are available through GSA Advantage!®, a menu-driven database system. The INTERNET address GSA Advantage!® is: GSAAAdvantage.gov. For more information on ordering from Federal Supply Schedules click on the FSS Schedules button at fss.gsa.gov.
CUSTOMER INFORMATION

1a. AUTHORIZED SPECIAL ITEM NUMBERS (SINs):

<table>
<thead>
<tr>
<th>SIN</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>33411</td>
<td>Purchasing of New Electronic Equipment</td>
</tr>
<tr>
<td>511210</td>
<td>Software Licenses</td>
</tr>
<tr>
<td>OLM</td>
<td>Order-Level Materials (OLM)</td>
</tr>
</tbody>
</table>

1b. Lowest Priced Model Number and Price for each SIN: See Price List

1c. SERVICES OFFERED: See Price List

2. MAXIMUM ORDER PER SIN:

<table>
<thead>
<tr>
<th>SIN</th>
<th>MAXIMUM ORDER</th>
</tr>
</thead>
<tbody>
<tr>
<td>33411</td>
<td>$500,000 per SIN/Order</td>
</tr>
<tr>
<td>511210</td>
<td>$500,000 per SIN/Order</td>
</tr>
<tr>
<td>OLM</td>
<td>$250,000 per SIN/Order</td>
</tr>
</tbody>
</table>

3. MINIMUM ORDER LIMITATION: $100


5. POINT OF PRODUCTION: United States

6. BASIC DISCOUNT: Prices listed are net, discounts have been deducted and the industrial funding fee has been added.

7. QUANTITY DISCOUNT: See Price List

8. PROMPT PAYMENT TERMS: NET 30. Information for Ordering Offices: Prompt payment terms cannot be negotiated out of the contractual agreement in exchange for other concessions.

9a. GOVERNMENT PURCHASE CARDS ARE ACCEPTED UP TO THE MICRO-PURCHASE THRESHOLD.

9b. GOVERNMENT PURCHASE CARDS MAY BE ACCEPTED ABOVE THE MICRO-PURCHASE THRESHOLD.

10. FOREIGN ITEMS: None

11a. TIME OF DELIVERY: 30 Days ARO

11b. EXPEDITED DELIVERY: Contact Contractor

11c. OVERNIGHT AND 2-DAY DELIVERY: Contact Contractor

11d. URGENT REQUIREMENTS: Contact Contractor

12. F.O.B. POINT: Destination
13a. ORDERING ADDRESS: Isimulate, LLC
43 New Scotland Ave MC # 25
Albany, NY, 12208-3412

13b. ORDERING PROCEDURES: For supplies and services, the ordering procedures, information on Blanket Purchase Agreements (BPA’s) are found in Federal Acquisition Regulation (FAR) 8.405-3.

14. PAYMENT ADDRESS: Same as Ordering Address

15. WARRANTY PROVISION: Standard Commercial Warranty

16. EXPORT PACKING CHARGES: Not Applicable

17. TERMS AND CONDITIONS OF GOVERNMENT PURCHASE CARD ACCEPTANCE: Will be accepted below the micro-purchase threshold

18. TERMS AND CONDITIONS OF RENTAL: Not Applicable

19. TERMS AND CONDITIONS OF INSTALLATION: Not Applicable

20. TERMS AND CONDITIONS OF REPAIR PARTS: Not Applicable

20a. TERMS AND CONDITIONS FOR ANY OTHER SERVICES: Not Applicable

21. LIST OF SERVICE AND DISTRIBUTION POINTS: Not Applicable

22. LIST OF PARTICIPATING DEALERS: Not Applicable

23. PREVENTIVE MAINTENANCE: Not Applicable

24a. SPECIAL ATTRIBUTES: Not Applicable

24b. SECTION 508 COMPLIANCE INFORMATION: Not Applicable

25. DATA UNIVERSAL NUMBER SYSTEM (DUNS) NUMBER: 044007287

26. CONTRACTOR HAS REGISTERED IN THE SYSTEM FOR AWARD MANAGEMENT (SAM) DATABASE.
TERMS AND CONDITIONS APPLICABLE TO PURCHASING OF NEW ELECTRONIC EQUIPMENT (SPECIAL ITEM NUMBER 33411)

1. MATERIAL AND WORKMANSHIP
All equipment furnished hereunder must satisfactorily perform the function for which it is intended.

2. ORDER
Written orders, EDI orders (GSA Advantage! and FACNET), credit card orders, and orders placed under blanket purchase agreements (BPA) agreements shall be the basis for purchase in accordance with the provisions of this contract. If time of delivery extends beyond the expiration date of the contract, the Contractor will be obligated to meet the delivery and installation date specified in the original order.

For credit card orders and BPAs, telephone orders are permissible.

3. TRANSPORTATION OF EQUIPMENT
FOB DESTINATION. Prices cover equipment delivery to destination, for any location within the geographic scope of this contract.

4. INSTALLATION AND TECHNICAL SERVICES
a. INSTALLATION. When the equipment provided under this contract is not normally self-installable, the Contractor's technical personnel shall be available to the ordering activity, at the ordering activity's location, to install the equipment and to train ordering activity personnel in the use and maintenance of the equipment. The charges, if any, for such services are listed below, or in the price schedule: Equipment is self-installable.

b. INSTALLATION, DEINSTALLATION, REINSTALLATION. The Davis-Bacon Act (40 U.S.C. 276a-276a-7) provides that contracts in excess of $2,000 to which the United States or the District of Columbia is a party for construction, alteration, or repair (including painting and decorating) of public buildings or public works with the United States, shall contain a clause that no laborer or mechanic employed directly upon the site of the work shall receive less than the prevailing wage rates as determined by the Secretary of Labor. The requirements of the Davis-Bacon Act do not apply if the construction work is incidental to the furnishing of supplies, equipment, or services. For example, the requirements do not apply to simple installation or alteration of a public building or public work that is incidental to furnishing supplies or equipment under a supply contract. However, if the construction, alteration or repair is segregable and exceeds $2,000, then the requirement of the Davis-Bacon Act applies. Equipment is self-installable.

The ordering activity issuing the task order against this contract will be responsible for proper administration and enforcement of the Federal labor standards covered by the Davis-Bacon Act. The proper Davis-Bacon wage determination will be issued by the ordering activity at the time a request for quotations is made for applicable construction classified installation, deinstallation, and reinstallation services under SIN 33411 or SIN 33411REF. Equipment is self-installable.

c. OPERATING AND MAINTENANCE MANUALS. The Contractor shall furnish the ordering activity with access to instructional materials which are normally provided with the equipment being purchased.

5. INSPECTION/ACCEPTANCE
The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The ordering activity reserves the right to inspect or test any equipment that has been tendered for acceptance. The ordering activity may require repair or replacement of nonconforming equipment at no increase in contract price. The ordering activity must exercise its post acceptance rights (1) within 72 hours after the defect was discovered or should have been discovered; and (2) before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

6. WARRANTY

a. Unless specified otherwise in this contract, the Contractor’s standard commercial warranty as stated in the contract’s commercial pricelist will apply to this contract.

b. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

c. Limitation of Liability. Except as otherwise provided by an express or implied warranty, the Contractor will not be liable to the ordering activity for consequential damages resulting from any defect or deficiencies in accepted items.

d. If inspection and repair of defective equipment under this warranty will be performed at the Contractor's plant, the address is as follows: N/A

7. PURCHASE PRICE FOR ORDERED EQUIPMENT

The purchase price that the ordering activity will be charged will be the ordering activity purchase price in effect at the time of order placement, or the ordering activity purchase price in effect on the installation date (or delivery date when installation is not applicable), whichever is less.

8. RESPONSIBILITIES OF THE CONTRACTOR

The Contractor shall comply with all laws, ordinances, and regulations (Federal, State, City or otherwise) covering work of this character, and shall include all costs, if any, of such compliance in the prices quoted in this offer.

9. TRADE-IN OF INFORMATION TECHNOLOGY EQUIPMENT

When an ordering activity determines that Information Technology equipment will be replaced, the ordering activity shall follow the contracting policies and procedures in the Federal Acquisition Regulation (FAR), the policies and procedures regarding disposition of information technology excess personal property in the Federal Property Management Regulations (FPMR) (41 CFR 101-43.6), and the policies and procedures on exchange/sale contained in the FPMR (41 CFR part 101-46).
1. INSPECTION/ACCEPTANCE

The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The ordering activity reserves the right to inspect or test any software that has been tendered for acceptance. The ordering activity may require repair or replacement of nonconforming software at no increase in contract price. The ordering activity must exercise its post acceptance rights (1) within 72 hours after the defect was discovered or should have been discovered; and (2) before any substantial change occurs in the condition of the software, unless the change is due to the defect in the software. Inspection of services is in accordance with 552.212-4 CONTRACT TERMS AND CONDITIONS–COMMERCIAL ITEMS (JAN 2017) (DEVIATION – FEB 2007) (DEVIATION - FEB 2018) for Firm-Fixed Price orders; or GSAR 552.212-4 CONTRACT TERMS AND CONDITIONS–COMMERCIAL ITEMS (JAN 2017) (DEVIATION - FEB 2018) (ALTERNATE I - JAN 2017) (DEVIATION - FEB 2007) for Time- and-Materials and Labor-Hour Contracts orders placed under this contract.

2. COMMERCIAL SUPPLIER AGREEMENTS

Commercial Supplier Agreements to include End User License Agreements or Terms of Service (TOS) agreements. The Contractor shall provide all Commercial Supplier Agreements to include End User License Agreements or Terms of Service (TOS) agreements in an editable Microsoft Office (Word) format for review prior to award.

3. GUARANTEE/WARRANTY

a. The Contractor’s commercial guarantee/warranty shall be included in the Commercial Supplier Agreement to include Enterprise User License Agreements or Terms of Service (TOS) agreements.

b. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract. If no implied warranties are given, an express warranty of at least 60 days must be given in accordance with FAR 12.404(b)(2)

c. Limitation of Liability. Except as otherwise provided by an express or implied warranty, the Contractor will not be liable to the ordering activity for consequential damages resulting from any defect or deficiencies in accepted items.

4. TECHNICAL SERVICES

The Contractor, without additional charge to the ordering activity, shall provide a hot line technical support number +1 518-261-1700 for the purpose of providing user assistance and guidance in the implementation of the software. The technical support number is available from 8am to 5pm EST.

5. SOFTWARE MAINTENANCE

a. Software maintenance as it is defined: (select software maintenance type):

   (1)   X   Software Maintenance as a Product (SIN 511210)
Software maintenance as a product includes the publishing of bug/defect fixes via patches and updates to maintain the operability and usability of the software product. It may also include other no charge support that is included in the purchase price of the product in the commercial marketplace. No charge support includes items such as user blogs, discussion forums, on-line help libraries and Frequently Asked Questions (FAQ’s), hosted chat rooms, and limited telephone, email and/or web-based general technical support for user’s self-diagnostics.

Software maintenance as a product does NOT include the creation, design, implementation, integration, etc. of a software package. These examples are considered software maintenance services.

Software Maintenance as a product is billed at the time of purchase.

6. PERIODS OF TERM LICENSES (SIN 511210)

a. The Contractor shall honor orders for periods for the duration of the contract period or a lesser period of time.

b. Term licenses may be discontinued by the ordering activity on thirty (30) calendar days written notice to the Contractor.

c. Annual Funding. When using annually appropriated funds are cited on an order for term licenses, the period of the term licenses shall automatically expire on September 30 of the contract period.

d. Cross-Year Funding Within Contract Period. Where an ordering activity’s specific appropriation authority provides for funds in excess of a 12 month (fiscal year) period, the ordering activity may place an order under this schedule contract for a period up to the expiration of the contract period, notwithstanding the intervening fiscal years.

e. Ordering activities should notify the Contractor in writing thirty (30) calendar days prior to the expiration of an order, if the term licenses and/or maintenance is to be terminated at that time. Orders for the continuation of term licenses will be required if the term licenses and/or maintenance is to be continued during the subsequent period.

7. CONVERSION FROM TERM LICENSE TO PERPETUAL LICENSE

Conversion credit equal to year of a term license will be offered to convert to perpetual license.

8. TERM LICENSE CESSATION

a. Not Offered.

9. UTILIZATION LIMITATIONS - (SIN 511210)

a. Software acquisition is limited to commercial computer software defined in FAR Part 2.101.

b. When acquired by the ordering activity, commercial computer software and related documentation so legend shall be subject to the following:
(1) Title to and ownership of the software and documentation shall remain with the Contractor, unless otherwise specified.

(2) Software licenses are not site licenses.

(3) Except as is provided in paragraph 9.b(2) above, the ordering activity shall not provide or otherwise make available the software or documentation, or any portion thereof, in any form, to any third party without the prior written approval of the Contractor. Third parties do not include prime Contractors, subcontractors and agents of the ordering activity who have the ordering activity's permission to use the licensed software and documentation at the facility, and who have agreed to use the licensed software and documentation only in accordance with these restrictions. This provision does not limit the right of the ordering activity to use software, documentation, or information therein, which the ordering activity may already have or obtains without restrictions.

(4) The ordering activity shall have the right to use the software and documentation with the run-time computing environment (e.g. operating system, virtual machine, mobile operating system, processor etc.) to be specifically identified for which it is acquired at any other facility/user device to which that time computing environment may be transferred, or in cases of Disaster Recovery, the ordering activity has the right to transfer the software to another site/user device if the ordering activity site for which it is acquired is deemed to be unsafe for ordering activity personnel; to use the software and documentation with a backup time computing environment when the primary is inoperative; to copy computer programs for safekeeping (archives) or backup purposes.

(5) "Commercial Computer Software" may be marked with the Contractor's standard commercial restricted rights legend, but the schedule contract and schedule pricelist, including this clause, "Utilization Limitations" are the only governing terms and conditions, and shall take precedence and supersede any different or additional terms and conditions included in the standard commercial legend.

(6) Licensee Data belongs exclusively to Licensee, regardless of where the Data may reside at any moment in time including, but not limited to Licensor hardware, networks or other infrastructure and facilities where Data may reside, transit through or be stored from time to time. Licensor makes no claim to a right of ownership in Licensee Data. Licensor agrees to keep the Licensee Data Confidential as that term is defined in the relevant FAR and DFARS provisions pertaining to Confidential Information and Confidentiality. Licensor is not permitted to use Licensee’s data for a purpose that is not explicitly granted in writing by Licensee. Upon Licensee request, for any reason whatsoever, Licensor must promptly return all Licensee Data in Licensor’s possession in a format as may be designated at the time of request by Licensee.

(7) Licensee may not create or hire others to create modifications, customizations or other enhancements to the Software which might be classified as “Derivative Works” of the software.

(8) Software Asset Identification Tags (SWID) (Option 1 SIN 511210)

Option 1 is applicable when the Offeror agrees to include the International Organization for Standardization/International Electrotechnical Commission 19770-2 (ISO/IEC 19770- 2:2015) standard identification tag (SWID Tag) as an embedded element in the software. An ISO/IEC 19970-2 tag is a discoverable identification element in software that provides licensees enhanced asset visibility. Enhance visibility supports both the goals of better software asset management and license compliance. Offerors may use the National Institute of Standards and Technology (NIST) document “NISTIR 8060: Guidelines for Creation of Interoperable Software Identification (SWID) Tags,” December 2015 to determine if they are in compliance with the ISO/IEC 19770-2 standard.
Section 837 of The Federal Information Technology Acquisition Reform Act (FITARA) of 2014, requires GSA to seek agreements with software vendors that enhance government-wide acquisition, shared use, and dissemination of software, as well as compliance with end user license agreements. The Megabyte Act of 2016 requires agencies to inventory software assets and to make informed decisions prior to new software acquisitions. In June of 2016, the Office of Management and Budget issued guidance on software asset management requiring each CFO Act (Public Law 101-576 – 11/15/1990) agency to begin software inventory management (M-16-12). To support these requirements, Offerors may elect to include the terms of Option 1 and/or Option 2, which support software asset management and government-wide reallocation or transferability of perpetually licensed software.

(9) Reallocation of Perpetual Software (Option 2 SIN 511210) is applicable when the Offeror agrees

a. The purpose of SIN 511210 OPTION 2 is to allow ordering activities to transfer software assets for a pre-negotiated charge to other ordering activities.

b. When an ordering activity becomes aware that a reusable software asset may be available for transfer, it shall contact the Contractor, identify the software license or licenses in question, and request that these licenses be reallocated or otherwise made available to the new ordering activity.

c. Contractors shall release the original ordering activity from all future obligations under the original license agreement and shall present the new ordering activity with an equivalent license agreement. When the new ordering activity agrees to the license terms, henceforth any subsequent infringement or breach of licensing obligations by the new ordering activity shall be a matter exclusively between the new ordering activity and the Contractor.

d. The original ordering activity shall de-install, and/or make unusable all of the software assets that are to be transferred. It shall have no continuing right to use the software and any usage shall be considered a breach of the Contractor’s intellectual property and a matter of dispute between the original ordering activity/original license grantee and the licensor.

e. As a matter of convenience, once the original licenses are deactivated, di-installed, or made otherwise unusable by the original ordering activity or license grantee, the Contractor may elect to issue new licenses to the new ordering activity to replace the old licenses. When new licenses are not issued, the Contractor shall provide technical advice on how best to achieve the functional transfer of the software assets.

f. Software assets that are eligible for transfer that have lapsed Software Maintenance Services (SIN 54151) may require a maintenance reinstatement fee, chargeable to the new ordering activity or license grantee. When such a fee is paid, the new ordering activity shall receive all the rights and benefits of Software Maintenance Services.

g. When software assets are eligible for transfer, and are fully covered under pre-paid Software Maintenance Services (SIN 54151), the new ordering activity shall not be required to pay maintenance for those license assets prior to the natural termination of the paid for maintenance period. The rights associated with paid for current Software Maintenance Services shall automatically transfer with the software licenses without fee. When the maintenance period expires, the new ordering activity or license grantee shall have the option to renew maintenance.

h. The administrative fee to support the transfer of licenses, exclusive of any new incremental licencing or maintenance costs shall percentage (5) of the original license fee. The fee shall be paid only at the time of transfer. In applying the transfer fee, the Software Contractor shall provide transactional data that supports the original costs of the licenses.
10. SOFTWARE CONVERSIONS - (SIN 511210)
Not Offered.

11. DESCRIPTIONS AND EQUIPMENT COMPATIBILITY
The Contractor shall include, in the schedule pricelist, a complete description of each software product including the operating systems on which the software can be used. Also included shall be a brief, introductory explanation of the modules and documentation which are offered.

12. RIGHT-TO-COPY PRICING
Not Offered.
<table>
<thead>
<tr>
<th>SIN</th>
<th>PART NUMBER</th>
<th>PRODUCT NAME</th>
<th>PRODUCT DESCRIPTION</th>
<th>GSA PRICE PER UNIT (1-2)</th>
<th>GSA PRICE PER UNIT (3+)</th>
</tr>
</thead>
<tbody>
<tr>
<td>511210</td>
<td>ALSi2S</td>
<td>ALSi Annual</td>
<td>iSimulate ALSi Annual Membership System *Requires ALSi Control and ALSi Monitor to operate</td>
<td>$982.47</td>
<td>$962.42</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Membership</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>511210</td>
<td>ALSi2</td>
<td>ALSi Full</td>
<td>iSimulate ALSi Membership System *Requires ALSi Control and ALSi Monitor to operate</td>
<td>$4,838.29</td>
<td>$4,739.55</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Membership</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>33411</td>
<td>ALSi40MP</td>
<td>ALSi Simulation Pro Set Complete</td>
<td>Simulation Set Complete including: One (1) ALSi Control One (1) ALSi Monitor Fixed Wi-Fi Monitor Bag ALSi Simulation Lead set (Adult) Power System System Configuration</td>
<td>$3,455.92</td>
<td>$3,385.39</td>
</tr>
<tr>
<td>511210</td>
<td>ALSi2/CTGi2</td>
<td>ALSi/CTGi Combined Full Membership</td>
<td>iSimulate ALSi Membership /iSimulate CTGi Membership System *Requires ALSi/CTGi Control and ALSi/CTGi Monitor to operate</td>
<td>$7,331.49</td>
<td>$7,181.86</td>
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<tr>
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<tr>
<td>33411</td>
<td>ALSi/CTGi40MP</td>
<td>ALSi/CTGi Simulation Pro Set Complete</td>
<td>Simulation Set Complete including: One (1) ALSi/CTGi Control One (1) ALSi/CTGi Monitor Fixed Wi-Fi Monitor Bag ALSi &amp; CTGi Simulation Lead set (Adult) Power System System Configuration</td>
<td>$3,060.96</td>
<td>$2,998.49</td>
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<tr>
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</tr>
<tr>
<td>33411</td>
<td>STETH1</td>
<td>AURiS Training Stethoscope</td>
<td>*Requires AURiS Control to operate Heart, lung, bowel sounds Rechargeable battery Adjustable settings</td>
<td>$982.47</td>
<td>$962.42</td>
</tr>
<tr>
<td>SIN</td>
<td>PART NUMBER</td>
<td>PRODUCT NAME</td>
<td>PRODUCT DESCRIPTION</td>
<td>GSA PRICE PER UNIT (1-2)</td>
<td>GSA PRICE PER UNIT (3+)</td>
</tr>
<tr>
<td>------</td>
<td>-------------</td>
<td>--------------</td>
<td>-------------------------------------------------------------------------------------</td>
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</tr>
<tr>
<td>33411</td>
<td>STETH1C</td>
<td>AURiS Training Stethoscope Complete</td>
<td>Package includes: AURiS Training Stethoscope One (1) AURiS Control Heart, lung, bowel sounds Rechargeable battery Adjustable settings</td>
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<td>$1,639.50</td>
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<tr>
<td>511210</td>
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<td>CTGi Annual Membership</td>
<td>iSimulate CTGi Annual Membership System *Requires CTGi Control and CTGi Monitor to operate</td>
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<td>$962.42</td>
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<tr>
<td>511210</td>
<td>CTGi2</td>
<td>CTGi Full Membership</td>
<td>iSimulate CTGi Membership System *Requires CTGi Control and CTGi Monitor to operate</td>
<td>$4,838.29</td>
<td>$4,739.55</td>
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<tr>
<td>33411</td>
<td>CTGi40MP</td>
<td>CTGi Simulation Pro Set Complete</td>
<td>Simulation Set Complete including: One (1) CTGi Control One (1) CTGi Monitor Fixed Wi-Fi Monitor Bag CTGi Simulation Lead set (Adult) Power System System Configuration</td>
<td>$3,060.96</td>
<td>$2,998.49</td>
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<tr>
<td>511210</td>
<td>REALITI360AED</td>
<td>REALITi 360 AED Screen</td>
<td>Premium AED Screen of Choice for REALITi 360</td>
<td>$488.77</td>
<td>$478.79</td>
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<tr>
<td>33411</td>
<td>CPR360</td>
<td>REALITi 360 CPR Module</td>
<td>CPR Module for REALITi 360 Includes: CPR Software Integration with REALITi 360 CPR Hardware including two (2) CPR Bands and case</td>
<td>$982.47</td>
<td>$962.42</td>
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<tr>
<td>511210</td>
<td>REALITI360DEF</td>
<td>REALITi 360 Defibrillator Screen</td>
<td>Premium Defibrillator Screen of Choice for REALITi 360</td>
<td>$982.47</td>
<td>$962.42</td>
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<tr>
<td>33411</td>
<td>REALITi360KT</td>
<td>REALITi 360 Kit</td>
<td>Simulation Set Complete including: One (1) REALITi Control One (1) REALITi Monitor Fixed Wi-Fi Monitor Bag Simulation Lead set (Adult) Power System System Configuration</td>
<td>$2,957.28</td>
<td>$2,896.93</td>
</tr>
<tr>
<td>SIN</td>
<td>PART NUMBER</td>
<td>PRODUCT NAME</td>
<td>PRODUCT DESCRIPTION</td>
<td>GSA PRICE PER UNIT (1-2)</td>
<td>GSA PRICE PER UNIT (3+)</td>
</tr>
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</tr>
<tr>
<td>511210</td>
<td>REALITi360MMA</td>
<td>REALITi 360</td>
<td>Mobile Media Access for REALITi 360 includes: REALITi Video Recording</td>
<td>$1,476.17</td>
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<tr>
<td></td>
<td></td>
<td>Mobile Media Access</td>
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<tr>
<td>33411</td>
<td>REALITi360MMM</td>
<td>REALITi 360</td>
<td>Mobile Media Module for REALITi 360 includes: REALITi Video Recording Module One (1) REALITi Camera One (1) Mobile Media System One (1) Tripod</td>
<td>$2,957.28</td>
<td>$2,896.93</td>
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<td></td>
<td></td>
<td>Mobile Media Module</td>
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</tr>
<tr>
<td>511210</td>
<td>REALITi360MON</td>
<td>REALITi 360</td>
<td>Premium Monitor Screen of Choice for REALITi 360</td>
<td>$982.47</td>
<td>$962.42</td>
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<tr>
<td></td>
<td></td>
<td>Monitor Screen</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>33411</td>
<td>REALITi360PL</td>
<td>REALITi 360</td>
<td>REALITi 360 Plus Full Membership One (1) Premium Screen of choice Simulation Set Complete including: One (1) REALITi Control One (1) REALITi Monitor Fixed Wi-Fi Monitor Bag Simulation Lead set (Adult) Power System System Configuration</td>
<td>$8,881.71</td>
<td>$8,700.45</td>
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<tr>
<td></td>
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<td>Plus</td>
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<tr>
<td>511210</td>
<td>REALITi360PLMS</td>
<td>REALITi 360</td>
<td>REALITi 360 Plus Annual Membership One (1) Premium Screen of choice *Requires REALITi Control and REALITi Monitor to operate</td>
<td>$1,476.17</td>
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<td></td>
<td></td>
<td>Plus Annual</td>
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Isimulate, LLC  
Contract Number 47QTCA20D005F  
Phone: 518-261-1700
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1. INTRODUCTION

1.1. This page sets out the general terms and conditions (General Terms) which apply to the licensing of Services (as defined below) in relation to the App (as defined below) from the GSA Multiple Award Schedule Contractor acting on behalf of Supplier (as defined below) to the Customer (as defined below).

1.2. The parties’ agreement is made up of (i) these General Terms; (ii) the Quotation (if any); and (iii) any amendments or supplements to the agreement signed and agreed in writing between the parties. Together the above documents, with the underlying GSA Schedule Contract, Schedule Pricelist, and Purchase Order(s), shall constitute and be known as the “agreement” and apply to the contract between the parties to the exclusion of any other terms that the Customer may seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

1.3. When construing the meaning of the Agreement, the documents listed in clause 1.2 shall be interpreted in a reverse order of priority in the event of any inconsistency or conflict, with documents appearing later in the list taking priority over documents appearing earlier in the list.

1.4. Reserved.

1.5. The Licensor may amend the non-material terms and conditions of these General Terms from time to time as set out in clause 14.12. Every time the Licensee agrees a new Quotation with the Licensor it should check these General Terms to ensure that it understands the terms which will apply to the agreement at that time. Any material updates to this agreement shall be presented to Ordering Activity for review and will not be effective unless and until both parties sign a written agreement updating these terms.

1.6. Reserved

2. INTERPRETATION

2.1. In this agreement:

App means the Supplier’s mobile based software application, “ALSi”®, “CTGi”®, “AURIS”®, “REALITi”® and “Engage”®.

Authorized Users means those employees and agents of the Customer only, who are authorized by the Customer to use the App and its ancillary documentation who have agreed to the terms of the EULA.

Business Day means any day which is not a Saturday, Sunday, bank or public holiday in the USA.

Commencement Date means the date that the Customer first pays Subscription Fees in respect of any Authorized User(s).

Confidential Information means in relation to either party, any or all information of a confidential nature (whether in oral, written or electronic form) including trade secrets and information of commercial value known and belonging to that party and concerning its business, suppliers, customers, products or services (including without limitation the App and its ancillary documentation) and any other information which the recipient knows or is notified or has reason to believe is confidential to the disclosing party.

Customer means the eligible Ordering Activity under GSA Schedule contracts identified in the Purchase Order, Statement of Work, or similar document which has purchased User Subscriptions from the Supplier from time to time, who is either the holder of the online account used to subscribe or is named on the Quotation (if applicable).
Customer Data means the data, content and images inputted by the Customer, the Authorized Users, or (if applicable) the Supplier (or its subcontractors) on the Customer’s behalf for the purpose of facilitating the Customer’s or the Authorized Users’ use of the App.

Customer Equipment means a modern mobile (Apple or Android, once the App is supported on that platform) device capable of running the App and internet access.

EULA means the end-user licence agreement and privacy policy included within this document which all Authorized Users are required to sign up to before beginning to use the Services.

Licence Restrictions means the licence restrictions specified in this agreement.

Purpose means accessing and using the Services for their functionally contemplated training and simulation purposes only.

Quotation means the written quotation form provided by the Supplier to the Customer and agreed by the Customer or signed by the Customer in respect of the subject matter of the agreement, or if none is signed or agreed, then the email correspondence or other online web page in or on which the relevant commercial terms are set out.

Service Charges means the service charges that the Supplier confirms to the Customer from time to time in respect of any bespoke services requested by the Customer.

Subscription Fees means the total amounts specified online to the Customer or in the Quotation when purchasing User Subscriptions from time to time or otherwise payable in accordance with the terms of this agreement, to be paid in accordance with the timeframes and other stipulations set out in this agreement.

Subscription Term means the term beginning on the Commencement Date and continuing for the period specified either in the Quotation or online when the Customer signs up to purchase the App, unless and until this agreement is terminated in accordance with its terms. If a perpetual term is specified online or in any Quotation, this shall be interpreted as meaning a term which endures so long as the App is generally updated and maintained by the Supplier.

Supplier means iSimulate LLC whose registered office is at 43 New Scotland Ave MC#25 Albany, NY 12208

Support means the support services to be provided by the Supplier in relation to each Authorized User, and made available, unless otherwise specified, during the Supplier’s standard business hours (9am to 5.00pm AEST time on Business Days) via email contact to info@isimulate.com or phone to +1 1300 474 685. Remote access must be provided by the Customer to allow the Supplier access to the Customer Equipment for emergency fixes. The Supplier may also provide online support resources for Authorized Users.

Term means the term of this agreement as defined in clause 13.1.

Services means hosting of the App and making it available for access to Authorized Users using the Customer Equipment.

User Subscriptions means the subscriptions purchased by the Customer which entitle Authorized Users to access and use the Services and its ancillary documentation in accordance with this agreement.

2.2. Clause, schedule and paragraph headings shall not affect the interpretation of this agreement. References to clauses and schedules are to the clauses and schedules of this agreement.

2.3. Words in the singular shall include the plural and vice versa.

2.4. A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
3. USER SUBSCRIPTIONS

3.1. Subject to payment and the other restrictions set out in this agreement, the Supplier hereby grants to the Customer, subject to the Licence Restrictions, subject to the EULA applicable to each Authorized User, a non-exclusive, non-transferable right to permit the Authorized Users to use the Services during the Subscription Term of the User Subscriptions for such Authorized Users solely for the Purpose.

3.2. In relation to the Authorized Users, the Customer undertakes that: (a) it shall be responsible for compliance by Authorized Users with the terms of this agreement and the EULA, and that the restrictions on the Customer set out within this agreement shall, unless the context requires otherwise, equally apply to any such persons; (b) the number of Authorized Users shall not exceed the number of User Subscriptions the Customer has purchased from time to time; (c) it will not allow or suffer any User Subscription to be used by more than one individual Authorized User unless it has been reassigned in its entirety to another individual Authorized User, in which case the prior Authorized User shall no longer have any right to access or use the Services and/or its documentation; (d) each Authorized User shall keep a secure password for his use of the Services and its documentation, and that each Authorized User shall keep his password confidential; (e) it shall maintain a written, up to date list of current Authorized Users and provide such list to the Supplier within 5 Business Days of the Supplier’s written request at any time or times; (f) it shall permit the Supplier to audit the Services in order to establish the name and password of each Authorized User. Such audit may be conducted no more than once per 12 month period, shall be subject to Government security requirements, and with reasonable prior notice; (g) if any of the audits referred to in clause 3.1(f) reveal that the Customer has underpaid Subscription Fees to the Supplier, then without prejudice to any other right to which it may be entitled, the Customer shall pay to the Supplier an amount equal to such underpayment (as calculated by reference to the Subscription Fees for additional Authorized Users) within thirty (30) days of the invoice receipt date; and (h) if any of the audits referred to in clause 3.1(f) reveal that any password has been provided to any individual who is not an Authorized User, then without prejudice to the Supplier’s other rights, the Customer shall promptly disable such passwords and the Supplier shall not issue any new passwords to any such individual.

3.3. The Customer shall not access, store, distribute or transmit any viruses, or any material during the course of their use of the Services that: (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; (b) facilitates illegal activity; (c) depicts sexually explicit images; (d) promotes unlawful violence; (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activity; or (f) causes damage or injury to any person or property. Should the need arise Supplier will submit a claim to the contracting officer if it believes the Government to be in breach, and to continue performance during the pendency of the claim.

3.4. The Customer shall not: (a) other than as permitted by law, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the App and/or its documentation (as applicable) in any form or media or by any means; nor attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the App; or (b) access all or any part of the Services in order to build a product or service which competes with the Services; or (c) use the Services to provide services to third parties; or (d) subject to clause 14.6, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services available to any third party except the Authorized Users; or (e) attempt to obtain, or assist third parties in obtaining, access to the Services, other than as provided under this clause 3; or (f) interfere with or disrupt the integrity or performance of the Services or third party data contained therein; or (g) attempt to gain unauthorized access to the Services or their related systems or networks.
3.5. The Customer shall use all reasonable endeavours to prevent any unauthorized access to, or use of, the Services and/or its documentation and, in the event of any such unauthorized access or use, promptly notify the Supplier.

3.6. The rights provided under this clause 3 are granted to the Customer only and shall not be considered granted to any subsidiary or holding company of the Customer.

3.7. The Customer must ensure that its use of the Services and all Customer Data is at all times compliant with the terms of this agreement, all applicable laws and regulations (nationally and internationally) and the Customer represents and warrants that: (i) it has obtained all necessary rights, releases and permissions to provide all the Customer Data to the Supplier and to grant the rights granted to the Supplier in this agreement and (ii) the Customer Data and its transfer to and use by the Supplier as authorized by the Customer under this agreement do not violate any laws (including without limitation those relating to export control and electronic communications), including without limitation any intellectual property rights, rights of privacy, or rights of publicity, and any use, collection and disclosure authorized herein is not inconsistent with the terms of any applicable privacy policies. Other than its security obligations under clause 9.3, the Supplier assumes no responsibility or liability for Customer Data, and the Customer shall be solely responsible for Customer Data and the consequences of using, disclosing, storing, or transmitting it.

4. ADDITIONAL USER SUBSCRIPTIONS

4.1. Subject to clause 4.2, the Customer may, from time to time during the Subscription Term, purchase additional User Subscriptions.

4.2. The Customer shall, within 30 days of the receipt date of the Supplier’s invoice, pay to the Supplier the relevant fees for such additional User Subscriptions.

5. SERVICES

5.1. The Supplier shall, during the Subscription Term, provide the Support and the Services to the Customer on and subject to the terms of this agreement.

5.2. The Supplier shall procure hosting of the App from its hosting subcontractor and make the Services available to the Customer in accordance with the terms imposed upon Supplier by its hosting sub-contractor from time to time, a copy of which will be provided to the Customer upon request. The Supplier shall use reasonable endeavours to inform the Customer in advance of any planned service interruption.

5.3. Where the Customer has purchased a “lifetime support and upgrades policy” for the App the Supplier will, as part of the Services and at no additional cost to the Customer other than the Subscription Fees, provide the Customer with the Support for the lifetime of the App (i.e. the period over which it is generally maintained and upgraded by the Supplier) in accordance with the Supplier’s support services policy in effect at the time that the Services are provided, subject to fair usage of the Support by the Customer. Where such a policy is purchased, the Customer shall also be entitled, at no additional charge, to any upgrades or improvements to the App which the Supplier may release over the lifetime of the App (i.e. the period over which it is generally maintained and upgraded by the Supplier). For the avoidance of doubt, if no such policy has been purchased, no Support or upgrades shall be offered by the Supplier.

5.4. Clause 5.3 notwithstanding, the Supplier may, from time to time at its discretion, generally upgrade and improve the App as it sees fit and the Customer acknowledges that if the Supplier chooses to generally release such upgrades and improvements, they may affect the Customer’s use of the Services. Any specific upgrades requested by the Customer are chargeable by the Supplier.

5.5. There may be storage limits associated with Services, which are generally subject to fair usage limits. The Supplier reserves the right to charge for additional storage at the rates set in the Schedule Pricelist.
6. SUPPLIER'S OBLIGATIONS

6.1. The Supplier undertakes that the Services will be performed with reasonable skill and care for the lifetime of the App (i.e. the period over which it is generally maintained and upgraded by the Supplier).

6.2. The undertaking at clause 6.1 shall not apply to the extent of any nonconformance which is caused by use of the Services contrary to the Supplier’s instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier’s duly authorized contractors or agents. If the Services do not conform with the foregoing undertaking, Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer’s sole and exclusive remedy for any breach of the undertaking set out in clause 6.1. Notwithstanding the foregoing, the Supplier does not warrant that the Customer’s use of the Services will be uninterrupted or error-free, nor that the Services and/or documentation will meet the Customer’s requirements.

6.3. The Customer acknowledges that it has assessed the suitability of the Services for its requirements. The Supplier does not warrant that the App, the Services and/or its documentation will be suitable for such requirements or that any use will be uninterrupted or error free. The undertaking in this clause 6 shall not apply if the Customer makes or causes to be made any modifications to the App or Services without the Supplier’s consent or the App is used in combination with any software, hardware or materials not supplied by the Supplier or approved in writing by the Supplier or the App or Services are used in an application for which they were not intended or the App or Services are used otherwise than as permitted by this agreement.

6.4. This agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this agreement.

6.5. The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement.

7. CUSTOMER’S OBLIGATIONS

The Customer shall:

a. provide the Supplier with all necessary co-operation in relation to this agreement, and all necessary data and access to information as may be required by the Supplier, its agents or contractors, in order to render the Services, including but not limited to applicable specifications, data management decisions, approvals, security access information and configuration services;

b. comply with all applicable laws and regulations with respect to its activities under this agreement;

c. carry out all other Customer responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;

d. ensure that the Authorized Users use the Services in accordance with the terms and conditions of this agreement and shall be responsible for any breach of this agreement by either;

e. obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under this agreement, including without limitation the Services;

f. ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time;

g. be solely responsible for procuring and maintaining its network connections and telecommunications links, and maintaining appropriate Customer Equipment;
h. provide a single main point of contact who can address questions or issues relating to the Services, provide timely feedback and review any changes to the Services; and
i. be solely responsible at its own cost for generating Customer Data, content and data required to utilise the services and uploading all such content and data to the site provided to the Customer using the Services. In the event that the Customer requires any assistance from the Supplier in this regard and provides prior written consent, the Supplier may provide such assistance as it deems appropriate at the Schedule Pricelist charges.

8. CHARGES AND PAYMENT
8.1. The Customer shall pay the Subscription Fees in full within thirty (30) days of the invoice receipt date. The Customer shall pay any Service Charges, or other charges specified or agreed under the agreement, as and when they are invoiced by the Supplier. Such invoices are payable within 30 days of the invoice receipt date, unless otherwise agreed in writing by the Supplier. All charges shall be paid by bank transfer to the bank account nominated in writing by the Supplier from time to time.
8.2. If the Supplier has not received payment for any Subscription Fees, and/or any Services Charges or other charges within 30 days after the invoice due date, interest shall accrue on such due amounts at a monthly rate equal to the amount indicated by the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315. Should the need arise iSimulate will submit a claim to the contracting officer if it believes the Government to be in breach, and to continue performance during the pendency of the claim. Should claim for non-payment go unresolved for 60 days after the invoice date, supplier reserves the right suspend access until payment in full is received
8.3. All amounts and fees stated or referred to in this agreement: (a) shall be payable in US Dollars; (b) reserved; (c) Supplier shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
8.4. If, at any time whilst using the Services, the Customer exceeds the Licence Restrictions, the Supplier shall charge the Customer, and the Customer shall pay, the Supplier’s then prevailing GSA Schedule Pricelist charges for such excessive use.
8.5. Backup of all Customer Data is the sole responsibility of the Customer. Bespoke upgrades may be undertaken on written request, subject to confirmation by Supplier, and are charged for by the Supplier at its then prevailing standard daily rate. Any on-site support required by the Customer and agreed by the Supplier and Customer in writing will be chargeable at the Supplier’s then prevailing standard daily rates.

9. PROPRIETARY RIGHTS
9.1. The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Services, App and its documentation. Except as expressly stated herein, this agreement does not grant the Customer any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Services, App and its documentation.
9.2. The Customer shall own all rights, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data and the means by which it acquired such Customer Data.
9.3. The Supplier shall use reasonable endeavours to maintain appropriate administrative, physical and technical safeguards for protection of the security, confidentiality and integrity of Customer Data. However, the Customer understands and acknowledges that use of the hosted Services necessarily involves transmission of the Customer Data over networks that are not owned, operated or controlled by the
Supplier, and that the Supplier cannot be held responsible for any Customer Data lost, altered, intercepted or stored across such networks. The Supplier does not guarantee that its security procedures will be error-free, that transmissions of the Customer Data will always be secure or that unauthorized third parties will never be able to defeat the Supplier’s security measures or those of the Supplier’s third-party service providers.

9.4. The Supplier shall not modify Customer Data, disclose Customer Data or access Customer Data except: (a) as required by law; (b) as expressly permitted by the Customer; (c) to provide the Services; (d) to address technical problems or issues with the Services; or (e) at the Customer’s request when providing Support.

9.5. The Supplier shall use its reasonable commercial endeavours to back-up all Customer Data on a daily basis. In relation to images comprised in the Customer Data, the Supplier shall use its reasonable commercial endeavours to procure from its hosting provider back-up of such images in accordance with its hosting provider’s terms for provision of back-up services from time to time. In the event of any loss of or damage to Customer Data, the Customer’s sole and exclusive remedy shall be for the Supplier to use its reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Supplier (or its hosting provider, as appropriate according to the nature of the Customer Data which has been lost or damaged).

9.6. If the Supplier processes any personal data on the Customer’s behalf when performing its obligations under this agreement, the parties record their intention that the Customer shall be the data controller and the Supplier shall be a data processor and in any such case: (a) the Customer shall ensure that the Customer is entitled to transfer the relevant personal data to the Supplier so that the Supplier may lawfully use, process and transfer the personal data in accordance with this agreement on the Customer’s behalf; (b) the Customer shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation; (c) the Supplier shall process the personal data only in accordance with the terms of this agreement and any lawful instructions reasonably given by the Customer from time to time; and (d) each party shall take appropriate technical and organisational measures against unauthorized or unlawful processing of the personal data or its accidental loss, destruction or damage.

10. CONFIDENTIALITY

10.1. Each party shall maintain the confidentiality of the other party’s Confidential Information and shall not, without the prior written consent of the other, use, disclose, copy or modify the other party’s Confidential Information (or permit any third party to do so) other than as strictly necessary for the performance of its rights and obligations under this agreement. The provisions of this clause shall not apply to any information which: (a) is or comes into the public domain without breach of this agreement; or (b) was in the possession of the receiving party prior to receipt from the disclosing party without an obligation of confidence; or (c) was obtained from a third party free to divulge such information; or (d) is required to be disclosed by law or by any legal, regulatory or administrative body. Supplier recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as “confidential” by the vendor.

11. INDEMNITY

11.1. In no event will Supplier be liable to Customer for any direct, indirect or other damages, including any lost profits, list savings or other incidental, special, consequential or exemplary damages arising out of the use or inability to use the software, or a loss of data or profits, whether in action of contract, negligence or other tortious action, even if Supplier had been advised of the possibility of such damages, nor shall Supplier be liable for any similar claim against Customer by any other party.
11.2. The Supplier shall, subject to the limitations in this clause 12 and 28 USC 516, defend the Customer against any claim that the Services infringe any US patent effective as of the Commencement Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that: (a) the Supplier is given prompt notice of any such claim; and (b) the Customer provides reasonable cooperation to the Supplier in the defence and settlement of such claim, at the Supplier’s expense.

11.3. In the defence or settlement of any claim, the Supplier may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this agreement without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.

11.4. In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on: (a) a modification of the Services by anyone other than the Supplier; or (b) the Customer’s use of the Services in a manner contrary to the instructions given to the Customer by the Supplier; or (c) the Customer’s use of the Services after notice of the alleged or actual infringement from the Supplier or any appropriate authority.

11.5. The foregoing states the Customer’s sole and exclusive rights and remedies, and the Supplier’s (including the Supplier’s employees’, agents’ and sub-contractors’) entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

12. LIMITATION OF LIABILITY

12.1. This clause 12 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of: (a) any breach of this agreement (including without limitation, any claim under clause 11.2); (b) any use made by the Customer of the App, Support or any part of them; and (c) any representation, statement or tortious act or omission arising under or in connection with this agreement.

12.2. Supplier warrants that the App will, for a period of sixty (60) days from the date of Ordering Activity’s receipt, perform substantially in accordance with the App’s written materials accompanying it, Except as expressly and specifically provided in this agreement: (a) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement; (b) the Services and all other services provided, procured and/or sub-contracted by the Supplier under this agreement, are provided to the Customer on an “as is” basis; and (c) the Customer assumes sole responsibility for results obtained from the use of the Services and its associated documentation by the Customer and Authorized Users, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or data provided to the Supplier by the Customer in connection with the Services, or any actions taken by the Supplier at the Customer’s direction.

12.3. Nothing in this agreement excludes the liability of the Supplier: (a) for death or personal injury caused by the Supplier’s negligence; (b) for fraud or fraudulent clause 12.2. and clause 12.3; (c) for any reason that cannot be legally excluded: (a) the Supplier shall not be liable whether in tort (including breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement; and (b) the Supplier’s total aggregate liability in contract, tort (breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to the total Purchase Order price paid, including Subscription Fees paid for the User Subscriptions.
13. TERM AND TERMINATION

13.1. This agreement shall commence on the Commencement Date and shall (unless terminated earlier in accordance with these terms) continue in full force and effect until the end of the Subscription Term.

13.2. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Supplier shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer. Should claim for non-payment go unresolved for 60 days after the invoice date, supplier reserves the right suspend access until payment in full is received.

13.3. On expiry or termination of this agreement for any reason: (a) all licences granted under this agreement shall immediately terminate, even if the Subscription Term is defined as “perpetual” in, or if no expiration date is specified in, the Quotation; (b) each party shall return and make no further use of any Confidential Information belonging to the other party; and (c) the accrued rights of the parties as at expiry or termination, or the continuation after expiry or termination of any provision expressly stated to survive (including, without limitation, clauses 1, 9, 10, 11.1, 12, 13.3 and 14) or implicitly surviving termination, shall not be affected or prejudiced; and (d) the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession unless the Supplier receives, no later than 10 days after the effective date of termination of this agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. The Supplier shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of receipt of such a request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination).

14. GENERAL

14.1. Excusable delays shall be governed by FAR 52.212-4(f).

14.2. A waiver of any right under this agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.

14.3. Unless specifically provided otherwise, rights arising under this agreement are cumulative and do not exclude rights provided by law.

14.4. If any provision (or part of a provision) of this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

14.5. This agreement, together with the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s), constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover. In the event of any conflict between this Agreement and a Negotiated Purchase Order, the Purchase Order shall prevail.

14.6. Neither party shall, without the prior written consent of the other party (such consent not to be unreasonably withheld, delayed or conditioned), assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

14.7. Nothing in this agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
14.8. Notwithstanding any other provisions of this Agreement, nothing in this Agreement confers or purports to confer any right to enforce any of its terms on any person who is not a party to it.

14.9. Any notice required or permitted to be given under this agreement shall be in writing and shall be delivered or transmitted to the intended recipient's address as specified in this agreement or such other address as either party may notify in writing to the other from time to time for this purpose. Any notice shall be treated as having been served on delivery if delivered by hand, 4 Business Days after posting if sent by pre-paid first class post, and on completion of transmission if sent by facsimile (subject to receipt of acknowledgement of successful transmission).

14.10. The construction, validity and performance of this agreement shall be governed by the Federal laws of the USA, and the parties submit to the exclusive jurisdiction of the Federal courts of the USA.

14.11. This agreement may be executed in any number of counterparts, each of which will be considered an original, but all of which together will constitute the same agreement. The exchange of a fully executed agreement (in counterparts or otherwise) by facsimile or electronic transmission shall be sufficient to bind the parties to the terms and conditions of this agreement.

14.12. No variation of this agreement shall be effective unless it is in writing and signed by authorized representatives of each of the parties. Notwithstanding this, the Supplier may generally update the non-material terms and conditions of these General Terms from time to time. It is the responsibility of the Customer to check these General Terms to ensure that it is aware of any changes to same.