

<b>SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS</b>				1. REQUISITION NUMBER		PAGE 1 OF 2	
<i>OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, &amp; 30</i>							
2. CONTRACT NO. F01620-03-A-8003		3. AWARD/EFFECTIVE DATE 31 JUL 2003		4. ORDER NUMBER		5. SOLICITATION NUMBER	
7. FOR SOLICITATION INFORMATION CALL:		a. NAME		b. TELEPHONE NUMBER (No collect calls)		8. OFFER DUE DATE/ LOCAL TIME	
9. ISSUED BY HQ SSG/AQ		CODE FA8771		10. THIS ACQUISITION IS <input type="checkbox"/> UNRESTRICTED <input type="checkbox"/> SET ASIDE: % FOR <input type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> HUBZONE SMALL BUSINESS  <input type="checkbox"/> 8(A) NAICS: SIZE STANDARD:		11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED <input type="checkbox"/> SEE SCHEDULE <input checked="" type="checkbox"/> 13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700) 13b. RATING DO-A7 14. METHOD OF SOLICITATION <input type="checkbox"/> RFQ <input type="checkbox"/> IFB <input type="checkbox"/> RFP	
DEPARTMENT OF THE AIR FORCE HQ SSG/AQ 490 EAST MOORE DR., SUITE 270 MAFB - GUNTER ANNEX AL 36114-3000 JOHN R. BUZAN 334-416-3839 John.Buzan@Gunter.AF.Mil				12. DISCOUNT TERMS N			
15. DELIVER TO SEE SF1449 Continuation				16. ADMINISTERED BY HQ STANDARD SYSTEMS GROUP CONTRACTING DIRECTORATE (PK) 490 EAST MOORE DRIVE SUITE 270 MAFB-GUNTER ANNEX AL 36114 SCD: C PAS: (NONE)			
17a. CONTRACTOR/ OFFEROR TELOS CORPORATION 19886 ASHBURN ROAD ASHBURN VA 20147-2358		CODE 7B108		FACILITY CODE		18a. PAYMENT WILL BE MADE BY DFAS PE-FPO (DOD BRANCH) 130 WEST AVE. SUITE A PENSACOLA, FL 32508-5120	
TELEPHONE NO. (703) 724-3800						CODE N68566	
<input checked="" type="checkbox"/> 17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER				18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a. UNLESS BLOCK BELOW IS CHECKED <input type="checkbox"/> SEE ADDENDUM			
19. ITEM NO.		20. SCHEDULE OF SUPPLIES/SERVICES		21. QUANTITY		22. UNIT	
		See SF1449 Continuation (Attach Additional Sheets as Necessary)				23. UNIT PRICE	
						24. AMOUNT	
25. ACCOUNTING AND APPROPRIATION DATA				26. TOTAL AWARD AMOUNT (For Govt. Use Only) \$0.00			
<input type="checkbox"/> 27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4. FAR 52.212-3 AND 52.212-5 ARE ATTACHED. ADDENDA <input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED.				<input checked="" type="checkbox"/> 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4. FAR 52.212-5 IS ATTACHED. ADDENDA <input checked="" type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED.			
28. <input checked="" type="checkbox"/> CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN 1 COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED HEREIN.				29. <input type="checkbox"/> AWARD OF CONTRACT: REF. _____ OFFER DATED _____. YOUR OFFER ON SOLICITATION (BLOCK 5) _____ INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS: SEE CONTINUATION.			
30a. SIGNATURE OF OFFEROR/CONTRACTOR				31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER)			
30b. NAME AND TITLE OF SIGNER (Type or print)		30c. DATE SIGNED		31b. NAME OF CONTRACTING OFFICER (Type or print) HARRY M. BRYAN III		31c. DATE SIGNED	
32a. QUANTITY IN COLUMN 21 HAS BEEN <input type="checkbox"/> RECEIVED <input type="checkbox"/> INSPECTED <input type="checkbox"/> 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 <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL		34. VOUCHER NUMBER		35. AMT VERIFIED CORRECT FOR		36. PAYMENT <input type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL	
37. CHECK NUMBER							
38. S/R ACCT NUMBER		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/MMM/DD)		42d. TOTAL CONTAINERS	

DOCUMENT	PGS	DATE	TITLE
EXHIBIT A	11		SF1449 CONTINUATION - TELOS ESA BPA F01620-03-A-8003
ATTACHMENT 1	6	29 JUL 2003	ATTACHMENT A - PRICING FOR DOD ENTERPRISE SOFTWARE INITIATIVE BPA
ATTACHMENT 2	3		ATTACHMENT B - XACTA SOFTWARE SUBSCRIPTION LICENSE AGREEMENT
ATTACHMENT 3	2		ATTACHMENT C - REPORT OF SALES (FORMAT)

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

In the spirit of the National Performance Review, the Department of Defense (DoD) and Telos Corporation 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-4315D.

Federal Supply Schedule Contract Blanket Purchase Agreements (BPA) reduce 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 – Product and Price List
- b. Attachment B – License Agreement
- c. Attachment C – Report of Sales Format

### **A. TERMS AND CONDITIONS**

1. Pursuant to General Services Administration (GSA) Federal Supply Services (FSS) Contract Number GS-35F-4315D, Telos Corporation agrees to the following terms of a Blanket Purchase Agreement (BPA) with the Air Force's Standard Systems Group. All orders placed against this BPA are subject to the terms and conditions of the FSS Contract. The items on this BPA are set forth in Attachment A. License terms and conditions applicable to products acquired under this BPA are defined in the Telos Corporation License Agreement included as Attachment B.

2. **Extent of Obligation.** The Government is obligated only to the extent of authorized purchases actually made under this BPA. This agreement is limited to the DITSCAP version of Xacta Web C&A™.

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

4. **BPA Term.** The BPA expires five (5) years after award. This expiration is contingent upon the Contractor maintaining or renewing a GSA FSS Schedule. The BPA will be reviewed annually to ensure that it still represents a "best value". HQ SSG reserves the right to discontinue this BPA at any time with 30 days written notice within the provision of the referenced GSA Schedule.

**5. Pricing Terms.** Attachment A provides unit prices and special pricing for Enterprise Subscription Licenses as explained below. Product prices shall not escalate, and Attachment A product pricing is not subject to upward adjustment during the term of the BPA. Services pricing will be based on the then-current GSA prices, with appropriate discounting. Spot discounting is encouraged. The prices will be reviewed annually, or as required to determine whether a reduction is appropriate in accordance with the price reduction provisions of the agreement. 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.

**6. Discount Terms and Conditions.** Attachment A presents Telos' product and services discounting as follows:

- a. Individual or small purchases: Subscriptions may be purchased as required. Telos is offering a tiered discount based on the cumulative number of subscriptions purchased through this BPA. When a discount threshold is reached, all future purchases will be discounted at the new discount rate until the next threshold is achieved. Only subscriptions bought individually are tallied to compute the discount – Enterprise Subscriptions (as described below), services, and training are excluded from the computation.
- b. Enterprise Subscriptions: An Enterprise Subscription rate is being offered for each military service ("Service") within the DoD. When purchased, the Enterprise Subscription permits unlimited usage of the DITSCAP version of Xacta Web C&A within the Service. Significant additional discounts are offered for Enterprise Subscriptions.
- c. Professional Services and Training: A discount off the standard GSA price is offered for professional services and training. This discount applies to the purchase of professional services and training credits regardless of the subscription threshold described in Paragraph 6a.

**7. Out-Year Prices.**

Discount levels are achieved by quantity of subscriptions purchased only and are not governed by agreement year. Purchased quantity that is credited towards the volume discount level is cumulative for the total term of the BPA. Any creditable purchases made in one year are credited in the subsequent agreement years to determine the applicable discount level. The unit price for subscriptions for the discount level on Attachment A is not subject to upward adjustment during the term of the BPA.

8. Reserved.

**9. License.** Software licenses purchased under this BPA are Subscription Term or Enterprise Subscription Term licenses subject to the licensing provisions and the terms of the GSA Contract and the license agreement provided at Attachment B. Individually purchased licenses are transferable within the DoD and authorized users (see B.2), except that a license may not be transferred after a project key has been issued. Licenses purchased as part of an Enterprise Subscription are transferable only within the Service that purchased the Enterprise Subscription. 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. The Order of Precedence for resolving any inconsistency between the Attachment B Commercial License and the GSA contract terms shall be as specified in the GSA contract's Commercial Item clause, FAR 52.212-4, and the provisions of FAR 52.212-4 specified in FAR

12.302, as required by Federal law, shall prevail over any terms of the commercial license. The parties agree that the License's paragraph 7.06 provision does not meet the requirements of 5 USC 575 to constitute an agreement for and statutory approval of an agreement to submit to binding arbitration

10. **Media.** The Xacta Web C&A software is available via CD or download from the Xacta web site ([www.xacta.com](http://www.xacta.com)). The Users' Ordering Guide, to be prepared in accordance with Paragraph C.3 of this BPA, will provide specific instructions for downloading the software and obtaining subscription keys.

## 11. **Support and Maintenance.**

11.1. **Support.** Licenses purchased under this BPA are Term Subscriptions. That is, the software is licensed for the specified term (1 year or 3 years) and worldwide support is included for the duration of the subscription at no additional cost. This support includes:

- a) Help Desk (24x7x365)
- b) Telephonic support for installations (8AM to 5PM EST, or by prior arrangement)
- c) New product releases
- d) Knowledgebase updates
- e) Vulnerability feeds
- f) Xacta Advisor (on-line technical assistance from Xacta staff) (8AM to 5PM EST)
- g) Xacta Forum (customer peer-to-peer service) (24x7x365)

11.2. **Maintenance.** All maintenance is provided for the term of the subscription (see Paragraph 11.1 above).

12. **Professional Services.** Telos is offering a discount for professional services purchased off this BPA. Attachment A presents the discount schedule for services. Services are described in Telos' GSA Schedule, a copy of which is available electronically. Orders for services may be Time and Material (T&M) or Firm-Fixed Price (FFP). Instructions for ordering services will be included in the Users' Ordering Procedures (reference Paragraph C.3).

13. **Training.** Each individual subscription or enterprise subscription includes training credits. Attachment A identifies the number of training credits provided. Each training credit can be redeemed for one day of training for one person at a scheduled Xacta class. Training is conducted at the Telos/Xacta facility located in Ashburn, VA. Due to class size limits, training must be scheduled in advance. Additional training credits may be purchased. A discount schedule for training credits is provided in Attachment A. On-site training or custom courses will be provided on a case-by-case basis. The price for on-site training or custom courses will be provided at the time of request and will be based on the service categories described in Paragraph 12 above.

14. **Technology Improvement.** The Government may solicit and the BPA holder is encouraged to propose independently, technology improvements to the BPA. 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 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 equipment (includes software, hardware and firmware) schedules the products for discontinuation, improvement and/or replacement, the BPA holder shall provide a proposal to include the new or revised products on the BPA under the appropriate line items. Discounts shall be at the same or greater discount level as the original BPA product prices. Proposals shall be submitted to the Contracting Officer within seven (7) days of the BPA holder's awareness of the OEM's intent. Improvement of product includes new releases, updates, upgrades including additional features and functionality, and successor or upgrade products.

## **B. ADMINISTRATION AND AUTHORIZED USERS**

1. Administration of this BPA will be performed by the following organization:

HQ Standard Systems Group  
Directorate of Acquisitions  
490 East Moore Drive, Bldg 892, Suite 270  
Gunter Annex MAFB, AL 36114

2. **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, and the Intelligence Community. This BPA is also open to DoD Contractors authorized to order in accordance with the FAR Part 51.

3. **BPA Points of Contact:**

a. **Contracting Office:**

Point of Contact:  
HQ Standard Systems Group  
AQIS Software Team  
501 E Moore Dr Bldg 884 Rm 1442  
Gunter Annex MAFB AL 36114

Procuring Contracting Officer (PCO):  
HQ Standard Systems Group  
AQIS Software Team  
501 E. Moore Dr Bldg 884 Rm 1440  
Gunter Annex MAFB AL 36114

POC: John R. Buzan  
Phone: 334-416-3839  
Fax: 334-416-5796  
Email: John.Buzan@Gunter.AF.Mil

PCO: Harry M. Bryan III  
Phone: 334-416-1102  
Fax: 334-416-5796  
Email: Harry.Bryan@Gunter.AF.Mil

b. **Software Product Manager (SPM):**

Software Product Manager (SPM):

or Alternate Point of Contact:

HQ Standard Systems Group  
AQIS Software Team  
501 E Moore Dr Bldg 884 Rm 1442  
Gunter Annex MAFB AL 36114

HQ Standard Systems Group  
AQIS Software Team  
501 E. Moore Dr Bldg 884 Rm 1440  
Gunter Annex MAFB AL 36114

SPM: Robert K. Spredbury  
Phone: 334-416-2306  
Fax: 334-416-5796  
Email: Robert.Spredbury@Gunter.AF.Mil

POC: Robert H. Hamrick  
Phone: 334-416-2303  
Fax: 334-416-5796  
Email: Robert.Hamrick@Gunter.AF.Mil

**c. Financial Management Office (FMO):**

HQ Standard Systems Group  
AQIS Software Team  
501 E Moore Dr Bldg 884 Rm 1437  
Gunter Annex MAFB AL 36114

FMO: Robert H. Hamrick  
Phone: 334-416-2303  
Fax: 334-416-5796  
Email: Robert.Hamrick@Gunter.AF.Mil

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

**C. ORDERING**

1. DFARS Section 208.74 directs 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.don-imit.navy.mil/esi>.

2. **Delivery Orders.** The scope of this effort is worldwide. Delivery requirements 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 (applies to all orders, except for Enterprise Subscriptions, which are described in Paragraph 2b below). 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, or on an authorized form such as a Standard Form (SF) 1449 or Department of Defense (DD) Form 1155.
- b. Enterprise Subscriptions must be negotiated through the SSG Contracting Officer and Software Product Manager, as identified in Paragraph B.3.a and B.3.b above. Procedures for ordering licenses under the Enterprise Subscription will be defined during negotiations.

**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 (currently <http://gsa.telos.com/pdf/terms.pdf> ) 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
- 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.

The Contractor shall adapt its business processes, at no additional cost to the government, as the DoD Virtual Information Technology Marketplace (VITM) technical requirements, environment and architecture evolve. The VITM may be reached via the web site [www.vitm.gov](http://www.vitm.gov).

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

**5. Delivery Schedule.** The Contractor shall ship the software on CD or make the software available for electronic download within two (2) business days from acceptance of an order, as

defined in the GSA Schedule.

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, 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 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.

#### 4. **Fees and Payments.**

4.1 **GSA Industrial Funding Fee.** The 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.

4.2. **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 the completion of the reporting period. Negative reports are required. 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.

#### 4.3 **Reserved**

4.4 **Fee Distribution.** The Air Force, Army 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 Air Force, Army, Navy or DOD as appropriate.

##### 4.4.1 **ALL SALES:**

The 2% ACT fee is split equally between the DoD Component whose customer places the order and the DoD Component that manages the ESI agreement. In other words, any Navy order against an ESI agreement managed by the Navy results in a 1% portion of the 2% fee being returned to the Navy acquisition organization (listed under Navy Sales). The Air Force will retain the entire 2% fee under orders issued for Air Force activities or those activities that do not collect a fee under the ESI agreements managed by the Air Force. 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 Air Force shall be calculated at 1% for Army sales, 1% for Navy sales and 2% for all other 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 F01620-03-A-0004

ESI-SW Fee Sharing

Checks must include the following information to ensure proper crediting of the payment:

F01620-03-A-0004

DoD Telos Corporation Enterprise Software Agreement

## ACT Fee

Send check and transmittal letter to:  
DFAS OPLOC/PE  
Building 603-2, Code FDA-SSG  
130 West Avenue, Suite A  
Pensacola, FL 32508-5120

FAX a copy of the check and letter to:  
HQ SSG/ITS  
Attn: Bob Hamrick, Bldg 884, Rm 1437  
501 East Moore Drive  
MAFB-Gunter Annex, AL 36114-3004  
FAX: (334) 416-5796

### 4.4.2 ARMY SALES:

The amount of ACT Fee due DFAS Pensacola shall be calculated at 1% of all Army 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 F01620-03-A-0004  
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:  
Defense Finance & Accounting Service  
Code AIF  
Attn: DFAS-PE (AIF-SCP)  
130 West Avenue, Suite A  
Pensacola, FL 32508-5120

Mail a copy of the check and letter to:  
PEO Enterprise Information Systems  
Assistant PM, Army Small Computer Program  
SFAE-PS-EI-SCP (Attn: Financial Support  
Group)  
Fort Monmouth, NJ 07703-5605

### 4.4.3 NAVY SALES:

The amount of ACT Fee due DFAS Pensacola shall be calculated at 1% of all Navy 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:  
F01620-03-A-0004  
DoD Telos Corporation Enterprise Software Agreement ACT Fee

If using overnight or express mail, send check to:  
SPAWAR Systems Center Charleston  
Attn: Jakki Rightmeyer  
Norfolk Office  
Code 645.2, Bldg. V53  
9456 Fourth Avenue  
Norfolk, VA 23511-2130

If using regular mail, send check to:  
SPAWAR Systems Center Charleston  
Attn: Jakki Rightmeyer  
Norfolk Office  
Code 645.2, Bldg V53  
P.O. Box 1376  
Norfolk, VA 23501-1376

## 5. Telos Remittance Addresses

(Mailing address for checks)

Telos Corporation  
NW7993  
PO Box 1450  
Minneapolis, MN 55485-7993

(Federal Express address for checks)

Telos Corporation  
c/o Regulus  
NW7993  
1350 Energy Lane, Suite 200  
St. Paul, MN 55108

(ACH/EFT payments)

Wells Fargo  
ABA Routing No. 121000248  
Telos Corporation  
Account No. 4945023398  
ACH Coordinator is:  
Keith Flynn, V.P. Treasury Management, (p) 314-290-5077

## **E. BPA MANAGEMENT AND OVERSIGHT**

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

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 made on a monthly basis or as otherwise requested by the SPM. The monthly report is due, in electronic format, within fifteen (15) days of the monthly reporting period. In addition to the regular monthly submissions, a Quarterly Report of Sales shall also accompany the ACT Fee payment. Reports of Sales shall be submitted to the SPM and PCO in electronic format within fifteen (15) days following the completion of the monthly reporting period. If the BPA contains services current ACT fee paid by Delivery Order and total ACT fees paid will be included in the report. The report shall be submitted in the standard format shown in Attachment C.

3. **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.

4. **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.

5. **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 agency sponsored events and news media geared to Government/DoD IT people.

## F. STANDARDS.

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

2. **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](http://www.section508.gov). The Contractor's Section 508 compliancy information can be found at <http://www.xacta.com/resources/>

3. **DoD Instruction 5200.40, DoD Information Technology Security Certification and Accreditation Process (DITSCAP).** All products provided under this BPA shall be compliant with the DITSCAP.

### 4. Other

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

52.237-2 -- Protection of Government Buildings, Equipment, and Vegetation (Apr 1984)

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**

**Pricing for DoD Enterprise Software Initiative BPA  
for  
Xacta Web C&A**



**Telos Corporation**  
**Attachment A: Pricing**  
**Pricing for DoD Enterprise Software Initiative (ESI) BPA**

Std. Discount

**Standard Subscription Discounts and Pricing for DITSCAP Version of Xacta Web C&A**

**Determination of Base BPA Price for Individually Purchased Subscriptions:**

Telos Part No.	Product Description	Training Credits	GSA Price (incl IFF)
XWCAS-001-000	Xacta Web C&A - 1 year Subscription -- DITSCAP Version	2	\$15,000
XWCAS-003-000	Xacta Web C&A - 3 year Subscription -- DITSCAP Version	4	\$30,000

**Discount Schedule for Cumulative Purchased Subscriptions (excluding Enterprise Subscriptions):**

Cumulative Qty. of Subscriptions	Discount	BPA Price 1-year Subscription XWCAS-001-000	BPA Price 3-year Subscription XWCAS-003-000
1 - 500	35.75%	\$9,637	\$19,274
501 - 1000	38.81%	\$9,178	\$18,356
1001 - 2000	42.89%	\$8,566	\$17,133
> 2000	45.95%	\$8,107	\$16,215

- NOTES:**
- Discounts apply to new subscriptions purchased after the threshold has been reached and are not retroactive to previously sold subscriptions. For example, the first 500 subscriptions will be priced at the 35.75% discount rate. The 501st subscription will be priced at a 38.81% discount.
  - Enterprise Subscription quantities are excluded from the discount computation.
  - The discounts listed above apply only to individually purchased subscriptions. They do not apply to professional services or training -- discounts for professional services and training are provided below.
  - For subscriptions purchased under this BPA only, Telos has increased the number of training credits for a 3-year subscription from two (2) to four (4). Each individually purchased subscription includes two (2) training credits for a 1-year subscription or four (4) training credits for a 3-year subscription. Each training credit can be redeemed for one day of training for one student for a scheduled course conducted at the Telos/Xacta facility in Ashburn, Virginia.

**Professional Services:**

**Telos Corporation**  
**Attachment A: Pricing**  
**Pricing for DoD Enterprise Software Initiative (ESI) BPA**

Std. Discount

<b>Telos Part No.</b>	<b>Labor Category Description</b>	<b>GSA Price (incl. IFF)</b>	<b>Discounted BPA Price</b>
GA-51089	Internet Security Engineer	\$75.09	\$73.51
GA-51091	Information Security Engineering Project	\$112.60	\$110.24
GA-51092	Information System Security Engineer	\$71.54	\$70.04
GA-51093	Sr. Information System Security Engineer	\$89.12	\$87.25
GA-51094	Information Security Certification Test Specialist	\$59.82	\$58.56
GA-51095	Sr. Information Security Certification Test Specialist	\$78.49	\$76.84
GA-51096	Information System Security Training and Awareness Specialist	\$57.46	\$56.25
GA-51102	Subject Matter Expert	\$170.91	\$167.32
GA-51107	Enterprise Security Consulting Program Manager	\$105.00	\$102.80
GA-51108	Certified Enterprise Security Consulting Program Manager	\$112.00	\$109.65
GA-51109	Enterprise Security Consultant	\$80.00	\$78.32
GA-51110	Certified Enterprise Security Consultant	\$88.00	\$86.15
GA-51111	Certification and Accreditation Enterprise Security Analyst	\$80.00	\$78.32
GA-51112	Certified Certification and Accreditation Enterprise Security Analyst	\$88.00	\$86.15
GA-51113	Sr. Certification and Accreditation Enterprise Security Analyst	\$95.00	\$93.01

- a. Professional Services may be purchased from this BPA using the labor categories in Telos' GSA Schedule.
- b. Professional Services will be discounted 2.1%. The table above lists the labor categories most commonly used for C&A efforts.
- c. Orders for professional services will be placed in accordance with the instructions contained in Telos' GSA Schedule.

**Telos Corporation**  
**Attachment A: Pricing**  
**Pricing for DoD Enterprise Software Initiative (ESI) BPA**

Std. Discount

- d. Orders for professional services may be time and material (T&M) or firm-fixed price (FFP).
- e. Spot discounting may be considered on an individual order basis.

**Additional Training Credits** may be purchased as the discounted price shown below.

Telos Part No.	Product Description	GSA Price (incl. IFF)	Discounted BPA Price
XCU	Xacta Web C&A Credit Unit – Utilized for training and support services	\$450	\$424

**Telos Corporation**  
**Attachment A: Pricing**  
**Pricing for DoD Enterprise Software Initiative (ESI) BPA**

Enterprise Subscription

**Enterprise Subscription Term License Pricing for DITSCAP Version of Xacta Web C&A**

<b>Military Service</b>	<b>1-year Enterprise Subscription (SIN 132-33)</b>	<b>Training Credits for 1-year Subscription (SIN 132-50)</b>	<b>3-year Enterprise Subscription (SIN 132-33)</b>	<b>Training Credits for 3-year Subscription (SIN 132-50)</b>
Air Force (incl. Reserve and Guard)(see NOTE #1)	\$5,100,000	500	\$10,200,000	1,000
Army (incl. Reserve and Guard)	\$5,100,000	500	\$10,200,000	1,000
Navy/USMC (incl. Reserve)	\$5,100,000	500	\$10,200,000	1,000
Other DoD Agencies (non-Intel )	\$5,100,000	500	\$10,200,000	1,000
Individual Totals	\$20,400,000		\$40,800,000	
ANG Credit (see note #1 below)	(\$1,000,000)		(\$1,000,000)	
Individual Totals with Pre-8/31/03 ANG Discount	\$19,400,000		\$39,800,000	
<b>DoD-wide ESA (see note #2 below)</b>	<b>\$15,300,000</b>	<b>1,500</b>	<b>\$30,600,000</b>	<b>3,000</b>

**NOTE #1:** Telos will credit \$1,000,000 (plus corresponding reduction in the ACT Fee) towards the Air Force ESA due to a previous ANG order, if the ESA order is awarded to Telos before August 31, 2003, resulting in total pricing of \$4,080,000 (\$4,000,000 plus 2% ACT fee) for a 1-year Air Force ESA or \$9,180,000 (\$9,000,000 plus 2% ACT Fee) for a 3-year Air Force ESA. If the order is awarded after August 31, 2003, the 1-year Air Force ESA price is \$5,100,000 and the 3-year Air Force ESA price is \$10,200,000.

**NOTE #2:** The DoD-wide ESA provides unlimited number of subscriptions across all DoD (excluding Intelligence agencies) for the DITSCAP version of Xacta Web C&A.

**NOTE #3:** Full payment is due up front with payment terms of net 30 from the date of Telos' invoice.

**NOTE #4:** All pricing above is inclusive of the 1% GSA Industrial Funding Fee (IFF) and the 2% ACT Fee.





## SOFTWARE SUBSCRIPTION LICENSE AGREEMENT

This Software Subscription License Agreement ("Agreement") is made between Xacta Corporation, organized under the laws of Delaware, USA (hereinafter called "Xacta"), and Subscriber Licensee.

### NOTICE- READ BEFORE INSTALLING

**CAREFULLY READ THE TERMS AND CONDITIONS OF THIS AGREEMENT BEFORE INSTALLING THE SOFTWARE. INSTALLATION OF THE SOFTWARE INDICATES YOUR ACCEPTANCE OF THESE TERMS AND CONDITIONS. IF YOU DO NOT AGREE WITH THE TERMS AND CONDITIONS, PROMPTLY RETURN THE SOFTWARE TO XACTA FOR A REFUND OF THE AMOUNT PAID.**

WHEREAS Xacta has licensing rights in certain of the designated computer programs ("Program" as further hereinafter defined); and

WHEREAS, the licensed Program contains Xacta proprietary technology and embeds third party software including portions of products licensed by Xacta with the rights to SUBSCRIBER LICENSEE; and

WHEREAS, SUBSCRIBER LICENSEE may be engaged in hosting certain computer software for providing services to computer users and systems within the SUBSCRIBER LICENSEE enterprise NOW, THEREFORE, in consideration of the premises and mutual covenants hereinafter set forth and other good and valuable consideration, the adequacy of which is hereby acknowledged, the parties agree as follows:

### ARTICLE 1 - DEFINITIONS

1.01 "Program" means:

1) Xacta Software: Xacta computer program(s) and related documentation as originally licensed from Xacta, including all product components and subsequent releases by Xacta for use in connection with or replacement of the certain specified software, and,

2) THIRD PARTY Software: third party software and any enhancements and features added to the Program, and other Program components developed or acquired by Xacta and provided to SUBSCRIBER LICENSEE under this Agreement. The term "Program" includes documentation and related materials pertinent to such Program and any updated Program or portion of a Program hereinafter furnished to SUBSCRIBER LICENSEE by Xacta for use in connection with or replacement of a Program, including future enhancements and additions hereto as approved in writing by Xacta and SUBSCRIBER LICENSEE.

1.02 "Proprietary Information" shall mean proprietary and trade secret information embodied in software and other materials provided from one party to the other under this Agreement and not generally known or available to

the public, including Program Source Code and Object Code, as defined below, and computer program listings, techniques, algorithms, processes, manual, training materials provided a party under this Agreement.

1.03 "Source Code" shall mean a form of a computer program in which the program logic is easily deduced by a human being, such as a printed listing of the Program, or in an encoded machine-readable form such as might be recorded on magnetic disk or tape, from which a printed listing can be made by processing it with a computer.

1.04 "Object Code" shall mean the form of a computer program resulting from the translation or processing of Program Source Code by a computer into machine language or intermediate code, which is not convenient to human understanding of the program logic, but which is appropriate for execution or interpretation by a computer.

1.05 The "Effective Date" of this Agreement shall be the date on letter sent by Xacta to the SUBSCRIBER LICENSEE when the purchase is processed.

### ARTICLE 2 - SUBSCRIPTION LICENSE GRANT

2.01 Subject to the conditions hereinafter set forth and subscription fees paid, Xacta hereby grants to SUBSCRIBER LICENSEE a nontransferable (except pursuant to Section 7.01 herein below) subscription license to use and display the Program on one computer at the site specified in the ordering document for the term of the subscription.

2.02 No rights or licenses are granted herein to SUBSCRIBER LICENSEE, expressly or by implication, under any Xacta intellectual property, patents or any applications for patent, designs or proprietary data, except as provided for by this license agreement.

2.03 This Agreement is subject to and conditioned upon compliance with the US Export Administration Act and the applicable regulations thereunder (collectively, the "US Export Laws"). SUBSCRIBER LICENSEE acknowledges and understands that neither the Program,

nor the technical data relating to the Program is intended to be used for any purpose prohibited by the US Export Laws, including but not limited to nuclear proliferation, chemical/biological weapons or missiles. SUBSCRIBER LICENSEE will not export or re-export the Program to any destination subject to export restrictions under U.S. law, unless prior written authorization is obtained from the appropriate U.S. agency.

2.04 Xacta shall provide technical telephone support , documentation, active updates and training services to SUBSCRIBER LICENSEE.

2.05 During the term of this Agreement, Xacta agrees to make upgrades, modifications and enhancements of the Xacta Program available to SUBSCRIBER LICENSEE at no additional charge to SUBSCRIBER LICENSEE.

2.06 Xacta shall provide upgrades and enhancements to SUBSCRIBER LICENSEE within thirty days of completion of such upgrades and enhancements. SUBSCRIBER LICENSEE agrees to furnish applicable software for any requests for upgrades and enhancements not listed hereinabove. Xacta shall then provide all configuration management thereof.

2.07 The Program and all copies (in whole or part) shall remain the exclusive property of Xacta. Customer shall not modify, reverse engineer, reverse assemble, reverse compile any Program or part thereof, or create derivative works based on any Program or any part thereof. Customer shall not remove or alter any trademark, copyright, or other proprietary notice contained on or in the Program.

2.08 Nothing contained in this Agreement shall be construed as granting to SUBSCRIBER LICENSEE any other right or license, either express or implied, except the express rights hereinabove granted.

2.09 This Agreement does not constitute nor include a sale, lease, loan or transfer of the Program, upgrades, or enhancements thereto in any form by the parties hereto.

2.10 No rights or licenses are herein granted to SUBSCRIBER LICENSEE, expressly or by implication to use the names Xacta Corporation, Xacta or any trademark or trade name owned by Xacta, or any trademark or trade name which may cause confusion as to origin and source of manufacture between Xacta and SUBSCRIBER LICENSEE.

### **ARTICLE 3 - CONSIDERATION**

3.01 In consideration of the rights granted to SUBSCRIBER LICENSEE under Article 2 herein, SUBSCRIBER LICENSEE shall pay subscription fees according to a duly authorized ordering document released against this Agreement and accepted by Xacta.

3.02 SUBSCRIBER LICENSEE shall be billable under an ordering document released against this Agreement and subscription and other fees shall be paid to Xacta by SUBSCRIBER LICENSEE within thirty (30) days after the invoice date. All such fees shall be free of any applicable taxes, charges, or remittance fees levied by any United States or foreign governmental agency. SUBSCRIBER LICENSEE will pay all applicable sales,

use, personal property or similar taxes, tariffs or governmental charges, exclusive of Xacta's income tax. All fees received by Xacta in foreign currencies shall be converted to United States Dollars at the exchange rates quoted in the national edition of the Wall Street Journal on the last business day of the month in which payment is due.

3.03 Xacta shall deliver to SUBSCRIBER LICENSEE the Content Package and the Program in accordance with the ordering document.

### **ARTICLE 4 - PROPRIETARY RIGHTS AND CONFIDENTIALITY**

4.01 Xacta represents and warrants that the Program is and shall at all times be and remain the sole and exclusive property of Xacta and the third party Licensors from which Xacta has obtained the right to grant, and to grant others the right to grant sublicenses. SUBSCRIBER LICENSEE shall derive no right, title or interest therein except as expressly set forth in this Agreement.

4.02 All right, title and interest in the Program, subject to the ownership rights of third parties in portions of the Program and the rights granted to SUBSCRIBER LICENSEE under Article 2, will remain in Xacta.

4.03 Each party agrees to protect the confidentiality of the Program and any Proprietary Information thereof (including methods or concepts utilized and the result of any benchmark tests) and all other information identified by one party to the other party as proprietary and confidential with the same standard of care which it uses to protect its own valuable trade secrets and proprietary information, but in no event less than reasonable care. Proprietary Information shall not be disclosed to any third party without the express written consent of the disclosing party (except for recipient party's employees and consultants who are bound by a written agreement with recipient party to maintain the confidentiality of such Proprietary Information in a manner consistent with this Agreement). Neither party shall have any such obligation with respect to information which:

- (1) are already or otherwise become publicly known through no act or failure to act of either party; or
- (2) are lawfully received from third parties subject to no restriction of confidentiality.

### **ARTICLE 5 - LIMITATION OF WARRANTIES AND REMEDIES**

5.01 Xacta warrants that it has the right to license others under its rights in the Program. However, in the event the Program is held by a court of competent jurisdiction to infringe on a valid patent, copyright or trade secret, Xacta shall have the option in its sole discretion either to (i) procure for SUBSCRIBER LICENSEE the right to continue using said Program, (ii) replace or modify the same to make use non-infringing, or (iii) refund to SUBSCRIBER LICENSEE the amount paid under this Agreement for the infringing portion of the Program less a

straight line depreciation assuming a useful life of five years.

5.02 Neither Xacta, nor any other software organizations from which Xacta has obtained the right to grant, and to grant others the right to grant sublicenses:

(1) MAKES ANY WARRANTY OR REPRESENTATION WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE WITH RESPECT TO THE PROGRAM; OR,

(2) ASSUMES ANY LIABILITY WHATSOEVER WITH RESPECT TO ANY USE OF THE PROGRAM OR ANY PORTION THEREOF OR WITH RESPECT TO ANY DAMAGES WHICH MAY RESULT FROM SUCH USE.

#### **ARTICLE 6 - TERM AND TERMINATION**

6.01 Unless sooner terminated as herein provided, the term of this Agreement shall begin on the Effective Date and shall continue through the subscription period, for which subscription fees were paid, as stated on the ordering document.

6.02 If either party hereto defaults in fulfilling any material obligations and conditions set forth in this Agreement, and such default has not been remedied within sixty (60) days after notice specifying the nature of such default, the party not in default shall have the right to terminate this Agreement by giving written notice of such termination to the defaulting party.

6.03 Upon termination of this Agreement as provided hereinabove, SUBSCRIBER LICENSEE shall return all copies of the Program and documentation relating thereto, including copies of any and all Proprietary Information associated with the Program then in its possession, to Xacta within thirty (30) days of the effective date of the termination.

6.04 The right of either party to terminate this Agreement shall not be affected in any way by its waiver of, or failure to take action with respect to, any previous default.

6.05 Surviving termination of this Agreement for any reason are the provisions of Articles 2.03, 4, 5; 6.05, and any cause or action or claim of either party accrued or to accrue because of any breach or default by the other party including, but not limited to, injunctive relief and any other relief available whether in law or in equity.

#### **ARTICLE 7 - MISCELLANEOUS**

7.01 This Agreement and the subscription license herein granted shall not be assignable by either party thereto without the prior, written consent of the other party, which consent shall not be unreasonably withheld, except that this Agreement may be assigned to a party's

affiliates or to a purchaser of substantially all of the assets of the business to which this Agreement pertains.

7.02 If any term or provision of this Agreement shall be determined by a court of competent jurisdiction to be invalid, the remaining terms and provisions shall remain in effect.

7.03 This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all previous agreements whether written or oral.

7.04 This Agreement may be modified, amended, superseded or terminated, other than by its terms, only by a writing duly signed by authorized representatives of both parties.

7.05 Any notice, report or statement required to be given or made hereunder shall be considered properly given if sent by registered or certified mail, return receipt requested, postage-paid to the respective address of each party as either of the parties shall have last furnished in writing to the other.

7.06 Except for injunctive relief relating to any unauthorized use or transfer of the program by SUBSCRIBER LICENSEE, any dispute or controversy arising out of or relating to this Agreement, or any modification or extension thereof, including any claim for damages, restitution or specific performance, rescission or reformation, or any combination of such remedies, shall be settled by arbitration, in accordance with the Commercial Arbitration Rules of the American Arbitration Association and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

7.07 This Agreement shall be construed in accordance with the laws of the state of Delaware.

7.08 Neither party will, without the other party's express written permission, use in advertising, publicity, marketing or otherwise any trade name, trademark or other identification or any abbreviation, contraction or simulation thereof owned or used by the other party.

7.09 No advertising or publicity matter having any reference to any of the parties to this Agreement shall be published, disseminated or distributed by any party to the Agreement, or anyone in such party's behalf, unless and until such matter shall have first been submitted to and approved in writing by the party referred to in the advertising or publicity matter.

#### **ARTICLE 8 – ORDER OF PRECEDENCE**

Any inconsistencies between this Agreement and other documents shall be resolved by giving precedence to this Agreement.

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REPORT OF SALES

Enterprise Software Agreement

N00104-01-A-Qxxx

Total Price on Order	Date Ordered	Actual Ship Date	End User Name	End User Phone	End User Fax	End User Email	Ordering Activity	Ordering Activity POC	Ordering Activity Phone	Comments
\$494.40	xx/xx/xx	xx/xx/xx	xxxxx	xxx-xxx-xxxx	xxx-xxx-xxxx	xxxxxx@xxxx.xxxx.xxx	CECOM xxxxxx, xx	xxxxx	xxx-xxx-xxxx	
\$556.20	xx/xx/xx	xx/xx/xx	xxxxx	xxx-xxx-xxxx	xxx-xxx-xxxx	xxxxxx@xxxx.xxxx.xxx	CECOM xxxxxx, xx	xxxxx	xxx-xxx-xxxx	
\$103.00	xx/xx/xx	xx/xx/xx	xxxxx	xxx-xxx-xxxx	xxx-xxx-xxxx	xxxxxx@xxxx.xxxx.xxx	xxxxx xxxxxx, xx	xxxxx	xxx-xxx-xxxx	
<b>TOTAL ACT FEE ON ARMY SALES</b>										
<b>ARMY ACT FEE @ 1%</b>										
<b>NAVY ACT FEE @ 1%</b>										
\$659.20	xx/xx/xx	xx/xx/xx	xxxxx	xxx-xxx-xxxx	xxx-xxx-xxxx	xxxxxx@xxxx.xxxx.xxx	xxxxx xxxxxx, xx	xxxxx	xxx-xxx-xxxx	
\$257.50	xx/xx/xx	xx/xx/xx	xxxxx	xxx-xxx-xxxx	xxx-xxx-xxxx	xxxxxx@xxxx.xxxx.xxx	xxxxx xxxxxx, xx	xxxxx	xxx-xxx-xxxx	
\$247.20	xx/xx/xx	xx/xx/xx	xxxxx	xxx-xxx-xxxx	xxx-xxx-xxxx	xxxxxx@xxxx.xxxx.xxx	xxxxx xxxxxx, xx	xxxxx	xxx-xxx-xxxx	
<b>TOTAL ACT FEE ON AIR FORCE SALES</b>										
<b>AIR FORCE ACT FEE @ 1%</b>										
<b>NAVY ACT FEE @ 1%</b>										
\$309.00	xx/xx/xx	xx/xx/xx	Sylvia Johnson	717-605-1548	717-605-4600	sylvia_c_johnson@icpmec.navy.mil	NAVICP Mechanicsburg, PA	xxxxx	xxx-xxx-xxxx	
\$247.20	xx/xx/xx	xx/xx/xx	Sylvia Johnson	717-605-1548	717-605-4600	sylvia_c_johnson@icpmec.navy.mil	NAVICP Mechanicsburg, PA	xxxxx	xxx-xxx-xxxx	
\$309.00	xx/xx/xx	xx/xx/xx	xxxxx	xxx-xxx-xxxx	xxx-xxx-xxxx	xxxxxx@xxxx.xxxx.xxx	xxxxx xxxxxx, xx	xxxxx	xxx-xxx-xxxx	
\$103.00	xx/xx/xx	xx/xx/xx	xxxxx	xxx-xxx-xxxx	xxx-xxx-xxxx	xxxxxx@xxxx.xxxx.xxx	xxxxx xxxxxx, xx	xxxxx	xxx-xxx-xxxx	
\$103.00	xx/xx/xx	xx/xx/xx	xxxxx	xxx-xxx-xxxx	xxx-xxx-xxxx	xxxxxx@xxxx.xxxx.xxx	xxxxx xxxxxx, xx	xxxxx	xxx-xxx-xxxx	
\$309.00	xx/xx/xx	xx/xx/xx	xxxxx	xxx-xxx-xxxx	xxx-xxx-xxxx	xxxxxx@xxxx.xxxx.xxx	xxxxx xxxxxx, xx	xxxxx	xxx-xxx-xxxx	
\$61.80	xx/xx/xx	xx/xx/xx	xxxxx	xxx-xxx-xxxx	xxx-xxx-xxxx	xxxxxx@xxxx.xxxx.xxx	xxxxx xxxxxx, xx	xxxxx	xxx-xxx-xxxx	
<b>ACT FEE ON NAVY &amp; DOD SALES @ 2%</b>										
\$3,759.50										