

**AUTHORIZED FEDERAL SUPPLY SERVICE  
INFORMATION TECHNOLOGY SCHEDULE PRICELIST  
GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY  
EQUIPMENT, SOFTWARE AND SERVICES**



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Contract Number: **GS-35F-0363P** (P00168 dated 3/13/2020)  
Period Covered by Contract: 3/16/2019 through 3/31/2024

**Special Item No. 532420L Leasing of Product (formerly SIN 132-3)**  
**Special Item No. 33411 Purchase of New Equipment (formerly SIN 132-8)**  
**Special Item No. 811212 Equipment Maintenance (formerly SIN 1321-12)**  
**Special Item No. 511210 Term Software License (formerly 132-32)**  
**Special Item No. 511210 Perpetual Software License (formerly 132-33)**  
**Special Item No. 511210 Maintenance of Software (formerly 132-34)**  
**Special Item No. 611420 Training (formerly 132-50)**  
**Special Item No. 54151S Information Technology Professional Services formerly (132-51)**  
**Special Item No. 54151ECOM Electronic Commerce and Subscription Services (formerly 132-52)**

*Note: All non-professional labor categories must be incidental to and used solely to support hardware, software and/or professional services, and cannot be purchased separately.*

General Services Administration  
Federal Supply Service

Products and ordering information in this Authorized FSS Information Technology Schedule Pricelist are also available on the GSA Advantage! System. Agencies can browse GSA Advantage! by accessing the Federal Supply Service's Home Page via the Internet at <http://www.fss.gsa.gov/>

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## **SIN 532420 LLEASING OF PRODUCT**

## **SIN 33411 PURCHASE OF NEW**

## **EQUIPMENT SIN 511210 - TERM**

### **SOFTWARE LICENSES**

FSC/PSC Class 7030 ADP SOFTWARE

- Ancillary Financial Systems Software
- Application Software
- Communications Software
- Core Financial Management Software
- Electronic Commerce (EC) Software
- Large Scale Computers
- Microcomputers
- Operating System Software
- Special Physical, Visual, Speech, and Hearing Aid Software. Provide specific information.
- Utility Software

### **SIN 511210 - PERPETUAL SOFTWARE LICENSES**

FSC/PSC Class 7030 ADP SOFTWARE

- Ancillary Financial Systems Software
- Application Software
- Communications Software
- Core Financial Management Software
- Electronic Commerce (EC) Software
- Large Scale Computers
- Microcomputers
- Operating System Software
- Special Physical, Visual, Speech, and Hearing Aid Software. Provide specific information.
- Utility Software

### **SIN 511210 - MAINTENANCE OF SOFTWARE**

FSC/PSC Class J070 MAINT/REPAIR/REBUILD OF EQUIPMENT- ADP  
EQUIPMENT/SOFTWARE/SUPPLIES/SUPPORT EQUIPMENT

- Maintenance of Software

### **SIN 611420 - TRAINING COURSES FOR INFORMATION TECHNOLOGY EQUIPMENT AND SOFTWARE (FPDS Code U012)**

FSC/PSC Class U012 EDUCATION/TRAINING- INFORMATION  
TECHNOLOGY/TELECOMMUNICATIONS TRAINING

- Training Courses for Information Technology Equipment and Software

### **SIN 54151S - INFORMATION TECHNOLOGY (IT) PROFESSIONAL SERVICES**

FPDS Code D301 IT Facility Operation and Maintenance

FPDS Code D302 IT Systems Development Services

FPDS Code D306 IT Systems Analysis Services

FPDS Code D307 Automated Information Systems Design and Integration Services

FPDS Code D308 Programming Services

FPDS Code D310 IT Backup and Security Services  
FPDS Code D311 IT Data Conversion Services  
FPDS Code D313 Computer Aided Design/Computer Aided Manufacturing (CAD/CAM) Services  
FPDS Code D316 IT Network Management Services  
FPDS Code D317 Creation/Retrieval of IT Related Automated News Services, Data Services, or  
Other Information Services (All other information services belong under Schedule 76)  
FPDS Code D399 Other Information Technology Services, Not Elsewhere Classified

**INFORMATION FOR ORDERING ACTIVITIES  
APPLICABLE TO ALL SPECIAL ITEM NUMBERS**

**SPECIAL NOTICE TO AGENCIES: Small Business Participation**

SBA strongly supports the participation of small business concerns in the Federal Supply Schedules Program. To enhance Small Business Participation SBA policy allows agencies to include in their procurement base and goals, the dollar value of orders expected to be placed against the Federal Supply Schedules, and to report accomplishments against these goals.

For orders exceeding the micropurchase threshold, FAR 8.404 requires agencies to consider the catalogs/pricelists of at least three schedule contractors or consider reasonably available information by using the GSA Advantage!™ on-line shopping service ([www.fss.gsa.gov](http://www.fss.gsa.gov)). The catalogs/pricelists, GSA Advantage!™ and the Federal Supply Service Home Page ([www.fss.gsa.gov](http://www.fss.gsa.gov)) contain information on a broad array of products and services offered by small business concerns.

This information should be used as a tool to assist ordering activities in meeting or exceeding established small business goals. It should also be used as a tool to assist in including small, small disadvantaged, and women-owned small businesses among those considered when selecting pricelists for a best value determination.

For orders exceeding the micropurchase threshold, customers are to give preference to small business concerns when two or more items at the same delivered price will satisfy their requirement.

**1. GEOGRAPHIC SCOPE OF CONTRACT:**

The geographic scope of this contract is the 48 contiguous states and the District of Columbia.

**2. CONTRACTOR'S ORDERING ADDRESS AND PAYMENT INFORMATION:**

**Ordering Address:**

ESCgov, Inc.  
1660 International Dr  
Suite 410  
McLean, VA 22102  
Telephone: (703) 637-8555 ext. 112  
Fax: (240) 214-4841  
E-mail: [mthoppil@escgov.com](mailto:mthoppil@escgov.com)

**Remit check payment via U.S. mail to:**

ESCgov, Inc.  
P.O. Box 9284  
McLean, VA 22102

**Remit payment by wire transfer to:**

Wells Fargo;                      Account Name: ESCgov, Inc  
ABA# 051400549;                  Account No.: 2000028445344

Contractors are required to accept credit cards for payments equal to or less than the micro-purchase threshold for oral or written delivery orders. Credit cards will be acceptable for payment above the micro-purchase threshold. In addition, bank account information for wire transfer payments will be shown on the invoice.

The following telephone number(s) can be used by ordering activities to obtain technical and/or ordering assistance:  
(703-637-8555 ext. 112

When Authorized Dealers are allowed by the Contractor to bill ordering activities and accept payment, the order and/or payment must be in the name of the Contractor, in care of the Authorized Dealer.

**3. LIABILITY FOR INJURY OR DAMAGE**

The Contractor shall not be liable for any injury to ordering activity personnel or damage to ordering activity property arising from the use of equipment maintained by the Contractor, unless such injury or damage is due to the fault or negligence of the Contractor.

**4. STATISTICAL DATA FOR GOVERNMENT ORDERING OFFICE COMPLETION OF STANDARD FORM 279:**

- Block 9: G. Order/Modification Under Federal Schedule
- Block 16: Data Universal Numbering System (DUNS) Number: **136-155-178**
- Block 30: Type of Contractor – **B – Other Small Business**
- Block 31: Woman-Owned Small Business - **NO**
- Block 36: Contractor's Taxpayer Identification Number (TIN): **65-1187014**
- 4a. CAGE Code: **3L9F0**

**5. FOB DESTINATION**

**6. DELIVERY SCHEDULE**

a. **TIME OF DELIVERY:** The Contractor shall deliver to destination within the number of calendar days after receipt of order (ARO), as set forth below:

SPECIAL ITEM NUMBER	DELIVERY TIME (Days ARO)
SIN 532420L	30 Days
SIN 33411	30 Days
SIN 811212	30 Days
SIN 511210	30 Days
SIN 511210	30 Days
SIN 511210	30 Days
SIN 611420	30 Days
SIN 54151S	30 Days
SIN 54151ECOM	30 Days

b. **URGENT REQUIREMENTS:** When the Federal Supply Schedule contract delivery period does not meet the bona fide urgent delivery requirements of an ordering activity, ordering activities are encouraged, if time permits, to contact the Contractor for the purpose of obtaining accelerated delivery. The Contractor shall reply to the inquiry within 3 workdays after receipt. (Telephonic replies shall be confirmed by the Contractor in writing.) If the Contractor offers an accelerated delivery time acceptable to the ordering activity, any order(s) placed pursuant

to the agreed upon accelerated delivery time frame shall be delivered within this shorter delivery time and in accordance with all other terms and conditions of the contract.

7. **DISCOUNTS:** Prices shown are NET Prices; Basic Discounts have been deducted.
- a. Prompt Payment: None. Net 30 days from receipt of invoice or date of acceptance, whichever is later.
  - b. Quantity: None
  - c. Dollar Volume: Orders in excess of \$500,000 may qualify for a spot discount. Contact ESCgov for reduced prices.
  - d. Government Educational Institutions: Government Educational Institutions are offered the same discounts as all other Government customers.
  - e. Other: None

8. **TRADE AGREEMENTS ACT OF 1979, AS AMENDED:**

All items are U.S. made end products, designated country end products, Caribbean Basin country end products, Canadian end products, or Mexican end products as defined in the Trade Agreements Act of 1979, as amended.

9. **STATEMENT CONCERNING AVAILABILITY OF EXPORT PACKING:**

Not applicable.

10. **SMALL REQUIREMENTS:**

The minimum dollar value of orders to be issued is \$100.00.

11. **MAXIMUM ORDER** (All dollar amounts are exclusive of any discount for promptpayment.)

- a. The Maximum Order value for the following Special Item Numbers (SINs) is \$500,000:

Special Item Number 532420L- Leasing of Product  
Special Item Number 532420R (132-4) – Daily / Short  
Term Rental Special Item Number 33411 - Purchase of  
Equipment Special Item Number 811212 – Maintenance of  
Equipment Special Item Number 511210 - Term Software  
Licenses Special Item Number 511210 - Perpetual  
Software Licenses Special Item Number 511210 –  
Maintenance of Software  
Special Item Number 54151S - Information Technology (IT) Professional  
Services Special Item Number 54151ECOM - Electronic Commerce (EC)  
Services  
Special Item Number 517312 (132-53) – Wireless Services

- b. The Maximum Order value for the following Special Item Numbers (SINs) is \$25,000:

Special Item Number 611420 - Training Courses

12. **USE OF FEDERAL SUPPLY SERVICE INFORMATION TECHNOLOGY SCHEDULE CONTRACTS. In accordance with FAR 8.404:**

**[NOTE: Special ordering procedures have been established for Special Item Numbers (SINs) 54151S IT Professional Services and 54151ECOM EC Services; refer to the terms and conditions for those SINs.]**

Orders placed pursuant to a Multiple Award Schedule (MAS), using the procedures in FAR 8.404, are considered to be issued pursuant to full and open competition. Therefore, when placing orders under Federal Supply Schedules, ordering activities need not seek further competition, synopsise the requirement, make a separate determination of fair and reasonable pricing, or consider small business set-asides in accordance with subpart 19.5. GSA has already determined the prices of items under schedule contracts to be fair and reasonable. By placing an order against a schedule using the procedures outlined below, the ordering activity has concluded that the order represents the best value and results in the lowest overall cost alternative (considering price, special features, administrative costs, etc.) to meet the ordering activity's needs.

a. Orders placed at or below the micro-purchase threshold. Ordering activities can place orders at or below the micro-purchase threshold with any Federal Supply Schedule Contractor.

b. Orders exceeding the micro-purchase threshold but not exceeding the maximum order threshold. Orders should be placed with the Schedule Contractor that can provide the supply or service that represents the best value. Before placing an order, ordering activities should consider reasonably available information about the supply or service offered under MAS contracts by using the "GSA Advantage!" on-line shopping service, or by reviewing the catalogs/pricelists of at least three Schedule Contractors and selecting the delivery and other options available under the schedule that meets the ordering activity's needs. In selecting the supply or service representing the best value, the ordering activity may consider--

- (1) Special features of the supply or service that are required in effective program performance and that are not provided by a comparable supply or service;
- (2) Trade-in considerations;
- (3) Probable life of the item selected as compared with that of a comparable item;
- (4) Warranty considerations;
- (5) Maintenance availability;
- (6) Past performance; and
- (7) Environmental and energy efficiency considerations.

c. Orders exceeding the maximum order threshold. Each schedule contract has an established maximum order threshold. This threshold represents the point where it is advantageous for the ordering activity to seek a price reduction. In addition to following the procedures in paragraph b, above, and before placing an order that exceeds the maximum order threshold, ordering activities shall--

Review additional Schedule Contractors'

- (1) catalogs/pricelists or use the "GSA Advantage!" on-line shopping service;
- (2) Based upon the initial evaluation, generally seek price reductions from the Schedule Contractor(s) appearing to provide the best value (considering price and other factors); and
- (3) After price reductions have been sought, place the order with the Schedule Contractor that provides the best value and results in the lowest overall cost alternative. If further price reductions are not offered, an order may still be placed, if the ordering activity determines that it is appropriate.

NOTE: For orders exceeding the maximum order threshold, the Contractor may:

- (1) Offer a new lower price for this requirement (the Price Reductions clause is not applicable to orders placed over the maximum order in FAR 52.216-19 Order Limitations);
- (2) Offer the lowest price available under the contract; or
- (3) Decline the order (orders must be returned in accordance with FAR 52.216-19).

d. Blanket purchase agreements (BPAs). The establishment of Federal Supply Schedule BPAs is permitted when following the ordering procedures in FAR 8.404. All schedule contracts contain BPA provisions. Ordering activities may use BPAs to establish accounts with Contractors to fill recurring requirements. BPAs should address the frequency of ordering and invoicing, discounts, and delivery locations and times.

e. Price reductions. In addition to the circumstances outlined in paragraph c, above, there may be instances when ordering activities will find it advantageous to request a price reduction. For example, when the ordering activity finds a schedule supply or service elsewhere at a lower price or when a BPA is being established to fill recurring requirements, requesting a price reduction could be advantageous. The potential volume of orders under these agreements, regardless of the size of the individual order, may offer the ordering activity the opportunity to secure greater discounts. Schedule Contractors are not required to pass on to all schedule users a price reduction extended only to an individual ordering activity for a specific order.

f. Small business. For orders exceeding the micro-purchase threshold, ordering activities should give preference to the items of small business concerns when two or more items at the same delivered price will satisfy the requirement.

g. Documentation. Orders should be documented, at a minimum, by identifying the Contractor the item was purchased from, the item purchased, and the amount paid. If an ordering activity requirement, in excess of the micro-purchase threshold, is defined so as to require a particular brand name, product, or feature of a product peculiar to one manufacturer, thereby precluding consideration of a product manufactured by another company, the ordering activity shall include an explanation in the file as to why the particular brand name, product, or feature is essential to satisfy the ordering activity's needs.

### **13. FEDERAL INFORMATION TECHNOLOGY/TELECOMMUNICATION STANDARDS**

**REQUIREMENTS:** ordering activities acquiring products from this Schedule must comply with the provisions of the Federal Standards Program, as appropriate (reference: NIST Federal Standards Index). Inquiries to determine whether or not specific products listed herein comply with Federal Information Processing Standards (FIPS) or Federal Telecommunication Standards (FED-STDS), which are cited by ordering activities, shall be responded to promptly by the Contractor.

#### **13.1 FEDERAL INFORMATION PROCESSING STANDARDS PUBLICATIONS (FIPS PUBS):**

Information Technology products under this Schedule that do not conform to Federal Information Processing Standards (FIPS) should not be acquired unless a waiver has been granted in accordance with the applicable "FIPS Publication." Federal Information Processing Standards Publications (FIPS PUBS) are issued by the U.S. Department of Commerce, National Institute of Standards and Technology (NIST), pursuant to National Security Act. Information concerning their availability and applicability should be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161. FIPS PUBS include voluntary standards when these are adopted for Federal use. Individual orders for FIPS PUBS should be referred to the NTIS Sales Office, and orders for subscription service should be referred to the NTIS Subscription Officer, both at the above address, or telephone number (703)487-4650.

**13.2 FEDERAL TELECOMMUNICATION STANDARDS (FED-STDS):** Telecommunication products under this Schedule that do not conform to Federal Telecommunication Standards (FED-STDS) should not be acquired unless a waiver has been granted in accordance with the applicable "FED-STD." Federal Telecommunication Standards are issued by the U.S. Department of Commerce, National Institute of Standards and Technology (NIST), pursuant to National Security Act. Ordering information and information concerning the availability of FED-STDS should be obtained from the GSA, Federal Supply Service, Specification Section, 470 East L'Enfant Plaza, Suite 8100, SW, Washington, DC 20407, telephone number (202)619-8925. Please include a self-addressed mailing label when requesting information by mail. Information concerning their applicability can be obtained by writing or calling the U.S. Department of Commerce, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone number (301)975-2833.

### **14. CONTRACTOR TASKS / SPECIAL REQUIREMENTS (C-FSS-370) (NOV 2001)**

a. Security Clearances: The Contractor may be required to obtain/possess varying levels of security clearances in the performance of orders issued under this contract. All costs associated with obtaining/possessing such security clearances should be factored into the price offered under the Multiple Award Schedule.

b. Travel: The Contractor may be required to travel in performance of orders issued under this contract. Allowable travel and per diem charges are governed by Pub .L. 99-234 and FAR Part 31, and are reimbursable by the ordering agency or can be priced as a fixed price item on orders placed under the Multiple Award Schedule. The Industrial Funding Fee does NOT apply to travel and per diem charges.

c. Certifications, Licenses and Accreditations: As a commercial practice, the Contractor may be required to obtain/possess any variety of certifications, licenses and accreditations for specific FSC/service code classifications offered. All costs associated with obtaining/ possessing such certifications, licenses and accreditations should be factored into the price offered under the Multiple Award Schedule program.

d. Insurance: As a commercial practice, the Contractor may be required to obtain/possess insurance coverage for specific FSC/service code classifications offered. All costs associated with obtaining/possessing such insurance should be factored into the price offered under the Multiple Award Schedule program.

e. Personnel: The Contractor may be required to provide key personnel, resumes or skill category descriptions in the performance of orders issued under this contract. Ordering activities may require agency approval of additions or replacements to key personnel.

f. Organizational Conflicts of Interest: Where there may be an organizational conflict of interest as determined by the ordering agency, the Contractor's participation in such order may be restricted in accordance with FAR Part 9.5.

g. Documentation/Standards: The Contractor may be requested to provide products or services in accordance with rules, regulations, OMB orders, standards and documentation as specified by the agency's order.

h. Data/Deliverable Requirements: Any required data/deliverables at the ordering level will be as specified or negotiated in the agency's order.

i. Government-Furnished Property: As specified by the agency's order, the Government may provide property, equipment, materials or resources as necessary.

j. Availability of Funds: Many Government agencies' operating funds are appropriated for a specific fiscal year. Funds may not be presently available for any orders placed under the contract or any option year. The Government's obligation on orders placed under this contract is contingent upon the availability of appropriated funds from which payment for ordering purposes can be made. No legal liability on the part of the Government for any payment may arise until funds are available to the ordering Contracting Officer.

## **15. CONTRACT ADMINISTRATION FOR ORDERING ACTIVITIES:**

Any ordering activity, with respect to any one or more delivery orders placed by it under this contract, may exercise the same rights of termination as might the GSA Contracting Officer under provisions of FAR 52.212-4, paragraphs (l) Termination for the ordering activity's convenience, and (m) Termination for Cause (See C.1.)

## **16. GSA Advantage!**

GSA Advantage! is an on-line, interactive electronic information and ordering system that provides on-line access to vendors' schedule prices with ordering information. GSA Advantage! will allow the user to perform various searches across all contracts including, but not limited to:

- (1) Manufacturer;
- (2) Manufacturer's Part Number; and
- (3) Product categories.

Agencies can browse GSA Advantage! by accessing the Internet World Wide Web utilizing a browser (ex.: NetScape). The Internet address is <http://www.fss.gsa.gov/>.

## 17. PURCHASE OF OPEN MARKET ITEMS

NOTE: Open Market Items are also known as incidental items, noncontract items, non-Schedule items, and items not on a Federal Supply Schedule contract.

For administrative convenience, an ordering activity contracting officer may add items not on the Federal Supply Multiple Award Schedule (MAS) -- referred to as open market items -- to a Federal Supply Schedule blanket purchase agreement (BPA) or an individual task or delivery order, **only if-**

- (1) All applicable acquisition regulations pertaining to the purchase of the items not on the Federal Supply Schedule have been followed (e.g., publicizing (Part 5), competition requirements (Part 6), acquisition of commercial items (Part 12), contracting methods (Parts 13, 14, and 15), and small business programs (Part 19));
- (2) The ordering activity contracting officer has determined the price for the items not on the Federal Supply Schedule is fair and reasonable;
- (3) The items are clearly labeled on the order as items not on the Federal Supply Schedule; and
- (4) All clauses applicable to items not on the Federal Supply Schedule are included in the order.

## 18. CONTRACTOR COMMITMENTS, WARRANTIES AND REPRESENTATIONS

a. For the purpose of this contract, commitments, warranties and representations include, in addition to those agreed to for the entire schedule contract:

- (1) Time of delivery/installation quotations for individual orders;
- (2) Technical representations and/or warranties of products concerning performance, total system performance and/or configuration, physical, design and/or functional characteristics and capabilities of a product/equipment/ service/software package submitted in response to requirements which result in orders under this schedule contract.
- (3) Any representations and/or warranties concerning the products made in any literature, description, drawings and/or specifications furnished by the Contractor.

b. The above is not intended to encompass items not currently covered by the GSA Schedule contract.

## 19. OVERSEAS ACTIVITIES

The terms and conditions of this contract shall apply to all orders for installation, maintenance and repair of equipment in areas listed in the pricelist outside the 48 contiguous states and the District of Columbia, except as indicated below:

Not applicable

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Upon request of the Contractor, the ordering activity may provide the Contractor with logistics support, as available, in accordance with all applicable ordering activity regulations. Such ordering activity support will be provided on a reimbursable basis, and will only be provided to the Contractor's technical personnel whose services are exclusively required for the fulfillment of the terms and conditions of this contract.

## 20. BLANKET PURCHASE AGREEMENTS (BPAs)

Federal Acquisition Regulation (FAR) 13.303-1(a) defines Blanket Purchase Agreements (BPAs) as "...a simplified method of filling anticipated repetitive needs for supplies or services by establishing 'charge accounts' with qualified sources of supply." The use of Blanket Purchase Agreements under the Federal Supply Schedule Program is authorized in accordance with FAR 13.303-2(c)(3), which reads, in part, as follows:

"BPAs may be established with Federal Supply Schedule Contractors, if not inconsistent with the terms of the applicable schedule contract."

Federal Supply Schedule contracts contain BPA provisions to enable schedule users to maximize their administrative and purchasing savings. This feature permits schedule users to set up "accounts" with Schedule Contractors to fill recurring requirements. These accounts establish a period for the BPA and generally address issues such as the frequency of ordering and invoicing, authorized callers, discounts, delivery locations and times. Agencies may qualify for the best quantity/volume discounts available under the contract, based on the potential volume of business that may be generated through such an agreement, regardless of the size of the individual orders. In addition, agencies may be able to secure a discount higher than that available in the contract based on the aggregate volume of business possible under a BPA. Finally, Contractors may be open to a progressive type of discounting where the discount would increase once the sales accumulated under the BPA reach certain prescribed levels. Use of a BPA may be particularly useful with the new Maximum Order feature. See the Suggested Format, contained in this Schedule Pricelist, for customers to consider when using this purchasing tool.

## **21. CONTRACTOR TEAM ARRANGEMENTS**

Contractors participating in contractor team arrangements must abide by all terms and conditions of their respective contracts. This includes compliance with Clauses 552.238-74, Contractor's Reports of Sales and 552.238-76, Industrial Funding Fee, i.e., each contractor (team member) must report sales and remit the IFF for all products and services provided under its individual contract.

## **22. 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 received 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 requirements of the Davis-Bacon Act applies.

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.

## **23. SECTION 508 COMPLIANCE.**

If applicable, Section 508 compliance information on the supplies and services in this contract are available in Electronic and Information Technology (EIT) at the following:

Please refer to the website of the product's manufacturer.

The EIT standard can be found at: [www.Section508.gov/](http://www.Section508.gov/).

## **24. PRIME CONTRACTOR ORDERING FROM FEDERAL SUPPLY SCHEDULES.**

Prime Contractors (on cost reimbursement contracts) placing orders under Federal Supply Schedules, on behalf of an ordering activity, shall follow the terms of the applicable schedule and authorization and include with each order –

- (a) A copy of the authorization from the ordering activity with whom the contractor has the prime contract (unless a copy was previously furnished to the Federal Supply Schedule contractor); and
- (b) The following statement:

This order is placed under written authorization from \_\_\_\_\_ dated \_\_\_\_\_. In the event of any inconsistency between the terms and conditions of this order and those of your Federal Supply Schedule contract, the latter will govern.

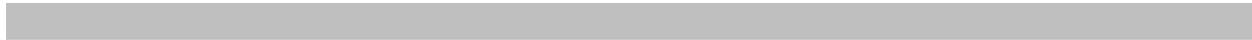
**25. INSURANCE—WORK ON A GOVERNMENT INSTALLATION (JAN 1997)(FAR 52.228-5)**

a. The Contractor shall, at its own expense, provide and maintain during the entire performance of this contract, at least the kinds and minimum amounts of insurance required in the Schedule or elsewhere in the contract.

b. Before commencing work under this contract, the Contractor shall notify the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the Government's interest shall not be effective—

- (1) For such period as the laws of the State in which this contract is to be performed prescribe; or
- (2) Until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer, whichever period is longer.

c. The Contractor shall insert the substance of this clause, including this paragraph (c), in subcontracts under this contract that require work on a Government installation and shall require subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the contract. The Contractor shall maintain a copy of all subcontractors' proofs of required insurance, and shall make copies available to the Contracting Officer upon request.



**TERMS AND CONDITIONS APPLICABLE TO  
LEASING OF GENERAL PURPOSE COMMERCIAL  
INFORMATION TECHNOLOGY PRODUCTS  
(SPECIAL ITEM NUMBER 532420L)**

**LEASE TYPES**

The ordering activity will consider proposals for the following lease types:

- a. Lease to Ownership,
- b. Lease with Option to Own, and
- c. Step Lease.

Orders for leased products must specify the leasing type.

**OPTION 1:**

**1. STATEMENT**

a. It is understood by all parties to this contract that orders issued under this SIN shall constitute a lease arrangement. Unless the ordering activity intends to obligate other than annual appropriations to fund the lease, the base period of the lease is from the date of the product acceptance through September 30 of the fiscal year in which the order is placed.

b. Agencies are advised to follow the guidance provided in Federal Acquisition Regulation (FAR) Subpart 7.4 Product Lease or Purchase and OMB Circular A-11. Agencies are responsible for the obligation of funding consistent with all applicable legal principles when entering into any lease arrangement.

**2. FUNDING AND PERIODS OF LEASING ARRANGEMENTS**

a. Annual Funding. When annually appropriated funds are cited on an order for leasing, the following applies:

(1) The base period of an order for any lease executed by the ordering activity shall be for the duration of the fiscal year. All ordering activity renewal options under the lease shall be specified in the delivery order. All orders for leasing shall remain in effect through September 30 of the fiscal year or the planned expiration date of the lease, whichever is earlier, unless the ordering activity exercises its rights hereunder to acquire title to the product prior to the planned expiration date or unless the ordering activity exercise its right to terminate under FAR 52.212-4. Orders under the lease shall not be deemed to obligate succeeding fiscal year's funds or to otherwise commit the ordering activity to a renewal.

(2) All orders for leasing shall automatically terminate on September 30, unless the ordering activity notifies the Contractor in writing thirty (30) calendar days prior to the expiration of such orders of the ordering activity's intent to renew. Such notice to renew shall not bind the ordering activity. The ordering activity has the option to renew each year at the original rate in effect at the time the order is placed. This rate applies for the duration of the order. If the ordering activity exercises its option to renew, the renewal order, shall be issued within 15 days after funds become available for obligation by the ordering activity, or as specified in the initial order. No termination fees shall apply if the ordering activity does not exercise an option.

b. Crossing Fiscal Years Within Contract Period. Where an ordering activity has specific authority to cross fiscal years with annual appropriations, the ordering activity may place an order under this option to lease product for a period up to the expiration of its period of appropriation availability, or twelve months, whichever occurs later, notwithstanding the intervening fiscal years.

**3. DISCONTINUANCE AND TERMINATION**

Notwithstanding any other provision relating to this SIN, the ordering activity may terminate products leased under this agreement, at any time during a fiscal year in accordance with the termination provisions contained in FAR 52.212-4. (l) Termination for the ordering activity’s convenience, or (m) Termination for cause. Additionally, no termination for cost or fees shall be charged for non-renewal of an option.

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**OPTION 2**

To the extent an Offeror wishes to propose alternative lease terms and conditions that provide for lower discounts/prices based on the ordering activity’s stated intent to fulfill the projected term of a lease including option years, while at the same time including separate charges for early end of the lease, the following terms apply. These terms address the timing and extent of the ordering activity’s financial obligation including any potential charges for early end of the lease.

**1. LEASING PRICE LIST NOTICE:**

Contractors must include the following notice in their contract price list for SIN 532420L:

“The ordering activity is responsible for the obligation of funds consistent with applicable law. Agencies are advised to review the lease terms and conditions contained in this price list prior to ordering and obligating funding for a lease.”

**2. STATEMENT OF ORDERING ACTIVITY INTENT:**

a. The ordering activity and the Contractor understand that a delivery order issued pursuant to this SIN is a lease arrangement and contemplates the use of the product for the term of the lease specified in such delivery order (the “Lease Term”). In that regard, the ordering Activity, as lessee, understands that the lease provisions contained herein and the rate established for the delivery order are premised on the ordering Activity's intent to fulfill that agreement, including acquiring products for the period of time specified in the order. Each lease hereunder shall be initiated by a delivery order which shall, either through a statement of work or other attachment, specify the product being leased, and the required terms of the transaction.

b. Each ordering activity placing a delivery order under the terms of this option intends to exercise each renewal option and to extend the lease until completion of the Lease Term so long as the need of the ordering activity for the product or functionally similar product continues to exist and funds are appropriated. Contractor may request information from the ordering activity concerning the essential use of the products.

**3. LEASE TERM:**

a. The date on which the ordering activity accepts the products is the Commencement Date of the lease. For acceptance to occur, the products must operate in accordance with the product’s published specifications and statement of work. Acceptance shall be in accordance with the terms of the contract or as otherwise negotiated by the ordering activity and the Contractor.

b. Any lease is executed by the ordering activity on the basis that the known requirement for such product exceeds the initial base period of the delivery order, which is typically 12 months, or for the remainder of the fiscal year. Pursuant to FAR 32.703-3(b), delivery orders with options to renew that are funded by annual (fiscal year) appropriations may provide for initial base periods and option periods that cross fiscal years as long as the initial base period or each option period does not exceed a 12 month period. Defense agencies must also consider

DOD FAR supplement (DFAR) 232.703-3(b) in determining whether to use cross fiscal year funding. This cross fiscal year authority does not apply to multi-year leases.

c. The total Lease Term will be specified in each delivery order, including any relevant renewal options of the ordering activity. All delivery orders, whether for the initial base period or renewal period, shall remain in effect through September 30 of the fiscal year (unless extended by statute), through any earlier expiration date specified in the delivery order, or until the ordering activity exercises its rights hereunder to acquire title to the product prior to such expiration date. The ordering activity, at its discretion, may exercise each option to extend the term of the lease through the lease term. Renewal delivery orders shall not be issued for less than all of the product and/or software set forth in the original delivery order. Delivery orders under this SIN shall not be deemed to obligate succeeding fiscal year funds. The ordering activity shall provide the Contractor with written notice of exercise of each renewal option as soon as practicable. Notice requirements may be negotiated on an order-by-order basis.

d. Where an ordering activity's specific appropriation or procurement authority provides for contracting beyond the fiscal year period, the ordering activity may place a delivery order for a period up to the expiration of the Lease Term, or to the expiration of the period of availability of the multi-year appropriation, or whatever is appropriate under the applicable circumstance.

#### 4. LEASE TERMINATION:

a. The ordering activity must elect the Lease Term of the relevant delivery order. The Contractor (and assignee, if any) will rely on the ordering activity's representation of its intent to fulfill the full Lease Term to determine the monthly lease payments calculated herein.

(i) The ordering activity may terminate or not renew leases under this option at no cost, pursuant to a Termination for Non-Appropriation as defined herein (see paragraph (c) below). In any other event, the ordering activity's contracting officer may either terminate the relevant delivery order for cause or Termination for Convenience in accordance with FAR 52.212-4 paragraphs (l) and (m).

(ii) The Termination for Convenience at the end of a fiscal year allows for separate charges for the early end of the lease (see paragraph (d) below). In the event of termination for the convenience of the ordering activity, the ordering activity may be liable only up to the amount beyond the order's Termination Ceiling. Any termination charges calculated under the Termination for Convenience clause must be determined or identified in the delivery order or in the lease agreement.

b. Termination for Convenience of the Ordering Activity: Leases entered into under this option may not be terminated except by the ordering activity's contracting office responsible for the delivery order in accordance with FAR 52.212-4, Contract Terms and Conditions-Commercial Items, paragraph (l), *Termination for Convenience of the ordering activity*. The costs charged to the ordering activity as the result of any Termination for Convenience of the ordering activity must be reasonable and may not exceed the sum of the fiscal year's payment obligations less payments made to date of termination plus the Termination Ceiling

c. Termination for Non-Appropriation: The ordering activity reasonably believes that the bona fide need will exist for the entire Lease Term and corresponding funds in an amount sufficient to make all payment for the lease Term will be available to the ordering activity. Therefore, it is unlikely that leases entered into under this option will terminate prior to the full Lease Term. Nevertheless, the ordering activity's contracting officer may terminate or not renew leases at the end of any initial base period or option period under this paragraph if (a) it no longer has a bona fide need for the product or functionally similar product; or (b) there is a continuing need, but adequate funds have not been made available to the ordering activity in an amount sufficient to continue to make the lease payments. If this occurs, the ordering activity will promptly notify the Contractor, and the product lease will be terminated at the end of the last fiscal year for which funds were appropriated. Substantiation to support a termination for non-appropriation shall be provided to the Contractor upon request.

d. Termination Charges: At the initiation of the lease, termination ceilings will be established for each year of the lease term. The termination ceiling is a limit on the amount that a Contractor may be paid by the ordering activity on the Termination for Convenience of a lease. No claim will be accepted for future costs: supplies, maintenance, usage charges or interest expense beyond the date of termination. In accordance with the bona fide needs rule, all termination charges must reasonably represent the value the ordering activity received for the work

performed based upon the shorter lease term. No Termination for Convenience costs will be associated with the expiration of the lease term.

e. At the order level, the ordering activity may, consistent with legal principles, negotiate lower monthly payments or rates based upon appropriate changes to the termination conditions in this section.

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**LEASE PROVISIONS COMMON TO  
ALL TYPES OF LEASE AGREEMENTS**

**1. ORDERING PROCEDURES:**

- (a) When an ordering activity expresses an interest in leasing a product(s), the ordering activity will provide the following information to the prospective Contractor:
  - (i) Which product(s) is (are) required.
  - (ii) The required delivery date.
  - (iii) The proposed lease plan and term of the lease.
  - (iv) Where the product will be located.
  - (v) Description of the intended use of the product.
  - (vi) Source and type of appropriations to be used.
- (b) The Contractor will respond with:
  - (i) Whether the Contractor can provide the required product.
  - (ii) The estimated residual value of the product (Lease with Option to Own and Step Lease only).
  - (iii) The monthly payment based on the rate.
  - (iv) The estimated cost, if any, of applicable State or local taxes. State and local personal property taxes are to be estimated as separate line items in accordance with FAR 52.229-1, which may be identified and added to the monthly lease payment.
  - (v) A confirmation of the availability of the product on the required delivery date.
  - (vi) Extent of warranty coverage, if any, of the leased products.
  - (vii) The length of time the quote is valid.

(c) The ordering activity may issue a delivery order to the Contractor based on the information set forth in the Contractor's quote. In the event that the ordering activity does not issued a delivery order within the validity period stated in the Contractor's quote letter, the quote shall expire.

**2. ASSIGNMENT OF CLAIMS:**

GSAR 552.232-23, Assignment of Claims, is incorporated herein by reference as part of these lease provisions. The ordering activity's contracting officer will acknowledge the assignment of claim for a lease in accordance with FAR 32.804-5. The extent of the assignee's protection is in accordance with FAR 32.804. Any setoff provision must be in accordance with FAR 32.803.

**3. PEACEFUL POSSESSION AND UNRESTRICTED USE:**

In recognition of the types of products available for lease and the potential adverse impact to the ordering activity's mission, the ordering activity's quiet and peaceful possession and unrestricted use of the product shall not be disturbed in the event the product is sold by the Contractor, or in the event of bankruptcy of the Contractor, corporate dissolution of the Contractor, or other event. The product shall remain in the possession of the ordering activity until the expiration of the lease. Any assignment, sale, bankruptcy, or other transfer of the leased product by the Contractor will not relieve the Contractor of its obligations to the ordering activity, and will not change the ordering activity's duties or increase the burdens or risks imposed on the ordering activity.

**4. COMMENCEMENT OF LEASE:**

The date on which the ordering activity accepts the products is the Commencement Date of the lease. Acceptance is as defined elsewhere in the contract, or as further specified in the order.

**5. INSTALLATION AND MAINTENANCE:**

a. Installation and Maintenance, when applicable, normally are not included in the charge for leasing. The Contractor may require the ordering activity to obtain installation and maintenance services from a qualified source. The ordering activity may obtain installation and/or maintenance on the open market, from the Contractor's schedule contract, or from other sources. The ordering activity may also perform installation and/or maintenance in house, if qualified resources exist. In any event, it is the responsibility of the ordering activity to ensure that maintenance is in effect for the Lease term for all products leased.

b. When installation and/or maintenance are ordered under this schedule to be performed by the Contractor, the payments, terms and conditions as stated in this contract apply. The rates and terms and conditions in effect at the time the order is issued shall apply during any subsequent renewal period of the lease. The maintenance rates and terms and conditions may be added to the lease payments with mutual agreement of the parties.

**6. MONTHLY PAYMENTS:**

a. Prior to the placement of an order under this Special Item Number, the ordering activity and the Contractor must agree on a "base value" for the products to be leased. For Lease to Ownership (Capital Lease) the base value will be the contract purchase price (less any discounts). For Lease with Option to Own (Operating Lease), the base value will be the contract purchase price (less any discounts), less a mutually agreed upon residual value (pre-stated purchase option price at the conclusion of the lease) for the products. The residual value will be used in the calculation of the original lease payment, lease extension payments, and the purchase option price.

b. To determine the initial lease term payment, the Contractor agrees to apply the negotiated lease factor to the agreed upon base value, which will be the equivalent term Treasury Bill (T-bill) at the most current U.S. treasury auction plus 395 basis points.

For Example: Lease factor one (1) percent over the rate for the three year (or other term) Treasury Bill (T-bill) at the most current U. S. Treasury auction.

The lease payment may be calculated by using a programmed business calculator or by using "rate" functions provided in commercial computer spreadsheets (e.g., Lotus 1-2-3, Excel).

c. For any lease extension, the extension lease payment will be based on the original residual value, in lieu of the purchase price. The ordering activity and the Contractor shall agree on a new residual value based on the estimated fair market price at the end of the extension. The formula to determine the lease payment will be that in 6.b. above.

d. The purchase option price will be the fair market value of the product or payment will be based upon the unamortized principle, as shown on the payment schedule as of the last payment prior to date of transfer of ownership, whichever is less.

NOTE: At the order level, ordering activity may elect to obtain a lower rate for the lease by setting the purchase option price as either, the fair market value of the product or unamortized principle. The methodology for determining lump sum payments may be identified in the pricelist.

e. The point in time when monthly rates are established is subject to negotiation and evaluation at the order level.

In the event the ordering activity desires, at any time, to acquire title to product leased hereunder, the ordering activity may make a one-time lump sum payment.

## 7. LEASE END/DISCONTINUANCE OPTIONS:

a. Upon the expiration of the Lease Term, Termination for Convenience, or Termination for Non-Appropriation, the ordering activity will return the Product to the Contractor unless the ordering activity by 30 days written notice elects either:

(i) to purchase the product for the residual value of the product, or

(ii) to extend the term of the Lease, as mutually agreed. To compute the lease payment, the residual value from the preceding lease shall be the initial value of the leased product. A new residual value shall be negotiated for the extended lease and new lease payments shall be computed.

b. Relocation - The ordering activity may relocate products to another location within the ordering activity with prior written notice. No other transfer, including sublease, is permitted. ordering activity shall not assign, transfer or otherwise dispose of any products, or any interest therein, or create or suffer any levy, lien or encumbrance then except those created for the benefit of Contractor or its assigns.

c. Returns:

(i) Within fourteen (14) days after the date of expiration, non-renewal or termination of a lease, the ordering activity shall, at its own risk and expense, have the products packed for shipment in accordance with manufacturer's specifications and return the products to Contractor at the location specified by Contractor in the continental US, in the same condition as when delivered, ordinary wear and tear excepted. Any expenses necessary to return the products to good working order shall be at ordering activity's expense.

(ii) The Contractor shall conduct a timely inspection of the returned products and within 45 days of the return, assert a claim if the condition of the product exceeds normal wear and tear.

(iii) Product will be returned in accordance with the terms of the contract and in accordance with Contractor instruction.

(iv) With respect to software, the ordering activity shall state in writing to the Contractor that it has:

(1) deleted or disabled all files and copies of the software from the equipment on which it was installed;

- (2) returned all software documentation, training manuals, and physical media on which the software was delivered; and
- (3) has no ability to use the returned software.

**8. UPGRADES AND ADDITIONS:**

a. The ordering activity may affix or install any accessory, addition, upgrade, product or device on the product ("additions") provided that such additions:

- (1) can be removed without causing material damage to the product;
- (2) do not reduce the value of the product; and
- (3) are obtained from or approved by the Contractor, and are not subject to the interest of any third party other than the Contractor.

b. Any other additions may not be installed without the Contractor's prior written consent. At the end of the lease term, the ordering activity shall remove any additions which:

- (1) were not leased from the Contractor, and
- (2) are readily removable without causing material damage or impairment of the intended function, use, or value of the product, and restore the product to its original configuration.

c. Any additions that are not so removable will become the Contractor's property (lien free).

d. Leases of additions and upgrades must be co-terminus with that of the product.

**9. RISK OF LOSS OR DAMAGE:**

The ordering activity is relieved from all risk of loss or damage to the product during periods of transportation, installation, and during the entire time the product is in possession of the ordering activity, except when loss or damage is due to the fault or negligence of the ordering activity. The ordering activity shall assume risk of loss or damage to the product during relocation, (i.e., moving the product from one ordering activity location to another ordering activity location), unless the Contractor shall undertake such relocation.

**10. TITLE:**

During the lease term, product shall always remain the property of the Contractor. The ordering activity shall have no property right or interest in the product except as provided in this leasing agreement and shall hold the product subject and subordinate to the rights of the Contractor. Software and software licenses shall be deemed personal property. The ordering activity shall have no right or interest in the software and related documentation except as provided in the license and the lease. Upon the Commencement Date of the Lease Term, the ordering activity shall have an encumbered license to use the software for the Lease Term. The ordering activity's encumbered license rights in the software will be subject to the same rights as provided to a purchaser of a license under the terms of this contract except that the ordering activity will not have an unencumbered, paid-up license until it has made all lease payments for the full Lease Term in the case of an Lease To Ownership or has otherwise paid the applicable purchase option price.

**11. TAXES:**

The lease payments, purchase option prices, and interest rates identified herein exclude all state and local taxes levied on or measured by the contract or sales price of the product furnished hereunder. The ordering activity will be invoiced for any such taxes as Contractor receives such tax notices or assessments from the applicable local taxing authority. Pursuant to the provisions of FAR 52.229-1, State and Local Taxes, the ordering activity agrees to pay tax or provide evidence necessary to support an exemption from the tax.

**12. OPTION TO PURCHASE EQUIPMENT (FEB 1995) (FAR 52.207-5)**

a. The Government may purchase the equipment provided on a lease or rental basis under this contract. The Contracting Officer may exercise this option only by providing a unilateral modification to the Contractor. The effective date of the purchase will be specified in the unilateral modification and may be any time during the period of the contract, including any extensions thereto.

b. Except for final payment and transfer of title to the Government, the lease or rental portion of the contract becomes complete and lease or rental charges shall be discontinued on the day immediately preceding the effective date of purchase specified in the unilateral modification required in paragraph (a) of this clause.

c. The purchase conversion cost of the equipment shall be computed as of the effective date specified in the unilateral modification required in paragraph (a) of this clause, on the basis of the purchase price set forth in the contract, minus the total purchase option credits accumulated during the period of lease or rental, calculated by the formula contained elsewhere in this contract.

d. The accumulated purchase option credits available to determine the purchase conversion cost will also include any credits accrued during a period of lease or rental of the equipment under any previous Government contract if the equipment has been on continuous lease or rental. The movement of equipment from one site to another site shall be "continuous rental."

**TERMS AND CONDITIONS APPLICABLE TO PURCHASE OF  
GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY NEW  
EQUIPMENT (SPECIAL ITEM NUMBER 33411)**

**1. MANUFACTURER - IBM**

**2. MATERIAL AND WORKMANSHIP**

All equipment furnished hereunder must satisfactorily perform the function for which it is intended.

**3. ORDER**

Written orders, EDI orders (GSA Advantage! and FACNET), 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.

**4. TRANSPORTATION OF EQUIPMENT**

FOB DESTINATION. Prices cover equipment delivery to destination, for CONUS locations.

**5. INSTALLATION AND TECHNICAL SERVICES**

Not available at this time.

**6. INSPECTION/ACCEPTANCE**

Available at [http://www-935.ibm.com/services/us/iss/html/contracts\\_landing.html](http://www-935.ibm.com/services/us/iss/html/contracts_landing.html)

**7. WARRANTY**

Available at [http://www-935.ibm.com/services/us/iss/html/contracts\\_landing.html](http://www-935.ibm.com/services/us/iss/html/contracts_landing.html)

**8. 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.

**9. 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.

**10. TRADE-IN OF INFORMATION TECHNOLOGY EQUIPMENT**

Not applicable.

**TERMS AND CONDITIONS APPLICABLE TO PURCHASE OF  
GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY NEW  
EQUIPMENT(SPECIAL ITEM NUMBER 33411)**

**1. Manufacturer - TIBCO**

**2. MATERIAL AND WORKMANSHIP**

All equipment furnished hereunder must satisfactorily perform the function for which it is intended.

**3. 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.

**4. TRANSPORTATION OF EQUIPMENT**

FOB ORIGIN. Shipping costs will be included in quotation.

**5. INSTALLATION AND TECHNICAL SERVICES**

a. INSTALLATION. Equipment provided under this contract is normally self-installable.

b. OPERATING AND MAINTENANCE MANUALS. The Contractor shall furnish the ordering activity with one (1) copy of all operating and maintenance manuals which are normally provided with the equipment being purchased.

**6. INSPECTION/ACCEPTANCE**

Inspection and acceptance is in accordance with TIBCO's Standard Commercial Practices.

**7. 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.

**8. 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.

**9. 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.

**10. TRADE-IN OF INFORMATION TECHNOLOGY EQUIPMENT**

Not applicable.



**TERMS AND CONDITIONS APPLICABLE TO PURCHASE OF  
GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY NEW  
EQUIPMENT (SPECIAL ITEM NUMBER 33411)**

**1. Manufacturer - Grabba**

**2. MATERIAL AND WORKMANSHIP**

All equipment furnished hereunder must satisfactorily perform the function for which it is intended.

**3. 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.

**4. TRANSPORTATION OF EQUIPMENT**

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

**5. 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 priceschedule:

No charges for installation.

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 received 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 requirements of the Davis-Bacon Act applies.

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 (132-9).

c. **OPERATING AND MAINTENANCE MANUALS.** The Contractor shall furnish the ordering activity with one (1) copy of all operating and maintenance manuals which are normally provided with the equipment being purchased. All operating and maintenance manuals are available at the following website:

<http://grabba.com/portal/index.php>

## **6. 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 postacceptance rights (1) within a reasonable time 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.

## **7. 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:

Grabba, Inc.  
1479 Parker Rd.  
Conyers, GA 30094

## **8. 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.

## **9. 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.

## **10. 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).

Grabba's standard commercial practice does not permit trade-ins of equipment.

**TERMS AND CONDITIONS APPLICABLE TO  
MAINTENANCE, REPAIR SERVICE AND REPAIR PARTS/SPARE PARTS FOR  
GOVERNMENT-OWNED GENERAL PURPOSE COMMERCIAL INFORMATION  
TECHNOLOGY EQUIPMENT, RADIO/TELEPHONE EQUIPMENT, (AFTER  
EXPIRATION OF GUARANTEE/WARRANTY PROVISIONS AND/OR WHEN  
REQUIRED SERVICE IS NOT COVERED BY GUARANTEE/WARRANTY  
PROVISIONS) AND FOR LEASED EQUIPMENT (SPECIAL ITEM NUMBER**

**1. MANUFACTURER - IBM**

**2. SERVICE AREAS**

Available at [http://www-935.ibm.com/services/us/iss/html/contracts\\_landing.html](http://www-935.ibm.com/services/us/iss/html/contracts_landing.html)

**3. MAINTENANCE ORDER**

- a. Agencies may use written orders, EDI orders, or BPAs, for ordering maintenance under this contract. The Contractor shall confirm orders within fifteen (15) calendar days from the date of receipt, except that confirmation of orders shall be considered automatic for renewals for maintenance (Special Item Number 811212).
- b. The Contractor shall honor orders for maintenance for the duration of the contract period for the equipment shown in the pricelist. Maintenance service shall commence on a mutually agreed upon date, which will be written into the maintenance order. Maintenance orders shall not be made effective before the expiration of any applicable maintenance and parts guarantee/warranty period associated with the purchase of equipment.
- c. Annual Funding. When annually appropriated funds are cited on a maintenance order, the period of maintenance shall automatically expire on September 30th of the contract period, or at the end of the contract period, whichever occurs first. Renewal of a maintenance order citing the new appropriation shall be required, if maintenance is to continue during any remainder 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 maintenance service, if maintenance is to be terminated at that time. Orders for continued maintenance will be required if maintenance is to be continued during the subsequent period.

**4. REPAIR SERVICE AND REPAIR PARTS/SPARE PARTS ORDERS**

Not applicable.

**5. LOSS OR DAMAGE**

Not applicable.

**6. SCOPE**

**7. RESPONSIBILITIES OF THE ORDERING ACTIVITY**

- a. Ordering activity personnel shall not perform maintenance or attempt repairs to equipment while such equipment is under the purview of a maintenance order, unless agreed to by the Contractor.
- b. Subject to security regulations, the ordering activity shall permit access to the equipment which is to be maintained or repaired.

**8. MAINTENANCE RATE PROVISIONS**

- a. The Contractor shall bear all costs of maintenance, including labor, parts, and such other expenses as are necessary to keep the equipment in good operating condition, provided that the required repairs are not occasioned by fault or negligence of the ordering activity.

**b. REGULAR HOURS**

Support includes, but is not limited to product upgrades and patches, telephone and online support during regular business hours, Monday-Friday.

**c. AFTER HOURS**

Priority 1 (Critical Severity) assistance is available 24 hours a day, every day of the year.

**d. TRAVEL AND TRANSPORTATION**

If any charge is to apply, over and above the regular maintenance rates, because of the distance between the ordering activity location and the Contractor's service area, the charge will be negotiated at the Task Order level.

None.

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**e. QUANTITY DISCOUNTS**

Not applicable.

**9. REPAIR SERVICE RATE PROVISIONS**

Not applicable.

**10. REPAIR PARTS/SPARE PARTS RATE PROVISIONS**

Not applicable.

**11. GUARANTEE/WARRANTY—REPAIR SERVICE AND REPAIR PARTS/SPARE PARTS**

Not applicable.

**12. INVOICES AND PAYMENTS**

- a. Maintenance Service ASK KEITH

Maintenance Service for IBM ISS Hardware is considered hardware maintenance as a product and therefore it is billed at the time of purchase.

b. Repair Service and Repair Parts/Spare Parts  
Not applicable.

**TERMS AND CONDITIONS APPLICABLE TO MAINTENANCE, REPAIR SERVICE AND REPAIR PARTS/SPARE PARTS FOR GOVERNMENT-OWNED GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY EQUIPMENT, RADIO/TELEPHONE EQUIPMENT, (AFTER EXPIRATION OF GUARANTEE/WARRANTY PROVISIONS AND/OR WHEN REQUIRED SERVICE IS NOT COVERED BY GUARANTEE/WARRANTY PROVISIONS) AND FOR LEASED EQUIPMENT (SPECIAL ITEM NUMBER 811212)**

1. **Manufacturer - TIBCO**

2. **SERVICE AREAS**

a. **The maintenance and repair service rates listed herein are applicable to any ordering activity location within a \_\_\_\_\_ see item b \_\_\_\_\_ (\*\*insert miles\*\*) mile radius of the Contractor's service points. If any additional charge is to apply because of the greater distance from the Contractor's service locations, the mileage rate or other distance factor shall be negotiated at the Task Order level.**

b. When repair services cannot be performed at the ordering activity installation site, the repair services will be performed at the Contractor's plant(s) listed below:

Service area will be in accordance with TIBCO maintenance practices, found at [http://www.tibco.com/multimedia/equipment-maintenance-program-guide\\_tcm8-16160.pdf](http://www.tibco.com/multimedia/equipment-maintenance-program-guide_tcm8-16160.pdf)

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3. **MAINTENANCE ORDER**

a. Agencies may use written orders, EDI orders, credit card orders, or BPAs, for ordering maintenance under this contract. The Contractor shall confirm orders within fifteen (15) calendar days from the date of receipt, except that confirmation of orders shall be considered automatic for renewals for maintenance (Special Item Number 811212). Automatic acceptance of order renewals for maintenance service shall apply for machines which may have been discontinued from use for temporary periods of time not longer than 120 calendar days. If the order is not confirmed by the Contractor as prescribed by this paragraph, the order shall be considered to be confirmed by the Contractor.

b. The Contractor shall honor orders for maintenance for the duration of the contract period or a lesser period of time, for the equipment shown in the pricelist. Maintenance service shall commence on a mutually agreed upon date, which will be written into the maintenance order. Maintenance orders shall not be made effective before the expiration of any applicable maintenance and parts guarantee/warranty period associated with the purchase of equipment. Orders for maintenance service shall not extend beyond the end of the contract period.

c. Maintenance may not be discontinued by the ordering activity.

d. **Annual Funding.** When annually appropriated funds are cited on a maintenance order, the period of maintenance shall automatically expire on September 30th of the contract period, or at the end of the contract period, whichever occurs first. Renewal of a maintenance order citing the new appropriation shall be required, if maintenance is to continue during any remainder of the contract period.

e. **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.

f. Ordering activities should notify the Contractor in writing thirty (30) calendar days prior to the expiration of maintenance service, if maintenance is to be terminated at that time. Orders for continued maintenance will be required if maintenance is to be continued during the subsequent period.

#### **4. REPAIR SERVICE AND REPAIR PARTS/SPARE PARTS ORDERS**

Not applicable.

#### **5. LOSS OR DAMAGE**

When the Contractor removes equipment to his establishment for repairs, the Contractor shall be responsible for any damage or loss, from the time the equipment is removed from the ordering activity installation, until the equipment is returned to such installation.

When customer returns product for support, provision 3.5.5 of the TIBCO Equipment Maintenance Program Guide ([http://www.tibco.com/multimedia/equipment-maintenance-program-guide\\_tcm8-16160.pdf](http://www.tibco.com/multimedia/equipment-maintenance-program-guide_tcm8-16160.pdf)) shall apply.

#### **6. SCOPE**

a. The Contractor shall provide maintenance for all equipment listed herein, as requested by the ordering activity during the contract term. Repair service and repair parts/spare parts shall apply exclusively to the equipment types/models within the scope of this Information Technology Schedule.

b. Equipment placed under maintenance service shall be in good operating condition.

(1) In order to determine that the equipment is in good operating condition, the equipment shall be subject to inspection by the Contractor, without charge to the ordering activity.

(2) Costs of any repairs performed for the purpose of placing the equipment in good operating condition shall be borne by the Contractor, if the equipment was under the Contractor's guarantee/warranty or maintenance responsibility prior to the effective date of the maintenance order.

(3) If the equipment was not under the Contractor's responsibility, the costs necessary to place the equipment in proper operating condition are to be borne by the ordering activity, in accordance with the provisions of Special Item Number 811212 (or outside the scope of this contract).

#### **7. RESPONSIBILITIES OF THE ORDERING ACTIVITY**

a. Ordering activity personnel shall not perform maintenance or attempt repairs to equipment while such equipment is under the purview of a maintenance order, unless agreed to by the Contractor.

b. Subject to security regulations, the ordering activity shall permit access to the equipment which is to be maintained or repaired.

c. If the Ordering Activity desires a factory authorized/certified service personnel then this should be clearly stated in the task or delivery order.

#### **8. RESPONSIBILITIES OF THE CONTRACTOR**

a. For equipment not covered by a maintenance contract or warranty, the Contractor's repair service personnel shall complete repairs as soon as possible after notification by the ordering

activity that service is required. Within the service areas, this repair service should normally be done within 4 hours after notification.

b. If the Ordering Activity task or delivery order specifies a factory authorized/certified service personnel then the Contractor is obligated to provide such a factory authorized/certified service personnel for the equipment to be repaired or serviced, unless otherwise agreed to in advance between the Agency and the Contractor.

## **9. MAINTENANCE RATE PROVISIONS**

a. The Contractor shall bear all costs of maintenance, including labor, parts, and such other expenses as are necessary to keep the equipment in good operating condition, provided that the required repairs are not occasioned by fault or negligence of the ordering activity.

b. HOURS

The hours can be found in the TIBCO Equipment Maintenance Program Guide  
[http://www.tibco.com/multimedia/equipment-maintenance-program-guide\\_tcm8-16160.pdf](http://www.tibco.com/multimedia/equipment-maintenance-program-guide_tcm8-16160.pdf).

c. TRAVEL AND TRANSPORTATION

If any charge is to apply, over and above the regular maintenance rates, because of the distance between the ordering activity location and the Contractor's service area, the charge will be negotiated at the Task Order level.

d. QUANTITY DISCOUNTS

Not applicable.

## **10. REPAIR SERVICE RATE PROVISIONS**

Not applicable.

## **11. REPAIR PARTS/SPARE PARTS RATE PROVISIONS**

All parts, furnished as spares or as repair parts in connection with the repair of equipment, unless otherwise indicated in this pricelist, shall be in accordance with TIBCO Equipment Maintenance Program Guide  
[http://www.tibco.com/multimedia/equipment-maintenance-program-guide\\_tcm8-16160.pdf](http://www.tibco.com/multimedia/equipment-maintenance-program-guide_tcm8-16160.pdf).

## **12. GUARANTEE/WARRANTY—REPAIR SERVICE AND REPAIR PARTS/SPARE PARTS**

Not applicable.

## **13. INVOICES AND PAYMENTS**

a. Maintenance

Invoices for maintenance shall be submitted by the Contractor when the period of performance for the maintenance commences.

b. Repair Service and Repair Parts/Spare Parts

Not applicable

**TERMS AND CONDITIONS APPLICABLE TO TERM SOFTWARE LICENSES  
(SPECIAL ITEM NUMBER 511210) FOR IBM RATIONAL TOKEN-  
BASED INFORMATION TECHNOLOGY SOFTWARE**

**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 postacceptance rights (1) within a reasonable time 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.

**2. GUARANTEE/WARRANTY**

- a. Unless specified otherwise in this contract, the IBM standard commercial guarantee/warranty 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.

**3. TECHNICAL SERVICES**

The IBM Software Support Handbook can be found at  
<http://www14.software.ibm.com/webapp/set2/sas/f/handbook/home.html>

**This handbook provides an overview of the IBM support portfolio as well as client self-assist tools and contact numbers for support.**

**4. SOFTWARE MAINTENANCE (i.e, IBM Software Subscription and Support)  
Maintenance for the IBM Rational Token-Based products is included.**

**5. PERIODS OF TERM LICENSES (SIN 511210)**

- a. The Contractor shall honor orders for periods for the duration of the contract period.
- b. Term licenses may not be discontinued during a contract period. **Annual Funding.** When annually appropriated funds are cited on an order for term licenses, the period of the term licenses shall automatically expire at the end of the contract period. Renewal of the term licenses orders citing the new appropriation shall be required, if the term licenses is to be continued beyond 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 are to be terminated at that time. Orders for the continuation of term licenses will be required if the term licenses are to be continued during the subsequent period.

**6. CONVERSION FROM TERM LICENSE TO PERPETUAL LICENSE**

Not applicable.

**7. SOFTWARE CONVERSIONS - (SIN 511210) Not Applicable.**

**8. DESCRIPTIONS AND EQUIPMENT COMPATIBILITY**

The following websites provide IBM Rational portfolio information and formal IBM software Announcement Letters that contain detailed product information and platform support.

<http://www-01.ibm.com/software/rational/>

<http://www-01.ibm.com/common/ssi/index.wss>

**9. RIGHT-TO-COPY PRICING** Not applicable.

**Additional Terms and Conditions**

This proposal incorporates terms and conditions equivalent to those in the IBM GSA IT Schedule Contract No. GS-35F-4984H, Chapter 5- Software License Terms, Appendix S Passport Advantage Terms, and the Attachment B for IBM RATIONAL TOKEN LICENSING below.

## ATTACHMENT B

### IBM RATIONAL TOKEN LICENSING

The terms of this Attachment for Token Licensing (“Attachment”) are in addition to those of the IBM GSA Schedule, GS-35F-4984H Appendix S (“Agreement”), and govern the transaction when you obtain Eligible Token Products from an authorized reseller. The referenced terms and conditions are deemed accepted without modification by issuing an order to an IBM authorized reseller.

#### 1. Definitions

**Eligible Token Product** – A Product which is specified in a Schedule to this Attachment.

**Token** - A unit of value that is exchanged periodically via a license server (i.e., checked-in and checked-out) and can be expended toward use of Eligible Token Products that are specified in a Schedule to this Attachment. Each Eligible Token Product is assigned a Token Value that is specified in an Exhibit to this Attachment.

**Token License** –A Fixed Term license to use the Eligible Token Products, which are specified in a Schedule, up to the total amount of Tokens authorized in your PoE(s). As long as the total amount of Tokens does not exceed the number authorized in your PoE(s), you may use at any one time one or more Token(s) for a single Eligible Token Product or any number of Tokens for any combination of the Eligible Token Products.

**Token Value** –The quantity of Tokens required in order to use an Eligible Token Product pursuant to a Token License.

#### 2. Authorizations

- a. This Attachment grants you a Token License for the Eligible Token Products specified in a Schedule up to the number of Tokens authorized in your PoE(s).
- b. You must validly acquire the total number of Tokens associated with the Eligible Token Products.
- c. The number of Tokens being used at any given moment may not exceed the number of Tokens stated in your PoE(s).
- d. Prior to increasing or changing the mix of your Eligible Token Products, you must first acquire additional Tokens and execute either an amendment to your existing Schedule or a new Schedule to this Attachment.

#### 3. Compliance Verification

Upon reasonable notice, IBM may verify your compliance with this Attachment at all Passport Advantage site(s) where you use or install Eligible Token Products subject to the terms of this Attachment for any purpose. Such verification will be conducted in a manner that minimizes disruption to your business and may be conducted on your premises, during normal business hours. IBM may use an independent auditor to assist with such verification, provided IBM has a written confidentiality agreement in place with such auditor.

You agree to create, retain, and provide to IBM and its auditors written records, system tool outputs, PoEs, and other system information sufficient to provide auditable verification to IBM that your installation and use of Eligible Token Products is in compliance with the terms of this Attachment, including, without limitation, all of IBM’s applicable licensing and pricing qualification terms. IBM will notify you in writing if any such verification indicates that you have used Eligible Token Products in excess of their authorized level of use or you are otherwise not in compliance with this Attachment. You will be invoiced for i) the charges as IBM specifies in an invoice for any additional licenses equal to the quantity used in excess of authorized level of use and applicable Subscription and Support

offerings, as applicable, for such licenses for the lesser of the time that such licenses have been used or two years, and ii) any additional charges and other liabilities determined as a result of such verification

The rights and obligations set forth in this section remain in effect during the period the Eligible Token Products are licensed to you and for two years thereafter.

#### **4. Additional Terms**

- a. Eligible Token Products may contain a disabling device that will prevent them from being used after the end of the Fixed Term. You agree not to tamper with this disabling device or the Eligible Token Products. You should take precautions to avoid any loss of data that might result when the Eligible Token Products can no longer be used.
- b. Token Licenses cannot be converted into perpetual licenses and do not entitle you to any option to purchase or discount towards a perpetual license. Should you wish to acquire any such perpetual licenses to the Program(s), contact your local sales representative.
- c. The terms of this Attachment do not alter any terms in the Eligible Token Product's International Program License Agreement, and your use of Eligible Token Products is subject to its terms.

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The complete agreement between the parties consists of this Attachment for Token Licensing and any of its Schedules and the Agreement. If there is a conflict among the terms of this Attachment for Token Licensing and any of its Schedules and the Agreement, then a Schedule prevails over the Attachment for Token Licensing and the Attachment for Token Licensing prevails over the Agreement. In entering into this agreement, neither party is relying on any representation not specified in this Attachment for Token Licensing and any of its Schedules or the Agreement.

**TERMS AND CONDITIONS APPLICABLE TO  
PERPETUAL SOFTWARE LICENSES (SPECIAL ITEM NUMBER 511210) AND  
MAINTENANCE (SPECIAL ITEM NUMBER 511210) OF GENERAL PURPOSE  
COMMERCIAL INFORMATION TECHNOLOGY SOFTWARE**

1. MANUFACTURER - IBM

2. 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 a reasonable time 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.

3. GUARANTEE/WARRANTY

- a. Unless specified otherwise in this contract, the Contractor's standard commercial guarantee/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. See Attachment A for Manufacturer's Commercial License Agreement.

4. TECHNICAL SERVICES

Available at [http://www-935.ibm.com/services/us/iss/html/contracts\\_landing.html](http://www-935.ibm.com/services/us/iss/html/contracts_landing.html)

5. SOFTWARE MAINTENANCE

- a. Software maintenance as it is defined as Software Maintenance as a Product (SIN 511210 or SIN 511210)

Software maintenance as a product includes the publishing of bug/defect fixes via patches and updates/upgrades in function and technology to maintain the operability and usability of the software product. It may also include other no charge support that are 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 FAQs (Frequently Asked Questions), 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 as a

service.

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

6. PERIODS OF TERM LICENSES (511210) AND MAINTENANCE(511210)

- a. The Contractor shall honor orders for periods for the duration of the contract period or a lesser period of time.
- b. Maintenance may be discontinued by the ordering activity on thirty (30) calendar days written notice to the Contractor.
- c. Annual Funding. When annually appropriated funds are cited on an order for maintenance, the period of maintenance shall automatically expire on September 30 of the contract period, or at the end of the contract period, whichever occurs first. Renewal of maintenance orders citing the new appropriation shall be required, if maintenance is to be continued during any remainder 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 maintenance is to be terminated at that time. Orders for the continuation of maintenance will be required if maintenance is to be continued during the subsequent period.

7. CONVERSION FROM TERM LICENSE TO PERPETUAL LICENSE

Not applicable.

8. TERM LICENSE CESSATION

Not applicable.

9. UTILIZATION LIMITATIONS - (511210, AND 511210)

The IBM Passport Advantage (PPA) EULA terms can be found within IBM's GSA Schedule under following link:  
<http://www-304.ibm.com/easypass3/gsa/contenttemplate/#!/xmlid=104047>

The IBM ISS EULA terms can be found within IBM's GSA Schedule under following link:  
[http://www-935.ibm.com/services/us/iss/html/contracts\\_landing.html](http://www-935.ibm.com/services/us/iss/html/contracts_landing.html)

10. SOFTWARE CONVERSIONS - (511210 AND

511210) Not applicable.

11. DESCRIPTIONS AND EQUIPMENT COMPATIBILITY

Not applicable.

12. RIGHT-TO-COPY PRICING

Not applicable.

**TERMS AND CONDITIONS APPLICABLE TO TERM SOFTWARE LICENSES  
(SPECIAL ITEM NUMBER 511210), PERPETUAL SOFTWARE LICENSES  
(SPECIAL ITEM NUMBER 511210) AND MAINTENANCE AS A Product (SPECIAL  
ITEM NUMBERS 511210 & 511210) OF GENERAL PURPOSE COMMERCIAL  
INFORMATION TECHNOLOGY SOFTWARE**

**1. Manufacturer - TIBCO**

**2. 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 postacceptance rights (1) within a reasonable time 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.

**3. GUARANTEE/WARRANTY**

- a. Unless specified otherwise in this contract, the Contractor's standard commercial guarantee/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.

**4. TECHNICAL SERVICES**

The Contractor, without additional charge to the ordering activity, shall provide a hot line technical support number +1-650-846-5595 for the purpose of providing user assistance and guidance in the implementation of the software.

**5. SOFTWARE MAINTENANCE**

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

**X     1. Software Maintenance as a Product (SIN 511210 or SIN 511210)**

**Software maintenance as a product includes the publishing of bug/defect fixes via patches and updates/upgrades in function and technology to maintain the operability and usability of the software product. It may also include other no charge support that are 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 FAQs (Frequently Asked Questions), 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 as a service.**

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

The following table provides the TIBCO Maintenance offerings and part number structure:

Maintenance Type & Part Number Structure	Maintenance Description
DataSynapse Bronze Maintenance products are designated with a "DS-M-B" at the end of each part number.	TIBCO DataSynapse Maintenance, Bronze - Provides 8x5 Support Service 8 hours per day Monday through Friday (8x5) plus Software Updates.
DataSynapse Silver Maintenance products are designated with a "DS-M-S" at the end of each part number.	TIBCO DataSynapse Maintenance, Silver - Provides Support Service twenty four hours per day, seven days a week (24x7) plus Software Updates.
Perpetual Bronze Maintenance products are designated with a "M-B" at the end of each part number.	Maintenance, Bronze - Provides 8x5 Support Service 8 hours per day Monday through Friday (8x5) plus Software Updates.
Perpetual Silver Maintenance products are designated with a "M-S" at the end of each part number.	Maintenance, Silver - Provides Support Service twenty four hours per day, seven days a week (24x7) plus Software Updates.
Software Updates Only products are designated with a "SW-U" at the end of each part number	No Support; Software Updates Only
Term Bronze Maintenance products are designated with a "M-T-B" at the end of each part number.	Maintenance (Term), Bronze - Provides 8x5 Support Service 8 hours per day Monday through Friday (8x5) plus Software Updates.
Term Silver Maintenance products are designated with a "M-T-S" at the end of each part number.	Maintenance (Term), Silver - Provides Support Service twenty four hours per day, seven days a week (24x7) plus Software Updates.
OpenSpirit Bronze Maintenance products are designated with an "OS-M-B" at the end of each part number.	TIBCO OpenSpirit Maintenance, Bronze - Provides 8x5 Support Service 8 hours per day Monday through Friday (8x5) plus Software Updates.
OpenSpirit Software Updates Only products are designated with an "OS-SW-U" at the end of each part number.	TIBCO OpenSpirit No Support; Software Updates Only.
OpenSpirit Silver Maintenance products are designated with an "OS-M-S" at the end of each part number.	TIBCO OpenSpirit Maintenance, Silver - Provides Support Service twenty four hours per day, seven days a week (24x7) plus Software Updates.
TIBCO Foresight HIPAA Code Table Fee - Transaction Insight are designated with an "T-TI" at the end of each part number	Table only for Transaction Insight products.
TIBCO Foresight HIPAA Code Table Fee - Validator Desktop are designated with an "T-V" at the end of each part number	Table only for Validator Desktop products.
TIBCO Foresight HIPAA Code Table Fee - Instream are designated with an "T-I" at the end of each part number	Table only for Instream products.
Tibbr term Maintenance support products are designated with a "TB-M" at the end of each part number.	Maintenance (Term), tibbr Support - Provides Support Service twenty four hours per day, seven days a week (24x7) plus Software Updates.
Nimbus Bronze Maintenance products are designated with a "N-M-B" at the end of each part number.	Nimbus Maintenance, Bronze - Provides 8x5 Support Service 8 hours per day Monday through Friday (8x5) plus Software Updates.
Messaging Appliance Silver Maintenance products are designated with a "MA-S" at the end of each part number.	Maintenance, Appliance Silver - Provides Support Service twenty four hours per day, seven days a week (24x7) plus Software Updates.

Maintenance Type & Part Number Structure	Maintenance Description
Messaging Appliance Bronze Maintenance products are designated with a "MA-B" at the end of each part number.	Maintenance, Appliance Bronze - Provides 8x5 Support Service 8 hours per day Monday through Friday (8x5) plus Software Updates.

**2. Software Maintenance as a Service (SIN 511210)**

**Software maintenance as a service creates, designs, implements, and/or integrates customized changes to software that solve one or more problems and is not included with the price of the software. Software maintenance as a service includes person-to-person communications regardless of the medium used to communicate: telephone support, on-line technical support, customized support, and/or technical expertise which are charged commercially. Software maintenance as a service is billed arrears in accordance with 31 U.S.C. 3324.**

**Software maintenance as a service is billed in arrears in accordance with 31 U.S.C. 3324.**

b. Invoices for maintenance service shall be submitted by the Contractor on a quarterly or monthly basis, after the completion of such period. Maintenance charges must be paid in arrears (31 U.S.C. 3324). PROMPT PAYMENT DISCOUNT, IF APPLICABLE, SHALL BE SHOWN ON THE INVOICE.

**6. PERIODS OF TERM LICENSES AND MAINTENANCE (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 and/or maintenance may be discontinued by the ordering activity on thirty (30) calendar days written notice to the Contractor.
- c. Annual Funding. When annually appropriated funds are cited on an order for term licenses and/or maintenance, the period of the term licenses and/or maintenance shall automatically expire on September 30 of the contract period, or at the end of the contract period, whichever occurs first. Renewal of the term licenses and/or maintenance orders citing the new appropriation shall be required, if the term licenses and/or maintenance is to be continued during any remainder 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 and/or maintenance 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**

Term licenses cannot be converted to perpetual licenses.

**8. TERM LICENSE CESSATION**

Not applicable.

**9. UTILIZATION LIMITATIONS - (SIN 511210 & 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 by site and by ordering activity. An ordering activity is defined as a cabinet level or independent ordering activity. The software may be used by any subdivision of the ordering activity (service, bureau, division, command, etc.) that has access to the site the software is placed at, even if the subdivision did not participate in the acquisition of the software. Further, the software may be used on a sharing basis where multiple agencies have joint projects that can be satisfied by the use of the software placed at one ordering activity's site. This would allow other agencies access to one ordering activity's database. For ordering activity public domain databases, user agencies and third parties may use the computer program to enter, retrieve, analyze and present data. The user ordering activity will take appropriate action by instruction, agreement, or otherwise, to protect the Contractor's proprietary property with any third parties that are permitted access to the computer programs and documentation in connection with the user ordering activity's permitted use of the computer programs and documentation. For purposes of this section, all such permitted third parties shall be deemed agents of the user ordering activity.

(3) Except as is provided in paragraph 8.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 obtain without restrictions.

(4) The ordering activity shall have the right to use the computer software and documentation with the computer for which it is acquired at any other facility to which that computer may be transferred, or in cases of Disaster Recovery, the ordering activity has the right to transfer the software to another site if the ordering activity site for which it is acquired is deemed to be unsafe for ordering activity personnel; to use the computer software and documentation with a backup computer when the primary computer is inoperative; to copy computer programs for safekeeping (archives) or backup purposes; to transfer a copy of the software to another site for purposes of benchmarking new hardware and/or software; and to modify the software and documentation or combine it with other software, provided that the unmodified portions shall remain subject to these restrictions.

(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.

**10. SOFTWARE CONVERSIONS - (SIN 511210 AND SIN 511210)**

Not applicable.

**11. DESCRIPTIONS AND EQUIPMENT COMPATIBILITY**

The Contractor shall include, in the schedule pricelist, a complete description of each software product and a list of equipment 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 applicable.

**TERMS AND CONDITIONS APPLICABLE TO PURCHASE OF  
TRAINING COURSES FOR GENERAL PURPOSE COMMERCIAL  
INFORMATION TECHNOLOGY EQUIPMENT AND SOFTWARE  
(SPECIAL ITEM NUMBER 611420)**

1. SCOPE

a. The Contractor shall provide training courses normally available to commercial customers, which will permit ordering activity users to make full, efficient use of general purpose commercial IT products. Training is restricted to training courses for those products within the scope of this solicitation.

b. The Contractor shall provide training at the Contractor's facility and/or at the ordering activity's location, as agreed to by the Contractor and the ordering activity.

2. ORDER

Written orders, EDI orders (GSA Advantage! and FACNET), credit card orders, and orders placed under blanket purchase agreements (BPAs) shall be the basis for the purchase of training courses in accordance with the terms of this contract. Orders shall include the student's name, course title, course date and time, and contracted dollar amount of the course.

3. TIME OF DELIVERY

The Contractor shall conduct training on the date (time, day, month, and year) agreed to by the Contractor and the ordering activity.

4. CANCELLATION AND RESCHEDULING

a. The ordering activity will notify the Contractor at least seventy-two (72) hours before the scheduled training date, if a student will be unable to attend. The Contractor will then permit the ordering activity to either cancel the order or reschedule the training at no additional charge. In the event the training class is rescheduled, the ordering activity will modify its original training order to specify the time and date of the rescheduled training class.

b. In the event the ordering activity fails to cancel or reschedule a training course within the time frame specified in paragraph a, above, the ordering activity will be liable for the contracted dollar amount of the training course. The Contractor agrees to permit the ordering activity to reschedule a student who fails to attend a training class within ninety (90) days from the original course date, at no additional charge.

c. The ordering activity reserves the right to substitute one student for another up to the first day of class.

d. In the event the Contractor is unable to conduct training on the date agreed to by the Contractor and the ordering activity, the Contractor must notify the ordering activity at least seventy-two (72) hours before the scheduled training date.

5. FOLLOW-UP SUPPORT

The Contractor agrees to provide each student with unlimited telephone support for a period of one (1) year from the completion of the training course. During this period, the student may contact the Contractor's instructors for refresher assistance and answers to related course curriculum questions.

6. PRICE FOR TRAINING

The price that the ordering activity will be charged will be the ordering activity training price in effect at the time of order placement.

7. INVOICES AND PAYMENT

Invoices for training shall be submitted by the Contractor after ordering activity completion of the training course. Charges for training must be paid in arrears (31 U.S.C. 3324). PROMPT PAYMENT DISCOUNT, IF APPLICABLE, SHALL BE SHOWN ON THE INVOICE.

8. FORMAT AND CONTENT OF TRAINING

a. The Contractor shall provide written materials (i.e., manuals, handbooks, texts, etc.) normally provided with course offerings. Such documentation will become the property of the student upon completion of the training class.

b. **\*\*If applicable\*\*** For hands-on training courses, there must be a one-to-one assignment of IT equipment to students.

c. The Contractor shall provide each student with a Certificate of Training at the completion of each training course.

d. The Contractor shall provide the following information for each training course offered:

- (1) The course title and a brief description of the course content, to include the course format (e.g., lecture, discussion, hands-on training);
- (2) The length of the course;
- (3) Mandatory and desirable prerequisites for student enrollment;
- (4) The minimum and maximum number of students per class;
- (5) The locations where the course is offered;
- (6) Class schedules; and
- (7) Price (per student, per class (if applicable)).

e. For those courses conducted at the ordering activity's location, instructor travel charges (if applicable), including mileage and daily living expenses (e.g., per diem charges) are governed by Pub. L. 99-234 and FAR Part 31.205-46, and are reimbursable by the ordering activity on orders placed under the Multiple Award Schedule, as applicable, in effect on the date(s) the travel is performed. Contractors cannot use GSA city pair contracts. The Industrial Funding Fee does NOT apply to travel and per diem charges.

9. "NO CHARGE" TRAINING

Not Applicable

**TERMS AND CONDITIONS APPLICABLE TO INFORMATION TECHNOLOGY (IT)  
PROFESSIONAL SERVICES (SPECIAL ITEM NUMBER 54151S)**

1. SCOPE

- a. The prices, terms and conditions stated under Special Item Number 54151S Information Technology Professional Services apply exclusively to IT Services within the scope of this Information Technology Schedule.
- b. The Contractor shall provide services at the Contractor's facility and/or at the ordering activity location, as agreed to by the Contractor and the ordering activity.

2. PERFORMANCE INCENTIVES

- a. Performance incentives may be agreed upon between the Contractor and the ordering activity on individual fixed price orders or Blanket Purchase Agreements under this contract in accordance with this clause.
- b. The ordering activity must establish a maximum performance incentive price for these services and/or total solutions on individual orders or Blanket Purchase Agreements.
- c. Incentives should be designed to relate results achieved by the contractor to specified targets. To the maximum extent practicable, ordering activities shall consider establishing incentives where performance is critical to the ordering activity's mission and incentives are likely to motivate the contractor. Incentives shall be based on objectively measurable tasks.

3. ORDER

- a. Agencies may use written orders, EDI orders, blanket purchase agreements, individual purchase orders, or task orders for ordering services under this contract. Blanket Purchase Agreements shall not extend beyond the end of the contract period; all services and delivery shall be made and the contract terms and conditions shall continue in effect until the completion of the order. Orders for tasks which extend beyond the fiscal year for which funds are available shall include FAR 52.232-19 (Deviation – May 2003) Availability of Funds for the Next Fiscal Year. The purchase order shall specify the availability of funds and the period for which funds are available.
- b. All task orders are subject to the terms and conditions of the contract. In the event of conflict between a task order and the contract, the contract will take precedence.

4. PERFORMANCE OF SERVICES

- a. The Contractor shall commence performance of services on the date agreed to by the Contractor and the ordering activity.
- b. The Contractor agrees to render services only during normal working hours, unless otherwise agreed to by the Contractor and the ordering activity.
- c. The ordering activity should include the criteria for satisfactory completion for each task in the Statement of Work or Delivery Order. Services shall be completed in a good and workmanlike manner.
- d. Any Contractor travel required in the performance of IT Services must comply with the Federal Travel Regulation or Joint Travel Regulations, as applicable, in effect on the date(s) the travel is performed. Established Federal Government per diem rates will apply to all Contractor travel. Contractors cannot use GSA city pair contracts.

## 5. STOP-WORK ORDER (FAR 52.242-15) (AUG 1989)

(a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either-

- (1) Cancel the stop-work order; or
- (2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.

(b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if-

- (1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
- (2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

## 6. INSPECTION OF SERVICES

The Inspection of Services-Fixed Price (AUG 1996) (Deviation - May 2003) clause at FAR 52.246-4 applies to firm-fixed price orders placed under this contract. The Inspection-Time-and-Materials and Labor-Hour (JAN 1986) (Deviation - May 2003) clause at FAR 52.246-6 applies to time-and-materials and labor-hour orders placed under this contract.

## 7. RESPONSIBILITIES OF THE CONTRACTOR

The Contractor shall comply with all laws, ordinances, and regulations (Federal, State, City, or otherwise) covering work of this character. If the end product of a task order is software, then FAR 52.227-14 (Deviation - May 2003) Rights in Data - General, may apply.

## 8. RESPONSIBILITIES OF THE ORDERING ACTIVITY

Subject to security regulations, the ordering activity shall permit Contractor access to all facilities necessary to perform the requisite IT Services.

## 9. INDEPENDENT CONTRACTOR

All IT Services performed by the Contractor under the terms of this contract shall be as an independent Contractor, and not as an agent or employee of the ordering activity.

## 10. ORGANIZATIONAL CONFLICTS OF INTEREST

### a. Definitions.

“Contractor” means the person, firm, unincorporated association, joint venture, partnership, or corporation that is a party to this contract.

“Contractor and its affiliates” and “Contractor or its affiliates” refers to the Contractor, its chief executives, directors, officers, subsidiaries, affiliates, subcontractors at any tier, and consultants and any joint venture involving the Contractor, any entity into or with which the Contractor subsequently merges or affiliates, or any other successor or assignee of the Contractor.

An “Organizational conflict of interest” exists when the nature of the work to be performed under a proposed ordering activity contract, without some restriction on ordering activities by the Contractor and its affiliates, may either (i) result in an unfair competitive advantage to the Contractor or its affiliates or (ii) impair the Contractor’s or its affiliates’ objectivity in performing contract work.

b. To avoid an organizational or financial conflict of interest and to avoid prejudicing the best interests of the ordering activity, ordering activities may place restrictions on the Contractors, its affiliates, chief executives, directors, subsidiaries and subcontractors at any tier when placing orders against schedule contracts. Such restrictions shall be consistent with FAR 9.505 and shall be designed to avoid, neutralize, or mitigate organizational conflicts of interest that might otherwise exist in situations related to individual orders placed against the schedule contract. Examples of situations, which may require restrictions, are provided at FAR 9.508.

## 11. INVOICES

The Contractor, upon completion of the work ordered, shall submit invoices for IT services. Progress payments may be authorized by the ordering activity on individual orders if appropriate. Progress payments shall be based upon completion of defined milestones or interim products. Invoices shall be submitted monthly for recurring services performed during the preceding month.

## 12. PAYMENTS

For firm-fixed price orders the ordering activity shall pay the Contractor, upon submission of proper invoices or vouchers, the prices stipulated in this contract for service rendered and accepted. Progress payments shall be made only when authorized by the order. For time-and-materials orders, the Payments under Time-and-Materials and Labor-Hour Contracts at FAR 52.232-7 (DEC 2002), (Alternate II – Feb 2002) (Deviation – May 2003) applies to time-and-materials orders placed under this contract. For labor-hour orders, the Payment under Time-and-Materials and Labor-Hour Contracts at FAR 52.232-7 (DEC 2002), (Alternate II – Feb 2002) (Deviation – May 2003)) applies to labor-hour orders placed under this contract.

## 13. RESUMES

Resumes shall be provided to the GSA Contracting Officer or the user ordering activity upon request.

## 14. INCIDENTAL SUPPORT COSTS

Incidental support costs are available outside the scope of this contract. The costs will be negotiated separately with the ordering activity in accordance with the guidelines set forth in the FAR.

## 15. APPROVAL OF SUBCONTRACTS

The ordering activity may require that the Contractor receive, from the ordering activity's Contracting Officer, written consent before placing any subcontract for furnishing any of the work called for in a task order.

16. DESCRIPTION OF IT SERVICES AND PRICING

a. The Contractor shall provide a description of each type of IT Service offered under Special Item Number 54151S. IT Services should be presented in the same manner as the Contractor sells to its commercial and other ordering activity customers. If the Contractor is proposing hourly rates, a description of all corresponding commercial job titles (labor categories) for those individuals who will perform the service should be provided.

b. Pricing for all IT Services shall be in accordance with the Contractor's customary commercial practices; e.g., hourly rates, monthly rates, term rates, and/or fixed prices.

ESCgov Labor Rates						
MFR Part #	Production Description	3/16/19 – 3/31/20	4/1/20 – 3/31/21	4/1/21 – 3/31/22	4/1/22 – 3/31/23	4/1/23 – 3/31/24
ESC-C-103-CS	Consultant Skill Level D-Customer Site	\$192.41	\$198.18	\$204.13	\$210.25	\$216.56
ESC-C-104-CS	Consultant Skill Level E-Customer Site	\$222.02	\$228.68	\$235.54	\$242.61	\$249.89
ESC-C-105-CS	Consultant Skill Level F-Customer Site	\$251.63	\$259.18	\$266.96	\$274.97	\$283.22



**TERMS AND CONDITIONS APPLICABLE TO  
ELECTRONIC COMMERCE (EC) (SPECIAL IDENTIFICATION NUMBER  
54151ECOM)**

**1. MANUFACTURER - IBM**

**2. SCOPE**

The prices, terms and conditions stated under Special Item Number 54151ECOM Electronic Commerce (EC) Services apply exclusively to EC Services within the scope of this Information Technology Schedule.

**3. ELECTRONIC COMMERCE CAPACITY AND COVERAGE**

The Ordering Activity shall specify the capacity and coverage required as part of the initial requirement.

**4. INFORMATION ASSURANCE**

- a. The Ordering Activity is responsible for ensuring to the maximum extent practicable that each requirement issued is in compliance with the Federal Information Security Management Act (FISMA)
- b. The Ordering Activity shall assign an impact level (per Federal Information Processing Standards Publication 199 & 200 (FIPS 199, "*Standards for Security Categorization of Federal Information and Information Systems*") (FIPS 200, "*Minimum Security Requirements for Federal Information and Information Systems*") prior to issuing the initial statement of work. Evaluations shall consider the extent to which each proposed service accommodates the necessary security controls based upon the assigned impact level. The Contractor awarded SIN 54151ECOM is capable of meeting at least the minimum security requirements assigned against a low-impact information system (per FIPS 200).
- c. The Ordering Activity reserves the right to independently evaluate, audit, and verify the FISMA compliance for any proposed or awarded Electronic Commerce services. All FISMA certification, accreditation, and evaluation activities are the responsibility of the ordering activity.

**5. DELIVERY SCHEDULE.**

The Ordering Activity shall specify the delivery schedule as part of the initial requirement.

**6. INTEROPERABILITY.**

When an Ordering Activity requires interoperability, this requirement shall be included as part of the initial requirement. Interfaces may be identified as interoperable on the basis of participation in a sponsored program acceptable to the Ordering Activity. Any such access or interoperability with teleports/gateways and provisioning of enterprise service access will be defined in the individual requirement.

**7. ORDER**

- a. Agencies may use written orders, EDI orders, blanket purchase agreements, individual purchase orders, or task orders for ordering electronic services under this contract. Blanket Purchase Agreements shall not extend beyond the end of the contract period; all electronic services and delivery shall be made and the contract terms and conditions shall continue in effect until the completion of the order. Orders for tasks which extend beyond the fiscal year for which funds are available shall include FAR 52.232-19 (Deviation

– May 2003) Availability of Funds for the Next Fiscal Year. The purchase order shall specify the availability of funds and the period for which funds are available.

- b. All task orders are subject to the terms and conditions of the contract. In the event of conflict between a task order and the contract, the contract will take precedence.

## **8. PERFORMANCE OF ELECTRONIC SERVICES**

The Contractor shall provide electronic services on the date agreed to by the Contractor and the ordering activity.

## **9. RESPONSIBILITIES OF THE CONTRACTOR**

The Contractor shall comply with all laws, ordinances, and regulations (Federal, State, City, or otherwise) covering work of this character.

## **10. RIGHTS IN DATA**

The Contractor shall comply FAR 52.227-14 RIGHTS IN DATA – GENERAL and with all laws, ordinances, and regulations (Federal, State, City, or otherwise) covering work of this character.

## **11. ACCEPTANCE TESTING**

Not applicable.

## **12. WARRANTY**

Available at [http://www-935.ibm.com/services/us/iss/html/contracts\\_landing.html](http://www-935.ibm.com/services/us/iss/html/contracts_landing.html)

## **13. TRAINING**

Not applicable.

## **14. MONTHLY REPORTS**

In accordance with commercial practices, the Contractor may furnish the ordering activity/user with a monthly summary ordering activity report.

## **15. ELECTRONIC COMMERCE SERVICE PLAN**

Not applicable.

**TERMS AND CONDITIONS APPLICABLE TO  
ELECTRONIC COMMERCE AND SUBSCRIPTION SERVICES  
SPECIAL IDENTIFICATION NUMBER 54151ECOM)**

**1. SCOPE**

The prices, terms and conditions stated under Special Item Number 54151ECOM Electronic Commerce (EC) Services apply exclusively to YottaStor EC Services within the scope of this Information Technology Schedule.

**2. ELECTRONIC COMMERCE CAPACITY AND COVERAGE**

The Ordering Activity shall specify the capacity and coverage required as part of the initial requirement.

**3. INFORMATION ASSURANCE**

- a. The Ordering Activity is responsible for ensuring to the maximum extent practicable that each requirement issued is in compliance with the Federal Information Security Management Act (FISMA)
- b. The Ordering Activity shall assign an impact level (per Federal Information Processing Standards Publication 199 & 200 (FIPS 199, “*Standards for Security Categorization of Federal Information and Information Systems*”) (FIPS 200, “*Minimum Security Requirements for Federal Information and Information Systems*”) prior to issuing the initial statement of work. Evaluations shall consider the extent to which each proposed service accommodates the necessary security controls based upon the assigned impact level. The Contractor awarded SIN 54151ECOM is capable of meeting at least the minimum security requirements assigned against a low-impact information system (per FIPS 200).
- c. The Ordering Activity reserves the right to independently evaluate, audit, and verify the FISMA compliance for any proposed or awarded Electronic Commerce services. All FISMA certification, accreditation, and evaluation activities are the responsibility of the ordering activity.

**4. DELIVERY SCHEDULE.**

The Ordering Activity and the Contractor shall agree to a delivery schedule, and the Ordering Activity shall specify that schedule as a part of the initial requirement.

**5. INTEROPERABILITY.**

When an Ordering Activity requires interoperability, this requirement shall be included as part of the initial requirement. Interfaces may be identified as interoperable on the basis of participation in a sponsored program acceptable to the Ordering Activity. Any such access or interoperability with teleports/gateways and provisioning of enterprise service access will be defined in the individual requirement.

## **6. ORDER**

- a. Agencies may use written orders, EDI orders, blanket purchase agreements, individual purchase orders, or task orders for ordering electronic services under this contract. Blanket Purchase Agreements shall not extend beyond the end of the contract period; all electronic services and delivery shall be made and the contract terms and conditions shall continue in effect until the completion of the order. Orders for tasks which extend beyond the fiscal year for which funds are available shall include FAR 52.232-19 (Deviation – May 2003) Availability of Funds for the Next Fiscal Year. The purchase order shall specify the availability of funds and the period for which funds are available.
- b. All task orders are subject to the terms and conditions of the contract. In the event of conflict between a task order and the contract, the contract will take precedence.

## **7. PERFORMANCE OF ELECTRONIC SERVICES**

The Contractor shall provide electronic services on the date agreed to by the Contractor and the ordering activity.

## **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.

## **9. RIGHTS IN DATA**

The Contractor shall comply FAR 52.227-14 RIGHTS IN DATA – GENERAL and with all laws, ordinances, and regulations (Federal, State, City, or otherwise) covering work of this character.

## **10. ACCEPTANCE TESTING**

Refer to YottaStor Capacity Terms and Conditions (Section 5 – Acceptance of Order(s) for Capacity Service). (attached)

## **11. WARRANTY**

Refer to YottaStor Capacity Terms and Conditions (Section 6.2 – Warranty). (attached)

## **12. MANAGEMENT AND OPERATIONS PRICING**

The Contractor shall provide management and operations pricing on a uniform basis. All management and operations requirements for which pricing elements are not specified shall be provided as part of the basic service.

## **13. TRAINING**

The Contractor shall provide normal commercial installation, operation, maintenance, and engineering interface training on the system. If there is a separate charge, indicate below:

N/A

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**14. MONTHLY REPORTS**

In accordance with commercial practices, the Contractor may furnish the ordering activity/user with a monthly summary ordering activity report.

**15. ELECTRONIC COMMERCE SERVICE PLAN**

(a) Describe the electronic service plan and eligibility requirements.

Refer to YottaStor Capacity Terms and Conditions (attached).

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(b) Describe charges, if any, for additional usage guidelines.

Refer to YottaStor Capacity Terms and Conditions (attached).

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(c) Describe corporate volume discounts and eligibility requirements, if any.

N/A

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**16. ADDITIONAL TERMS AND CONDITIONS**

YottaStor Capacity Service Terms and Conditions (see attachment). These Terms and Conditions are incorporated in accordance with commercial practices.



**YottaStor**  
Capacity Service Terms and Conditions

**1. Scope.**

These Capacity Service Terms and Conditions (“Service Terms”) contain the terms and conditions that govern access to and use of the Capacity Service, and is an agreement between ESCgov, Inc. (“Contractor,”) and the ordering activity (“Government”). These Service Terms shall apply to any resultant Order(s) placed with the Contractor.

**2. Electronic Service.**

The YottaDrive Capacity Service provides for the efficient ingest, storage and dissemination of massive amounts of large data objects within a single global name space, and is accessible through hosted, on-site, and mobile containerized configurations.

Service is initiated by ordering a fixed storage capacity, and the Government agrees to pay the specified monthly rate for such ordered capacity every month in which Service is provided to the Government by the Contractor. The Government may increase capacity by ordering incrementally over time.

If at any time the Government’s usage exceeds the ordered capacity, the Contractor will notify the Government and the Government shall increase its ordered capacity or reduce its usage within thirty (30) days after notice by the Contractor. The Contractor may bill the Government on a pro-rated basis for any months in which usage exceeds the ordered capacity.

**3. Period of Performance.**

Subject only to availability of funds, the term of each Order for Capacity Service will commence on the effective date of the Order and will remain in effect for 48 continuous billable months after Government acceptance of the Order.

**4. Essential Requirement.**

By issuing an Order, the Government represents that its use of the Capacity Service is essential to fulfill its mission requirement(s), and is anticipated to remain essential during the minimum 48-month Capacity Service Term. Accordingly, the Government agrees not replace this Capacity Service with functionally similar capability during the Service Term.

**5. Acceptance of Order(s) for Capacity Service.**

The Capacity Service includes:

1. YottaCloud Ingest Service,
2. YottaCloud Search Service, and
3. YottaCloud Content Dissemination Service

For each Order, Government acceptance shall occur, and billing shall commence, upon reasonable demonstration that the three Capacity Services are functioning.

Upon such demonstration, the Contractor shall present an acceptance document, in a form acceptable to the Government, which the Government shall acknowledge within one business day.

Whenever Equipment and Software is delivered to the Government for use by the Government outside a Contractor provided hosting facility, the Contractor will provide opportunity for source inspection and acceptance of the three Capacity Services listed above. The Government agrees to inspect and accept the services or the Capacity Service will be deemed accepted upon shipment to the Government.

## **6. Ownership and Warranty of Equipment and Software.**

### **6.1 Ownership.**

The Service equipment and software (“Equipment and Software”) shall remain at all times the sole property of YottaStor and its assigns.

### **6.2 Warranty.**

Field service will be provided by YottaStor or its approved vendor. The government customers agree to allow field access to the Equipment and Software to perform upgrades, repair componentry, and perform routine maintenance. Further government customers agree that approved software may be upgraded remotely via classified and DOD approved communications.

## **7. Capacity Service Fees.**

Fees are billed monthly in arrears and are payable net 30 days, without setoff or withholding. Late payments are subject to the Prompt Payment Act. Additional discounts may be available for Customers who purchase in advance to reserve a fixed monthly capacity.

## **8. Assignment of Contract Payments.**

The Contractor may assign its rights to any and all monies due or to become due under the Contract to a bank, trust company or other financing institution. The Government agrees to acknowledge such notice of assignment and agrees to make payment of any and all monies due or to become due under the Contract in accordance with the terms of such assignment pursuant to the Assignment of Claims Act (31 U.S.C. 3727, 41 U.S.C. 15).

## **9. Taxes.**

Government shall keep the Equipment and Software free and clear of all levies, liens and encumbrances except those in favor of Contractor and its assigns. Capacity Service Fees are exclusive of any applicable taxes. The Government shall provide appropriate tax exempt certifications upon request by the Contractor.

## **10. Risk of Loss.**

Whenever Equipment and Software is delivered to the Government for use by the Government outside a Contractor provided hosting facility, the Government assumes and shall bear the entire risk of loss and damage to Equipment and Software at all times while in its possession.

This shall include all Equipment and Software provided by the Contractor to the Government in connection with any Service provided on customer premise, on-site at a Customer designated facility, deployed to a Customer designated location, or other service requiring the Government to take physical possession of the Equipment and Software.

While in the Government's possession, no loss or damage to the Equipment and Software or data shall impair any obligation of the Government under the relevant Order, including but not limited to the Government's obligation to make all payments during the full service term, which obligations shall continue in full force and effect.

In the event of such loss or damage of any kind to any Equipment and Software and/or related loss of data the Government, at the Government's option, shall pay the Contractor the amount equivalent to the Stipulated Loss Value of the Equipment and Software. The "Stipulated Loss Value" of any Equipment and Software is an amount equal to the Capacity Service Fees due or to become due during the remainder of the Capacity Service Term.

## **11. Capacity Service Term.**

The Capacity Service Term will commence upon Government acceptance and continue for 48 billable months subject only to availability of funds. The Service Term may be extended beyond the initial 48 continuous billable months by executing a bilaterally signed modification to the original Order (or by issuing a new order for the extended term) at the prevailing rate(s) of Service.

The Government will notify the Contractor six months prior to the expiration of the Capacity Service Term whether the Government intends to extend the Capacity Service Term for an additional 12-month term.

At the end of the Capacity Service Term, the Government agrees to return all Contractor provided Equipment and Software in good working order to a mutually agreed CONUS location within 90 days after the end of the Capacity Service Term.

## **12. Termination.**

### **12.1 Initial Term.**

The Government acknowledges and agrees that it has specifically elected the minimum 48 continuous billable month term of this Capacity Service agreement. The Contractor relied on the Government's representation of its intent to fulfill the full Capacity Service Term in determining the Capacity Service Fees set forth herein.

By issuing any order pursuant to this Agreement, the Government selected this Capacity Service to satisfy a specific requirement which is anticipated to continue through the minimum 48-month Capacity Service Term of the Order. The Government intends to exercise all payments for as long as the requirement continues to exist and funding is available. If the Government stops making payments during the Capacity Service Term, or terminates for convenience, or does not renew, or there is a non-appropriation of funds, the Government acknowledges that it no longer has any right to use this Capacity Service (or functionally similar products or services) during the remainder of the relevant 48-month term.

### **12.2 Return of Equipment and Termination Fees.**

In the event of any termination for convenience or non-renewal of any Order, the Government agrees to return all contractor provided Equipment and Software in good working order to the contractor at a CONUS destination to be agreed by the parties, and pay a termination amount equal to 70% of the remaining Capacity Service Fees from the date of termination to the end of the relevant 48-month Capacity Service Term.

For example, assume the Government terminates for convenience an Order for 2 PB of Capacity Service with two months remaining in the Capacity Service term. Assuming a monthly service fee of \$ 210,000 then the termination fee would be calculated as follows:

Capacity Service Fee per month	\$ 210,000
Capacity Service term remaining	2 months
PB on Order	2 PB
Capacity Service Fee remaining	\$ 420,000 (i.e. \$ 210,000 * 2)
Termination percentage	70%
Termination fee	\$ 294,000 (i.e. 70% of \$ 420,000)

### **12.3 Termination for Convenience.**

An Order may be terminated for convenience in accordance with Paragraph I (Termination for Convenience) of FAR 52.212-4 (Contract Terms and Conditions – Commercial Items). For purposes thereof, the Government agrees that as of the Acceptance Date, the Contractor has performed all the work required by the Contract with respect to the provision of Capacity Service. Any termination for convenience must be for all capacity in the Order and a partial termination for convenience is not permitted.

## **13. Proprietary Rights**

### **13.1 Government Content.**

The Government or its licensors owns all right, title, and interest in and to the data the Government places in use on the Equipment and Software. Except as provided in this section, the Contractor obtains no rights under this Agreement from the Government or its licensors to Government data, including any related intellectual property rights. The Government consents to the Contractor's use of Government data to provide the Capacity Service to the Government. The Contractor may disclose Government data to provide the Capacity Service to the Government or to comply with any request of a governmental or regulatory body (including subpoenas or court orders).

### **13.2 Adequate Rights.**

The Government represents and warrants to the Contractor that: (a) the Government or its licensors own all right, title, and interest in and to Government data, and (b) the Government has all rights in Government data necessary to grant the rights contemplated by this Capacity Service Agreement.

### **13.3 Service Offerings License.**

As between the Contractor and the Government, the Contractor or its affiliates or licensors own and reserve all right, title, and interest in and to the Capacity Service. The Contractor grants the Government a limited, revocable, non-exclusive, non-sub-licensable, non-transferable license to do the following during the Capacity Service Term: access and use the Capacity Service solely in accordance with this Capacity Service Agreement. The Government obtains no rights under this Capacity Service Agreement from the Contractor or its licensors to the Capacity Service, including any related intellectual property rights.

## **14. License Restrictions.**

Neither the Government nor any end user may use the Capacity Service in any manner or for any purpose other than as expressly permitted by this Capacity Service Agreement and any end user license agreements of the suppliers utilized to furnish the Capacity Service.

Neither the Government nor any end user may, or may attempt to:

- (a) modify, alter, tamper with, repair, or otherwise create derivative works of any software included in the Capacity Service (except to the extent software included in the Capacity Service are provided to the Government under a separate license that expressly permits the creation of derivative works),
- (b) reverse engineer, disassemble, or decompile the Capacity Service or apply any other process or procedure to derive the source code of any software included in the Capacity Service,
- (c) access or use the Capacity Service in a way intended to avoid incurring fees or exceeding usage limits or quotas, or
- (d) resell or sublicense the Capacity Service.

All licenses granted to the Government in this Capacity Service Agreement are conditional on the Government's continued compliance with this Capacity Service Agreement, and will immediately and automatically terminate if the Government does not comply with any term or condition of this Capacity Service Agreement.

During and after the Capacity Service Term, the Government will not assert, nor will the Government authorize, assist, or encourage any third party to assert, against the Contractor or any of its affiliates, customers, vendors, business partners, or licensors, any patent infringement or other intellectual property infringement claim regarding any Capacity Service the Government have used.

## **15. Indemnification.**

The Government will defend, indemnify, and hold harmless the Contractor, its affiliates and licensors, and each of their respective employees, officers, directors, and representatives from and against any claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of or relating to any third party claim concerning:

- (a) the Government's or any end users' use of the Capacity Service (including any activities under the Contractor account and use by the Government's employees and personnel),
- (b) breach of this Capacity Service Agreement or violation of applicable law by the Government or any end user, or
- (c) a dispute between the Government and any end user.

If the Contractor or its affiliates are obligated to respond to a third party subpoena or other compulsory legal order or process described above, the Government will also reimburse the Contractor for reasonable attorneys' fees, as well as the Contractor's employees' and contractors' time and materials spent responding to the third party subpoena or other compulsory legal order or process at the Contractor's then-current hourly rates.

## **16. Disclaimers.**

THE CAPACITY SERVICE IS PROVIDED "AS IS." THE CONTRACTOR AND ITS AFFILIATES AND LICENSORS MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE REGARDING THE CAPACITY SERVICE OR THE THIRD PARTY CONTENT, INCLUDING ANY WARRANTY THAT THE CAPACITY SERVICE OR THIRD PARTY CONTENT WILL BE UNINTERRUPTED, ERROR FREE OR FREE OF HARMFUL COMPONENTS, OR

THAT ANY CONTENT, INCLUDING THE GOVERNMENT'S CONTENT OR THIRD PARTY CONTENT, WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED. EXCEPT TO THE EXTENT PROHIBITED BY LAW, THE CONTRACTOR AND ITS AFFILIATES AND LICENSORS DISCLAIM ALL WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR QUIET ENJOYMENT, AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE.

**17. Limitations of Liability.**

THE CONTRACTOR AND ITS AFFILIATES OR LICENSORS WILL NOT BE LIABLE TO THE GOVERNMENT FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, OR DATA), EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, NEITHER THE CONTRACTOR NOR ANY OF ITS AFFILIATES OR LICENSORS WILL BE RESPONSIBLE FOR ANY COMPENSATION, REIMBURSEMENT, OR DAMAGES ARISING IN CONNECTION WITH:

(A) THE GOVERNMENT'S INABILITY TO USE THE SERVICES, INCLUDING AS A RESULT OF ANY:

1. TERMINATION OR SUSPENSION OF THIS AGREEMENT OR THE GOVERNMENT'S USE OF OR ACCESS TO THE CAPACITY SERVICE,
2. THE CONTRACTOR'S DISCONTINUATION OF ANY OR ALL OF THE SERVICE OFFERINGS, OR,
3. WITHOUT LIMITING ANY OBLIGATIONS UNDER THE CAPACITY SERVICE AGREEMENT, ANY UNANTICIPATED OR UNSCHEDULED DOWNTIME OF ALL OR A PORTION OF THE CAPACITY SERVICE FOR ANY REASON, INCLUDING AS A RESULT OF POWER OUTAGES, SYSTEM FAILURES OR OTHER INTERRUPTIONS;

(B) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES;

(C) ANY INVESTMENTS, EXPENDITURES, OR COMMITMENTS BY THE GOVERNMENT IN CONNECTION WITH THIS CAPACITY SERVICE AGREEMENT OR THE GOVERNMENT'S USE OF OR ACCESS TO THE CAPACITY SERVICE; OR

(D) ANY UNAUTHORIZED ACCESS TO, ALTERATION OF, OR THE DELETION, DESTRUCTION, DAMAGE, LOSS OR FAILURE TO STORE ANY OF THE GOVERNMENT'S CONTENT OR OTHER DATA.

IN ANY CASE, THE CONTRACTOR AND ITS AFFILIATES' AND LICENSORS' AGGREGATE LIABILITY UNDER THIS CAPACITY SERVICE AGREEMENT WILL BE LIMITED TO THE AMOUNT THE GOVERNMENT ACTUALLY PAYS THE CONTRACTOR UNDER THIS CAPACITY SERVICE AGREEMENT FOR THE CAPACITY SERVICE THAT GAVE RISE TO THE CLAIM DURING THE ONE MONTH PRECEDING THE CLAIM.

**18. Content.**

The Government or its licensors own all right, title, and interest in and to the content it stores within the Capacity Service, and the Government is solely responsible for its development, maintenance, accuracy, and use in accordance with applicable policy or law.

**19. Miscellaneous.**

### **19.1 Confidentiality and Publicity.**

The Government may use the Contractor's confidential information, including but not limited to the Contractor's proof of concept, proposal(s) and all information contained therein, and any other information which set forth the general and particular segments of the underlying business opportunity, only in connection with the Government's use of the Capacity Service and Equipment and Software as permitted under this Capacity Service Agreement.

The Government will not disclose the Contractor's confidential information during the Capacity Service Term or at any time during the 5-year period following the end of the Capacity Service Term.

The Government will take all reasonable measures to avoid disclosure, dissemination or unauthorized use of Confidential Information, including, at a minimum, those measures the Government takes to protect its own confidential information of a similar nature.

The Government will not issue any press release or make any other public communication with respect to this Capacity Service Agreement or the Government's use of the Capacity Service unless agreed to in writing by the Contractor.

The Government will not misrepresent or embellish the relationship between the Contractor and the Government (including by expressing or implying that the Contractor supports, sponsors, endorses, or contribute to the Government or its endeavors), or express or imply any relationship or affiliation between the Contractor and the Government or any other person or entity except as expressly permitted by this Capacity Service Agreement.

### **19.2 Force Majeure.**

The Contractor and its affiliates will not be liable for any delay or failure to perform any obligation under this Capacity Service Agreement where the delay or failure results from any cause beyond the Contractor's reasonable control, including acts of God, labor disputes or other industrial disturbances, systemic electrical, telecommunications, or other utility failures, earthquake, storms or other elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism, or war.

### **19.3 Independent Contractors; Non-Exclusive Rights.**

Neither party, nor any of their respective affiliates, is an agent of the other for any purpose or has the authority to bind the other. Both parties reserve the right:

- (a) to develop or have developed for it products, services, concepts, systems, or techniques that are similar to or compete with the products, services, concepts, systems, or techniques developed or contemplated by the other party and
- (b) to assist third party developers or systems integrators who may offer products or services which compete with the other party's products or services.

### **19.4 No Third Party Beneficiaries.**

This Capacity Service Agreement does not create any third party beneficiary rights in any individual or entity that is not a party to this Capacity Service Agreement, except for the Assigns of the Contractor under the Assignment of Claims Act.

### **19.5 U.S. Government Rights.**

The Capacity Service and Equipment and Software are provided to the U.S. Government as “commercial items,” “commercial computer software,” “commercial computer software documentation,” and “technical data” with the rights and restrictions set forth in the FAR 52.227-19 and any third party end user license agreements. The terms “commercial item,” “commercial computer software,” “commercial computer software documentation,” and “technical data” are defined in the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement.

#### **19.6 Import and Export Compliance.**

In connection with this Capacity Service Agreement, each party will comply with all applicable import, re-import, export, and re-export control laws and regulations, including the Export Administration Regulations, the International Traffic in Arms Regulations, and country-specific economic sanctions programs implemented by the Office of Foreign Assets Control.

#### **19.7 Notice.**

- (a) To the Government. The Contractor may provide any notice to the Government under this Agreement by:
1. facsimile transmission,
  2. by personal delivery, overnight courier or registered or certified mail to, or
  3. sending notice to the email address provided.

Notices the Contractor provides by email will be effective when the Contractor sends the email. It is the Government’s responsibility to keep its email address current. The Government will be deemed to have received any email sent to the email address then associated with the Government’s account when the Contractor sends the email, whether or not the Government actually receives the email.

- (b) To the Contractor. To give the Government notice under this Capacity Service Agreement, the Contractor must contact the Government as follows:
1. by facsimile transmission, or
  2. by personal delivery, overnight courier or registered or certified mail to. Notices provided by personal delivery will be effective immediately. Notices provided by facsimile transmission or overnight courier will be effective one business day after they are sent. Notices provided registered or certified mail will be effective three business days after they are sent.
- (c) Language. All communications and notices to be made or given pursuant to this Capacity Service Agreement must be in the English language.

#### **19.8 Assignment.**

The Government may not assign this Capacity Service Agreement, or delegate or sublicense any of the Government’s rights under this Capacity Service Agreement to any third party including any other United States Departments, Agencies or subsets thereof, without the Contractor’s prior written consent. Any assignment or transfer in violation of this Section 19.8 will be void. Subject to the foregoing, this Capacity

Service Agreement will be binding upon, and inure to the benefit of the parties and their respective successors and assigns.

**19.9 No Waivers.**

The failure by the Contractor to enforce any provision of this Capacity Service Agreement will not constitute a present or future waiver of such provision nor limit the Contractor's right to enforce such provision at a later time. All waivers by the Contractor must be in writing to be effective.

**19.10 Severability.**

If any portion of this Capacity Service Agreement is held to be invalid or unenforceable, the remaining portions of this Capacity Service Agreement will remain in full force and effect. Any invalid or unenforceable portions will be interpreted to effect and intent of the original portion. If such construction is not possible, the invalid or unenforceable portion will be severed from this Capacity Service Agreement but the rest of the Capacity Service Agreement will remain in full force and effect.

**19.11 Entire Agreement.**

This Capacity Service Agreement includes the entire agreement between the Government and the Contractor regarding the subject matter of this Capacity Service Agreement. This Capacity Service Agreement supersedes all prior or contemporaneous representations, understandings, agreements, or communications between the Government and the Contractor, whether written or verbal, regarding the subject matter of this Capacity Service Agreement. The Contractor will not be bound by, and specifically object to, any term, condition or other provision which is different from or in addition to the provisions of this Capacity Service Agreement (whether or not it would materially alter this Capacity Service Agreement) and which is submitted by the Government in any order, receipt, acceptance, confirmation, correspondence or other document unless signed by all parties hereto. If the terms of this document are inconsistent with the terms contained in any policy, agreement, order, addendum, or other memorialized agreement the terms contained in this document will control.

**USA COMMITMENT TO PROMOTE  
SMALL BUSINESS PARTICIPATION  
PROCUREMENT PROGRAMS**

PREAMBLE

(Name of Company) provides commercial products and services to ordering activities. We are committed to promoting participation of small, small disadvantaged and women-owned small businesses in our contracts. We pledge to provide opportunities to the small business community through reselling opportunities, mentor-protégé programs, joint ventures, teaming arrangements, and subcontracting.

COMMITMENT

To actively seek and partner with small businesses.

To identify, qualify, mentor and develop small, small disadvantaged and women-owned small businesses by purchasing from these businesses whenever practical.

To develop and promote company policy initiatives that demonstrate our support for awarding contracts and subcontracts to small business concerns.

To undertake significant efforts to determine the potential of small, small disadvantaged and women-owned small business to supply products and services to our company.

To insure procurement opportunities are designed to permit the maximum possible participation of small, small disadvantaged, and women-owned small businesses.

To attend business opportunity workshops, minority business enterprise seminars, trade fairs, procurement conferences, etc., to identify and increase small businesses with whom to partner.

To publicize in our marketing publications our interest in meeting small businesses that may be interested in subcontracting opportunities.

We signify our commitment to work in partnership with small, small disadvantaged and women-owned small businesses to promote and increase their participation in ordering activity contracts. To accelerate potential opportunities please contact Guy Speers at ESCgov, Inc., (703) 887-2057 (telephone), (240) 214-4841 (facsimile) [gspeers@escgov.com](mailto:gspeers@escgov.com) (e-mail).

**BEST VALUE  
BLANKET PURCHASE AGREEMENT  
FEDERAL SUPPLY SCHEDULE**

(Insert Customer Name)

In the spirit of the Federal Acquisition Streamlining Act (ordering activity) and (Contractor) enter into a cooperative agreement to further reduce the administrative costs of acquiring commercial items from the General Services Administration (GSA) Federal Supply Schedule Contract(s)\_\_\_\_\_.

Federal Supply Schedule contract BPAs eliminate contracting and open market costs such as: search for sources; the development of technical documents, solicitations and the evaluation of offers. Teaming Arrangements are permitted with Federal Supply Schedule Contractors in accordance with Federal Acquisition Regulation (FAR) 9.6.

This BPA will further decrease costs, reduce paperwork, and save time by eliminating the need for repetitive, individual purchases from the schedule contract. The end result is to create a purchasing mechanism for the ordering activity that works better and costs less.

Signatures

\_\_\_\_\_  
Ordering Activity                      Date

\_\_\_\_\_  
Contractor                                      Date

BPA NUMBER \_\_\_\_\_

(CUSTOMER NAME)  
BLANKET PURCHASE AGREEMENT

Pursuant to GSA Federal Supply Schedule Contract Number(s) \_\_\_\_\_, Blanket Purchase Agreements, the Contractor agrees to the following terms of a Blanket Purchase Agreement (BPA) EXCLUSIVELY WITH (ordering activity):

- (1) The following contract items can be ordered under this BPA. All orders placed against this BPA are subject to the terms and conditions of the contract, except as noted below:

MODEL NUMBER/PART NUMBER	*SPECIAL BPA DISCOUNT/PRICE
_____	_____
_____	_____
_____	_____

- (2) Delivery:

DESTINATION	DELIVERY SCHEDULES / DATES
_____	_____
_____	_____
_____	_____

- (3) The ordering activity estimates, but does not guarantee, that the volume of purchases through this agreement will be \_\_\_\_\_.

- (4) This BPA does not obligate any funds.

- (5) This BPA expires on \_\_\_\_\_ or at the end of the contract period, whichever is earlier.

- (6) The following office(s) is hereby authorized to place orders under this BPA:

OFFICE	POINT OF CONTACT
_____	_____
_____	_____
_____	_____

- (7) Orders will be placed against this BPA via Electronic Data Interchange (EDI), FAX, or paper.

- (8) Unless otherwise agreed to, all deliveries under this BPA must be accompanied by delivery tickets or sales slips that must contain the following information as a minimum:

- (a) Name of Contractor;
- (b) Contract Number;
- (c) BPA Number;
- (d) Model Number or National Stock Number (NSN);
- (e) Purchase Order Number;
- (f) Date of Purchase;

(g) Quantity, Unit Price, and Extension of Each Item (unit prices and extensions need not be shown when incompatible with the use of automated systems; provided, that the invoice is itemized to show the information); and

(h) Date of Shipment.

(9) The requirements of a proper invoice are specified in the Federal Supply Schedule contract. Invoices will be submitted to the address specified within the purchase order transmission issued against this BPA.

(10) The terms and conditions included in this BPA apply to all purchases made pursuant to it. In the event of an inconsistency between the provisions of this BPA and the Contractor's invoice, the provisions of this BPA will take precedence.



## **BASIC GUIDELINES FOR USING “CONTRACTOR TEAM ARRANGEMENTS”**

Federal Supply Schedule Contractors may use “Contractor Team Arrangements” (see FAR 9.6) to provide solutions when responding to a ordering activity requirements.

These Team Arrangements can be included under a Blanket Purchase Agreement (BPA). BPAs are permitted under all Federal Supply Schedule contracts.

Orders under a Team Arrangement are subject to terms and conditions or the Federal Supply Schedule Contract.

Participation in a Team Arrangement is limited to Federal Supply Schedule Contractors.

Customers should refer to FAR 9.6 for specific details on Team Arrangements.

Here is a general outline on how it works:

- The customer identifies their requirements.
  - Federal Supply Schedule Contractors may individually meet the customers needs, or-
- Federal Supply Schedule Contractors may individually submit a Schedules “Team Solution” to meet the customer’s requirement.
  - Customers make a best value selection.

**ATTACHMENT A – GSA PRICE LIST**

See GSA Advantage! For current prices.