GENERAL SERVICES ADMINISTRATION
FEDERAL SUPPLY SERVICE
AUTHORIZED FEDERAL SUPPLY SCHEDULE PRICE LIST
MULTIPLE AWARD SCHEDULE (MAS)
Information Technology Category
FSC/PSC Code : 7A21

Rainforest QA, Inc.
5675 W COG HILL TER
DUBLIN, CA 94568-1166
Phone: 415-969-6326
Email: gsa@rainforestqa.com
https://www.rainforestqa.com/

CONTRACT NUMBER: GS-35F-655GA

PERIOD COVERED BY CONTRACT:
September 7, 2017 through September 6, 2027

BUSINESS SIZE:
Small Business

Price List Current through Modification PA-0017
Effective March 4, 2022

Online access to contract ordering information, terms and conditions, up to date pricing, and the option to create an electronic delivery order are available through GSA Advantage!®, a menu driven database system. The internet address for GSA Advantage!® is: GSAAAdvantage.gov. For more information on ordering from Federal Supply Schedules go to the GSA Schedules page at GSA.gov.
CUSTOMER INFORMATION

1a. AUTHORIZED SPECIAL ITEM NUMBERS (SINs):

<table>
<thead>
<tr>
<th>SIN</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>511210</td>
<td>Software Licenses</td>
</tr>
<tr>
<td>OLM</td>
<td>Order-Level Materials (OLM)</td>
</tr>
</tbody>
</table>

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

1c. SERVICES OFFERED: Not Applicable

2. MAXIMUM ORDER PER SIN:

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

3. MINIMUM ORDER LIMITATION: $100

4. GEOGRAPHIC COVERAGE (DELIVERY AREA): Domestic

5. POINT OF PRODUCTION: United States

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

7. QUANTITY DISCOUNT: None

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

9. FOREIGN ITEMS: None

10a. TIME OF DELIVERY: 30 Days ARO

10b. EXPEDITED DELIVERY: Contact Contractor

10c. OVERNIGHT AND 2-DAY DELIVERY: Contact Contractor

10d. URGENT REQUIREMENTS: Contact Contractor

11. F.O.B. POINT: Destination

12a. ORDERING ADDRESS: Rainforest QA, Inc.

5675 W COG HILL TER
DUBLIN, CA 94568-1166

12b. ORDERING PROCEDURES: For supplies and services, the ordering procedures, information on Blanket Purchase Agreements (BPA’s) are found in Federal Acquisition Regulation (FAR) 8.405-3.

13. PAYMENT ADDRESS: Same as Ordering Address
14. WARRANTY PROVISION: Standard Commercial Warranty

15. EXPORT PACKING CHARGES: Not Applicable

16. TERMS AND CONDITIONS OF RENTAL: Not Applicable

17. TERMS AND CONDITIONS OF INSTALLATION: Not Applicable

18a. TERMS AND CONDITIONS OF REPAIR PARTS: Not Applicable

18b. TERMS AND CONDITIONS FOR ANY OTHER SERVICES: Not Applicable

19. LIST OF SERVICE AND DISTRIBUTION POINTS: Not Applicable

20. LIST OF PARTICIPATING DEALERS: Not Applicable

21. PREVENTIVE MAINTENANCE: Not Applicable

22a. SPECIAL ATTRIBUTES: Not Applicable

22b. SECTION 508 COMPLIANCE INFORMATION: Not Applicable

23. Unique Entity Identifier (UEI) number: ECE1D221DWL5

24. CONTRACTOR HAS REGISTERED IN THE SYSTEM FOR AWARD MANAGEMENT (SAM) DATABASE.
1. INSPECTION/ACCEPTANCE

The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The ordering activity reserves the right to inspect or test any software that has been tendered for acceptance. The ordering activity may require repair or replacement of nonconforming software at no increase in contract price. The ordering activity must exercise its post acceptance rights (1) within 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. ENTERPRISE USER LICENSE AGREEMENTS REQUIREMENTS (EULA)

The Contractor shall provide all Enterprise User License Agreements in an editable Microsoft Office (Word) format.

3. GUARANTEE/WARRANTY

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

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

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

4. TECHNICAL SERVICES

The Contractor, without additional charge to the ordering activity, shall provide a hot line technical support number 415-969-6326 for the purpose of providing user assistance and guidance in the implementation of the software.

5. SOFTWARE MAINTENANCE

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

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

Software maintenance as a product includes the publishing of bug/defect fixes via patches and updates/upgrades in function and technology to maintain the operability and usability of the software product. It may also include other no charge support that are included in the purchase price of the product in the commercial marketplace. No charge support includes items such as user blogs, discussion forums, on-line help libraries and FAQs (Frequently Asked Questions), hosted chat rooms, and limited telephone, email and/or web-based general technical support for user’s self diagnostics.
Software maintenance as a product does NOT include the creation, design, implementation, integration, etc. of a software package. These examples are considered software maintenance as a service.

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

2. Software Maintenance as a Service (SIN 54151)

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, online technical support, customized support, and/or technical expertise which are charged commercially. Software maintenance as a service is billed in arrears in accordance with 31 U.S.C. 3324.

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

b. Invoices for maintenance service shall be submitted by the Contractor on a quarterly or monthly basis, after the completion of such period. Maintenance charges must be paid in arrears (31 U.S.C. 3324).

PROMPT PAYMENT DISCOUNT, IF APPLICABLE, SHALL BE SHOWN ON THE INVOICE.

6. PERIODS OF TERM LICENSES (SIN 511210)

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

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

c. Annual Funding. When annually appropriated funds are cited on an order for term licenses, the period of the term licenses shall automatically expire on September 30 of the contract period, or at the end of the contract period, whichever occurs first. Renewal of the term licenses orders citing the new appropriation shall be required, if the term licenses is to be continued during any remainder of the contract period.

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

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

7. CONVERSION FROM TERM LICENSE TO PERPETUAL LICENSE

Not offered.
8. TERM LICENSE CESSATION

Not offered.

9. UTILIZATION LIMITATIONS - (SIN 511210)

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

b. When acquired by the ordering activity, commercial computer software and related documentation so legend shall be subject to the following:

(1) Title to and ownership of the software and documentation shall remain with the Contractor, unless otherwise specified.

(2) Software licenses are 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.
10. SOFTWARE CONVERSIONS

Not offered.

11. DESCRIPTIONS AND EQUIPMENT COMPATIBILITY

The Contractor shall include, in the schedule pricelist, a complete description of each software product and a list of equipment on which the software can be used. Also, included shall be a brief, introductory explanation of the modules and documentation which are offered.

12. RIGHT-TO-COPY PRICING

The Contractor shall insert the discounted pricing for right-to-copy licenses.

Customer will not (and will not allow any third party to), directly or indirectly: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas or algorithms of the Services (or any underlying software, documentation or data related to the Services); modify, translate, or create derivative works based on the Services or any underlying software; or copy (except for archival purposes), rent, lease, distribute, pledge, assign, or otherwise transfer or encumber rights to the Services or any underlying software; use the Services or any underlying software for timesharing or service bureau purposes or otherwise for the benefit of a third party; or remove any proprietary notices or labels.
<table>
<thead>
<tr>
<th>SIN</th>
<th>Part Number</th>
<th>Product Description</th>
<th>GSA Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>511210</td>
<td>RFQA-P</td>
<td>Rainforest QA Professional Plan (annual). Billed monthly. Includes: Web Regression Testing, 24/7 Access to 50K Certified Testers, Algorithmic Management of Crowd, Mobile Testing, Exploratory Testing, Single Sign On (SAML), Internal On-Premise Crowd, and 14000 Monthly Credits. Dedicated Customer Success Manager, 1 Day Onsite Consultation, 1 Hour Workflow Consultation, 3 Account Reviews Per Year, Test Auditing Editing (10 Hours), Additional Platform Training 1 Included, 12 Hours SLA Support, Rainforest Executive Sponsor.</td>
<td>$116,070.53</td>
</tr>
<tr>
<td>511210</td>
<td>RFQA-B</td>
<td>Rainforest QA Business Plan (annual). Billed monthly. Includes: Web Regression Testing, 24/7 Access to 50K Certified Testers, Algorithmic Management of Crowd, Mobile Testing, Exploratory Testing, Single Sign On (SAML), Internal On-Premise Crowd, Custom Tester NDA, and 30000 Monthly Credits. Dedicated Customer Success Manager, 4 Days Onsite Consultation, 2 Hours Workflow Consultation, 4 Account Reviews Per Year, Test Auditing Editing (20 Hours), Additional Platform Training 2 Included, 12 Hours SLA Support, Rainforest Executive Sponsor.</td>
<td>$232,141.06</td>
</tr>
<tr>
<td>511210</td>
<td>RFQA-C</td>
<td>Rainforest QA Custom Plan (annual). Billed Monthly. Priced Per Monthly Credit.</td>
<td>$0.48</td>
</tr>
</tbody>
</table>
1. SERVICES AND SUPPORT

1.1 In accordance with the terms and conditions herein, together with the underlying GSA Schedule Contract, Schedule Pricelist and Purchase Order(s), Rainforest will use reasonable commercial efforts to provide Ordering Activity the Services selected in the Order Form, the applicable General Service Level Support Terms identified in Exhibit A, and if applicable, the professional services described in Exhibit B (collectively, the “Services”). As part of the registration process, Ordering Activity will identify an administrative user name and password for Ordering Activity’s Rainforest account (the “Account”). Ordering Activity may use the administrative user name and password to create standard users (each with a user password) up to the maximum number, if any, designated in the Order Form. “Ordering Activity” shall mean: The Government customer (licensee), under GSA Schedule contracts, is the “ordering activity,” defined as an “entity authorized to order under GSA Schedule contracts as defined in GSA Order OGP 4800.2I, as may be revised from time to time.” The licensee or customer cannot be an individual because any implication of individual licensing triggers the requirement for legal review by Federal employee unions. Conversely, because of competition rules, the contractor must be defined as a single entity even if the contractor is part of a corporate group. The Government cannot contract with the group, or in the alternative with a set of contracting parties.

2. RESTRICTIONS AND RESPONSIBILITIES

2.1 This is a contract for Services and no license is granted thereto. Subject to the terms of Sections 2, Section 3 and Section 4, Rainforest grants to Ordering Activity, for the term of this Agreement, a right to receive the Services and a right to reproduce and distribute internally within Ordering Activity’s business during the Service Term, and for Ordering Activity’s internal use only (and only in compliance with any applicable documentation), the documentation and data provided to Ordering Activity by Rainforest (the “Rainforest Data”). Ordering Activity will not (and will not allow any third party to), directly or indirectly: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas or algorithms of the Services (or any underlying software, documentation or data related to the Services); modify, translate, or create derivative works based on the Services or any underlying software; or copy (except for archival purposes), rent, lease, distribute, pledge, assign, or otherwise transfer or encumber rights to the Services or any underlying software; use the Services or any underlying software for timesharing or service bureau purposes or otherwise for the benefit of a third party; or remove any proprietary notices or labels.

2.2 Ordering Activity represents, covenants, and warrants that Ordering Activity will access and use the Services only in compliance with Rainforest’s standard access and security policies then in effect and made available to Ordering Activity.

2.3 Ordering Activity shall be responsible for maintaining the security of the Account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of the Account with or without Ordering Activity’s knowledge or consent.

2.4 Except as permitted by law, neither party shall acquire hereunder any right to use the name or logo of the other party or any part thereof. Any such use shall require the express written consent of the owner party. Notwithstanding, Rainforest shall be permitted to list Ordering Activity’s name and logo in its list of customers on its website and in its marketing materials. Rainforest acknowledges that the ability to use this Agreement in advertising is limited by GSAR 552.203.

3. CONFIDENTIALITY

3.1 Each party (the “Receiving Party”) understands that the other party (the “Disclosing Party”) has disclosed or may disclose information relating to the Disclosing Party’s business (hereinafter referred to as “Proprietary Information” of the Disclosing Party). Notwithstanding the foregoing, nothing (except the Services and underlying software, algorithms and information embodied therein) will be considered “Proprietary Information” of the Disclosing Party unless either it is or was disclosed in tangible or written form and is conspicuously marked “Confidential”, “Proprietary” (or the like) at the time of disclosure or it is identified as confidential or proprietary at the time of disclosure and is delivered in the appropriately marked form within 30 days of disclosure. Rainforest recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as “confidential” by the vendor.

3.2 The Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information, and (ii) not to use (except as expressly permitted herein) or divulge to any third person any such Proprietary Information. The Disclosing Party agrees that the foregoing shall not apply with respect to any information after three years following the disclosure thereof (except the Services and underlying software, algorithms and information embodied therein which shall remain confidential indefinitely) or any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by it without restriction on disclosure prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party, or (e) is required by law. In the performance of the Services, Rainforest is expressly authorized to collect general user data and report on aggregate measures of the Services’ performance, provided that the user data is anonymized and no personally identifying information of the Ordering Activity or its users is revealed.

3.3 Any suggestions, comments or other feedback provided by a party to the other in connection with this Agreement, including with respect to the Services (collectively, “Feedback”) is and will be treated as the recipient’s Confidential Information.

4. OWNERSHIP, DATA & DATA SECURITY

Rainforest QA, Inc.  Page 9
Contract Number GS-35F-655GA  Phone: 415-969-6326
As between Rainforest and Ordering Activity, Rainforest owns all right, title and interest in and to the Rainforest Services, and any and all related Intellectual Property Rights. "Intellectual Property Rights" means any and all patents, copyrights, moral rights, trademarks, trade secrets and any other form of intellectual property rights recognized in any jurisdiction in the world, including any applications and registrations for any of the foregoing. Each party reserves all rights not expressly granted in this Agreement, and no licenses are granted by a party to the other party under this Agreement, whether by implication, estoppel or otherwise, except as set forth in this Agreement.

Ordering Activity must provide any notices and obtain any consents related to use of the Services. Rainforest reserves the right to provide the Services from locations, and/or through use of subcontractors, worldwide.

Rainforest will take reasonable technical and organizational measures designed to keep the Rainforest Data and the Product Data (as defined below) secure and to protect it against accidental loss or unlawful destruction, alteration, disclosure or access. Ordering Activity acknowledges and agrees that no personally identifiable information is required for the Services and will use its commercially reasonable efforts to prevent sharing of such information with the Services and Rainforest.

To create meaningful analytics, and as otherwise provided in this Section 4.4, Rainforest may collect, compile and aggregate transactional and output data based on the Services activity originating from the Ordering Activity applications ("Product Data"). Rainforest agrees that it may only use Product Data in the following manner: (i) Rainforest may retain a copy of the Product Data as necessary to comply with applicable law, (ii) Rainforest may use the Product Data for the purpose of providing and improving the Services, and (iii) Rainforest may use the Product Data solely in aggregate, non-identifiable form (i.e., not identifying Ordering Activity or any end user) for Rainforest's legitimate business purposes, provided that Rainforest may not at any time disclose Product Data in a form that identifies Ordering Activity and/or any end user of a Ordering Activity application to a third party without the prior written authorization of Ordering Activity. Ordering Activity application to a third party without the prior written authorization of Ordering Activity. Ordering Activity owns all right, title and interest in and to any test scripts that Ordering Activity provides as part of the Services.

Rainforest will invoice Ordering Activity for the Fees for the Services as listed on the applicable Order Form.

If Ordering Activity believes that Rainforest has billed Ordering Activity incorrectly, Ordering Activity must contact Rainforest no later than 60 days after the closing date on the first billing statement in which the alleged error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to Rainforest's customer support department.

Rainforest shall state separately on invoices taxes excluded from the fees, and the Ordering Activity agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

The term of this Agreement begins on Effective Date and will remain in effect for the service term (the “Term”).

When the end user is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be made as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Rainforest shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

The parties' rights and obligations under Sections 2 (“Restrictions and Responsibilities"), 3 (“Confidentiality"), 4 (“Ownership, Data and Data Security"), 5 (“Payment of Fees"), 8 (“Indemnification"), 9 (“Warranty and Disclaimer"), 10 (“Limitation of Liability"), and 12 (“Miscellaneous”) shall survive termination.

The parties each warrant and represent to the other party that: (i) it has the corporate power and authority to grant the rights and any licenses granted herein and perform the obligations to which it commits herein; (ii) this Agreement is valid, binding and enforceable against it in accordance with its terms; and (iii) it shall comply with all applicable laws, regulations, governmental rules and guidance, and court orders, in the performance of this Agreement; (iv) it will abide by all of the restrictions, covenants, and obligations set forth in this Agreement; and (v) it will maintain and comply with its published privacy policy and end user license agreement (as applicable), and collect, use and disclose all personal information in accordance with its published privacy policy, terms of service, end user license agreement, and all applicable laws. No party approval of any material submitted by the other party will relieve the submitting party's responsibility under this Agreement.

Rainforest agrees, at its own expense, to indemnify, defend Ordering Activity and hold Ordering Activity harmless against any suit, claim, or proceeding brought against Ordering Activity alleging that the use of Services in accordance with this Agreement infringes any U.S. copyright, U.S. trademark or U.S. patent, provided that Ordering Activity (i) promptly notifies Rainforest in writing of any such suit, claim or proceeding, (ii) allows Rainforest, at Rainforest’s own expense, to direct the defense of such suit, claim or proceeding, (iii) gives Rainforest all information and assistance necessary to defend such suit, claim or proceeding, and (iv) does not enter into any settlement of any such suit, claim or proceeding without Rainforest’s written consent. The foregoing obligations do not apply with respect to the Services or portions or components thereof (w) used other than in accordance with this Agreement, (x) not supplied by Rainforest, (y) made in whole or in part in accordance to Ordering Activity specifications, (z) combined with other products, processes or materials where the alleged infringement...
would not have occurred without such combination. This section states Rainforest’s entire liability and Ordering Activity’s exclusive remedy for infringement or misappropriation of intellectual property of a third party. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

8.2 [Reserved]

9. WARRANTY AND DISCLAIMER

THE SERVICES WILL CONFORM TO THE SPECIFICATIONS AND DOCUMENTATION IN ALL MATERIAL RESPECTS. NOTWITHSTANDING, RAINFOREST DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE OR MEET ORDERING ACTIVITY’S REQUIREMENTS; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS PROVIDED IN THIS SECTION 9, THE SERVICES ARE PROVIDED “AS IS” AND, EXCEPT AS EXPRESSLY PROVIDED IN SECTION 7 AND THIS SECTION 9, RAINFOREST DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

10. LIMITATION OF LIABILITY

NOTWITHSTANDING ANYTHING TO THE CONTRARY, EXCEPT FOR BODILY INJURY OF A PERSON, NEITHER PARTY SHALL BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS OR PROFITS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND A PARTY’S REASONABLE CONTROL; OR (D) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE CONTRACT PRICE. ORDERING ACTIVITY ACKNOWLEDGES THAT AN INTERRUPTION IN SERVICE(S) DUE TO CIRCUMSTANCES BEYOND THE REASONABLE CONTROL OF RAINFOREST, SUCH AS A FAILURE OF TELECOMMUNICATIONS OR NETWORK SYSTEMS NOT CONTROLLED BY RAINFOREST, SHALL NOT BE CONSIDERED A SERVICE OUTAGE OR SERVICE DEFICIENCY FOR PURPOSES OF ANY REMEDY PROVIDED IN THIS AGREEMENT.


11. MISCELLANEOUS

If any provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other provisions of this Agreement will remain in full force and effect so long as the economic or legal substance of the transactions contemplated by this Agreement is not affected in any manner materially adverse to any party. Upon any determination that any provision is invalid, illegal, or incapable of being enforced, the parties will negotiate in good faith to modify this Agreement to effect the original intent of the parties as closely as possible and in an acceptable manner so that the transactions contemplated in this Agreement are fulfilled. This Agreement is not assignable, transferable or sublicensable by Ordering Activity except with Rainforest’s prior written consent. Both parties agree that this Agreement, together with the underlying GSA Schedule Contract, Schedule Pricelist and Purchase Order(s), is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed on behalf of both parties by their duly authorized representatives, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Ordering Activity does not have any authority of any kind to bind or attempt to bind Rainforest in any respect whatsoever. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. This Agreement shall be governed by the Federal laws of the United States without regard to its conflict of laws provisions. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement. This Agreement may be executed in one or more counterparts (including via PDF or other electronic format), each of which shall be deemed an original but all of which together shall constitute but one agreement.