



DOD ESI AGENCY CATALOG GENERAL TERMS AND CONDITIONS



Introduction/Recitals

1.1. Federal Acquisition Streamlining Act

1.1.1. In the spirit of the Federal Acquisition Streamlining Act, the Naval Information Warfare Center, Pacific on behalf of the U.S. Department of Defense (DoD) Enterprise Software Initiative (ESI) (referred to hereafter as the “Government” or “DoD”) and Immix Technology (the “Contractor”) enter into this DOD ESI Agency Catalog Agreement, which includes all Attachments (collectively referred to as the “Catalog”) as of the Effective Date of the Catalog.

1.2. NASA SEWP V Contract

1.2.1. This Catalog is issued to reduce the administrative costs of acquiring commercial, open market software products and services from your NASA SEWP V contract.

1.2.2. All Orders placed against this Catalog are subject to the terms and conditions of your NASA SEWP V Contract: NNG15SC3B

1.3. DoD ESI

1.3.1. The DoD ESI is a joint DoD initiative designed to develop and implement a DoD enterprise procurement process. This Catalog is issued in accordance with the policy and guidelines provided in the Defense Federal Acquisition Regulation Supplement (DFARS) Section 208.74.

1.4. Scope:

The software product category of Open JDK Software and Solutions Commercial Off-the-Shelf (COTS) software products, subscriptions, maintenance, support, and services includes, but is not limited to Open JDK software products supported on the following operating systems:

Windows, Linux, Mac, Solaris, Linux x86, Linux PowerPC, AIX and IBM OSS

And may include:

Java Development Kit (JDK)

Java Runtime Environment (JRE)

JAVAC

JAR

Java doc

Jrocket

Java for Linux

Software products will fall under:

NAICS: 511210 - Software Publishers, Applications development and publishing, except on a custom basis

PCS: 7030 Information Technology Software

1.5. Term



1.5.1 The term of the DOD ESI Agency Catalog will commence on the Effective Date of the catalog (e.g. day of posting on <https://www.sewp.nasa.gov/>) and shall continue in force for the period of your NASA SEWP V contract, unless otherwise modified or canceled as provided herein and is contingent on maintaining your NASA SEWP V contract.

1.5.2 This Catalog expires upon completion of all Orders issued within the specified Catalog ordering period. This Catalog is contingent upon the Contractor maintaining or renewing its NASA SEWP V contract.

1.5.3 Other

1.5.3.1 On-ramp procedures: The Government reserves the right to on-ramp any Reseller or OEM at any time during the term of this Catalog, based on its assessment of the marketplace. When an on-ramp is used, the Government will award a catalog providing the awardee meet the criteria established in the initial RFAC.

1.5.3.2 Existing Catalog holders will not be required to resubmit quotes. New awardees will be expected to compete with the existing Contractors for Orders.

All new Catalogs awarded as an on-ramp will have the same Period of Performance (POP) as their NASA SEWP V contract.

1.5.3.3 Off-ramp procedures: If at any point the Contractor decides that it no longer prefers to participate in this Catalog, the Contractor may submit a request to the DOD ESI team and the NASA SEWP Contracting Officer to suspend its Catalog, with no less than a 90 day notice. The NASA SEWP PCO may at his or her sole discretion, accept the request to cease active participation in the Catalog. If a Contractor receives this permission and is currently under contract to perform under any Order, the Contractor will be required to continue to perform under the terms of the specific Order. This provision is independent of any other action permitted under the contract terms and conditions.

2. List of Attachments to the Catalog

2.1. All attachments to this Catalog will be binding on this Catalog and are incorporated by reference. Definitions and terms will be common throughout the document and Attachments.

2.2. The parties agree the Attachments listed in Section 2.3 apply to all orders placed under this Catalog and are binding terms and conditions.

2.3. The Attachments are set forth as follows:



ATTACHMENT #	TITLE
1	Applicable Federal Acquisition Regulation (FAR) and DFARS Clauses
2	DOD ESI Agency Catalog Product and Price List
3	DOD ESI Software License Agreement
4	DOD ESI Agency Catalog Ordering Guide
5	Glossary
6	Report of Sales Format
7	Fees and Payments

2.4. Catalog Funds Obligation

2.4.1. This Catalog does not obligate any funds. Funds will only be obligated on each Order.

3. **Authorized Users**

3.1. DoD or Agencies

3.1.1. This Catalog is open for ordering by the “DoD Departments and Agencies” on a world-wide basis. “Departments and Agencies” are defined by the Title 48 Code of Federal Regulations, Section 202.101. In addition, “DoD or Agencies” includes the Intelligence Community (IC) and the U.S. Coast Guard. For the purposes of this Catalog, a DoD component is defined as follows: the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff, the Unified Combatant Commands, the Inspector General of the Department of Defense (DoD IG), the Defense Agencies, the DoD Field Activities, the U. S. Coast Guard, *Intelligence Communities (IC) and Foreign Military Sales (FMS) with a Letter of Authorization.

*The Intelligence Community is a federation of Executive branch intelligence agencies and Organizations that are comprised of 17 member organizations
<https://www.dni.gov/index.php/what-we-do/members-of-the-ic> Office of the Director of National Intelligence (ODNI) is authorized to procure IT through the DOD ESI per the Memorandum of Agreement, dated 15 May 2008.

<https://dodcio.defense.gov/portals/0/documents/net-centric-moa.pdf>

3.1.2. Contractors and Integrators

Government contractors performing work for a DoD Component (as defined above) may place Orders under this Catalog on behalf of and for the benefit of the DoD entity if authorized by their cognizant Contracting Officer in accordance with the requirements of FAR 51 and/or DFARS 251 as appropriate.

4. **Catalog Ordering Period and Survival**

4.1. Ordering Period



4.1.1. If Orders issued within the Catalog Ordering Period, the order options may be exercised after the Catalog ordering end date provided that:

- 4.1.1.1 The initial order that includes the option was issued during the Catalog ordering period, and does not exceed 60 months past the expiration date of the NASA SEWP V Contract; and
- 4.1.1.2 The Ordering Office satisfies all other applicable regulations for exercise of options.

4.2 Acquisitions and Mergers

4.1.2. This Catalog shall survive unto Contractor, its Successors, rights and assignments. The terms and conditions in this Catalog 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 Catalog.

5. Organization of this Catalog

5.1. Catalog Structure

5.1.1. This Catalog is organized in two major segments:

- 5.1.1.1. The general terms and conditions
- 5.1.1.2. Attachments, which are binding agreements entered into and made effective at the time of the award of this Catalog.

5.2. Order of Precedence

5.2.1 This DOD ESI Agency Catalog supplements the terms of the underlying NASA SEWP V contract. In the event of a conflict, the terms of NASA SEWP V prevail. However, the Catalog's Software License Agreement (Attachment 3) prevails over any other license, EULA, product use terms and conditions, or any other similar type document however named that is part of NASA SEWP V.

5.2.2 In the event of any inconsistency between the general terms and conditions of this Catalog and the terms and conditions of any Attachment to this Catalog, 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 Catalog.



5.2.3 All Orders placed against this DOD ESI Agency Catalog shall hereby incorporate the terms and conditions of (1) your NASA SEWP contract, and (2) these DOD ESI Agency Catalog Terms and Conditions, including all Attachments.

5.2.4 In the event of a conflict between an ordering document or Contractor's license, support, maintenance or services agreement, the Order of Precedence provisions of FAR 52.212-4(s) control.

5.2.5 Additional terms and conditions contained in quotes or invoices shall not apply if the terms are more restrictive than those in the Catalog.

5.3. Glossary

5.3.1 A glossary of all terms is contained in Attachment 5.

6. **Product and Service Offerings**

6.1. Catalog

6.1.1. The Contractor shall make available to all authorized users of this Catalog the products and services contained in Attachment 2.

6.1.2 All products offered by Contractor shall comply with appropriate standards enumerated in the Gig Technical Guidance Federation (GTG-F). The GTG-F is an online repository of Information Technology (IT) standards. GTG-F online supports the continuing evolution of the DoD Information Technology Standard Registry (DISR) and the automation of all its processes and is the repository for information related to DOD IT and National Security Systems (NSS) standards. GTG-F should be used by anyone involved in the management, development, or acquisition of new or improved systems within DoD.

IT Standards, and the mandated compendium can be obtained from the DoD IT standards management tool, which is available for use by CAC-equipped authorized parties and can be accessed for account requests at <https://gtg.csd.disa.mil>

6.1.3 The License Agreement, attached as Attachment 3, shall be subject to the terms of the Order of Precedence, govern the grant, provision and use of all software licensed to and ordered by the DoD pursuant to this Catalog.

6.1.4 If at any time during the life of this Catalog, the original manufacturer of the equipment (includes software, hardware, services and firmware) schedules the products for discontinuation, improvement and/or replacement, the Catalog holder shall update its NASA SEWP V contract to provide a proposal to include the new or revised products on the Catalog under the appropriate line items. Proposed prices for new or revised products shall be constructed in accordance



with this Catalog for most favored prices. Discounts shall be at the same or greater discount level as the original Catalog product prices.

- 6.1.5 Changes proposed by the Contractor to this Catalog shall become effective only upon written acceptance by a DOD ESI contracting officer.

7. Pricing Terms

7.1. Base Pricing

- 7.1.1. Prices for commercial products and services are specified in Attachment 2. The Contractor shall not charge prices in excess of those listed in this Catalog. Contractor shall include all Fees in Contractor's prices in accordance with Section 10.
- 7.1.2 Technology refreshes shall be subject to paragraph 6.1.4. The prices in Attachment 2 will be reviewed annually or as required to determine whether a reduction is appropriate.

7.2. Additional Price and Discount Terms

- 7.2.1. The government may secure additional discounts at the time of placing an order. Additional spot discounts are authorized and encouraged.
- 7.2.2. Attachment 2 may contain additional discounts for volume-based or transaction-based discounts.
- 7.2.3. Future Initiatives: The Office of Management and Budget (OMB) is leading the Federal Wide Category Management effort by collaborating with agencies such as DoD to maximize cost savings and implement the best practices for acquiring commercial products and services. If during the Catalog Ordering Period such an initiative comes to fruition, the government reserves the right to expand the scope, the pricing and terms and conditions of this Catalog to include these authorized customers.

8. Product and Pricing Data Submission

8.1 Data Submission Format

- 8.1.1. Contractor shall submit and keep current all products, service and pricing data in the format described in Attachment 2 (as amended from time to time) for publication in all web and other methods for public and private display and access.

9. Ordering

9.1. Ordering Guide

- 9.1.1. Attachment 4 contains the ordering process and instructions that shall be followed by Ordering Offices and Contractor.



- 9.1.2. The Contractor shall post the Ordering Guide on its web site.
- 9.1.3. 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.
- 9.1.4. This guide shall be continuously updated as required and shall not require formal modification to the Catalog.
- 9.2. Applicability of FAR and DFARS Provisions
 - 9.2.1. Orders issued against this Catalog are subject to the FAR clauses included in the underlying NASA SEWP V contract.
 - 9.2.2. Orders issued against this Catalog are subject to the FAR and DFARS clauses as indicated in Attachment 1. Additional FAR and DFARS clauses may apply to the Order.
 - 9.2.3. The DFARS clauses listed in Attachment 1 are those in effect as of the effective date of this Catalog. Ordering Offices are responsible for incorporating the most current or superseding version of the applicable DFARS clauses in the Order if required.
 - 9.2.4. Ordering Offices will include applicable end user component (local requirements) FAR supplement requirements, as required, for incorporation in the Delivery Order.
- 9.3. Web Sites and Electronic Ordering
 - 9.3.1. This Catalog will be posted to the DoD ESI website <http://www.esi.mil> . The Government may also post this Catalog to other federal government or DoD web sites, some of which may be publicly accessible.
 - 9.3.1.1. The Contractor shall maintain coordinated and integrated hypertext links to the DoD ESI web site from their World Wide Web site(s).
 - 9.3.2. This Catalog may also be loaded into publicly accessible electronic catalog systems of other DoD agencies.
- 9.4. Suspension
 - 9.4.1. There may be occasions where DOD ESI may suspend ordering (by catalog line item and may include the entire Catalog) or cancel the Catalog. Reasons for suspension or cancellation can include but are not limited to delinquent sales report submission, failure to submit quotes on RFQs, and non-compliance to Catalog terms and conditions. If a suspension is announced, the Contractor shall adhere to this suspension by not accepting/processing Orders for the suspended item(s).



10. Invoicing and Payment

10.1. The proper invoice requirements will be specified in the Order. Invoices will be submitted to the address specified within the Order issued against this Catalog.

10.2. The terms and conditions included in this DOD ESI Agency Catalog apply to all purchases made pursuant to it. In the event of an inconsistency between the provisions of this Catalog and the Contractor's invoice, the provisions of this Catalog will take precedence (see Section 5.2).

10.3. Report of Sales

The Contractor shall provide a Report of Sales, Attachment 6, to the SPM and the PCO in electronic format within thirty (30) 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 6. Sales reports are also required even in those instances where no sales are made during the reporting period.

10.3.1. At the end of each reporting period, the written report approval provided to the Contractor will be accompanied by a request to remit the ACT fees in accordance with Attachment 7.

10.4. Fees and Payments

10.4.1. The Contractor shall pay the DOD ESI ACT fees to the parties described in Attachment 7 within 30 days after notification of approval from the applicable SPM for the sales report required pursuant to section 10.4.3.

10.4.2. Attachment 7 will be updated as required concerning Points of Contact and related information and shall not require formal modification to the Catalog. All changes to Attachment 7 will be reviewed and approved by the applicable SPM

10.4.3. The ACT fee is 1% and is assessed on all sales executed against the Catalog, including, but not limited to: all software license types, software subscriptions, software maintenance as a product, software maintenance as a service, purchase of new hardware equipment, maintenance of equipment, repair services or spare parts, cloud computing services, continuous diagnostics and mitigation tools, training courses and information technology professional services.

10.5. Centralized Administration

10.5.1. The Contractor must provide a Program Manager for centralized administration to support this Catalog. The Program Manager, at a minimum, is required to participate in periodic Program Management



Reviews (PMRs) which may require travel to a Government named site. Additional functions would include customer service, educating the sales force, and submission of quarterly reports and approved fee payments.

10.6. Records

10.6.1. The Contractor shall maintain archival copies of all orders for the term of the Catalog in accordance with FAR Subpart 4.7 requirements. Copies shall be made available to the Government upon request.

10.7. Program Management Reviews (PMR)

10.7.1. The Contractor shall participate in regular reviews of the progress of the Catalog. Reviews shall be held at least twice annually as scheduled by the SPM. During these reviews the Contractor shall report on status of Catalog sales, sales leakage, marketing and any outstanding issues concerning the Catalog, among other things. PMR agenda and presentation format shall be provided by the SPM to Contractor prior to each PMR. All travel and PMR associated expenses are the responsibility of the Contractor.

10.8. Sales Leakage Prevention

10.8.1. The DoD ESI Program goals can only be realized if the Government and the Contractor direct all authorized customer sales through the DoD ESI vehicles. Sales leakage is the sale of Catalog products executed outside the Catalog. The Contractor shall ensure that all sales personnel are aware of the DoD ESI Program and enforce the policy that this Catalog is mandatory for consideration in accordance with DFARS Subpart 208.74 for the products within it. Within sixty (60) days of the effective Catalog date, Contractor shall submit its plan of action and processes required to minimize/prevent sales leakage throughout the Catalog Ordering period.

10.8.2. The Contractor shall establish a process to regularly audit sales to Government buyers, determine if sales outside the DoD ESI vehicle are occurring, and take corrective action to properly direct further sales through the DoD ESI vehicle. Audit results will be presented as a PMR agenda item and otherwise (i.e., quarterly) as predetermined by the Government.

10.9. Marketing and Promotion

10.9.1. The Contractor shall dedicate reasonable resources to this effort and market and advertise this Catalog, to include advertising the availability and benefits of this Catalog on the Contractor's web site, advertising this Catalog at relevant trade shows, participation in DoD Component sponsored events, and promotion through news media geared to Government/DoD IT personnel and leadership.



- 10.9.2. The Contractor may obtain standardized DoD ESI marketing materials by requesting them from the SPM.
- 10.9.3. The Contractor's use of the DoD ESI logo, seal or emblem shall be limited to materials describing the products and services which are specifically made available under this Catalog. DoD ESI reserves the right to review any materials that contain the DoD ESI brand prior to use by the Contractor, and, at a minimum, requires the Contractor to follow these guidelines:
 - 10.9.3.1. **Use Only the Approved Master Artwork.** Do not alter or distort the appearance of the logo in anyway, for example, by adding new design elements or colors or changing the font. The logo must always look sharp, clean, and well produced.
 - 10.9.3.2. **Allow A Minimum Clear Space Around the DoD ESI Logo.** Always allow for a clear space around the logo and never violate the clear space with any graphic elements, words or charts.
 - 10.9.3.3. **Maintain Legibility.** Never reproduce the logo in a manner that causes the logo to become illegible or blurry, which may happen if the logo is reproduced too small.
- 10.9.4. All materials made available for public view must include the following statement: "The DoD ESI logo/marketing is used with permission. DoD ESI procedures are explained in DFARS 208.74 and DoD CIO Guidance and Policy memorandum No. 12-8430 dated July 26, 2000."

11. Indemnity/Liquidated Damages/Infringement Claims

- 11.1. To the maximum extent permitted by law, Contractor will indemnify, protect and hold harmless DoD and their respective officers, directors, employees, agents, and Affiliates from and against any and all claims, losses, liens, demands, attorneys' fees, damages, liabilities, costs, expenses, obligations, causes of action, or suits, (collectively "Claims") by a third party, that are caused by or arise out of: i) any wrongful act or omission, whether active or passive, and whether actual or alleged, or willful misconduct of the Contractor or its employees, subcontractors or agents; and ii) property loss, damage, personal injury or death, caused by the Contractor, or any of the Contractor's employees, subcontractors or agents.
- 11.2. Liquidated Damages may be assessed in accordance with FAR Subpart 11.5 – Liquidated Damages, as specified in a Sales or Order.
- 11.3. Claims of infringement are handled in accordance with DFARS 227.70.



11.4. Under any circumstances related to claims, damages and/or indemnification, the Department of Justice, unless otherwise permitted by law, is the settlement authority for any Claim against the government.

12. Personal Data and Personally Identifiable Information (PII)

12.1. Compliance with Privacy Act

12.1.1. Contractor must comply with the Personally Identifiable Information requirements as set forth in the Privacy Act of 1974, Public Law 93-579, as amended, including all policies and directives issued there under including, for example, DFARS Subpart 224.1, Protection of Privacy, which may be amended from time to time or superseded.

13. Cancellation

13.1. Effect of Cancellation.

Effect of Cancellation by Government. The Contractor shall continue to perform the orders prior to termination executed under the Catalog. The Government shall have the right to continue use of any Products that were purchased by an Order issued prior to the termination of the Catalog.

13.2. Surviving Provisions.

13.2.1. The following sections shall survive the Cancellation or expiration of this Catalog: Section 11 (Indemnity), Section 12 (Personal Data and Personally Identifiable Information), Section 13.1 (Effect of Cancellation), Section 13.2 (Surviving provisions), Section 15 (General Provisions) and any software licenses acquired pursuant to this Catalog where usage rights extend beyond the expiration or termination date of this Catalog.

14. Relationship of the Parties

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 venture. Neither party assumes any liability for personal injury or property damage arising out of the other party's performance of this Catalog or Orders. The Contractor will be responsible for all obligations in this Agency Catalog 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 Agency Catalog.

15. General Provisions



15.1. Headings

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

15.2. Notices

- 15.2.1. All notices required under this Agency Catalog will be in writing and a copy will respective DOD ESI SPM and the Contractor's designated Program Manager for this Catalog, unless otherwise agreed to by the parties in writing.

15.3. Reference to Days

- 15.3.1. All references in this Catalog to "days" will, unless otherwise specified, mean calendar days.

15.4. Severability

- 15.4.1. If any term or provision of this Agency Catalog is held to be illegal or unenforceable, the validity or enforceability of the remainder of this Catalog shall not be affected. In such event, the parties will negotiate a valid, enforceable substitute provision that most nearly achieves the parties' original intent in entering into this Catalog or provide an equitable adjustment in the event no such provision can be added.

15.5. Waiver

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

15.6. Dispute Resolution

- 15.6.1. In the event of disagreement with respect to any aspect of this Catalog, 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.

15.7. Confidential or Propriety Information

- 15.7.1. The Product and Price List (Attachment 2), the Software License Agreement, (Attachment 3) and any prices paid data shall not be deemed "confidential or "proprietary" information notwithstanding any marking to that effect. The Freedom of Information Act



(FOIA) governs what information must be disclosed and what information may be withheld by the Government.

15.8. Entire Agreement

This Catalog, the underlying NASA SEWP V contract together with all Attachments and individual Orders issued against the Catalog, constitutes the entire agreement between DoD and Contractor and supersedes all prior or contemporaneous communications, representations, and agreements, whether oral or written, regarding the subject matter of this Catalog. No modifications to the terms of this Catalog shall be valid unless in writing and authorized.