Section G - Contract Administration Data

DOD ESI BPA TERMS & CONDITIONS
Blanket Purchase Agreement (BPA)
Department of Defense (DoD) Enterprise Software Agreement

In the spirit of the Federal Acquisition Streamlining Act, the Defense Information Systems Agency (DISA), on behalf of the U.S. DoD Enterprise Software Initiative (ESI) (referred to hereafter as the "Government" or "DoD") will establish Red Hat BPA(s).

Federal Supply Schedule (FSS) contract BPAs reduce contracting and open market costs such as: search for sources, the development of technical documents, solicitations, and the evaluation of offers. This BPA is entered to reduce the administrative costs of acquiring commercial products and services from the General Service Administration (GSA) FSS 70 contract(s). All orders placed against this BPA are subject to the terms and conditions of the FSS contract.

The ESI is a joint DoD project to develop and implement a DoD enterprise procurement process. This ESI BPA is issued in the spirit of the policy and guidelines provided in the Defense Federal Acquisition Regulation Supplement (DFARS) Subpart 208.74.

A. TERMS AND CONDITIONS

1. Pursuant to GSA FSS contract number GS-35F-0119Y contractor agrees to the following terms of a BPA with the Defense Information Technology Contracting Organization (DITCO). All orders placed against this BPA are subject to the terms and conditions of the FSS contract. The items on this BPA are set forth in Attachment A as defined by the contractor. License terms and conditions applicable to products acquired under this BPA are defined in the License Agreement included as Attachment B.

2. **Order of Precedence.** The order of precedence for resolving any inconsistency between this BPA and the GSA contract terms shall be as specified in the GSA contract's Commercial Item clause, FAR 52.212-4. The provisions of FAR 52.212-4 specified in FAR 12.302, as required by Federal law, shall prevail over any terms of the commercial license.

3. **Extent of Obligation.** The Government estimates, but does not guarantee, that the volume of purchases through this agreement will not exceed $40 million. The Government is obligated only to the extent of authorized purchases actually made under the BPA(s).

4. **Funds Obligation.** The BPA does not obligate any funds. Funds will only be obligated on each delivery order.

5. **BPA Term.** The PoP is for a period of five (5) years. The BPA will be reviewed annually to ensure that it still represents a "best value." This BPA expires upon completion of all orders issued within the specified BPA ordering period, inclusive of any exercised BPA option periods. The BPA is contingent upon the contractor maintaining products/services of the BPA on the applicable GSA Schedule. This BPA is based on the contractor's current GSA schedule contract. In the event the contractor's current GSA schedule contract is canceled or expires and a new GSA schedule contract is awarded, this BPA shall automatically transfer to the new GSA schedule contract to the extent the new schedule contract includes the same scope and items as the canceled or expired GSA contract.

6. **Pricing Terms.** Attachment A provides unit prices as explained below. Prices shall not escalate, and Attachment A is not subject to upward adjustment during the term of the BPA. The government may secure additional discounts at the time of placing an order. Spot discounts are authorized and encouraged. The prices will be reviewed annually, or as required to determine whether a reduction is appropriate in accordance with the price reduction provisions of the agreement. Contractor shall include a 2.0% Acquisition, Contracting, and Technical (ACT) fee in contractor's prices. The contractor shall be responsible for the payment of all fees that are included in

the product pricing (i.e. GSA, ACT), as calculated on the customer orders, in accordance with the Fees and Payments.

7. **Discount Terms and Conditions.** Volume pricing is based on attaining levels on a single delivery order. Discounts are based on a minimum quantity per order as outlined in Attachment A. This Attachment also provides a comparison between commercial list price, GSA price, and BPA price for Year 1 of the BPA.

8. **Option Periods.**

8.1 **Prices.** The rate of discount the BPA price provides in Year 1 from GSA pricing shall serve as a base line for discounts applied to future years of the BPA. Discounts shall be the same or greater discount level when comparing GSA pricing with BPA pricing.

8.2 **Ordering Period.** If orders issued within the BPA ordering period(s) include options, the order options may be exercised after the BPA ordering end date(s) provided that: the initial order that includes the option was issued during the BPA ordering period(s), the Ordering Office determines that the underlying GSA Schedule is still valid at the time the order option is exercised and still includes the applicable products, and the Ordering Office satisfies all other applicable regulations for exercise of options.

9. **Price Reduction.**

9.1 **Most Favored Customer Prices.** Contractor shall ensure the prices under this BPA are as low as the prices contractor has under any other contract instrument with any customer under like terms and conditions. If at any time the prices under any other contract instrument with any customer become lower than the prices in this BPA, this BPA will be immediately modified to include the lower prices.

9.2 **SmartBUY Program Extension.** Office of Management and Budget (OMB) has announced the SmartBUY initiative to maximize cost savings and achieve best quality when acquiring commercial products and services. If during the term of this BPA, contractor and its resellers enter into a government-wide agreement with the GSA under the SmartBUY Initiative, which includes pricing for the specific products or services under similar terms and conditions as those licensed by the DoD under this BPA, contractor and its resellers agree to reduce the prices for the remaining term of this BPA to meet the prices and fees under the SmartBUY agreement, or shall license the products and sell the services under the SmartBUY agreement for the same remaining term of this BPA, at the discretion of the DoD. Neither the contractor nor its resellers shall preclude the government from purchasing or licensing commercial products or services under a SmartBUY Agreement.

10. **License Agreement.** The contractor shall provide copies to the Government of all licensing and End User License Agreements. Attachment B provides the License Agreement supplied by Carahsoft Technology Corporation. Notwithstanding any provision to the contrary, licenses are transferable within the authorized users as stated in paragraph B.2. (Example: Software licenses acquired via delivery/call orders of this BPA are subscriptions and are subject to the licensing provisions and the terms of the GSA contract. A license may be hosted on the standard desktop and the same user's laptop (not to be used concurrently). Any delivery/call order issued hereunder will serve as proof of order. Upon validation and receipt of software, customers will be provided an electronic version of the license agreement.) The following provisions will be included in a license addendum if the BPA is awarded to other than the software publisher:

10.1 **Functionality Replacement and Extended Support.** If the form, fit, or functionality contained in any licensed products acquired hereunder is substantially reduced or if the product is replaced, and/or Carahsoft Technology Corporation provides this same or substantially similar functionality as a separate or renamed product, then the DoD is entitled to license such software at no additional licenses or maintenance fees. However, throughout the term of this agreement, the contractor will provide support services for a period of one year.

10.2 **Rights of Survivorship of the Agreement.** This BPA shall survive unto contractor, its successors, rights and assigns. The terms and conditions in this BPA shall survive the acquisition or merger of contractor by or with another entity. Contractor shall ensure these survivorship terms are included in any such merger or acquisition agreement, including a duty on the part of the surviving entity to abide by the terms of this BPA. Any software name changes, re-packing, or merger of similar products that carry forward the same or similar function of the software shall be supported with updates, upgrades, and new releases under this agreement at no additional cost.

11. **Substitution and Technology Refreshment.** If at any time during the life of this BPA, the original manufacturer of the equipment (includes software, hardware and firmware) schedules the products for discontinuation, improvement, and/or replacement, the BPA holder shall provide a proposal to include the new or revised products on the BPA under the appropriate line items. Proposed prices for new or revised products shall be constructed in accordance with this BPA for most favored customer prices. Discounts shall be at the same or greater discount level as the original BPA product prices. Proposals shall be submitted to the Contracting Officer within seven (7) days from the date the contractor obtains knowledge that the original equipment manufacturer has scheduled a BPA product for discontinuation, improvement, and/or replacement. Improvement of product includes new releases, updates, and upgrades including additional features and functionality, and successor or upgrade products. Changes proposed by the contractor shall become effective only upon written acceptance by the Government.

12. **Indemnity.** To the maximum extent permitted by law, contractor will defend, indemnify, protect and hold harmless DoD and their respective officers, directors, employees, agents, and affiliates from and against any and all claims, losses, liens, demands, attorneys' fees, damages, liabilities, costs, expenses, obligations, causes of action, or suits, (collectively "claims") by a third party, that are caused by or arise out of: i) any wrongful act or omission, whether active or passive and whether actual or alleged, or willful misconduct of the contractor or its employees, subcontractors or agents; and ii) property loss, damage, personal injury or death, caused by the contractor, or any of the contractor's employees, subcontractors or agents.

B. AUTHORIZED USERS AND POINTS OF CONTACT

1. **Authorized Users.** The BPA is open for ordering by all DoD components. For the purposes of this agreement, a DoD component is defined as: the Office of the Secretary of Defense (OSD), the military departments, the Chairman of the Joint Chiefs of Staff, the combatant commands, the Inspector General of the DoD, the Defense agencies, the DoD field activities, the U. S. Coast Guard, North Atlantic Treaty Organization, the Intelligence Community, and foreign military sales with a Letter of Authorization. GSA or other applicable ordering organizations/agencies are authorized to place orders under this BPA on behalf of DoD end users and must comply with DFARS 208.7400. This BPA is also open to DoD contractors authorized to order in accordance with the FAR Part 51.

2. **BPA Points of Contact (POCs):** The BPA POCs are outlined below. Each delivery order issued against the BPA will contain POCs reference clause DARS 52.204-9000 with the contacts of the delivery order.

   a. Contracting Office:

   Defense Information Technology Contracting Organization (DITCO)/PL8321
   2300 East Drive
   Scott Air Force Base, IL 62225-5406

   POC: Carrie Ross / Contracting Officer
   Phone: (618) 229-9569 / DSN: 779-9569
   Fax: (618) 229-9177
   Email: carrie.m.ross.civ@mail.mil

   POC: Jenna Frey / Contract Specialist
   Phone: (618) 229-9501 / DSN: 779-9501

Fax: (618) 229-9177
Email: jenna.m.frey.civ@mail.mil

b. Software Product Manager (SPM):

SPM: Jonnice Medley
Phone: (301) 225-8081 / DSN 375
E-mail: jonnice.medley.civ@mail.mil

c. Customer Point of Contact: (To be specified on each order)

d. Financial Management Office (FMO):

DITCO/CFE81
2300 East Drive
Scott AFB IL 62225-5406

FMO: Monica Hellmann
Phone: (618) 229-9280
Fax: (618) 229-9273
E-Mail: monica.a.hellmann.civ@mail.mil

e. Contractor Point of Contact:

Contractor name, business size: Carahsoft Technology Corporation, small business
TIN, DUNS, and CAGE: 53-2189693, 088365767, and 1P3C5
Contractor address as it appears on the System for Award Management: 12369 Sunrise Valley Drive, Suite D2,
Reston, VA, 20191
Contractor POC name: Jennifer Lohmann
Contractor phone number(s): 703-871-8592
Contractor fax number: 703-871-8505
Contractor POC email: Jennifer.Lohmann@carahsoft.com
Contractor ordering support numbers: redhatesibpa@carahsoft.com
                                         877-RHAT-GOV
Payment terms: Net 30
Remit-to address: Same as above

f. BPA Contracting Officer's Representative (COR):

Defense Information System Agency (DISA)/ES95
6910 Cooper Ave.
Fort Meade, MD 22041-2717

SPM: Jonnice Medley
Phone: (301) 225-8081 / DSN 375
E-mail: jonnice.medley.civ@mail.mil

C. ORDERING

1. DFARS Subpart 208.74 directs DoD software buyers and requiring officials to check the DoD ESI website for DoD inventory or an enterprise software agreement (ESA) before using another method of acquisition. These steps for the buyer are summarized from the DFARS:

a. Check the Enterprise Agreement Summary Table to determine if software rights or related services have already been acquired and are available from DoD inventory. If they are available, then acquire the designated software from DoD inventory and reimburse the SPM.

b. If the required software rights or related services are not available from inventory or from an Enterprise Software Agreement, then use an alternate method of acquisition, subject to laws and policy.

c. If the required software rights or related services are not available from inventory but are available from an ESA, then review the terms and conditions and prices, in accordance with otherwise applicable source selection requirements. Per FAR 8.405-3(c)(2), where multiple BPAs are available, before placing an order exceeding the micro-purchase threshold, forward the requirement to the BPA holders and evaluate the responses received to determine which BPA holder represents the best value.

d. If existing ESAs do not represent the best value to the Government for the software rights or related services, then seek a waiver from the SPM before continuing with the alternative acquisition methods.

This BPA will be posted to the DoD ESI website as part of the ESI program. The web site can be viewed at http://www.esi.mil. The Government will also post this contract to the following sites:
http://www.ditco.disa.mil/contracts/catalog.asp?cat=S
https://chess.army.mil/CMS/A/SoftwareAgreement

2. **Delivery Orders.** The scope of this effort is worldwide. Delivery requirements and administration will be stipulated on delivery orders. Ordering via this BPA is decentralized. Orders are prepared by a Government Ordering Officer (a duly warranted Contracting Officer whose warrant authorizes delivery orders from the GSA Schedule) in accordance with the terms and conditions of this BPA and the GSA Schedule. Orders may be placed by Electronic Data Interchange (EDI), credit card, facsimile, on an authorized form such as a Standard Form (SF) 1449 or Department of Defense (DD) Form 1155, or by logging on to the Carahsoft Technology Corporation purchasing page at http://www.carahsoft.com/redhat/.

   a. **Notice to Ordering Offices**: When ordering services, ordering offices are responsible for compliance with GSA's Ordering Procedures for Services and DFARS 208.404-70.

   b. **Placement of Orders:**

   (1) **Request for Quotes.** All requests for quotes shall be made in writing in an email attachment, through the on-line request for quotations, or via fax.

To request a quote, contact the contractor POC below:

Carahsoft Technology Corporation
Jennifer Lohmann
703-871-8592
703-871-8505
RedHatESIBPA@carahsoft.com

or submit on-line through the following website http://www.carahsoft.com/redhat/.

   (2) Assisted Orders: The Contracting Officer that administers the BPA may, occasionally, issue the delivery order for a specific requirement as an extra service for an ESI customer. This is called an "assisted order" and it may be appropriate for an additional contracting service fee to be charged. When this is the case, it must be recognized that those contracting fees are not a part of the ESA.

3. **Users' Ordering Guide.** The contractor shall develop a Users' Ordering Guide in coordination with the Government that will be posted to the contractor web site and various Government sites. The Ordering Guide shall

be submitted to the SPM and Procuring Contracting Officer (PCO) within thirty (30) days of BPA award and made available on the contractor's home page upon written approval. The contractor shall immediately notify the Contracting Officer in the event of any changes to contractor POC information, contractor physical address, contractor web address, or any other relevant information in the Ordering Guide. This guide shall be continuously updated as required and shall not require formal modification to the BPA. All changes to the ordering guide shall be reviewed and approved by the PCO prior to posting. The guide shall contain all information necessary for geographically dispersed activities to place orders, including, as a minimum:

    a. URL where a complete list of products is available, with appropriate contract line item numbers (CLINs), and associated prices can be found
    b. Government and contractor POCs
    c. Description of the ordering process
    d. Program Terms and Conditions
    e. License Terms and Conditions
    f. Information such as Commercial and Government Entity Code (CAGE), Data Universal Numbering System (DUNS), Taxpayer Identification Number (TIN), business size, etc. necessary to complete a Contract Action Report in the Federal Procurement Data System - Next Generation system
    g. Range of quantity discounts
    h. Links to DoD ESI and the Government web sites

4. E-Commerce Site. It is the intention of the Government to use existing and future capability of the DoD Standard Procurement System, EDI capability, Government procurement card, and contractor electronic ordering capability to create a paperless ordering, invoicing, and payment process. During the term of the BPA, the contractor shall participate to achieve this objective. This BPA will be posted to the DoD ESI website as part of the ESI program. The web site can be viewed at http://www.esi.mil and is publicly accessible. The Government may also post this BPA to other federal government or DoD web sites, some of which may be publicly accessible. On-line ordering may also be accomplished through DoD controlled web sites. The contractor shall ensure that the data and information relating to contractor's products, technical specifications, services, prices, and other information related to this BPA is current, accurate, complete, and delivered by the contractor in the standard format(s). The contractor shall maintain coordinated and integrated hypertext links to the ESI web site from their World Wide Web site(s). The contractor shall provide electronic-commerce/EDI capabilities and accept and respond to secure on-line orders and customer requests consistent with the terms of this acquisition vehicle. The contractor shall use its commercially reasonable business efforts to adapt its business processes as technical requirements, environment, and architecture evolve. This BPA may also be loaded into publicly accessible electronic catalog systems of other DoD agencies.

5. Delivery Schedule. Red Hat (RH) shall make available the RH entitlements via electronic download within one week of receipt of order. Media kits will be delivered within 7-10 business days of receipt of order.

6. Delivery Notice. Unless otherwise agreed to, all deliveries ordered under this BPA must be accompanied by a delivery notice, ticket, or sales slips that must contain at a minimum the following information:

    a. Product part number
    b. Product Description
    c. Product period of performance dates
    d. Product Qty purchased
    e. End customer PO #
    f. End customer Red Hat Network Account
    g. End Customer Entity as registered for through End customer's Red Hat Network Account

7. Suspension. There may be occasions where the Government may suspend ordering (by contract line item number (CLIN) up to and including the entire BPA) or cancel the BPA for cause. Reasons for suspension or cancellation can include but are not limited to delinquent sales report submission, and non-compliance to BPA terms and conditions. If a suspension is announced, the contractor shall adhere to this suspension by not accepting/processing delivery orders for the suspended item(s).

D. INVOICING AND PAYMENT

1. **Invoicing.** The requirements of a proper invoice are as specified below as required by FAR 52.212-4 in the Federal Supply Schedule contract. The contractor shall submit an electronic invoice to the address(es) specified within the delivery orders issued against the BPA. An invoice must include --

   a. Name and address of the contractor;
   b. Invoice date and number;
   c. Contract number, CLIN, and, if applicable, the order number;
   d. Description, quantity, unit of measure, unit price, and extended price of the items delivered and PoP;
   e. Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;
   f. Terms of any prompt payment discount offered;
   g. Name and address of official to whom payment is to be sent;
   h. Name, title, and phone number of the person to be notified in event of defective invoice;
   i. TIN. The contractor shall include its TIN on the invoice only if required elsewhere in this contract; and
   j. Electronic funds transfer banking information.

Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903). Prompt payment contractors are encouraged to assign an identification number to each invoice. Invoicing and payment may be accomplished either through Wide Area WorkFlow (WAWF) and/or via the Government Impact Card. The issued order will specify the method.

2. **Fast Payment Procedure.** The provisions of FAR 52.213-1, Fast Payment Procedure, are incorporated in this BPA by reference and pertain to credit card delivery/call orders or other applicable order deliveries. Fast Payment procedures may be used when the conditions of FAR 13.402 are met and the delivery order authorizes Fast Payment.

3. **Precedence.** The terms and conditions included in this BPA apply to all delivery/call orders made pursuant to it. In the event of an inconsistency between the provisions of the BPA and the contractor's invoice, the provisions of the BPA will take precedence.

E. BPA MANAGEMENT AND OVERSIGHT

1. **Management.** The contractor must provide centralized administration, in the form of a Program Manager, in support of all work performed under this BPA. The Program Manager, at a minimum, is required to participate in periodic program management reviews (which may require travel to a Government named site). Additional functions would include customer service, invoicing, payment, and submission of monthly and quarterly reports and approved fee payments. The contractor shall ensure that all sales personnel are aware of the ESI Program and enforce the policy that this BPA is the preferred DoD procurement vehicle for the products within.

2. **Report of Sales.** Consistent with the GSA Schedule, a Report of Sales as described herein shall accompany the remittance of the ACT fees to enable verification of the fee amounts rendered. The contractor shall provide a Report of Sales to the SPM and the PCO in electronic format within fifteen (15) days following completion of the quarterly reporting period, or as otherwise requested by the SPM. The report shall be submitted in the standard format shown in the Report of Sales, and where applicable (Air Force Sales) include an Air Force Sales Transmittal Letter. Negative reports are required. The SPM or PCO shall provide written approval of each report to the contractor. At the end of each calendar quarter, the written approval provided to the contractor will be accompanied by a request to remit ACT fees. The SPM or PCO will provide copies of the Report of Sales on a quarterly basis to the DoD components participating in fee sharing. If the BPA contains services, current ACT fee paid by delivery order and total ACT fees paid will be included in the report.

3. **United Nations Standard Products and Services Code.** The United Nations Standard Products and Services Code (UNSPSC) is a required field in the submission format required by DoD for products and prices. The UNSPSC code permits software asset management through a standard coding structure. The UNSPSC is a coding system used to classify both products and services for use throughout the global marketplace. The management and development of the UNSPSC Code is coordinated by GS1 US. The current version is available free as a download at http://www.unspsc.org.

4. **Records.** The contractor shall maintain archival copies of all orders for the life of the BPA in accordance with GSA and FAR Subpart 4.7 requirements. Copies shall be made available to the Government upon request.

5. **Program Management Reviews (PMR).** The contractor shall participate in regular reviews of the progress of the BPA. Reviews shall be held at least twice yearly as scheduled by the SPM. During these reviews the contractor shall report on status of BPA sales, sales leakage, marketing, and any outstanding issues concerning the BPA, among other things. PMR agenda and presentation format shall be provided by the SPM to contractor prior to each PMR. Travel expenses are the responsibility of the contractor.

6. **Sales Leakage.** The goals of the ESI Program can only be realized through cooperation between the Government and the contractor to direct appropriate sales through the ESI vehicles. The contractor shall ensure that all sales personnel are aware of the ESI Program and enforce the policy that this BPA is the preferred procurement vehicle for the products within. Within sixty (60) days of the effective date of this BPA, contractor shall submit its plan of action and define the processes required to conform to the requirements of this BPA and shall keep current the plan throughout the Term of this BPA. The contractor shall establish a process to regularly audit sales to Government buyers, determine where sales outside the ESI vehicle are occurring, and take appropriate action to direct further sales through the ESI vehicle. Results of these audits will be presented as an agenda item during PMRs.

7. **Marketing.** The contractor shall dedicate reasonable resources to this effort and market and advertise this BPA, to include advertising the availability and benefits of this BPA on the contractor's web site, advertising this BPA at relevant trade shows, participation in DoD component sponsored events, and promotion through news media geared to Government/DoD information technology (IT) personnel and leadership.

The contractor may obtain standardized ESI marketing materials by requesting access from the SPM. The contractor's use of the ESI logo, seal, or emblem shall be limited to materials describing the products and services which are specifically made available under this BPA. ESI reserves the right to review any materials that contain the ESI brand prior to use by the contractor, and, at a minimum, requires the contractor to follow these guidelines:

   a. **Use Only the Approved Master Artwork.** Do not alter or distort the appearance of the logo in anyway, for example, by adding new design elements or colors or changing the font. The logo must always look sharp, clean, and well produced.
   b. **Allow a Minimum Clear Space Around the ESI Logo.** Always allow for a minimum clear space around the logo. Never violate the clear space with any graphic elements, words, or charts.
   c. **Maintain Legibility.** Never reproduce the logo in a manner that causes the logo to become illegible or blurry, which may happen if the logo is reproduced too small.

All materials made available for public view must include the following statement: "The ESI logo/marking is used with permission. ESI procedures are explained in DFARS 208.74 and DoD CIO Guidance and Policy memorandum No. 12-8430 dated July 26, 2000."

8. **Enterprise Integration Toolkit.** The Enterprise Integration Toolkit is a program developed by the Assistant Deputy Under Secretary of Defense Logistics Systems Management to assist DoD Program Managers, Contracting Officers, and members of the Integrated Project Team in the acquisition and implementation of COTS business systems software.

The Toolkit provides guidance, processes, and tools to define program needs and determine how to best meet these needs through an external acquisition via a three-tiered roadmap to guide the entire life-cycle from problem definition to solution roll-out. It provides a collection of best practice tools adopted from the commercial industry and includes more than 100 best practice templates, guides, checklists, and samples.

Because the Toolkit is not contractor-specific and may be applied across a variety of COTS software package implementations, including this BPA, the contractor shall be familiar with the Toolkit and include as part of the marketing effort required above, a description of the Toolkit for their customers, and a link to the Enterprise Toolkit web site at: https://acc.dau.mil/CommunityBrowser.aspx?id=153015&view=w&lang=en-US.

(End)

ATTACH A - PRODUCT PRICE LIST

Attachment A

PRODUCT AND PRICE LIST

Attachment A -
Carahsoft ESI Pricelis

Carahsoft ESI BPA
Attachment A_Word I

(End)

ATTACH B - LICENSE AGREEMENT

Attachment B

LICENSE AGREEMENT AND LIMITED PRODUCT WARRANTY RED HAT PRODUCTS/SERVICES

Red Hat Enterprise Agreement

This Red Hat Enterprise Agreement (the "**Agreement**") including Appendix 1, incorporated herein, is between Red Hat, Inc. ("**Red Hat**") and the purchaser or user of Red Hat software and services ("**Client**"). The effective date of this Agreement ("**Effective Date**") shall be concurrent with the date for the order this agreement accompanies. The Enterprise Agreement covers the use of Software or Services by any Ordering Activity. Notwithstanding anything to the contrary, the use of Software or Services from Red Hat by an Ordering Activity *does not* constitute that Ordering Activity's assent or acceptance of the Enterprise Agreement. Red Hat agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 3701, *et seq.*, Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; and 41 U.S.C. 423 relating to procurement integrity.

   1. **Scope of Agreement**

      1.1 Framework. "Software" means Red Hat Enterprise Linux, JBoss Enterprise Middleware and other software programs branded by Red Hat, its Affiliates and/or third parties including all modifications, additions, or further enhancements delivered by Red Hat. The specific services (the "**Services**") and/or Software will be provided by an authorized Business Partner to Client. Nothing in this Agreement shall

modify the terms of any agreement, including the order this agreement accompanies between the Client and Red Hat's authorized Business Partner.

1.2 Affiliates. "**Affiliate**" means an entity that owns or controls, is owned or controlled by, or is under common control or ownership with a party, where "**control**" is the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise.

1.3 Business Partners. Red Hat has entered into agreements with other organizations ("**Business Partners**") to promote, market, and support certain Software and Services. When Client purchases Software and Services through a Business Partner, Red Hat confirms that it is responsible for providing the Software and Services to Client under the terms of this Agreement. Red Hat is not responsible for (a) the actions of Business Partners, (b) any additional obligations Business Partners have to Client, or (c) any products or services that Business Partners supply to Client under any separate agreements between a Business Partner and Client.

2. **Obligations of the Parties**

   2.1 Reserved.

   2.2 Assistance. Client may provide Red Hat access to Client information such as information concerning Client systems and software ("**Client Information**"). Client understands and agrees that (a) the completeness, accuracy of, and extent of access to, any Client Information provided to Red Hat/Business Partner may affect Red Hat's/ Business Partner ability to provide Services, and (b) if reasonable access to Client Information is not provided, Red Hat/Business Partner will be relieved from providing any Services dependent upon such access. Client will attempt to obtain any third party consents necessary to grant Red Hat/ Business Partner access to the Client Information that is subject to the proprietary rights of, or controlled by, any third party, or which is subject to any other form of restriction upon disclosure. Red Hat shall be relieved of performing under this Agreement to the extent Client Information is required to perform and Client is not able to obtain third party consents necessary to grant Red Hat access.

3. **Payment**

   Client shall make timely payment for Red Hat Products and/or Services (the "Fees") to Red Hat's Business Partner in accordance with the order this agreement accompanies between Client and the Business Partner.

4. **License and Ownership**

   4.1 Licenses. Upon the expiration of this Agreement and any orders it accompanies, the Client's use of the open source software referenced in Appendix 1 shall continue to be governed by the licenses at www.redhat.com/licenses/EULAs.

   4.2 Freedom to Use Ideas. Subject to Section 9, DFARS 252.227-7015 and Client's rights in Client Information and notwithstanding anything to the contrary contained in this Agreement or an Order Form, the ideas, methods, concepts, know-how, structures, techniques, inventions, developments, processes, discoveries, improvements and other information and materials developed in and during the course of any Order Form may be used by Red Hat, without an obligation to account, in any way Red Hat deems appropriate, including by or for itself or its clients or customers.

   4.3 Marks. Unless expressly stated in an Order, no right or license, express or implied, is granted in this Agreement for the use of any Red Hat, Red Hat Affiliate, Client or third party trade names, service marks or trademarks, including, without limitation, the distribution of the Software utilizing any Red Hat or Red Hat Affiliate trademarks.

5. **Reporting and Inspection**

   5.1 Reporting. Client will notify Red Hat's Business Partner from whom Client purchased Software or

Services promptly if the actual number of Units of Software or Services utilized by Client exceeds the number of Units for which Client has paid the applicable Fees. In its notice, Client will include the number of additional Units and the date(s) on which such Units were first utilized. Red Hat's Business Partner will invoice Client for the applicable Services for such Units and Client will pay for such Services as provided in the order this agreement accompanies. Notwithstanding the foregoing, nothing in this section prevents the Government from disputing any invoice in accordance with the Contract Disputes Act (41 U.S.C. §§7101-7109).

5.2 Inspection. Client will use its best efforts to keep full and accurate accounts that may be used to properly ascertain and verify numbers of Units in use. Unless expressly provided otherwise in an individual order, upon Red Hat's written request, Client shall perform an internal audit to verify numbers of Units in use. The Client will furnish Red Hat or Business Partner with the information necessary to assure that the Software and Software or Services are being used pursuant to the provisions of the order including but not limited to compliance with the Unit quantities, or Client shall permit Red Hat to observe Client's internal audit process in order to verify compliance. All Red Hat personnel or its authorized representatives must have appropriate security clearances to gain access to Client site or data, if required. An audit may only take place once for the order this agreement accompanies. Any such inspection will take place only during Client's normal business hours and upon no less than ten (10) days prior written notice from Red Hat. Within thirty (90) days from Red Hat's request, Client will finalize the internal audit and provide Red Hat with the results in the form of a written report certified by Client's authorized officer including the number of underreported Units of Software or Services (the "Report"). In the event that it is determined that unauthorized copies of the software are in use by Client (i.e. software instances for which the Client has not purchased a valid subscription or which was not provided at no charge to the Client) ("Over-Deployed Software"), the Client, agrees to negotiate with Red Hat to develop a solution to remedy the issue. In the event the parties are unable to mutually agree on a resolution, the matter shall be subject to the Agreement's disputes clause.

6. Term and Termination

6.1 Term and Termination of Agreement. The term of this Agreement will begin on the Effective Date and will terminate at the expiration of the order this agreement accompanies.

6.2 Survival. If this Agreement or an order is terminated for any reason, Sections 3, 4, 5.2, 6.2, 7, 8, 9, 10.2, 11, 12.6-12.14 of this Agreement will survive such termination.

7. Continuing Business

Nothing in this Agreement will preclude or limit Red Hat from providing software, materials, or services for itself or other clients, irrespective of the possible similarity of such software, materials, or services to those that might be delivered to Client. The terms of confidentiality in Section 9 will not prohibit or restrict either party's right to develop, use or market products or services similar to or competitive with the other party; provided, however, that neither party is relieved of its obligations under this Agreement.

8. Limitation of Liability and Disclaimer of Damages

8.1 Limitation of Liability. FOR ALL EVENTS AND CIRCUMSTANCES, RED HAT AND ITS AFFILIATES' AGGREGATE AND CUMULATIVE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT AND ALL ORDER FORMS, INCLUDING WITHOUT LIMITATION ON ACCOUNT OF PERFORMANCE OR NON-PERFORMANCE OF OBLIGATIONS, REGARDLESS OF THE FORM OF THE CAUSE OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), STATUTE OR OTHERWISE WILL BE LIMITED TO DIRECT DAMAGES AND WILL NOT EXCEED THE AMOUNTS RECEIVED BY RED HAT DURING TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO LIABILITY, WITH RESPECT TO THE PARTICULAR ITEMS

(WHETHER SOFTWARE, SERVICES OR OTHERWISE) GIVING RISE TO LIABILITY UNDER THE MOST APPLICABLE ORDERING DOCUMENT, EXCLUDING REPROCUREMENT COSTS. 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.

8.2 Disclaimer of Damages. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT OR AN ORDER FORM, IN NO EVENT WILL RED HAT OR ITS AFFILIATES BE LIABLE TO CLIENT OR ITS AFFILIATES FOR DAMAGES OTHER THAN DIRECT DAMAGES, INCLUDING, WITHOUT LIMITATION: ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES, WHETHER ARISING IN TORT, CONTRACT, OR OTHERWISE; OR ANY DAMAGES ARISING OUT OF OR IN CONNECTION WITH ANY MALFUNCTIONS, REGULATORY NON-COMPLIANCE, DELAYS, LOSS OF DATA, LOST PROFITS, LOST SAVINGS, INTERRUPTION OF SERVICE, LOSS OF BUSINESS OR ANTICIPATORY PROFITS, EVEN IF RED HAT OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. LIABILITY FOR THESE DAMAGES WILL BE LIMITED AND EXCLUDED EVEN IF ANY EXCLUSIVE REMEDY PROVIDED FOR IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE.

9. **Confidentiality**

9.1 Obligations. During the term of this Agreement, all parties agree that (i) Confidential Information will be used only in accordance with the terms and conditions of this Agreement; (ii) each will use the same degree of care it utilizes to protect its own confidential information, but in no event less than reasonable care; and (iii) the Confidential Information may be disclosed only to employees, agents and contractors with a need to know, and to its auditors and legal counsel, in each case, who are under a written obligation to keep such information confidential using standards of confidentiality not less restrictive than those required by this Agreement. Both parties agree that obligations of confidentiality will exist for a period of two (2) years following initial disclosure of the particular Confidential Information. **"Confidential Information"** means all information disclosed by either Red Hat or Client (**"Disclosing Party"**) to the other party (**"Recipient"**) during the term of this Agreement that is either (i) marked confidential or (ii) disclosed orally and described as confidential at the time of disclosure and subsequently set forth in writing, marked confidential, and sent to the Recipient within thirty (30) days following the oral disclosure. Confidential Information may be subject to full or partial disclosure under the Freedom of Information Act, 5 U.S.C. §552.

9.2 Exclusions. Confidential Information will not include information which: (i) is or later becomes publicly available without breach of this Agreement, or is disclosed by the Disclosing Party without obligation of confidentiality; (ii) is known to the Recipient at the time of disclosure by the Disclosing Party; (iii) is independently developed by the Recipient without use of the Confidential Information; (iv) becomes lawfully known or available to the Recipient without restriction from a source having the lawful right to disclose the information; (v) is generally known or easily ascertainable by parties of ordinary skill in the business of the Recipient; or (vi) is software code in either object code or source code form that is licensed under an open source license. The Recipient will not be prohibited from complying with disclosure mandated by applicable law if, where reasonably practicable and without breaching any legal or regulatory requirement, it gives the Disclosing Party advance notice of the disclosure requirement.

10. **Representations and Warranties**

10.1 General Representations and Warranties. Red Hat represents and warrants that: (a) the Services will be performed in a professional and workmanlike manner by qualified personnel; (b) it has the authority to enter into this Agreement with Client; and (c) to Red Hat's knowledge, Red Hat branded Software does not, at the time of delivery to Client, include malicious or hidden mechanisms or code for the purpose of damaging or corrupting the Software.

10.2 Disclaimer of Warranty. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 10.1 OR BY A THIRD PARTY VENDOR DIRECTLY TO CLIENT UNDER A SEPARATE AGREEMENT, THE

SERVICES, SOFTWARE AND ANY HARDWARE ARE PROVIDED BY RED HAT "AS IS" AND WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. RED HAT DOES NOT GUARANTEE OR WARRANT THAT THE USE OF THE SERVICES, SOFTWARE OR HARDWARE WILL BE UNINTERRUPTED, COMPLY WITH REGULATORY REQUIREMENTS, BE ERROR FREE OR THAT RED HAT WILL CORRECT ALL SOFTWARE ERRORS. FOR THE BREACH OF THE WARRANTIES SET FORTH IN SECTION 10.1, CLIENT'S EXCLUSIVE REMEDY, AND RED HAT'S ENTIRE LIABILITY, WILL BE THE REPERFORMANCE OF DEFICIENT SERVICES, OR IF RED HAT CANNOT SUBSTANTIALLY CORRECT A BREACH IN A COMMERCIALLY REASONABLE MANNER, CLIENT MAY TERMINATE THE RELEVANT SERVICES AND RECEIVE A PRO RATA REFUND OF THE FEES PAID FOR THE DEFICIENT SERVICES AS OF THE EFFECTIVE DATE OF TERMINATION. Without limiting the generality of the foregoing disclaimer, the Software, Services and any hardware provided are not specifically designed, manufactured or intended for use in (a) the planning, construction, maintenance, control, or direct operation of nuclear facilities, (b) aircraft navigation, control or communication systems, weapons systems, or (c) direct life support systems. Client agrees that it is solely responsible for the results obtained from the use of the Software and Services.

11. **Governing Law/Consent to Jurisdiction.** The validity, interpretation, and enforcement of this Agreement, including end user license agreement for Software, will be governed by and construed in accordance with the laws of the United States without giving effect to the conflicts of laws provisions thereof or the United Nations Convention on Contracts for the International Sale of Goods. This Agreement is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). Failure of the parties to reach agreement on any request for equitable adjustment, claim, appeal, or action arising under or relating to this Agreement shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, Disputes, which is incorporated herein by reference. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal or state laws or regulations are enacted, it will not apply to this Agreement, and the governing law will remain as if such law or regulation had not been enacted.

12. **Miscellaneous**

    12.1 Reserved.

    12.2 Reserved.

    12.3 Independent Contractor. Red Hat is an independent contractor and nothing in this Agreement or related to Red Hat's performance of any delivery order will be construed to create an employment or agency relationship between Client (or any Client personnel) and Red Hat (or any Red Hat personnel). Each party will be solely responsible for supervision, direction, control, and payment of its personnel, including applicable taxes, deductions, other payments, and benefits.

    12.4 Force Majeure. Except as may be otherwise provided herein, this Agreement is subject to FAR 52.212-4 (f) Excusable delays. (JUN 2010).

    12.5 Reserved.

    12.6 Export and Privacy. Red Hat may supply Client with technical data that is subject to export control restrictions. Red Hat will not be responsible for compliance by Client with applicable export obligations or requirements for this technical data. Client acknowledges and agrees that to provide the Services, it may be necessary for Client Information to be transferred between Red Hat, its Affiliates, Business Partners, and/or subcontractors, which may be located worldwide.

12.7 Dispute Resolution. Each party agrees to give the other a written description of any problem(s) that may arise and to make a good faith effort to amicably resolve any such problem before commencing any proceeding. Notwithstanding the foregoing, either party may take any action reasonably required to protect such party's rights. No claim or action, regardless of form, arising out of the order this agreement accompanies may be brought by either party more than six (6) years after the cause of action has accrued.

12.8 Headings. All headings contained in this Agreement are inserted for identification and convenience and will not be deemed part of this Agreement for purposes of interpretation.

12.9 Severability. If any provision of this Agreement is held invalid or unenforceable for any reason but would be valid and enforceable if appropriately modified, then such provision will apply with the modification necessary to make it valid and enforceable upon mutual agreement of both parties. If such provision cannot be so modified, the parties agree that such invalidity will not affect the validity of the remaining provisions of the Agreement.

12.10 Waiver. The delay or failure of either party to exercise any rights under this Agreement will not constitute or be deemed a waiver or forfeiture of such rights. No waiver will be valid unless in writing and signed by an authorized representative of the party against whom such waiver is sought to be enforced.

12.11 Complete Agreement. As between Client and Red Hat this Agreement constitutes the exclusive terms and conditions with respect to Red Hat products/services to this agreement accompanies and represents the final, complete and exclusive statement of the agreement between the parties with respect thereto, notwithstanding any prior written agreements or prior and contemporaneous oral agreements with respect to the subject matter.

12.12 Amendment. Neither this Agreement nor any Delivery Order may be amended or modified except in a writing signed by the parties. Such writing must make specific reference to this Agreement or the applicable Delivery Order.

12.13 Reserved.

12.14 United States Government End Users. The Software and its documentation are "Commercial items," "Commercial computer software" and "Computer software documentation" as defined by the Federal Acquisition Regulations ("**FAR**") and Defense Federal Acquisition Regulations Supplement ("**DFARS**"). Pursuant to FAR 12.211, FAR 12.212, DFARS, 227.7202-1 through 227.7202-4, and their successors, the U.S. Government acquires the Software and its documentation subject to the terms of this Agreement.

GLOBAL_Appendix_
One_English_201310ι

(End)

REPORT OF SALES

REPORT OF SALES FORMAT

Below is the Report of Sales Format (Government Microsoft Excel format) that the contractor shall use when submitting reports as required and outlined in the BPA document.

Report of Sales.xlsx

(End)

FEES AND PAYMENTS
The contractor shall be responsible for the payment of all fees that are included in the product pricing (i.e., GSA, ACT) as calculated on the customer orders, in accordance with the document provided below.

1.   **GSA Industrial Funding Fee (IFF).** The BPA unit prices include the applicable GSA IFF. The contractor shall be responsible for all required filings to GSA and for payment of this fee in accordance with applicable GSA instructions.

2.   **ACT Fee.** The cost of awarding, administering and managing this BPA is included in the prices charged to ordering activities.

ACT fee is 2% and is included for all software products, system maintenance services, and other related services and/or training. It shall not apply to software subscriptions/maintenance.

For purposes of this document, the term "software" means a collection of one or more programs, databases or microprograms fixed in any tangible medium of expression that comprises a sequence of instructions (source code) to carry out a process in, or convertible into, a form executable by an electronic computer (object code).

Software maintenance as a service creates, designs, implements, and/or integrates customized or configured 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 deliverable-based and charged in arrears.

System maintenance services include system maintenance services for software maintenance associated with proprietary hardware systems.   It can also include software support associated with middleware, proprietary application programming interface specific to one or more devices within a particular manufacturer's product range, or similar types of software maintenance as deemed appropriate by the ESI Team.

The ACT fees shall be remitted and distributed in accordance with sections 3 and 4 of this document.

3.   **Remittance of Fees.** The contractor shall remit the ACT fee on a calendar quarterly basis (i.e. January through March, April through June, July through September, and October through December) or as otherwise requested by the SPM. Payment is due thirty (30) days following approval of the Report of Sales for the completed quarter. ACT fees that have not been paid within the prescribed thirty (30) days shall be considered a debt to the United States Government under the terms of FAR 32.6. The Government may exercise all its rights under the contract, including withholding or setting off payments and interest on the debt (see contract FAR clause 52.232-17, Interest). Failure of the Contractor to pay the ACT Fee in a timely manner may result in termination of the BPA.

4.   **Fee Distribution.** The Army, Air Force, Defense Logistics Agency (DLA), DISA and Navy are participating in a fee-sharing program. The contractor shall collect the 2% ACT fee and distribute in accordance with the following procedures. Fee sharing shall be determined by the end user agency or service identified in the monthly

Report of Sales. This field shall be notated Army, Air Force, DLA, DISA, Navy, or DoD as appropriate. Marine Corps sales are reported under the Navy designation. Fee checks shall not be issued until written approval is received for the Report of Sales.

4.1 ALL SALES:

The 2% ACT fee is split equally between the DoD Component whose customer places the order and the DoD component that manages the ESI agreement. For example, an Air Force order issued against an ESI agreement managed by the Navy results in one half (or 1%) of the 2% fee being returned to the Air Force acquisition organization (listed under Air Force Sales). DISA will retain the entire 2% fee under orders issued for DISA activities or those activities that do not collect a fee under the ESI agreements managed by DISA. The contractor is responsible for distributing the ACT fee to all applicable services in accordance with the instructions herein. The amount of ACT fee due DISA shall be calculated at 1% for Army sales, 1% for Air Force sales, 1% for DLA sales, 1% for Navy sales, and 2% for all other sales.

The contractor shall remit ACT fee to the address provided below by corporate or cashiers check made payable to "Treasurer of the United States" noted with the following information:
BPA HC1028-14-A-0002
DoD Carahsoft Technology Corp. / Red Hat, Inc. Enterprise Software Agreement
Quarterly ACT Fee

****Checks must be accompanied by a transmittal letter that cites the applicable accounting data to ensure proper crediting of the payment.

Send check and transmittal letter to:

DFAS-CO
Finance and Accounting Office
Attn: Disbursement Office (Tom Triplett)
3990 East Broad St., Bldg. 21
Columbus, Ohio 43213

Provide copies of this letter and check electronically to: jonnice.medley.civ@mail.mil

4.2 ARMY SALES:

The amount of ACT Fee due the Army shall be calculated at 1% of all Army sales.

The contractor shall remit ACT Fee to the address provided below by corporate or cashier's check made payable to "Treasurer of the United States." Checks must be notated with the following information:
BPA HC1028-14-A-0002
SCP Fee Reimbursement

***Checks must be accompanied by a transmittal letter (format to be provided) that cites the applicable accounting data to ensure proper crediting of the payment.

Send check and transmittal letter to:

Project Director, Computer Hardware, Enterprise Software and Solutions (PD CHESS)
PEO Enterprise Information Systems
SFAE-PS-CH (Attn: Miguel Campos)
9351 Hall Road, Bldg 1456
Fort Belvoir, VA 22060

Email a copy of this letter, the Sales Report (per BPA requirements), and a copy of the check electronically to:

peoeis.pdchess.vndrrpts@us.army.mil
miguel.a.campos22.civ@mail.mil

4.3   AIR FORCE SALES:

The amount of ACT fee due the Air Force shall be calculated at 1% of all Air Force sales.

The contractor shall remit ACT Fee to the address provided below by corporate or cashier's check made payable to "3801-LI". Checks must be notated with the following information:
BPA HC1028-14-A-0002
ESI-SW Fee Sharing

***Checks must be accompanied by a transmittal letter (format to be provided) that cites the applicable accounting data to ensure proper crediting of the payment.

Send check and original transmittal letter to the appropriate address based on delivery method:

Submit Advance Payments from Public to:

DFAS Indy-Disbursing Operations
C/O 3801 Limestone
8899 E 56TH Street
Indianapolis, IN 46249

Email a copy of the check and transmittal letter to: AFPEO.BES.HICI.Financials@gunter.af.mil

Attach electronically (in Excel format) the Sales Report (per BPA requirements).

Subject Line Format of e-mail MUST be as follows:

Contract Number with hyphens, SALES REPORT Month Year, Contract Name, and Contractor Name
[Example: FA0000-00-A-0000, Sales Report October 2012, ESI SW, Vendor]

4.4   DLA SALES

The amount of ACT Fee due DLA shall be calculated at 1% of all DLA sales.

The contractor shall remit ACT Fee to the address provided below by corporate or cashier's check made payable to "Treasurer of the United States." No transmittal letter is required with submission of DLA fee checks.

Checks must include the following information to ensure proper crediting of the payment:
BPA HC1028-14-A-0002
DoD Carahsoft Technology Corp. / Red Hat, Inc. Enterprise Software Agreement
Quarterly ACT Fee

Send check to:
Defense Logistics Agency
DLA Finance, J873
Attn: Laura DeChants
8725 John J. Kingman Road

Fort Belvoir, VA 22060-6221

Mail a copy of the check to: Or email a copy of the check to:
Defense Logistics Agency   Email: Susan.Lizzi@dla.mil
Attn: Susan Lizzi, J-654
8725 John J. Kingman Road
Fort Belvoir, VA 22060-6221

4.5   NAVY

The contractor shall remit ACT Fee to the address provided below by corporate or cashier's check made payable to "Treasurer of the United States". No transmittal letter is required with submission of Navy fee checks.

Checks must include the following information to ensure proper crediting of the payment:
BPA HC1028-14-A-0002
DoD Carahsoft Technology Corp. / Red Hat, Inc. Enterprise Software Agreement
ACT Fee

For US Postal Service mail or USPS Express Mail, send check to:

SPAWAR Systems Center Pacific
Attn: Susan Ellison
Code 55350, Bldg 81
53560 Hull Street
San Diego, CA 92152-5001

For Federal Express, United Parcel Service, DHL or Other Courier Services, send check to:

SPAWAR Systems Center Pacific
Shipping and Receiving
Receiving Officer (OT 7)
Attn: Susan Ellison
Code 55350, Bldg 81
4297 Pacific Hwy.
San Diego, CA 92110

E-mail a copy of the ACT Fee remittance check to the SPM nina.diep@navy.mil.

(End)

AIR FORCE SALES TRANSMITTAL
                    AIR FORCE SALES TRANSMITTAL FORMAT

The contractor shall where Air Force Sales are applicable use the Air Force Transmittal Letter Format provided below.

Date: _____

To: Defense Finance and Accounting Service (DFAS)

From: Company Name, Address, City, State, and ZIP Code

POC: Name, Telephone Number and E-Mail Address

Purpose: Collection of ACT Fee for Enterprise Software Initiative Software (**ESI SW**) – FY14
Acquisition, Contracting, and Technical (**ACT**) Fee **Contract Number:** _____

Period of Performance: Month, Year or Quarter the fee check represents

Authority for Entering into Agreement: Refer to each contract "Recovery of Usage Fee Statement"

Amount Paid: Check Amount: _____   Check Number: _____

Performing Organization's LOA:
5743400 304 47GU 4G4XCC 040000 43940 72806F 667100 F67100 SC97 CSN: GU7999
FSR:022594   PSR:C28566   DSR: 142924

SDN: MORD: F2XTKB3291M004

Delivery Requirements: See Addendum

Payment Provisions: Please make your check payable to"DSSN3801-LI and forward your payment with a copy of the Request for Advance Payment from Public to:

DFAS Indy-Disbursing Operations
C/O 3801 Limestone
8899 E 56TH Street
Indianapolis, IN 46249

Please include the **Standard Document Number (SDN)** *cited above on the "memo" line of your check. This will assist us in processing your check to the correct location in a timely manner.*

If sending funds via Electronic Funds Transfer (EFT): N/A

Addendum: Must include this info - will assist us in posting your funds
  a. Email both copy of check and copy of this Request for Advance Payment from Public transmittal letter to: AFPEO.BES.HICI.Financials@gunter.af.mil
  b. Also, email an electronic (Excel format) copy of the Sales Report (as per BPA requirements) to the same email box as above.
  c. Subject line format of e-mail MUST be as follows:
      Contract Number with hyphens, Month or FY Quarter, Year, and Vendor Name
      [Example: HC1028-14-A-0002, 1QFY13, VendorA]
  d. Please follow your contract regarding the applicable ACT Fee rates.

(End)

DISA SALES TRANSMITTAL
DISA SALES TRANSMITTAL FORMAT
LETTER OF TRANSMITTAL FOR DISA FEE PAYMENTS

MEMORANDUM FOR DFAS-CO
Finance and Accounting Office
Attn: Disbursement Office (Tom Triplett)
3990 East Broad St., Bldg. 21
Columbus, Ohio 43213

From: Company Name
      Street Address
      City, State, Zip Code
POC: (Name, Phone Number & Email address)

SUBJECT: Collection of Checks for (Company Name)
                                (BPA/Contract Number)
                                (Quarter/FY)

1. Collection of the check will include the following:

    a. Please make check payable to **Treasurer of the United States**
    b. Mail original check to address above
    c. Checks must be accompanied by this transmittal letter.

2. To ensure proper crediting of the payment, DISA shall use the following accounting data.
    • LOA: 974 0100.4300 P40303148K ZZDI0 CI 2531 DCIMO46608 S12137

3. Direct questions to Jonnice Medley, 301-225-8081.

4. Provide copies of this letter and check to: jonnice.medley.civ@mail.mil.

(End)

CLAUSES INCORPORATED BY FULL TEXT

52.204-9001 Contract/Order Closeout—Fixed-Price, Time-and-Materials, or Labor-Hours (Jan 2007)

Timely contract closeout is a priority under this contract/order. The Contractor shall submit a final invoice within ninety (90) calendar days after the expiration of this contract/order, unless the Contractor requests and is granted an extension by the Contracting Officer, in writing. In addition, and concurrent with the submission of the final invoice, the Contractor shall notify the Contracting Officer of the amount of excess funds that can be deobligated from this contract/order so the closeout process can begin as soon as possible upon expiration of this contract/order. A bilateral contract/order closeout modification will be forwarded to the Contractor by the Contracting Officer and must be signed by the Contractor and returned to the Contracting Officer within thirty (30) calendar days of issuance of the modification. A Contractor's failure to respond and/or sign the bilateral closeout modification within thirty (30) calendar days of receipt will constitute approval of the terms of the modification and the modification will subsequently be processed unilaterally by the Contracting Officer to deobligate excess funds and close this contract/order.

If this contract/order contains option periods, the Contractor is required to submit an invoice within ninety (90) calendar days after expiration of the base period of performance and the expiration of each exercised option period of performance to allow for deobligation of excess funds that were obligated in those respective periods of performance.
(End of clause)

252.232-7006 WIDE AREA WORKFLOW PAYMENT INSTRUCTIONS (MAY 2013)

(a) Definitions. As used in this clause--

Department of Defense Activity Address Code (DoDAAC) is a six position code that uniquely identifies a unit, activity, or organization.

Document type means the type of payment request or receiving report available for creation in Wide Area WorkFlow (WAWF).

Local processing office (LPO) is the office responsible for payment certification when payment certification is done external to the entitlement system.

(b) Electronic invoicing. The WAWF system is the method to electronically process vendor payment requests and receiving reports, as authorized by DFARS 252.232-7003, Electronic Submission of Payment Requests and Receiving Reports.

(c) WAWF access. To access WAWF, the Contractor shall--

(1) Have a designated electronic business point of contact in the System for Award Management at https://www.acquisition.gov; and

(2) Be registered to use WAWF at https://wawf.eb.mil/ following the step-by-step procedures for self-registration available at this Web site.

(d) WAWF training. The Contractor should follow the training instructions of the WAWF Web-Based Training Course and use the Practice Training Site before submitting payment requests through WAWF. Both can be accessed by selecting the "Web Based Training" link on the WAWF home page at https://wawf.eb.mil/.

(e) WAWF methods of document submission. Document submissions may be via Web entry, Electronic Data Interchange, or File Transfer Protocol.

(f) WAWF payment instructions. The Contractor must use the following information when submitting payment requests and receiving reports in WAWF for this contract/order:

(1) Document type. The Contractor shall use the following document type(s).

Invoice and Receiving Report (Combo)

Note: If a "Combo" document type is identified but not supportable by the Contractor's business systems, an "Invoice" (stand-alone) and "Receiving Report" (stand-alone) document type may be used instead.

(2) Inspection/acceptance location. The Contractor shall select the following inspection/acceptance location(s) in WAWF, as specified by the contracting officer.

Destination

(3) Document routing. The Contractor shall use the information in the Routing Data Table below only to fill in applicable fields in WAWF when creating payment requests and receiving reports in the system.

Routing Data Table*

Field Name in WAWF	Data to be entered in WAWF
Pay Official DoDAAC	HQ0131

Issue By DoDAAC	To be determined (TBD) at order level
Admin DoDAAC	TBD at order level
Inspect By DoDAAC	TBD at order level
Ship To Code	N/A
Ship From Code	N/A
Mark For Code	N/A
Service Approver (DoDAAC)	TBD at order level
Service Acceptor (DoDAAC)	TBD at order level
Accept at Other DoDAAC	N/A
LPO DoDAAC	N/A
DCAA Auditor DoDAAC	N/A
Other DoDAAC(s)	N/A

----

(4) Payment request and supporting documentation. The Contractor shall ensure a payment request includes appropriate contract line item and subline item descriptions of the work performed or supplies delivered, unit price/cost per unit, fee (if applicable), and all relevant back-up documentation, as defined in DFARS Appendix F, (e.g. timesheets) in support of each payment request.

(5) WAWF email notifications. The Contractor shall enter the email address identified below in the "Send Additional Email Notifications" field of WAWF once a document is submitted in the system.

   TBD at order level

 (g) WAWF point of contact. (1) The Contractor may obtain clarification regarding invoicing in WAWF from the following contracting activity's WAWF point of contact.

   Columbus Center -- 1-800-756-4571
   HQ0131 – Option 2, then Option 2

(2) For technical WAWF help, contact the WAWF helpdesk at 866-618-5988.

(End of clause)

Section I - Contract Clauses

CLAUSES INCORPORATED BY REFERENCE

52.222-50	Combating Trafficking in Persons	FEB 2009
52.223-16 Alt I	IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products (Dec 2007) Alternate I	DEC 2007
52.223-18	Encouraging Contractor Policies To Ban Text Messaging While Driving	AUG 2011
52.233-3	Protest After Award	AUG 1996
252.204-7000	Disclosure Of Information	AUG 2013
252.227-7013	Rights in Technical Data--Noncommercial Items	JUN 2013
252.227-7014	Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation	MAY 2013
252.227-7015	Technical Data--Commercial Items	JUN 2013

CLAUSES INCORPORATED BY FULL TEXT

52.209-9000 ORGANIZATIONAL AND CONSULTANT CONFLICTS OF INTEREST (OCCI) (DEC 2005)

(a) An offeror shall identify in its proposal, quote, bid or any resulting contract, any potential or actual Organizational and Consultant Conflicts of Interest (OCCI) as described in FAR Subpart 9.5. This includes actual or potential conflicts of interests of proposed subcontractors. If an offeror identifies in its proposal, quote, bid or any resulting contract, a potential or actual conflict of interests the offeror shall submit an Organizational and Consultant Conflicts of Interest Plan (OCCIP) to the contracting officer. The OCCIP shall describe how the offeror addresses potential or actual conflicts of interest and identify how they will avoid, neutralize, or mitigate present or future conflicts of interest.

(b) Offerors must consider whether their involvement and participation raises any OCCI issues, especially in the following areas when:

    (1) Providing systems engineering and technical direction.

    (2) Preparing specifications or work statements and/or objectives.

    (3) Providing evaluation services.

    (4) Obtaining access to proprietary information.

(c) If a prime contractor or subcontractor breaches any of the OCCI restrictions, or does not disclose or misrepresents any relevant facts concerning its conflict of interest, the government may take appropriate action, including terminating the contract, in additional to any remedies that may be otherwise permitted by the contract or operation of law.

(End of clause)

252.204-7004 ALTERNATE A, SYSTEM FOR AWARD MANAGEMENT (MAY 2013)

(a) Definitions. As used in this clause--

``System for Award Management (SAM) database" means the primary Government repository for contractor information required for the conduct of business with the Government.

``Commercial and Government Entity (CAGE) code" means—

(1) A code assigned by the Defense Logistics Information Service (DLIS) to identify a commercial or Government entity; or

(2) A code assigned by a member of the North Atlantic Treaty Organization that DLIS records and maintains in the CAGE master file. This type of code is known as an ``NCAGE code."

``Data Universal Numbering System (DUNS) number" means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B) to identify unique business entities.

``Data Universal Numbering System +4 (DUNS+4) number" means the DUNS number assigned by D&B plus a 4-character suffix that may be assigned by a business concern. (D&B has no affiliation with this 4-character suffix.) This 4-character suffix may be assigned at the discretion of the business concern to establish additional SAM records for identifying alternative Electronic Funds Transfer (EFT) accounts (see FAR 32.11) for the same parent concern.

``Registered in the System for Award Management (SAM) database" means that—

(1) The contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, and Contractor and Government Entity (CAGE) code into the SAM database;

(2) The contractor has completed the Core Data, Assertions, Representations and Certifications, and Points of Contact sections of the registration in the SAM database;

(3) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS). The Contractor will be required to provide consent for TIN validation to the Government as part of the SAM registration process; and

(4) The Government has marked the record ``Active."

(b)(1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the SAM database prior to award, during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.

(2) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "DUNS" or "DUNS +4" followed by the DUNS or DUNS +4 number that identifies the offeror's name and address exactly as stated in the offer. The DUNS number will be used by the Contracting Officer to verify that the offeror is registered in the SAM database.

(c) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one.

(1) An offeror may obtain a DUNS number--

(i) Via the Internet at http://fedgov.dnb.com/webform or if the offeror does not have internet access, it may call Dun and Bradstreet at 1-866-705-5711 if located within the United States; or

(ii) If located outside the United States, by contacting the local Dun and Bradstreet office. The offeror should indicate that it is an offeror for a U.S. Government contract when contacting the local Dun and Bradstreet office.

(2) The offeror should be prepared to provide the following information:

(i) Company legal business.

(ii) Tradestyle, doing business, or other name by which your entity is commonly recognized.

(iii) Company Physical Street Address, City, State, and Zip Code.

(iv) Company Mailing Address, City, State and Zip Code (if separate from physical).

(v) Company Telephone Number.

(vi) Date the company was started.

(vii) Number of employees at your location.

(viii) Chief executive officer/key manager.

(ix) Line of business (industry).

(x) Company Headquarters name and address (reporting relationship within your entity).

(d) If the Offeror does not become registered in the SAM database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered Offeror.

(e) Processing time, which normally takes 48 hours, should be taken into consideration when registering. Offerors who are not registered should consider applying for registration immediately upon receipt of this solicitation.

(f) Offerors may obtain information on registration at https://www.acquisition.gov.

(End of clause)

252.204-7006   BILLING INSTRUCTIONS (OCT 2005)

When submitting a request for payment, the Contractor shall--

(a) Identify the contract line item(s) on the payment request that reasonably reflect contract work performance; and

(b) Separately identify a payment amount for each contract line item included in the payment request.

(End of clause)

252.204-7011 ALTERNATIVE LINE-ITEM STRUCTURE (SEP 2011)

(a) Line items are the basic structural elements in a solicitation or contract that provide for the organization of contract requirements to facilitate pricing, delivery, inspection, acceptance and payment. Line items are organized into contract line items, subline items, and exhibit line items. Separate line items should be established to account for separate pricing, identification (see section 211.274 of the Defense Federal Acquisition Regulation Supplement), deliveries, or funding. The Government recognizes that the line item structure in this solicitation may not conform to every offeror's practices. Failure to correct these issues can result in difficulties in accounting for deliveries and processing payments. Therefore, offerors are invited to propose an alternative line item structure for items on which bids, proposals, or quotes are requested in this solicitation to ensure that the resulting contract structure is economically and administratively advantageous to the Government and the Contractor.

(b) If an alternative line item structure is proposed, the structure must be consistent with subpart 204.71 of the Defense Federal Acquisition Regulation Supplement and PGI 204.71. A sample solicitation line-item structure and a corresponding offer of a proposed alternative line-item structure follow.

Solicitation:

Item No.	Supplies/Service	Quantity	Unit	Unit price	Amount
0001.............................	Computer, Desktop with CPU, Monitor, Keyboard and Mouse.	20	EA	....	....

Alternative line-item structure offer where monitors are shipped separately:

Item No.	Supplies/Service	Quantity	Unit	Unit Price	Amount
0001.............................	Computer, Desktop with CPU, Keyboard and Mouse.	20	EA	....	....
0002.............................	Monitor.................	20	EA	....	....

(End of provision)