

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT			1. CONTRACT ID CODE	PAGE OF PAGES	
2. AMENDMENT/MODIFICATION NO. P00012		3. EFFECTIVE DATE 25-Mar-2009	4. REQUISITION/PURCHASE REQ. NO.		5. PROJECT NO.(If applicable)
6. ISSUED BY ARMY CONTRACTING AGENCY-ITEC4 2461 EISENHOWER AVE ALEXANDRIA VA 22331-1700		CODE W91QUZ	7. ADMINISTERED BY (If other than item 6)		CODE
			See Item 6		
8. NAME AND ADDRESS OF CONTRACTOR (No., Street, County, State and Zip Code) IMMIXTECHNOLOGY, INC. ART RICHER 8444 WESTPARK DR STE 200 MC LEAN VA 22102-5112			9A. AMENDMENT OF SOLICITATION NO.		
			9B. DATED (SEE ITEM 11)		
			X	10A. MOD. OF CONTRACT/ORDER NO. DABL01-03-A-1006	
			X	10B. DATED (SEE ITEM 13) 25-Aug-2003	
CODE 3CA29		FACILITY CODE			
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS					
<input type="checkbox"/> The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offer <input type="checkbox"/> is extended, <input type="checkbox"/> is not extended.					
<p>Offer must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended by one of the following methods:</p> <p>(a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.</p>					
12. ACCOUNTING AND APPROPRIATION DATA (If required)					
13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.					
A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.					
X B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(B).					
C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:					
D. OTHER (Specify type of modification and authority)					
E. IMPORTANT: Contractor <input checked="" type="checkbox"/> is not, <input type="checkbox"/> is required to sign this document and return _____ copies to the issuing office.					
14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.) Modification Control Number: vmills091428 a. The purpose of this modification is to extend the period of performance in accordance with GS Schedule, Contract number GS-35F-0330J, Modification PO-1029. The POP is hereby extended to 26 June 2009. b. This modification corrects block 9 of the BPA to read, "Immixtechnology, Inc." as indicated on the Summary of Changes. c. Part A, Titled, Terms and Conditions, Section 5 (BPA Term) of the above BPA has been revised as indicated on the Summary of Changes. d. All other terms and conditions remain unchanged.					
Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.					
15A. NAME AND TITLE OF SIGNER (Type or print)			16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) DONNA S. HARRIS / CONTRACTING OFFICER TEL: 703-325-4625 EMAIL: Donna.Harris@itec4.army.mil		
15B. CONTRACTOR/OFFEROR		15C. DATE SIGNED	16B. UNITED STATES OF AMERICA BY <u>Donna S. Harris</u> (Signature of Contracting Officer)		16C. DATE SIGNED 25-Mar-2009
(Signature of person authorized to sign)					

SECTION SF 30 BLOCK 14 CONTINUATION PAGE

SUMMARY OF CHANGES

SECTION A - SOLICITATION/CONTRACT FORM

The contractor organization has changed from

IMMIXGROUP INC
BERNADETTE DAVIS
8444 WESTPARK DR STE 200
MC LEAN VA 22102-5112
to
IMMIXTECHNOLOGY, INC.
ART RICHER
8444 WESTPARK DR STE 200
MC LEAN VA 22102-5112

SECTION C - DESCRIPTIONS AND SPECIFICATIONS

The following have been modified:

SOFTWARE ENTERPRISE AGREEMENT

**Blanket Purchase Agreement
DoD Enterprise Software Agreement (ESA)**

In the spirit of the Federal Acquisition Streamlining Act, the Department of Defense (DoD) and immixTechnology, Inc., representing IBM software products, enter into a cooperative agreement to further reduce the administrative costs of acquiring commercial items from the General Service Administration (GSA) Federal Supply Schedule Contract GS-35F-0330J.

Federal Supply Schedule Contract Blanket Purchase Agreements (BPA) reduces contracting and open market costs such as: search for sources, the development of technical documents, solicitations, and the evaluation of bids and offers.

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

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

Attachments to this agreement are:

- a. Attachment A - IBM Software Price List
- b. Attachment B - IBM Software License Term and Conditions
- c. Attachment C - Sample Reporting Format
- d. Attachment D – Fees and Payments

A. TERMS AND CONDITIONS

1. Products Available Under BPA.

immixTechnology, Inc. hereby provides software products and maintenance services for IBM products listed in Attachment A. IBM product families include: Rational, WebSphere, Tivoli, DB2 Information Management and Lotus software brands. Additional IBM product families may be added through modification as provided herein. All new software licenses purchased include 1st year maintenance. Out-year maintenance services can be purchased under this agreement as well.

2. Prevailing Terms and Conditions.

Pursuant to General Services Administration (GSA) Federal Supply Services (FSS) Contract Number GS-35F-0330J, immixTechnology, Inc. agrees to the following terms of a Blanket Purchase Agreement (BPA) with the Army Contracting Agency – ITEC4. All orders placed against this BPA are subject to the terms and conditions of said FSS Contract. The items on this BPA are set forth in Attachment B. License terms and conditions applicable to products acquired under this BPA are defined in the immixTechnology, Inc. license agreement included as Attachment B and are represented under GSA contract number GS-35F-0330J. The Order of Precedence for resolving any inconsistency between the provisions of the BPA and the applicable GSA Contract, the provisions of the BPA will take precedence.

3. Extent of Obligation.

The Government estimates, but does not guarantee, that the volume of purchases through this agreement will be \$75,000,000.00. The Government is obligated only to the extent of authorized purchases actually made under this BPA.

4. Funds Obligation.

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

5. BPA Term.

The BPA shall be effective from the date of BPA award and is to run concurrent with GSA Schedule Contract GS-35F-0330J including renewals. This expiration is contingent upon ImmixTechnology maintaining or renewing a GSA FSS Schedule Contract. The BPA will be reviewed annually to ensure that it still represents a “best value”. Either party reserves the right to terminate this BPA at any time with thirty (30) days written notice.

6. Pricing Terms.

The unit prices for this BPA shall be based on GSA Contract pricing currently in effect at time individual orders are placed. Attachment A provides the current BPA Unit Price (inclusive of all industrial funding fees). All discounts provided in Tables 1, 2, and 3 listed in Section 7 will be based on the then current GSA Contract price at time of order. BPA prices shall only escalate in accordance with the GSA Economic Price Adjustment (EPA) clause. If the GSA Contract unit prices are subject to an EPA increase, the same discount relationship (discount percentage off GSA Contract price) shall be maintained during the term of this BPA. Spot discounting is encouraged. A 2.0% Acquisition, Contracting, and Technical (ACT) Fee shall be included in the 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 Attachment D.

7. Discount Terms and Conditions.

Reference Tables below for BPA discount tiers for each IBM software brand. Discount tiers independently apply to new license orders and maintenance renewals. A summary is as follows:

7.1. Software License

The single order dollar amount will be used to determine the applicable percentage discount. The discount for each order will be determined as follows:

- a. Establish configuration for a single order
- b. Contractor will calculate standard GSA prices for all CLINS supporting said single order
- c. The total GSA value, for new license product only, will determine appropriate discount tier

- d. Discounted ESI BPA price will be established based on allowable discount tier

A summary of the discount structure for new licenses is provided above in Tables 1 and 2 below. There are two new license discount tables provided representing the IBM software products. Each time DoD purchases a new software license product, 1st year maintenance is included in the price. Discounts apply to new product sales only. Therefore, 2nd year or out-year maintenance renewals leverage a different discount structure, as set forth in Section 7.2 below, and are not eligible for the new license discounts. Maintenance renewal CLINS can be part of a single ESI BPA order that includes new licenses but those CLINs will not be use in the calculation to determine the new license discount tier.

Table 1 - IBM All Brands New License Volume Discount Structure - excluding Rational:

Tier	Tier Structure based on Single Order Value of GSA Catalogue Price (all brands except Rational)		Discount off the Tier 1 ESI Price
1	\$0	\$100,000	0%
2	\$100,001	\$500,000	3%
3	\$500,001	\$1,000,000	7%
4	\$1,000,001	\$1,500,000	9%
5	\$1,500,001	\$2,500,000	12%
6	\$2,500,001	\$4,500,000	15%
7	\$4,500,001	\$6,500,000	17%
8	\$6,500,001	+	19%

(See Tier 1 Pricing - Attachment A)

Table 2 - IBM New License Volume Discount Structure – Rational products Only:

Tier	Tier Structure based on Single Order Value of GSA Catalogue Price (Rational products only)		Discount off the Tier 1 ESI Price
1	\$0	\$100,000	0%
2	\$100,001	\$500,000	2%
3	\$500,001	\$1,000,000	4%
4	\$1,000,001	\$2,500,000	6%
5	\$2,500,001	\$4,500,000	8%
6	\$4,500,001	\$6,500,000	10%
7	\$6,500,001	+	12%

(See Tier 1 Pricing - Attachment A)

7.2 Maintenance Renewals

The single order dollar amount will be used to determine the applicable percentage discount.

The discount for each order will be determined as follows:

- a. Establish configuration for a single order
- b. Contractor will calculate standard GSA prices for all CLINS supporting said single order
- c. The total GSA value, for maintenance renewal only, will determine appropriate discount tier
- d. Discounted ESI BPA price will be established based on allowable discount tier

A summary of the discount structure for maintenance renewals is provided in Table 3 below. New license product CLINS can be part of a single ESI BPA order that includes maintenance renewals but those CLINS will not be used in the calculation to determine the maintenance renewal discount tier.

Table 3 - IBM Maintenance Renewal License Volume Discount Structure – All Brands:

Tier	Tier Structure based on Single Order Value of GSA Catalogue Price		Discount off the Tier 1 ESI Price
1	\$0	\$100,000	0%
2	\$100,001	+	3%

(See Tier 1 Pricing Attachment A)

The following items are not subject to discount under this program and also are not included in computing the purchase order volume:

- Consulting services, Professional Services, Training, Implementation Plans
- Field Installation products and services

Price discounts for maintenance renewals provided in this ESI BPA are contingent on the Government allowing the Contractor to submit one invoice for the complete term of the maintenance services period and submitted at the beginning of the period of performance, assuming a valid ESI BPA order has been placed to Contractor. Payment will be standard terms in accordance with GSA Schedule Contract.

7.2. Price Validity

Discount levels are valid throughout the term of this BPA agreement, reference Section 5.

8. Price Reduction.

8.1. Most Favored Customer Prices.

The prices under this BPA shall be at least as low as the prices other immixTechnology, Inc. contract vehicles where immixTechnology serves as a Prime contractor offering like terms and conditions for the products specified on Attachment A to the Federal government as that exhibit may be amended. If at any time the prices under said immixTechnology contract vehicles become lower than the prices in this BPA, this BPA will be modified to include the lower prices.

8.2. SmartBUY Transition.

OMB has recently announced the SmartBUY initiative to maximize cost savings and achieve best quality when acquiring software. The General Services Administration (GSA) is the designated Executive Agent for SmartBUY. The initiative will establish software enterprise licensing on a government-wide basis. If during the term of this BPA, immixTechnology, Inc. enters 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, immixTechnology, Inc. will not preclude the DoD from licensing products or purchasing services under such a SmartBUY agreement.

Provisions of this BPA, including attachments, marked to apply to SmartBUY agreements, may be

adopted by mutual agreement.

9. License Agreement.

Software licenses purchased under this BPA are subject to the licensing provisions and the terms of the GSA Contract No. GS-35F-0330J (Attachment B), except that notwithstanding any provision to the contrary, licensee may request a transfer of the license, subject to approval by IBM, through immixTechnology, which shall not be unreasonably withheld. In the event transfer is approved Licensee shall be required to fill out all necessary transfer documentation. Approved licenses are transferable within the DoD and authorized users (see Section B.1 herein). Any delivery order issued hereunder will serve as proof of purchase. Upon validation and receipt of software, customers will be provided an electronic version of the license agreement. In the event of any inconsistency between the provisions of the BPA and the Attachment B (GSA Schedule), the provisions of the Attachment B (GSA Schedule) will take precedence.

9.1. Functionality Replacement and Extended Support.

See Attachment B (GSA Schedule)

9.2. Rights of Survivorship of the Agreement.

This Agreement shall survive unto IBM Corporation, its Successor, rights and assigns. The software and agreement terms and conditions as covered under this agreement shall survive this agreement notwithstanding the acquisition or merger of IBM Corporation by or with another entity.

9.3. Audits.

In lieu of any audit provisions in the license agreement, Licensee may perform an internal audit and will use its best efforts to keep full and accurate accounts that may be used to properly ascertain and verify numbers of licenses in use. Licensee may permit IBM Corporation or immixTechnology, Inc. to have access to Licensee records and computer systems and the right to audit such systems to insure software use is in accordance with its license terms. All vendor personnel must have appropriate security clearances to gain access to Licensee site or data.

10. Media.

This software is available on CD-ROM media if ordered by the Government. Download versions are available on a case-by-case basis.

11. Support and Maintenance.

11.1. Support.

See Attachment B (GSA Schedule) for maintenance and support terms and conditions.

11.2. Maintenance.

See Attachment B (GSA Schedule) for maintenance and support terms and conditions.

12. Professional Services.

No professional services are provided under this BPA. IBM services can be provided under its standard GSA Schedule Contract and/or through teaming arrangements.

13. On-Site Training.

No professional services are provided under this BPA. IBM services can be provided under its standard GSA Schedule Contract and/or through teaming arrangements.

14. Technology Improvement.

Items awarded on a GSA Schedule contract are the basis for this BPA. Since the IBM product catalog is updated periodically, the immixTechnology GSA Schedule is updated to reflect those changes. Where items within the IBM

catalog are maintained on GSA Schedule contracts held by other than immixTechnology, contractor teaming arrangements (CTA) may be utilized to add same to this BPA. Such GSA approved updates shall be automatically incorporated into and shall amend a BPA price list posted to the BPA web site. The Government may solicit and IBM is encouraged to propose independent technology improvements to the BPA services and products. Proposals shall be submitted by the BPA holder and include a description of the products and/or services, an electronic copy of the pricing tables, technical literature that describes the products and/or services, and evidence of Inclusion on a GSA schedule. Discounts shall be at the same or greater discount level as the original BPA product prices.

15. Substitution and Technology Refreshment.

If at any time during the life of this BPA, the original manufacturer of the software 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 paragraph 8 of this BPA for most favored prices. Unless otherwise agreed to, discounts shall be at the same or greater discount level as the original BPA product prices. Such GSA approved updates shall be automatically incorporated into and shall amend Attachment A and be posted to the BPA web site. Improvement of product includes new releases, updates, upgrades including additional features and functionality, and successor or upgrade products.

B. AUTHORIZED USERS AND POINTS OF CONTACT

1. Authorized Users.

The BPA is open for ordering by all Department of Defense (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 Department of Defense (DoD IG), the Defense Agencies, the DoD Field Activities, the U. S. Coast Guard, NATO, and the Intelligence Community. This BPA is also open to DoD Contractors authorized to order in accordance with the FAR Part 51.

2. BPA Points of Contact:

a. Contracting Office:

Army Contracting Agency/ ITEC 4
2461 Eisenhower Ave.
Alexandria, VA 22331-1700

CO: Ronald Hyde
Phone: 703 325-4625
Fax: 703 428-9842
Email: ron.hyde@us.army.mil

b. Software Product Manager (SPM):

Army Small Computer Program

SPM: Dee Wardle
Phone: 732-427-6793
Fax: 732-532-5182
Email: Adelia.wardle@us.army.mil

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

C. ORDERING

1. DFARS Section 208.74 directs DoD software buyers and requiring officials to check the DoD ESI website for DoD inventory or an 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 maintenance have already been purchased and are available from DoD inventory. If they are available, purchase the designated software from DoD inventory and reimburse the SPM.
 - b. If the required software rights or maintenance are not available from inventory or from an ESA, you may use an alternate method of acquisition, subject to laws and policy.
 - c. If the required software rights or maintenance are not available from inventory but are available from an ESA, you must follow the procedure in the DFARS Section 208.74.
 - d. If you must obtain the software or software maintenance outside the DoD ESA, you may seek a waiver from a management official designated by your DoD Component.

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 Army Small Computer Program (ASCP) website at <https://ascp.monmouth.army.mil>

2. **Delivery Orders.**

The scope of this effort is worldwide. Delivery requirements and administration will be stipulated on Delivery Orders.

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.

- a. Ordering via this BPA is decentralized. Orders are prepared by a Government Ordering Officer (a duly warranted Contracting Officer whose warrant authorizes purchases from the GSA Schedule), in accordance with the terms and conditions of this BPA and the GSA Schedule. Orders may be placed by 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 [immixTechnology, Inc.](http://www.immixtechnology.com/contracts/order.cfm) purchasing page at <http://www.immixtechnology.com/contracts/order.cfm>

Only the completed Ordering Sheet and MIPR (DD Form 448) are required to place an enterprise license order. No other ordering document (e.g. DD1155, SF1449) is needed. The MIPR amount must equal the total amount of Enterprise Licenses being ordered.

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 PCO within thirty (30) days of BPA issuance and made available on the Contractor's home page upon written approval. This guide shall be continuously updated as required. 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 available, with appropriate contract line item numbers (CLINs) and associated prices can be found
- b. Government and Contractor Points of Contact
- c. Description of the ordering process

- d. Program Terms and Conditions
- e. License Terms and Conditions
- f. Information necessary to complete a DD350 (such as CAGE, DUNS, TIN, Business Size, etc.)
- g. Range of 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, Electronic Data Interchange (EDI) capability, Government procurement card, and vendor electronic ordering capability to create a paper-less ordering, invoicing and payment process. During the term of the BPA, the Contractor shall participate to achieve this objective.

On-line ordering can also be accomplished at the ASCP E-mart website <https://ascp.monmouth.army.mil>.

This BPA may also be loaded into the electronic catalog systems of other DoD agencies.

5. Delivery Schedule.

The Contractor shall make available the current version of software via CD-ROM or electronic download, if available, in accordance with the delivery terms contained in Attachment B.

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. Name of Contractor
- b. GSA Contract Number
- c. BPA Number
- d. Product Description/Model numbers
- e. Delivery order number
- f. Date of purchase
- g. Quantity, unit price and extension of each item (unit prices need not be shown when incompatible with the use of automated systems; provided that the invoice is itemized to show the information)
- h. Date of shipment

7. Suspension.

There may be occasions where the Government may suspend ordering (by CLIN up to and including the entire BPA.) 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. Full text of this clause can be found on the web at URL: <http://farsite.hill.af.mil/>. The contractor shall submit an original invoice and three copies (*or electronic invoice, if authorized*), to the address specified on the delivery orders issued against the BPA. An invoice must include:

- a. Name and address of the Contractor

- b. Invoice date
- c. Contract number, contract line item number and, if applicable, the order number
- d. Description, quantity, unit of measure, unit price and extended price of the items delivered
- 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

Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) Circular A-125. Prompt Payment Contractors are encouraged to assign an identification number to each invoice.

2. Fast Payment Procedure.

The provisions of FAR 52.213-1 FAST PAYMENT PROCEDURE (*FEB 1998*) are incorporated in this BPA by reference and pertain to Credit Card purchases 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. Full text of this clause can be found on the web at URL: <http://farsite.hill.af.mil/>.

3. Precedence.

The terms and conditions included in this BPA and Attachment B (GSA Schedule) apply to all purchases 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. Program 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, PERIODIC PROGRAM MANAGEMENT REVIEWS, INVOICING, PAYMENT AND SUBMISSION OF MONTHLY AND QUARTERLY REPORTS.

2. Report of Sales.

CONSISTENT WITH CLAUSE C.22 OF 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. SUBMISSION OF THE REPORT OF SALES SHALL BE SUBMITTED TO THE SPM AND THE PCO IN ELECTRONIC FORMAT WITHIN FIFTEEN (15) DAYS FOLLOWING THE COMPLETION OF THE MONTHLY REPORTING PERIOD, OR AS OTHERWISE REQUESTED BY THE SPM. THE REPORT SHALL BE SUBMITTED IN THE STANDARD FORMAT SHOWN IN ATTACHMENT C. NEGATIVE REPORTS

ARE REQUIRED. THE SPM OR PCO SHALL PROVIDE WRITTEN APPROVAL OF EACH REPORT. 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. (NOTE: ANY UNIQUE REPORTING REQUIREMENTS ASSOCIATED WITH WCF ORDERS SHOULD BE DISCUSSED HERE).

3. Universal Standard Products and Services Code.

THE UNIVERSAL STANDARD PRODUCTS AND SERVICES CODE (UNSPSC) IS A REQUIRED FIELD OF THE REPORT OF SALES FOUND IN ATTACHMENT C. 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 ECCMA, THE ELECTRONIC COMMERCE CODE MANAGEMENT ASSOCIATION. THE CURRENT VERSION CONSISTS OF MORE THAN 16,000 TERMS AND IS AVAILABLE FREE AS A DOWNLOAD AT [HTTP://WWW.UNSPSC.ORG](http://www.unspsc.org).

4. Records.

THE CONTRACTOR SHALL MAINTAIN ARCHIVAL COPIES OF ALL ORDERS FOR THE LIFE OF THE BPA. 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 Software Product Manager. During these reviews the Contractor shall report on among other things, status of BPA sales, marketing and any outstanding issues concerning the BPA. PMR agenda and presentation format shall be provided 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, within reasonable capability of Contractor, that all of Contractor's sales personnel are aware of the ESI Program and enforce the policy that this BPA is the preferred procurement vehicle for the products within. The Contractor shall also establish a process to regularly audit sales to Government buyers, determine where sales outside the ESI vehicle are occurring, and take reasonably 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 work to market and advertise this agreement. Desired actions include: advertising resultant vehicles on the contractor's Internet site and advertising the agreement at relevant trade shows, participation in DoD Component sponsored events and news

media geared to Government/DoD IT people.

8. Virtual IT Marketplace.

ESI and GSA have partnered to create the Virtual IT Marketplace (VITM). The VITM interfaces with GSA Advantage and provides ESI agreement product information to the DoD customer. The Contractor shall follow GSA procedures for electronic loading of ESI contract information to the VITM and will be responsible to ensure that the VITM data is maintained in a current status. The VITM may be accessed at <http://www.vitm.gov>.

9. Enterprise Integration Toolkit.

The Enterprise Integration Toolkit is a program developed by the Assistant Deputy Under Secretary of Defense (L&MR) Logistics Systems Management (LSM) to assist DoD Program Managers, Contracting Officers and members of the Integrated Project Team (IPT) in the acquisition and implementation of Commercial Off The Shelf (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 vendor 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: <http://www.eitoolkit.com>.

F. Standards.

1. YEAR 2000 Compliance.All products provided under this BPA shall be Y2K compliant as defined in FAR 39.002.

2. JTA Compliance.

All products offered shall comply with the appropriate Publicly Available Standards (PAS) (e.g., TIA, EIA, ANSI, IEEE, ISO) and the applicable DoD information technology standards contained in the Joint Technical Architecture (JTA). More information on this standard can be found at <http://jta.disa.mil>.

3. Section 508 of the Rehabilitation Act Compliance.

All products provided under this BPA must meet the applicable accessibility standards at 36 CFR Part 1194 as required by FAR Case 1999-607. General information regarding the Section 508 Act can be found at the web site www.section508.gov.

4. Standards.

52.204-2 -- Security Requirements (Aug. 1996)

252.201-7000 -- Contracting Officers Representative (Dec 1991)

252.204-7000 -- Disclosure of Information (Dec 1991)

252.204-7004 -- Required Central Contractor Registration (Mar 2000)

252.209-7004 -- Subcontracting with Firms That Are Owned or Controlled by the Government of a Terrorist Country (Mar 1998)

252.227-7015 -- Technical Data -- Commercial Items (Nov 1995)

252.227-7037 -- Validation of Restrictive Markings on Technical Data (Sep 1999)

252.246-7000 -- Material Inspection and Receiving Report (Dec 1991)

Attachment A - IBM Software ESI Price List Revised

In an effort to increase the efficiency and accuracy in which IBM software products are offered to DoD customers, the link below shall replace attachment A – “IBM Software ESI Price List Revised”. The link contains an exclusive list of IBM software products offered under this agreement. IMMIX shall maintain the link and perform updates to include new products as they become available, provided they fall within the scope of the agreement. All new products must be submitted to ASCP for review prior to posting.

http://var.immixgroup.com/contracts/esi_ibm.cfm

Attachment B - Software Terms and Conditions

INTERNATIONAL BUSINESS MACHINES (“IBM”) SOFTWARE TERMS AND CONDITIONS APPLICABLE TO PERPETUAL SOFTWARE LICENSES (SPECIAL ITEM NUMBER 132-33) AND MAINTENANCE (SPECIAL ITEM NUMBER 132-34)

1. Inspection/Acceptance

The Contractor shall only tender for acceptance those items that substantially conform to the manufacturer’s published specifications. Items ordered by the ordering activity are deemed accepted at the date of delivery. The ordering activity reserves the right to inspect or test accepted software and may, at no increase in contract price, require repair or replacement of software that does not substantially conform to IBM’s published specifications. The ordering activity must exercise this post-acceptance right (1) within a reasonable time after the defect was discovered or should have been discovered, but not later than one (1) year from date of delivery; and (2) before any substantial change occurs in the condition of the software, unless the change is due to the defect in the software.

2. Guarantee/Warranty

a. The following IBM standard commercial guarantee/warranty will apply to this contract: IBM warrants that when the Program is used in the specified operating environment it will conform to its specifications. The warranty applies only to the unmodified portion of the Program. IBM does not warrant uninterrupted or error-free operation of the Program or that IBM will correct all Program defects. The ordering activity is responsible for the results obtained from the use of the Program. IBM provides the

ordering activity with access to IBM databases containing information on known Program defects, defect corrections, restrictions, and bypasses at no additional charge. Consult the IBM Software Support Guide for further information at <http://www.ibm.com/software/support>. IBM will maintain this information for at least one year after the original licensee acquires the Program ("Warranty Period"). If the Program does not function as warranted during the Warranty Period and the problem cannot be resolved with information available in the IBM databases, the ordering activity may return the Program and its Proof of Entitlement ("PoE") to the party (either IBM or its reseller) from whom the ordering activity acquired it and receive a refund in the amount the ordering activity paid. If the ordering activity downloaded the Program, the ordering activity may contact the party from which the ordering activity acquired it for instructions on how to obtain the refund.

b. THE FOREGOING WARRANTIES ARE THE ORDERING ACTIVITY'S EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

c. Limitation of Liability. Circumstances may arise where, because of a default on IBM's part or other liability, the ordering activity is entitled to recover damages from IBM. In each such instance, regardless of the basis on which the ordering activity may be entitled to claim damages from IBM, (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), IBM is liable for no more than (1) damages for bodily injury (including death) and damage to real property and tangible personal property and (2) the amount of any other actual direct damages up to the charges for the Program that is the subject of the claim. This limitation of liability also applies to IBM's Program developers and suppliers. It is the maximum for which they and IBM are collectively responsible.

UNDER NO CIRCUMSTANCES IS IBM, ITS PROGRAM DEVELOPERS OR SUPPLIERS LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY: (B) LOSS OF, OR DAMAGE TO, DATA; (2) SPECIAL, INCIDENTAL, OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; OR (3) LOST PROFITS, BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.

3. Technical Support Services

IBM, at the appropriate commercial charges cited in the Schedule, shall provide standard technical support services for the purpose of providing user assistance and guidance in the implementation of the software, per detail in Item 4 below.

4. Software Maintenance

- a. Software maintenance service shall include the IBM Maintenance Support services detailed in the Schedule.
- 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.

5. Periods Of Maintenance (132-34)

All references to term licenses in this section 5 are not applicable and are hereby deleted.

- a. The Contractor shall honor orders for periods for the duration of the contract period or a lesser period of time, provided that in any event the period of a maintenance order shall not exceed two (2) years.
- b. Maintenance may be discontinued by the ordering activity on ninety (90) days written notice to the Contractor, and must be executed in accord with issuance of a Deactivation of License certificate per Attachment C. Any pro-rated credit for pre-paid maintenance shall be negotiated on a cases by case basis and at the sole discretion of the Contractor.
- c. Annual Funding. When annually appropriated funds are cited on an order for maintenance, the period of the maintenance shall automatically expire on September 30 of the contract period, or at the end of the contract period, whichever occurs first. Renewal of the maintenance orders citing the new appropriation shall be required, if the maintenance is to be continued during any remainder of the contract period.
- d. Cross-Year Funding Within Contract Period. Where an ordering office's specific appropriation authority provides for funds in excess of a 12 month (fiscal year) period, the ordering office may place an order under this schedule contract for a period up to the expiration of the contract period, notwithstanding the intervening fiscal years, provided that in any event the period of a maintenance order shall not exceed two (2) years.
- e. Ordering activities should notify the Contractor in writing thirty (30) calendar days prior to the expiration of an order, if the maintenance is to be terminated at that time. Orders for the continuation of maintenance will be required if the maintenance is to be continued during the subsequent period.

6. Conversion From Term License To Perpetual License

This Section 6 is hereby deleted in its entirety as not applicable.

7. Term License Cessation

This Section 7 is hereby deleted in its entirety as not applicable.

8. Utilization Limitations - (132-32, 132-33, and 132-34)

- a. Software acquisition is limited to Commercial Computer Software defined in FAR Part 2.101.
- b. When acquired by the ordering activity, commercial computer software and related documentation so legend shall be subject to the following:
 - 1) Title to and ownership of the software and documentation shall remain with the Contractor, unless otherwise specified.
- c. The following IBM International Program License will apply to this contract, as it may be modified or updated from time to time with the shrink-wrap and/or click-wrap version accompanying Product:

"IBM" is International Business Machines Corporation or one of its subsidiaries.

"License Information" ("LI") is a document that provides information specific to a Program. The Program's LI is available at <http://www.ibm.com/software/sla/>. The LI may also be found in a file in the Program's directory, by the use of a system command, or as a booklet which accompanies the Program.

"Program" is the following, including the original and all whole or partial copies: (1) machine-readable instructions and data, (2) components, (3) audio-visual content (such as images, text, recordings, or pictures), (4) related licensed materials, and 5) license use documents or keys, and documentation.

A "Proof of Entitlement" ("PoE") is evidence of the ordering activity's authorization to use a Program at a specified level. That level may be measured, for example, by the number of processors or users. The PoE is also evidence of the ordering activity's eligibility for warranty, future upgrade prices, if any, and potential special or promotional opportunities. If IBM does not provide an ordering activity with a PoE, then IBM may accept the original paid sales receipt or other sales record from the party (either IBM or its reseller) from whom the ordering activity acquired the Program, provided that it specifies the name of the Program and the usage level acquired.

The Program is owned by IBM or an IBM supplier, and is copyrighted and licensed, not sold. IBM grants the ordering activity a non-exclusive license to use the Program when the ordering activity lawfully acquires it. The ordering activity may: (1) use the Program up to the level of use specified in the PoE and (2) make and install copies, including a backup copy, to support such use. The terms of this license apply to each copy the ordering activity makes. The ordering activity will reproduce all copyright notices and all other legends of ownership on each copy, or partial copy, of the Program. If the ordering activity acquires the Program as a program upgrade, after the ordering activity installs the upgrade it may not use the Program from which the ordering activity upgraded or transfer it to another party.

The ordering activity will ensure that anyone who uses the Program (accessed either locally or remotely) does so only for Your authorized use and complies with the terms of this Agreement. The ordering activity may not: (1) use, copy, modify, or distribute the Program except as provided in these terms and conditions; (2) reverse assemble, reverse compile, or otherwise translate the Program except as specifically permitted by law without the possibility of contractual waiver; or 3) sublicense, rent, or lease the Program. IBM may terminate this license if the ordering activity fails to comply with the terms of this Agreement. If IBM does so, the ordering activity must destroy all copies of the Program and its PoE.

Program Transfer. The ordering activity may transfer a Program and all of its license rights and obligations to another party only if that party agrees to these terms and conditions. When the ordering activity transfers the Program, the ordering activity must also transfer a copy of these terms and conditions, including the Program's PoE. After the transfer, the ordering activity may not use the Program.

U.S. Government Users Restricted Rights - Use, duplication or disclosure restricted by the GSA ADP Schedule Contract with IBM.

- d) To the extent the following language is not in conflict with the above, it shall apply. 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. The user ordering activity will take appropriate action by instruction, agreement, or otherwise, to protect IBM'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.

- 1) Except as is provided herein 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 IBM. 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.
- 2) The ordering activity shall have the right to use the computer software and documentation with the computer for which it is acquired, 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;; and to modify the software and documentation or combine it with other software, provided that the unmodified portions shall remain subject to these restrictions.
- 3) "Commercial Computer Software" may be marked with IBM's standard commercial restricted rights legend, but the schedule contract and schedule pricelist, including this clause, "Utilization Limitations" are the only governing terms and conditions, and shall take precedence and supersede any different or additional terms and conditions included in the standard commercial legend.

9. Software Conversions - (132-33)

Monetary credit will be allowed to the ordering activity when conversion from one version of the software to another is made as the result of a change in operating system, or from one computer system to another, on a case by case basis, at the discretion of Contractor. Under a perpetual license (132-33), the purchase price of the new software shall be reduced by the amount that was paid to purchase the earlier version, or some pro-rated portion thereof.

10. Descriptions and Equipment Compatibility

A complete description of each software product and a list of equipment on which the software can be used, along with a brief, introductory explanation of the modules and documentation which are offered on the schedule price list, may be located by contacting IBM's web site: [http\\www.ibm.com](http://www.ibm.com)

11. Right-To-Copy Pricing

Deleted in its entirety as Not Applicable.

12. PASSPORT ADVANTAGE – US GOVERNMENT TERMS

Under this Agreement, IBM provides the Passport Advantage customer a way to obtain authorizations to use, update, and support Programs obtained from IBM. The Originating U. S. Government customer and immixTechnology, along with IBM Originating Company, agree to coordinate the administration of this Agreement within their respective Enterprises. **In order to constitute a valid order, Exhibit A, attached herein, must be completed and attached to the delivery order.** When used in this Agreement, "IBM" means the IBM Enterprise company that is providing Eligible Products, and "You/Your" means the U. S. Government customer Enterprise that is ordering them, subject to the Agreement. This Agreement is executed with the understanding that all parties are bound by its

terms. All parties agree to distribute copies of the Agreement within our respective participating Enterprise.

Products eligible under this Agreement ("Eligible Products") include commercially available IBM Programs, certain Programs that are subject to a third-party end user license agreement ("Non-IBM Programs"), IBM Trade-ups, Competitive Trade-ups, annual IBM Software Maintenance renewals, IBM Software Maintenance Reinstatement, and, where applicable, annual Third Party Software Maintenance renewals and Third Party Software Maintenance Reinstatement.

You accept the terms of this Agreement without modification. This Agreement remains in effect until You or IBM terminate it in accordance with the "Agreement Termination" within this Section (below).

The terms of the sections of the IBM Program License Agreement for Distributed Systems Programs, U. S. Government Terms ("IPLA"), Section 13, entitled "Limitation of Liability" are also part of this Agreement and are incorporated by reference into this Agreement with the following exceptions:

The term "Program" is replaced by the term "Eligible Product."

A copy of the IPLA in its entirety is provided in below. This Agreement is hereby accepted and, 1) unless prohibited by applicable law or specified otherwise, any reproduction of it or an Associated Document made by reliable means (for example, photocopy or facsimile) is considered an original and 2) all Eligible Products ordered under this Agreement are subject to it.

If IBM withdraws an Eligible Product from marketing, You will no longer be able to obtain it under this Agreement. If IBM withdraws a Program or a version of a Program from marketing, You may not increase its level of use, beyond the authorizations already acquired, on or after the effective date of withdrawal, without IBM's prior written consent which IBM will not unreasonably withhold.

The Passport Advantage "Anniversary" for the Government is October 1 of each fiscal year or the Government's existing "Anniversary", unless a different date is mutually agreed to in writing.

A "Program" is the following, including the original and all whole or partial copies: 1) machine-readable instructions and data, 2) components, 3) audio-visual content (such as images, text, recordings, or pictures), 4) related licensed materials, and 5) license use documents or keys and documentation.

A "Term" is the period that begins either on the date immixTechnology and IBM accepts Your Purchase Order/Purchase Order modification or on the Anniversary (in the case of subsequent Terms), and ends on the day immediately prior to the next Anniversary.

Eligible Products

Eligible Products that You obtain under this Agreement are for use within Your Enterprise only and may not be resold, rented, leased, or transferred to third parties. In addition, such Eligible Products may not be used to provide commercial hosting or other commercial information technology services to third parties.

Unless IBM specifies otherwise, it provides Non-IBM Programs and Third Party Software Maintenance WITHOUT WARRANTIES OF ANY KIND. However, non-IBM manufacturers, developers, suppliers, or publishers may provide their own warranties to you.

IBM Programs.

Proof of Entitlement: IBM specifies a Program's authorized use in a Proof of Entitlement (called "PoE"). Examples of the measure of the level of authorized use include, but are not limited to, the number of copies, processors, or users. This PoE, supported by Your matching invoice or receipt, is evidence of Your level of authorized use. During the period this Agreement remains in effect, and for two years thereafter, IBM has the right to verify Your compliance with this Agreement on Your

premises during Your normal business hours and in a manner that minimizes disruption to Your business. IBM may use an independent auditor for this with Your prior approval, which You will not unreasonably withhold.

Versions and Platforms: You may use Programs and their associated user documentation in any commercially available national language version up to the level of use authorized in the PoE. You are authorized to use the Programs that You obtain under these terms on any platform or operating system for which IBM currently makes Program code available under Passport Advantage unless the Program is designated as platform or operating system specific at the time You obtain it.

IBM Trade-ups: Licenses for certain Programs that replace qualifying IBM Programs may be obtained for a reduced charge. You agree to terminate Your use of the replaced IBM Programs when You install the replacement Programs.

Competitive Trade-ups: Licenses for certain Programs that replace qualifying third party programs may be obtained for a reduced charge. You agree to terminate Your use of the replaced third party programs when You install the replacement Programs.

License: IBM Programs obtained under these terms are governed by the terms of the IPLA, which You accept by downloading, installing, copying, accessing, or using the Program. If there is a conflict between the terms of this Agreement and those of the IPLA, including its License Information document ("LI"), the terms of this Agreement prevail.

Non-IBM Programs

License: The licensing of Non-IBM Programs obtained under this Agreement is governed by the terms of the third party end user license agreement that accompanies it in lieu of the IPLA. If there is a conflict between the terms of this Agreement and those of the third party end user license agreement, the terms of this Agreement prevail. IBM is not a party to the third party end user license agreement and assumes no obligations under it.

Software Maintenance

Software maintenance is included with each Program license. Software maintenance included with IBM Program licenses is provided by IBM and is called "IBM Software Maintenance". IBM does not provide IBM Software Maintenance for Non-IBM Programs. Software maintenance included with Non-IBM Program licenses is provided by the third party under the third party's terms and is called "Third Party Software Maintenance". For purposes of this Agreement, "software maintenance" means both IBM Software Maintenance and Third Party Software Maintenance.

IBM Software Maintenance begins on the date of acquisition and ends on the last day of the corresponding month in the following year, unless the date of acquisition is the first day of the month, in which case coverage ends on the last day of the month, 12 months from the date of acquisition. While IBM Software Maintenance continues to be made commercially available for an IBM Program license:

IBM will make available to You and authorize You to use the most current commercially available version, release, or update, should any be made available.

IBM provides You assistance for Your 1) routine, short duration installation and usage (how-to) questions; and 2) code-related questions.

IBM provides assistance via telephone and, if available, electronic access, only to Your information systems ("IS") technical support personnel during the normal business hours (published prime shift hours) of Your IBM support center. (This assistance is not available to Your end users.) IBM provides

Severity 1 assistance 24 hours a day, every day of the year. Consult the IBM Software Support Guide for details at ibm.com/software/support.

All Software Maintenance is provided from the IBM US Domestic support operations.

IBM Software Maintenance does not include assistance for 1) the design and development of applications, 2) Your use of IBM Programs in other than their specified operating environment or 3) failures caused by products for which IBM is not responsible under this Agreement.

IBM warrants that it provides IBM Software Maintenance using reasonable care and skill. This warranty is Your exclusive warranty and replaces all other warranties or conditions, express or implied, including, but not limited to, the implied warranties or conditions of merchantability and fitness for a particular purpose.

Annual Software Maintenance Renewal. On the Anniversary date, IBM will renew Software Maintenance on a subscription basis for an additional annual one-time charge due and payable to immixTechnology at the time of renewal. IBM will renew, expiring software maintenance for all of Your Program licenses to the next Anniversary if immixTechnology and IBM receive an order within seven (7) days after the Anniversary. Otherwise, IBM's systems will automatically terminate the service. If You do not renew Software Maintenance coverage for certain or all of Your Program licenses and at a later date You wish to again acquire Software Maintenance coverage for such Program licenses, You must obtain IBM Software Maintenance Reinstatement.

Software Maintenance obtained or renewed on the Anniversary is renewable for an additional coverage period of twelve (12) full months.

Software Maintenance obtained on a date other than the Anniversary is renewable at the next Anniversary for an additional coverage period of less than 12 months for a pro-rated charge, thereby extending the coverage to the following Anniversary.

If IBM or the third party, as applicable, withdraws Software Maintenance for a particular Program, You understand that:

IBM will not make Software Maintenance renewal available for that Program; and

If You renewed IBM Software Maintenance for that IBM Program license prior to the withdrawal notice, IBM, at its sole discretion, will either continue to provide IBM Software Maintenance to You for that Program license until the end of the then current coverage period or You may obtain a prorated refund. If You renewed Third Party Software Maintenance for that Non-IBM Program prior to the notice, the third party will continue to provide Third Party Software Maintenance to You for that Non-IBM until the end of the then current coverage period.

Otherwise, except as may be stated elsewhere in this contract, the Government may obtain a prorated refund.

Enterprise

An Enterprise is the U.S. Government Agency or affiliated entity of the U. S. Government Agency. For purposes of this contract, the U. S. Government Agency or affiliated entity of the U.S. Government Agency shall mean the specific acquiring Government Agency list on the Purchase Order. The U. S. Government Agency awarding a contract and subsequent Purchase Order under such contract is the legal entity that is authorized to execute and administer this Agreement.

Site

"Site" means any location of a U. S. Government Agency issuing to IBM a Purchase Order hereunder for the Agency's own internal use.

The U. S. Government Agency Site issuing a Purchase Order to IBM is defined as the “Originating Site.”

Any Site, within the Enterprise, that subsequently enrolls under this Agreement is defined as an “Additional Site.”

The U. S. Government Agency is responsible for all Sites’ compliance with the terms of this Agreement.

Obtaining Eligible Products

To obtain additional authorizations to use Programs under Passport Advantage You must have already obtained the Program code/media.

Except as may be stated elsewhere in this contract, IBM’s “money-back guarantee” applies to the first time You license the IBM Program.

Under Passport Advantage You may obtain individual Eligible Products or “CEO Product Categories” (groupings of Eligible Products).

You obtain CEO Product Categories on a per-user basis. When you obtain your first CEO Product Category (“Primary Product Category”), you must obtain it for all Users and for not less than the number of Users specified in the CEO Product Categories Table at ibm.com/software/passportadvantage. A “User” is an individual to whom a machine capable of copying, using, or extending the use of Programs has been assigned.

You may obtain additional CEO Product Categories if you meet the minimum number of Users requirement specified in the CEO Product Category in the CEO Product Categories Table at ibm.com/software/passportadvantage. However, you need not obtain additional CEO Product Categories for all Users within your Enterprise.

A User may use any or all of the Programs included in a chosen CEO Product Category. However, all IBM Programs that are used for client access must be obtained from the same CEO Product Category as the server Program they access.

CEO Product Categories: Additions and Deletions

IBM may add Eligible Products to or delete Eligible Products from any CEO Product Category. If IBM deletes an Eligible Product from a CEO Product Category, You may continue to use the Eligible Product but You may not exceed the number of Users enrolled prior to the deletion.

Increasing the number of Users

In the event you increase the number of Users, you must obtain an authorization to use the CEO Product Category for each new User.

Decreasing the number of Users

You will notify immixTechnology and IBM in writing prior to Your next Anniversary in the event Your total number of Users decreases. Decreases may result from reorganization or restructuring of one or more of your Sites. A reduction in the number of Users of a temporary or seasonal nature does not qualify as a decrease. If the level of authorized use of a CEO Product Category drops below the minimum number of Users applicable to that CEO Category, You may not renew IBM Software Maintenance on a CEO Product Category basis.

Payment

Except as may be stated elsewhere in our contract, when You obtain Eligible Products from IBM, You agree to pay as immixTechnology specifies in its invoice including, when applicable, any late payment fee/interest. If any authority imposes a duty, tax, levy or fee (excluding those based on immixTechnology's or IBM's net income) upon Eligible Products, then You agree to pay that amount as immixTechnology specifies or supply tax exemption documentation.

Mutual Responsibilities

All parties agree that, under this Agreement, all information exchanged is non-confidential. If any of the parties require the exchange of confidential information, it will be made under a signed confidentiality agreement; and

All of the parties may communicate with the other by electronic means and such communication is acceptable as a signed writing to the extent permissible under applicable law. All of the parties agree that for all electronic communications, an identification code (called a "user ID") contained in an electronic document is sufficient to verify the sender's identity and the document's authenticity.

Assignment

You may not assign this Agreement, in whole or in part, without immixTechnology and IBM's prior written consent. Any attempt to do so is void. ImmixTechnology and IBM will not unreasonably withhold this consent.

The assignment of this Agreement, in whole or in part, within the Enterprise of which either of us is a part or to a successor organization by merger or acquisition does not require the consent of the other. It is not considered an assignment for immixTechnology or IBM to divest a portion of its business in a manner that similarly affects all of its customers.

Changes to the Agreement Terms

For a change to the terms of this Agreement to be valid, an authorized signature of immixTechnology and You must execute a Modification.

Agreement Termination

You may terminate this Agreement without cause on one month's written notice. ImmixTechnology and IBM may terminate this Agreement on one year's written notice or upon withdrawal of the Passport Advantage commercial offering.

Any of the parties may terminate this Agreement if the other does not comply with any of its terms, provided the one who is not complying is given written notice and reasonable time to comply.

Any terms of this Agreement which by their nature extend beyond its termination remain in effect until fulfilled and apply to respective successors and assignees.

Geographic Scope

The terms of this Agreement apply in the United States, Puerto Rico and the District of Columbia.

1. Program License Agreement for Distributed Systems Programs U.S. Government Terms (IPLA)

BY DOWNLOADING, INSTALLING, COPYING, ACCESSING, OR USING THE PROGRAM THE GOVERNMENT AGREES TO THE TERMS OF THIS AGREEMENT. IF THE GOVERNMENT DOES NOT AGREE TO THESE TERMS,

? DO NOT DOWNLOAD, INSTALL, COPY, ACCESS, OR USE THE PROGRAM; AND
? PROMPTLY RETURN THE PROGRAM AND PROOF OF ENTITLEMENT TO IBM TO OBTAIN A REFUND OF THE AMOUNT THE GOVERNMENT PAID. IF THE GOVERNMENT DOWNLOADED THE PROGRAM, CONTACT YOUR IBM POINT OF CONTACT.

“IBM” is International Business Machines Corporation or one of its subsidiaries.

“License Information” (“LI”) is a document that provides information specific to a Program. The Program’s LI is available at <http://www.ibm.com/software/sla/>. The LI may also be found in a file in the Program’s directory, by the use of a system command, or as a booklet that accompanies the Program.

“Program” is the following, including the original and all whole or partial copies: 1) machine-readable instructions and data, 2) components, 3) audio-visual content (such as images, text, recordings, or pictures), 4) related licensed materials, and 5) license use documents or keys, and documentation.

A “Proof of Entitlement” (“PoE”) is evidence of the Government’s authorization to use a Program at a specified level. That level may be measured, for example, by the number of processors or users. The PoE is also evidence of the Government’s eligibility for warranty, future upgrade prices, if any, and potential special or promotional opportunities.

If IBM does not provide the Government with a PoE, then IBM may accept the original invoice provided that it specifies the name of the Program and the usage level acquired.

“You” and “Your” refer either to an individual person or to a single legal entity

This Agreement includes General Terms, License Information, and Proof of Entitlement and, in addition to the Terms and Conditions stated above, is the complete agreement between immixTechnology, You and IBM regarding the use of the Program. It replaces any prior oral or written communications between immixTechnology, You and IBM concerning Your use of the Program. The terms of License Information may replace or modify this Agreement. To the extent there is a conflict between the terms of this Agreement and those of the IBM Passport Advantage Agreement (above) or any other Terms and Conditions stated above, U. S. Government Terms, the terms of the latter agreement prevail.

1. Entitlement

License

The Program is owned by IBM or an IBM supplier, and is copyrighted and licensed, not sold.

IBM grants You a nonexclusive license to use the Program when You lawfully acquire it.

You may 1) use the Program up to the level of use specified in the PoE and 2) make and install copies, including a backup copy, to support such use. The terms of this license apply to each copy You make. You will reproduce all copyright notices and all other legends of ownership on each copy, or partial copy, of the Program.

If You acquire the Program as a program upgrade, after You install the upgrade You may not use the Program from which You upgraded or transfer it to another party.

You will ensure that anyone who uses the Program (accessed either locally or remotely) does so only for Your authorized use and complies with the terms of this Agreement.

You may not 1) use, copy, modify, or distribute the Program except as provided in this Agreement; 2) reverse assemble, reverse compile, or otherwise translate the Program except as specifically permitted by law without the possibility of contractual waiver; or 3) sublicense, rent, or lease the Program.

IBM may terminate Your license if You fail to comply with the terms of this Agreement. If IBM does so, You must destroy all copies of the Program and its PoE.

Money-back Guarantee

Except as may be stated elsewhere in the contract, if for any reason You are dissatisfied with the Program and You are the original licensee, You may obtain a refund of the amount You paid for it, if within 30 days of Your invoice date, You return the Program and its PoE to IBM. If You downloaded the Program, You may contact IBM for instructions on how to obtain the refund.

Program Transfer

Except as may be stated elsewhere in this contract, You may transfer a Program and all of Your license rights and obligations to another party only if that party agrees to the terms of this Agreement. When You transfer the Program, You must also transfer a copy of this Agreement, including the Program's PoE and License Information. After the transfer, You may not use the Program.

2. Charges

The amount payable for a Program license is a one-time charge.

Payment will be remitted to immixTechnology.

One-time charges are based on the level of use acquired which is specified in the PoE. ImmixTechnology and IBM do not give credits or refunds for charges already due or paid, except as may be specified elsewhere in this Agreement.

If You wish to increase the level of use, notify immixTechnology and IBM and pay any applicable charges to immixTechnology.

If any authority imposes a duty, tax, levy or fee, excluding those based on immixTechnology's or IBM's net income, upon the Program, then You agree to pay the amount specified or supply exemption documentation.

3. Limited Warranty

IBM warrants that when the Program is used in the specified operating environment it will conform to its specifications. The warranty applies only to the unmodified portion of the Program. IBM does not warrant uninterrupted or error-free operation of the Program or that IBM will correct all Program defects. You are responsible for the results obtained from the use of the Program.

IBM provides You with access to IBM databases containing information on known Program defects, defect corrections, restrictions, and bypasses at no additional charge. Consult the IBM Software Support Guide for further information at <http://www.ibm.com/software/support>. IBM will maintain this information for at least one year after the original licensee acquires the Program ("Warranty Period").

If the Program does not function as warranted during the Warranty Period and the problem cannot be resolved with information available in the IBM databases, You may return the Program and its PoE to IBM and receive a refund in the amount You paid. If You downloaded the Program, You may contact IBM for instructions on how to obtain the refund.

THESE WARRANTIES ARE YOUR EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF EXPRESS OR IMPLIED WARRANTIES, SO THE ABOVE

EXCLUSION MAY NOT APPLY TO YOU. IN THAT EVENT, SUCH WARRANTIES ARE LIMITED IN DURATION TO THE WARRANTY PERIOD. NO WARRANTIES APPLY AFTER THAT PERIOD.

4. Limitation of Liability

Circumstances may arise where, because of a default on IBM's part or other liability, You are entitled to recover damages from IBM. In each such instance, regardless of the basis on which You may be entitled to claim damages from IBM, (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), immixTechnology and IBM are liable for no more than 1) damages for bodily injury (including death) and damage to real property and tangible personal property and 2) the amount of any other actual direct damages, up to the greater of \$100,000 or the charges (if recurring, 12 months' charges apply) for the Program that is the subject of the claim.

This limitation of liability also applies to IBM's Program developers and suppliers. It is the maximum for which they and IBM are collectively responsible.

UNDER NO CIRCUMSTANCES IS IBM, ITS PROGRAM DEVELOPERS OR SUPPLIERS (INCLUDING IMMIXTECHNOLOGY) LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY:

- a. LOSS OF, OR DAMAGE TO, DATA;
- b. SPECIAL, INCIDENTAL, OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; OR
- c. LOST PROFITS, BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.

5. General

Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.

In the event that any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect.

You agree to comply with all applicable export and import laws and regulations.

You agree to allow IBM to store and use Your contact information, including names, phone numbers, and e-mail addresses, anywhere they do business. Such information will be processed and used in connection with our business relationship, and may be provided to contractors, Business Partners, and assignees of IBM for uses consistent with their collective business activities, including communicating with You (for example, for processing orders, for promotions, and for market research).

Neither You nor IBM nor immixTechnology will bring a legal action under this Agreement more than two years after the cause of action arose unless otherwise provided by law without the possibility of contractual waiver or limitation.

Neither You nor IBM nor immixTechnology is responsible for failure to fulfill any obligations due to causes beyond its control.

This Agreement will not create any right or cause of action for any third party, nor will IBM or immixTechnology be responsible for any third party claims against You except, as permitted by the Limitation of Liability section above, for bodily injury (including death) or damage to real or tangible personal property for which IBM is legally liable.

Exhibit A
IBM International Passport Advantage Agreement - Enrollment Form

Please provide all requested information in order to be enrolled or to update your information.

Enrollment and Eligible Product acquisition under Passport Advantage is subject to the terms of the IBM International Passport Advantage Agreement (“the Agreement”). Use of any Program acquired under Passport Advantage is subject to the terms of the IBM International Program License Agreement (“IPLA”), which is made part of the Agreement by reference, and any applicable License Information document (“LI”).

In enrolling, you acknowledge that you

- a. have had the opportunity to read and understand these documents, prior to your completion of this form and to any acquisition under the Agreement ; and**
- b. accept the terms of these documents.**

This enrollment is for (**check one**): Originating Site Additional Site* Site Information Update

If this is an enrollment for an Originating Site, please indicate customer type (**check one****):

- Commercial (see Option A, Section 4 of the Agreement)
- Commercial, purchasing CEO Product Categories (see Option B, section 4 of the Agreement)
- Government
- Academic Volume Option (AVO)

***Note:** The Originating Site Primary Contact must, if applicable, complete and submit with this enrollment form, an Authorized Additional Site Schedule listing any and all potential Additional Sites. Failure to do so may result in delay in processing Additional Site enrollments. An Additional Site is required to be part of the Originating Site’s Enterprise as defined in Section 2 of the Agreement. By completing this form as an Additional Site, you certify that this requirement has been met.

****Note:** If you are a Government customer enrolling under Commercial terms, please check **both** “Government” and **one** of the two Commercial options shown.

If enrolling an Additional Site, please indicate Passport Advantage Agreement Number: _____

If updating existing Site information, please indicate Passport Advantage Site number: _____

For each contact information box below, please complete all details, including the optional check-box concerning promotional and marketing communications from IBM and its business partners. By completing this form and providing us with information on behalf of other individuals in your organization, you certify that you have confirmed that they agree to your providing their data on the form. If you indicate, for any of the contacts listed, that you or they DO wish to receive promotional and/or marketing material, we will use the contact information for these purposes too, as well as generally in connection with your Passport Advantage Agreement.

Primary Contact (required): IBM will consider the contact you designate in this information box to be the primary contact for your Site. All Passport Advantage correspondence, other than correspondence related to Software Maintenance renewals, will be sent to the attention of the Primary Contact. If the Primary Contact is the only contact specified, IBM may consider the Primary Contact to be the sole contact for all purposes. **(No Post Office Boxes, please)**

Company Name:		
Contact Name:		
Street Address:		
City:	State/Province:	Zip Code/Postal Code:
Country:	Telephone/Ext:	Fax:
E-mail Address:		
IBM Customer Number:		

Yes, please use the contact information in the information box above for future marketing or promotional contacts or other communications beyond the scope of this Passport Advantage Agreement.

Proof of Entitlement (Certificate) Contact *(if different from the Primary Contact above)*: The contact you designate in this information box will receive the "Proofs of Entitlement" for Passport Advantage acquisitions made by this Site.

Company Name:		
Contact Name:		
Street Address:		
City:	State/Province:	Zip Code/Postal Code:
Country:	Telephone/Ext:	Fax:
E-mail Address:		
IBM Customer Number:		

Yes, please use the contact information in the information box above for future marketing or promotional contacts or other communications beyond the scope of this Passport Advantage Agreement.

Software Maintenance Media Shipping Contact (if different from Primary Contact above):

Note: Each Site with Software Maintenance coverage is eligible to receive one set of media for Programs covered by such Software Maintenance when Programs are revised and become commercially available. Program upgrade media will be shipped to the contact at the address indicated below. Software Maintenance coverage must be active in order for the upgrade(s) to be shipped. **Please note: A Post Office Box is not a valid ship-to address.**

Company Name:		
Contact Name:		
Street Address:		
City:	State/Province:	Zip Code/Postal Code:
Country:	Telephone/Ext:	Fax:
E-mail Address:		
IBM Customer Number:		

Yes, please use the contact information in the information box above for future marketing or promotional contacts or other communications beyond the scope of this Passport Advantage Agreement.

Language:

Please indicate the language(s) in which you want to receive your media: _____

For countries where there is more than one official language (for example, Canada, Switzerland, Belgium), please indicate in which languages you wish to receive communications from IBM regarding your Passport Advantage relationship: _____

Please note that while IBM will make all reasonable efforts to meet your request, media and communications may not be available in all languages.

Software Maintenance Renewal Contact (if different from Primary Contact above): The contact you designate in this information box is the person responsible for assisting with Software Maintenance renewals.

Company Name:		
Contact Name:		
Street Address:		
City:	State/Province:	Zip Code/Postal Code:
Country:	Telephone/Ext:	Fax:
E-mail Address:		
IBM Customer Number:		

Yes, please use the contact information in the information box above for future marketing or promotional contacts or other communications beyond the scope of this Passport Advantage Agreement.

Site Technical Contact (if different from Primary Contact above): The Site Technical Contact specified below is responsible for overall support compliance for this Passport Advantage site, maintaining the authorized caller list on the Passport Advantage eCare Web site, and coordinating distribution of the technical support access information to the authorized callers of this site.

Company Name:		
Contact Name:		
Street Address:		
City:	State/Province:	Zip Code/Postal Code:
Country:	Telephone/Ext:	Fax:
E-mail Address:		
IBM Customer Number:		

Yes, please use the contact information in the information box above for future marketing or promotional contacts or other communications beyond the scope of this Passport Advantage Agreement.

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Billing Contact (if different from Primary Contact above): The contact you designate in this information box is the person you want to receive, where applicable, billing communications.

Company Name:		
Contact Name:		
Street Address:		
City:	State/Province:	Zip Code/Postal Code:
Country:	Telephone/Ext:	Fax:
E-mail Address:		
IBM Customer Number:		

Yes, please use the contact information in the information box above for future marketing or promotional contacts or other communications beyond the scope of this Passport Advantage Agreement.

Passport Advantage Primary Reseller, if applicable for this enrollment:

Primary Reseller Company Name:		
Contact Name:		
Street Address:		
City:	State/Province:	Zip Code/Postal Code:
Country:	Telephone/Ext:	Fax:
E-mail Address:		

IBM SOFTWARE TERMS AND CONDITIONS APPLICABLE TO PURCHASE OF TRAINING COURSES (SPECIAL ITEM NUMBER 132-50)

I. IBM Training Terms & Conditions (Special Terms & Conditions are included for IBM University Flexible Training Days & IBM University Passport for Web-Based Training.)

1. Scope

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

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

2. Order

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

3. Time of Delivery

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

4. Cancellation and Rescheduling

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

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

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

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

Follow-Up Support

NOT APPLICABLE

6. Price for Training

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

In addition to Instructor Fees, which are payable at the rate(s) set forth in the then current IBM Price Guide, the customer is responsible for payment of the standard charges for course materials. Unless otherwise specified in the purchase documents, all course materials are shipped directly to the customer training site, FOB Origin, prepaid and billed to the Customer.

7. Invoices and Payment

Invoices for training shall be submitted by the Contractor after ordering activity completion of the training course. Charges for training must be paid in arrears (31 U.S.C. 3324). PROMPT PAYMENT DISCOUNT, IF APPLICABLE, SHALL BE SHOWN ON THE INVOICE. Payments are due NET 30 days after receipt of invoice.

8. Format and Content of Training

a. The Contractor shall provide written materials (i.e., manuals, handbooks, texts, etc.) normally provided with course offerings. Such documentation will become the property of the student upon completion of the training class. Course materials are copyrighted. The ordering activity agrees that it shall not reproduce such materials nor permit others to do so, and that the materials shall not be transferred or re-used for any purpose other than the ordering activity's own internal training course.

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

c. The Contractor shall provide each student with a Certificate of Training at the completion of each training course, where regularly issued by Contractor.

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

The course title and a brief description of the course content, to include the course format (e.g., lecture, discussion, hands-on training);

The length of the course;

Mandatory and desirable prerequisites for student enrollment;

The minimum and maximum number of students per class;

The locations where the course is offered;

Class schedules; and

Price (per student, per class (if applicable)).

Information on training courses is available in the price schedule, and/or by contacting: <http://www.ibm.com>

e. For those courses conducted at the ordering activity’s location, the ordering activity is responsible for providing and installing all hardware, compilers, and other software, and associated equipment, supplies, and facilities required for conduct of the training.

In addition to the Course Fees, the ordering activity is responsible for payment of the standard charges for course materials, and for all instructor travel charges (if applicable), including mileage, daily living expenses, travel and incidental expenses incurred by IBM or its supplier in conducting the course(s). Rates paid as a result of travel must comply with the Federal Travel Regulation or Joint Travel Regulations, as applicable, in effect on the date(s) the travel is performed. Contractors cannot use GSA city pair contracts.

f. There are no warranties, express or implied. IBM disclaims any representations or warranties of merchantability or fitness for a particular purpose. In no event shall IBM be liable for (a) indirect, special, consequential, or other similar damages, or (b) any damages whatsoever resulting from loss of use, data, or profits, arising out of or in connection with the services provided hereunder, even if IBM has been aware of the possibility of such damages, and whether in a contract or tort action (including negligence). IBM’s total liability, regardless of the theory of recovery, shall be limited to

direct money damages not exceeding the total amount paid to IBM under the applicable purchase order.

9. “No Charge” Training

NOT APPLICABLE.

II. Special Terms & Conditions for IBM University Flexible Training Days & IBM University Passport for Web-Based Training are below. Should these Special Terms & Conditions for IBM University Flexible Training Days & IBM University Passport for Web-Based Training conflict with the Terms & Conditions above (in Section I), these Special Terms & Conditions will supercede for for IBM University Flexible Training Days & IBM University Passport for Web-Based Training.

1. IBM University Flexible Training Days Terms and Conditions

a. These terms and conditions will govern the provision of training courses by IBM to the ordering activity (“Customer”) who has purchased Flexible Training Days. A Flexible Training Day means one day of a public training course taught by a IBM employee instructor, offered for two types of courses:

- For open-enrollment, public training classes presented at a IBM controlled site (Open Enrollment Flexible Training Days)
- For onsite training classes presented at the Customer’s site (OnSite Flexible Training Days)

b. Flexible Training Days can be applied to any standard IBM University Training course within the Training Day type purchased, in the appropriate quantity of days for that course [e.g. A standard three (3) day course requires three (3) Flexible Training Days]. Half-day courses will be charged as one full Training Day. The two types are not recommended to be used as interchangeable. In the event they do have to be converted, they will be converted at the following ratio:

- Seven (7) Open Enrollment Flexible Training Days convert to one (1) OnSite Flexible Training Day
- c. Flexible Training Days are valid only for training courses taught by a IBM employee instructor, and cannot be applied to training courses conducted by any IBM partner.
- d. Customer's balance of Trainings Days will be decremented and Customer will be invoiced as courses are taken. Flexible Training Days will be effective for a period of eighteen (18) months from the effective date. Unused Flexible Training Days will be terminated if they are not used prior to the expiration date. No refunds or credits shall apply, as Flexible Training Days are not pre-paid.
- e. Cancellation/Termination:
(1) Cancellation: The Customer may cancel or reschedule a course up to 10 business days before the course start date at no charge. All Customers canceling or rescheduling a course less than 10 business days, but at least 5 business days, before the course start date will be charged 50% of the Flexible Training Days required for the course, plus any incurred non-refundable expenses. A cancellation or reschedule less than 5 business days before the course start date, or a no-show for a course, will be charged 100% of the Flexible Training Days **required for the course, plus any incurred non-refundable expenses.**
(2) Termination: In the event the Customer terminates a purchase order prior to the expiration of the Training Days, Customer shall pay Contractor for services performed and expenses incurred prior to the termination of the purchase order, plus any applicable cancellation fees per Section II,1e(1) above.
- f. In addition to the course fees in the form of Flexible Training Days, the customer is responsible for payment of all per diem and other travel and incidental expenses, in accordance with the Federal/Joint Travel Regulations, incurred by IBM or its supplier in conducting the courses. All prices are exclusive of any state, local, or federal taxes or fees, which shall be invoiced and payable additionally by Customer. Payments are due Net 30 days after receipt of invoice.
- g. Training course materials are protected under United States and international laws, treaties and conventions. Customer agrees that it shall not reproduce such materials nor permit others to do so, and that the materials shall not be transferred or re-used for any purpose other than as reasonably necessary in order for Customer to benefit from the IBM-provided training. If Customer desires to teach its own courses, Customer will need to purchase the appropriate license from IBM.
- h. All training courses are offered subject to availability. Once IBM accepts a Customer course registration containing a firm schedule, or otherwise confirms a schedule in writing, the course may be canceled or rescheduled by Customer only with the consent of IBM and subject to any applicable cancellation or rescheduling charges.
- i. For OnSite Flexible Training Days conducted on Customer's site, Customer is responsible for providing all hardware, compilers, and other software, and associated equipment, supplies, and facilities required for conduct of the training. Customer is further responsible for installing all IBM-provided training software, and for de-installing and destroying all such software at the end of the training. With OnSite course delivery, additional students past the standard 12 students will be charged at one (1) OnSite Flexible Training Day per student.
- j. EXCEPT TO THE EXTENT PROHIBITED BY LAW, IBM EXPRESSLY DISCLAIMS ALL WARRANTIES OR REPRESENTATIONS, EXPRESS OR

IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, TITLE OR FITNESS FOR A PARTICULAR PURPOSE OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. IN NO EVENT SHALL IBM OR ITS LICENSORS BE LIABLE FOR (A) INDIRECT, SPECIAL, CONSEQUENTIAL, OR OTHER SIMILAR DAMAGES, OR (B) ANY DAMAGES WHATSOEVER RESULTING FROM LOSS OF USE, DATA, OR PROFITS, ARISING OUT OF OR IN CONNECTION WITH THE SERVICES AND/OR MATERIALS PROVIDED HEREUNDER, EVEN IF IBM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF WHETHER IN A CONTRACT OR TORT ACTION (INCLUDING NEGLIGENCE). IBM'S TOTAL LIABILITY, REGARDLESS OF THE THEORY OF RECOVERY, SHALL BE LIMITED TO DIRECT MONEY DAMAGES NOT EXCEEDING THE TOTAL AMOUNT PAID TO IBM UNDER THE APPLICABLE PURCHASE ORDER.

2. IBM University Passport for Web-Based Training Terms and Conditions

- a. These terms and conditions will govern the provision of the IBM University Passport for Web-Based Training for training courses provided on-line ("Web-Passport") by IBM to the ordering activity ("Customer") who has purchased such IBM University Web-Passport.
- b. All IBM University Passport for Web-Based Training is paid in fully in advance. Once purchased, a Web-Passport will become effective as of the date an access code is provided to Customer, and will continue in effect for the duration of time for which the particular Web-Passport was purchased (either six months or one year).

- c. A Web-Passport is available only for a minimum purchase of one named Customer employee for a minimum of six months. Upon purchase, Customer is responsible for identifying by name, those Customer employee(s) who are to be authorized named users of the Web-Passport by making the access code available to those employees it wishes to be authorized users of the Passport. The authorized users will then use the access code to enroll for the web-based training courses.

A Web-Passport is not intended to permit changing or substituting the named users once identified, except in the case of a named user having left the Customer employ. Customer may submit other requests involving changing or substituting named users, which shall be evaluated at IBM's sole discretion.

- d. A Web-Passport is valid for all web-based training courses offered by IBM during the effective dates of the Web-Passport, and is valid only for web-based training classes offered by IBM Software. Web-Passports cannot be applied to classes conducted in person.
- e. During the Web-Passport effective dates: (i) a particular Customer named user may enroll in all Web-Based training then offered by IBM; (ii) once a particular Customer named user has enrolled in a course, that user has a period of ninety (90) days within which to complete that course; (iii) once a particular named user has enrolled in and completed any one course, that user may re-enroll in that same course.
- f. Once purchased, a Web-Passport may not be canceled, nor may it be returned or refunded. If Customer has not fully utilized the Web-Passport, all unused portions remaining at the expiration date are forfeited.
- g. For each course which a Customer named user has enrolled in, that user may, for such user's personal use, print out one hard copy of those portions of the training course materials that are enabled for printing; provided that the copy

- contains all copyright and other legal notices that IBM has placed on the materials.
- h. All training course materials provided are copyrighted materials, and are protected under the laws of United States, and under International copyright laws and conventions. All right, title and interest in all training course materials shall remain with IBM and/or its licensors. Customer agrees that neither it nor its employees or agents shall create derivative works of the training course materials, nor shall they re-use or transfer the materials, and Customer agrees not to permit others to do so. If Customer desires to teach courses itself, Customer will need to purchase the appropriate license from IBM.
 - i. Customer shall be responsible for any improper or unauthorized use of the Web-Passport and of any improper or unauthorized use of the access codes. IBM reserves the right to immediately suspend Customer's use of a Web-Passport and/or the related access codes if abuses are discovered; or in extreme cases of abuse, immediately terminate a Web-Passport.
 - j. Customer may request that IBM provide it with a report regarding its use of a particular Web-Passport. Customer may request a report by contacting their IBM account representative. A report is available up to one time every six-month Web-Passport subscription or two times for every one-year Web-Passport subscription.
 - k. All prices are exclusive of any state, local, or federal tax or fee, which shall be invoiced and payable additionally by Customer. Payments are due NET 30 days after date of invoice.
 - l. IBM reserves the right to modify or discontinue any web-based training course offered under a Web-Passport at any time at IBM's sole discretion. IBM will provide a two-week, advance notification of discontinuance of a Web-based training course, via the routine, online listing of courses and course schedules.
 - m. EXCEPT TO THE EXTENT PROHIBITED BY LAW, IBM EXPRESSLY DISCLAIMS ALL WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, TITLE OR FITNESS FOR A PARTICULAR PURPOSE OR

ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. IN NO EVENT SHALL IBM OR ITS LICENSORS BE LIABLE FOR (A) INDIRECT, SPECIAL, CONSEQUENTIAL, OR OTHER SIMILAR DAMAGES, OR (B) ANY DAMAGES WHATSOEVER RESULTING FROM LOSS OF USE, DATA, OR PROFITS, ARISING OUT OF OR IN CONNECTION WITH THE SERVICES AND/OR MATERIALS PROVIDED HEREUNDER, EVEN IF IBM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF WHETHER IN A CONTRACT OR TORT ACTION (INCLUDING NEGLIGENCE). IBM'S TOTAL LIABILITY, REGARDLESS OF THE THEORY OF RECOVERY, SHALL BE LIMITED TO DIRECT MONEY DAMAGES NOT EXCEEDING THE TOTAL AMOUNT PAID TO IBM UNDER THE APPLICABLE PURCHASE ORDER.

Attachment B - SAMPLE VENDOR REPORT FORMAT

Order Transactions (OT)**(File Layout Definition)**

1. This report is due weekly, monthly or quarterly based on your specific contract terms. Report order transactions from Sunday through Saturday (or orders not previously reported) and send to ASCP by COB on the following Thursday.
2. An e-mail response is required for negative reports (no transactions to report).
3. This electronic report needs to be submitted as a Microsoft Excel Spreadsheet, to amsel-dsa-scp-cr@mail1.monmouth.army.mil.
4. No extra spaces, commas, or ampersands allowed in the spreadsheet. Dashes are allowed. File name cannot be more than 50 characters in length. Vendor needs to ensure leading zeros are not dropped. For example, Zip Code "07703" should not appear as "7703"; Order Number "0030" should not appear as "30"; CLIN Number "0003AA" should not appear as "3AA".
5. NOTE: Order Transaction and Vendor Status reports are cross-referenced for reconciliation and therefore, data must be consistent in all 3 reports (i.e. order number, dates, dollar amounts, etc.).

Excel Column	Column Name	Format	Comments
A	Contract Number	Alphanumeric (21)	
B	Order Number	Alphanumeric (30)	<ol style="list-style-type: none"> 1. Must be unique (minimum 4 digits). 2. You cannot report this order more than once in the same file. (The order can have as many line items as you wish). 3. Record order number exactly as it appears on the order.
C	Order Mod Number	Alphanumeric (25)	<i>Data required only when reporting a MOD.</i>
D	Transaction Type	Alphanumeric (2)	The order types are as follows: CC = Credit Card, DO= Direct Ordering (paper order).
E	Date of Order or date of Order Mod	DD-MMM-YYYY	Report the actual date of the order, or when reporting an order mod, report the date of the order mod.
F	Date Transaction Cancelled	DD-MMM-YYYY	<i>Data required only for Cancelled order/mods.</i>
G	UNSPSC	Alphanumeric (14)	Format is ##.##.##.##.##. Last two positions should be "00" except for Low End Servers(32-Bit) = 01 and High End Servers (64-Bit) = 02
H	CLIN Number	Alphanumeric (39)	Unique contract identifier of item being ordered (as identified in contract, i.e. product #, manufacturer part #, contract line item)
I	CLIN Quantity	Number (7,0)	CLIN quantity being ordered.
J	CLIN Unit Price	Number (11,2)	Price per item.
K	CLIN Extended Dollar Amount	Number (11,2)	Extended Dollar Amount = (CLIN quantity x unit price) No formatting (i.e. No \$ signs, commas, etc).
L	Dollar amount of Transaction	Number (12,2)	Reflects the dollar amount of this reported transaction (order or order mod.)
M	POC Last Name	Alphanumeric (35)	Customer's Last Name. (Use this column for customer's full name when unable to separate first name, last name, title into separate columns)
N	POC First Name	Alphanumeric (35)	Customer's First Name.
O	POC Title	Alphanumeric (35)	Customer's Title (i.e. COL, Mr., Ms., etc.).
P	Telephone Number	Alphanumeric (20)	Customer's telephone number. Format: 9999999999
Q	Email address	Alphanumeric (40)	Customer's email address.
R	Street Address 1	Alphanumeric (40)	First line of the Customer's Ship-To address.
S	Street Address 2	Alphanumeric (40)	Second line of the Customer's Ship-To address.
T	Street Address 3	Alphanumeric (40)	Third line of the Customer's Ship-To address.
U	City	Alphanumeric (27)	Customer's Ship-To City.
V	State	Alphanumeric (2)	Customer's Ship-To State for USA only. Post office two character abbreviation.
W	Country	Alphanumeric (27)	<i>Data required only when reporting a country other than USA.</i>

X	5-digit Zip Code	Number (5)	Five-digit Customer Ship-To zip code.
Y	4-digit Zip Code Extension	Number (4)	Four-digit extension Customer Ship-To zip code.
Z	Service or Agency	Alphanumeric (20)	Use the abbreviation from the <i>Service/Agency</i> list located at https://ascp.monmouth.army.mil/scp/content/activitylist.jsp
AA	Army Activity	Alphanumeric (20)	<i>Data required only for Army.</i> Use the abbreviation from the <i>Army Activity</i> list located at https://ascp.monmouth.army.mil/scp/content/activitylist.jsp
AB	Comments	Alphanumeric (2000)	Free text.
AC	ASCP Reserved 1	Alphanumeric (2000)	Reserved for Product Leader.
AD	ASCP Reserved 2	Alphanumeric (2000)	Reserved for Product Leader.

Vendor Status (VS)**(File Layout Definition)**

1. This report is due weekly, monthly or quarterly based on your specific contract terms.
2. An e-mail response is required for negative reports (no transactions to report).
3. This electronic report needs to be submitted as a Microsoft Excel Spreadsheet, to amsel-dsa-scp-cr@mail1.monmouth.army.mil .
4. No extra spaces, commas, or ampersands allowed in the spreadsheet. Dashes are allowed. File name cannot be more than 50 characters in length.
5. Vendor needs to ensure leading zeros are not dropped. For example, order number 0030 should not appear as 30.
6. When canceling orders, enter the date in the **Date Transaction Cancelled** column in this report.
7. NOTE: Order Transaction and Vendor Status reports are cross-referenced for reconciliation and therefore, data must be consistent in both reports (i.e. order number, dates, dollar amounts, etc.).
8. Format for 16 required columns (all 16 columns are required even when there is no data for a specific column):

Excel Column	Column Name	Format	Comments
A	Contract Number	Alphanumeric (21)	
B	Order Number	Alphanumeric (30)	Record order number exactly as it appears on the order.
C	Order Mod Number	Alphanumeric (25)	<i>Only Required when reporting a mod.</i>
D	Date Received by Vendor	DD-MMM-YYYY	(i.e. 09-FEB-2002)
E	Date Rejected by Vendor	DD-MMM-YYYY	<i>Data required only for rejected orders.</i>
F	Date Accepted by Vendor	DD-MMM-YYYY	A Vendor receives an order and either rejects it or accepts it as a valid order.
G	Date Transaction Cancelled	DD-MMM-YYYY	<i>Data required only for Cancelled order/mods.</i>
H	Projected Ship Date by Vendor	DD-MMM-YYYY	<i>Data required only when reporting a projected ship date.</i>
I	Vendor Ship Date	DD-MMM-YYYY	For all orders shipped by the Vendor.
J	Projected Delivery Date	DD-MMM-YYYY	<i>Data required only when reporting a projected delivery date.</i>
K	Contractually Due Date	DD-MMM-YYYY	This is a date calculated by the Vendor that shows when the order is contractually due. This formula is agreed to by the Product Leader and Vendor and takes into consideration contract requirements such as CONUS, OCONUS, SURGE, NON-SURGE, SERVICES, etc.
L	Service Start Date	DD-MMM-YYYY	<i>Data required only when reporting services.</i>
M	Service Completion Date	DD-MMM-YYYY	<i>Data required only when reporting services.</i>
N	Comments	Alphanumeric (2000)	Free text.
O	ASCP Reserved 1	Alphanumeric (2000)	Reserved for Product Leader.
P	ASCP Reserved 2	Alphanumeric (2000)	Reserved for Product Leader.

Fee For Service (FFS)**(File Layout Definition)**

1. FFS report applies to applicable ESI agreements only.

2. Report is due to ASCP by the 15th Government workday after the end of each month. The data reported is for that reporting period activity only (not a cumulative listing).
3. If no payments were received during the previous month, a negative report is required.
4. This electronic report needs to be submitted as a Microsoft Excel Spreadsheet, to amsel-dsa-scp-cr@mail1.monmouth.army.mil.
5. No extra spaces, commas, or ampersands allowed in the spreadsheet. Dashes are allowed. File name cannot be more than 50 characters in length.
6. Vendor needs to ensure leading zeros are not dropped. For example, order number 0030 should not appear as 30.
7. SPECIAL NOTE TO VENDOR(S): Order Transaction, Vendor Status, and Fee for Service reports are cross-referenced for reconciliation and therefore, data must be consistent in all 3 reports (i.e. order number, dates, dollar amounts, etc.).

EXCEL COLUMN	COLUMN NAME	COLUMN FORMAT	COMMENTS
A	Report Number	Alphanumeric (21)	Must be Unique.
B	Report Type	Alphanumeric (21)	Use one of the following codes I = Initial Report R = Replace all previously reported information for this frame with this new data M = This report modifies some of the information reported during this time frame
C	Report Start Date	DD-MON-YYYY	(i.e. 01-MAR-2002)
D	Report End Date	DD-MON-YYYY	(i.e. 31-MAR-2002)
E	Contract Number	Alphanumeric (21)	
F	Order Number	Alphanumeric (30)	Must be reported exactly as shown on the customer order.
G	Order Mod Number	Alphanumeric (25)	<i>Data required only when reporting a MOD.</i>
H	Dollar Amount of Transaction	Number (12,2)	Reflects dollar amount of the transaction (order or MOD being reported). No formatting (i.e. No \$ signs, commas, etc).
I	Date Transaction Sent to Vendor	DD-MON-YYYY	(i.e. 09-FEB-2002)
J	1 Percent Fee for Transaction	Number (12,2)	
K	Previous Payment Made on Transaction	Number (12,2)	
L	Current Payment	Number (12,2)	
M	Remaining Amount to be Paid	Number (12,2)	
N	Transaction Type	Alphanumeric (2)	Order types are as follows: CC = Credit Card DO = Direct Ordering (paper direct to vendor) PA = Paper (sent to vendor by COPO)
O	Other Agency Share Fee Payable	Number (12,2)	If applicable. Fee share amount due to either Navy, AF or DLA (50% of Column L)
P	Other Agency for Share Fee	Alphanumeric (21)	If applicable. Identify as 'USN', 'DLA', or 'USAF' generated Delivery Order
Q	Army Fee Payable	Number (12,2)	If applicable. Column L minus Column O Amounts
R	Comments	Alphanumeric (2000)	Free text.
S	ASCP Reserved 1	Alphanumeric (2000)	Reserved for Product Leader.
T	ASCP Reserved 2	Alphanumeric (2000)	Reserved for Product Leader.

Fee For Service (FFS) (Continued)

(File Layout Definition)

The FFS payment is calculated by dividing the “Amount Paid to Vendor” column on the army Fee-for-Service Reconciliation Report by 1.01, and then multiplying this value by .01. (Example provided below):

A	B	C
DOLLAR AMOUNT OF TRANSACTION	COLUMN A DIVIDED BY 1.01	SCP 1% FFS (1% OF COLUMN B)
\$1,000.00	\$990.10	\$9.90

NOTE: The rounding feature in Excel is not to be utilized when totaling columns of numbers.

Sample VENDOR REPORT FORMAT

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P
REPORT NUMBER	REPORT TYPE	REPORT START DATE	REPORT END DATE	CONTRCT NUMBER	ORDER NUMBER	MOD NUMBER	DOLLAR AMOUNT OF TRANS	DATE TRANS SENT TO VENDOR	1 PERCENT FEE FOR TRANS	PREVIOUS PYMT MADE ON TRANS	CURRENT PYMT	REMAININ G AMOUNT TO BE PAID	TRANS TYPE	Other Agency Fee Payment	Other Agency
FFS2002-03	I	1-Mar-2002	31-Mar-2002	DAAB15-XX-X-XXXX	DO01		10000.00	14-Mar-2002	990.10	0.00	990.10	0.00	DO	495.05	AF
FFS2002-03	I	1-Mar-2002	31-Mar-2002	DAAB15-XX-X-XXXX	DO01	0001	10000.00	15-Mar-2002	99.01	0.00	99.01	0.00	DO	0	
FFS2002-03	I	1-Mar-2002	31-Mar-2002	DAAB15-XX-X-XXXX	DO16		25000.00	10-Jan-2002	247.52	100.00	100.00	47.52	DO	50.00	USN
FFS2002-03	I	1-Mar-2002	31-Mar-2002	DAAB15-XX-X-XXXX	DO25		5000.00	12-Mar-2002	49.50	0.00	49.50	0.00	CC	0	

Q	R	S	T
Army Fee Payment	Comments	ASCP Reserved 1	ASCP Reserved 2
495.05			
99.01			
50			
49.50			

ATTACHMENT D - FEES AND PAYMENTS

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

- 2. Acquisition, Contracting, and Technical (ACT) Fee.** The cost of awarding, administering and managing this BPA is included in the prices charged to ordering activities. The ACT fee is 2%. Remittance of the ACT fee shall be made on a calendar quarterly basis (i.e. January – March, April – June, July – September, and October – December) or as otherwise requested by the Software Product Manager (SPM) and is due thirty (30) days following approval of the report for the completed reporting period. 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.

3. Fee Distribution. The Army, Air Force, DLA 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, Navy or DOD as appropriate. Fee checks shall not be issued until written approval is received for the Report of Sales.

(For a SmartBUY agreement use the following: The Air Force, Army, DLA, Navy and GSA (for SmartBUY Federal government Civilian Agency orders) are participating in an ACT fee-sharing program. For orders within DoD, the 2% ACT fee is split equally between the DoD Component whose customer places the order and the Component that manages the contract. The Contractor shall collect the 2% ACT fee and distribute in accordance with the following procedures. ACT fee sharing shall be determined by the End User Agency or Service identified in the monthly Report of Sales. This field shall be notated Air Force, Army, DLA, Navy, DoD or Non-DoD as appropriate. In the case of SmartBUY orders (Federal Government Civilian Agencies) non-DoD orders and non DoD support contractor orders, excluding the Intelligence Community and non Coast Guard orders or support vendors to same, the 2% ACT fee is split equally between the Agency that manages the contract and GSA SmartBUY Program Management Office.)

(Enter Service fee sharing arrangement here. If the vendor is collecting fees under a separate CLIN it should be addressed here. See Navy examples below at 3.1 through 3.4)

3.1 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. In other words, any Air Force order against an ESI agreement managed by the Navy results in a 1% portion of the 2% fee being returned to the Air Force acquisition organization (listed under Air Force Sales). The Navy will retain the entire 2% fee under orders issued for Navy activities or those activities that do not collect a fee under the ESI agreements managed by the Navy. 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 the FMO shall be calculated at 1% for Army sales, 1% for Air Force sales, 1% for DLA sales and 2% for all other sales.

Remit ACT Fee to the Financial Management Office (FMO) 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 *(fill in applicable #)*

DoD *(fill in name of agreement)* Enterprise Software Agreement

ACT Fee

If using overnight or express mail, send check to:
SPAWAR Systems Center Charleston
Attn: Elizabeth Vonasek

If using regular mail, send check to:
SPAWARSYSCEN Charleston
Attn: Elizabeth Vonasek

Norfolk Office
Code 846.2, Bldg. V53
9456 Fourth Avenue
Norfolk, VA 23511-2130

Norfolk Office
Code 846.2, Bldg V53
P.O. Box 1376
Norfolk, VA 23501-1376

Email a copy of the FMO check to the SPM: Linda.Greenwade@navy.mil

3.2 ARMY SALES:

The amount of ACT Fee due the Program Executive Office (PEO) Enterprise Information Systems (EIS) shall be calculated at 1% of all Army sales.

Remit ACT Fee to PEO EIS by corporate or cashier's check made payable to "Treasurer of the United States" notated with the following information:

BPA (*fill in applicable #*)
SCP Fee Reimbursement

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

Send check and transmittal letter to:
Program Executive Office (PEO) Enterprise Information Systems (EIS)
Assistant Program Manager (APM), Army Small Computer Program
Attn: SFAE-PS-EI-SCP (Attn: Financial Support Group)
Fort Monmouth, NJ 07703-5605

Email a copy of the check and letter to: AMSEL-dsa-scp-CR@mail1.monmouth.army.mil

3.3 AIR FORCE SALES:

The amount of ACT Fee due DFAS **Denver** shall be calculated at 1% of all Air Force sales.

Remit ACT Fee to DFAS **Denver** by corporate or cashier's check made payable to "Treasurer of the United States" notated with the following information:

BPA (*fill in applicable #*)
ESI-SW Fee Sharing

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

Send check and transmittal letter to:
DFAS-DE/ATDT/DEDE
(Attn: Mr. Daniel Medina)
6760 East Irvington Place
Denver, CO 80279

Mail a copy of the check & letter to:
HQ **754 ELSG/KABS**
Bldg **892**
<mailto:Karen.Molloy@gunter.af.mil>

Or send via fax or email to:
Fax: 334-416-7795 or 334-416-1351
Email: **kabfinance**@gunter.af.mil

490 East Moore Drive
MAFB-Gunter Annex, AL 36114-3014

3.4 DLA SALES

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

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 (*fill in applicable #*)

DoD (*fill in name of agreement*) Enterprise Software Agreement

Quarterly ACT Fee

Send check to:

Defense Logistics Agency

DES Acquisition Staff Directorate

Attn: Connie House, DES-A

8725 John J. Kingman Road, Room 1145

Fort Belvoir, VA 22060-6220

Mail a copy of the check to:

Defense Logistics Agency

Attn: Susan Lizzi, J-654

8725 John J. Kingman Road

Fort Belvoir, VA 22060-6221

Or send via email to:

Email: Susan.Lizzi@dla.mil

For SmartBUY agreements add the below:

3.5 GSA SALES

The amount of ACT Fee due GSA shall be calculated at 1% of all Civilian agency sales.

Remit ACT Fee by corporate or cashier's check made payable to "Treasurer of the United States" notated with the following information:

BPA (*Enter BPA number*)

ESI-SW Fee Sharing

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

Send check and transmittal letter to:

GSA

P. O. Box 880908

Dallas, TX 75388-0908

Mail a copy of the check and transmittal letter to:

GSA

Attn: Pebble Randolph

SmartBUY Program Management Office
10304 Eaton Place
Fairfax, VA 22310

Attachment B - Software Terms and Conditions

INTERNATIONAL BUSINESS MACHINES (“IBM”) SOFTWARE TERMS AND CONDITIONS APPLICABLE TO PERPETUAL SOFTWARE LICENSES (SPECIAL ITEM NUMBER 132-33) AND MAINTENANCE (SPECIAL ITEM NUMBER 132-34)

1. Inspection/Acceptance

The Contractor shall only tender for acceptance those items that substantially conform to the manufacturer’s published specifications. Items ordered by the ordering activity are deemed accepted at the date of delivery. The ordering activity reserves the right to inspect or test accepted software and may, at no increase in contract price, require repair or replacement of software that does not substantially conform to IBM’s published specifications. The ordering activity must exercise this post-acceptance right (1) within a reasonable time after the defect was discovered or should have been discovered, but not later than one (1) year from date of delivery; and (2) before any substantial change occurs in the condition of the software, unless the change is due to the defect in the software.

2. Guarantee/Warranty

a. The following IBM standard commercial guarantee/warranty will apply to this contract:

IBM warrants that when the Program is used in the specified operating environment it will conform to its specifications. The warranty applies only to the unmodified portion of the Program. IBM does not warrant uninterrupted or error-free operation of the Program or that IBM will correct all Program defects. The ordering activity is responsible for the results obtained from the use of the Program. IBM provides the ordering activity with access to IBM databases containing information on known Program defects, defect corrections, restrictions, and bypasses at no additional charge. Consult the IBM Software Support Guide for further information at <http://www.ibm.com/software/support>. IBM will maintain this information for at least one year after the original licensee acquires the Program (“Warranty Period”). If the Program does not function as warranted during the Warranty Period and the problem cannot be resolved with information available in the IBM databases, the ordering activity may return the Program and its Proof of Entitlement (“PoE”) to the party (either IBM or its

reseller) from whom the ordering activity acquired it and receive a refund in the amount the ordering activity paid. If the ordering activity downloaded the Program, the ordering activity may contact the party from which the ordering activity acquired it for instructions on how to obtain the refund.

b. THE FOREGOING WARRANTIES ARE THE ORDERING ACTIVITY’S EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

c. Limitation of Liability. Circumstances may arise where, because of a default on IBM’s part or other liability, the ordering activity is entitled to recover damages from IBM. In each such instance, regardless of the basis on which the ordering activity may be entitled to claim damages from IBM, (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), IBM is liable for no more than (1) damages for bodily injury (including death) and damage to real property and tangible personal property and (2) the amount of any other actual direct damages up to the charges for the Program that is the subject of the claim. This limitation of liability also applies to IBM’s Program developers and suppliers. It is the maximum for which they and IBM are collectively responsible.

UNDER NO CIRCUMSTANCES IS IBM, ITS PROGRAM DEVELOPERS OR SUPPLIERS LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY: (B) LOSS OF, OR DAMAGE TO, DATA; (2) SPECIAL, INCIDENTAL, OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; OR (3) LOST PROFITS, BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.

3. Technical Support Services

IBM, at the appropriate commercial charges cited in the Schedule, shall provide standard technical support services for the purpose of providing user assistance and guidance in the implementation of the software, per detail in Item 4 below.

4. Software Maintenance

- a. Software maintenance service shall include the IBM Maintenance Support services detailed in the Schedule.
- 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.

5. Periods Of Maintenance (132-34)

All references to term licenses in this section 5 are not applicable and are hereby deleted.

- a. The Contractor shall honor orders for periods for the duration of the contract period or a lesser period of time, provided that in any event the period of a maintenance order shall not exceed two (2) years.
- b. Maintenance may be discontinued by the ordering activity on ninety (90) days written notice to the Contractor, and must be executed in accord with issuance of a Deactivation of License certificate per Attachment C. Any pro-rated credit for pre-paid maintenance shall be negotiated on a case by case basis and at the sole discretion of the Contractor.
- c. Annual Funding. When annually appropriated funds are cited on an order for maintenance, the period of the maintenance shall automatically expire on September 30 of the contract period, or at the end of the contract period, whichever occurs first. Renewal of the maintenance orders citing the new appropriation shall be required, if the maintenance is to be continued during any remainder of the contract period.

d. Cross-Year Funding Within Contract Period. Where an ordering office's specific appropriation authority provides for funds in excess of a 12 month (fiscal year) period, the ordering office may place an order under this schedule contract for a period up to the expiration of the contract period, notwithstanding the intervening fiscal years, provided that in any event the period of a maintenance order shall not exceed two (2) years.

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

6. Conversion From Term License To Perpetual License

This Section 6 is hereby deleted in its entirety as not applicable.

7. Term License Cessation

This Section 7 is hereby deleted in its entirety as not applicable.

8. Utilization Limitations - (132-32, 132-33, and 132-34)

- a. Software acquisition is limited to Commercial Computer Software defined in FAR Part 2.101.
- b. When acquired by the ordering activity, commercial computer software and related documentation so legend shall be subject to the following:
 - 2) Title to and ownership of the software and documentation shall remain with the Contractor, unless otherwise specified.
- d. The following IBM International Program License will apply to this contract, as it may be modified or updated from time to time with the shrink-wrap and/or click-wrap version accompanying Product:

"IBM" is International Business Machines Corporation or one of its subsidiaries.

"License Information" ("LI") is a document that provides information specific to a Program. The Program's LI is available at <http://www.ibm.com/software/sla/>. The LI may also be found in a file in the Program's directory, by the use of a system command, or as a booklet which accompanies the Program.

"Program" is the following, including the original and all whole or partial copies: (1) machine-readable instructions and data, (2) components, (3) audio-visual content (such as images, text, recordings, or pictures), (4) related licensed materials, and 5) license use documents or keys, and documentation.

A "Proof of Entitlement" ("PoE") is evidence of the ordering activity's authorization to use a Program at a specified level. That level may be measured, for example, by the number of processors or users. The PoE is also evidence of the ordering activity's eligibility for warranty, future upgrade prices, if any, and potential special or promotional opportunities. If IBM does not provide an ordering activity with a PoE, then IBM may accept the original paid sales receipt or other sales record from the party (either IBM or its reseller) from whom the ordering activity acquired the Program, provided that it specifies the name of the Program and the usage level acquired.

The Program is owned by IBM or an IBM supplier, and is copyrighted and licensed, not sold. IBM grants the ordering activity a non-exclusive license to use the Program when the ordering activity lawfully acquires it. The ordering activity may: (1) use the Program up to the level of use specified in the PoE and (2) make and install copies, including a backup copy, to support such use. The terms of this license apply to each copy the ordering activity makes. The ordering activity will reproduce all copyright notices and all other legends of ownership on each copy, or partial copy, of the Program. If the ordering activity acquires the Program as a program upgrade, after the ordering activity installs the upgrade it may not use the Program from which the ordering activity upgraded or transfer it to another party.

The ordering activity will ensure that anyone who uses the Program (accessed either locally or remotely) does so only for Your authorized use and complies with the terms of this Agreement. The ordering activity may not: (1) use, copy, modify, or distribute the Program except as provided in these terms and conditions; (2) reverse assemble, reverse compile, or otherwise translate the Program except as specifically permitted by law without the possibility of contractual waiver; or 3) sublicense, rent, or lease the Program. IBM may terminate this license if the ordering activity fails to comply with the terms of this Agreement. If IBM does so, the ordering activity must destroy all copies of the Program and its PoE.

Program Transfer. The ordering activity may transfer a Program and all of its license rights and obligations to another party only if that party agrees to these terms and conditions. When the ordering activity transfers the

Program, the ordering activity must also transfer a copy of these terms and conditions, including the Program's PoE. After the transfer, the ordering activity may not use the Program.

U.S. Government Users Restricted Rights - Use, duplication or disclosure restricted by the GSA ADP Schedule Contract with IBM.

- e) **To the extent the following language is not in conflict with the above, it shall apply. 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. The user ordering activity will take appropriate action by instruction, agreement, or otherwise, to protect IBM'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.**
- 4) **Except as is provided herein 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 IBM. 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.**
- 5) **The ordering activity shall have the right to use the computer software and documentation with the computer for which it is acquired, 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;; and to modify the software and documentation or combine it with other software, provided that the unmodified portions shall remain subject to these restrictions.

- 6) "Commercial Computer Software" may be marked with IBM's standard commercial restricted rights legend, but the schedule contract and schedule pricelist, including this clause, "Utilization Limitations" are the only governing terms and conditions, and shall take precedence and supersede any different or additional terms and conditions included in the standard commercial legend.**

9. Software Conversions - (132-33)

Monetary credit will be allowed to the ordering activity when conversion from one version of the software to another is made as the result of a change in operating system, or from one computer system to another, on a case by case basis, at the discretion of Contractor. Under a perpetual license (132-33), the purchase price of the new software shall be reduced by the amount that was paid to purchase the earlier version, or some pro-rated portion thereof.

10. Descriptions and Equipment Compatibility

A complete description of each software product and a list of equipment on which the software can be used, along with a brief, introductory explanation of the modules and documentation which are offered on the schedule price list, may be located by contacting IBM's web site: [http\\www.ibm.com](http://www.ibm.com)

11. Right-To-Copy Pricing

Deleted in its entirety as Not Applicable.

12. PASSPORT ADVANTAGE – US GOVERNMENT TERMS

Under this Agreement, IBM provides the Passport Advantage customer a way to obtain authorizations to use, update, and support Programs obtained from IBM. The Originating U. S. Government customer and immixTechnology,

along with IBM Originating Company, agree to coordinate the administration of this Agreement within their respective Enterprises. **In order to constitute a valid order, Exhibit A, attached herein, must be completed and attached to the delivery order.** When used in this Agreement, "IBM" means the IBM Enterprise company that is providing Eligible Products, and "You/Your" means the U. S. Government customer Enterprise that is ordering them, subject to the Agreement. This Agreement is executed with the understanding that all parties are bound by its terms. All parties agree to distribute copies of the Agreement within our respective participating Enterprise.

Products eligible under this Agreement ("Eligible Products") include commercially available IBM Programs, certain Programs that are subject to a third-party end user license agreement ("Non-IBM Programs"), IBM Trade-ups, Competitive Trade-ups, annual IBM Software Maintenance renewals, IBM Software Maintenance Reinstatement, and, where applicable, annual Third Party Software Maintenance renewals and Third Party Software Maintenance Reinstatement.

You accept the terms of this Agreement without modification. This Agreement remains in effect until You or IBM terminate it in accordance with the "Agreement Termination" within this Section (below).

The terms of the sections of the IBM Program License Agreement for Distributed Systems Programs, U. S. Government Terms ("IPLA"), Section 13, entitled "Limitation of Liability" are also part of this Agreement and are incorporated by reference into this Agreement with the following exceptions:

The term "Program" is replaced by the term "Eligible Product."

A copy of the IPLA in its entirety is provided in below. This Agreement is hereby accepted and, 1) unless prohibited by applicable law or specified otherwise, any reproduction of it or an Associated Document made by reliable means (for example, photocopy or facsimile) is considered an original and 2) all Eligible Products ordered under this Agreement are subject to it.

If IBM withdraws an Eligible Product from marketing, You will no longer be able to obtain it under this Agreement. If IBM withdraws a Program or a version of a Program from marketing, You may not increase its level of use, beyond the authorizations already acquired, on or after the effective date of withdrawal, without IBM's prior written consent which IBM will not unreasonably withhold.

The Passport Advantage "Anniversary" for the Government is October 1 of each fiscal year or the Government's existing "Anniversary", unless a different date is mutually agreed to in writing.

A "Program" is the following, including the original and all whole or partial copies: 1) machine-readable instructions and data, 2) components, 3) audio-visual content (such as images, text, recordings, or pictures), 4) related licensed materials, and 5) license use documents or keys and documentation.

A "Term" is the period that begins either on the date immixTechnology and IBM accepts Your Purchase Order/Purchase Order modification or on the Anniversary (in the case of subsequent Terms), and ends on the day immediately prior to the next Anniversary.

Eligible Products

Eligible Products that You obtain under this Agreement are for use within Your Enterprise only and may not be resold, rented, leased, or transferred to third parties. In addition, such Eligible Products may not be used to provide commercial hosting or other commercial information technology services to third parties.

Unless IBM specifies otherwise, it provides Non-IBM Programs and Third Party Software Maintenance WITHOUT WARRANTIES OF ANY KIND. However, non-IBM manufacturers, developers, suppliers, or publishers may provide their own warranties to you.

IBM Programs.

Proof of Entitlement: IBM specifies a Program's authorized use in a Proof of Entitlement (called "PoE"). Examples of the measure of the level of authorized use include, but are not limited to, the number of copies, processors, or users. This PoE, supported by Your matching invoice or receipt, is evidence of Your level of authorized use. During the period this Agreement remains in effect, and for two years thereafter, IBM has

the right to verify Your compliance with this Agreement on Your premises during Your normal business hours and in a manner that minimizes disruption to Your business. IBM may use an independent auditor for this with Your prior approval, which You will not unreasonably withhold.

Versions and Platforms: You may use Programs and their associated user documentation in any commercially available national language version up to the level of use authorized in the PoE. You are authorized to use the Programs that You obtain under these terms on any platform or operating system for which IBM currently makes Program code available under Passport Advantage unless the Program is designated as platform or operating system specific at the time You obtain it.

IBM Trade-ups: Licenses for certain Programs that replace qualifying IBM Programs may be obtained for a reduced charge. You agree to terminate Your use of the replaced IBM Programs when You install the replacement Programs.

Competitive Trade-ups: Licenses for certain Programs that replace qualifying third party programs may be obtained for a reduced charge. You agree to terminate Your use of the replaced third party programs when You install the replacement Programs.

License: IBM Programs obtained under these terms are governed by the terms of the IPLA, which You accept by downloading, installing, copying, accessing, or using the Program. If there is a conflict between the terms of this Agreement and those of the IPLA, including its License Information document ("LI"), the terms of this Agreement prevail.

Non-IBM Programs

License: The licensing of Non-IBM Programs obtained under this Agreement is governed by the terms of the third party end user license agreement that accompanies it in lieu of the IPLA. If there is a conflict between the terms of this Agreement and those of the third party end user license agreement, the terms of this Agreement prevail. IBM is not a party to the third party end user license agreement and assumes no obligations under it.

Software Maintenance

Software maintenance is included with each Program license. Software maintenance included with IBM Program licenses is provided by IBM and is called "IBM Software Maintenance". IBM does not provide IBM Software Maintenance for Non-IBM Programs. Software maintenance included with Non-IBM Program licenses is provided by the third party under the third party's terms and is called "Third Party Software Maintenance". For purposes of this Agreement, "software maintenance" means both IBM Software Maintenance and Third Party Software Maintenance.

IBM Software Maintenance begins on the date of acquisition and ends on the last day of the corresponding month in the following year, unless the date of acquisition is the first day of the month, in which case coverage ends on the last day of the month, 12 months from the date of acquisition. While IBM Software Maintenance continues to be made commercially available for an IBM Program license:

IBM will make available to You and authorize You to use the most current commercially available version, release, or update, should any be made available.

IBM provides You assistance for Your 1) routine, short duration installation and usage (how-to) questions; and 2) code-related questions.

IBM provides assistance via telephone and, if available, electronic access, only to Your information systems ("IS") technical support personnel during the normal business hours (published prime shift hours) of Your IBM support center. (This assistance is not available to Your end users.) IBM provides Severity 1 assistance 24 hours a day, every day of the year. Consult the IBM Software Support Guide for details at ibm.com/software/support.

All Software Maintenance is provided from the IBM US Domestic support operations.

IBM Software Maintenance does not include assistance for 1) the design and development of applications, 2) Your use of IBM Programs in other than their specified operating environment or 3) failures caused by products for which IBM is not responsible under this Agreement.

IBM warrants that it provides IBM Software Maintenance using reasonable care and skill. This warranty is Your exclusive warranty and replaces all other warranties or conditions, express or implied, including, but not limited to, the implied warranties or conditions of merchantability and fitness for a particular purpose.

Annual Software Maintenance Renewal. On the Anniversary date, IBM will renew Software Maintenance on a subscription basis for an additional annual one-time charge due and payable to immixTechnology at the time of renewal. IBM will renew, expiring software maintenance for all of Your Program licenses to the next Anniversary if immixTechnology and IBM receive an order within seven (7) days after the Anniversary. Otherwise, IBM's systems will automatically terminate the service. If You do not renew Software Maintenance coverage for certain or all of Your Program licenses and at a later date You wish to again acquire Software Maintenance coverage for such Program licenses, You must obtain IBM Software Maintenance Reinstatement.

Software Maintenance obtained or renewed on the Anniversary is renewable for an additional coverage period of twelve (12) full months.

Software Maintenance obtained on a date other than the Anniversary is renewable at the next Anniversary for an additional coverage period of less than 12 months for a pro-rated charge, thereby extending the coverage to the following Anniversary.

If IBM or the third party, as applicable, withdraws Software Maintenance for a particular Program, You understand that:

IBM will not make Software Maintenance renewal available for that Program; and

If You renewed IBM Software Maintenance for that IBM Program license prior to the withdrawal notice, IBM, at its sole discretion, will either continue to provide IBM Software Maintenance to You for that Program license until the end of the then current coverage period or You may obtain a prorated refund. If You renewed Third Party Software Maintenance for that Non-IBM Program prior to the notice, the third party will continue to provide Third Party Software

Maintenance to You for that Non-IBM until the end of the then current coverage period.

Otherwise, except as may be stated elsewhere in this contract, the Government may obtain a prorated refund.

Enterprise

An Enterprise is the U.S. Government Agency or affiliated entity of the U. S. Government Agency. For purposes of this contract, the U. S. Government Agency or affiliated entity of the U.S. Government Agency shall mean the specific acquiring Government Agency list on the Purchase Order. The U. S. Government Agency awarding a contract and subsequent Purchase Order under such contract is the legal entity that is authorized to execute and administer this Agreement.

Site

“Site” means any location of a U. S. Government Agency issuing to IBM a Purchase Order hereunder for the Agency’s own internal use. The U. S. Government Agency Site issuing a Purchase Order to IBM is defined as the “Originating Site.”

Any Site, within the Enterprise, that subsequently enrolls under this Agreement is defined as an “Additional Site.”

The U. S. Government Agency is responsible for all Sites’ compliance with the terms of this Agreement.

Obtaining Eligible Products

To obtain additional authorizations to use Programs under Passport Advantage You must have already obtained the Program code/media.

Except as may be stated elsewhere in this contract, IBM’s “money-back guarantee” applies to the first time You license the IBM Program.

Under Passport Advantage You may obtain individual Eligible Products or “CEO Product Categories” (groupings of Eligible Products).

You obtain CEO Product Categories on a per-user basis. When you obtain your first CEO Product Category (“Primary Product Category”), you must obtain it for all Users and for not less than the number of Users specified in the CEO Product Categories Table at

ibm.com/software/passportadvantage. A “User” is an individual to whom a machine capable of copying, using, or extending the use of Programs has been assigned.

You may obtain additional CEO Product Categories if you meet the minimum number of Users requirement specified in the CEO Product Category in the CEO Product Categories Table at ibm.com/software/passportadvantage. However, you need not obtain additional CEO Product Categories for all Users within your Enterprise.

A User may use any or all of the Programs included in a chosen CEO Product Category. However, all IBM Programs that are used for client access must be obtained from the same CEO Product Category as the server Program they access.

CEO Product Categories: Additions and Deletions

IBM may add Eligible Products to or delete Eligible Products from any CEO Product Category. If IBM deletes an Eligible Product from a CEO Product Category, You may continue to use the Eligible Product but You may not exceed the number of Users enrolled prior to the deletion.

Increasing the number of Users

In the event you increase the number of Users, you must obtain an authorization to use the CEO Product Category for each new User.

Decreasing the number of Users

You will notify immixTechnology and IBM in writing prior to Your next Anniversary in the event Your total number of Users decreases. Decreases may result from reorganization or restructuring of one or more of your Sites. A reduction in the number of Users of a temporary or seasonal nature does not qualify as a decrease. If the level of authorized use of a CEO Product Category drops below the minimum number of Users applicable to that CEO Category, You may not renew IBM Software Maintenance on a CEO Product Category basis.

Payment

Except as may be stated elsewhere in our contract, when You obtain Eligible Products from IBM, You agree to pay as immixTechnology specifies in its invoice including, when applicable, any late payment fee/interest. If any authority imposes a duty, tax, levy or fee (excluding those based on immixTechnology's or IBM's net income) upon Eligible Products, then You agree to pay that amount as immixTechnology specifies or supply tax exemption documentation.

Mutual Responsibilities

All parties agree that, under this Agreement, all information exchanged is non-confidential. If any of the parties require the exchange of confidential information, it will be made under a signed confidentiality agreement; and

All of the parties may communicate with the other by electronic means and such communication is acceptable as a signed writing to the extent permissible under applicable law. All of the parties agree that for all electronic communications, an identification code (called a "user ID") contained in an electronic document is sufficient to verify the sender's identity and the document's authenticity.

Assignment

You may not assign this Agreement, in whole or in part, without immixTechnology and IBM's prior written consent. Any attempt to do so is void. ImmixTechnology and IBM will not unreasonably withhold this consent.

The assignment of this Agreement, in whole or in part, within the Enterprise of which either of us is a part or to a successor organization by merger or acquisition does not require the consent of the other. It is not considered an assignment for immixTechnology or IBM to divest a portion of its business in a manner that similarly affects all of its customers.

Changes to the Agreement Terms

For a change to the terms of this Agreement to be valid, an authorized signature of immixTechnology and You must execute a Modification.

Agreement Termination

You may terminate this Agreement without cause on one month's written notice. ImmixTechnology and IBM may terminate this Agreement on one year's written notice or upon withdrawal of the Passport Advantage commercial offering.

Any of the parties may terminate this Agreement if the other does not comply with any of its terms, provided the one who is not complying is given written notice and reasonable time to comply.

Any terms of this Agreement which by their nature extend beyond its termination remain in effect until fulfilled and apply to respective successors and assignees.

Geographic Scope

The terms of this Agreement apply in the United States, Puerto Rico and the District of Columbia.

2. Program License Agreement for Distributed Systems Programs U.S. Government Terms (IPLA)

BY DOWNLOADING, INSTALLING, COPYING, ACCESSING, OR USING THE PROGRAM THE GOVERNMENT AGREES TO THE TERMS OF THIS AGREEMENT. IF THE GOVERNMENT DOES NOT AGREE TO THESE TERMS,
? DO NOT DOWNLOAD, INSTALL, COPY, ACCESS, OR USE THE PROGRAM; AND
? PROMPTLY RETURN THE PROGRAM AND PROOF OF ENTITLEMENT TO IBM TO OBTAIN A REFUND OF THE AMOUNT THE GOVERNMENT PAID. IF THE GOVERNMENT DOWNLOADED THE PROGRAM, CONTACT YOUR IBM POINT OF CONTACT.

"IBM" is International Business Machines Corporation or one of its subsidiaries.

"License Information" ("LI") is a document that provides information specific to a Program. The Program's LI is available at <http://www.ibm.com/software/sla/>. The LI may also be found in a file in the Program's directory, by the use of a system command, or as a booklet that accompanies the Program.

"Program" is the following, including the original and all whole or partial copies: 1) machine-readable instructions and data, 2) components, 3) audio-visual content (such as images, text, recordings, or pictures), 4) related licensed materials, and 5) license use documents or keys, and documentation.

A “Proof of Entitlement” (“PoE”) is evidence of the Government’s authorization to use a Program at a specified level. That level may be measured, for example, by the number of processors or users. The PoE is also evidence of the Government’s eligibility for warranty, future upgrade prices, if any, and potential special or promotional opportunities.

If IBM does not provide the Government with a PoE, then IBM may accept the original invoice provided that it specifies the name of the Program and the usage level acquired.

“You” and “Your” refer either to an individual person or to a single legal entity

This Agreement includes General Terms, License Information, and Proof of Entitlement and, in addition to the Terms and Conditions stated above, is the complete agreement between immixTechnology, You and IBM regarding the use of the Program. It replaces any prior oral or written communications between immixTechnology, You and IBM concerning Your use of the Program. The terms of License Information may replace or modify this Agreement. To the extent there is a conflict between the terms of this Agreement and those of the IBM Passport Advantage Agreement (above) or any other Terms and Conditions stated above, U. S. Government Terms, the terms of the latter agreement prevail.

1. Entitlement

License

The Program is owned by IBM or an IBM supplier, and is copyrighted and licensed, not sold.

IBM grants You a nonexclusive license to use the Program when You lawfully acquire it.

You may 1) use the Program up to the level of use specified in the PoE and 2) make and install copies, including a backup copy, to support such use. The terms of this license apply to each copy You make. You will reproduce all copyright notices and all other legends of ownership on each copy, or partial copy, of the Program.

If You acquire the Program as a program upgrade, after You install the upgrade You may not use the Program from which You upgraded or transfer it to another party.

You will ensure that anyone who uses the Program (accessed either locally or remotely) does so only for Your authorized use and complies with the terms of this Agreement.

You may not 1) use, copy, modify, or distribute the Program except as provided in this Agreement; 2) reverse assemble, reverse compile, or otherwise translate the Program except as specifically permitted by law without the possibility of contractual waiver; or 3) sublicense, rent, or lease the Program.

IBM may terminate Your license if You fail to comply with the terms of this Agreement. If IBM does so, You must destroy all copies of the Program and its PoE.

Money-back Guarantee

Except as may be stated elsewhere in the contract, if for any reason You are dissatisfied with the Program and You are the original licensee, You may obtain a refund of the amount You paid for it, if within 30 days of Your invoice date, You return the Program and its PoE to IBM. If You downloaded the Program, You may contact IBM for instructions on how to obtain the refund.

Program Transfer

Except as may be stated elsewhere in this contract, You may transfer a Program and all of Your license rights and obligations to another party only if that party agrees to the terms of this Agreement. When You transfer the Program, You must also transfer a copy of this Agreement, including the Program’s PoE and License Information. After the transfer, You may not use the Program.

2. Charges

The amount payable for a Program license is a one-time charge.

Payment will be remitted to immixTechnology.

One-time charges are based on the level of use acquired which is specified in the PoE. ImmixTechnology and IBM do not give credits or refunds for charges already due or paid, except as may be specified elsewhere in this Agreement.

If You wish to increase the level of use, notify immixTechnology and IBM and pay any applicable charges to immixTechnology.

If any authority imposes a duty, tax, levy or fee, excluding those based on immixTechnology’s or IBM’s net

income, upon the Program, then You agree to pay the amount specified or supply exemption documentation.

3. Limited Warranty

IBM warrants that when the Program is used in the specified operating environment it will conform to its specifications. The warranty applies only to the unmodified portion of the Program. IBM does not warrant uninterrupted or error-free operation of the Program or that IBM will correct all Program defects. You are responsible for the results obtained from the use of the Program.

IBM provides You with access to IBM databases containing information on known Program defects, defect corrections, restrictions, and bypasses at no additional charge. Consult the IBM Software Support Guide for further information at <http://www.ibm.com/software/support> . IBM will maintain this information for at least one year after the original licensee acquires the Program ("Warranty Period").

If the Program does not function as warranted during the Warranty Period and the problem cannot be resolved with information available in the IBM databases, You may return the Program and its PoE to IBM and receive a refund in the amount You paid. If You downloaded the Program, You may contact IBM for instructions on how to obtain the refund.

THESE WARRANTIES ARE YOUR EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF EXPRESS OR IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. IN THAT EVENT, SUCH WARRANTIES ARE LIMITED IN DURATION TO THE WARRANTY PERIOD. NO WARRANTIES APPLY AFTER THAT PERIOD.

4. Liability Limitation of

Circumstances may arise where, because of a default on IBM's part or other liability, You are entitled to recover damages from IBM. In each such instance, regardless of the basis on which You may be entitled to claim damages from IBM, (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), immixTechnology and IBM are liable for no more than 1) damages for bodily injury (including death) and damage to real property and tangible personal property and 2) the amount of any other actual direct damages, up to the greater of \$100,000 or the charges (if recurring, 12

months' charges apply) for the Program that is the subject of the claim.

This limitation of liability also applies to IBM's Program developers and suppliers. It is the maximum for which they and IBM are collectively responsible.

UNDER NO CIRCUMSTANCES IS IBM, ITS PROGRAM DEVELOPERS OR SUPPLIERS (INCLUDING IMMIXTECHNOLOGY) LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY:

- d. **LOSS OF, OR DAMAGE TO, DATA;**
- e. **SPECIAL, INCIDENTAL, OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; OR**
- f. **LOST PROFITS, BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.**

6. General

Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.

In the event that any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect.

You agree to comply with all applicable export and import laws and regulations.

You agree to allow IBM to store and use Your contact information, including names, phone numbers, and e-mail addresses, anywhere they do business. Such information will be processed and used in connection with our business relationship, and may be provided to contractors, Business Partners, and assignees of IBM for uses consistent with their collective business activities, including communicating with You (for example, for processing orders, for promotions, and for market research).

Neither You nor IBM nor immixTechnology will bring a legal action under this Agreement more than two years after the cause of action arose unless otherwise provided by law without the possibility of contractual waiver or limitation.

Neither You nor IBM nor immixTechnology is responsible for failure to fulfill any obligations due to causes beyond its control.

This Agreement will not create any right or cause of action for any third party, nor will IBM or immixTechnology be responsible for any third party claims against You except, as permitted by the Limitation

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of Liability section above, for bodily injury (including death) or damage to real or tangible personal property for which IBM is legally liable.

Exhibit A
IBM International Passport Advantage Agreement - Enrollment Form

Please provide all requested information in order to be enrolled or to update your information.

Enrollment and Eligible Product acquisition under Passport Advantage is subject to the terms of the IBM International Passport Advantage Agreement (“the Agreement”). Use of any Program acquired under Passport Advantage is subject to the terms of the IBM International Program License Agreement (“IPLA”), which is made part of the Agreement by reference, and any applicable License Information document (“LI”).

In enrolling, you acknowledge that you

- a. have had the opportunity to read and understand these documents, prior to your completion of this form and to any acquisition under the Agreement ; and**
- b. accept the terms of these documents.**

This enrollment is for (**check one**): Originating Site Additional Site* Site Information Update

If this is an enrollment for an Originating Site, please indicate customer type (**check one****):

- Commercial (see Option A, Section 4 of the Agreement)
- Commercial, purchasing CEO Product Categories (see Option B, section 4 of the Agreement)
- Government
- Academic Volume Option (AVO)

***Note:** The Originating Site Primary Contact must, if applicable, complete and submit with this enrollment form, an Authorized Additional Site Schedule listing any and all potential Additional Sites. Failure to do so may result in delay in processing Additional Site enrollments. An Additional Site is required to be part of the Originating Site’s Enterprise as defined in Section 2 of the Agreement. By completing this form as an Additional Site, you certify that this requirement has been met.

****Note:** If you are a Government customer enrolling under Commercial terms, please check **both** “Government” and **one** of the two Commercial options shown.

If enrolling an Additional Site, please indicate Passport Advantage Agreement Number: _____

If updating existing Site information, please indicate Passport Advantage Site number: _____

For each contact information box below, please complete all details, including the optional check-box concerning promotional and marketing communications from IBM and its business partners. By completing this form and providing us with information on behalf of other individuals in your organization, you certify that you have confirmed that they agree to your providing their data on the form. If you indicate, for any of the contacts listed, that you or they DO wish to receive promotional and/or marketing material, we will use the contact information for these purposes too, as well as generally in connection with your Passport Advantage Agreement.

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Primary Contact (required): IBM will consider the contact you designate in this information box to be the primary contact for your Site. All Passport Advantage correspondence, other than correspondence related to Software Maintenance renewals, will be sent to the attention of the Primary Contact. If the Primary Contact is the only contact specified, IBM may consider the Primary Contact to be the sole contact for all purposes. **(No Post Office Boxes, please)**

Company Name:		
Contact Name:		
Street Address:		
City:	State/Province:	Zip Code/Postal Code:
Country:	Telephone/Ext:	Fax:
E-mail Address:		
IBM Customer Number:		

Yes, please use the contact information in the information box above for future marketing or promotional contacts or other communications beyond the scope of this Passport Advantage Agreement.

Proof of Entitlement (Certificate) Contact *(if different from the Primary Contact above)*: The contact you designate in this information box will receive the "Proofs of Entitlement" for Passport Advantage acquisitions made by this Site.

Company Name:		
Contact Name:		
Street Address:		
City:	State/Province:	Zip Code/Postal Code:
Country:	Telephone/Ext:	Fax:
E-mail Address:		
IBM Customer Number:		

Yes, please use the contact information in the information box above for future marketing or promotional contacts or other communications beyond the scope of this Passport Advantage Agreement.

Software Maintenance Media Shipping Contact (if different from Primary Contact above):

Note: Each Site with Software Maintenance coverage is eligible to receive one set of media for Programs covered by such Software Maintenance when Programs are revised and become commercially available. Program upgrade media will be shipped to the contact at the address indicated below. Software Maintenance coverage must be active in order for the upgrade(s) to be shipped. **Please note: A Post Office Box is not a valid ship-to address.**

Company Name:		
Contact Name:		
Street Address:		
City:	State/Province:	Zip Code/Postal Code:
Country:	Telephone/Ext:	Fax:
E-mail Address:		
IBM Customer Number:		

Yes, please use the contact information in the information box above for future marketing or promotional contacts or other communications beyond the scope of this Passport Advantage Agreement.

Language:

Please indicate the language(s) in which you want to receive your media: _____

For countries where there is more than one official language (for example, Canada, Switzerland, Belgium), please indicate in which languages you wish to receive communications from IBM regarding your Passport Advantage relationship: _____

Please note that while IBM will make all reasonable efforts to meet your request, media and communications may not be available in all languages.

Software Maintenance Renewal Contact (if different from Primary Contact above): The contact you designate in this information box is the person responsible for assisting with Software Maintenance renewals.

Company Name:		
Contact Name:		
Street Address:		
City:	State/Province:	Zip Code/Postal Code:
Country:	Telephone/Ext:	Fax:
E-mail Address:		
IBM Customer Number:		

Yes, please use the contact information in the information box above for future marketing or promotional contacts or other communications beyond the scope of this Passport Advantage Agreement.

Site Technical Contact (if different from Primary Contact above): The Site Technical Contact specified below is responsible for overall support compliance for this Passport Advantage site, maintaining the authorized caller list on the Passport Advantage eCare Web site, and coordinating distribution of the technical support access information to the authorized callers of this site.

Company Name:		
Contact Name:		
Street Address:		
City:	State/Province:	Zip Code/Postal Code:
Country:	Telephone/Ext:	Fax:
E-mail Address:		
IBM Customer Number:		

Yes, please use the contact information in the information box above for future marketing or promotional contacts or other communications beyond the scope of this Passport Advantage Agreement.

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Billing Contact (if different from Primary Contact above): The contact you designate in this information box is the person you want to receive, where applicable, billing communications.

Company Name:		
Contact Name:		
Street Address:		
City:	State/Province:	Zip Code/Postal Code:
Country:	Telephone/Ext:	Fax:
E-mail Address:		
IBM Customer Number:		

Yes, please use the contact information in the information box above for future marketing or promotional contacts or other communications beyond the scope of this Passport Advantage Agreement.

Passport Advantage Primary Reseller, if applicable for this enrollment:

Primary Reseller Company Name:		
Contact Name:		
Street Address:		
City:	State/Province:	Zip Code/Postal Code:
Country:	Telephone/Ext:	Fax:
E-mail Address:		

IBM SOFTWARE TERMS AND CONDITIONS APPLICABLE TO PURCHASE OF TRAINING COURSES (SPECIAL ITEM NUMBER 132-50)

I. IBM Training Terms & Conditions (Special Terms & Conditions are included for IBM University Flexible Training Days & IBM University Passport for Web-Based Training.)

1. Scope

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

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

2. Order

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

3. Time of Delivery

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

4. Cancellation and Rescheduling

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

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

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

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

Follow-Up Support

NOT APPLICABLE

6. Price for Training

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

In addition to Instructor Fees, which are payable at the rate(s) set forth in the then current IBM Price Guide, the customer is responsible for payment of the standard charges for course materials. Unless otherwise specified in the purchase documents, all course materials are shipped directly to the customer training site, FOB Origin, prepaid and billed to the Customer.

7. Invoices and Payment

Invoices for training shall be submitted by the Contractor after ordering activity completion of the training course. Charges for training must be paid in arrears (31 U.S.C. 3324). PROMPT PAYMENT DISCOUNT, IF APPLICABLE, SHALL BE SHOWN ON THE INVOICE. Payments are due NET 30 days after receipt of invoice.

8. Format and Content of Training

a. The Contractor shall provide written materials (i.e., manuals, handbooks, texts, etc.) normally provided with course offerings. Such documentation will become the property of the student upon completion of the training class. Course materials are copyrighted. The ordering activity agrees that it shall not reproduce such materials nor permit others to do so, and that the materials shall not be transferred or re-used for any purpose other than the ordering activity's own internal training course.

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

c. The Contractor shall provide each student with a Certificate of Training at the completion of each training course, where regularly issued by Contractor.

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

The course title and a brief description of the course content, to include the course format (e.g., lecture, discussion, hands-on training);

The length of the course;

Mandatory and desirable prerequisites for student enrollment;

The minimum and maximum number of students per class;

The locations where the course is offered;

Class schedules; and

Price (per student, per class (if applicable)).

Information on training courses is available in the price schedule, and/or by contacting: <http://www.ibm.com>

e. For those courses conducted at the ordering activity's location, the ordering activity is responsible for providing and installing all hardware, compilers, and other software, and associated equipment, supplies, and facilities required for conduct of the training.

In addition to the Course Fees, the ordering activity is responsible for payment of the standard charges for course materials, and for all instructor travel charges (if applicable), including mileage, daily living expenses, travel and incidental expenses incurred by IBM or its supplier in conducting the course(s). Rates paid as a result of travel must comply with the Federal Travel Regulation or Joint Travel Regulations, as applicable, in effect on the date(s) the travel is performed. Contractors cannot use GSA city pair contracts.

f. There are no warranties, express or implied. IBM disclaims any representations or warranties of merchantability or fitness for a particular purpose. In no event shall IBM be liable for (a) indirect, special, consequential, or other similar damages, or (b) any damages whatsoever resulting from loss of use, data, or profits, arising out of or in connection with the services provided hereunder, even if IBM has been aware of the possibility of such damages, and whether in a contract or tort action (including negligence). IBM's total liability, regardless of the theory of recovery, shall be limited to

direct money damages not exceeding the total amount paid to IBM under the applicable purchase order.

9. "No Charge" Training

NOT APPLICABLE.

II. Special Terms & Conditions for IBM University Flexible Training Days & IBM University Passport for Web-Based Training are below. Should these Special Terms & Conditions for IBM University Flexible Training Days & IBM University Passport for Web-Based Training conflict with the Terms & Conditions above (in Section I), these Special Terms & Conditions will supercede for for IBM University Flexible Training Days & IBM University Passport for Web-Based Training.

1. IBM University Flexible Training Days Terms and Conditions

k. These terms and conditions will govern the provision of training courses by IBM to the ordering activity ("Customer") who has purchased Flexible Training Days. A Flexible Training Day means one day of a public training course taught by a IBM employee instructor, offered for two types of courses:

- For open-enrollment, public training classes presented at a IBM controlled site (Open Enrollment Flexible Training Days)
- For onsite training classes presented at the Customer's site (OnSite Flexible Training Days)

l. Flexible Training Days can be applied to any standard IBM University Training course within the Training Day type purchased, in the appropriate quantity of days for that course [e.g. A standard three (3) day course requires three (3) Flexible Training Days]. Half-day courses will be charged as one full Training Day. The two types are not recommended to be used as interchangeable. In the event they do have to be converted, they will be converted at the following ratio:

- Seven (7) Open Enrollment Flexible Training Days convert to one (1) OnSite Flexible Training Day
- m. Flexible Training Days are valid only for training courses taught by a IBM employee instructor, and cannot be applied to training courses conducted by any IBM partner.
- n. Customer's balance of Trainings Days will be decremented and Customer will be invoiced as courses are taken. Flexible Training Days will be effective for a period of eighteen (18) months from the effective date. Unused Flexible Training Days will be terminated if they are not used prior to the expiration date. No refunds or credits shall apply, as Flexible Training Days are not pre-paid.
- o. Cancellation/Termination:
(1) Cancellation: The Customer may cancel or reschedule a course up to 10 business days before the course start date at no charge. All Customers canceling or rescheduling a course less than 10 business days, but at least 5 business days, before the course start date will be charged 50% of the Flexible Training Days required for the course, plus any incurred non-refundable expenses. A cancellation or reschedule less than 5 business days before the course start date, or a no-show for a course, will be charged 100% of the Flexible Training Days **required for the course, plus any incurred non-refundable expenses.**
(2) Termination: In the event the Customer terminates a purchase order prior to the expiration of the Training Days, Customer shall pay Contractor for services performed and expenses incurred prior to the termination of the purchase order, plus any applicable cancellation fees per Section II,1e(1) above.
- p. In addition to the course fees in the form of Flexible Training Days, the customer is responsible for payment of all per diem and other travel and incidental expenses, in accordance with the Federal/Joint Travel Regulations, incurred by IBM or its supplier in conducting the courses. All prices are exclusive of any state, local, or federal taxes or fees, which shall be invoiced and payable additionally by Customer. Payments are due Net 30 days after receipt of invoice.
- q. Training course materials are protected under United States and international laws, treaties and conventions. Customer agrees that it shall not reproduce such materials nor permit others to do so, and that the materials shall not be transferred or re-used for any purpose other than as reasonably necessary in order for Customer to benefit from the IBM-provided training. If Customer desires to teach its own courses, Customer will need to purchase the appropriate license from IBM.
- r. All training courses are offered subject to availability. Once IBM accepts a Customer course registration containing a firm schedule, or otherwise confirms a schedule in writing, the course may be canceled or rescheduled by Customer only with the consent of IBM and subject to any applicable cancellation or rescheduling charges.
- s. For OnSite Flexible Training Days conducted on Customer's site, Customer is responsible for providing all hardware, compilers, and other software, and associated equipment, supplies, and facilities required for conduct of the training. Customer is further responsible for installing all IBM-provided training software, and for de-installing and destroying all such software at the end of the training. With OnSite course delivery, additional students past the standard 12 students will be charged at one (1) OnSite Flexible Training Day per student.
- t. EXCEPT TO THE EXTENT PROHIBITED BY LAW, IBM EXPRESSLY DISCLAIMS ALL WARRANTIES OR REPRESENTATIONS, EXPRESS OR

IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, TITLE OR FITNESS FOR A PARTICULAR PURPOSE OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. IN NO EVENT SHALL IBM OR ITS LICENSORS BE LIABLE FOR (A) INDIRECT, SPECIAL, CONSEQUENTIAL, OR OTHER SIMILAR DAMAGES, OR (B) ANY DAMAGES WHATSOEVER RESULTING FROM LOSS OF USE, DATA, OR PROFITS, ARISING OUT OF OR IN CONNECTION WITH THE SERVICES AND/OR MATERIALS PROVIDED HEREUNDER, EVEN IF IBM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF WHETHER IN A CONTRACT OR TORT ACTION (INCLUDING NEGLIGENCE). IBM'S TOTAL LIABILITY, REGARDLESS OF THE THEORY OF RECOVERY, SHALL BE LIMITED TO DIRECT MONEY DAMAGES NOT EXCEEDING THE TOTAL AMOUNT PAID TO IBM UNDER THE APPLICABLE PURCHASE ORDER.

2. IBM University Passport for Web-Based Training Terms and Conditions

n. These terms and conditions will govern the provision of the IBM University Passport for Web-Based Training for training courses provided on-line ("Web-Passport") by IBM to the ordering activity ("Customer") who has purchased such IBM University Web-Passport.

o. All IBM University Passport for Web-Based Training is paid in fully in advance. Once purchased, a Web-Passport will become effective as of the date an access code is provided to Customer, and will continue in effect for the duration of time for which the particular Web-Passport was purchased (either six months or one year).

p. A Web-Passport is available only for a minimum purchase of one named Customer employee for a minimum of six months. Upon purchase, Customer is responsible for identifying by name, those Customer employee(s) who are to be authorized named users of the Web-Passport by making the access code available to those employees it wishes to be authorized users of the Passport. The authorized users will then use the access code to enroll for the web-based training courses.

A Web-Passport is not intended to permit changing or substituting the named users once identified, except in the case of a named user having left the Customer employ. Customer may submit other requests involving changing or substituting named users, which shall be evaluated at IBM's sole discretion.

q. A Web-Passport is valid for all web-based training courses offered by IBM during the effective dates of the Web-Passport, and is valid only for web-based training classes offered by IBM Software. Web-Passports cannot be applied to classes conducted in person.

r. During the Web-Passport effective dates: (i) a particular Customer named user may enroll in all Web-Based training then offered by IBM; (ii) once a particular Customer named user has enrolled in a course, that user has a period of ninety (90) days within which to complete that course; (iii) once a particular named user has enrolled in and completed any one course, that user may re-enroll in that same course.

s. Once purchased, a Web-Passport may not be canceled, nor may it be returned or refunded. If Customer has not fully utilized the Web-Passport, all unused portions remaining at the expiration date are forfeited.

t. For each course which a Customer named user has enrolled in, that user may, for such user's personal use, print out one hard copy of those portions of the training course materials that are enabled for printing; provided that the copy

- contains all copyright and other legal notices that IBM has placed on the materials.
- u. All training course materials provided are copyrighted materials, and are protected under the laws of United States, and under International copyright laws and conventions. All right, title and interest in all training course materials shall remain with IBM and/or its licensors. Customer agrees that neither it nor its employees or agents shall create derivative works of the training course materials, nor shall they re-use or transfer the materials, and Customer agrees not to permit others to do so. If Customer desires to teach courses itself, Customer will need to purchase the appropriate license from IBM.
 - v. Customer shall be responsible for any improper or unauthorized use of the Web-Passport and of any improper or unauthorized use of the access codes. IBM reserves the right to immediately suspend Customer's use of a Web-Passport and/or the related access codes if abuses are discovered; or in extreme cases of abuse, immediately terminate a Web-Passport.
 - w. Customer may request that IBM provide it with a report regarding its use of a particular Web-Passport. Customer may request a report by contacting their IBM account representative. A report is available up to one time every six-month Web-Passport subscription or two times for every one-year Web-Passport subscription.
 - x. All prices are exclusive of any state, local, or federal tax or fee, which shall be invoiced and payable additionally by Customer. Payments are due NET 30 days after date of invoice.
 - y. IBM reserves the right to modify or discontinue any web-based training course offered under a Web-Passport at any time at IBM's sole discretion. IBM will provide a two-week, advance notification of discontinuance of a Web-based training course, via the routine, online listing of courses and course schedules.
 - z. EXCEPT TO THE EXTENT PROHIBITED BY LAW, IBM EXPRESSLY DISCLAIMS ALL WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, TITLE OR FITNESS FOR A PARTICULAR PURPOSE OR

ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. IN NO EVENT SHALL IBM OR ITS LICENSORS BE LIABLE FOR (A) INDIRECT, SPECIAL, CONSEQUENTIAL, OR OTHER SIMILAR DAMAGES, OR (B) ANY DAMAGES WHATSOEVER RESULTING FROM LOSS OF USE, DATA, OR PROFITS, ARISING OUT OF OR IN CONNECTION WITH THE SERVICES AND/OR MATERIALS PROVIDED HEREUNDER, EVEN IF IBM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF WHETHER IN A CONTRACT OR TORT ACTION (INCLUDING NEGLIGENCE). IBM'S TOTAL LIABILITY, REGARDLESS OF THE THEORY OF RECOVERY, SHALL BE LIMITED TO DIRECT MONEY DAMAGES NOT EXCEEDING THE TOTAL AMOUNT PAID TO IBM UNDER THE APPLICABLE PURCHASE ORDER.

Attachment C- SAMPLE VENDOR REPORT FORMAT

Order Transactions (OT)**(File Layout Definition)**

6. This report is due weekly, monthly or quarterly based on your specific contract terms. Report order transactions from Sunday through Saturday (or orders not previously reported) and send to ASCP by COB on the following Thursday.
7. An e-mail response is required for negative reports (no transactions to report).
8. This electronic report needs to be submitted as a Microsoft Excel Spreadsheet, to amse1-dsa-scp-cr@mail1.monmouth.army.mil.
9. No extra spaces, commas, or ampersands allowed in the spreadsheet. Dashes are allowed. File name cannot be more than 50 characters in length. Vendor needs to ensure leading zeros are not dropped. For example, Zip Code "07703" should not appear as "7703"; Order Number "0030" should not appear as "30"; CLIN Number "0003AA" should not appear as "3AA".
10. NOTE: Order Transaction and Vendor Status reports are cross-referenced for reconciliation and therefore, data must be consistent in all 3 reports (i.e. order number, dates, dollar amounts, etc.).

Excel Column	Column Name	Format	Comments
A	Contract Number	Alphanumeric (21)	
B	Order Number	Alphanumeric (30)	4. Must be unique (minimum 4 digits). 5. You cannot report this order more than once in the same file. (The order can have as many line items as you wish). 6. Record order number exactly as it appears on the order.
C	Order Mod Number	Alphanumeric (25)	<i>Data required only when reporting a MOD.</i>
D	Transaction Type	Alphanumeric (2)	The order types are as follows: CC = Credit Card, DO= Direct Ordering (paper order).
E	Date of Order or date of Order Mod	DD-MMM-YYYY	Report the actual date of the order, or when reporting an order mod, report the date of the order mod.
F	Date Transaction Cancelled	DD-MMM-YYYY	<i>Data required only for Cancelled order/mods.</i>
G	UNSPSC	Alphanumeric (14)	Format is ##.##.##.##.##.##. Last two positions should be "00" except for Low End Servers(32-Bit) = 01 and High End Servers (64-Bit) = 02
H	CLIN Number	Alphanumeric (39)	Unique contract identifier of item being ordered (as identified in contract, i.e. product #, manufacturer part #, contract line item)
I	CLIN Quantity	Number (7,0)	CLIN quantity being ordered.
J	CLIN Unit Price	Number (11,2)	Price per item.
K	CLIN Extended Dollar Amount	Number (11,2)	Extended Dollar Amount = (CLIN quantity x unit price) No formatting (i.e. No \$ signs, commas, etc).
L	Dollar amount of Transaction	Number (12,2)	Reflects the dollar amount of this reported transaction (order or order mod.)
M	POC Last Name	Alphanumeric (35)	Customer's Last Name. (Use this column for customer's full name when unable to separate first name, last name, title into separate columns)
N	POC First Name	Alphanumeric (35)	Customer's First Name.
O	POC Title	Alphanumeric (35)	Customer's Title (i.e. COL, Mr., Ms., etc.).
P	Telephone Number	Alphanumeric (20)	Customer's telephone number. Format: 9999999999
Q	Email address	Alphanumeric (40)	Customer's email address.
R	Street Address 1	Alphanumeric (40)	First line of the Customer's Ship-To address.
S	Street Address 2	Alphanumeric (40)	Second line of the Customer's Ship-To address.
T	Street Address 3	Alphanumeric (40)	Third line of the Customer's Ship-To address.
U	City	Alphanumeric (27)	Customer's Ship-To City.
V	State	Alphanumeric (2)	Customer's Ship-To State for USA only. Post office two character

			abbreviation.
W	Country	Alphanumeric (27)	<i>Data required only when reporting a country other than USA.</i>
X	5-digit Zip Code	Number (5)	Five-digit Customer Ship-To zip code.
Y	4-digit Zip Code Extension	Number (4)	Four-digit extension Customer Ship-To zip code.
Z	Service or Agency	Alphanumeric (20)	Use the abbreviation from the <i>Service/Agency</i> list located at https://ascp.monmouth.army.mil/scp/content/activitylist.jsp
AA	Army Activity	Alphanumeric (20)	<i>Data required only for Army.</i> Use the abbreviation from the <i>Army Activity</i> list located at https://ascp.monmouth.army.mil/scp/content/activitylist.jsp
AB	Comments	Alphanumeric (2000)	Free text.
AC	ASCP Reserved 1	Alphanumeric (2000)	Reserved for Product Leader.
AD	ASCP Reserved 2	Alphanumeric (2000)	Reserved for Product Leader.

Vendor Status (VS)**(File Layout Definition)**

9. This report is due weekly, monthly or quarterly based on your specific contract terms.
10. An e-mail response is required for negative reports (no transactions to report).
11. This electronic report needs to be submitted as a Microsoft Excel Spreadsheet, to amsel-dsa-scp-cr@mail1.monmouth.army.mil.
12. No extra spaces, commas, or ampersands allowed in the spreadsheet. Dashes are allowed. File name cannot be more than 50 characters in length.
13. Vendor needs to ensure leading zeros are not dropped. For example, order number 0030 should not appear as 30.
14. When canceling orders, enter the date in the **Date Transaction Cancelled** column in this report.
15. NOTE: Order Transaction and Vendor Status reports are cross-referenced for reconciliation and therefore, data must be consistent in both reports (i.e. order number, dates, dollar amounts, etc.).
16. Format for 16 required columns (all 16 columns are required even when there is no data for a specific column):

Excel Column	Column Name	Format	Comments
A	Contract Number	Alphanumeric (21)	
B	Order Number	Alphanumeric (30)	Record order number exactly as it appears on the order.
C	Order Mod Number	Alphanumeric (25)	<i>Only Required when reporting a mod.</i>
D	Date Received by Vendor	DD-MMM-YYYY	(i.e. 09-FEB-2002)
E	Date Rejected by Vendor	DD-MMM-YYYY	<i>Data required only for rejected orders.</i>
F	Date Accepted by Vendor	DD-MMM-YYYY	A Vendor receives an order and either rejects it or accepts it as a valid order.
G	Date Transaction Cancelled	DD-MMM-YYYY	<i>Data required only for Cancelled order/mods.</i>
H	Projected Ship Date by Vendor	DD-MMM-YYYY	<i>Data required only when reporting a projected ship date.</i>
I	Vendor Ship Date	DD-MMM-YYYY	For all orders shipped by the Vendor.
J	Projected Delivery Date	DD-MMM-YYYY	<i>Data required only when reporting a projected delivery date.</i>
K	Contractually Due Date	DD-MMM-YYYY	This is a date calculated by the Vendor that shows when the order is contractually due. This formula is agreed to by the Product Leader and Vendor and takes into consideration contract requirements such as CONUS, OCONUS, SURGE, NON-SURGE, SERVICES, etc.
L	Service Start Date	DD-MMM-YYYY	<i>Data required only when reporting services.</i>
M	Service Completion Date	DD-MMM-YYYY	<i>Data required only when reporting services.</i>
N	Comments	Alphanumeric (2000)	Free text.
O	ASCP Reserved 1	Alphanumeric (2000)	Reserved for Product Leader.
P	ASCP Reserved 2	Alphanumeric (2000)	Reserved for Product Leader.

Fee For Service (FFS)**(File Layout Definition)**

8. FFS report applies to applicable ESI agreements only.
9. Report is due to ASCP by **the 15th Government workday after the end of each month.** The data reported is for that reporting period activity only (not a cumulative listing).
10. If no payments were received during the previous month, a negative report is required.

11. This electronic report needs to be submitted as a Microsoft Excel Spreadsheet, to amsel-dsa-scp-cr@mail1.monmouth.army.mil .
12. No extra spaces, commas, or ampersands allowed in the spreadsheet. Dashes are allowed. File name cannot be more than 50 characters in length.
13. Vendor needs to ensure leading zeros are not dropped. For example, order number 0030 should not appear as 30.
14. SPECIAL NOTE TO VENDOR(S): Order Transaction, Vendor Status, and Fee for Service reports are cross-referenced for reconciliation and therefore, data must be consistent in all 3 reports (i.e. order number, dates, dollar amounts, etc.).

EXCEL COLUMN	COLUMN NAME	COLUMN FORMAT	COMMENTS
A	Report Number	Alphanumeric (21)	Must be Unique.
B	Report Type	Alphanumeric (21)	Use one of the following codes I = Initial Report R = Replace all previously reported information for this frame with this new data M = This report modifies some of the information reported during this time frame
C	Report Start Date	DD-MON-YYYY	(i.e. 01-MAR-2002)
D	Report End Date	DD-MON-YYYY	(i.e. 31-MAR-2002)
E	Contract Number	Alphanumeric (21)	
F	Order Number	Alphanumeric (30)	Must be reported exactly as shown on the customer order.
G	Order Mod Number	Alphanumeric (25)	<i>Data required only when reporting a MOD.</i>
H	Dollar Amount of Transaction	Number (12,2)	Reflects dollar amount of the transaction (order or MOD being reported). No formatting (i.e. No \$ signs, commas, etc).
I	Date Transaction Sent to Vendor	DD-MON-YYYY	(i.e. 09-FEB-2002)
J	1 Percent Fee for Transaction	Number (12,2)	
K	Previous Payment Made on Transaction	Number (12,2)	
L	Current Payment	Number (12,2)	
M	Remaining Amount to be Paid	Number (12,2)	
N	Transaction Type	Alphanumeric (2)	Order types are as follows: CC = Credit Card DO = Direct Ordering (paper direct to vendor) PA = Paper (sent to vendor by COPO)
O	Other Agency Share Fee Payable	Number (12,2)	If applicable. Fee share amount due to either Navy, AF or DLA (50% of Column L)
P	Other Agency for Share Fee	Alphanumeric (21)	If applicable. Identify as 'USN', 'DLA', or 'USAF' generated Delivery Order
Q	Army Fee Payable	Number (12,2)	If applicable. Column L minus Column O Amounts
R	Comments	Alphanumeric (2000)	Free text.
S	ASCP Reserved 1	Alphanumeric (2000)	Reserved for Product Leader.
T	ASCP Reserved 2	Alphanumeric (2000)	Reserved for Product Leader.

Fee For Service (FFS) (Continued)
(File Layout Definition)

The FFS payment is calculated by dividing the “Amount Paid to Vendor” column on the army Fee-for-Service Reconciliation Report by 1.01, and then multiplying this value by .01. (Example provided below):

A	B	C
DOLLAR AMOUNT OF TRANSACTION	COLUMN A DIVIDED BY 1.01	SCP 1% FFS (1% OF COLUMN B)
\$1,000.00	\$990.10	\$9.90

NOTE: The rounding feature in Excel is not to be utilized when totaling columns of numbers.

Sample VENDOR REPORT FORMAT

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P
REPORT NUMBER	REPORT TYPE	REPORT START DATE	REPORT END DATE	CONTRCT NUMBER	ORDER NUMBER	MOD NUMBER	DOLLAR AMOUNT OF TRANS	DATE TRANS SENT TO VENDOR	1 PERCENT FEE FOR TRANS	PREVIOUS PYMT MADE ON TRANS	CURRENT PYMT	REMAININ G AMOUNT TO BE PAID	TRANS TYPE	Other Agency Fee Payment	Other Agency
FFS2002-03	I	1-Mar-2002	31-Mar-2002	DAAB15-XX-X-XXXX	DO01		100000.00	14-Mar-2002	990.10	0.00	990.10	0.00	DO	495.05	AF
FFS2002-03	I	1-Mar-2002	31-Mar-2002	DAAB15-XX-X-XXXX	DO01	0001	10000.00	15-Mar-2002	99.01	0.00	99.01	0.00	DO	0	
FFS2002-03	I	1-Mar-2002	31-Mar-2002	DAAB15-XX-X-XXXX	DO16		25000.00	10-Jan-2002	247.52	100.00	100.00	47.52	DO	50.00	USN
FFS2002-03	I	1-Mar-2002	31-Mar-2002	DAAB15-XX-X-XXXX	DO25		5000.00	12-Mar-2002	49.50	0.00	49.50	0.00	CC	0	

Q	R	S	T
Army Fee Payment	Comments	ASCP Reserved 1	ASCP Reserved 2
495.05			
99.01			
50			
49.50			

ATTACHMENT D – FEES AND PAYMENTS

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

2. Acquisition, Contracting, and Technical (ACT) Fee. The cost of awarding, administering and managing this BPA is included in the prices charged to ordering activities. The ACT fee is 2%. Remittance of the ACT fee shall be made on a calendar quarterly basis (i.e. January – March, April – June, July – September, and October – December) or as otherwise requested by the Software Product Manager (SPM) and is due thirty (30) days following approval of the report for the completed reporting period. 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, DLA 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, Navy or DOD as appropriate. Fee checks shall not be issued until written approval is received for the Report of Sales.

3.1 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. In other words, any Air Force order against an ESI agreement managed by the Navy results in a 1% portion of the 2% fee being returned to the Air Force acquisition organization (listed under Air Force Sales). The Navy will retain the entire 2% fee under orders issued for Navy activities or those activities that do not collect a fee under the ESI agreements managed by the Navy. 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 the FMO shall be calculated at 1% for Army sales, 1% for Air Force sales, 1% for DLA sales and 2% for all other sales.

Remit ACT Fee to the Financial Management Office (FMO) 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 (*fill in applicable #*)

DoD (*fill in name of agreement*) Enterprise Software Agreement

ACT Fee

If using overnight or express mail, send check to:

SPAWAR Systems Center Charleston

Attn: Elizabeth Vonasek

Norfolk Office

Code 846.2, Bldg. V53

9456 Fourth Avenue

Norfolk, VA 23511-2130

If using regular mail, send check to:

SPAWARSYSCEN Charleston

Attn: Elizabeth Vonasek

Norfolk Office

Code 846.2, Bldg V53

P.O. Box 1376

Norfolk, VA 23501-1376

Email a copy of the FMO check to the SPM: Linda.Greenwade@navy.mil

FMO:Elizabeth Vonasek

Phone 757-445-1493

Fax 757-445-2103

Elizabeth.vonasek@navy.mil

3.2 ARMY SALES:

The amount of ACT Fee due the Program Executive Office (PEO) Enterprise Information Systems (EIS) shall be calculated at 1% of all Army sales.

Remit ACT Fee to PEO EIS by corporate or cashier's check made payable to "Treasurer of the United States" notated with the following information:

BPA (*fill in applicable #*)

SCP Fee Reimbursement

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

Send check and transmittal letter to:
Program Executive Office (PEO) Enterprise Information Systems (EIS)
Assistant Program Manager (APM), Army Small Computer Program
Attn: SFAE-PS-EI-SCP (Attn: Financial Support Group)
Fort Monmouth, NJ 07703-5605

Email a copy of the check and letter to: AMSEL-dsa-scp-CR@mail1.monmouth.army.mil

3.3 AIR FORCE SALES:

The amount of ACT Fee due DFAS Pensacola shall be calculated at 1% of all Air Force sales.

Remit ACT Fee to DFAS Pensacola by corporate or cashier's check made payable to "Treasurer of the United States" notated with the following information:

BPA (*fill in applicable #*)
ESI-SW Fee Sharing

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

Send check and transmittal letter to:
DFAS-DE/ATDT/DEDE
(Attn: Mr. Daniel Medina)
6760 East Irvington Place
Denver, CO 80279

Mail a copy of the check & letter to:
HQ OSSG/KABS
Bldg 884
<mailto:Karen.Molloy@gunter.af.mil>
501 East Moore Drive
MAFB-Gunter Annex, AL 36114-3014

Or send via fax or email to:
Fax: 334-416-7795
Email: itservices.bpa@gunter.af.mil

3.4 DLA SALES

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

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 (*fill in applicable #*)
DoD (*fill in name of agreement*) Enterprise Software Agreement
Quarterly ACT Fee

Send check to:
Defense Logistics Agency
DES Acquisition Staff Directorate
Attn: Connie House, DES-A
8725 John J. Kingman Road, Room 1145

Fort Belvoir, VA 22060-6220

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

Or send via email to:
Email: Susan.Lizzi@dfa.mil

(End of Summary of Changes)