



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

Contract Number
GS-35F-0382V

Period Covered by Contract
April 27, 2009 – April 26, 2014

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General Services Administration
Federal Acquisition Service

Pricelist and terms current as of Modification #3 (Administrative), dated October 12, 2011

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



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SPECIAL ITEM NUMBERS

SIN 132-33 - PERPETUAL SOFTWARE LICENSES

FSC CLASS 7030 - INFORMATION TECHNOLOGY SOFTWARE

Large Scale Computers

Application Software

Microcomputers

Application Software

SIN 132-34 - MAINTENANCE OF SOFTWARE

1. Software Maintenance as a Product

SIN 132-50 - TRAINING COURSES FOR INFORMATION TECHNOLOGY EQUIPMENT AND SOFTWARE (FPDS Code U012)

SIN 132-51 - INFORMATION TECHNOLOGY (IT) PROFESSIONAL SERVICES

FPDS Code D302 IT Systems Development Services

FPDS Code D306 IT Systems Analysis Services

FPDS Code D308 Programming Services

Note 1: 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.

Note 2: Offerors and Agencies are advised that the Group 70 – Information Technology Schedule is not to be used as a means to procure services which properly fall under the Brooks Act. These services include, but are not limited to, architectural, engineering, mapping, cartographic production, remote sensing, geographic information systems, and related services. FAR 36.6 distinguishes between mapping services of an A/E nature and mapping services which are not connected nor incidental to the traditionally accepted A/E Services.

Note 3: This solicitation is not intended to solicit for the reselling of IT Professional Services, except for the provision of implementation, maintenance, integration, or training services in direct support of a product. Under such circumstances the services must be performance by the publisher or manufacturer or one of their authorized agents.



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.FAS.gsa.gov). The catalogs/pricelists, GSA Advantage!™ and the Federal Acquisition Service Home Page (www.FAS.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:

Domestic delivery is delivery within the 48 contiguous states, Alaska, Hawaii, Puerto Rico, Washington, DC, and U.S. Territories. Domestic delivery also includes a port or consolidation point, within the aforementioned areas, for orders received from overseas activities.

Overseas delivery is delivery to points outside of the 48 contiguous states, Washington, DC, Alaska, Hawaii, Puerto Rico, and U.S. Territories.

Offerors are requested to check one of the following boxes:

- The Geographic Scope of Contract will be domestic and overseas delivery.
- The Geographic Scope of Contract will be overseas delivery only.
- The Geographic Scope of Contract will be domestic delivery only.

SIN 132-33: Delivery of software products is provided through download of electronic files. This delivery is free, immediate and available worldwide.

SIN 132-34: Software Maintenance is provided worldwide through phone, email, web sites, blogs, video conference, and other means.

SINs 132-50, 132-51: Professional services and trainings are delivered without exception to any location in North America. Delivery of services and trainings to other global locations is available, but subject to availability of professional resources, scheduling and travel considerations.

2. CONTRACTOR'S ORDERING ADDRESS AND PAYMENT INFORMATION:

TopQuadrant, Inc.
Eileen Daley, Business Operations Manager
330 John Carlyle Street, Suite 180
Alexandria, VA 22314-5760
Phone: 703-299-9330, Fax: 703-299-8330, edaley@topquadrant.com

Remittance Address and Contact Information

<same as Ordering Address and Contact Information>



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:

Phone: 703-299-9330; Fax: 703-299-8330

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: **111108747**
Block 30: Type of Contractor - **B, Other Small Business**

- A. Small Disadvantaged Business
- B. Other Small Business
- C. Large Business
- G. Other Nonprofit Organization
- L. Foreign Contractor

Block 31: Woman-Owned Small Business -**No**
Block 36: Contractor's Taxpayer Identification Number (TIN): **91-2163813**

4a. CAGE Code: **3FFM3**

4b. Contractor has registered with the Central Contractor Registration Database.

5. FOB DESTINATION

SIN 132-33: Delivery of software products is provided through download of electronic files. This delivery is free, immediate and available worldwide.

SIN 132-34: Software Maintenance is provided worldwide through phone, email, web sites, blogs, video conference, and other means.

SINs 132-50, 132-51: Professional services and trainings are delivered without exception to any location in North America. Delivery of services and trainings to other global locations is available, but subject to availability of professional resources, scheduling and travel considerations.

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) |
|---------------------|--|
| <u>132-33,</u> | <u>30</u> Days or less (for certain Server products if installation is required. Otherwise, expedited delivery of software products is provided through download of electronic files. This delivery is free, immediate and available worldwide |
| <u>132-34,</u> | <u>30</u> Days or less, when purchased with initial software purchase. Expedited delivery is 1-2 days to process order for purchase of renewal of support and maintenance. |



132-50,

30 Days or less, Expedited delivery is 14 days to allow for scheduling or resources (instructors) and training location.

132-51

30 Days or less As agreed upon between the contractor and the ordering activity; depends on the SOW and project constraints

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 - None
- d. Government Educational Institutions - None, 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 available within the scope of this contract.

10. Small Requirements: The minimum dollar value of orders to be issued is \$ 100

11. MAXIMUM ORDER (All dollar amounts are exclusive of any discount for prompt payment.)

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

Special Item Number 132-34 – Maintenance of Software

Special Item Number 132-51 - Information Technology (IT) Professional Services

12. ORDERING PROCEDURES FOR FEDERAL SUPPLY SCHEDULE CONTRACTS

Ordering activities shall use the ordering procedures of Federal Acquisition Regulation (FAR) 8.405 when placing an order or establishing a BPA for supplies or services. These procedures apply to all schedules.

- a. FAR 8.405-1 Ordering procedures for supplies, and services not requiring a statement of work.
- b. FAR 8.405-2 Ordering procedures for services requiring a statement of work.

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 Acquisition 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-FAS-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. Travel in performance of a task order will only be reimbursable to the extent authorized by the ordering agency. 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.
- (k) Overtime: For professional services, the labor rates in the Schedule should not vary by virtue of the Contractor having worked overtime. For services applicable to the Service Contract Act (as identified in the Schedule), the labor rates in the Schedule will vary as governed by labor laws (usually assessed a time and a half of the labor rate).

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.FAS.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. ODCs (Other Direct Costs) are not part of this contract and should be treated as open market purchases. Ordering Activities procuring open market items must follow FAR 8.402(f).

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:

NONE

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)

The use of BPAs under any schedule contract to fill repetitive needs for supplies or services is allowable. BPAs may be established with one or more schedule contractors. The number of BPAs to be established is within the discretion of the ordering activity establishing the BPA and should be based on a strategy that is expected to maximize the effectiveness of the BPA(s). Ordering activities shall follow FAR 8.405-3 when creating and implementing BPA(s).

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, Industrial Funding Fee and Sales Reporting, 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 receive less than the prevailing wage rates as determined by the Secretary of Labor. The requirements of the Davis-Bacon Act do not apply if the construction work is incidental to the furnishing of supplies, equipment, or services. For example, the requirements do not apply to simple installation or alteration of a public building or public work that is incidental to furnishing supplies or equipment under a supply contract. However, if the construction, alteration or repair is segregable and exceeds \$2,000, then the 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 132-8.

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: www.topquadrant.com/products/legal/section508compliance

The EIT standard can be found at: 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.

26. SOFTWARE INTEROPERABILITY.

Offerors are encouraged to identify within their software items any component interfaces that support open standard interoperability. An item's interface may be identified as interoperable on the basis of participation in a Government agency-sponsored program or in an independent organization program. Interfaces may be identified by reference to an interface registered in the component registry located at <http://www.core.gov>.

27. ADVANCE PAYMENTS

A payment under this contract to provide a service or deliver an article for the United States Government may not be more than the value of the service already provided or the article already delivered. Advance or pre-payment is not authorized or allowed under this contract. (31 U.S.C. 3324)



TERMS AND CONDITIONS APPLICABLE TO PERPETUAL SOFTWARE LICENSES (SPECIAL ITEM NUMBER 132-33) AND MAINTENANCE (SPECIAL ITEM NUMBER 132-34) OF GENERAL PURPOSE COMMERCIAL 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 Contractor's standard commercial guarantee/warranty as stated in the contract's commercial pricelist will apply to this contract.

(The following clauses are from APPENDIX III: TOPBRAID END USER LICENSE AGREEMENT (EULA) FOR GSA)

EULA-7. LIMITED WARRANTY. TopQuadrant warrants to Customer that the Software will perform substantially in accordance with the Documentation for a period of 90 days from the date of receipt. TopQuadrant's and its suppliers' entire liability and Customer's sole and exclusive remedy for breach of the above warranty shall be, at TopQuadrant's option, either (i) return of the price paid, if any, or (ii) repair or replacement of the nonconforming Software. TopQuadrant does not warrant that Customer will experience no down-time or data loss in connection with the Software, or that the operation of the Software will be uninterrupted or error free. Moreover, the above warranty shall not apply to (and TopQuadrant shall have no obligation with respect to): (1) any Software that has been modified or altered by any party other than TopQuadrant; (2) use of the Software with any equipment or software not recommended by TopQuadrant (see www.topquadrant.com/products/legal/supported-platforms.html) or approved in advance by TopQuadrant; (3) noncompliance with Documentation, improper operation, or mismanagement of the Software; or (4) electrical failures or surges, poor circuitry, or other accidents or causes not within the reasonable control of TopQuadrant.

EULA-8. DISCLAIMER OF OTHER WARRANTIES. OTHER THAN THE WARRANTY SET FORTH IN SECTION 7, TOPQUADRANT AND ITS SUPPLIERS MAKE NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, WHETHER BY STATUTE, COMMON LAW, CUSTOM, USAGE OR OTHERWISE, AS TO ANY MATTERS, INCLUDING THE PERFORMANCE OR RESULTS CUSTOMER MAY OBTAIN BY USING THE SOFTWARE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, TOPQUADRANT AND ITS SUPPLIERS DISCLAIM ALL OTHER WARRANTIES WITH REGARD TO THE SOFTWARE, WHETHER EXPRESS OR IMPLIED, SATISFACTORY QUALITY, INFORMATIONAL CONTENT OR ACCURACY, QUIET ENJOYMENT, TITLE AND NONINFRINGEMENT.

EULA-9. LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF A REMEDY FAILS ITS ESSENTIAL PURPOSE, IN NO EVENT SHALL TOPQUADRANT OR ITS SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, DIRECT OR INDIRECT DAMAGES WHATSOEVER (INCLUDING DAMAGES FOR LOST PROFITS, BUSINESS INTERRUPTION, LOSS OF INFORMATION, OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE, EVEN IF TOPQUADRANT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, TOPQUADRANT'S ENTIRE LIABILITY UNDER ANY PROVISION OF THE AGREEMENT OR THIS EULA SHALL BE LIMITED TO THE LESSER OF CUSTOMER'S ACTUAL DAMAGES OR THE AMOUNT ACTUALLY PAID BY CUSTOMER FOR THE SOFTWARE.



- 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 Contractor, without additional charge to the ordering activity, shall provide a hot line technical support number 650.265.1700 for the purpose of providing user assistance and guidance in the implementation of the software. The technical support number is available from 8:00am to 5:00pm Eastern Time

4. SOFTWARE MAINTENANCE

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

1. Software Maintenance as a Product

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.

2. Software Maintenance as a Service

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.

- 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.**

Note: Software licenses offered are all perpetual. Sections 5, 6 and 7 concerning term licenses are not applicable.

8. UTILIZATION LIMITATIONS - (132-32, 132-33, AND 132-34)

- 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 obtains 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.

9. SOFTWARE CONVERSIONS - (132-32 AND 132-33)

Full monetary credit will be allowed to the ordering activity when conversion from one version of the software to another is made as the result of a change in operating system, or from one computer system to another. Under a perpetual license (132-33), the purchase price of the new software shall be reduced by the amount that was paid to purchase the earlier version. Under a term license (132-32), conversion credits which accrued while the earlier version was under a term license shall carry forward and remain available as conversion credits which may be applied towards the perpetual license price of the new version.

10. DESCRIPTIONS AND EQUIPMENT COMPATIBILITY

All equipment compatibility or supported hardware functions applicable to the Contractor's products are set forth in the Contractor's published literature or manuals supplied with the Products. For all additional information concerning supported hardware or compatibility requirements the Government is advised to contact the Contractor.

- For descriptions, and flyers, and product data sheets that can be downloaded for all of TopQuadrant's TopBraid software products, please visit: http://www.topquadrant.com/products/TB_Suite.html.
- For a list of equipment on which the software can be used please visit: www.topquadrant.com/products/legal/supported-platforms.html.

Also, included shall be a brief, introductory explanation of the modules and documentation which are offered.

- For an introductory explanation of modules and documentation, please visit: <http://www.topquadrant.com/resources/documentation.html>, http://www.topquadrant.com/products/TB_Suite.html, http://www.topquadrant.com/resources/resources_overview.html, and <http://www.topquadrant.com/products/legal.html>



11. RIGHT-TO-COPY PRICING

Right-to-copy licenses are not available with this offering. Right to copy is limited solely for the purpose of system backup.

12. PRICING AND DESCRIPTIONS

See APPENDIX I: TOPQUADRANT PRODUCTS AND SERVICES PRICELIST, and APPENDIX II: DESCRIPTIVE INFORMATION – SOFTWARE AND TRAININGS OFFERED

13. EULA AND SUPPORT & MAINTENANCE AGREEMENT FOR GSA

In addition to the terms and conditions in this section related to PERPETUAL SOFTWARE LICENSES (SPECIAL ITEM NUMBER 132-33), the document “TopBraid End User License Agreement (EULA) for GSA” covers additional terms governing sales to government customers as agreed with GSA.

- A copy of the document is provided in Appendix III.
- A PDF version is available for download from a link on this page:
<http://www.topquadrant.com/products/legal.html>
and directly from <http://www.topquadrant.com/docs/legal/EULA.pdf>.

In addition to the terms and conditions in this section related to MAINTENANCE (SPECIAL ITEM NUMBER 132-34), the document “TopBraid Live Support And Maintenance (TSM) for GSA” covers additional terms governing sales to government customers as agreed with GSA.

- A copy of the document is provided in Appendix IV.
- A PDF version is available for download from a link on this page:
<http://www.topquadrant.com/products/legal.html>
and directly from http://www.topquadrant.com/docs/legal/TBL_tsm_GSA.pdf.



TERMS AND CONDITIONS APPLICABLE TO PURCHASE OF TRAINING COURSES FOR GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY EQUIPMENT AND SOFTWARE (SPECIAL ITEM NUMBER 132-50)

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, or the ordering activity price in effect at the time the training course is conducted, whichever is less.

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.
- f. For Online Training Courses, a copy of all training material must be available for electronic download by the students.

9. "NO CHARGE" TRAINING

Not offered.

10. PRICING AND DESCRIPTIONS

See APPENDIX I: TOPQUADRANT PRODUCTS AND SERVICES PRICELIST, and APPENDIX II: DESCRIPTIVE INFORMATION – SOFTWARE AND TRAININGS OFFERED



TERMS AND CONDITIONS APPLICABLE TO INFORMATION TECHNOLOGY (IT) PROFESSIONAL SERVICES (SPECIAL ITEM NUMBER 132-51)

1. SCOPE

- a. The prices, terms and conditions stated under Special Item Number 132-51 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

In accordance with FAR 52.212-4 CONTRACT TERMS AND CONDITIONS--COMMERCIAL ITEMS (MAR 2009) (DEVIATION I - FEB 2007) for Firm-Fixed Price orders and FAR 52.212-4 CONTRACT TERMS AND CONDITIONS -COMMERCIAL ITEMS (MAR 2009) (ALTERNATE I - OCT 2008) (DEVIATION I – FEB 2007) applies to Time-and-Materials and Labor-Hour Contracts 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 (Dec 2007) 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 52.212-4 (MAR 2009) (ALTERNATE I – OCT 2008) (DEVIATION I – FEB 2007) 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 52.212-4 (MAR 2009) (ALTERNATE I – OCT 2008) (DEVIATION I – FEB 2007) applies to labor-hour orders placed under this contract. 52.216-31(Feb 2007) Time-and-Materials/Labor-Hour Proposal Requirements—Commercial Item Acquisition. As prescribed in 16.601(e)(3), insert the following provision:

(a) The Government contemplates award of a Time-and-Materials or Labor-Hour type of contract resulting from this solicitation.

(b) The offeror must specify fixed hourly rates in its offer that include wages, overhead, general and administrative expenses, and profit. The offeror must specify whether the fixed hourly rate for each labor category applies to labor performed by—

- (1) The offeror;
- (2) Subcontractors; and/or
- (3) Divisions, subsidiaries, or affiliates of the offeror under a common control.

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/EC SERVICES AND PRICING

a. The Contractor shall provide a description of each type of IT Service offered under Special Item Number 132-51. 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.

See listing below and APPENDIX II: DESCRIPTIVE INFORMATION – SOFTWARE AND TRAININGS OFFERED



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.

See APPENDIX I: TOPQUADRANT PRODUCTS AND SERVICES PRICELIST

The following is a listing of topquadrant's listing of commercial job titles:

Principal Consultant

General Experience: Fifteen (15) years progressive Information Technology (IT) experience including at least six projects in the area of information management and application of semantic web solutions. At least two projects must have occurred within the past three (3) years.

Specialized Experience: Eight (8) years in supervision of substantial IT projects. Very strong communication, presentation and facilitation skills, conflict and change management experience drawing from a wide variety of methods such as creativity techniques, story-telling, scenario development, process knowledge, systems thinking. Five (5) years experience with technology business planning, IT strategy development, customer relations, technology transfer and deployment strategies must have occurred in the last ten (10) years. Broad business capability and domain knowledge in areas such as Government, Finance, Manufacturing and Aerospace. Extensive experience with business strategy / modeling methods and software engineering modeling and development methods.

Functional Responsibility: Engagement leadership, leading Solution Envisioning Workshops, facilitating stakeholder interactions and conflict management, development of a solution concept, business case and roadmaps for implementation and adoption. Ensures problem resolution and customer satisfaction for individual delivery orders; provides supervisory, technical, and administrative direction for personnel performing on a TO. Interfaces with Government management personnel. Reports in writing and orally to Contractor management and Government representatives, including the Government CO and COR.

Minimum Education: Master's degree

Semantic Technology Expert

General Experience: Twelve (12) years progressive Information Technology (IT) experience including at least four projects in semantic web technology and at least three projects using other knowledge technologies such as rules, case-based reasoning and expert systems. At least two projects must have occurred within the past three (3) years.

Specialized Experience: Eight (8) years experience in lead roles (knowledge solution architect/designer) on IT knowledge system projects. Five (5) years experience with supervision of knowledge system projects, technology business planning, customer relations, technology transfer and deployment strategies must have occurred in the last ten (10) years. Strong skills in knowledge-based system architecture, requirements analysis, knowledge acquisition, user interface design, enterprise integration, and project management. In depth knowledge of semantic web standards - RDFS, OWL and SWRL. Able to support Solution Envisioning engagements with extensive knowledge and experience in the evaluation, selection and design of available technology options for supporting corresponding business capabilities and solutions.

Functional Responsibility: Semantic systems architect of advisory, transactional and operational information systems for business and government. These are intelligent, interactive information systems created as innovative solutions to a wide range of application demands in finance, e-commerce, transportation, maintenance and repair, training, and command and control. Can guide information management strategies, technology comparisons, formal requirements determinations, system descriptions, development and integration approaches, and detailed implementation planning. Serves as a senior subject matter technical expert on semantic technologies, standards and tools. Interfaces with Government management personnel.

Minimum Education: Masters degree

Knowledge Engineer/Ontology Modeler

General Experience: Nine (9) years of progressive Information Technology (IT) experience including at least five projects in knowledge modeling or semantic technology areas. At least two projects must have occurred within the past (3) years.



Specialized Experience: Five (5) years experience in lead design/modeling roles on substantial knowledge modeling or semantic technology projects. One (1) year of this experience must have been in supervising large knowledge modeling or semantic technology based engagements, including people of various job categories and skills and must have occurred in the last five (5) years. Well versed in emerging semantic technologies, artificial intelligence technologies and modeling methods. Ready to provide consulting support to assess enterprise problems and the suitability of knowledge-based solutions.

Functional Responsibility: Provides technical and administrative direction for tasks on semantic technology based projects, including review of work products for correctness, compliance with industry accepted standards, FTS standards, and user standards specified in specific TOs. Provide guidance to the technical staff on knowledge modeling and application of semantic technologies.

Minimum Education: Master's degree

Semantic Solutions Developer I

General Experience: Five (5) years progressive Information Technology (IT) experience including at least three projects in knowledge modeling or semantic technology areas. At least two projects must have occurred within the past three (3) years. University term and thesis projects can count toward this number.

Specialized Experience: Four (4) years of knowledge and/or semantic modeling experience including at least two projects in semantic technology areas. Proficiency with semantic modeling tools and standards such as RDF(S) and OWL is required. At least two projects must have occurred within the past three (3) years. University term and thesis projects can count toward this number.

Functional Responsibility: Supports a knowledge engineer/ontology modeler with both technical and administrative tasks related to the project with direct responsibility for assuring the correctness of a semantic / knowledge models.

Minimum Education: Master's degree

Semantic Solutions Developer II

General Experience: Three (3) years progressive Information Technology (IT) experience including at least two projects in knowledge modeling or semantic technology areas. At least one project must have occurred within the past three (3) years. University term and thesis projects can count toward this number.

Specialized Experience: Two (2) years of knowledge and/or semantic modeling experience including at least two projects in semantic technology areas. Working experience with semantic modeling tools and standards such as RDF(S) and OWL is required. At least one project must have occurred within the past three (3) years. University term and thesis projects can count toward this number.

Functional Responsibility: Supports a knowledge engineer/ontology modeler with both technical and administrative tasks related to the project with direct responsibility for assuring the correctness of a semantic / knowledge models.

Minimum Education: Bachelor's degree



USA COMMITMENT TO PROMOTE SMALL BUSINESS PARTICIPATION PROCUREMENT PROGRAMS

PREAMBLE

TopQuadrant 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



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.



APPENDIX I: TOPQUADRANT PRODUCTS AND SERVICES PRICELIST

The Industrial Funding Fee of .75% has been added to these prices.¹

SIN: 132-33 Perpetual Software License

TopBraid Software Products

A. TopBraid Composer (standard edition) Release 2.6.2 and above (TBC)

Prices includes 1 year of TopBraid Support and Maintenance

| Quantity | Price |
|----------|------------|
| 1 | \$ 1463.00 |
| 5 | \$ 1374.00 |
| 10 | \$ 1308.00 |
| 20 | \$ 1219.00 |

B. TopBraid Composer - Maestro Edition Release 2.6.2 and above (TBC-ME)

Prices includes 1 year of TopBraid Support and Maintenance

| Quantity | Price |
|----------|------------|
| 1 | \$ 2660.00 |
| 5 | \$ 2527.00 |
| 10 | \$ 2349.00 |
| 20 | \$ 2217.00 |

C. Upgrade from TopBraid Composer to TopBraid Composer Maestro Edition

Release 2.6.2 and above (TBC-ME)

- \$1197/license, for any quantity.

¹ Prices reflect final price negotiated with GSA based on GSA discount from commercial sales prices + IFF of .75%



C. TopBraid Live Release 3.x

Developer License:

- **\$20,150.00/license.**

Per User Level License Pricing

Production License:

Up to 50 users:

- **\$36,270/license.**

From 51 to 100 users:

- **\$64,480/license.**

From 101 to 200 users:

- **\$100,750/license.**

From 201 to 500 users:

- **\$141,050/license.**

User Level Upgrade Packs for Production Licenses:

(Note: To be eligible for an upgrade, Support & Maintenance must be in effect for the license to be upgraded. Applicable support and maintenance cost must be added to each upgrade price; see SIN: 132-34 Software Maintenance for the applicable pricing.

Upgrade from 50 to up to 100 users:

- **\$36,270 / 1 time upgrade / per license**

Upgrade from 100 to up to 200 users:

- **\$44,330 / 1 time upgrade / per license**

Upgrade from 200 to up to 500 users:

- **\$48,360 / 1 time upgrade / per license**

Per Processor Level License Pricing

Production License:

1 Processor:

- **\$40,300/license**

2 Processors:

- **\$60,450/license**



4 Processors:

- **\$100,750/license**

8 Processors:

- **\$141,050/license**

Processor Level Upgrade Packs for Production Licenses:

(Note: To be eligible for an upgrade, Support & Maintenance must be in effect for the license to be upgraded. Applicable support and maintenance cost must be added to each upgrade price; see SIN: 132-34 Software Maintenance for the applicable pricing.)

Upgrade from 1 to 2 Processors:

- **\$28,210 / 1 time upgrade / per license**

Upgrade from 2 to 4 Processors:

- **\$48,360 / 1 time upgrade / per license**

Upgrade from 4 to 8 Processors:

- **\$48,360 / 1 time upgrade / per license**

D. TopBraid Ensemble Release 3.0

- **Distributed for free with purchase of TBC-ME or TBL**



SIN: 132-34 Software Maintenance

TopBraid Software Support & Maintenance (TSM)

Initial Cost / Renewal Cost (Currently, initial cost and renewal cost are the same)

| TopBraid Product | Initial Cost | Renewal Cost |
|---|---|--|
| TopBraid Composer | \$230/year | \$230/year |
| TopBraid Composer Maestro Edition | \$418/year | \$418/year |
| TopBraid Live | Developer License: \$3627/year | Developer License: \$3627/year |
| TopBraid Live (per User Level licenses) | Production License: <ul style="list-style-type: none"> Up to 50 users: \$6,529 From 51 - 100 users: \$11,606 From 101 - 200 users: \$18,135 From 201 - 500 users: \$25,389 | Production License: <ul style="list-style-type: none"> Up to 50 users: \$6,529 From 51 - 100 users: \$11,606 From 101 - 200 users: \$18,135 From 201 - 500 users: \$25,389 |
| TopBraid Live Upgrade Packs (per User Level licenses) | <p>Price of TSM with any upgrade is the same as the price of TSM for the equivalent license level if purchased directly without upgrades.</p> <p>For example, cost of TSM for a production license upgraded to up to 100 users from original license for up to 50 users is equivalent to the cost of TSM for a production license for from 51 – 100 users, or \$11,606.</p> <p>At time of purchase, the value of each remaining whole month of the current TSM period will be credited (at 1/12th the cost of the TSM) toward the price of the new TSM period. TSM period for the upgraded license begins on the date of purchase of the upgrade.</p> | |
| TopBraid Live (per Processor licenses) | Production License: <ul style="list-style-type: none"> 1 Processor: \$7,254 2 Processors: \$10,881 4 Processors: \$18,135 8 Processors: \$25,389 | Production License: <ul style="list-style-type: none"> 1 Processor: \$7,254 2 Processors: \$10,881 4 Processors: \$18,135 8 Processors: \$25,389 |
| TopBraid Live Upgrade Packs (per Processor licenses) | <p>Price of TSM with any upgrade is the same as the price of TSM for the equivalent license level if purchased directly without upgrades.</p> <p>For example, cost of TSM for a production license upgraded to up to 4 processors from original license for 2 processors is equivalent to the cost of TSM for a production license for 4 processors, or \$18,135.</p> <p>At time of purchase, the value of each remaining whole month of the current TSM period will be credited (at 1/12th the cost of the TSM) toward the price of the new TSM period. TSM period for the upgraded license begins on the date of purchase of the upgrade.</p> | |
| TopBraid Ensemble | (free with purchase of TBL) | (free with purchase of TBL) |



Descriptions of Support & Maintenance Provided

Client Products (TopBraid Composer and TopBraid Composer Maestro Edition)

The Support & Maintenance Package is available in a one year annually renewable plan. The cost of the initial year of TSM for each license purchase is included in the purchase price. The support period begins on the day you purchase the product license and extends for a period of exactly 12 months. You may only purchase TSM at the time you purchase a product license or when you renew an existing TSM for an additional one year period.

Services included

Priority Technical Support is provided via email at composersupport@topquadrant.com. TopQuadrant will respond within 1 business day, US business hours (MO-FR, 8am PST – 6pm PST, US holidays excluded). Technical support only covers issues or questions resulting directly from the operation of the software. If TopQuadrant determines that a reported reproducible material error in the software exists and significantly impairs the usability and utility of the software, TopQuadrant agrees to use reasonable commercial efforts to correct or provide a usable work-around solution in an upcoming maintenance release or update, which is made available at certain times at TopQuadrant's sole discretion.

Users may also want to join the TopBraid Composer Users' forum mailing list for access to answers to commonly asked questions, discussions, suggestions of new features, and so on. To subscribe, please go to <http://www.topquadrant.com/products/support.html>.

You will receive free all maintenance releases and major software versions that are released during your Support Period.

Server Products (TopBraid Live)

See governing agreement, Appendix IV: "TopBraid Live Support and Maintenance Agreement for GSA".



SIN: 132-50 Classroom Training

A. Getting Ready for the Semantic Web with TopBraid Suite

Public Trainings:

- **\$1447/seat** (for one student attending a class)
- **\$1390/seat** (for two or more students attending the same class)

B. TopBraid Suite Advanced Product Trainings

Public Trainings:

- **4-day training, \$1366/seat**
- **3-day training, \$1044/seat**



SIN: 132-51 Information Technology Services

TopQuadrant Professional Services

2009 GSA Sch70 Rate Schedule

| Role / Resource Type | Government Direct Rates |
|---------------------------------------|--------------------------------|
| Principal Consultant | \$242 |
| Semantic Technologies Expert | \$212 |
| Knowledge Engineer / Ontology Modeler | \$171 |
| Semantic Solutions Developer I | \$141 |
| Semantic Solutions Developer II | \$121 |



APPENDIX II: DESCRIPTIVE INFORMATION – SOFTWARE AND TRAININGS OFFERED

Software:

For descriptions, and flyers, and product data sheets that can be downloaded for all of TopQuadrant's TopBraid software products, please visit:
http://www.topquadrant.com/products/TB_Suite.html

Trainings:

For descriptions and flyers that can be downloaded for all of TopQuadrant's trainings, please visit:
http://www.topquadrant.com/training/training_overview.html.

Company and Overview of Professional Services:

Descriptive literature for TopQuadrant Company and overview of offerings including Professional Services can be downloaded at: http://www.topquadrant.com/company/company_overview.html.



APPENDIX III: TOPBRAID END USER LICENSE AGREEMENT (EULA) FOR GSA

(NOTE: A PDF version of the following document is available for download from a link on this page:
<http://www.topquadrant.com/products/legal.html>
and directly from <http://www.topquadrant.com/docs/legal/EULA.pdf>.)

TOPBRAID END USER LICENSE AGREEMENT (EULA)

1. GRANT OF LICENSE.

TopQuadrant grants Customer a non-exclusive, non-transferable (except as provided in Section 16), limited license to use the Software. The license is an object code license, except that TopQuadrant may provide to Customer certain limited portions of the source code for the sole purpose of allowing Customer to prepare certain customizations to the Software using the source code (such source code, the "Licensed Source Code").

2. RESTRICTIONS.

- a. Installation; Users. If the Software is designated by TopQuadrant as a "client-side product," then Customer may install and use the Software on a maximum of two computers; provided, however, that (i) one computer is Customer's primary computer (e.g., an office computer) and one computer is Customer's secondary computer (e.g., a laptop or home computer) and (ii) the Software is not simultaneously used on both computers. If the Software is designated by TopQuadrant as a "server-side product," then the Software may be used by the number of users set forth in the Order Documents (as defined in Section 17(g)). If the Software is used pursuant to a development license, then the Software may be used only for development and testing (and not in a production environment).
- b. Reverse Engineering. Customer shall not, nor shall it permit others to, reverse engineer, decompile, disassemble or otherwise attempt to discover the source code (other than the Licensed Source Code), underlying ideas, underlying user interface techniques or algorithms of the Software by any means whatsoever, directly or indirectly, or disclose any of the foregoing, except to the extent Customer may be expressly permitted to decompile under applicable law in the European Union, if it is essential to do so in order to achieve operability of the Software with another software program, and Customer has first requested TopQuadrant to provide the information necessary to achieve such operability and TopQuadrant has not made the information available. TopQuadrant has the right to impose reasonable conditions and to request a reasonable fee before providing the information.
- c. Other Restrictions. Customer may not loan, rent, lease, sublicense, distribute, transfer, assign, or otherwise convey or provide access to all or any portion or any derivative works of the Software to any third party (including any affiliate or any outsourced service provider) except to the limited extent set forth in Section 16. Customer may not copy the Software in any manner except as set forth in Section 3. Customer may not create Modifications (as defined in Section 5) to the Software, except for Modifications made to Licensed Source Code to enable the preparation of customizations or to develop plug-ins ("Permitted Modifications"). Customer may not, directly or indirectly, (i) encumber or suffer to exist any lien or security interest on its license rights in the Software, or (ii) use the Software in any computer environment not specified in the Agreement, in any unintended or unapproved manner, or in any manner that violates applicable laws or regulations, including U.S. and foreign export control laws and regulations. The Software and Documentation were privately developed and are licensed to U.S. government end users only as commercial items. Use, duplication or disclosure by the U.S. Government or a U.S. Government contractor or subcontractor is subject to the restrictions set forth in this EULA and as provided in FAR 12.211 and 12.212 (48 C.F.R. §12.211 and 12.212) or DFARS 227. 7202 (48 C.F.R. §227-7202) as applicable.

3. COPIES.

Customer may make one archival copy of the Software, provided Customer's archival copy is not installed or used on any computer and further provided that the copy shall bear the original and unmodified copyright, patent and other intellectual property markings that appear on or in the Software. Customer may not transfer the rights to an archival copy unless Customer transfers all rights in the Software as provided under Section 16.

4. KEY CODES AND UPGRADES.

The Software can only be used after acquisition by Customer of a key code that will enable Customer to activate the Software. Customer may not re-license, reproduce or distribute any key code except with the express advance written



permission of TopQuadrant. Upon receipt of a Software upgrade, Customer may receive a new key code to activate the upgraded version. TopQuadrant's provision of a new key code does not constitute the granting of a second license to the Software, in that Customer may not use the upgraded version in addition to the prior version of the Software that is being replaced. Customer's use of the upgraded version terminates its license to use the prior version of the Software.

5. OWNERSHIP OF INTELLECTUAL PROPERTY.

- a. Ownership. TopQuadrant and its suppliers retain all right, title and interest in and to the Software, the Documentation, any images, photographs, animation, videos, audio, music, text and "applets" incorporated into the Software, and all copies thereof, as well as to all modifications to the Software, whether created by Supplier or any other person or entity, including all corrections, revisions, bug fixes, workarounds, translations, adaptations, derivative works, customizations, configurations, updates, upgrades, new releases, new versions, improvements, and enhancements thereof ("Modifications"), and all copyrights, trade secrets, patent rights, trademarks, service marks, trade dress, and any other intellectual property rights embodied therein or associated therewith (together, "TopQuadrant Rights"). Notwithstanding the foregoing, all models and other work product created by Customer using the Software, and all plug-ins developed by the Customer, shall be owned by Customer.
- b. Reservation. All rights not specifically granted to Customer in this EULA are reserved by TopQuadrant. Customer will take all reasonable measures to protect, and will not take any action which could prejudice or impair TopQuadrant's rights in, and will not challenge or contest the validity of, or TopQuadrant's complete and exclusive ownership of, the TopQuadrant Rights.

6. PAYMENT.

All license fees applicable to the Software will be invoiced and paid pursuant to the terms of the Agreement. Any consulting, development, installation, integration, training, support, or other professional services provided to Customer will be charged at TopQuadrant's then-prevailing hourly rates, plus reimbursement of reasonable expenses, and invoiced in arrears on a monthly basis. Payment shall be due within 30 days after the date of the invoice. .

7. LIMITED WARRANTY.

TopQuadrant warrants to Customer that the Software will perform substantially in accordance with the Documentation for a period of 90 days from the date of receipt. TopQuadrant's and its suppliers' entire liability and Customer's sole and exclusive remedy for breach of the above warranty shall be, at TopQuadrant's option, either (i) return of the price paid, if any, or (ii) repair or replacement of the nonconforming Software. TopQuadrant does not warrant that Customer will experience no down-time or data loss in connection with the Software, that the operation of the Software will be uninterrupted or error free, or that all Software errors will be corrected. Moreover, the above warranty shall not apply to (and TopQuadrant shall have no obligation with respect to): (1) any Software that has been modified or altered by any party other than TopQuadrant; (2) use of the Software with any equipment or software not recommended by TopQuadrant (see http://www.topquadrant.com/docs/legal/supported_platforms.pdf) or approved in advance by TopQuadrant; (3) noncompliance with Documentation, improper operation, or mismanagement of the Software; or (4) electrical failures or surges, poor circuitry, or other accidents or causes not within the reasonable control of TopQuadrant.

8. DISCLAIMER OF OTHER WARRANTIES.

OTHER THAN THE WARRANTY SET FORTH IN SECTION 7, TOPQUADRANT AND ITS SUPPLIERS MAKE NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, WHETHER BY STATUTE, COMMON LAW, CUSTOM, USAGE OR OTHERWISE, AS TO ANY MATTERS, INCLUDING THE PERFORMANCE OR RESULTS CUSTOMER MAY OBTAIN BY USING THE SOFTWARE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, TOPQUADRANT AND ITS SUPPLIERS DISCLAIM ALL OTHER WARRANTIES WITH REGARD TO THE SOFTWARE, WHETHER EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, INFORMATIONAL CONTENT OR ACCURACY, QUIET ENJOYMENT, TITLE AND NONINFRINGEMENT.

9. LIMITATION OF LIABILITY.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF A REMEDY FAILS ITS ESSENTIAL PURPOSE, IN NO EVENT SHALL TOPQUADRANT OR ITS SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING DAMAGES FOR LOST PROFITS, BUSINESS INTERRUPTION, LOSS OF INFORMATION, OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE, EVEN IF TOPQUADRANT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, TOPQUADRANT'S ENTIRE LIABILITY UNDER ANY PROVISION OF THE AGREEMENT OR THIS EULA SHALL BE LIMITED TO THE LESSER OF CUSTOMER'S ACTUAL DAMAGES OR THE AMOUNT ACTUALLY PAID BY CUSTOMER FOR THE SOFTWARE.

10. THIRD-PARTY AND OPEN SOURCE PROGRAMS.

One or more third-party proprietary or open source programs or services may be embodied in, bundled with, or otherwise provided by TopQuadrant to Customer in connection with the Software. If third-party proprietary programs are acquired by Customer from TopQuadrant for a separate fee from the license fees applicable to the Software, the third-party license terms applicable to that third-party program shall be applicable to Customer's use thereof and TopQuadrant shall, as its sole liability in connection therewith, reasonably cooperate with Customer in communicating with that third-party vendor regarding warranty or other issues. Further, although a third-party program or service may be embedded in the Software, in certain cases TopQuadrant may require Customer to obtain its own copy of such program or its own account or subscription for such service, to continue use of the Software. Customer acknowledges that open source programs are distributed under the terms of the open source license applicable to each such program, and only such license, with no additional license conditions. Where required by the applicable license, the source code for each open source program distributed by TopQuadrant can be accessed by Customer via TopQuadrant's website. Any rights associated with any open source program apply to that program only and not to any other programs owned by TopQuadrant or its licensors even if distributed together with the open source program.

11. PRIVACY MATTERS.

TopQuadrant's Privacy Policy is incorporated into this EULA and is available for download at <http://www.topquadrant.com/docs/legal/privacy.pdf>. By Customer's acceptance of the terms of this EULA or use of the Software, Customer authorizes the collection, use and disclosure of information collected by TopQuadrant for the purposes provided for in this EULA and/or the Privacy Policy as revised from time to time. European users understand and consent to the processing of personal information in the United States for the purposes described herein. TopQuadrant has the right in its sole discretion to amend its Privacy Policy at any time.

12. TERM AND TERMINATION.

The Agreement (including this EULA) may be terminated (a) by Customer's giving TopQuadrant written notice of termination or (b) by TopQuadrant's giving Customer written notice of termination if Customer commits a breach of the Agreement and fails to cure the breach within ten days after notice from TopQuadrant. Upon termination, Customer must cease all use of the Software, destroy all copies then in Customer's possession or control and take any other actions as TopQuadrant may reasonably request to ensure that no copies of the Software remain in Customer's possession or control. The terms and conditions set forth in Sections 2, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, and 17 shall survive termination as applicable.

13. SUPPORT AND MAINTENANCE.

Subject to timely payment by Customer of the applicable maintenance and support fees under the Agreement or any applicable Maintenance and Support Agreement, TopQuadrant shall provide maintenance and support services in accordance with its standard maintenance and support terms for such services. For Client Products, such as TopBraid Composer, TopQuadrant's standard support terms are as set forth at http://www.topquadrant.com/docs/legal/supported_platforms.pdf. For all Server Products, TopQuadrant's standard support terms are set forth in its standard Maintenance and Support Agreement to be entered into between TopQuadrant and Customer at initiation of the license. TopQuadrant reserves the right to change the nature and scope of its standard maintenance and support services upon reasonable notice to Customer.

14. INDEMNIFICATION.

- a. TopQuadrant shall indemnify Customer against any claims by a third party not affiliated with Customer that the Software infringes such party's registered or issued U.S. patents or copyrights, or misappropriates its trade secrets, and shall pay the amount of any resulting adverse final judgment or settlement to which TopQuadrant consents. TopQuadrant acknowledges that pursuant to federal law, the Department of Justice has been granted exclusive authority to defend claims brought against Customer. Customer acknowledges that TopQuadrant shall be allowed to participate in the defense and settlement of the claims to the extent permitted by federal law. In the event of infringement or misappropriation, TopQuadrant may replace, in whole or in part, the Software with a substantially compatible and comparable product, modify the Software to avoid the infringement or misappropriation, or procure for Customer the right to continue using the Software. TopQuadrant will have no liability under this Section arising from or relating to: (i) use of the Software after TopQuadrant has notified Customer to discontinue its use due to an infringement or misappropriation claim; (ii) the combination, operation, or use of the Software with technology or other materials not supplied by TopQuadrant, if the claim would have been avoided by use of other technology or other materials; or (iii) alteration of the Software or use of a version of the Software that has been superseded by a newer version, if the infringement would have been avoided by use of a current unaltered version which TopQuadrant has provided or made available to Customer.

15. CONFIDENTIALITY.

- a. General Obligations. For a period of three years following disclosure or exposure (or, in the case of trade secrets as defined under applicable law, for so long beyond the three-year period as the information continues to be a trade secret as so defined), Customer shall maintain confidentiality with respect to, and refrain from using other than as provided in the Agreement, any proprietary, confidential, or trade secret information of TopQuadrant acquired by Customer, including the design, functionality, structure, organization, code, and operation of, and pricing for, the Software, and proprietary information contained in the Software or Documentation. Customer shall use confidentiality agreements and other similar measures with, and to be fully responsible for, any parties who obtain any TopQuadrant confidential information through Customer, including any of Customer's employees, former employees, contractors, and former contractors.
- b. Obligations Relating to Licensed Source Code. In addition to the reasonable efforts that at all times Customer must make to maintain confidentiality with respect to all of TopQuadrant's proprietary, confidential, and trade secret information, the following specific procedures must be utilized in the protection of any portions of the Licensed Source Code: (i) Customer shall ensure that all access to the Licensed Source Code is password protected and that the passwords conform to the reasonable requirements of TopQuadrant, including requirements regarding the format of passwords and the frequency with which the passwords must be changed. (ii) Customer shall not provide any access to the Licensed Source Code to contractors or other outside parties without TopQuadrant's prior written authorization. (iii) Customer shall ensure that all copies of Licensed Source Code are identified by number or other manner such that each copy may be reasonably monitored, tracked and secured by Customer or TopQuadrant.

16. GENERAL PROVISIONS.

- a. Force Majeure. If TopQuadrant is delayed in or prevented from performing any obligation under the Agreement due to causes or events beyond its control, including any act of God, fire, riot, legal action, hardware/equipment breakdown or failure, non-TopQuadrant software failure, present or future law, governmental order, rule or regulation, such delay or nonperformance shall be excused and the time for performance shall be extended or rescheduled on mutually agreeable terms.
- b. Audit Rights. TopQuadrant may request that the Customer conduct an annual audit of Customer's usage of the Software and compliance with this EULA. Customer shall provide TopQuadrant all reasonable access in connection with the audit, including access to its systems, premises, and employees. The results of the audit shall be promptly provided to TopQuadrant. Audits shall be conducted so as to minimize interference with Customer's use of the Software and its normal business operations.
- c. Compliance. Customer shall notify Customer's employees who may have access to the Software of the restrictions contained in this EULA and ensure their compliance with these restrictions. Customer agrees to bear full responsibility for the actions of its employees or other parties who obtain access to the Software through Customer.
- d. Notices. Any notice or other communication given under the Agreement shall be in writing and shall have been properly given by either party to the other if sent by certified or registered mail, return receipt requested, or by overnight courier to the address shown on TopQuadrant's website for TopQuadrant and the address shown in TopQuadrant's records for Customer, or such other address as the parties may designate by notice given in the manner set forth above.
- e. Interpretation. All Section numbers in this EULA refer to Sections of this EULA, unless otherwise specifically stated. Any of the terms defined in this Agreement may be used in the singular or the plural. In this Agreement, unless otherwise specifically stated, "hereof," "herein," "hereto," "hereunder" and the like mean and refer to this EULA as a whole and not merely to the specific section, paragraph or clause in which the word appears; "including" means including without limitation; and words importing any gender include the neuter and the other genders. The title of this EULA and the headings of the Sections of this EULA are for reference purposes only and shall not be used in construing or interpreting this EULA.
- f. Entire Agreement; Amendment; Etc. As used in this EULA, the term "Agreement" means (i) this EULA, (ii) GSA Schedule Contract, TopQuadrant's support and maintenance agreement, or any other document or documents agreed in writing by TopQuadrant and evidencing TopQuadrant's and Customer's agreement regarding the TopQuadrant software products to be licensed to Customer, the license fees, the number of licensed users (in the case of server-side products), and any other products or services to be provided by TopQuadrant (the "Order Documents"), (iii) any documents or agreements referenced in this EULA, and (iv) any amendments to any of the foregoing. The Agreement contains the entire agreement and understanding of the parties with respect to the matters addressed in the Agreement, and supersedes all prior written and oral understandings of the parties with respect to those matters. The Agreement may be amended only by a

document in writing signed by both parties. If, for any reason, any provision of the Agreement is held invalid or otherwise unenforceable, such invalidity or unenforceability shall not affect the remainder of the Agreement, and the Agreement shall continue in full force and effect to the fullest extent allowed by law. The failure of either party at any time to require performance of any provision hereof shall in no manner affect such party's right at a later time to enforce the same or any other term of the Agreement.

17. PRE-RELEASE AND EVALUATION SOFTWARE.

- a. Application. If Customer is licensing from TopQuadrant a pre-commercial release or beta version of Software (“Pre-release Software”), or is using the Software on an evaluation or demonstration basis (“Evaluation Software”), then the terms of this Section 18 shall apply. If any provision of this Section 18 conflicts with any other term or condition in this EULA, this Section 18 shall supersede and control over such other term with respect to Pre-release and/or Evaluation Software, but only to the extent necessary to resolve the conflict. Notwithstanding the foregoing, if Customer has been provided Pre-release Software or Evaluation Software pursuant to a separate written agreement, Customer's use of the Software is governed by that agreement.
- b. Pre-release Software. The Pre-release Software is a pre-release version and may contain bugs, errors and other problems that could cause system or other failures and data loss. The Pre-release Software does not represent a final product, and a final product that is the same as, similar to, or compatible with, the Pre-release Software may not be introduced or made available in the future. Any research or development that Customer performs regarding the Pre-release Software or any product associated with the Pre-release Software is done entirely at Customer's own risk. During the term of Customer's use of the Pre-release Software, Customer will, upon request by TopQuadrant, provide feedback to TopQuadrant regarding testing and use of the Pre-release Software, including error or bug reports. Customer shall not be entitled to use Pre-release Software in live, production environments. All use shall be strictly for non-commercial, internal, non-production purposes.
- c. Evaluation Software. If the Evaluation Software has a time-out feature, then the Software will cease operation at the conclusion of the designated evaluation period. Upon the expiration date, Customer's license will expire unless otherwise extended. Access to any files created with the Evaluation Software is entirely at Customer's risk. Customer shall not be entitled to use Evaluation Software in live, production environments. All use shall be strictly for non-commercial, internal, non-production purposes.
- d. Disclaimer of Warranties; Limitation of Liability. PRE-RELEASE AND/OR EVALUATION SOFTWARE IS PROVIDED TO CUSTOMER “AS-IS,” AND TOPQUADRANT AND ITS SUPPLIERS MAKE NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, WHETHER BY STATUTE, COMMON LAW, CUSTOM, USAGE OR OTHERWISE, AS TO ANY MATTERS, INCLUDING THE PERFORMANCE OR RESULTS CUSTOMER MAY OBTAIN BY USING THE PRE-RELEASE AND/OR EVALUATION SOFTWARE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, TOPQUADRANT AND ITS SUPPLIERS DISCLAIM ALL WARRANTIES WITH REGARD TO THE SOFTWARE, WHETHER EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, INFORMATIONAL CONTENT OR ACCURACY, QUIET ENJOYMENT, TITLE AND NONINFRINGEMENT. WHERE LEGALLY LIABILITY CANNOT BE EXCLUDED, BUT IT MAY BE LIMITED, TOPQUADRANT'S LIABILITY AND THAT OF ITS SUPPLIERS SHALL BE LIMITED TO THE SUM OF \$50 IN TOTAL.
- e. Remedy. Customer's sole REMEDY in the event of any dissatisfaction is to cease using the Pre-release AND/or Evaluation Software, erase all copies of same from Customer's computers and memory storage devices, and return to TopQuadrant all copies of the Software and any associated documentation.



APPENDIX IV: TOPBRAID LIVE SUPPORT AND MAINTENANCE (TSM) FOR GSA

(NOTE: A PDF version of the following document is available for download from a link on this page:
<http://www.topquadrant.com/products/legal.html>
and directly from http://www.topquadrant.com/docs/legal/TBL_tsm_GSA.pdf.)

TOPBRAID LIVE SUPPORT AND MAINTENANCE (TSM)

This TopBraid Support and Maintenance (TSM) Agreement sets forth TopQuadrant's maintenance and support terms and conditions for Customer for the Server Products, and is hereby incorporated into the Agreement. Defined terms used herein and not otherwise defined shall have the meanings ascribed to them in the Agreement.

1. TOPBRAID SUPPORT AND MAINTENANCE.

Throughout the Support Term (as defined below), so long as Customer is in conformance with the Agreement or this TSM Agreement, or any other executed agreement or addendum between the parties, TopQuadrant shall provide Company with Support Services (as defined below). For clarification, Support Services do not include modifications to upgrades to customize such upgrades for usage in Customer's environment.

- a. Support and Maintenance Fees. Customer shall pay TopQuadrant support and maintenance fees at rates per the following schedule ("Support Fees"):

| | |
|----------------------------|-------------------|
| <i>Developer License:</i> | \$3,627 annually |
| <i>Production License:</i> | |
| Up to 50 users: | \$6,529 annually |
| From 51 - 100 users: | \$11,606 annually |
| From 101 - 200 users: | \$18,135 annually |
| From 201 - 500 users: | \$25,389 annually |
| 1 Processor: | \$7,254 annually |
| 2 Processors: | \$10,881 annually |
| 4 Processors: | \$18,135 annually |
| 8 Processors: | \$25,389 annually |

Support Fees are calculated at 18 % of the License Fees. Customer shall pay Support Fees annually at the beginning of the Initial Support Period (as defined below) and each Renewal Support Period (as defined below), in accordance with the terms of the Agreement. TopQuadrant shall be entitled to increase the Support Fees once annually by an amount not to exceed five percent (5%) each year, upon notice to Customer. Customer understands that if Customer discontinues and then resumes purchase of Support Services, Customer will be required to pay TopQuadrant the entire Support Fees for the period of discontinuance², plus the Support Fees for the term of Support Services then commencing. Customer agrees to pay or reimburse TopQuadrant for any out-of-pocket expenses (including, but not limited to, travel and related expenses³) incurred by TopQuadrant at the request or with the approval of Customer in connection with the performance of Support Services. TopQuadrant will invoice Customer for Support Fees thirty (30) days prior to the beginning of each Renewal Support Period, and periodically for reimbursable expenses. In all cases, unless otherwise agreed in writing by TopQuadrant, payment is due within thirty (30) days after the date of the invoice. All amounts hereunder are exclusive of all federal, state, local, national, and international taxes.

2. SUPPORT DURING SUPPORT TERM.

Subject to timely payment of the Support Fees and compliance with the terms of the Agreement by Customer, TopQuadrant agrees to provide the support services set forth below (together, the "Support Services") in connection with the Software. The parties agree that TopQuadrant shall have no obligation to provide any maintenance or support services except as expressly set forth herein.

² In no event will the total cost be higher than if the customer paid for the entire fee for the interrupted period of time.

³ All travel and related expense will be in accord with Joint Travel Regulations

- a. **Customer Support Contacts.** Customer will designate no more than two persons who will be Customer's primary support contacts for Support Services (the "Customer Support Contacts"). The Customer Support Contacts may be changed from time to time upon written notice from Customer to TopQuadrant. Customer agrees that all Support Service inquiries from Customer's individual users will be directed to the Customer Support Contacts and, to the maximum extent practicable, Customer's communications with TopQuadrant for Support Services will be through the Customer Support Contacts.
- b. **Telephone Support.** TopQuadrant will make telephone hotline support available to the Customer Support Contacts for questions regarding the use of only the most current standard version, and the immediately prior standard version, of the Software released by TopQuadrant, and to help the Customer Support Contacts to resolve problems with such Software ("Telephone Support"). Telephone Support will be made available on business days from 8:00am through 5:00pm Eastern Time, TopQuadrant holidays excluded. Customer understands and agrees that Telephone Support provided by TopQuadrant at other times, if any, will be solely on an "as available" basis.
- c. **Software Maintenance and Support.** TopQuadrant will provide software maintenance services for reported material, reproducible problems and verified errors ("Errors") that Customer encounters in using the most current standard version, or the immediately prior standard version, of the Software released by TopQuadrant. TopQuadrant shall use commercially reasonable efforts to respond, remedy, and resolve Errors reported by Customer in accordance with TopQuadrant's standard maintenance procedures. TopQuadrant reserves the right to reasonably modify its standard maintenance procedures upon thirty (30) days prior written notice to Customer. TopQuadrant's current standard maintenance procedures call for the following issue response times:

| Severity Code | Severity Level Definition | First Return Callback Within | Resolution Within |
|---------------|---|--------------------------------------|--|
| 1 | Software is not operational or Customer experiences a complete loss of service; work cannot reasonably continue; the operation is mission critical to the Customer's business and the situation is an emergency; no work around exists, or work around exists, but is unacceptable due to impact on Customer's business. A Severity 1 incident has one or more of the following characteristics: - A critical documented function is not available - System hangs indefinitely, causing unacceptable or indefinite delays for resources or response - System crashes, and crashes repeatedly after reset attempts | 1 hour during normal business days* | Acceptable work around within 6 hours after the first callback; resolution within 2 business days or such other time as may be mutually agreed upon by the parties |
| 2 | Software is operational, but functionality is seriously affected; a severe loss of service; no acceptable workaround is available; however, operation can continue in a restricted fashion, but loss in functionality can only be sustained by Customer for a few working days. | 4 hours during normal business days* | Acceptable work around within 2 business days after the first callback; resolution within 4 business days or such other time as may be mutually agreed upon by the parties |
| 3 | Software is operational, but a portion is not operating as documented or warranted; a minor loss of service with minor business impact and/or an acceptable temporary work around exists; or Customer has a time-sensitive question on the operation of the Software that is not answered in the documentation for the Software. | 24 hours during normal business days | 10 business days |
| 4 | Customer has a non-urgent issue or problem; Software is operating substantially in accordance with specifications. | 48 hours during normal business days | Considered for the inclusion in the next update or upgrade |

*Severity 1 and 2 case tickets logged outside of regular business hours (weekdays 9:00 AM to 9:00 PM ET) will get call back by 10:00am ET next business day.

- d. **Updates and New Releases.** TopQuadrant will also make available to Customer as part of Support Services such periodic standard updates, patches, bug fixes, modifications and enhancements to the current standard version of the Software as TopQuadrant generally makes available at no additional cost to TopQuadrant's other customers of the Software who subscribe to Support Services; and such standard new versions of the Software which are released by TopQuadrant on a general basis and made available at no additional cost to



TopQuadrant's other customers subscribing to Support Services. All updates, patches, bug fixes, modifications, enhancements and new versions of the Software and all other deliverables and work product hereunder provided to Customer shall be deemed licensed as "Software" under, and subject to, the terms and conditions of the Agreement.

- e. Exclusions. Support Services extend only to the Software free of any Modifications that have been made by persons other than TopQuadrant or its agents, or approved by TopQuadrant in writing. Further, Support Services extend only to the most current standard version and immediately prior standard version of the Software as used on or in the hardware, platforms and operating environment(s) designated by TopQuadrant for use with the Software. Support Services also do not include, and TopQuadrant shall have no responsibility or liability for, the following: (i) addressing errors, defects, or damage in or to the Software resulting from causes other than those arising in the ordinary use of the Software, or from the use of third-party software, firmware or data, or from the use of hardware not meeting TopQuadrant's recommended configuration; (ii) providing hardware-related services; (iii) providing network related support and outage resolution including but not limited to, response time, availability or connectivity; (iv) providing training to Customer's personnel; or (v) developing or otherwise providing Customer with additional features, functionality, or customizations to the Software. Other professional services of TopQuadrant, such as, for example, but without limitation, those described in items (iv) and (v) above, may be made available to Customer under a separate services agreement, subject to availability and TopQuadrant's pricing then in effect.
- f. Assistance. Customer will reasonably assist TopQuadrant in verifying, reproducing, and correcting Errors. For example, assistance may include providing telecommunications connections in Customer's computer equipment and providing sample output and other diagnostic information. Error correction is subject to verification and reproduction of the Error by TopQuadrant. Error correction may include a temporary work-around, patch, or bypass supplied by TopQuadrant, or temporary implementation by Customer of a computer or operational procedure, in order to diminish or avoid the effect of the Error.

3. TERM AND TERMINATION.

Support Services shall commence on the date the license to the Software is purchased by Customer (which, for purposes of this TSM Agreement, shall be the date of TopQuadrant's invoice for payment of the license fee) and shall continue until the first anniversary of such date (the "Initial Support Period"). The Support Services shall automatically renew for additional one-year periods (each, a "Renewal Support Period"; the Initial Support Period and all Renewal Support Periods together, the "Support Term") upon expiration of the Initial Support Period or any Renewal Support Period unless either party provides notice of termination at least ninety (90) days prior to the scheduled expiration date. Support Services may also be terminated in accordance with the following:

- a. Termination of Support Generally. TopQuadrant may terminate Support Services upon ninety (90) days prior written notice to Customer in the event TopQuadrant ceases to provide Support Services for the Software on a general basis.
- b. Breach or Nonpayment. Either party shall have the right to terminate Support Services upon the other party's material breach of these Support Terms or the Agreement and failure to cure same within thirty (30) days after receipt of notice from the non-breaching party describing the breach. Customer acknowledges that nonpayment of Support Fees constitutes a material breach of these Support Terms.
- c. Bankruptcy. Either party shall have the right to terminate Support Services if the other party commences or becomes subject to bankruptcy or similar proceedings and such proceedings are not dismissed within sixty (60) days of filing.
- d. Termination of Agreement. For clarification, TopQuadrant's obligation to provide Support Services shall immediately terminate upon termination of the Agreement for any reason.

4. EFFECT OF TERMINATION.

Termination of this Agreement by either party shall not act as a waiver of any breach of this Support Agreement and shall not act as a release of either party hereto from any liability for breach of such party's obligations under this Support Agreement. Within forty-five (45) calendar days following the termination of this Support Agreement, each party shall pay to the other party all sums, if any, due and owing as of the date of expiration or termination, net of any amounts due from the other party as of such date.

5. LIMITED WARRANTY AND DISCLAIMER.

TopQuadrant warrants that the Support Services will be performed in a workmanlike and professional manner, consistent with applicable industry practices. EXCEPT FOR THE EXPRESS WARRANTIES MADE BY SUPPLIER IN THIS SECTION 6, SUPPLIER EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING



ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NONINFRINGEMENT. SUPPLIER DOES NOT WARRANT THAT ANY OR ALL ERRORS OR DEFECTS IN THE SOFTWARE WILL BE CORRECTED. THIS DISCLAIMER AND LIMITATION IS CUMULATIVE WITH, AND NOT INTENDED TO REPLACE, THE LIMITATIONS OF SUPPLIER LIABILITY AND REMEDIES AGAINST SUPPLIER SET FORTH IN THE AGREEMENT.