



U.S. General Services Administration

**GENERAL SERVICES ADMINISTRATION
FEDERAL SUPPLY SERVICE
AUTHORIZED FEDERAL SUPPLY SCHEDULE CATALOG/PRICE LIST**

*On-line access to contract ordering information, terms and conditions, up-to-date pricing, and the option to create an electronic delivery order is available through **GSA Advantage!**, a menu-driven database system. The INTERNET address for **GSA Advantage!** is <http://www.gsaadvantage.gov>*

**Multiple Award Schedule (MAS)
Category F, Information Technology (IT)
Subcategory F04, IT Software, FSC/PSC 7030**



CONTRACT NUMBER: GS-35F-0821M
CONTRACT PERIOD: 9/26/2017 – 9/25/2022

For more information on ordering from Federal Supply go to this website: www.gsa.gov/schedules

CONTRACTOR:
Mumps AudioFAX, Inc. DBA AudioCARE Systems
744 West Lancaster Avenue, suite 250, Wayne, PA 19087
Phone number: (610) 293-2160
Fax number: 610) 687-5713
Web Site: HTTP:\\www.audiocare.com

CONTRACTOR'S ADMINISTRATION SOURCE:
Badra Berkane
744 West Lancaster Avenue, suite 250
Wayne, PA 19087
Phone number: (800) 606-8677
Fax number: (610) 687-5713
E-Mail: Bberkane@audiocare.com

BUSINESS SIZE: Small Woman Owned Business

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CUSTOMER INFORMATION:

1a. TABLE OF AWARDED SPECIAL ITEM NUMBERS (SINs)

SIN	DESCRIPTION
511210	Software Licenses
54151	Software Maintenance Services
Offer Cooperative Purchasing (STLOC) and Disaster Recovery Purchasing (RC)	

1b. LOWEST PRICED MODEL NUMBER AND PRICE FOR EACH SIN: (Government net price based on a unit of one)

See Pricelist on Page 13

1c. HOURLY RATES (Services only):

N/A: Products Only

2. MAXIMUM ORDER*: \$500,000 per SIN

NOTE TO ORDERING ACTIVITIES: *If the best value selection places your order over the Maximum Order identified in this catalog/pricelist, you have an opportunity to obtain a better schedule contract price. Before placing your order, contact the aforementioned contractor for a better price. The contractor may (1) offer a new price for this requirement (2) offer the lowest price available under this contract or (3) decline the order. A delivery order that exceeds the maximum order may be placed under the schedule contract in accordance with FAR 8.404.

3. MINIMUM ORDER: \$100.00 Per SIN

4. GEOGRAPHIC COVERAGE: Domestic and Overseas delivery

5. POINT(S) OF PRODUCTION: Wayne, Pennsylvania

6. DISCOUNT FROM LIST PRICES: *GSA Net Prices are shown on the attached GSA Pricelist. Negotiated discount has been applied and the IFF has been added.*

7. QUANTITY DISCOUNT(S): None

8. PROMPT PAYMENT TERMS: 0%

9. FOREIGN ITEMS: N/A

10a. TIME OF DELIVERY: Delivery after receipt of Order (ARO). 90 days ARO for SIN 511210 5 days ARO for SIN 54151

10b. EXPEDITED DELIVERY: Items available for expedited delivery are noted in this price list or negotiated at the task order level.

10c. OVERNIGHT AND 2-DAY DELIVERY: Overnight and 2-day delivery are available. Contact the Contractor for rates.

10d. URGENT REQUIREMENTS: Agencies can contact the Contractor's representative to affect a faster delivery. Customers are encouraged to contact the contractor for the purpose of requesting accelerated delivery.

11. FOB POINT: Destination

- 12a. **ORDERING ADDRESS:** Same as contractor
- 12b. **ORDERING PROCEDURES:** Ordering activities shall use the ordering procedures described in Federal Acquisition Regulation 8.405-3 when placing an order or establishing a BPA for supplies or services. The ordering procedures, information on Blanket Purchase Agreements (BPA's) and a sample BPA can be found at the GSA/FSS Schedule Homepage (fss.gsa.gov/schedules).
13. **PAYMENT ADDRESS:** Same as contractor
14. **WARRANTY PROVISION:** Customer should contact contractor for a copy of the warranty
15. **EXPORT PACKING CHARGES:** Not applicable
16. **TERMS AND CONDITIONS OF RENTAL, MAINTENANCE, AND REPAIR (IF APPLICABLE):** NA
17. **TERMS AND CONDITIONS OF INSTALLATION (IF APPLICABLE):** NA
- 18a. **TERMS AND CONDITIONS OF REPAIR PARTS INDICATING DATE OF PARTS PRICE LISTS AND ANY DISCOUNTS FROM LIST PRICES (IF AVAILABLE):** NA
- 18b. **TERMS AND CONDITIONS FOR ANY OTHER SERVICES (IF APPLICABLE):** NA
19. **LIST OF SERVICE AND DISTRIBUTION POINTS (IF APPLICABLE):** N/A
20. **LIST OF PARTICIPATING DEALERS (IF APPLICABLE):** NA
21. **PREVENTIVE MAINTENANCE (IF APPLICABLE):** NA
- 22a. **SPECIAL ATTRIBUTES SUCH AS ENVIRONMENTAL ATTRIBUTES (e.g. recycled content, energy efficiency, and/or reduced pollutants):** N/A
- 22b. **Section 508 Compliance for Electronic and Information Technology (EIT):** Section 508 compliance information on the supplies and services in this contract are available from AudioCARE Systems upon request via contacting the Contractor Administration Source listed on the Cover Page.
- The EIT standard can be found at: www.Section508.gov/.
23. **DUNS NUMBER:** 96-317-7209 and **CAGE CODE:** OXPL7
24. **NOTIFICATION REGARDING REGISTRATION IN SYSTEM FOR AWARD MANAGEMENT (SAM) DATABASE:** Contractor has an Active Registration in the SAM database.



License Renewal

Maintenance and Support Services (MSS)

744 West Lancaster Avenue Suite 250 Wayne, PA 19087
800-606-8677 Fax 610-296-9957

Standard Plan

The Standard Renewal Plan includes Maintenance and Support Services to provide comprehensive software maintenance, technical support for the AudioCARE Server, and customer service for all installed AudioCARE Systems applications. AudioCARE's systems are licensed on an annual basis. Maintenance and Support Services of all software and systems is contingent upon a valid License Renewal contract. MSS are not available without a valid License Renewal contract. Please review the License Agreement for more details.

Included in the Standard MSS are the following:

☐ **Hardware Maintenance** - AudioCARE provides the required hardware for the telephony and core web applications. Therefore, all components of the AudioCARE systems are covered under this Agreement. No third party agreements are needed. Replacement hardware/ systems will be provided within one business day of the diagnosis and confirmation of the hardware failure.

AudioCARE warrants its hardware and operating platform based upon secured and protected computer location environments. Power and line conditioners are strongly recommended to protect the AudioCARE server(s) and telephony cards. Hardware failures due to power surges and outages, floods, and / or other conditions that occur outside of the normal use and operation of the AudioCARE systems are considered outside of this agreement. Under such circumstances, repairs will be made on a time and materials basis.

AudioCARE considers the technical Life Span of its systems to be four years. All maintenance outside of this timeframe will be based upon the availability of parts and system components. Replacement systems for those outside of the established system life span are provided by AudioCARE at an additional cost.

☐ **Software Support** - Software patches required to keep the AudioCARE applications operational are provided as part of this agreement. Please note that Software patches do not include custom programming or programming required for site or system mergers, or programming changes required for software modifications made to the host computer system, or any other infrastructure at the customer site that connects to the AudioCARE System. The AudioCARE systems are located at the customer's site and are administered by the customer. The upkeep of the firewall settings and window's security patches as well as antivirus updates are the responsibility of the customer. No additional software, not provided by AudioCARE is allowed unless authorized by AudioCARE, and any additional costs associated with the testing and certifying of this software will be handled at an additional charge.

Software Support Includes:

- Voice Recordings to accommodate site changes in areas such as: hours of operations, internal transfer locations, new area codes or telephone exchanges, and operations procedures or promotions.
- Help Desk - Unlimited telephone support during AudioCARE's standard business hours. AudioCARE's standard business hours are 8:00 AM to 5:00 PM EST.
- Documentation - Updates to existing user documents and training aids.
- Medication Formularies - Clients using AudioRxINFO™ and WebRxINFO™ will receive medication voice and text updates. ALL users of AudioRxINFO™ and WebRxINFO™ must be covered under a current MSS and apply updates in a timely fashion to avoid license expiration of this application.

Premium Plan

The Premium MSS includes everything listed under the Standard MSS, plus a few additional benefits. Included in the Premium MSS are the following:

- ALL Standard MSS benefits
- 24-hour / 7 days a week Emergency Support
- Analysis and telephone consultation on the set-up and effectiveness of the installed AudioCARE systems.
- Remote refresher training sessions on existing AudioCARE applications.

Note : All Customers outside of the continental US are required to be on the Premium Plan.



System and Software Inclusion Overview

744 W. Lancaster Avenue, Suite 250 Wayne, PA 19087
800-606-8677 **FAX 610-296-9957**

All AudioCARE First Time System Licenses include the following:

1. Fully configured PC running Microsoft Windows 10®, including all related hardware and software.
2. InterSystems Cache multi-user license.
3. C-Talk Interactive Telephony software license and related telephony hardware.
4. Complete system documentation.
5. Pre-shipment system configuration and testing.
6. Shipping, installation & training, and testing (Includes all related expenses).
7. Custom Voice Recording
8. One year maintenance from date of shipping, including:
 - a) Next-business-day hardware maintenance
 - b) Software support and updates
 - c) Regular updates to Medication Consultation text (AudioRxINFO™ users only)

All AudioCARE Systems UPGRADES ** (additional hardware, software, licenses) include the following:

1. Full compatibility with your AudioCARE system and other components.
2. Complete system documentation.
3. Additional C-Talk interactive telephony software licenses to support purchases
4. Shipping, remote installation, testing, and training over the telephone.
5. One year FREE maintenance from date of shipping.

*** One year free maintenance does not apply to item ACS-HU-S04 and ACS-HU-4 - these are upgrades and maintenance will be assessed on the ACS-S04, and ACS-U-4 components being upgraded.

On-going Annual Maintenance

Please review current License and Renewal (MSS) attachment

SCHEDULE PRICE LIST



AudioCARE Systems Price List

Revised GSA Price List Per MOD PS-0021

Term Software Licenses for all Items- Period is one Year

		511210		54151 STD	54151 PRM
Item	Description	Qty	GSA PRICE	*Standard Maintenance & Support	*Premium Maintenance & Support
ACS-SO4	Base AudioCARE Server (includes 4 user CTalk license to support 4 telephone lines)- <i>Latest released platform by AudioCARE at time of</i>	1	\$ 15,000	16%	22%
ACS-U-4	Accommodate 4 additional lines (CTalk license & hardware)	1	\$ 6,990	16%	22%
ACS-TM-BASE*	AudioCARE Base SMS Software platform. Includes SMS license for up to 120,000 texts/year. This includes software and text message delivery fees- This is a Pre-requisite to add one or several Text Messaging Products	1	\$ 4,400	NA	NA
ACS-HU-S04	Upgrade to New Server (4-line system)-Latest released by AudioCARE	1	\$ 13,000	No Charge	No Charge
ACS-HU-04	Ability to accommodate 4 additional lines for system upgrade (Hardware)	1	\$ 2,500	No Charge	No Charge
ACS-CU-04	Accommodate 4 additional lines for ACS CACHE Server upgrade- <i>For customer who are on AudioCARE's MSM platform .</i>	1	\$ 4,000	No Charge	No Charge
ACS Application Set-up Fee	Application Set-up Fee	1	\$ 500	No Charge	No Charge
ACS-Kiosk Set Up Fee	Per Kiosk Configuration and Location Set Up Fee	1	\$ 2,400	No Charge	No Charge
AudioREMINDER	Automated Appointment Reminders Via Telephone	1	\$ 12,990	16%	22%
TM-REMINDER	Automated Appointment Reminder system via Text Messaging - Software Add-on to AudioREMINDER	1	\$ 11,540	16%	19%
AudioINQUIRY	Patient-initiated Appointment Inquiries Via Telephone	1	\$ 9,990	16%	22%
WebINQUIRY	Patient-initiated Appointment Inquiries Via Internet	1	\$ 14,990	16%	22%
AudioCANCEL	Automated Cancellation Notifications Via Telephone	1	\$ 9,990	16%	22%
TM-CANCEL	Automated Cancellation Notifications Via Text Messaging - Software Add-on to AudioCANCEL	1	\$ 8,499	16%	19%
AudioRECALLReminder	Automated Appointment Recall reminder Notifications via telephone	1	\$ 11,390	16%	19%
TM-RECALLReminder	Automated Appointment Recall reminder Notifications via text Messaging - Software add-on to AudioRECALLReminder	1	\$ 8,499	16%	19%
AudioVERIFY	Patient-initiated Phone Number Verification	1	\$ 9,990	16%	22%
AudioCONTACT	Patient Initiated contact Management for text messaging opt-In/Opt-Out as well as cell and home phone number verification and edits and	1	\$ 12,990	16%	19%
AudioREFILL	Prescription Inquiry and Refills via Telephone	1	\$ 14,990	16%	22%
AudioRxINFO	Prescription-specific Medication Education via Telephone*	1	\$ 14,990	16%	22%
AudioOFFLINE	Offline Pharmacy Processing When Host is Unavailable	1	\$ 9,990	16%	22%
WebREFILL	Prescription Inquiry and Refills via Internet	1	\$ 14,990	16%	22%
WebRxINFO	Prescription-specific Medication Education via Internet	1	\$ 14,990	16%	22%
AudioRxMINDER	Automated Prescription Pickup Reminders Via Telephone	1	\$ 12,990	16%	22%
TM-RxMINDER	Automated Prescription Pickup Reminders Via Text Messaging - Software Add-on to AudioRxMINDER	1	\$ 9,990	16%	19%
AudioRENEWAL	Patient Initiated Prescription Renewal Requests via Telephone	1	\$ 14,990	16%	22%
AudioRxORDER	New Order and Refill Processing when Host is Unavailable	1	\$ 14,990	16%	22%
AudioBALANCE	Patient-initiated Balance Inquiries Via Telephone	1	\$ 9,990	16%	22%
WebBALANCE	Patient-initiated Balance Inquiries Via Internet	1	\$ 14,990	16%	22%
AudioNOTES	Secure Physician-Patient Lab Results Messages, Special Messages and Announcements Available for Inbound Access as well as Outbound Notifications	1	\$ 12,990	16%	22%
AudioCOMMUNICATOR-Standard	Ad-hoc communications and Patient Surveys, Wellness Health Messages, Drug and Equipment Recalls (Prerequisite for Disease Management)	1	\$ 9,990	16%	22%
AudioCOMMUNICATOR-DM (Disease Management)	Disease Management Monitoring & In Home Messaging Surveys Enhancement. Includes AutoRUN function to schedule the start and stop of recurring communications. (Requires AudioCOMMUNICATOR Standard Version)	1	\$ 9,990	16%	22%
TM-COMMUNICATOR	Ad-hoc communications and Patient Surveys, Wellness Health Messages, Drug and Equipment Recalls and other miscellaneous communications via text message -Software Add-on to AudioCOMMUNICATOR	1	\$ 8,499	16%	19%
AudioRECALL	Automated Staff Notification System	1	\$ 9,990	16%	22%

**ACS-TM- BASE is a Pre-requisite to add one or multiple Text Messaging Products.

AudioCARE Systems License Agreement

The following are the terms and conditions (this "AGREEMENT") under which the AudioCARE Systems Division of MUMPS AudioFAX, Inc., of 207 East King St Malvern, PA 19355 (together with successors and assigns, "ACS") licenses software products ("ACS SOFTWARE", as further defined in section 2 below) and related services in the United States of America to a licensee that has done one of the following: (1) executed a purchase order incorporating this AGREEMENT or referencing this AGREEMENT as on file and accepted or (2) signed a version of this AGREEMENT ("LICENSEE") with a signature page included.

1. Prices, Orders, Payment, Offer and Conditions. This AGREEMENT plus the current valid quote from ACS to LICENSEE ("QUOTE") is collectively the "OFFER". Any special conditions for LICENSEE are specified in Addendum, Section 11 or in QUOTE. LICENSEE agrees all orders placed current, past and future with ACS are governed by this AGREEMENT. Orders must identify products from OFFER including LICENSE RATING (as defined in Section 3).

2. Grant of LICENSE. ACS grants and LICENSEE obtains no LICENSE except as explicitly specified in this section 2. Source code is proprietary to ACS and unless otherwise specified grant of LICENSE does not include the right to access ACS source code. LICENSE is granted for the use of the software and related documentation (collectively "ACS SOFTWARE") specified in OFFER after ACS receives payment in full for the amount specified in the OFFER. Unless specified otherwise by a separate license signed by a Contracting Officer authorized to bind Licensee, the terms and conditions of this LICENSE extend to any third-party licenses or data distributed with ACS SOFTWARE or provided by ACS.

Installation date initiates a one year hardware and 90 day Application Software warranty period. License renewal is contingent upon current Maintenance and Software Support ("MSS") status. All ACS SOFTWARE updates, whether described as releases, versions, corrections or other similar phrase (collectively, "VERSION(S)"), are subject to the same terms and conditions of this AGREEMENT that apply to the ACS SOFTWARE the VERSIONS are updating, replacing, complementing, modifying or correcting. As used in this AGREEMENT, ACS SOFTWARE can be an enabling software technology ("SYSTEM SOFTWARE") such as *MUMPS Talk*TM or an application ("APPLICATION SOFTWARE") that solves a particular problem, such as applications in the *AudioCARE*TM suite.

ACS SOFTWARE is proprietary to ACS. ACS transfers no title to or ownership of any ACS SOFTWARE to LICENSEE nor to persons or entities not a party to this AGREEMENT ("THIRD PARTIES"). Except as explicitly set forth in this AGREEMENT, LICENSEE may not execute, use, copy, transmit, license, rent, lease, disclose or sell ACS SOFTWARE to THIRD PARTIES. The LICENSE may not be transferred without ACS's written consent. All property licensed and/or otherwise provided to LICENSEE by ACS including, but are not limited to, ACS SOFTWARE, documentation and hardware provided by ACS are collectively "COMPONENTS". LICENSEE is entitled to use COMPONENTS only while LICENSEE's LICENSE is in effect, and only while using LICENSE as authorized in section 3.

3. Use of ACS SOFTWARE and COMPONENTS.

- (a) **US GOVERNMENT RESTRICTED RIGHTS.** ACS SOFTWARE and documentation are provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by FED is subject to restrictions as set forth in subparagraph (c)(1)(ii) of The Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software -- Restricted Rights at 48 CFR 52.227-19, as applicable. Manufacturer is ACS.
- (b) Unless specified elsewhere, LICENSEE may only have applications run on COMPONENTS (1) provided by ACS to LICENSEE directly or (2) developed and owned exclusively by LICENSEE ("USER APPLICATIONS"). Unless specified elsewhere, USER APPLICATIONS may only run on systems licensed by ACS to LICENSEE directly. The license rating ("LICENSE RATING") specifies the number of channels, lines, users, tasks, development or production use, or other applicable measure specified in the OFFER, for which LICENSEE is authorized to use COMPONENTS. Use of LICENSE may not exceed the LICENSE RATING of the LICENSE granted by ACS to LICENSEE. LICENSEs for exclusive development of USER APPLICATIONS ("DEVELOPMENT LICENSEs") may only be used with test data and may only be utilized for developing or demonstrating USER APPLICATIONS. LICENSEs for production use ("PRODUCTION LICENSEs") may be used for production purposes and with production data. All LICENSEs are PRODUCTION LICENSEs unless specified otherwise.
- (c) LICENSE is independent of databases or systems accessed. However, all COMPONENTS relevant to the LICENSE remain at the same physical location. If COMPONENTS are to be used in multiple locations, a

separate LICENSE is needed for each location. LICENSEE cannot be a service bureau to other organizations with this LICENSE.

4. Copies and Access to ACS SOFTWARE. LICENSEE may make one archival copy and only such other copies of ACS SOFTWARE that are a necessary and essential step in utilizing ACS SOFTWARE in accordance with this AGREEMENT. LICENSEE agrees to reproduce ACS's copyright and all other legal notices, including but not limited to proprietary notices and notices mandated by governmental entities, on all complete or partial copies or transmissions of ACS SOFTWARE and on legal documents, manuals, and all other written materials referring to ACS SOFTWARE or USER APPLICATIONS.

5. Protection of ACS SOFTWARE. ACS shall have the right to take all actions to protect ACS SOFTWARE, including, but not limited to, instituting legal proceedings against infringers of rights in ACS SOFTWARE. LICENSEE agrees to provide ACS with all relevant information required by ACS and to cooperate with any actions deemed necessary by ACS to enforce protection of ACS SOFTWARE in matters pertaining to LICENSEE's LICENSE.

Under certain circumstances, including, but not limited to, solving problems related to ACS SOFTWARE or testing new VERSIONS, ACS may choose to disclose protected ACS source code to LICENSEE. When requested by ACS, LICENSEE agrees to return all copies of source code provided by ACS and destroy all remaining copies of source code, including, but not limited to, copies on any computer media, and to certify in writing that the conditions in this section have been met.

LICENSEE shall not, and shall not direct nor knowingly permit any person to attempt to (i) reverse engineer, decompile or disassemble ACS SOFTWARE, nor to (ii) use COMPONENTS or information obtained from COMPONENTS, other than generally available public domain information, to derive, specify, design, create, execute or otherwise contribute to producing or supporting or executing software ("ERSATZ") that performs the functions specified in the OFFER, nor (iii) knowingly purchase, use or make ERSATZ available to THIRD PARTIES regardless of where ERSATZ originates.

6. LICENSE Termination. LICENSE termination, whether by ACS or LICENSEE, shall apply to all VERSIONS. All obligations and liabilities of LICENSEE under this AGREEMENT, including, but not limited to, payment obligations, shall survive termination. In the event of termination, LICENSEE shall within 10 days of the date of such termination destroy all copies of ACS SOFTWARE pertaining to LICENSE, including but not limited to all copies or derivatives of all associated documentation and copies on any computer media, return all COMPONENTS other than copies or VERSIONS so destroyed, and to certify in writing that the conditions in this section have been met.

7. Maintenance and Support. Subject to the terms in this section 7 ACS agrees to provide maintenance and support services ("MSS") to LICENSEE including: new VERSIONS whenever these are available, patches or other methods to circumvent discovered program errors and reasonable telephone support including answering general questions related to ACS SOFTWARE such as its uses, installation, configuration, and use of utilities or tools included in ACS SOFTWARE. LICENSEE agrees to provide basic support for remote maintenance and diagnostics by ACS including, but not limited to, providing for ACS dial-in access and applying software updates as specified by ACS support staff.

In all cases, the MSS are included gratis during the initial warranty term specified in the OFFER(90 days). MSS are available only for the most current VERSION of ACS SOFTWARE. Unless specified elsewhere, LICENSEE is provided a 120 day period to upgrade to each new VERSION released. LICENSEEs not current may require certification by ACS. If the LICENSEE has been ineligible for MSS for more than 12 consecutive months ACS will not be obligated to reinstate MSS. Subject to any security measures deemed necessary by LICENSEE, LICENSEE agrees to provide ACS staff remote access to the ACS server for support and system monitoring purposes over the Internet by providing ACS an IP address to the ACS server on LICENSEE's network and access through any firewalls. LICENSEE agrees to provide ACS access to a development account on LICENSEE's host healthcare information system ("HHIS") to ensure continued proper operation of ACS software with HHIS software, to enable ACS to quickly respond to changes on HHIS software, and for ACS to provide support "on both ends"

8. Limited Liability and Remedies. ACS's entire liability and LICENSEE's exclusive remedies in lieu of any other remedy at law or equity are set forth in this section 8. LICENSEE acknowledges that no software is error free and accepts the LICENSE for ACS SOFTWARE "as is". In the event terms of sections 2 through 6 are breached ACS shall have the right to remedies in equity or at law, including but not limited to recovery of damages.

(a) This section 8a is for FEDERAL GOVERNMENT LICENSEEs only. WARRANTEE EXCLUSION AND LIMITATION OF DAMAGES (OCT. 90 FIRMR). Except as expressly set forth in this section 8a and except for the implied warranty of merchantability, there are no warranties, expressed or implied. In no

event will **ACS** be liable for consequential damages as defined in the Uniform Commercial Code, section 2-715, in effect in the District of Columbia as of Jan. 1 1973, i.e., consequential damages resulting from the seller's breach include (i) any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and (ii) injury to person or property proximately resulting from any breach of warranty. This clause does not limit or disclaim any of the warranties specified in the GSA Schedule 70 Contract under FAR 52.212-4(o). In the event of a breach of warranty, the U.S. Government reserves all rights and remedies under the contract, the Federal Acquisition Regulations, and the Contract Disputes Act, 41 U.S.C. 7101-7109. This clause shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to this Contract under any federal fraud statute, including the False Claims Act, 31 U.S.C. 3729-3733. Furthermore, this clause shall not impair nor prejudice the U.S. Government's right to express remedies provided in the GSA Schedule contract (e.g., clause 552.238-75 – Price Reductions, clause 52.212-4(h) – Patent Indemnification, and GSAR 552.215-72 – Price Adjustment – Failure to Provide Accurate Information).

- (b) This section 8b is for NON-FED LICENSEES. LICENSEE RECOGNIZES THAT ACS MAKES NO EXPRESS, IMPLIED OR STATUTORY WARRANTY OF ANY KIND FOR ACS COMPONENTS INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY WITH REGARD TO PERFORMANCE, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSES. LICENSEE AGREES TO RELEASE ACS FROM ANY DAMAGE DIRECTLY OR INDIRECTLY SUFFERED BY LICENSEE AS A RESULT OF HARDWARE, SOFTWARE OR DOCUMENTATION ERRORS OR OMISSIONS ASSOCIATED WITH ACS COMPONENTS, OR AS A RESULT OF ACS'S PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO MSS. LICENSEE AGREES THAT IN NO EVENT SHALL ACS BE LIABLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF ACS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. In the event ACS COMPONENTS do not perform as specified in the OFFER, LICENSEE's sole remedy will be to require ACS to provide LICENSEE a new VERSION of ACS SOFTWARE as specified in section 7. IF ACS fails to perform such remedy, LICENSEE shall be entitled to recover only related damages and in no event more than the up front cost of the LICENSE. LICENSEE agrees to indemnify and hold ACS and its representatives harmless for any liability or claim from LICENSEE or THIRD PARTIES, including but not limited to reasonable attorney's fees and related expenses, in all matters in relation to this AGREEMENT, including but not limited to termination of LICENSE by ACS.

9. Usage Based LICENSE. Section 9 is exclusively applicable to Usage Based LICENSEs ("UBL") in addition to the other provisions of this AGREEMENT. Not Applicable

10. General Offer.

- (a) Severability. If any provision of this AGREEMENT is not held to be legal, valid and enforceable ("VALID") by a court of competent jurisdiction, ACS and LICENSEE shall make a bona fide effort to agree on a VALID substitute provision as similar in effect as possible, or as shall be found VALID by such court of competent jurisdiction. Remaining provisions shall remain VALID and effective unless the provision found not VALID goes to the essence of this AGREEMENT.
- (b) Force Majeure. No party to this AGREEMENT shall be liable for failure to perform any duty or obligation that said party may have under this AGREEMENT where such failure is due to any act of God, fire, strike, inevitable accident, war or any cause outside the reasonable control of the party which had duty to perform.
- (c) Successors and Assigns. Successors in interest to ACS or LICENSEE are bound by obligations and benefit from rights under this AGREEMENT. ACS may assign its rights to this AGREEMENT only in accordance with the procedures of FAR Part 42.12.
- (d) Governing Law. This AGREEMENT shall be governed and construed in accordance with the laws of the United States for FEDERAL GOVERNMENT LICENSEES, and in accordance with the Laws of the Commonwealth of Pennsylvania for NON-FED LICENSEES.
- (e) Section Headings. Section headings contained in this AGREEMENT are for reference purposes only and shall not affect the meaning and interpretation of this AGREEMENT.
- (f) Notification. All notifications required by this AGREEMENT shall be in writing via certified mail or via carriers that provide proof of delivery (such as Federal Express) to the addresses specified at the end of this AGREEMENT.
- (g) Acceptance of Agreement. This AGREEMENT supersedes all prior agreements and understandings between the parties.
- (h) Execution in Counterpart. As appropriate, this AGREEMENT may be executed in two or more counterparts, each of which shall be an original and all of which shall constitute one and the same agreement.

- (i) Rights and Waiver. No waiver of a breach or default shall be effective nor deemed a continuing waiver or a waiver in respect to any subsequent breach or default, whether of a similar or a dissimilar nature, unless expressly stated in writing and signed by the party granting such waiver. Failure to exercise a right shall not preclude any future exercise of the right.
- (j) Effective Date. As appropriate, this AGREEMENT is effective on the purchase order date that references it; the date both parties sign it; or the date of breaking the unit seal, considered to be 10 days after shipment as applicable.
- (k) Amendment. This AGREEMENT may only be amended or supplemented by written agreement of **ACS** and LICENSEE.
- (l)

11. Special Conditions (Addendum) for _____ NOT APPLICABLE
(“LICENSEE”).

ACS		LICENSEE
AudioCARE Systems		Address:
BY:	Licensee: BY:	
NAME:	NAME:	
TITLE:	TITLE:	
DATE:	DATE:	

All AudioCARE products are trademarks of AudioCARE Systems.
AudioCARE is a registered trademark of AudioCARE Systems.