



| 19.<br>Item No. | 20.<br>Schedule Of Supplies/Services | 21.<br>Quantity | 22.<br>Unit | 23.<br>Unit Price | 24.<br>Amount |
|-----------------|--------------------------------------|-----------------|-------------|-------------------|---------------|
|                 |                                      |                 |             |                   |               |

32a. Quantity In Column 21 Has Been

Received  Inspected  Accepted, And Conforms To The Contract, Except As Noted: \_\_\_\_\_

|   |                                |                            |   |   |  |                  |
|---|--------------------------------|----------------------------|---|---|--|------------------|
| 32b. Signature Of Authorized Government Representative        |                                | 32c. Date                  | 32d. Printed Name and Title of Authorized Government Representative |   |  |                  |
| 32e. Mailing Address of Authorized Government Representative  |                                |                            | 32f. Telephone Number of Authorized Government Representative       |   |  |                  |
|   |                                |                            | 32g. E-Mail of Authorized Government Representative                 |   |  |                  |
| 33. Ship Number   |                                | 34. Voucher Number         | 35. Amount Verified Correct For                                     | 36. Payment   |  | 37. Check Number |
| <input type="checkbox"/> Partial                              | <input type="checkbox"/> Final |                            |   | <input type="checkbox"/> Complete <input type="checkbox"/> Partial <input type="checkbox"/> Final |  |                  |
| 38. S/R Account No.   | 39. S/R Voucher Number         | 40. Paid By                |   |   |  |                  |
| 41a. I Certify This Account Is Correct And Proper For Payment |                                |                            | 42a. Received By (Print)  |   |  |                  |
| 41b. Signature And Title Of Certifying Officer                |                                | 41c. Date                  | 42b. Received At (Location)   |   |  |                  |
|   |                                | 42c. Date Rec'd (YY/MM/DD) | 42d. Total Containers   |   |  |                  |

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| <b>Name of Offeror or Contractor:</b> OPTIMAL SOLUTIONS INC. |   |                           |

SUPPLEMENTAL INFORMATION

BLANKET PURCHASE AGREEMENT (BPA) ARMY / DEPARTMENT OF THE NAVY ENTERPRISE LICENSE AGREEMENT (ELA) with OPTIMAL SOLUTIONS, INC (OSI)  
GS-35F-0265X W52P1J-12-A-0017

1. Introduction/Recitals

1.1. Federal Acquisition Streamlining Act

1.1.1. In the spirit of the Federal Acquisition Streamlining Act, the ARMY and the Department of the NAVY (referred to hereafter as the Government or ARMY / DEPARTMENT OF THE NAVY) and OPTIMAL SOLUTIONS, INC, (OSI) (the Contractor) enter into this Blanket Purchase Agreement (BPA) and includes all Attachments (collectively referred to as the BPA or Agreement) as of AUGUST 03, 2012 (the "Effective Date").

1.2. GSA FSS Contract

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

1.2.2. This BPA is entered to reduce the administrative costs of acquiring commercial products and services from the General Service Administration (GSA) Federal Supply Schedule (FSS) Contract(s) GS-35F-0265X (the FSS Contract).

1.2.3. All orders placed against this BPA are subject to the Terms and Conditions of CHES, The BPA, the FSS Contract and the applicable order.

2. List of Attachments to the BPA

ATTACHMENT # TITLE

- 0001. Product and Price List
- 0002. Ordering Guide
- 0003. Applicable DFARS Provisions
- 0004. Report of Sales Format with Instructions

3. Obligation

3.1. Extent of Obligation

3.1.1. The Government estimates, but does not guarantee, that the volume of purchases through this agreement will be \$14.5M\*. The Government is obligated only to the extent of authorized purchases actually made under this Agreement. There is no minimum order guarantee. \* The total estimated sales volume for the new ordering period from 8/03/2012 to 3/02/2016 (inclusive of BPA ordering option periods) is \$31M to be shared across all multiple award BPAs. Thus, this BPA is assigned an estimated value of \$31M with the understanding that sales could fluctuate from reseller to reseller.

3.2. Funds Obligation

3.2.1. This Agreement does not obligate any funds. Funds will only be obligated on each delivery order.

4. Authorized Users

4.1. ARMY and Department of the Navy Components

4.1.1. The Agreement is open for ordering by all ARMY and Department of the NAVY Components.

4.2. Government Contractors

4.2.1. Government contractors performing work for an ARMY or Department of the NAVY Component may place Delivery Orders under this Agreement on behalf of and for the benefit of the ARMY / Department of the NAVY entity if authorized by their cognizant Contracting Officer in accordance with the requirements of FAR 51(Use of Government Sources by Contractors) and/or DFARS 251 (Use of Government Sources by Contractors) as appropriate.

5. Term and Survival

5.1. Term

This BPA includes a one-year base ordering period, with four (one-year) option ordering periods.  
BPA Base Period: Ordering Period 8/3/2012 8/2/2013

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**Name of Offeror or Contractor:** OPTIMAL SOLUTIONS INC.

BPA Option 1: Ordering Period 8/3/2013 8/2/2014  
 BPA Option 2: Ordering Period 8/3/2014 8/2/2015  
 BPA Option 3: Ordering Period 8/3/2015 8/2/2016  
 BPA Option 4: Ordering Period 8/3/2016 8/2/2017

5.1.1. This BPA expires upon completion of all orders issued within the specified BPA ordering periods, inclusive of any exercised BPA option periods. BPA is contingent upon the Contractor maintaining or renewing a GSA FSS Schedule.

5.1.2. The Government is not obligated to exercise the BPA options periods.

5.1.3. The following FAR Clause is hereby incorporated:

(i) 52.217-9 -- Option to Extend the Term of the Contract (Mar 2000)

(a) The Government may extend the term of this contract by written notice to the Contractor no later than 8/2/2013; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 5 days before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of the BPAs ordering period, including the exercise of any BPA options under this clause, shall not exceed 8/2/2017.

(ii) 52.212-5(o) The Contractor Warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this agreement.

(iii) 52.232-4501 (ACC-RI) WAWF-RA use is required.

5.1.4 If orders issued within the BPA Ordering Period(s) include options, the order options may be exercised after the BPA ordering end date(s) provided that:

(a) The initial order that includes the option was issued during the BPA ordering period(s),

(b) The Ordering Office determines that the underlying GSA Schedule is still valid at the time the order option is exercised and still includes the applicable products, and

(c) The Ordering Office satisfies all other applicable regulations for exercise of options.

## 5.2. GSA Federal Supply Schedule Succession

5.2.1. This BPA is based on the Contractors current GSA 70 schedule contract number GS-35F-0265X. In the event the current GSA 70 schedule contract is cancelled or expires and a new GSA 70 schedule contract is awarded, this BPA shall be modified to transfer to the new GSA 70 schedule contract to the extent the new schedule contract includes the same scope and items as the cancelled or expired GSA contract.

## 5.3. Annual Review for Best Value

5.3.1. This Agreement will be reviewed annually to ensure that it still represents a best value.

## 5.4. Survival

5.4.1. This Agreement shall survive unto Contractor, its Successors, rights and assigns. The Terms and Conditions in this Agreement shall survive the acquisition or merger of Contractor by or with another entity. Contractor shall ensure these survivorship terms are included in any such merger or acquisition agreement, including a duty on the part of the surviving entity to abide by the terms of this Agreement.

## 6. Organization of this Agreement

### 6.1. BPA Structure

6.1.1. This BPA is organized in two major segments:

6.1.1.1. The General Terms and Conditions

6.1.1.2. Attachments, which are binding Master Agreements entered into and made effective at the time of the award of this BPA.

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6.2. Order of Precedence

6.2.1. The Order of Precedence for resolving any inconsistency between this Agreement and the GSA contract terms shall be as specified in the GSA contracts Commercial Item clause, FAR 52.212-4 (Contract Terms & Conditions Commercial Items).

6.2.2. The provisions of FAR 52.212-4 specified in FAR 12.302 (Tailoring of Provisions and Clauses for the Acquisition of Commercial Items), as required by Federal law, shall prevail over any terms of the commercial license.

6.2.3. In the event of any inconsistency between the General Terms and Conditions of this Agreement and the Terms and Conditions of any Attachment to this Agreement, the General Terms and Conditions shall take precedence over the Terms and Conditions of any Attachment, unless the parties specifically agree in writing that a Term or Condition of an Attachment has precedence over the corresponding term or condition in the General Terms and Conditions of the BPA.

6.2.4. All orders placed against this BPA shall incorporate the terms and conditions of this BPA, including all Attachments. In the event of a conflict between an ordering document (including the Contractors license, support, maintenance, or services agreements) and this BPA, the BPA and its Attachments shall take precedence over the Order unless the parties specifically agree in writing that a term or condition of an Order has precedence over the corresponding term or condition in the general terms and conditions of the BPA or its Attachments.

6.3. Attachments

6.3.1. All attachments to this Agreement will be deemed a part of this Agreement and incorporated herein by reference. Terms defined in this Agreement and used in any Attachment will have the same meaning as in this Agreement.

6.3.2. The parties hereby agree the Attachments listed in Section 2 apply to all orders placed under this BPA and are incorporated herein as binding terms and conditions.

7. Product and Service Offerings

7.1. Catalog and Product Information

7.1.1. The Contractor shall make available to all authorized users of this Agreement the products and services contained in Attachment 0001.

7.1.2 Proof of License & Serial Numbers. The CHES reseller will email the end-use customer(s) listed on the purchase order with a license confirmation and/or proof of license upon order processing. Upon order entry into PTC WINDCHILLS licensing system, the ship to and/or end-use customer identified in the order will receive an email notification with instructions on how to obtain the applicable serial number(s) from the PTC WINDCHILL Licensing System. Each serial number covers a single product, version, language, and platform, except for products available in both Macintosh and Windows versions. For these products, serial numbers will be provided for both platforms, even when only one platform is licensed. NOTE: All orders placed with CHES shall include the end-use customers POC information (name, email address and phone number) to ensure that the appropriate person is being provided serial number notification. If end-use customer information is classified, then an intermediate POC must be listed who will be responsible for forwarding upgrade notifications to the classified end-use customer. Customers requiring additional assistance should call OPTIMAL SOLUTIONS, INC Customer Service at (703)230-7800.

7.1.3 Software Distribution. License prices and upgrade plans (new and renewal) do not include media and documentation. Media and Documentation are available for purchase or customers can choose Electronic Software Delivery (ESD).

7.1.4 Media and Printed Documentation. Media and Documentation are available for purchase under the CHES PTC BPAs. The CD Media contains the .exe file for the software application and a .pdf copy of the documentation. Documentation can also be purchased separately for customers who prefer a bound, printed book, instead of printing out their own from the .pdf. DoD end-use customers may order any CDs or printed documentation through CHES PTC BPA provided the quantities do not exceed the number of licenses being ordered.

7.1.5 Electronic Software Delivery. OPTIMAL SOLUTIONS, INC provides Electronic Software Delivery (ESD) for selected products via the OPTIMAL SOLUTIONS, INC Licensing Web Site (\\*HYPERLINK "www.osigov.com"www.osigov.com). All PTC WINDCHILL products may not be available through ESD. However, as new versions of products are released, they may be made available through ESD. ARMY / Department of the NAVY customers requiring ESD should inquire with CHES on the availability of this service. Upon order confirmation, OPTIMAL SOLUTIONS, INC will provide login instructions to the licensing website. Upon login, there is an ESD link that takes the customer to the site, which allows for product download, if available. End-use customer contact(s) may download any available OPTIMAL SOLUTIONS, INC desktop software product at any time provided they have proof of license for the product. Downloads shall not be performed prior to receipt of valid license. Customers requiring additional assistance should call OPTIMAL SOLUTIONS, INC Customer Service at (703)230-7800.

7.1.6 Support Programs. OPTIMAL SOLUTIONS, INC. Support plans enable customers to have successful product deployments and have been created to increase overall customer satisfaction. Available support plans for Professional Support and Server Support include: Gold Support Program: Offers support for an unlimited number of cases with approximately two-hour response times and support for help desks and broad corporate deployments. Defined service levels help Adobe prioritize resolution efforts on the most important incidents

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affecting customers business.

7.1.7 Upgrade Plan (formerly known as maintenance). Upgrade Plan is a fixed cost that Customers may pay to receive future software product version upgrades that are covered under Upgrade Plan during the life of the BPA. Upgrade Plan coverage grants users the right to upgrades for products covered during the Upgrade Plan term. An upgrade is a major release of a software application that includes new features. When a new version is announced for a product in which a customer has an active Upgrade Plan, OPTIMAL SOLUTIONS, INC will send an upgrade fulfillment email to customers eligible to receive an upgrade license and new software at no additional charge. The email will include specific instructions on how to upgrade to the new version. OPTIMAL SOLUTIONS, INC will automatically place an order on behalf of qualifying customers for the new license. Serial numbers corresponding to these orders will be available via the Licensing Web Site at: [www.osigov.com](http://www.osigov.com). NOTE: All orders placed on the CHES managed PTC WINDCHILL BPA shall include the end-use customers POC information (name, email address and phone number) to ensure that the appropriate person is notified when an upgrade is available. If end-use customer information is classified, then an intermediate POC must be listed who will be responsible for forwarding upgrade notifications to the classified end-use customer.

7.1.7.2 Updates. An update includes enhancements and solutions to known issues with a product, but no major new features. OPTIMAL SOLUTIONS, INC provides updates to customers at no charge but does not automatically notify customers when an update is available. To find out if an update is available for a product, customers should go to the page for their product on the OPTIMAL SOLUTIONS, INC Web site at [www.osigov.com](http://www.osigov.com).

7.2. Technology Refreshment / Products and Services Improvement

7.2.1. The Contractor shall propose improvements to the products and services offered under this Agreement as products become commercially available. Proposals shall be submitted by the Contractor 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 GSA schedule. Discounts shall be at the same or greater discount level as provided under the original Agreement product and service prices.

7.2.2. If at any time during the life of this BPA, the original manufacturer of the equipment (includes software, licenses and upgrades (maintenance)) schedules the products for discontinuation, improvement and/or replacement, the BPA holder shall provide a proposal to include the new or revised products on the BPA under the appropriate line items. Proposed prices for new or revised products shall be constructed in accordance with this BPA for most favored prices. Discounts shall be at the same or greater discount level as the original BPA product prices. Proposals shall be submitted to the PCO within seven (7) days of the BPA holders awareness of the OEMs intent. Improvement of product includes new releases, updates, and upgrades including additional features and functionality, and successor or upgrade products.

7.2.3. Changes proposed by the Contractor shall become effective only upon written acceptance by the Government.

8. Pricing Terms

8.1. Base Pricing

8.1.1. Prices for commercial products and services are specified in Attachment 0001. BPA prices shall only escalate in accordance with the GSA Economic Price Adjustment clause. The same discount relationship (Discount Percentage off GSA Schedule price) shall be maintained during the term of this BPA.

8.1.2. The prices in Attachment 0001 will be reviewed annually or as required to determine whether a reduction is appropriate in accordance with section 8.2.

8.2. Most Favored Customer

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

8.3. Additional Price and Discount Terms

8.3.1. The government may secure additional discounts at the time of placing an order. Spot discounts are authorized and encouraged.

8.3.2. Special solutions and voluntary price reductions may be negotiated for individual orders. ARMY / Department of the NAVY customers are encouraged to consolidate their purchases of PTC WINDCHILL products prior to releasing requests for quotes under a CHES Enterprise Licensing Agreement (ELA). Ordering Officers should contact CHES for further details. CHES will evaluate consolidated requirements and may negotiate special terms/solutions and price reductions for specific orders as warranted by large volume purchases or other special circumstances.

9. Product and Pricing Data Submission

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9.1. Data Submission Format

9.1.1. Contractor shall submit and keep current all products, service and pricing data in the format described in Attachment 0001 (amended as required) for publication in all web and other methods for public and private display and access.

9.1.2. Changes to Contractors products or prices shall only be effective upon receipt of written approval from the Procuring Contract Officer (PCO).

9.2. UNSPSC

9.2.1. The United Nations Standard Products and Services Code (UNSPSC) is a required field in the Report of Sales submission found in Attachment 0004. The UNSPSC code permits software asset management through a standard coding structure. The UNSPSC is a coding system used to classify both products and services for use throughout the global marketplace. The management and development of the UNSPSC Code is coordinated by GS1 US. The current version is available free as a download at \\*HYPERLINK

"<http://www.unspsc.org>"<http://www.unspsc.org>.

10. Ordering

10.1. Ordering Guide

10.1.1. Attachment 0002 contains the ordering process and instructions that shall be followed by Ordering Offices and Contractor.

10.1.2. The Contractor shall post the Ordering Guide on its web site.

10.1.3. The Contractor shall immediately notify the Contracting Officer in the event of any changes to Contractor POC information, Contractor physical address, Contractor web address, or any other relevant information in the Ordering Guide.

10.2. Applicability of FAR and DFARS Provisions

10.2.1. Orders issued against this BPA are subject to the FAR clauses included in the underlying GSA Schedule.

10.2.2. Orders issued against this BPA are subject to the DFARS clauses as indicated by a check mark in Attachment 0003. Additional DFARS clauses may apply to the Delivery Order.

10.2.3. The DFARS clauses listed in Attachment 0003 are those in effect as of the effective date of this BPA. Ordering Offices are responsible for incorporating the most current version of the applicable DFARS clauses in the Delivery Order as appropriate.

10.2.4. Any additional DFARS clauses not checked in Attachment 0003 should be considered by the Ordering Offices for inclusion in the Delivery Order.

10.2.5. The Ordering Offices should consider the requirements of the FAR supplement of the end user component (local requirements), as they apply to commercial item acquisition and use of GSA schedules, in determining what additional clauses may be required for incorporation in the Delivery Oder issued by the Ordering Office.

10.3. Web Sites and Electronic Ordering

10.3.1. This BPA will be posted to the PD CHES website as part of the CHES program. The web site can be viewed at \\*HYPERLINK "<http://www.chess.army.mil>"<http://www.chess.army.mil> and is publicly accessible.

10.3.2. 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 Contractor 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.

10.3.2.1. On-line ordering may also be accomplished through CHES controlled web sites.

10.3.2.2. The Contractor shall ensure that the data and information relating to Contractors products, technical specifications, services, prices and other information related to this BPA is current, accurate, complete, and delivered by the Contractor in the standard format(s) described in Attachment 0001.

10.3.2.3. The Contractor shall maintain coordinated and integrated hypertext links to the CHES web site from their World Wide Web site(s).

10.3.2.4. The Contractor should provide electronic-commerce (EC)/EDI capabilities and accept and respond to secure on-line orders and customer requests consistent with the terms of this acquisition vehicle.

10.3.2.5. The Contractor shall use its commercially reasonable business efforts to adapt its business processes as technical requirements, environment and architecture evolve.

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10.4. Delivery Schedule.

10.4.1. The Contractor will be required to deliver all products within 30 business days of receipt of order. More expedient delivery terms may be proposed on individual orders, and are encouraged. Deliveries will be made to the address specified on the delivery orders issued against the BPA.

10.5. Delivery Notice.

10.5.1 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

10.6. BPA Ordering Suspension

10.6.1. There may be occasions where the Government may suspend ordering (by CLIN up to and including the entire BPA) or cancel the BPA for cause. Reasons for suspension or cancellation can include but are not limited to delinquent sales report submission, non-compliance to BPA terms and conditions, failure to maintain PTC WINDCHILL Authorized Licensing Center CHES reseller status; and/or PTC WINDCHILL partnering or teaming program Gold maintenance certification. (Note: Upon launch of the PTC WINDCHILL BPA, Contractor must hold a Gold level maintenance to retain their BPA. Any BPA holder that fails to retain a BPA will not have an opportunity for another BPA for the remaining duration of the BPA Ordering Period, inclusive of any exercised option ordering periods.) If a suspension is announced, the Contractor shall adhere to this suspension by not accepting or processing delivery orders for the suspended item(s).

11. Contractor BPA Management Obligations

11.1. Report of Sales

11.1.1. The Contractor shall provide a Report of Sales to the SPM and the PCO in electronic format within fifteen (15) days following completion of the quarterly reporting period, or as otherwise requested by the SPM. The report shall be submitted in the standard format shown in Attachment 0004. Sales reports are required even in those instances where no sales are made. The SPM or PCO shall provide written approval of each report to the Contractor.

11.3. Centralized Administration

11.3.1. The Contractor must provide centralized administration, in the form of a Program Manager, in support of all work performed under this Agreement. 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, educating the sales force and submission of quarterly reports.

11.4. Records

11.4.1. The Contractor shall maintain archival copies of all orders for the term of the Agreement and for 7 years after its expiration or termination. Copies shall be made available to the Government upon request.

11.5. Program Management Reviews (PMR)

11.5.1. The Contractor shall participate in regular reviews of the progress of the Agreement. Reviews shall be held at least twice yearly as scheduled by the Software Product Manager. During these reviews the Contractor shall report on status of Agreement sales, sales leakage, marketing and any outstanding issues concerning the Agreement, among other things. PMR agenda and presentation format shall be provided by the SPM to Contractor prior to each PMR. Travel expenses are the responsibility of the Contractor.

11.6. Sales Leakage Prevention

11.6.1. The goals of the CHES Program can only be realized through cooperation between the Government and the Contractor to direct appropriate sales through the CHES vehicles. The Contractor shall ensure that all sales personnel are aware of the CHES Program and enforce the policy that this Agreement is the preferred procurement vehicle for the products within. Within sixty (60) days of the effective date of this BPA, Contractor shall submit its plan of action and define the processes required to conform to the requirements of this BPA and shall keep current the plan throughout the Term of this BPA.

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11.6.2. The Contractor shall establish a process to regularly audit sales to Government buyers, determine where sales outside the CHESSE vehicle are occurring, and take appropriate action to direct further sales through the CHESSE vehicle. Results of these audits will be presented as an agenda item during PMRs.

13. Personal Data and Personally Identifiable Information (PII)

13.1. Compliance with Privacy Act

13.1.1. Contractor must comply with the Personally Identifiable Information (PII) requirements as set forth in the Privacy Act of 1974, Public Law 93-579, as amended, including all policies and directives issued therein including, for example, DoD Directive 5400-11, DoD Program dated May 8, 2007, as may also be amended from time to time or superseded.

14. Termination

14.1. Effect of Termination.

14.1.1. Effect of Termination by Contractor. Notwithstanding any termination of this Agreement, by Contractor, including any Attachments to this Agreement, DOD shall have the right to continue use of any Products and Documentation that were purchased by a Delivery Order issued prior to the termination of the Agreement.

14.2. Surviving Provisions.

14.2.1. The following sections shall survive the termination or expiration of this Agreement: Section 5 (Term & Survival); Section 13 (Personal Data and Personally Identifiable Information); Section 14.1 (Effect of Termination); Section 13.2 (Surviving provisions); Section 16 (General Provisions) and any software licenses acquired pursuant to this BPA where usage rights are perpetual.

15. Relationship of the Parties

15.1. Independent Contractors.

15.1.1. Each party will act solely as an independent contractor. Nothing contained herein will be construed to create the relationship of principal and agent, employer and employee, partners or joint ventures. Neither party assumes any liability for personal injury or property damage arising out of the other party's performance of this Agreement.

15.1.2. The Contractor will be responsible for all obligations in this Agreement whether or not Contractor provides them directly. Further, the Contractor is the sole point of contact with regard to all contractual matters, including payment of any and all charges under orders executed under this Agreement.

15.2 ON-RAMP PROCEDURES: The Government reserves the right to reopen competition at any time during the term of the BPA. The Government will review the need for additional Contractors as needed. When an on-ramp is used, the Government will advertise the reopening of the competition on FedBizOpps and GSA ebuy, and awardees shall meet the criteria established in the initial solicitation. The evaluation and selection of awardees for any on-ramp will be exactly the same as the evaluation and award criteria used for the initial basic BPA awards. Any new awardees will compete with any existing or remaining Contractors for all delivery orders.

16. General Provisions

16.1. YEAR 2000 Compliance

16.1.1. All products provided under this BPA shall be Y2K compliant as defined in FAR 39.002.

16.2. Headings

16.2.1. The section captions and headings used in this Agreement are for reference only, and are not to be construed in any way as terms or be used to interpret the provisions of this Agreement.

16.3. Notices

16.3.1. All notices required under this Agreement will be in writing and will be sent to the Government PCO and the Contractors designated Program Manager for this Agreement at the email address set forth on page 1 of this Agreement, unless otherwise agreed to by the parties. Notices are considered to be "issued" when copies are either deposited in the mail, transmitted by facsimile, or sent by other electronic commerce methods, such as email.

16.4. Reference to Days

16.4.1. All references in this Agreement to days will, unless otherwise specified, mean calendar days.

16.5. Severability

16.5.1. If any term or provision of this Agreement is held to be illegal or unenforceable, the validity or enforceability of the remainder of this Agreement shall not be affected. In such event, the parties will negotiate a valid, enforceable substitute provision

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|---------------------------|---|---------------------------|
| <b>CONTINUATION SHEET</b> | <b>Reference No. of Document Being Continued</b><br><b>PIIN/SIIN</b> W52P1J-12-A-0017<br><b>MOD/AMD</b> | <b>Page</b> 9 <b>of</b> 9 |
|---------------------------|---|---------------------------|

**Name of Offeror or Contractor:** OPTIMAL SOLUTIONS INC.

that most nearly achieves the parties original intent in entering into this Agreement or provide an equitable adjustment in the event no such provision can be added.

16.5.2 The Government does not agree to any Terms and Conditions that violate federal law or regulations including any Terms and Conditions contained in any third party software license agreement.

16.6. Waiver

16.6.1. Neither party's failure to exercise or delay in exercising any of its rights under this Agreement shall constitute or be deemed to constitute a waiver, forfeiture, or modification of such rights or any others. Waiver of a breach of this Agreement shall not be deemed a waiver of any future breach. Any waiver must be in writing and signed by each party's representative.

16.7. Dispute Resolution

16.7.1. In the event of disagreement with respect to any aspect of this Agreement, the parties agree to discuss in good-faith to reach an amicable resolution, and to escalate such resolution process to the appropriate members of their respective management organization who have the power and authority to achieve a successful resolution.

16.8. Entire Agreement

16.8.1. This Agreement, together with all Attachments hereto, and Delivery Orders, constitutes the entire Agreement between the ARMY and the Department of the NAVY and Contractor and supersedes all prior or contemporaneous communications, representations, and Agreements, whether oral or written, regarding the subject matter of this Agreement. No modifications of, or amendments to, the terms of this Agreement shall be valid unless in writing and signed by an authorized representative of each party.

\*\*\* END OF NARRATIVE A0001 \*\*\*