

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT				1. CONTRACT ID CODE <div style="text-align: center;">J</div>		PAGE OF PAGES <div style="text-align: center;">1 2</div>	
2. AMENDMENT/MODIFICATION NO. P00001		3. EFFECTIVE DATE 09-Aug-2017		4. REQUISITION/PURCHASE REQ. NO. SEE SCHEDULE		5. PROJECT NO.(If applicable)	
6. ISSUED BY ARMY CONTRACTING COMMAND - NJ BUILDING 10 PHIPPS ROAD PICATINNY ARSENAL NJ 07806-5000		CODE W15QKN		7. ADMINISTERED BY (If other than item 6) <div style="text-align: center; font-weight: bold;">See Item 6</div>			
8. NAME AND ADDRESS OF CONTRACTOR (No., Street, County, State and Zip Code) PIVOTAL SOFTWARE, INC. 875 HOWARD ST 5TH FLR SAN FRANCISCO CA 94103-3021				9A. AMENDMENT OF SOLICITATION NO.			
				9B. DATED (SEE ITEM 11)			
				X 10A. MOD. OF CONTRACT/ORDER NO. W15QKN-17-9-0044			
				X 10B. DATED (SEE ITEM 13) 04-Aug-2017			
CODE 71BN7		FACILITY CODE					
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS							
<input type="checkbox"/> The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offer <input type="checkbox"/> is extended, <input type="checkbox"/> is not extended.							
Offer must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended by one of the following methods: (a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.							
12. ACCOUNTING AND APPROPRIATION DATA (If required) See Schedule							
13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.							
A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.							
B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(B).							
C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:							
X D. OTHER (Specify type of modification and authority) In accordance with Article IV: Obligation and Payment of the OTA.							
E. IMPORTANT: Contractor <input type="checkbox"/> is not, <input checked="" type="checkbox"/> is required to sign this document and return <u>1</u> copies to the issuing office.							
14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.) Modification Control Number: (b)(6) The purpose of this modification is to correct the funding allocation on CLIN 1001 and on subCLIN 100101. CLIN 1001 has been updated to reflect the total amounts of Milestones (b)(4) and the funding to subCLIN 100101 is corrected to reflect the \$1,700,000.00 incremental obligation. All other terms and conditions remain unchanged.							
Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.							
15A. NAME AND TITLE OF SIGNER (Type or print)				16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) (b)(6)			
15B. CONTRACTOR/OFFEROR (Signature of person authorized to sign)		15C. DATE SIGNED		16B. UNITED STATES OF AMERICA BY (b)(6) (Signature of Contracting Officer)		16C. DATE SIGNED 09-Aug-2017	

SECTION SF 30 BLOCK 14 CONTINUATION PAGE

SUMMARY OF CHANGES

SECTION A - SOLICITATION/CONTRACT FORM

The total cost of this contract was increased by \$5,106,000.00 from \$3,430,156.67 to \$8,536,156.67.

SECTION B - SUPPLIES OR SERVICES AND PRICES

CLIN 1001

The pricing detail quantity has increased by 5,106,000.00 from 1,700,000.00 to 6,806,000.00.

The total cost of this line item has increased by \$5,106,000.00 from \$1,700,000.00 to \$6,806,000.00.

SECTION G - CONTRACT ADMINISTRATION DATA

Accounting and Appropriation

Summary for the Payment Office

As a result of this modification, the total funded amount for this document was increased by \$1,700,000.00 from \$270,000.00 to \$1,970,000.00.

SUBCLIN 100101:

AA:

576360029647ML6453506TRXSS8210064858F503000F03000C102000BMJ65447AA079043484701F4FBFQ717
4G101 (CIN U16KA1011ANG020001) was increased by \$1,700,000.00 from \$0.00 to \$1,700,000.00

(End of Summary of Changes)

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT				1. CONTRACT ID CODE J		PAGE OF PAGES 1 40	
2. AMENDMENT/MODIFICATION NO. P00002		3. EFFECTIVE DATE 30-Aug-2017		4. REQUISITION/PURCHASE REQ. NO. SEE SCHEDULE		5. PROJECT NO.(If applicable)	
6. ISSUED BY US ARMY CONTRACTING COMMAND US ACC NEW JERSEY PICATINNY NJ 07806-5000		CODE W15QKN		7. ADMINISTERED BY (If other than item 6) ARMY CONTRACTING COMMAND - NJ BUILDING 10 PHIPPS ROAD PICATINNY ARSENAL NJ 07806-5000		CODE W15QKN	
8. NAME AND ADDRESS OF CONTRACTOR (No., Street, County, State and Zip Code) PIVOTAL SOFTWARE, INC. 875 HOWARD ST 5TH FLR SAN FRANCISCO CA 94103-3021				9A. AMENDMENT OF SOLICITATION NO.			
				9B. DATED (SEE ITEM 11)			
				X 10A. MOD. OF CONTRACT/ORDER NO. W15QKN-17-9-0044			
				X 10B. DATED (SEE ITEM 13) 04-Aug-2017			
CODE 71BN7		FACILITY CODE					
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS							
<input type="checkbox"/> The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offer <input type="checkbox"/> is extended, <input type="checkbox"/> is not extended.							
Offer must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended by one of the following methods: (a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.							
12. ACCOUNTING AND APPROPRIATION DATA (If required) See Schedule							
13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.							
A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.							
B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(B).							
C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:							
X D. OTHER (Specify type of modification and authority) In accordance with Article IV: Obligation and Payment of the OTA.							
E. IMPORTANT: Contractor <input type="checkbox"/> is not, <input checked="" type="checkbox"/> is required to sign this document and return <u> 1 </u> copies to the issuing office.							
14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.) Modification Control Number: (b)(6) The purpose of this modification is to provide incremental funding in the amount of \$8,147,369.67 for Milestones (b)(4) (b)(4) Additionally, the value for Milestone (b)(4) as administratively corrected to reflect the correct amount of \$105,342.00. See table 4.0 of SOW for Milestone and Payment Schedule. All other terms and conditions remain unchanged.							
Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.							
15A. NAME AND TITLE OF SIGNER (Type or print)				16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)			
				(b)(6) (b)(6)			
15B. CONTRACTOR/OFFEROR		15C. DATE SIGNED		16B. UNITED STATES OF AMERICA		16C. DATE SIGNED	
_____ (Signature of person authorized to sign)				BY (b)(6) (Signature of Contracting Officer)		30-Aug-2017	

SECTION SF 30 BLOCK 14 CONTINUATION PAGE

SUMMARY OF CHANGES

SECTION A - SOLICITATION/CONTRACT FORM

The total cost of this contract was increased by \$6,895,524.33 from \$8,536,156.67 to \$15,431,681.00.

SECTION B - SUPPLIES OR SERVICES AND PRICES

CLIN 1003

The pricing detail quantity has increased by 4,697.33 from 1,478,406.67 to 1,483,104.00.

The total cost of this line item has increased by \$4,697.33 from \$1,478,406.67 to \$1,483,104.00.

SUBCLIN 100102 is added as follows:

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
100102	Funding for CLIN 1001 FFP (b)(4)				(b)(4)
	FOB: Destination				
				NET AMT	(b)(4)
	ACRN AE CIN: U17AP1031ANG010001				(b)(4)

SUBCLIN 100302 is added as follows:

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
100302					(b)(4)

Funding for CLIN 1003

FFP

(b)(4)

FOB: Destination

NET AMT

(b)(4)

ACRN AC

CIN: U17DF1021ANG010002

(b)(4)

CLIN 1004 is added as follows:

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
1004	(b)(4)	(b)(4)	Lot	(b)(4)	(b)(4)

(b)(4)

FOB: Destination

NET AMT

(b)(4)

SUBCLIN 100401 is added as follows:

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
100401	Funding for CLIN 1004 FFP (b)(4)				(b)(4)
NET AMT					(b)(4)
ACRN AD CIN: U17KCC011ANG010001					(b)(4)

SUBCLIN 100402 is added as follows:

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
100402	Funding for CLIN 1004 FFP (b)(4)				(b)(4)
NET AMT					(b)(4)
ACRN AG CIN: U17DF1011ANG010002					(b)(4)

CLIN 1005 is added as follows:

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
1005	(b)(4) FFP (b)(4) Firm Fixed Price Ceiling FOB: Destination	(b)(4)	(b)(4)	(b)(4)	(b)(4)
NET AMT					(b)(4)

SUBCLIN 100501 is added as follows:

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
100501	Funding for CLIN 1005 FFP (b)(4)				(b)(4)
NET AMT					(b)(4)
ACRN AD CIN: U17KCC011ANG010002					(b)(4)

SUBCLIN 100502 is added as follows:

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
100502	Funding for CLIN 1005 FFP (b)(4)				(b)(4)
NET AMT					(b)(4)
ACRN AG CIN: U17DF1011ANG010003					(b)(4)

CLIN 1006 is added as follows:

SUBCLIN 100601 is added as follows:

SUBCLIN 100602 is added as follows:

[illegible]

SUBCLIN 100603 is added as follows:

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
100603	Funding for CLIN 1006 (b)(4) (b)(4)				(b)(4)
				NET AMT	(b)(4)
	(b)(4)				(b)(4)

CLIN 1007 is added as follows:

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
1007	(b)(4) FFP (b)(4)	(b)(4)	(b)(4)	(b)(4)	(b)(4)
				NET AMT	(b)(4)

SUBCLIN 100701 is added as follows:

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
100701	Funding for CLIN 1007 (b)(4) (b)(4)				(b)(4)
NET AMT					(b)(4)
	(b)(4)				(b)(4)

The following have been modified:

MILESTONE PAYMENT INFO

Note: Reference Table 4.0 Milestone Payment Schedule of SOW. This Milestone log will be updated each time a modification changes the funding or milestone schedule.

(b)(4)

P00002, 29 August 2017

(b)(4)

(b)(4)

SECTION E - INSPECTION AND ACCEPTANCE

The following Acceptance/Inspection Schedule was added for SUBCLIN 100102:

INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
N/A	N/A	N/A	Government

The following Acceptance/Inspection Schedule was added for SUBCLIN 100302:

INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
N/A	N/A	N/A	Government

The following Acceptance/Inspection Schedule was added for CLIN 1004:

INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
N/A	N/A	N/A	Government

The following Acceptance/Inspection Schedule was added for SUBCLIN 100401:

INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
N/A	N/A	N/A	Government

The following Acceptance/Inspection Schedule was added for SUBCLIN 100402:

INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
N/A	N/A	N/A	Government

The following Acceptance/Inspection Schedule was added for CLIN 1005:

INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
N/A	N/A	N/A	Government

The following Acceptance/Inspection Schedule was added for SUBCLIN 100501:

INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
N/A	N/A	N/A	Government

The following Acceptance/Inspection Schedule was added for SUBCLIN 100502:

INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
N/A	N/A	N/A	Government

The following Acceptance/Inspection Schedule was added for CLIN 1006:

INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
N/A	N/A	N/A	Government

The following Acceptance/Inspection Schedule was added for SUBCLIN 100601:

INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
N/A	N/A	N/A	Government

The following Acceptance/Inspection Schedule was added for SUBCLIN 100602:

INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
N/A	N/A	N/A	Government

The following Acceptance/Inspection Schedule was added for SUBCLIN 100603:

INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
N/A	N/A	N/A	Government

The following Acceptance/Inspection Schedule was added for CLIN 1007:

INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
N/A	N/A	N/A	Government

The following Acceptance/Inspection Schedule was added for SUBCLIN 100701:

INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
N/A	N/A	N/A	Government

SECTION G - CONTRACT ADMINISTRATION DATA

Accounting and Appropriation

Summary for the Payment Office

As a result of this modification, the total funded amount for this document was increased by \$8,147,369.67 from \$1,970,000.00 to \$10,117,369.67.

(b)(4)



(b)(4)



(b)(4)



(b)(4)



SECTION H - SPECIAL CONTRACT REQUIREMENTS

The following have been modified:
PIVOTAL SOFTWARE INC OTA

AGREEMENT BETWEEN

UNITED STATES ARMY CONTRACTING COMMAND – NEW JERSEY
PICATINNY ARSENAL, NJ 07806-5000

AND

Pivotal Software Inc.
875 Howard Street, 5th Floor
San Francisco, CA 94103

Agreement No.: W15QKN-17-9-0044
Total Amount of the Agreement: \$21,372,783.00
Authority: 10 U.S.C. § 2371b

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ARTICLE I: SCOPE OF THE AGREEMENT

A. Background

This Other Transaction Agreement (OTA) is awarded based upon the prototype project proposed by Pivotal Software Inc., hereinafter referred to as “The Company” or “Pivotal” in response to the Defense Innovation Unit – Experimental (DIUx) Commercial Solutions Offering (CSO). The principle purpose of this OTA is to establish the underlying terms and conditions between the government and Pivotal for the Agreement No. W15KN-17-9-0044. This includes elements from both DIUx’s model Other Transaction contract and Pivotal’s software licenses and professional services agreement.

BRIEFLY SUMMARIZE THE PROTOTYPE PROJECT: This pilot is intended to demonstrate a method to develop, operate, and maintain software for complex information technology systems in the DoD. Through this methodology the DoD will increase the speed and effectiveness of application delivery, decrease spending for operations, and radically enhance the tactical and strategic responsiveness of the Air Operations Center (AOC). Pivotal will accomplish these outcomes by installing its cloud native platform, Pivotal Cloud Foundry (PCF), at several locations annotated in the Statement of Work (SOW) to run Pivotal Cloud Foundry and demonstrate the utility of this commercial methodology.

B. Definitions

“Agreement” or “OTA” refers to the Other Transaction Agreement, as authorized under 10 U.S.C. 2371b, between the Government and Pivotal Software Inc., Agreement No. **W15QKN-17-9-0044**.

“Affiliate” means a legal entity controlled by, controlling, or that is under common control of Pivotal or Customer, with control meaning more than fifty percent (50%) of the voting power or ownership interests then outstanding of that entity.

“Agreements Officer (AO)” is the United States Army Contracting Command – New Jersey Contracting Activity warranted Contracting Officer authorized to sign the final agreement for the Government.

“Agreements Officer’s Representative (AOR)” is the individual designated by the Government on a per project basis to monitor all technical aspects; the AOR shall only assist in agreement administration of the specific project to the extent expressly delegated such administration authority in writing in the Project Agreement by the responsible Agreements Officer.

“Infringement Claim” means any third party claim, notice, demand, action, proceeding, litigation, investigation, or judgment relating IP infringement. With respect to Software, such Claim must be related to Customer’s use of the Software during the Subscription Period (or renewal thereof).

“Contracting Activity” means an element of an agency designated by the agency head and delegated broad authority regarding acquisition functions. It also means elements or another agency designated by the director of a defense agency which has been delegated contracting authority through its agency charter.

“Date of Completion” is the date on which all work is completed or the date on which the period of performance ends.

“Discovery and Framing (D&F)” means upfront period during application development focused on Pivotal’s methodology towards defining user requirements for the minimal viable product (MVP).

“Effective Date” means the date when this Agreement is signed and executed by the Agreements Officer for the Government.

“Excluded Materials” mean Pivotal Materials, Open Source Software, and Third Party Materials.

“Government” or “the Customer” means the U.S. Government.

“Government Fiscal Year” means the period commencing on October 1 and ending September 30 of the following calendar year.

(b)(4)

“Major Release” means a generally available release of Software that Pivotal designates with a change in the digit to the left of the first decimal point (e.g., 5.0 >> 6.0).

“Milestone” means a scheduled event signifying the completion of a major deliverable or a set of related deliverables as identified in the Statement of Work.

“Minimum Viable Product (MVP)” creation of baseline requirements defined by the government delineating user acceptance for an operational setting for each application developed.

“Minor Release” means a generally available release of Software that Pivotal designated with a change in the digit to the right of the decimal point (e.g., 5.0 >> 5.1).

“Open Source Software” or OSS means software components licensed under a license approved by the Open Source Initiative or similar open source or freeware license and included in, embedded in, utilized by, provided or distributed with Software or Developments.

“Other Transactions Agreement (OTA)” is the term commonly used to refer to the 10 USC 2371b authority to enter into transactions other than contracts, grants or cooperative agreements. The Department of Defense (DoD) currently has authority to make awards that are directly relevant to enhancing the mission effectiveness of military personnel and the supporting platforms, systems, components, or materials proposed to be acquired or developed by the Department of Defense, or to improvement of platforms, systems, components, or materials in use by the armed forces. OTAs are acquisition instruments that generally, are not subject to the federal laws and regulations governing procurement (FAR based) contracts. As such, they are not required to comply with the Federal Acquisition Regulation (FAR), its supplements (i.e. DFARS) or laws that are limited in applicability to procurement contracts.

“Parties” means Government and the COMPANY by its authorized agent where collectively identified and “Party” where each entity is individually identified.

“Partial Payment Milestone” means partial completion of the payable milestone based on the invoice submitted by the company

“Payable Milestone” means that once a milestone has been met (see definition of “milestone”), the Government can approve payment to the COMPANY of a predetermined dollar amount in relation to performance of a particular project or defined services under the Other Transaction Agreement or the SOW.

“PCF Dojo services” are focused on Day One (deployment and testing) and Day Two (operationalization and utilization) concerns. The actual work on site will be tailored to specific program objectives and tailored to each environment’s unique role in the continuous fielding process for the AOC. The Designated Operations Engineer(s) shall provide ongoing support of the platform over the extent of this pilot engagement and shall pair with the customer to work on backlog priorities while operationalizing PCF.

(b)(4)

(b)(4)

“Perpetual License” means access to Software and Documentation subject to the licensing terms and restrictions in the (b)(4) available at (b)(4) on a perpetual basis.

“Pivotal Materials” means any materials developed by Pivotal: (a) prior to the Effective Date; (b) other than in performance of this Agreement; (c) that are generally applicable to Pivotal’s products and services and are not unique to the business of Customer or the SOW; or (d) that are improvements to Software or Pivotal’s internal processes.

(b)(4)

“Signatory Authority” refers to the individual that has the authority to legally bind a party to an agreement.

“Software” means Pivotal computer programs listed in the Guide and identified in a Quote, indicating a Subscription License excluding code written as part of a (b)(4)

“Subscription License” means (a) access to Software (and Documentation) set forth in the SOW subject to the Guide; and (b) Support Services, which include any Minor and Major Releases and related upgrades on a “when and if available” basis, all during the Subscription Period.

“Subscription Period” means the period starting upon notification to Customer that Software is available for download, and continues for the period specified in the Quote or mutually-signed Order

“Support Services” means services described at: (b)(4)

“Third Party Materials” means materials (including tools that are used to deliver the Professional Services) that are not owned or created by Pivotal (other than Open Source Software).

“The Company” or “The Contractor” means Pivotal Software Inc.

“Work Product” means the works of authorship or other products developed or created and delivered by Pivotal to Customer (excluding the Excluded Materials) in the course of performing Services described in the applicable SOW.

C. Scope

STATEMENT OF WORK for “AOC Pathfinder”

1.0 BACKGROUND: The Department of Defense, in partnership with the Air Operations Center (AOC) Weapons System Program Management Office (PMO) and supporting government organizations,

plans to prototype the use of agile software development for large enterprise architectures, adopting commercial best practices that are not utilized in the DoD. This methodology has the potential to change how the government manages and implements large IT enterprises. Through this methodology, users will also receive more capability in the applications they leverage to perform day-to-day operations.

To effectively implement and leverage this methodology, the government must first establish environments, leveraging commercial software licenses, to provide the underpinning software development platform. Once that environment is realized, the government can then leverage commercial best practices of agile software development to produce user-centered design, test-driven development, continuous integration, and continuous delivery of new and enhanced software code. Additionally, the mentorship and training to government personnel on how to leverage the environment is paramount realizing the utility for this approach. This is in stark contrast to how the DoD currently implements software. That current process is accomplished in a serial fashion known as the waterfall approach. *The waterfall approach can be summarized as follows: manual orchestration of low-level steps, which generate repetitive work that is highly susceptible to errors. Automation, if used at all within DoD, is typically script-based and ad hoc. As a result, software processes to build, test, deploy and operate each application are custom, complex, and frequently inconsistent, resulting in additional operational complexity and chaos. Organizations manage such complexity by slowing down release processes to ensure correctness and consistency, and consequently struggle to release new functionality quickly. The end result is a track record of major IT programs that are over-budget and over-timeline.*

While having the underlying platform is critical for the iterative deployment of the enhanced software, the true power of the agile methodology is ensuring the software developers (people) are enabled to leverage the development platform. **To that end, this project will prototype the use of agile software development methodology in conjunction with a modernized software platform (Pivotal Cloud Foundry) to assess whether this commercial methodology can provide similar benefits in a government use case.** To affect this prototype project, the contractor shall perform co-development on all aspects of the prototype project to include:

- 1.1 Establishment and optimal configuration of the Pivotal Cloud Foundry (PCF) 'environment' for Administrators through the contractor's DoJo offering
- 1.2 Net-New Application development - this includes partnering with contractor designers, product managers, and software engineers in order to deploy Agile software development where new features are deployed to the end users on a regular cadence.
- 1.3 App Replatforming - This effort is focused on taking legacy applications and retooling the software code so that the application can operate on a modern cloud infrastructure, to include the Pivotal Cloud Foundry platform, allowing for reduced sustainment costs and higher system reliability.
- 1.4 Third Party Application Integration - The PCF platform is extremely robust, but it does not have all the tools required by the government. The government will provide personnel to partner with pivotal to identify the correct suite of third party applications and implement those capabilities into the development platform to either gain access to additional data sets or applications for end users whether they are the app development team or a user of the application.
- 1.5 Training: While learning is inherent in each activity provided by the teaming methodology, the contractor offers additional acceleration courses to ensure new team members joining various functions of the agile methodology do not slow down the S/W development team. This methodology is extremely collaborative and the learning curve steep for personnel newly introduced to its utilization. The methodology and technologies are new to government software developers, requiring some initial training for some of them before being able to take advantage of the platform.

The AOC PMO is the first major IT program to implement this methodology. If successful, it is the intent of the DoD to leverage this methodology across several other IT program offices. Fundamental to introducing commercial best practices is to ensure the personnel as well as the technology is synchronized to perform the Agile Software Development methodology. From management, to design, to development, to test and finally to production, the entire process must be integrated and fully understood or else just like a three-legged stool, without one leg the entire system collapses. In the technical requirements, the SOW will highlight how the government intends to employ this methodology to enhance operations within the AOC. Additionally, this prototype project will be broken into two phases: Base Period and Option Period. The base period will be defined by specific targeted environments and applications to be developed / replatformed. The option period will define potential augmentation for known interest items to the government.

1.6 Environment Setup:

- 1.6.1 Base period: The contractor shall deliver and establish three separate environments. One unclassified environment for software development, a second to act as the staging and test environment on a classified network, and a third as the production (or operations) environment on a classified network. This will prove out the methodology by developing a direct pipeline from application development all the way to application utilization in an operational setting. This is unique and currently is not done in the Department of Defense.
- 1.6.2 Option period: The base period sets-up a simple one to one relationship from development to production; however, the AOC has multiple Command and Control (C2) operation centers geographically dispersed across the globe. The option period will aim to establish multiple production and staging environments to prove the scalability of one development environment for consistency across multiple geographically disparate systems. Additionally, the government may establish an environment on the JWICs network which will introduce additional layers of complexity.

1.7

(b)(4)



1.8 App Replatforming: 1.8.1 Base Period: The Government has identified three initial candidates for the prototype effort to be replatformed and deployable on the PCF platform. They are: the 'Battle Damage Assessment' (BDA), 'Integrated Air and Missile Defense' (IAMD) and 'Joint Targeting Toolbox' (JTT). These applications were chosen based on high priority to the user community and level of complexity.

- 1.8.2 Option Period: The PMO may pick additional applications for replatforming to test the methodology with its own developers as well as include applications with enhanced technical complexity. One application designated for the option period is the Command and Control (C2) Air Operations Suite-C2 Information Services (C2AOS-C2IS) which was originally developed to replace several legacy applications being used in the AOC today.

1.9 Training:

- 1.9.1 Period: Fundamental to employing the methodology is to ensure government personnel utilizing the platform get up to speed and become contributors from day one. The base period training is designated to account for roll-on personnel through the life-cycle of the prototype effort. The amount of additional training opportunities is correlated with the amount of environment and applications

being developed/replatformed.

- 1.10 Recommendations: The government is interested in understanding additional integration tools to protect the platform based on government requirements. This is with regards to establishing single sign-on and security architecture.

2. TECHNICAL REQUIREMENTS/Approach: This Section highlights the major technical aspects of each offering described in the background paragraph and what the government and the contractor shall accomplish through the duration of the project to prototype the methodology.

- 2.1 Platform:** Part of establishing the platform environment includes the requirement for the company to partner with government personnel in order to teach the administrator function. The company shall provide three DoJo offerings per platform install. PCF Platform DoJo offering are designed to accelerate success with PCF by pairing Pivotal experts with USAF personnel to plan, implement, customize, use, and scale the platform to meet the needs of the DoD. By working together, the government improves project outcomes and enables faster fielding of user centric products. All Platforming is expected to occur during Phase II. The contractor shall:

- 2.1.1 Travel to location to perform PCF platform installation
- 2.1.2 Establish PCF platform subscription services
- 2.1.3 Train government personnel system administrators how to operate and customize the PCF platform
- 2.1.4 Ensure government system administrators understand contractor Guide for reach back support
- 2.1.5 Deliver a report after platform is established detailing when, where, who (gov't personnel), how long, and any outstanding issues pertaining to the install. The report will be a text document or however the contractor deems appropriate.
- 2.1.6 For the Option period, the same actions detailed in 2.1.1-2.1.5 shall apply

- 2.2 Pivotal subscription:** A mixture of Pivotal subscriptions will be required at each designated environment. The base period shall consist of three environments to include: an (1) development environment, (2) testing and backup production environment, and (3) operational production environment. Attachment 1 (b)(4)

(b)(4)

- 2.2.1 PCF Operations Manager
- 2.2.2 PCF Elastic Runtime Service
- 2.2.3 PCF Services Suite
- 2.2.4 (b)(4)

Additionally, the contractor shall:

- 2.2.5 Start the base year-long subscription license on no earlier than 29 September 2017.
- 2.2.6 The contractor shall provide a report on PCF subscription mix to maximize operation effectiveness for AOC deployment. The report will be a text document or however the contractor deems appropriate.
- 2.2.7 (b)(4)

- 2.3 Training:** The Contractor will offer an extensive portfolio of role-based training courses

that will build and enhance government product expertise. Courses are designed by industry experts and aligned with the latest Pivotal products. The lab-based curriculum enables the government team to maximize skills retained and offer flexible delivery options. The training can take place at the government location discretion and

Attachment 3 (b)(4)

(b)(4)

- 2.3.1. *PCF Developer* - Three-day course shall provide participants an understanding of how deploy to PCF, exploring concepts and features of the platform including: services, log draining, metrics, build packs, service brokers, and route services. The course can support up to 12 people and shall be provided for the base period.
- 2.3.2. *Core Spring* - Four-day course shall teach participants how to build a Spring-powered Java application that demonstrates the Spring Framework and other Spring technologies - including Spring aOP and Spring Security. The course can support up to 12 people and shall be provided for the base period.
- 2.3.3. *PCF Administrator* - Five-day course shall provide hands-on experience required to manage a PCF installation by exploring "Day 1" and "Day 2 Operations" which includes: installing the Ops Manager, configuring users, roles and quotes, backing up and restoring files, using BOSH, etc. The course can support up to 12 people and shall be provided for the base period.
- 2.3.4. *Spring Boot Developer* - Two-day course shall provide application developers the ability to create enterprise-ready applications using Spring Boot. This will explore major Spring Boot features to include: auto-configuration, data access, actuator, etc. The course can support up to 12 people and shall be provided for the base period.
- 2.3.5. *Platform Acceleration Lab (PAL)*: Four-week course to provide training on legacy platform app transition and re-platforming legacy apps. Four people to be sent to a scheduled public offering of the PAL.
- 2.3.6. *Training Report*: certificates of individuals who attended will be provided by the contractor and training effectiveness surveys will be provided to the government at the end of each class so that feedback can be incorporated into future training sessions. A summary report will be provided at the end of the PoP to highlight the notice of successful completion, and aggregate the staff who participated and packaging of participants and survey data.

2.4 Application Replatforming: The Contractor shall provide a methodology for the transition of an application from its existing infrastructure by changing certain environmental and configuration properties to enable it to run on modern cloud technology, while preserving existing functionality. This work involves modernizing (refactoring or rewriting) certain incompatible modules - moving them from vertical (application servers and relational database management systems) to horizontal "scale-out" and "cloud first" models. The two applications identified for 'Replatforming' are as follows: BDA, JTT, and IAMD. Each will undergo the following replatforming process and at the end, the app shall be replatformed and deployed on PCF environments established in section 2.1 and 2.2. Each App Replatforming shall:

- 2.4.1 Develop business goals for the project
- 2.4.2 Break down understanding of the first user problem
- 2.4.3 Develop backlog planning & prioritization during the initial inception phase.
- 2.4.4 Organize into developer teams
- 2.4.5 Begin to migrate the identified applications
- 2.4.6 Build PCF extensions
- 2.4.7 Develop automated testing

- 2.4.8 Pair to develop the pipelines to continuously execute automated tests.
- 2.4.9 Apply process to the remaining applications
- 2.4.10 Pairing on development of documentation that outline replatforming patterns discovered during the engagement for subsequent transition of efforts
- 2.4.11 Government Product owner with Contractor shall perform application acceptance test in PCF environment

- 2.5 Net-new application development:** The Contractor will provide its methodology to new application builds as an incremental process. It should be noted that no specific deliverable is tied to this effort since software can always improve. The contractor shall provide monthly invoices to ensure the government is tracking the monthly effort of the contractors FTE (hours) towards four identified applications which are: (b)(4)

(b)(4)

- 2.6 Security:** Demonstrate Identity and Access Management: The Contractor shall collaborate and provide recommendations for incorporating single sign on and identity access management into each of the appropriate projects. This will be accomplished during Phase II and III of the project.
- 2.7 Single Sign-on:** Contractor shall provide a recommendation on whether robust single sign on architecture is warranted. This will be accomplished during Phase II and Phase III of the project.
- 2.8 Jira Core Integration:** The Contractor shall integrate Jira Core workflow API into PCF. This will be accomplished during Phase II and Phase III of the project.
- 2.9 Mapbox Integration:** The Contractor shall integrate Mapbox API into PCF. This will be accomplished during Phase II and Phase III of the project.

(b)(4)

(b)(4)



(b)(4)



(b)(4)



5.0 PERIOD OF PERFORMANCE: The period of performance (PoP) for this statement of work is twelve (12) months.

5.1 The subscription licenses are for a year and will extend beyond the PoP

5.2 Option periods exercised will be accomplished inside the original twelve (12) month PoP

(b)(4)



8.0 SECURITY: A DD 254 to the Top Secret/Special Compartmentalized Information (TS/SCI) level will be issued as a part of this effort. OPSEC language can be found in Article XI of the contract. Operations Security

(OPSEC) requirements apply to this contract. OPSEC program managers will provide the appropriate Critical Information (CI) lists to the Contractor under separate cover. Contractors conducting work on military installations will participate in the Installation OPSEC Program. Contractors will receive periodic training along with military and Government civilian counterparts. OPSEC program managers will provide the appropriate CI lists and the Program Protection Plan (PPP) to the contractor under separate cover.

9.0 GOVERNMENT FURNISHED EQUIPMENT/PROPERTY/DATA

GFE/P/D Reference	Delivery Date Required	Asserted Rights Category	Name of Organization Asserting Restrictions/POC	Milestone Association
Personnel: Government code developers (X)	seven days after contract award	N/A	HBB / Lt Col (b)(6)	N/A
Source Code for all applications being replatformed	at the beginning of the milestone delivery	Distribution Category D	HBB / Lt Col (b)(6)	4.3, 4.4, 4.5
3 rd Party Licenses: Mapbox, MongoDB, CrunchyBase, Jira Core, Security Tools, Cloud Solution Provider	90 days after contract award	N/A	HBB / Lt Col (b)(6)	4.5.1

SOW Attachments:

Attachment One	(b)(4)
Attachment Two	
Attachment Three	
Attachment Four	
Attachment Five	

ARTICLE II: TERM & TERMINATION

A. The Term of this Agreement

This OTA will be available for use for a period of **twelve (12) months** from the date the OTA is awarded. Provisions of this Agreement, which, by their express terms or by necessary implication, apply for periods of time other than specified in Article II herein, shall be given effect, notwithstanding this Article.

B. Early Termination of Agreement Provision

1. Subject to a reasonable determination that the program, or a project will not produce beneficial results commensurate with the expenditure of resources, the Government may stop performance of work under this OTA, in

whole or in part, if the AO determines that a termination is in the Government's interest. The AO shall terminate by delivering to the COMPANY a Notice of Termination specifying the extent of termination and the effective date. Such termination shall not constitute a "termination" as the term is used to mean a termination for convenience or default under public sector contracting laws and regulations.

- (2) Either Party may terminate this Agreement effective immediately upon written notice to the other party if:
- i. Customer fails to pay any portion of fees due under a valid Invoice, Quote or Order ninety days after interest begins to accrue under the Prompt Payment Act;
 - ii. the other party suffers an insolvency or analogous event;
 - iii. the other party commits a material breach of this Agreement that is incapable of being cured; or
 - iv. the other party breaches any other provision of this Agreement and does not cure the breach within thirty (30) days after receiving written notice of breach.

(3) Either Party may terminate this Agreement upon 30 days written notice to the other, however such termination shall not affect existing Software Orders or SOWs. Customer may terminate any SOW for any or no reason by providing at least fourteen (14) calendar days prior written notice to Pivotal. For the avoidance of doubt, upon such termination for convenience: Customer shall not be entitled to any refund for any fees paid for Services performed prior to the effective date of termination. Any Software Orders signed and agreed to prior to such termination taking effect are non-cancelable and non-refundable (meaning they cannot be terminated by either party for convenience).

(4) In the event of expiration of a Subscription License, Customer must remove and destroy all copies of Software, including all backup copies, from the server, virtual machine, and all computers and terminals on which Software (including copies) is installed or used and certify destruction thereof.

In the event of termination for default relating to the Government's use Software, Customer must remove and destroy all copies of Software, including all backup copies, from the server, virtual machine, and all computers and terminals on which Software (including copies) is installed or used and certify destruction thereof.

Termination does not relieve Customer of its obligation to pay all fees and expenses for all Services performed, as of the date of termination. All provisions of this Agreement will survive any termination or expiration if by its nature and context it is intended to survive.

(5) After receipt of a Notice of Termination, and except as directed by the AO, the COMPANY shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due:

- i. Stop work as specified in the notice.
- ii. Place no further orders for materials, services, or facilities, except as necessary to complete the continued portion of the OTA.
- iii. Terminate all orders to the extent they relate to the work terminated.
- iv. Reserved.
- v. With approval or ratification to the extent required by the AO, settle all outstanding liabilities and termination settlement proposals arising from the termination of orders; the approval or ratification will be final for purposes of this clause.
- vi. Reserved
- vii. Complete performance of any work not terminated, if applicable.

(6) Notwithstanding any term to the contrary herein, the parties agree that termination of the Agreement shall not relieve the Government from its obligations to pay the non-cancelable and non-refundable fees associated with any Subscription License herein. Failure of the Parties to agree to an equitable adjustment shall be resolved pursuant to Article V, Disputes. Nothing in this section shall be construed as a limitation of the rights of either party in the event of a breach of contract or default by the other party.

C. Stop Work Clause

(1) As directed by the AO, the COMPANY shall stop all, or any part, of the work called for under this Agreement for a period of 90 days after the written order is delivered, and for any further period to which the parties may agree.

The order shall be specifically identified as a stop-work order issued under this Article. Upon receipt of the order, the COMPANY shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered, or within any extension of that period to which the parties shall have agreed, the AO shall either:

- i. Cancel the stop-work order; or
- ii. Terminate the work covered this Agreement.

(2) If a stop work order issued under this clause is canceled, the COMPANY shall resume work. The Government shall make an equitable adjustment in the delivery schedule or negotiated price, or both, and the Government's share of this Agreement shall be modified, in writing, accordingly, if:

- i. The stop-work order results in an increase in the time required for, or in the cost properly allocable to, the performance of any part of this Agreement; and
- ii. The COMPANY asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Government decides the facts justify the action, the Government may receive and act upon a proposal submitted at any time before final payment under this Agreement.

ARTICLE III: AGREEMENT ADMINISTRATION

Unless otherwise provided in this Agreement, approvals permitted or required to be made by the ACC-NJ Contracting Activity may be made only by the ACC-NJ Contracting Activity Agreements Officer. Administrative and contractual matters under this Agreement shall be referred to the following representatives of the parties:

(b)(6)



Each party may change its representatives named in this Article by written notification to the other party.

Cognizant Defense Finance and Accounting Service Office:

DFAS COLUMBUS CENTER WEST
DFAS-CO/WEST ENTITLEMENT OPERATIONS
P.O. Box 182381
Columbus, OH 43218-2381

ARTICLE IV: OBLIGATION AND PAYMENT

A. Obligation: Except as specified in Article V: Disputes, the Government's liability to make payments to the COMPANY is limited only to those funds obligated under this Agreement or by modification to the Agreement. The ACC-NJ Contracting Activity may incrementally fund this Agreement. If modification becomes necessary in performance of this Agreement, pursuant to Article IV of this Agreement, the AO and the COMPANY shall establish and execute a mutually agreed to revised Schedule of Payable Milestones consistent with the current Project Plan.

B. Project Payments: Reference Milestone Payment Schedule, Table 4.0 in the SOW.

C. Payable Milestones: The COMPANY shall submit invoices for processing according to the milestone payment schedule via the Invoice, Receipt, Acceptance, and Property Transfer (iRAPT) application of the Wide Area Work Flow (WAWF) system, according to the guidelines set forth below. Payments will be made by Defense Finance and Accounting Service, DFAS COLUMBUS CENTER WEST.

1. The WAWF system is the method to electronically process vendor payment requests and receiving reports. To access WAWF, the COMPANY shall have a designated electronic business point of contact in the System for Award Management at <https://www.acquisition.gov>; and be registered to use WAWF at <https://wawf.eb.mil/> following the step-by-step procedures for self-registration available at this web site. The COMPANY shall follow the training instructions of the WAWF Web-Based Training Course and use the Practice Training Site before submitting payment requests through WAWF. Both can be accessed by selecting the "Web Based Training" link on the WAWF home page at <https://wawf.eb.mil/>.

2. The COMPANY shall submit a Combo request through WAWF utilizing the following Routing Data to fill in the applicable fields in WAWF when creating payment requests in the system.

Routing Data Table

<i>Field Name in WAWF</i>	<i>Data to be entered in WAWF</i>
Pay Official DoDAAC	HQ0339
Issue By DoDAAC	W15QKN
Admin DoDAAC	W15QKN
Inspect By DoDAAC	W15BW9
Accept at Other DoDAAC	W15BW9

3. All payment requests shall include an invoice (contractor's format is acceptable) to include at a minimum, invoice number, milestone payment number and contract number. Note, all invoices shall be for exact payment amount as referenced B. Partial milestones shall not be submitted.

4. The COMPANY shall include the following WAWF email notifications when submitting invoices to assure payment approval:

(b)(6)

5. For technical WAWF help, contact the WAWF helpdesk at 866-618-5988.

D. Electronic Fund Transfer: COMPANY must be enrolled in EFT by contacting the paying office designated in the Agreement and requesting Form SF 3881, Automated Clearing House (ACH) Vendor/Miscellaneous Payment Enrollment Plan. This form must be completed by the COMPANY and the COMPANY's financial institution, and returned to the paying office. The paying office will complete the process and notify the COMPANY that EFT enrollment is complete. All payments under this agreement will be held until the COMPANY provides the required EFT enrollment information.

The CAGE Code and DUNS number for the COMPANY are as follows:

CAGE Code: **71BN7**

DUNS number: **078824783**.

Registration in the System Award for Management (SAM) is mandatory.

E. Limitation of Funds: Except as set forth in Article V, the Government's financial liability will not exceed the amount obligated under this Agreement and available for payment.

F. Financial Records and Reports: The COMPANY shall maintain adequate records to account for Federal funds received under this Agreement and shall maintain adequate records to account for COMPANY Project Agreement funding provided under this Agreement, should cost sharing procedures be implemented for funding a particular project. COMPANY relevant financial records are subject to examination or audit on behalf of the ACC-NJ Contracting Activity by the Government for a period not to exceed three (3) years after expiration of the term of the Agreement. The AO or designee shall have direct access to sufficient records and information of the, COMPANY to ensure full accountability for all funding under this Agreement. Such audit, examination or access shall be performed during business hours on business days upon prior written notice and shall be subject to the security requirements of the audited party. Any audit required during the course of the program may be conducted by the Government using Government auditors or, at the request of COMPANY's external CPA accounting firm at the expense of the COMPANY

ARTICLE V: DISPUTES

A. General

The Parties shall communicate with one another in good faith and in a timely and cooperative manner when raising issues under this Article.

B. Dispute Resolution Procedures

(1) Any disagreement, claim or dispute between the ACC-NJ and the COMPANY concerning questions of fact or law arising from or in connection with this Agreement, and, whether or not involving an alleged breach of this Agreement, may be raised only under this Article.

(2) Whenever disputes, disagreements, or misunderstandings arise, the Parties shall attempt to resolve the issue(s) involved by discussion and mutual agreement as soon as practicable. In no event shall a dispute, disagreement or misunderstanding which arose more than twelve (12) months prior to the notification, made under this subsection constitute the basis for relief under this article unless the Chief of the Contracting Office, ACC-NJ in the interest of justice waives this requirement.

(3) Failing resolution by mutual agreement, or no later than four (4) months after notification was made to the other Party, the aggrieved Party shall document the dispute, disagreement, or misunderstanding by notifying the other Party (through the respective AO or AOR, as the case may be) in writing documenting the relevant facts, identifying unresolved issues, specifying the clarification or remedy sought, and documenting the rationale as to why the clarification/remedy is appropriate. Within ten (10) working days after providing notice to the other Party, the aggrieved Party may, in writing, request a decision by the Chief of the Contracting Office, ACC-NJ. The other Party shall submit a written position on the matter(s) in dispute within thirty (30) calendar days after being notified that a decision has been requested. The Chief of the Contracting Office, ACC-NJ, will conduct a review of the

matter(s) in dispute and render a decision in writing within thirty (30) calendar days of receipt of such position. Any such decision is final and binding, unless a Party shall, within thirty (30) calendar days request further review as provided by this article.

(4) If requested within thirty (30) calendar days of the decision by the Chief of the Contracting Office, ACC-NJ, further review will be conducted by the Vice-President of the COMPANY Federal business and the ACC-NJ Director of Contracting. In the event of a decision, or in absence of a decision within sixty (60) calendar days of referral to the Vice President of the COMPANY federal business and the ACC-NJ Director of Contracting (or such other period as agreed to by the parties), either party may pursue any right or remedy provided by law in a court of competent jurisdiction, including any remedies available in an action before the Court of Federal Claims. Alternatively, the parties may agree to explore and establish an additional Alternate Disputes Resolution procedure to resolve this dispute.

C. Limitation of Liability and Damages

In no event shall the liability of the COMPANY under any basis exceed the funding received for their performance of this Agreement.

No Party shall be liable to any other Party for consequential, punitive, special and incidental damages or other indirect damages, whether arising in contract (including warranty), tort (whether or not arising from the negligence of a Party) or otherwise, except to the extent such damages are caused by a Party's willful misconduct. Notwithstanding the foregoing, claims for contribution toward third-party personal injury, are not waived, released, or disclaimed.

ARTICLE VI: CONFIDENTIAL INFORMATION

A. Definitions

"Disclosing Party" means COMPANY, or their subcontractors or suppliers, or the Government who discloses Confidential Information as contemplated by the subsequent Paragraphs.

"Receiving Party" means COMPANY, or their subcontractors or suppliers, or the Government who receives Confidential Information disclosed by a Disclosing Party.

"Confidential Information" means information and materials of a Disclosing Party which are designated as confidential or as a Trade Secret in writing by such Disclosing Party, whether by letter or by use of an appropriate stamp or legend, prior to or at the same time any such information or materials are disclosed by such Disclosing Party to the Receiving Party. Confidential Information includes the terms of this Agreement, Software, and all confidential and proprietary information of The COMPANY or the Government, including without limitation, all business plans, product plans, financial information, software, designs, and technical, business and financial data of any nature whatsoever, provided that such information is marked or designated in writing as "confidential," "proprietary," or with a similar term or designation, and projects for other companies that may be occurring concurrently in The COMPANY's offices while The COMPANY is performing the Services. Notwithstanding the foregoing, materials and other information which are orally, visually, or electronically disclosed by a Disclosing Party, or are disclosed in writing without an appropriate letter, stamp, or legend, shall constitute Confidential Information or a Trade Secret if such Disclosing Party, within thirty (30) calendar days after such disclosure, delivers to the Receiving Party a written document or documents describing the material or information and indicating that it is confidential or a Trade Secret, provided that any disclosure of information by the Receiving Party prior to receipt of such notice shall not constitute a breach by the Receiving Party of its obligations under this Paragraph. "Confidential Information" includes any information and materials considered a Trade Secret by the COMPANY on its own behalf or on behalf of their subcontractors or suppliers.

"Trade Secret" means all forms and types of financial, business, scientific, technical, economic, or engineering or otherwise proprietary information, including, but not limited to, patterns, plans, compilations, program devices,

formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if:

- i. The owner thereof has taken reasonable measures to keep such information secret; and
- ii. The information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, the public.

B. Exchange of Information: The Government may from time to time disclose Government Confidential Information to the COMPANY and its subcontractors or suppliers, in connection with Annual Plan and similar processes or particular projects, and the COMPANY their subcontractors or suppliers, may from time to time disclose information that is Trade Secret or Confidential Information to the Government in connection with the OTA, an OTA project proposal, Project Milestone and Payment Instruction, Project Agreement, or performance thereunder. Neither the Government nor COMPANY or their subcontractors or suppliers, nor the AOR shall be obligated to transfer Confidential Information or Trade Secrets independently developed by the Government or the COMPANY or their subcontractors or suppliers, absent an express written agreement between the Parties providing the terms and conditions for such disclosure.

C. Confidentiality and Authorized Disclosure: The Receiving Party agrees that Confidential Information and Trade Secrets shall remain the property of the Disclosing Party (no one shall disclose unless they have the right to do so), and that, unless otherwise agreed to by the Disclosing Party, Confidential Information and Trade Secrets shall not be disclosed, divulged, or otherwise communicated by it to third parties or used by it for any purposes other than in connection with specified project efforts and the licenses granted in Article VIII, Data Rights, provided that the duty to protect such "Confidential Information" and "Trade Secrets" shall not extend to materials or information that:

- i. Are received or become available without restriction to the Receiving Party under a proper, separate agreement,
- ii. Are not identified with a suitable notice or legend per Article entitled "Confidential Information" herein,
- iii. Are lawfully in possession of the Receiving Party without such restriction to the Receiving Party at the time of disclosure thereof as demonstrated by prior written records,
- iv. Are or later become part of the public domain through no fault of the Receiving Party,
- v. Are received by the Receiving Party from a third party having no obligation of confidentiality to the Disclosing Party that made the disclosure,
- vi. Are developed independently by the Receiving Party without use of Confidential Information or Trade Secrets as evidenced by written records, or
- vii. Are required by law or regulation to be disclosed; provided, however, that the Receiving Party has provided written notice to the Disclosing Party promptly so as to enable such Disclosing Party to seek a protective order or otherwise prevent disclosure of such information.

Confidential Information does not include information that is:

- i. rightfully in the receiving party's possession without prior obligation of confidentiality from the disclosing party;
- ii. a matter of public knowledge (or becomes a matter of public knowledge other than through breach of confidentiality by the other party);
- iii. rightfully furnished to the receiving party by a third party without confidentiality restriction; or
- iv. Independently developed by the receiving party without reference to the disclosing party's Confidential Information.

D. Return of Proprietary Information: Upon the request of COMPANY, the Government shall promptly return all copies and other tangible manifestations of the Confidential Information or Trade Secrets disclosed. Upon request by the Government, COMPANY shall promptly return all copies and other tangible manifestations of the Confidential Information disclosed by the Government. As used in this section, tangible manifestations include

human readable media as well as magnetic and digital storage media.

E. Term: Except to the extent covered by and subject to other provisions of this Agreement or the specific Project Agreement, the obligations of the Receiving Party under this Article shall continue to the maximum extent allowed by Federal law.

The Government and the COMPANY shall flow down the requirements of this Article VI to their respective personnel, agents, partners, and team members receiving such Confidential Information or Trade Secrets under this OTA.

ARTICLE VII: PUBLICATION AND ACADEMIC RIGHTS

A. Classified Research Projects: If a release of Confidential Information or Trade Secrets is for a classified Research Project, the provisions of the DoD Security Agreement (DD Form 441), Certificate Pertaining to Foreign Interests (SF 328), and the DoD Contract Security Classification Specification (DD Form 254) apply. The Government will be responsible for the completion of the DD Form 254. The COMPANY must complete the DD Form 441 and SF 328 and provide them to the Government through for review by the proper Government representatives, the Industrial Security Representative at the cognizant Defense Security Service (DSS) office for DD Form 441 and SF 328 and the VRA's local Security office for the DD Form 254.

B. Review or Approval of Technical Information for Public Release.

(a) At least 30 days prior to the scheduled release date, COMPANY shall submit to the AO two copies of the information to be released along with Clearance of Technical Information for Public Release.

The AOR is hereby designated as the approval authority for the AO for such releases.

(b) Reserved

(c) Parties to this Agreement are also responsible for assuring that every publication of material based on or developed under this project contains the following disclaimer:

“The views and conclusions contained herein are those of the authors and should not be interpreted as necessarily representing the official policies or endorsements, either expressed or implied, of the U.S. Government.”

The COMPANY shall flow down these requirements to its partners and team members, at all tiers.

ARTICLE VIII: LICENSING & PROPRIETARY RIGHTS//DATA RIGHTS

A. Definitions

“**Government Purpose Rights**” (GPR)” means the rights to use, modify, duplicate or disclose the “Data” licensed with such rights as set forth in Table 3.0 of the SOW under this Agreement within the Government for United States Government purposes only; and to release or disclose data outside the Government to any authorized persons pursuant to an executed non-disclosure agreement for such persons’ use, modification, or reproduction for United States Government purposes only. United States Government purposes include Foreign Military Sales purposes and competitive re-procurement.

(b)(4)



(b)(4)



(b)(4)



C. PROPRIETARY RIGHTS FOR PROFESSIONAL SERVICES. (PRPS)

(1) Professional Services. Other than the Excluded Materials, Customer shall own all intellectual property rights associated with the Work Product, as well as Customer's derivative works thereof, subject to Customer's payment in full under such SOW and subject to Pivotal's rights in the underlying intellectual property embodied therein or used by Pivotal to perform the Professional Services.

(b)(4)



(3) Open Source Materials Exclusion. OSS identified in the applicable SOW or subsequently agreed to in writing by the parties may be included in, or necessary for Customer to use, the Work Product, but are excluded from Customer's ownership rights set forth in Article III(1). Pivotal may (a) obtain such OSS on Customer's behalf, (b) incorporate such OSS into the Work Product, and (c) submit back to open source libraries any improvements made to the OSS during the course of performing the Professional Services, to the extent such submissions do not violate the confidentiality obligations set forth herein. Other than the OSS referenced in the applicable SOW, Pivotal will not include OSS in the Work Product without obtaining Customer's written permission.

(4) Third Party Materials Exclusion. Third Party Materials may be included in, or necessary for Customer to use, the Work Product, but are excluded from Customer's ownership rights set forth in Article III(1) Customer will be solely responsible for obtaining necessary licenses to the Third Party Materials and liable for their use.

(5) Customer's Underlying Rights. Customer represents and warrants to Pivotal that (a) Customer owns or controls all rights in and to all Customer information and materials provided by or on behalf of Customer to Pivotal pursuant to this Agreement, including without limitation all rights to exploit all such Customer information and materials worldwide in all media and languages in perpetuity without encumbrance or restriction, and (b) Customer grants to Pivotal a nonexclusive, nontransferable, worldwide paid-up license to make, use, modify, reproduce, and prepare derivative works of Customer information and materials, solely for the purpose of performing Professional Services in accordance with the Statement of Work of this Agreement, with no right to grant sublicenses.

(6) Feedback. The Parties agree that any feedback or suggestions ("Feedback") (if any) given hereunder is voluntary. Each party is free to use, disclose, reproduce, license or otherwise distribute the Feedback relating to its own products and services, without any obligations or restrictions of any kind, including intellectual property rights subject to Article XI, G, except that under no circumstances may Pivotal use such Feedback for the purpose of

stating or implying any endorsement by the Government of Pivotal, its products or services.

(7) Reservation of IP Rights. Except as expressly stated, nothing herein shall be construed to (a) directly or indirectly grant to a receiving party any title or license to or ownership of a providing party's intellectual property rights in Professional Services, Software or materials furnished by such providing party; (b) preclude such providing party from:

(i) independently developing, marketing, acquiring, using, licensing, modifying or otherwise freely exploiting products or services that are similar to or related to the Professional Services, Software or materials provided hereunder;

(ii) restricting the assignment of persons performing Professional Services; or

(iii) using and employing their general skills, know-how, and expertise, and to use, disclose, and employ any generalized ideas, concepts, know-how, methods, techniques, or skills gained or learned during the course of any assignment, so long as that party complies with confidentiality obligations herein.

Pivotal is not being engaged to perform any investigation of third party intellectual property rights including any searches of patents, copyrights, or trademarks related to the Work Product.

(b)(4)

ARTICLE IX: PATENT RIGHTS

RESERVED

ARTICLE X: FOREIGN ACCESS TO TECHNOLOGY AND EXPORT CONTROL

1. Foreign Access to Technology

This Article X shall remain in effect during the term of this Agreement.

A. Definition

a) "Foreign Firm or Institution" means a firm or institution organized or existing under the laws of a country other than the United States, its territories, or possessions. The term includes, for purposes of this Agreement, any agency or instrumentality of a foreign government; and firms, institutions or business organizations which are owned or substantially controlled by foreign governments, firms, institutions, or individuals.

b) "Work Product" means the works of authorship or other products developed or created and delivered by Pivotal to Customer (excluding the Excluded Materials) in the course of performing Services described in the applicable SOW.

B. General: The Parties agree that research findings, Work Products and Customer Information and Materials (under Article XIII paragraph 5 i.e. government source code used for replatforming, i.e., existing government applications that are provided to COMPANY for replatforming) arising under this Agreement may constitute a significant enhancement to the national defense, and to the economic vitality of the United States. Accordingly, access to important technology developments under this Agreement by Foreign Firms or Institutions must be carefully controlled. The controls contemplated in this Article are in addition to, and are not intended to change or supersede, the provisions of the International Traffic in Arms Regulation (22 CFR Part 121 et seq.), the DoD Industrial Security Regulation (DoD 5220.22-R) and the Department of Commerce Export Regulation (15 CFR Part 770 et seq.). But, this Agreement shall not require Company to make its corporate network capable of handling ITAR or national security classified information pursuant to the regulations above.

C. Restrictions on Sale or Transfer of Work Products to Foreign Firms or Institutions

- a) In order to promote the national security interests of the United States and to effectuate the policies that underlie the regulations cited above, the procedures stated in subparagraphs C(b), C(c), and C(d) below shall apply to any transfer of Work Products. For purposes of this paragraph, a transfer includes a sale of the company, and sales or licensing of Work Products. Transfers do not include:
- (i) sales of products or components, or
 - (ii) licenses of software or documentation related to sales of products or components, or
 - (iii) transfer to foreign subsidiaries of the COMPANY member entities for purposes related to this Agreement, or
 - (iv) transfer which provides access to Work Products to a Foreign Firm or Institution which is an approved source of supply or source for the conduct of research under this Agreement provided that such transfer shall be limited to that necessary to allow the firm or institution to perform its approved role under this Agreement.
 - (v) releases pursuant to Article VII hereof ("Publication and Academic Rights")
- b) The COMPANY shall provide timely notice to the Government of any proposed transfers of Work Products developed under this Agreement to Foreign Firms or Institutions. If the Government determines that the transfer may have adverse consequences to the national security interests of the United States, the COMPANY and the Government shall jointly endeavor to find alternatives to the proposed transfer which obviate or mitigate potential adverse consequences of the transfer but which provide substantially equivalent benefits to the COMPANY.
- c) In any event, the COMPANY shall provide written notice to the Government AO's Representative and AO of any proposed transfer to a foreign firm or institution at least sixty (60) calendar days prior to the proposed date of transfer. Such notice shall cite this Article and shall state specifically what is to be transferred and the general terms of the transfer. Within thirty (30) calendar days of receipt of the COMPANY's written notification, the Government AO shall advise the COMPANY whether it objects to the proposed transfer. If the government does not object within 30 days the COMPANY may proceed with the transfer. .

D) Lower Tier Agreements

The COMPANY shall include this Article, suitably modified, to identify the Parties, in all Project Agreements or lower tier agreements, regardless of tier, for experimental, Work Products, or research work.

2. Export Control

A. Export Compliance.

Each Party agrees to comply with U.S. Export regulations including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C. § § 2751-2794, including the International Traffic in Arms Regulation (ITAR), 22 C.F.R. § 120 et seq. ; and the Export Administration Act, 50 U.S.C. app. § 2401-2420. Each party is responsible for obtaining from the Government export licenses or other authorizations/approvals, if required, for information or materials provided from one party to another under this Agreement. Accordingly, the COMPANY shall not export, directly, or indirectly, any Work Products, Confidential Information, Trade Secrets, or Classified and Unclassified Technical Data in violation of any U.S. Export laws or regulations.

B. Flowdown.

The COMPANY shall include this Article, suitably modified, to identify all Parties, in all lower tier agreements. This Article shall, in turn, be included in all sub-tier subcontracts or other forms of lower tier

agreements, regardless of tier.

ARTICLE XI: OPSEC TAILOR THIS LANGUAGE ACCORDINGLY

- (a) Access and General Protection/Security Policy and Procedures. All contractor employees, including subcontractor employees, shall comply with all installation and facility access and local security policies and procedures (provided by Government representative), and security/emergency management exercises. The contractor shall also provide all information required for background checks to meet installation access requirements to be accomplished by the Installation Provost Marshal Office, Director of Emergency Services, or Security Office. The contractor workforce shall comply with all personal identity verification and accountability requirements as directed by DoD, HQDA, and/or local policy. Should the Force Protection Condition (FPCON) at any individual facility or installation change, the Government may require changes in contractor security matters or processes. During FPCONs Charlie and Delta, services/installation access may be discontinued/postponed due to higher threat. Services will resume when FPCON level and/or threat is reduced to an acceptable level as determined by the Installation Commander. Contractor person working on an installation shall participate in the installation Random Antiterrorism Measures Program as directed. Contractor shall be subject to and comply with vehicle searches, wearing of ID badges, etc.
- (b) iWatch (See Something, Say Something) Training: All contractor employees, including subcontractor employees, shall receive training and participate in the local iWATCH program (training standards provided by the requiring activity ATO). This locally developed training will be used to inform employees of the types of behavior to watch for and instruct employees to report suspicious activity to the AOR. This training shall be completed within 45 calendar days after contract start date or effective date of incorporation of this requirement into the contract, whichever applies, and then annually thereafter. The contractor shall submit certificates of completion for each affected contractor employee and subcontractor employee to the AOR within 14 calendar days after completion of training by all employees and subcontractor personnel.
- (c) Access to DoD Facility or Installation: All contractor employees, including subcontractor employees, shall comply with adjudication standards and procedures using the National Crime Information Center Interstate Identification Index (NCIC-III) and Terrorist Screening Database (Army Directive 2014-05/AR 190-13); applicable installation, facility and area commander installation and facility access and local security policies and procedures (provided by the AOR).
- (d) Information Management Army Information Technology/IA: This project will access For Official Use Only (FOUO) information via UPS mail, Safe Access File Exchange (SAFE) or approved Impact Level cloud service providers. This Agreement shall not require Company to store, handle, receive or otherwise manage aforementioned information on its corporate servers or network.
- (e) For Official Use Only Information (FOUO) and Controlled Unclassified Information (CUI): See subsection (d).
- (f) OPSEC Training: In accordance with AR 530-1 (or DoDM 5205.02-M), new contractor employees, including subcontractor employees, shall complete initial OPSEC training within 30 calendar days of award and must also complete annual OPSEC awareness as provided by the appropriately designated OPSEC level II trained OPSEC Officer/Coordinator. The contractor shall arrange training through the AOR.
- (g) Public Release of Information: In accordance with AR 530-1 (or DoDM 5205.02-M), an OPSEC review will be performed by the Government prior to all public release of information. All Government information intended for public release by a contractor shall undergo a Government OPSEC review prior to release. The OPSEC review will be performed as part of the Public Review Process described in Article VII.

(b)(4)

ARTICLE XIII: EXECUTION

This Agreement constitutes the entire agreement of the Parties and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions among the Parties, whether oral or written, with respect to the subject matter hereof. This Agreement may be revised only by written consent of the COMPANY and the ACC-NJ Agreements Officer designated in this Agreement. By executing this agreement, the COMPANY affirms that it is a nontraditional defense contractor as that term is defined in 10 U.S.C. 2302 and, as a result, is eligible to be awarded this Agreement.

ARTICLE XIV IP INDEMNITY.

(1) **IP Indemnity for Software.** Subject to the remainder of this Article XV and the Limitation of Liability in Article V.C, Pivotal shall (a) defend Customer against any Infringement Claim that Software infringes a copyright or patent enforceable in a Berne Convention signatory country; and (b) pay resulting costs and damages finally awarded against Customer by a court of competent jurisdiction, or pay amounts stated in a written settlement negotiated and approved by Pivotal.

(2) **IP Indemnity for Professional Services.** Subject to this Article XIV and the Limitation of Liability in Article V.C, Pivotal shall (a) defend Customer against any Infringement Claim that the Professional Services and/or Work Product (excluding any Excluded Materials) infringe a trade secret, or a copyright enforceable in a Berne Convention country, and (b) pay resulting costs and damages finally awarded against Customer by a court of competent jurisdiction, or pay amounts stated in a written settlement negotiated and approved by Pivotal. Customer shall provide non-infringing materials for any such materials they bring to the engagement.

(3) **Procedure and Remedies.** The foregoing obligations apply only if indemnitee:

- (a) promptly notifies indemnitor in writing of such Infringement Claim;
- (b) grants Pivotal sole control over the defense and settlement thereof to the extent such control does not contradict or contravene 28 U.S.C. 516;
- (c) reasonably cooperates in response to indemnitor's request for assistance;
- (d) is not in material breach of this Agreement (including any Exhibits); and
- (e) is current in payment of all applicable fees prior to Infringement Claim.

If the allegedly infringing Software, Professional Services and/or Work Product ("Indemnified Elements") are held to constitute an infringement, or in Pivotal's opinion, any such Indemnified Elements are likely to become infringing and their use enjoined, Pivotal may, at its sole option and expense:

- (i) procure for Customer the right to make continued use of the affected Indemnified Elements;
- (ii) replace or modify the affected Indemnified Elements to make them non-infringing; or
- (iii) notify Customer to return the affected Indemnified Elements and, upon receipt, discontinue the related Support Services (if applicable) and, for Subscription Licenses, refund unused prepaid fees calculated based on each month remaining in the Subscription Period.

(4) **IP Indemnity Exclusions.** Neither Pivotal nor any Distributor shall have any obligation under this Article IV or otherwise with respect to any Infringement Claim that arises out of or relates to: (a) combination, operation or use of the Indemnified Elements with any other software, hardware, technology, data, or other materials; (b) use for a purpose or in a manner for which Indemnified Elements were not designed or use after Pivotal notifies Customer to cease such use due to a possible or pending Infringement Claim; (c) any modifications to Indemnified Elements made by any person other than Pivotal or its authorized representatives; (d) any modifications to Indemnified Elements made by Pivotal pursuant to instructions, designs, specifications, or any other information or materials provided to Pivotal by or on behalf of Customer; (e) use of any version of Software when an upgrade or a newer iteration of Software made available by Pivotal could have avoided the infringement; (f) any data or information which Customer or a third party utilizes in connection with Software; or (g) any Open Source Software. THIS

SECTION STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND PIVOTAL'S ENTIRE LIABILITY FOR ANY INFRINGEMENT CLAIMS.

(End of Summary of Changes)

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT				1. CONTRACT ID CODE <div style="text-align: center;">J</div>		PAGE OF PAGES <div style="text-align: center;">1 5</div>	
2. AMENDMENT/MODIFICATION NO. P00003		3. EFFECTIVE DATE 07-Sep-2017		4. REQUISITION/PURCHASE REQ. NO. SEE SCHEDULE		5. PROJECT NO.(If applicable)	
6. ISSUED BY US ARMY CONTRACTING COMMAND US ACC NEW JERSEY PICATINNY NJ 07806-5000		CODE W15QKN		7. ADMINISTERED BY (If other than item 6) ARMY CONTRACTING COMMAND - NJ BUILDING 10 PHIPPS ROAD PICATINNY ARSENAL NJ 07806-5000		CODE W15QKN	
8. NAME AND ADDRESS OF CONTRACTOR (No., Street, County, State and Zip Code) PIVOTAL SOFTWARE, INC. 875 HOWARD ST 5TH FLR SAN FRANCISCO CA 94103-3021				9A. AMENDMENT OF SOLICITATION NO.			
				9B. DATED (SEE ITEM 11)			
				X 10A. MOD. OF CONTRACT/ORDER NO. W15QKN-17-9-0044			
				X 10B. DATED (SEE ITEM 13) 04-Aug-2017			
CODE 71BN7		FACILITY CODE					
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS							
<input type="checkbox"/> The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offer <input type="checkbox"/> is extended, <input type="checkbox"/> is not extended.							
Offer must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended by one of the following methods: (a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.							
12. ACCOUNTING AND APPROPRIATION DATA (If required) See Schedule							
13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.							
A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.							
B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(B).							
C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:							
X D. OTHER (Specify type of modification and authority) In accordance with Article IV: Obligation and Payment of the OTA.							
E. IMPORTANT: Contractor <input checked="" type="checkbox"/> is not, <input type="checkbox"/> is required to sign this document and return _____ copies to the issuing office.							
14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.) Modification Control Number: (b)(6) The purpose of this modification is to administratively correct the Line of Accounting associated with subCLINs 100201 and CLINs 100301. Due to missing accounting information, subCLIN 100201 is replaced by subCLIN 100202 and subCLIN 100301 is replaced by subCLIN 100303. CLIN totals remain unchanged and all other terms and conditions remain the same.							
Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.							
15A. NAME AND TITLE OF SIGNER (Type or print)				16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)			
				(b)(6)			
15B. CONTRACTOR/OFFEROR		15C. DATE SIGNED		16B. UNITED STATES OF AMERICA		16C. DATE SIGNED	
_____ (Signature of person authorized to sign)				BY (b)(6) (Signature of Contracting Officer)		07-Sep-2017	

SECTION SF 30 BLOCK 14 CONTINUATION PAGE

SUMMARY OF CHANGES

SECTION B - SUPPLIES OR SERVICES AND PRICES

(b)(4)

SUBCLIN 100202 is added as follows:

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
100202	Funding for CLIN 1002 FFP (b)(4)				(b)(4)
	FOB: Destination				
	ACRN AH CIN: AN6AS3301ANG010001			NET AMT	(b)(4)

SUBCLIN 100303 is added as follows:

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
100303					(b)(4)

Funding for CLIN 1003
FFP

(b)(4)

NET AMT

(b)(4)

(b)(4)

(b)(4)

The following have been modified:

MILESTONE PAYMENT INFO

(b)(4)

(b)(4)

SECTION E - INSPECTION AND ACCEPTANCE

The following Acceptance/Inspection Schedule was added for SUBCLIN 100202:

INSPECT AT
N/A

INSPECT BY
N/A

ACCEPT AT
N/A

ACCEPT BY
Government

The following Acceptance/Inspection Schedule was added for SUBCLIN 100303:

INSPECT AT
N/A

INSPECT BY
N/A

ACCEPT AT
N/A

ACCEPT BY
Government

(b)(4)

(b)(4)



AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT				1. CONTRACT ID CODE J		PAGE OF PAGES 1 5	
2. AMENDMENT/MODIFICATION NO. P00004		3. EFFECTIVE DATE 07-Nov-2017		4. REQUISITION/PURCHASE REQ. NO. SEE SCHEDULE		5. PROJECT NO.(If applicable)	
6. ISSUED BY US ARMY CONTRACTING COMMAND US ACC NEW JERSEY PICATINNY NJ 07806-5000		CODE W15QKN		7. ADMINISTERED BY (If other than item 6) See Item 6		CODE	
8. NAME AND ADDRESS OF CONTRACTOR (No., Street, County, State and Zip Code) PIVOTAL SOFTWARE, INC. 875 HOWARD ST 5TH FLR SAN FRANCISCO CA 94103-3021				9A. AMENDMENT OF SOLICITATION NO.			
				9B. DATED (SEE ITEM 11)			
				X 10A. MOD. OF CONTRACT/ORDER NO. W15QKN-17-9-0044			
				X 10B. DATED (SEE ITEM 13) 04-Aug-2017			
CODE 71BN7		FACILITY CODE					
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS							
<input type="checkbox"/> The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offer <input type="checkbox"/> is extended, <input type="checkbox"/> is not extended. Offer must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended by one of the following methods: (a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.							
12. ACCOUNTING AND APPROPRIATION DATA (If required) See Schedule							
13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.							
A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.							
B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(B).							
C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:							
X D. OTHER (Specify type of modification and authority) In accordance with Article IV: Obligation and Payment of the OTA.							
E. IMPORTANT: Contractor <input checked="" type="checkbox"/> is not, <input type="checkbox"/> is required to sign this document and return _____ copies to the issuing office.							
14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.) Modification Control Number: (b)(6) The purpose of this modification is to provide incremental funding in the amount of \$2,000,000.00 to fully fund (b)(4) (b)(4) in the amount of \$589,250.00. All other terms and conditions remain unchanged.							
Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.							
15A. NAME AND TITLE OF SIGNER (Type or print)				16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) (b)(6)			
15B. CONTRACTOR/OFFEROR (Signature of person authorized to sign)		15C. DATE SIGNED		16B. UNITED STATES OF AMERICA BY (b)(6) (Signature of Contracting Officer)		16C. DATE SIGNED 07-Nov-2017	

SECTION SF 30 BLOCK 14 CONTINUATION PAGE

SUMMARY OF CHANGES

SECTION B - SUPPLIES OR SERVICES AND PRICES

SUBCLIN 100103 is added as follows:

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
100103	Funding for CLIN 1001 FFP (b)(4)				(b)(4)
	FOB: Destination PURCHASE REQUEST NUMBER: U18AS1011ANG01				
				NET AMT	(b)(4)
	(b)(4)				(b)(4)

SUBCLIN 100104 is added as follows:

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
100104	Funding for CLIN 1001 FFP (b)(4)				(b)(4)
	FOB: Destination PURCHASE REQUEST NUMBER: U18AP1011ANG01				
				NET AMT	(b)(4)
	ACRN AK CIN: U18AP1011ANG010001				(b)(4)

CLIN 1008 is added as follows:

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
1008				(b)(4)	(b)(4)

FFP
FOB: Destination

NET AMT

(b)(4)

The following have been modified:
MILESTONE PAYMENT INFO

(b)(4)

(b)(4)

SECTION E - INSPECTION AND ACCEPTANCE

The following Acceptance/Inspection Schedule was added for SUBCLIN 100103:

INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
N/A	N/A	N/A	Government

The following Acceptance/Inspection Schedule was added for SUBCLIN 100104:

INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
N/A	N/A	N/A	Government

The following Acceptance/Inspection Schedule was added for CLIN 1008:

INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
N/A	N/A	N/A	Government

(b)(4)

(b)(4)



AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT				1. CONTRACT ID CODE J		PAGE OF PAGES 1 5	
2. AMENDMENT/MODIFICATION NO. P00005		3. EFFECTIVE DATE 30-Nov-2017		4. REQUISITION/PURCHASE REQ. NO. SEE SCHEDULE		5. PROJECT NO.(If applicable)	
6. ISSUED BY US ARMY CONTRACTING COMMAND US ACC NEW JERSEY PICATINNY NJ 07806-5000		CODE W15QKN		7. ADMINISTERED BY (If other than item 6) See Item 6		CODE	
8. NAME AND ADDRESS OF CONTRACTOR (No., Street, County, State and Zip Code) PIVOTAL SOFTWARE, INC. 875 HOWARD ST 5TH FLR SAN FRANCISCO CA 94103-3021				9A. AMENDMENT OF SOLICITATION NO.			
				9B. DATED (SEE ITEM 11)			
				X 10A. MOD. OF CONTRACT/ORDER NO. W15QKN-17-9-0044			
				X 10B. DATED (SEE ITEM 13) 04-Aug-2017			
CODE 71BN7		FACILITY CODE					
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS							
<input type="checkbox"/> The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offer <input type="checkbox"/> is extended, <input type="checkbox"/> is not extended.							
Offer must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended by one of the following methods: (a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.							
12. ACCOUNTING AND APPROPRIATION DATA (If required) See Schedule							
13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.							
A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.							
B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(B).							
C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:							
X D. OTHER (Specify type of modification and authority) In accordance with Article IV: Obligation and Payment of the OTA.							
E. IMPORTANT: Contractor <input checked="" type="checkbox"/> is not, <input type="checkbox"/> is required to sign this document and return _____ copies to the issuing office.							
14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.) Modification Control Number: (b)(6) The purpose of this modification is to provide incremental funding in the total amount of \$1,450,000.00. This funding will be applied to CLIN (b)(4) All other terms and conditions remain unchanged.							
Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.							
15A. NAME AND TITLE OF SIGNER (Type or print)				16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) (b)(6)			
15B. CONTRACTOR/OFFEROR (Signature of person authorized to sign)		15C. DATE SIGNED		16B. UNITED STATES OF AMERICA BY (b)(6) (Signature of Contracting Officer)		16C. DATE SIGNED 30-Nov-2017	

SECTION SF 30 BLOCK 14 CONTINUATION PAGE

SUMMARY OF CHANGES

SECTION B - SUPPLIES OR SERVICES AND PRICES

SUBCLIN 100105 is added as follows:

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
100105	Funding for CLIN 1001 FFP (b)(4)				(b)(4)
	FOB: Destination				
				NET AMT	(b)(4)
	(b)(4)				(b)(4)

SUBCLIN 100304 is added as follows:

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
100304	Funding for CLIN 1003 FFP (b)(4)				(b)(4)
	FOB: Destination				
				NET AMT	(b)(4)
	ACRN AL CIN: U18AD1011ANG010002				(b)(4)

The following have been modified:
MILESTONE PAYMENT INFO

(b)(4)



(b)(4)

SECTION E - INSPECTION AND ACCEPTANCE

The following Acceptance/Inspection Schedule was added for SUBCLIN 100105:

INSPECT AT
N/AINSPECT BY
N/AACCEPT AT
N/AACCEPT BY
Government

The following Acceptance/Inspection Schedule was added for SUBCLIN 100304:

INSPECT AT
N/AINSPECT BY
N/AACCEPT AT
N/AACCEPT BY
Government

(b)(4)

(b)(4)

(End of Summary of Changes)

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT				1. CONTRACT ID CODE J		PAGE OF PAGES 1 31	
2. AMENDMENT/MODIFICATION NO. P00006		3. EFFECTIVE DATE 01-Feb-2018		4. REQUISITION/PURCHASE REQ. NO. SEE SCHEDULE		5. PROJECT NO.(If applicable)	
6. ISSUED BY US ARMY CONTRACTING COMMAND US ACC NEW JERSEY PICATINNY NJ 07806-5000		CODE W15QKN		7. ADMINISTERED BY (If other than item 6) See Item 6		CODE	
8. NAME AND ADDRESS OF CONTRACTOR (No., Street, County, State and Zip Code) PIVOTAL SOFTWARE, INC. 875 HOWARD ST 5TH FLR SAN FRANCISCO CA 94103-3021				9A. AMENDMENT OF SOLICITATION NO.			
				9B. DATED (SEE ITEM 11)			
				X 10A. MOD. OF CONTRACT/ORDER NO. W15QKN-17-9-0044			
				X 10B. DATED (SEE ITEM 13) 04-Aug-2017			
CODE 71BN7		FACILITY CODE					
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS							
<input type="checkbox"/> The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offer <input type="checkbox"/> is extended, <input type="checkbox"/> is not extended.							
Offer must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended by one of the following methods: (a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.							
12. ACCOUNTING AND APPROPRIATION DATA (If required)							
13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.							
A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.							
B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(B).							
C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:							
X D. OTHER (Specify type of modification and authority) In accordance with Article IV: Obligation and Payment of the OTA.							
E. IMPORTANT: Contractor <input type="checkbox"/> is not, <input checked="" type="checkbox"/> is required to sign this document and return <u> 1 </u> copies to the issuing office.							
14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.) Modification Control Number: (b)(6) The purpose of this modification is to: 1) Specify an additional performance location of Korea. 2) Incorporate United States Forces Korea (USFK) Status of Forces Agreement (SOFA) clause into the OTA terms and conditions. All other terms and conditions remain unchanged.							
Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.							
15A. NAME AND TITLE OF SIGNER (Type or print)				16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) (b)(6)			
15B. CONTRACTOR/OFFEROR _____ (Signature of person authorized to sign)		15C. DATE SIGNED		16B. UNITED STATES OF AMERICA BY (b)(6) _____ (Signature of Contracting Officer)		16C. DATE SIGNED 01-Feb-2018	

SECTION SF 30 BLOCK 14 CONTINUATION PAGE

SUMMARY OF CHANGES

SECTION H - SPECIAL CONTRACT REQUIREMENTS

The following have been modified:

PIVOTAL SOFTWARE INC OTA

AGREEMENT BETWEEN

UNITED STATES ARMY CONTRACTING COMMAND – NEW JERSEY
PICATINNY ARSENAL, NJ 07806-5000

AND

Pivotal Software Inc.
875 Howard Street, 5th Floor
San Francisco, CA 94103

Agreement No.: W15QKN-17-9-0044
Total Amount of the Agreement: \$21,372,783.00
Authority: 10 U.S.C. § 2371b

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ARTICLE I: SCOPE OF THE AGREEMENT

A. Background

This Other Transaction Agreement (OTA) is awarded based upon the prototype project proposed by Pivotal Software Inc., hereinafter referred to as “The Company” or “Pivotal” in response to the Defense Innovation Unit – Experimental (DIUx) Commercial Solutions Offering (CSO). The principle purpose of this OTA is to establish the underlying terms and conditions between the government and Pivotal for the Agreement No. W15KN-17-9-0044. This includes elements from both DIUx’s model Other Transaction contract and Pivotal’s software licenses and professional services agreement.

BRIEFLY SUMMARIZE THE PROTOTYPE PROJECT: This pilot is intended to demonstrate a method to develop, operate, and maintain software for complex information technology systems in the DoD. Through this methodology the DoD will increase the speed and effectiveness of application delivery, decrease spending for operations, and radically enhance the tactical and strategic responsiveness of the Air Operations Center (AOC). Pivotal will accomplish these outcomes by installing its cloud native platform, Pivotal Cloud Foundry (PCF), at several locations annotated in the Statement of Work (SOW) to run Pivotal Cloud Foundry and demonstrate the utility of this commercial methodology.

B. Definitions

“Agreement” or “OTA” refers to the Other Transaction Agreement, as authorized under 10 U.S.C. 2371b, between the Government and Pivotal Software Inc., Agreement No. **W15QKN-17-9-0044**.

“Affiliate” means a legal entity controlled by, controlling, or that is under common control of Pivotal or Customer, with control meaning more than fifty percent (50%) of the voting power or ownership interests then outstanding of that entity.

“Agreements Officer (AO)” is the United States Army Contracting Command – New Jersey Contracting Activity warranted Contracting Officer authorized to sign the final agreement for the Government.

“Agreements Officer’s Representative (AOR)” is the individual designated by the Government on a per project basis to monitor all technical aspects; the AOR shall only assist in agreement administration of the specific project to the extent expressly delegated such administration authority in writing in the Project Agreement by the responsible Agreements Officer.

“Infringement Claim” means any third party claim, notice, demand, action, proceeding, litigation, investigation, or judgment relating IP infringement. With respect to Software, such Claim must be related to Customer’s use of the Software during the Subscription Period (or renewal thereof).

“Contracting Activity” means an element of an agency designated by the agency head and delegated broad authority regarding acquisition functions. It also means elements or another agency designated by the director of a defense agency which has been delegated contracting authority through its agency charter.

“Date of Completion” is the date on which all work is completed or the date on which the period of performance ends.

“Discovery and Framing (D&F)” means upfront period during application development focused on Pivotal’s methodology towards defining user requirements for the minimal viable product (MVP).

“Effective Date” means the date when this Agreement is signed and executed by the Agreements Officer for the Government.

“Excluded Materials” mean Pivotal Materials, Open Source Software, and Third Party Materials.

“Government” or “the Customer” means the U.S. Government.

“Government Fiscal Year” means the period commencing on October 1 and ending September 30 of the following calendar year.

(b)(4)

“Major Release” means a generally available release of Software that Pivotal designates with a change in the digit to the left of the first decimal point (e.g., 5.0 >> 6.0).

“Milestone” means a scheduled event signifying the completion of a major deliverable or a set of related deliverables as identified in the Statement of Work.

“Minimum Viable Product (MVP)” creation of baseline requirements defined by the government delineating user acceptance for an operational setting for each application developed.

“Minor Release” means a generally available release of Software that Pivotal designated with a change in the digit to the right of the decimal point (e.g., 5.0 >> 5.1).

“Open Source Software” or OSS means software components licensed under a license approved by the Open Source Initiative or similar open source or freeware license and included in, embedded in, utilized by, provided or distributed with Software or Developments.

“Other Transactions Agreement (OTA)” is the term commonly used to refer to the 10 USC 2371b authority to enter into transactions other than contracts, grants or cooperative agreements. The Department of Defense (DoD) currently has authority to make awards that are directly relevant to enhancing the mission effectiveness of military personnel and the supporting platforms, systems, components, or materials proposed to be acquired or developed by the Department of Defense, or to improvement of platforms, systems, components, or materials in use by the armed forces. OTAs are acquisition instruments that generally, are not subject to the federal laws and regulations governing procurement (FAR based) contracts. As such, they are not required to comply with the Federal Acquisition Regulation (FAR), its supplements (i.e. DFARS) or laws that are limited in applicability to procurement contracts.

“Parties” means Government and the COMPANY by its authorized agent where collectively identified and “Party” where each entity is individually identified.

“Partial Payment Milestone” means partial completion of the payable milestone based on the invoice submitted by the company

“Payable Milestone” means that once a milestone has been met (see definition of “milestone”), the Government can approve payment to the COMPANY of a predetermined dollar amount in relation to performance of a particular project or defined services under the Other Transaction Agreement or the SOW.

“PCF Dojo services” are focused on Day One (deployment and testing) and Day Two (operationalization and utilization) concerns. The actual work on site will be tailored to specific program objectives and tailored to each environment’s unique role in the continuous fielding process for the AOC. The Designated Operations Engineer(s) shall provide ongoing support of the platform over the extent of this pilot engagement and shall pair with the customer to work on backlog priorities while operationalizing PCF.

“PCF Elastic Runtime Service” means Pivotal’s complete, scalable runtime environment, extensible to most modern frameworks or languages running on Linux or Windows. Deployed applications enjoy built-in services, and can automatically bind to new data services through a service broker or to an existing user provided service.

“PCF Operations Manager” means Pivotal’s subscription which provides the foundation for PCF within a specific network environment.

(b)(4)

(b)(4) License” means access to Software and Documentation subject to the licensing terms and restrictions in the Pivotal Product Guide available (b)(4) a perpetual basis.

“Pivotal Materials” means any materials developed by Pivotal: (a) prior to the Effective Date; (b) other than in performance of this Agreement; (c) that are generally applicable to Pivotal’s products and services and are not unique to the business of Customer or the SOW; or (d) that are improvements to Software or Pivotal’s internal processes.

(b)(4)

“Signatory Authority” refers to the individual that has the authority to legally bind a party to an agreement.

“Software” means Pivotal computer programs listed in the Guide and identified in a Quote, indicating a Subscription License excluding code written as part of a Pivotal Labs project

“Subscription License” means (a) access to Software (and Documentation) set forth in the SOW subject to the Guide; and (b) Support Services, which include any Minor and Major Releases and related upgrades on a “when and if available” basis, all during the Subscription Period.

“Subscription Period” means the period starting upon notification to Customer that Software is available for download, and continues for the period specified in the Quote or mutually-signed Order

“Support Services” means services described at: (b)(4)

“Third Party Materials” means materials (including tools that are used to deliver the Professional Services) that are not owned or created by Pivotal (other than Open Source Software).

“The Company” or “The Contractor” means Pivotal Software Inc.

“Work Product” means the works of authorship or other products developed or created and delivered by Pivotal to Customer (excluding the Excluded Materials) in the course of performing Services described in the applicable SOW.

C. Scope

STATEMENT OF WORK for “AOC Pathfinder”

1.0 BACKGROUND: The Department of Defense, in partnership with the Air Operations Center (AOC) Weapons System Program Management Office (PMO) and supporting government organizations,

plans to prototype the use of agile software development for large enterprise architectures, adopting commercial best practices that are not utilized in the DoD. This methodology has the potential to change how the government manages and implements large IT enterprises. Through this methodology, users will also receive more capability in the applications they leverage to perform day-to-day operations.

To effectively implement and leverage this methodology, the government must first establish environments, leveraging commercial software licenses, to provide the underpinning software development platform. Once that environment is realized, the government can then leverage commercial best practices of agile software development to produce user-centered design, test-driven development, continuous integration, and continuous delivery of new and enhanced software code. Additionally, the mentorship and training to government personnel on how to leverage the environment is paramount realizing the utility for this approach. This is in stark contrast to how the DoD currently implements software. That current process is accomplished in a serial fashion known as the waterfall approach. *The waterfall approach can be summarized as follows: manual orchestration of low-level steps, which generate repetitive work that is highly susceptible to errors. Automation, if used at all within DoD, is typically script-based and ad hoc. As a result, software processes to build, test, deploy and operate each application are custom, complex, and frequently inconsistent, resulting in additional operational complexity and chaos. Organizations manage such complexity by slowing down release processes to ensure correctness and consistency, and consequently struggle to release new functionality quickly. The end result is a track record of major IT programs that are over-budget and over-timeline.*

While having the underlying platform is critical for the iterative deployment of the enhanced software, the true power of the agile methodology is ensuring the software developers (people) are enabled to leverage the development platform. **To that end, this project will prototype the use of agile software development methodology in conjunction with a modernized software platform (Pivotal Cloud Foundry) to assess whether this commercial methodology can provide similar benefits in a government use case.** To affect this prototype project, the contractor shall perform co-development on all aspects of the prototype project to include:

- 1.1 Establishment and optimal configuration of the Pivotal Cloud Foundry (PCF) 'environment' for Administrators through the contractor's DoJo offering
- 1.2 Net-New Application development - this includes partnering with contractor designers, product managers, and software engineers in order to deploy Agile software development where new features are deployed to the end users on a regular cadence.
- 1.3 App Replatforming - This effort is focused on taking legacy applications and retooling the software code so that the application can operate on a modern cloud infrastructure, to include the Pivotal Cloud Foundry platform, allowing for reduced sustainment costs and higher system reliability.
- 1.4 Third Party Application Integration - The PCF platform is extremely robust, but it does not have all the tools required by the government. The government will provide personnel to partner with pivotal to identify the correct suite of third party applications and implement those capabilities into the development platform to either gain access to additional data sets or applications for end users whether they are the app development team or a user of the application.
- 1.5 Training: While learning is inherent in each activity provided by the teaming methodology, the contractor offers additional acceleration courses to ensure new team members joining various functions of the agile methodology do not slow down the S/W development team. This methodology is extremely collaborative and the learning curve steep for personnel newly introduced to its utilization. The methodology and technologies are new to government software developers, requiring some initial training for some of them before being able to take advantage of the platform.

The AOC PMO is the first major IT program to implement this methodology. If successful, it is the intent of the DoD to leverage this methodology across several other IT program offices. Fundamental to introducing commercial best practices is to ensure the personnel as well as the technology is synchronized to perform the Agile Software Development methodology. From management, to design, to development, to test and finally to production, the entire process must be integrated and fully understood or else just like a three-legged stool, without one leg the entire system collapses. In the technical requirements, the SOW will highlight how the government intends to employ this methodology to enhance operations within the AOC. Additionally, this prototype project will be broken into two phases: Base Period and Option Period. The base period will be defined by specific targeted environments and applications to be developed / replatformed. The option period will define potential augmentation for known interest items to the government.

1.6 Environment Setup:

- 1.6.1 Base period: The contractor shall deliver and establish three separate environments. One unclassified environment for software development, a second to act as the staging and test environment on a classified network, and a third as the production (or operations) environment on a classified network. This will prove out the methodology by developing a direct pipeline from application development all the way to application utilization in an operational setting. This is unique and currently is not done in the Department of Defense.
- 1.6.2 Option period: The base period sets-up a simple one to one relationship from development to production; however, the AOC has multiple Command and Control (C2) operation centers geographically dispersed across the globe. The option period will aim to establish multiple production and staging environments to prove the scalability of one development environment for consistency across multiple geographically disparate systems. Additionally, the government may establish an environment on the JWICs network which will introduce additional layers of complexity.

1.7 Net-New Application Development:

- 1.7.1 Base period 'Application Development': The Government has identified four initial candidates for net-new development leveraging the contractor's Pivotal Labs offering. Those four applications are: 'Targeting Production Manager' (TPM), 'Tanker Planning Tool-Kit' (TPTK), 'Dynamic Targeting' (DT) and 'Misrep Analysis Tool' (MAT).

1.8 App Replatforming: 1.8.1 Base Period: The Government has identified three initial candidates for the prototype effort to be replatformed and deployable on the PCF platform. They are: the 'Battle Damage Assessment' (BDA), 'Integrated Air and Missile Defense' (IAMD) and 'Joint Targeting Toolbox' (JTT). These applications were chosen based on high priority to the user community and level of complexity.

- 1.8.2 Option Period: The PMO may pick additional applications for replatforming to test the methodology with its own developers as well as include applications with enhanced technical complexity. One application designated for the option period is the Command and Control (C2) Air Operations Suite-C2 Information Services (C2AOS-C2IS) which was originally developed to replace several legacy applications being used in the AOC today.

1.9 Training:

- 1.9.1 Period: Fundamental to employing the methodology is to ensure government personnel utilizing the platform get up to speed and become contributors from day one. The base period training is designated to account for roll-on personnel through the life-cycle of the prototype effort. The amount of additional training opportunities is correlated with the amount of environment and applications

being developed/replatformed.

- 1.10 Recommendations: The government is interested in understanding additional integration tools to protect the platform based on government requirements. This is with regards to establishing single sign-on and security architecture.

2. TECHNICAL REQUIREMENTS/Approach: This Section highlights the major technical aspects of each offering described in the background paragraph and what the government and the contractor shall accomplish through the duration of the project to prototype the methodology.

- 2.1 Platform:** Part of establishing the platform environment includes the requirement for the company to partner with government personnel in order to teach the administrator function. The company shall provide three DoJo offerings per platform install. PCF Platform DoJo offering are designed to accelerate success with PCF by pairing Pivotal experts with USAF personnel to plan, implement, customize, use, and scale the platform to meet the needs of the DoD. By working together, the government improves project outcomes and enables faster fielding of user centric products. All Platforming is expected to occur during Phase II. The contractor shall:

- 2.1.1 Travel to location to perform PCF platform installation
- 2.1.2 Establish PCF platform subscription services
- 2.1.3 Train government personnel system administrators how to operate and customize the PCF platform
- 2.1.4 Ensure government system administrators understand contractor Guide for reach back support
- 2.1.5 Deliver a report after platform is established detailing when, where, who (gov't personnel), how long, and any outstanding issues pertaining to the install. The report will be a text document or however the contractor deems appropriate.
- 2.1.6 For the Option period, the same actions detailed in 2.1.1-2.1.5 shall apply

- 2.2 Pivotal subscription:** A mixture of Pivotal subscriptions will be required at each designated environment. The base period shall consist of three environments to include: an (1) development environment, (2) testing and backup production environment, and (3) operational production environment. Attachment 1 (b)(4)

(b)(4)

- 2.2.1 PCF Operations Manager
- 2.2.2 PCF Elastic Runtime Service
- 2.2.3 PCF Services Suite
- 2.2.4 Pivotal Cloud Cache

Additionally, the contractor shall:

- 2.2.5 Start the base year-long subscription license on no earlier than 29 September 2017.
- 2.2.6 The contractor shall provide a report on PCF subscription mix to maximize operation effectiveness for AOC deployment. The report will be a text document or however the contractor deems appropriate.

- 2.2.7 (b)(4)

- 2.3 Training:** The Contractor will offer an extensive portfolio of role-based training courses

that will build and enhance government product expertise. Courses are designed by industry experts and aligned with the latest Pivotal products. The lab-based curriculum enables the government team to maximize skills retained and offer flexible delivery options. The training can take place at the government location discretion and

Attachment 3 (b)(4)

(b)(4)

- 2.3.1. *PCF Developer* - Three-day course shall provide participants an understanding of how deploy to PCF, exploring concepts and features of the platform including: services, log draining, metrics, build packs, service brokers, and route services. The course can support up to 12 people and shall be provided for the base period.
- 2.3.2. *Core Spring* - Four-day course shall teach participants how to build a Spring-powered Java application that demonstrates the Spring Framework and other Spring technologies - including Spring aOP and Spring Security. The course can support up to 12 people and shall be provided for the base period.
- 2.3.3. *PCF Administrator* - Five-day course shall provide hands-on experience required to manage a PCF installation by exploring "Day 1" and "Day 2 Operations" which includes: installing the Ops Manager, configuring users, roles and quotes, backing up and restoring files, using BOSH, etc. The course can support up to 12 people and shall be provided for the base period.
- 2.3.4. *Spring Boot Developer* - Two-day course shall provide application developers the ability to create enterprise-ready applications using Spring Boot. This will explore major Spring Boot features to include: auto-configuration, data access, actuator, etc. The course can support up to 12 people and shall be provided for the base period.
- 2.3.5. *Platform Acceleration Lab (PAL)*: Four-week course to provide training on legacy platform app transition and re-platforming legacy apps. Four people to be sent to a scheduled public offering of the PAL.
- 2.3.6. *Training Report*: certificates of individuals who attended will be provided by the contractor and training effectiveness surveys will be provided to the government at the end of each class so that feedback can be incorporated into future training sessions. A summary report will be provided at the end of the PoP to highlight the notice of successful completion, and aggregate the staff who participated and packaging of participants and survey data.

2.4 Application Replatforming: The Contractor shall provide a methodology for the transition of an application from its existing infrastructure by changing certain environmental and configuration properties to enable it to run on modern cloud technology, while preserving existing functionality. This work involves modernizing (refactoring or rewriting) certain incompatible modules - moving them from vertical (application servers and relational database management systems) to horizontal "scale-out" and "cloud first" models. The two applications identified for 'Replatforming' are as follows: BDA, JTT, and IAMD. Each will undergo the following replatforming process and at the end, the app shall be replatformed and deployed on PCF environments established in section 2.1 and 2.2. Each App Replatforming shall:

- 2.4.1 Develop business goals for the project
- 2.4.2 Break down understanding of the first user problem
- 2.4.3 Develop backlog planning & prioritization during the initial inception phase.
- 2.4.4 Organize into developer teams
- 2.4.5 Begin to migrate the identified applications
- 2.4.6 Build PCF extensions
- 2.4.7 Develop automated testing

- 2.4.8 Pair to develop the pipelines to continuously execute automated tests.
- 2.4.9 Apply process to the remaining applications
- 2.4.10 Pairing on development of documentation that outline replatforming patterns discovered during the engagement for subsequent transition of efforts
- 2.4.11 Government Product owner with Contractor shall perform application acceptance test in PCF environment

- 2.5 Net-new application development:** The Contractor will provide its methodology to new application builds as an incremental process. It should be noted that no specific deliverable is tied to this effort since software can always improve. The contractor shall provide monthly invoices to ensure the government is tracking the monthly effort of the contractors FTE (hours) towards four identified applications which are: 'Targeting Production Manager' (TPM), 'Tanker Planning Took-Kit' (TPTK), 'Dynamic Targeting' (DT), and 'Misrep Analysis Tool' (MAT). These efforts will begin during Phase I and continue throughout the duration of the project. To ensure the project team efficacy, Pivotal follows a methodical approach outlined below:

(b)(4)



- 2.6 Security:** Demonstrate Identity and Access Management: The Contractor shall collaborate and provide recommendations for incorporating single sign on and identity access management into each of the appropriate projects. This will be accomplished during Phase II and III of the project.
- 2.7 Single Sign-on:** Contractor shall provide a recommendation on whether robust single sign on architecture is warranted. This will be accomplished during Phase II and Phase III of the project.
- 2.8 Jira Core Integration:** The Contractor shall integrate Jira Core workflow API into PCF. This will be accomplished during Phase II and Phase III of the project.
- 2.9 Mapbox Integration:** The Contractor shall integrate Mapbox API into PCF. This will be accomplished during Phase II and Phase III of the project.

(b)(4)



(b)(4)



(b)(4)



(b)(4)

5.0 PERIOD OF PERFORMANCE: The period of performance (PoP) for this statement of work is twelve (12) months.

5.1 The subscription licenses are for a year and will extend beyond the PoP

5.2 Option periods exercised will be accomplished inside the original twelve (12) month PoP

6.0

(b)(4)

7.0

(b)(4)

(b)(4)

8.0 SECURITY: A DD 254 to the Top Secret/Special Compartmentalized Information (TS/SCI) level will be

issued as a part of this effort. OPSEC language can be found in Article XI of the contract. Operations Security (OPSEC) requirements apply to this contract. OPSEC program managers will provide the appropriate Critical Information (CI) lists to the Contractor under separate cover. Contractors conducting work on military installations will participate in the Installation OPSEC Program. Contractors will receive periodic training along with military and Government civilian counterparts. OPSEC program managers will provide the appropriate CI lists and the Program Protection Plan (PPP) to the contractor under separate cover.

9.0 GOVERNMENT FURNISHED EQUIPMENT/PROPERTY/DATA

GFE/P/D Reference	Delivery Date Required	Asserted Rights Category	Name of Organization Asserting Restrictions/POC	Milestone Association
Personnel: Government code developers (X)	seven days after contract award	N/A	HBB / Lt Col (b)(6)	N/A
Source Code for all applications being replatformed	at the beginning of the milestone delivery	Distribution Category D	HBB / Lt Col (b)(6)	4.3, 4.4, 4.5
3 rd Party Licenses: Mapbox, MongoDB, CrunchyBase, Jira Core, Security Tools, Cloud Solution Provider	90 days after contract award	N/A	HBB / Lt Col (b)(6)	4.5.1

SOW Attachments:

Attachment One -	(b)(4)
Attachment Two -	
Attachment Three -	
Attachment Four -	
Attachment Five -	

ARTICLE II: TERM & TERMINATION

A. The Term of this Agreement

This OTA will be available for use for a period of **twelve (12) months** from the date the OTA is awarded. Provisions of this Agreement, which, by their express terms or by necessary implication, apply for periods of time other than specified in Article II herein, shall be given effect, notwithstanding this Article.

B. Early Termination of Agreement Provision

1. Subject to a reasonable determination that the program, or a project will not produce beneficial results

commensurate with the expenditure of resources, the Government may stop performance of work under this OTA, in whole or in part, if the AO determines that a termination is in the Government's interest. The AO shall terminate by delivering to the COMPANY a Notice of Termination specifying the extent of termination and the effective date. Such termination shall not constitute a "termination" as the term is used to mean a termination for convenience or default under public sector contracting laws and regulations.

(2) Either Party may terminate this Agreement effective immediately upon written notice to the other party if:

- i. Customer fails to pay any portion of fees due under a valid Invoice, Quote or Order ninety days after interest begins to accrue under the Prompt Payment Act;
- ii. the other party suffers an insolvency or analogous event;
- iii. the other party commits a material breach of this Agreement that is incapable of being cured; or
- iv. the other party breaches any other provision of this Agreement and does not cure the breach within thirty (30) days after receiving written notice of breach.

(3) Either Party may terminate this Agreement upon 30 days written notice to the other, however such termination shall not affect existing Software Orders or SOWs. Customer may terminate any SOW for any or no reason by providing at least fourteen (14) calendar days prior written notice to Pivotal. For the avoidance of doubt, upon such termination for convenience: Customer shall not be entitled to any refund for any fees paid for Services performed prior to the effective date of termination. Any Software Orders signed and agreed to prior to such termination taking effect are non-cancelable and non-refundable (meaning they cannot be terminated by either party for convenience).

(4) In the event of expiration of a Subscription License, Customer must remove and destroy all copies of Software, including all backup copies, from the server, virtual machine, and all computers and terminals on which Software (including copies) is installed or used and certify destruction thereof.

In the event of termination for default relating to the Government's use Software, Customer must remove and destroy all copies of Software, including all backup copies, from the server, virtual machine, and all computers and terminals on which Software (including copies) is installed or used and certify destruction thereof.

Termination does not relieve Customer of its obligation to pay all fees and expenses for all Services performed, as of the date of termination. All provisions of this Agreement will survive any termination or expiration if by its nature and context it is intended to survive.

(5) After receipt of a Notice of Termination, and except as directed by the AO, the COMPANY shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due:

- i. Stop work as specified in the notice.
- ii. Place no further orders for materials, services, or facilities, except as necessary to complete the continued portion of the OTA.
- iii. Terminate all orders to the extent they relate to the work terminated.
- iv. Reserved.
- v. With approval or ratification to the extent required by the AO, settle all outstanding liabilities and termination settlement proposals arising from the termination of orders; the approval or ratification will be final for purposes of this clause.
- vi. Reserved
- vii. Complete performance of any work not terminated, if applicable.

(6) Notwithstanding any term to the contrary herein, the parties agree that termination of the Agreement shall not relieve the Government from its obligations to pay the non-cancelable and non-refundable fees associated with any Subscription License herein. Failure of the Parties to agree to an equitable adjustment shall be resolved pursuant to Article V, Disputes. Nothing in this section shall be construed as a limitation of the rights of either party in the event of a breach of contract or default by the other party.

C. Stop Work Clause

(1) As directed by the AO, the COMPANY shall stop all, or any part, of the work called for under this Agreement for

a period of 90 days after the written order is delivered, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this Article. Upon receipt of the order, the COMPANY shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered, or within any extension of that period to which the parties shall have agreed, the AO shall either:

- i. Cancel the stop-work order; or
- ii. Terminate the work covered this Agreement.

(2) If a stop work order issued under this clause is canceled, the COMPANY shall resume work. The Government shall make an equitable adjustment in the delivery schedule or negotiated price, or both, and the Government's share of this Agreement shall be modified, in writing, accordingly, if:

- i. The stop-work order results in an increase in the time required for, or in the cost properly allocable to, the performance of any part of this Agreement; and
- ii. The COMPANY asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Government decides the facts justify the action, the Government may receive and act upon a proposal submitted at any time before final payment under this Agreement.

ARTICLE III: AGREEMENT ADMINISTRATION

Unless otherwise provided in this Agreement, approvals permitted or required to be made by the ACC-NJ Contracting Activity may be made only by the ACC-NJ Contracting Activity Agreements Officer. Administrative and contractual matters under this Agreement shall be referred to the following representatives of the parties:

(b)(6)



Each party may change its representatives named in this Article by written notification to the other party.

Cognizant Defense Finance and Accounting Service Office:

DFAS COLUMBUS CENTER WEST
DFAS-CO/WEST ENTITLEMENT OPERATIONS
P.O. Box 182381
Columbus, OH 43218-2381

ARTICLE IV: OBLIGATION AND PAYMENT

A. Obligation: Except as specified in Article V: Disputes, the Government's liability to make payments to the COMPANY is limited only to those funds obligated under this Agreement or by modification to the Agreement. The ACC-NJ Contracting Activity may incrementally fund this Agreement. If modification becomes necessary in performance of this Agreement, pursuant to Article IV of this Agreement, the AO and the COMPANY shall establish and execute a mutually agreed to revised Schedule of Payable Milestones consistent with the current Project Plan.

B. Project Payments: Reference Milestone Payment Schedule, Table 4.0 in the SOW.

C. Payable Milestones: The COMPANY shall submit invoices for processing according to the milestone payment schedule via the Invoice, Receipt, Acceptance, and Property Transfer (iRAPT) application of the Wide Area Work Flow (WAWF) system, according to the guidelines set forth below. Payments will be made by Defense Finance and Accounting Service, DFAS COLUMBUS CENTER WEST.

1. The WAWF system is the method to electronically process vendor payment requests and receiving reports. To access WAWF, the COMPANY shall have a designated electronic business point of contact in the System for Award Management at <https://www.acquisition.gov>; and be registered to use WAWF at <https://wawf.eb.mil/> following the step-by-step procedures for self-registration available at this web site. The COMPANY shall follow the training instructions of the WAWF Web-Based Training Course and use the Practice Training Site before submitting payment requests through WAWF. Both can be accessed by selecting the "Web Based Training" link on the WAWF home page at <https://wawf.eb.mil/>.

2. The COMPANY shall submit a Combo request through WAWF utilizing the following Routing Data to fill in the applicable fields in WAWF when creating payment requests in the system.

Routing Data Table

<i>Field Name in WAWF</i>	<i>Data to be entered in WAWF</i>
Pay Official DoDAAC	HQ0339
Issue By DoDAAC	W15QKN
Admin DoDAAC	W15QKN
Inspect By DoDAAC	W15BW9
Accept at Other DoDAAC	W15BW9

3. All payment requests shall include an invoice (contractor's format is acceptable) to include at a minimum, invoice number, milestone payment number and contract number. Note, all invoices shall be for exact payment amount as referenced B. Partial milestones shall not be submitted.

4. The COMPANY shall include the following WAWF email notifications when submitting invoices to assure payment approval:

(b)(6)

5. For technical WAWF help, contact the WAWF helpdesk at 866-618-5988.

D. Electronic Fund Transfer: COMPANY must be enrolled in EFT by contacting the paying office designated in the Agreement and requesting Form SF 3881, Automated Clearing House (ACH) Vendor/Miscellaneous Payment Enrollment Plan. This form must be completed by the COMPANY and the COMPANY's financial institution, and returned to the paying office. The paying office will complete the process and notify the COMPANY that EFT enrollment is complete. All payments under this agreement will be held until the COMPANY provides the required EFT enrollment information.

The CAGE Code and DUNS number for the COMPANY are as follows:

CAGE Code: **71BN7**

DUNS number: **078824783**.

Registration in the System Award for Management (SAM) is mandatory.

E. Limitation of Funds: Except as set forth in Article V, the Government's financial liability will not exceed the amount obligated under this Agreement and available for payment.

F. Financial Records and Reports: The COMPANY shall maintain adequate records to account for Federal funds received under this Agreement and shall maintain adequate records to account for COMPANY Project Agreement funding provided under this Agreement, should cost sharing procedures be implemented for funding a particular project. COMPANY relevant financial records are subject to examination or audit on behalf of the ACC-NJ Contracting Activity by the Government for a period not to exceed three (3) years after expiration of the term of the Agreement. The AO or designee shall have direct access to sufficient records and information of the, COMPANY to ensure full accountability for all funding under this Agreement. Such audit, examination or access shall be performed during business hours on business days upon prior written notice and shall be subject to the security requirements of the audited party. Any audit required during the course of the program may be conducted by the Government using Government auditors or, at the request of COMPANY's external CPA accounting firm at the expense of the COMPANY

ARTICLE V: DISPUTES

A. General

The Parties shall communicate with one another in good faith and in a timely and cooperative manner when raising issues under this Article.

B. Dispute Resolution Procedures

(1) Any disagreement, claim or dispute between the ACC-NJ and the COMPANY concerning questions of fact or law arising from or in connection with this Agreement, and, whether or not involving an alleged breach of this Agreement, may be raised only under this Article.

(2) Whenever disputes, disagreements, or misunderstandings arise, the Parties shall attempt to resolve the issue(s) involved by discussion and mutual agreement as soon as practicable. In no event shall a dispute, disagreement or misunderstanding which arose more than twelve (12) months prior to the notification, made under this subsection constitute the basis for relief under this article unless the Chief of the Contracting Office, ACC-NJ in the interest of justice waives this requirement.

(3) Failing resolution by mutual agreement, or no later than four (4) months after notification was made to the other Party, the aggrieved Party shall document the dispute, disagreement, or misunderstanding by notifying the other Party (through the respective AO or AOR, as the case may be) in writing documenting the relevant facts, identifying unresolved issues, specifying the clarification or remedy sought, and documenting the rationale as to why the clarification/remedy is appropriate. Within ten (10) working days after providing notice to the other Party, the aggrieved Party may, in writing, request a decision by the Chief of the Contracting Office, ACC-NJ. The other Party shall submit a written position on the matter(s) in dispute within thirty (30) calendar days after being notified that a decision has been requested. The Chief of the Contracting Office, ACC-NJ, will conduct a review of the

matter(s) in dispute and render a decision in writing within thirty (30) calendar days of receipt of such position. Any such decision is final and binding, unless a Party shall, within thirty (30) calendar days request further review as provided by this article.

(4) If requested within thirty (30) calendar days of the decision by the Chief of the Contracting Office, ACC-NJ, further review will be conducted by the Vice-President of the COMPANY Federal business and the ACC-NJ Director of Contracting. In the event of a decision, or in absence of a decision within sixty (60) calendar days of referral to the Vice President of the COMPANY federal business and the ACC-NJ Director of Contracting (or such other period as agreed to by the parties), either party may pursue any right or remedy provided by law in a court of competent jurisdiction, including any remedies available in an action before the Court of Federal Claims. Alternatively, the parties may agree to explore and establish an additional Alternate Disputes Resolution procedure to resolve this dispute.

C. Limitation of Liability and Damages

In no event shall the liability of the COMPANY under any basis exceed the funding received for their performance of this Agreement.

No Party shall be liable to any other Party for consequential, punitive, special and incidental damages or other indirect damages, whether arising in contract (including warranty), tort (whether or not arising from the negligence of a Party) or otherwise, except to the extent such damages are caused by a Party's willful misconduct. Notwithstanding the foregoing, claims for contribution toward third-party personal injury, are not waived, released, or disclaimed.

ARTICLE VI: CONFIDENTIAL INFORMATION

A. Definitions

"Disclosing Party" means COMPANY, or their subcontractors or suppliers, or the Government who discloses Confidential Information as contemplated by the subsequent Paragraphs.

"Receiving Party" means COMPANY, or their subcontractors or suppliers, or the Government who receives Confidential Information disclosed by a Disclosing Party.

"Confidential Information" means information and materials of a Disclosing Party which are designated as confidential or as a Trade Secret in writing by such Disclosing Party, whether by letter or by use of an appropriate stamp or legend, prior to or at the same time any such information or materials are disclosed by such Disclosing Party to the Receiving Party. Confidential Information includes the terms of this Agreement, Software, and all confidential and proprietary information of The COMPANY or the Government, including without limitation, all business plans, product plans, financial information, software, designs, and technical, business and financial data of any nature whatsoever, provided that such information is marked or designated in writing as "confidential," "proprietary," or with a similar term or designation, and projects for other companies that may be occurring concurrently in The COMPANY's offices while The COMPANY is performing the Services. Notwithstanding the foregoing, materials and other information which are orally, visually, or electronically disclosed by a Disclosing Party, or are disclosed in writing without an appropriate letter, stamp, or legend, shall constitute Confidential Information or a Trade Secret if such Disclosing Party, within thirty (30) calendar days after such disclosure, delivers to the Receiving Party a written document or documents describing the material or information and indicating that it is confidential or a Trade Secret, provided that any disclosure of information by the Receiving Party prior to receipt of such notice shall not constitute a breach by the Receiving Party of its obligations under this Paragraph. "Confidential Information" includes any information and materials considered a Trade Secret by the COMPANY on its own behalf or on behalf of their subcontractors or suppliers.

"Trade Secret" means all forms and types of financial, business, scientific, technical, economic, or engineering or otherwise proprietary information, including, but not limited to, patterns, plans, compilations, program devices,

formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if:

- i. The owner thereof has taken reasonable measures to keep such information secret; and
- ii. The information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, the public.

B. Exchange of Information: The Government may from time to time disclose Government Confidential Information to the COMPANY and its subcontractors or suppliers, in connection with Annual Plan and similar processes or particular projects, and the COMPANY their subcontractors or suppliers, may from time to time disclose information that is Trade Secret or Confidential Information to the Government in connection with the OTA, an OTA project proposal, Project Milestone and Payment Instruction, Project Agreement, or performance thereunder. Neither the Government nor COMPANY or their subcontractors or suppliers, nor the AOR shall be obligated to transfer Confidential Information or Trade Secrets independently developed by the Government or the COMPANY or their subcontractors or suppliers, absent an express written agreement between the Parties providing the terms and conditions for such disclosure.

C. Confidentiality and Authorized Disclosure: The Receiving Party agrees that Confidential Information and Trade Secrets shall remain the property of the Disclosing Party (no one shall disclose unless they have the right to do so), and that, unless otherwise agreed to by the Disclosing Party, Confidential Information and Trade Secrets shall not be disclosed, divulged, or otherwise communicated by it to third parties or used by it for any purposes other than in connection with specified project efforts and the licenses granted in Article VIII, Data Rights, provided that the duty to protect such "Confidential Information" and "Trade Secrets" shall not extend to materials or information that:

- i. Are received or become available without restriction to the Receiving Party under a proper, separate agreement,
- ii. Are not identified with a suitable notice or legend per Article entitled "Confidential Information" herein,
- iii. Are lawfully in possession of the Receiving Party without such restriction to the Receiving Party at the time of disclosure thereof as demonstrated by prior written records,
- iv. Are or later become part of the public domain through no fault of the Receiving Party,
- v. Are received by the Receiving Party from a third party having no obligation of confidentiality to the Disclosing Party that made the disclosure,
- vi. Are developed independently by the Receiving Party without use of Confidential Information or Trade Secrets as evidenced by written records, or
- vii. Are required by law or regulation to be disclosed; provided, however, that the Receiving Party has provided written notice to the Disclosing Party promptly so as to enable such Disclosing Party to seek a protective order or otherwise prevent disclosure of such information.

Confidential Information does not include information that is:

- i. rightfully in the receiving party's possession without prior obligation of confidentiality from the disclosing party;
- ii. a matter of public knowledge (or becomes a matter of public knowledge other than through breach of confidentiality by the other party);
- iii. rightfully furnished to the receiving party by a third party without confidentiality restriction; or
- iv. Independently developed by the receiving party without reference to the disclosing party's Confidential Information.

D. Return of Proprietary Information: Upon the request of COMPANY, the Government shall promptly return all copies and other tangible manifestations of the Confidential Information or Trade Secrets disclosed. Upon request by the Government, COMPANY shall promptly return all copies and other tangible manifestations of the Confidential Information disclosed by the Government. As used in this section, tangible manifestations include

human readable media as well as magnetic and digital storage media.

E. Term: Except to the extent covered by and subject to other provisions of this Agreement or the specific Project Agreement, the obligations of the Receiving Party under this Article shall continue to the maximum extent allowed by Federal law.

The Government and the COMPANY shall flow down the requirements of this Article VI to their respective personnel, agents, partners, and team members receiving such Confidential Information or Trade Secrets under this OTA.

ARTICLE VII: PUBLICATION AND ACADEMIC RIGHTS

A. Classified Research Projects: If a release of Confidential Information or Trade Secrets is for a classified Research Project, the provisions of the DoD Security Agreement (DD Form 441), Certificate Pertaining to Foreign Interests (SF 328), and the DoD Contract Security Classification Specification (DD Form 254) apply. The Government will be responsible for the completion of the DD Form 254. The COMPANY must complete the DD Form 441 and SF 328 and provide them to the Government through for review by the proper Government representatives, the Industrial Security Representative at the cognizant Defense Security Service (DSS) office for DD Form 441 and SF 328 and the VRA's local Security office for the DD Form 254.

B. Review or Approval of Technical Information for Public Release.

(a) At least 30 days prior to the scheduled release date, COMPANY shall submit to the AO two copies of the information to be released along with Clearance of Technical Information for Public Release.

The AOR is hereby designated as the approval authority for the AO for such releases.

(b) Reserved

(c) Parties to this Agreement are also responsible for assuring that every publication of material based on or developed under this project contains the following disclaimer:

“The views and conclusions contained herein are those of the authors and should not be interpreted as necessarily representing the official policies or endorsements, either expressed or implied, of the U.S. Government.”

The COMPANY shall flow down these requirements to its partners and team members, at all tiers.

ARTICLE VIII: LICENSING & PROPRIETARY RIGHTS//DATA RIGHTS

A. Definitions

“**Government Purpose Rights**” (GPR)” means the rights to use, modify, duplicate or disclose the “Data” licensed with such rights as set forth in Table 3.0 of the SOW under this Agreement within the Government for United States Government purposes only; and to release or disclose data outside the Government to any authorized persons pursuant to an executed non-disclosure agreement for such persons’ use, modification, or reproduction for United States Government purposes only. United States Government purposes include Foreign Military Sales purposes and competitive re-procurement.

(b)(4)

(b)(4)



(b)(4)



C. PROPRIETARY RIGHTS FOR PROFESSIONAL SERVICES. (PRPS)

(1) Professional Services. Other than the Excluded Materials, Customer shall own all intellectual property rights associated with the Work Product, as well as Customer's derivative works thereof, subject to Customer's payment in full under such SOW and subject to Pivotal's rights in the underlying intellectual property embodied therein or used by Pivotal to perform the Professional Services.

(2) Pivotal Materials Exclusion. Pivotal Materials may be included in, or necessary for Customer to use, the Work Product, but are excluded from Customer's ownership rights set forth in Article III(1). Customer agrees that Pivotal Materials are the sole property of Pivotal. Pivotal hereby grants to Customer a worldwide, perpetual, royalty-free license to use Pivotal Materials solely as necessary for use as part of the Work Product. No other grants of licenses or rights to Customer will be implied from the provisions stated in this Agreement. Customer shall not obliterate or remove and will reproduce Pivotal's intellectual property notices contained in the Pivotal Materials. Customer shall not reverse engineer, decompile, or otherwise attempt to derive source code from any portions of the Pivotal Materials.

(3) Open Source Materials Exclusion. OSS identified in the applicable SOW or subsequently agreed to in writing by the parties may be included in, or necessary for Customer to use, the Work Product, but are excluded from Customer's ownership rights set forth in Article III(1). Pivotal may (a) obtain such OSS on Customer's behalf, (b) incorporate such OSS into the Work Product, and (c) submit back to open source libraries any improvements made to the OSS during the course of performing the Professional Services, to the extent such submissions do not violate the confidentiality obligations set forth herein. Other than the OSS referenced in the applicable SOW, Pivotal will not include OSS in the Work Product without obtaining Customer's written permission.

(4) Third Party Materials Exclusion. Third Party Materials may be included in, or necessary for Customer to use, the Work Product, but are excluded from Customer's ownership rights set forth in Article III(1). Customer will be solely responsible for obtaining necessary licenses to the Third Party Materials and liable for their use.

(5) Customer's Underlying Rights. Customer represents and warrants to Pivotal that (a) Customer owns or controls all rights in and to all Customer information and materials provided by or on behalf of Customer to Pivotal pursuant to this Agreement, including without limitation all rights to exploit all such Customer information and materials worldwide in all media and languages in perpetuity without encumbrance or restriction, and (b) Customer grants to Pivotal a nonexclusive, nontransferable, worldwide paid-up license to make, use, modify, reproduce, and prepare derivative works of Customer information and materials, solely for the purpose of performing Professional Services in accordance with the Statement of Work of this Agreement, with no right to grant sublicenses.

(6) Feedback. The Parties agree that any feedback or suggestions ("Feedback") (if any) given hereunder is voluntary. Each party is free to use, disclose, reproduce, license or otherwise distribute the Feedback relating to its own products and services, without any obligations or restrictions of any kind, including intellectual property rights subject to Article XI, G, except that under no circumstances may Pivotal use such Feedback for the purpose of

stating or implying any endorsement by the Government of Pivotal, its products or services.

(7) Reservation of IP Rights. Except as expressly stated, nothing herein shall be construed to (a) directly or indirectly grant to a receiving party any title or license to or ownership of a providing party's intellectual property rights in Professional Services, Software or materials furnished by such providing party; (b) preclude such providing party from:

(i) independently developing, marketing, acquiring, using, licensing, modifying or otherwise freely exploiting products or services that are similar to or related to the Professional Services, Software or materials provided hereunder;

(ii) restricting the assignment of persons performing Professional Services; or

(iii) using and employing their general skills, know-how, and expertise, and to use, disclose, and employ any generalized ideas, concepts, know-how, methods, techniques, or skills gained or learned during the course of any assignment, so long as that party complies with confidentiality obligations herein.

Pivotal is not being engaged to perform any investigation of third party intellectual property rights including any searches of patents, copyrights, or trademarks related to the Work Product.

(b)(4)

ARTICLE IX: PATENT RIGHTS

RESERVED

ARTICLE X: FOREIGN ACCESS TO TECHNOLOGY AND EXPORT CONTROL

1. Foreign Access to Technology

This Article X shall remain in effect during the term of this Agreement.

A. Definition

a) "Foreign Firm or Institution" means a firm or institution organized or existing under the laws of a country other than the United States, its territories, or possessions. The term includes, for purposes of this Agreement, any agency or instrumentality of a foreign government; and firms, institutions or business organizations which are owned or substantially controlled by foreign governments, firms, institutions, or individuals.

b) "Work Product" means the works of authorship or other products developed or created and delivered by Pivotal to Customer (excluding the Excluded Materials) in the course of performing Services described in the applicable SOW.

B. General: The Parties agree that research findings, Work Products and Customer Information and Materials (under Article XIII paragraph 5 i.e. government source code used for replatforming, i.e., existing government applications that are provided to COMPANY for replatforming) arising under this Agreement may constitute a significant enhancement to the national defense, and to the economic vitality of the United States. Accordingly, access to important technology developments under this Agreement by Foreign Firms or Institutions must be carefully controlled. The controls contemplated in this Article are in addition to, and are not intended to change or supersede, the provisions of the International Traffic in Arms Regulation (22 CFR Part 121 et seq.), the DoD Industrial Security Regulation (DoD 5220.22-R) and the Department of Commerce Export Regulation (15 CFR Part 770 et seq.). But, this Agreement shall not require Company to make its corporate network capable of handling ITAR or national security classified information pursuant to the regulations above.

C. Restrictions on Sale or Transfer of Work Products to Foreign Firms or Institutions

- a) In order to promote the national security interests of the United States and to effectuate the policies that underlie the regulations cited above, the procedures stated in subparagraphs C(b), C(c), and C(d) below shall apply to any transfer of Work Products. For purposes of this paragraph, a transfer includes a sale of the company, and sales or licensing of Work Products. Transfers do not include:
- (i) sales of products or components, or
 - (ii) licenses of software or documentation related to sales of products or components, or
 - (iii) transfer to foreign subsidiaries of the COMPANY member entities for purposes related to this Agreement, or
 - (iv) transfer which provides access to Work Products to a Foreign Firm or Institution which is an approved source of supply or source for the conduct of research under this Agreement provided that such transfer shall be limited to that necessary to allow the firm or institution to perform its approved role under this Agreement.
 - (v) releases pursuant to Article VII hereof ("Publication and Academic Rights")
- b) The COMPANY shall provide timely notice to the Government of any proposed transfers of Work Products developed under this Agreement to Foreign Firms or Institutions. If the Government determines that the transfer may have adverse consequences to the national security interests of the United States, the COMPANY and the Government shall jointly endeavor to find alternatives to the proposed transfer which obviate or mitigate potential adverse consequences of the transfer but which provide substantially equivalent benefits to the COMPANY.
- c) In any event, the COMPANY shall provide written notice to the Government AO's Representative and AO of any proposed transfer to a foreign firm or institution at least sixty (60) calendar days prior to the proposed date of transfer. Such notice shall cite this Article and shall state specifically what is to be transferred and the general terms of the transfer. Within thirty (30) calendar days of receipt of the COMPANY's written notification, the Government AO shall advise the COMPANY whether it objects to the proposed transfer. If the government does not object within 30 days the COMPANY may proceed with the transfer. .

D) Lower Tier Agreements

The COMPANY shall include this Article, suitably modified, to identify the Parties, in all Project Agreements or lower tier agreements, regardless of tier, for experimental, Work Products, or research work.

2. Export Control

A. Export Compliance.

Each Party agrees to comply with U.S. Export regulations including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C. § § 2751-2794, including the International Traffic in Arms Regulation (ITAR), 22 C.F.R. § 120 et seq. ; and the Export Administration Act, 50 U.S.C. app. § 2401-2420. Each party is responsible for obtaining from the Government export licenses or other authorizations/approvals, if required, for information or materials provided from one party to another under this Agreement. Accordingly, the COMPANY shall not export, directly, or indirectly, any Work Products, Confidential Information, Trade Secrets, or Classified and Unclassified Technical Data in violation of any U.S. Export laws or regulations.

B. Flowdown.

The COMPANY shall include this Article, suitably modified, to identify all Parties, in all lower tier agreements. This Article shall, in turn, be included in all sub-tier subcontracts or other forms of lower tier

agreements, regardless of tier.

ARTICLE XI: OPSEC TAILOR THIS LANGUAGE ACCORDINGLY

- (a) Access and General Protection/Security Policy and Procedures. All contractor employees, including subcontractor employees, shall comply with all installation and facility access and local security policies and procedures (provided by Government representative), and security/emergency management exercises. The contractor shall also provide all information required for background checks to meet installation access requirements to be accomplished by the Installation Provost Marshal Office, Director of Emergency Services, or Security Office. The contractor workforce shall comply with all personal identity verification and accountability requirements as directed by DoD, HQDA, and/or local policy. Should the Force Protection Condition (FPCON) at any individual facility or installation change, the Government may require changes in contractor security matters or processes. During FPCONs Charlie and Delta, services/installation access may be discontinued/postponed due to higher threat. Services will resume when FPCON level and/or threat is reduced to an acceptable level as determined by the Installation Commander. Contractor person working on an installation shall participate in the installation Random Antiterrorism Measures Program as directed. Contractor shall be subject to and comply with vehicle searches, wearing of ID badges, etc.
- (b) iWatch (See Something, Say Something) Training: All contractor employees, including subcontractor employees, shall receive training and participate in the local iWATCH program (training standards provided by the requiring activity ATO). This locally developed training will be used to inform employees of the types of behavior to watch for and instruct employees to report suspicious activity to the AOR. This training shall be completed within 45 calendar days after contract start date or effective date of incorporation of this requirement into the contract, whichever applies, and then annually thereafter. The contractor shall submit certificates of completion for each affected contractor employee and subcontractor employee to the AOR within 14 calendar days after completion of training by all employees and subcontractor personnel.
- (c) Access to DoD Facility or Installation: All contractor employees, including subcontractor employees, shall comply with adjudication standards and procedures using the National Crime Information Center Interstate Identification Index (NCIC-III) and Terrorist Screening Database (Army Directive 2014-05/AR 190-13); applicable installation, facility and area commander installation and facility access and local security policies and procedures (provided by the AOR).
- (d) Information Management Army Information Technology/IA: This project will access For Official Use Only (FOUO) information via UPS mail, Safe Access File Exchange (SAFE) or approved Impact Level cloud service providers. This Agreement shall not require Company to store, handle, receive or otherwise manage aforementioned information on its corporate servers or network.
- (e) For Official Use Only Information (FOUO) and Controlled Unclassified Information (CUI): See subsection (d).
- (f) OPSEC Training: In accordance with AR 530-1 (or DoDM 5205.02-M), new contractor employees, including subcontractor employees, shall complete initial OPSEC training within 30 calendar days of award and must also complete annual OPSEC awareness as provided by the appropriately designated OPSEC level II trained OPSEC Officer/Coordinator. The contractor shall arrange training through the AOR.
- (g) Public Release of Information: In accordance with AR 530-1 (or DoDM 5205.02-M), an OPSEC review will be performed by the Government prior to all public release of information. All Government information intended for public release by a contractor shall undergo a Government OPSEC review prior to release. The OPSEC review will be performed as part of the Public Review Process described in Article VII.

(b)(4)

ARTICLE XIII: EXECUTION

This Agreement constitutes the entire agreement of the Parties and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions among the Parties, whether oral or written, with respect to the subject matter hereof. This Agreement may be revised only by written consent of the COMPANY and the ACC-NJ Agreements Officer designated in this Agreement. By executing this agreement, the COMPANY affirms that it is a nontraditional defense contractor as that term is defined in 10 U.S.C. 2302 and, as a result, is eligible to be awarded this Agreement.

ARTICLE XIV IP INDEMNITY.

(1) **IP Indemnity for Software.** Subject to the remainder of this Article XV and the Limitation of Liability in Article V.C, Pivotal shall (a) defend Customer against any Infringement Claim that Software infringes a copyright or patent enforceable in a Berne Convention signatory country; and (b) pay resulting costs and damages finally awarded against Customer by a court of competent jurisdiction, or pay amounts stated in a written settlement negotiated and approved by Pivotal.

(2) **IP Indemnity for Professional Services.** Subject to this Article XIV and the Limitation of Liability in Article V.C, Pivotal shall (a) defend Customer against any Infringement Claim that the Professional Services and/or Work Product (excluding any Excluded Materials) infringe a trade secret, or a copyright enforceable in a Berne Convention country, and (b) pay resulting costs and damages finally awarded against Customer by a court of competent jurisdiction, or pay amounts stated in a written settlement negotiated and approved by Pivotal. Customer shall provide non-infringing materials for any such materials they bring to the engagement.

(3) **Procedure and Remedies.** The foregoing obligations apply only if indemnitee:

- (a) promptly notifies indemnitor in writing of such Infringement Claim;
- (b) grants Pivotal sole control over the defense and settlement thereof to the extent such control does not contradict or contravene 28 U.S.C. 516;
- (c) reasonably cooperates in response to indemnitor's request for assistance;
- (d) is not in material breach of this Agreement (including any Exhibits); and
- (e) is current in payment of all applicable fees prior to Infringement Claim.

If the allegedly infringing Software, Professional Services and/or Work Product ("Indemnified Elements") are held to constitute an infringement, or in Pivotal's opinion, any such Indemnified Elements are likely to become infringing and their use enjoined, Pivotal may, at its sole option and expense:

- (i) procure for Customer the right to make continued use of the affected Indemnified Elements;
- (ii) replace or modify the affected Indemnified Elements to make them non-infringing; or
- (iii) notify Customer to return the affected Indemnified Elements and, upon receipt, discontinue the related Support Services (if applicable) and, for Subscription Licenses, refund unused prepaid fees calculated based on each month remaining in the Subscription Period.

(4) **IP Indemnity Exclusions.** Neither Pivotal nor any Distributor shall have any obligation under this Article IV or otherwise with respect to any Infringement Claim that arises out of or relates to: (a) combination, operation or use of the Indemnified Elements with any other software, hardware, technology, data, or other materials; (b) use for a purpose or in a manner for which Indemnified Elements were not designed or use after Pivotal notifies Customer to cease such use due to a possible or pending Infringement Claim; (c) any modifications to Indemnified Elements made by any person other than Pivotal or its authorized representatives; (d) any modifications to Indemnified Elements made by Pivotal pursuant to instructions, designs, specifications, or any other information or materials provided to Pivotal by or on behalf of Customer; (e) use of any version of Software when an upgrade or a newer iteration of Software made available by Pivotal could have avoided the infringement; (f) any data or information which Customer or a third party utilizes in connection with Software; or (g) any Open Source Software. THIS

SECTION STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND PIVOTAL'S ENTIRE LIABILITY FOR ANY INFRINGEMENT CLAIMS.

SECTION I - CONTRACT CLAUSES

The following have been added by full text:

STATUS OF FORCES AGMT CLAUSE

SOFA Contract Clause

INVITED CONTRACTOR OR TECHNICAL REPRESENTATIVE STATUS
UNDER U.S. - REPUBLIC OF KOREA (ROK)

Invited Contractor (IC) and Technical Representative (TR) status shall be governed by the U.S.-ROK Status of Forces Agreement (SOFA) as implemented by United States Forces Korea (USFK) Reg 700-19, which can be found under the "publications" tab on the US Forces Korea homepage <http://www.usfk.mil>

(a) Definitions. As used in this clause—

"U.S. – ROK Status of Forces Agreement" (SOFA) means the Mutual Defense Treaty between the Republic of Korea and the U.S. of America, Regarding Facilities and Areas and the Status of U.S. Armed Forces in the Republic of Korea, as amended.

"Combatant Commander" means the commander of a unified or specified combatant command established in accordance with 10 U.S.C. 161. In Korea, the Combatant Commander is the Commander, United States Pacific Command.

"United States Forces Korea" (USFK) means the subordinate unified command through which US forces would be sent to the Combined Forces Command fighting components.

"Commander, United States Forces Korea" (COMUSK) means the commander of all U.S. forces present in Korea. In the Republic of Korea, COMUSK also serves as Commander, Combined Forces Command (CDR CFC) and Commander, United Nations Command (CDR UNC).

"USFK, Assistant Chief of Staff, Acquisition Management" (USFK/FKAQ) means the principal staff office to USFK for all acquisition matters and administrator of the U.S.-ROK SOFA as applied to US and Third Country contractors under the Invited Contractor (IC) and Technical Representative (TR) Program (USFK Reg 700-19).

"Responsible Officer (RO)" means a senior DOD employee (such as a military E5 and above or civilian GS-7 and above), appointed by the USFK Sponsoring Agency (SA), who is directly responsible for determining and administering appropriate logistics support for IC/TRs during contract performance in the ROK.

(b) IC or TR status under the SOFA is subject to the written approval of USFK, Assistant Chief of Staff, Acquisition Management (FKAQ), Unit #15289, APO AP 96205-5289.

(c) The contracting officer will coordinate with HQ USFK/FKAQ, IAW FAR 25.8, and USFK Reg 700-19. FKAQ will determine the appropriate contractor status under the SOFA and notify the contracting officer of that determination.

(d) Subject to the above determination, the contractor, including its employees and lawful dependents, may be accorded such privileges and exemptions under conditions and limitations as specified in the SOFA and USFK Reg 700-19. These privileges and exemptions may be furnished during the performance period of the contract, subject to their availability and continued SOFA status. Logistics support privileges are provided on an as-available basis to properly authorized individuals. Some logistics support may be issued as Government Furnished Property or transferred on a reimbursable basis.

(e) The contractor warrants and shall ensure that collectively, and individually, its officials and employees performing under this contract will not perform any contract, service, or other business activity in the ROK, except under U.S. Government contracts and that performance is IAW the SOFA.

(f) The contractor's direct employment of any Korean-National labor for performance of this contract shall be

governed by ROK labor law and USFK regulation(s) pertaining to the direct employment and personnel administration of Korean National personnel.

(g) The authorities of the ROK have the right to exercise jurisdiction over invited contractors and technical representatives, including contractor officials, employees and their dependents, for offenses committed in the ROK and punishable by the laws of the ROK. In recognition of the role of such persons in the defense of the ROK, they will be subject to the provisions of Article XXII, SOFA, related Agreed Minutes and Understandings. In those cases in which the authorities of the ROK decide not to exercise jurisdiction, they shall notify the U.S. military authorities as soon as possible. Upon such notification, the military authorities will have the right to exercise jurisdiction as is conferred by the laws of the U.S.

(h) Invited contractors and technical representatives agree to cooperate fully with the USFK Sponsoring Agency (SA) and Responsible Officer (RO) on all matters pertaining to logistics support and theater training requirements. Contractors will provide the assigned SA prompt and accurate reports of changes in employee status as required by USFK Reg 700-19.

(i) Theater Specific Training. Training Requirements for IC/TR personnel shall be conducted in accordance with USFK Reg 350-2 Theater Specific Required Training for all Arriving Personnel and Units Assigned to, Rotating to, or in Temporary Duty Status to USFK. IC/TR personnel shall comply with requirements of USFK Reg 350-2.

(j) Except for contractor air crews flying Air Mobility Command missions, all U.S. contractors performing work on USAF classified contracts will report to the nearest Security Forces Information Security Section for the geographical area where the contract is to be performed to receive information concerning local security requirements.

(k) Invited Contractor and Technical Representative status may be withdrawn by USFK/FKAQ upon:

(1) Completion or termination of the contract.

(2) Determination that the contractor or its employees are engaged in business activities in the ROK other than those pertaining to U.S. armed forces.

(3) Determination that the contractor or its employees are engaged in practices in contravention to Korean law or USFK regulations.

(l) It is agreed that the withdrawal of invited contractor or technical representative status, or the withdrawal of, or failure to provide any of the privileges associated therewith by the U.S. and USFK, shall not constitute grounds for excusable delay by the contractor in the performance of the contract and will not justify or excuse the contractor defaulting in the performance of this contract. Furthermore, it is agreed that withdrawal of SOFA status for reasons outlined in USFK Reg 700-19, Section II, paragraph 6 shall not serve as a basis for the contractor filing any claims against the U.S. or USFK. Under no circumstance shall the withdrawal of SOFA Status or privileges be considered or construed as a breach of contract by the U.S. Government.

(m) Support.

(1) Unless the terms and conditions of this contract place the responsibility with another party, the COMUSK will develop a security plan to provide protection, through military means, of Contractor personnel engaged in the theater of operations when sufficient or legitimate civilian authority does not exist.

(2)(i) All Contractor personnel engaged in the theater of operations are authorized resuscitative care, stabilization, hospitalization at level III military treatment facilities, and assistance with patient movement in emergencies where loss of life, limb, or eyesight could occur. Hospitalization will be limited to stabilization and short-term medical treatment with an emphasis on return to duty or placement in the patient movement system.

(ii) When the Government provides medical or emergency dental treatment or transportation of Contractor personnel to a selected civilian facility, the Contractor shall ensure that the Government is reimbursed for any costs associated with such treatment or transportation.

(iii) Medical or dental care beyond this standard is not authorized unless specified elsewhere in this contract.

(3) Unless specified elsewhere in this contract, the Contractor is responsible for all other support required for its personnel engaged in the theater of operations under this contract.

(n) Compliance with laws and regulations. The Contractor shall comply with, and shall ensure that its personnel supporting U.S. Armed Forces in the Republic of Korea as specified in paragraph (b)(1) of this clause are familiar with and comply with, all applicable—

(1) United States, host country, and third country national laws;

(2) Treaties and international agreements;

(3) United States regulations, directives, instructions, policies, and procedures; and

(4) Orders, directives, and instructions issued by the COMUSK relating to force protection, security, health, safety, or relations and interaction with local nationals. Included in this list are force protection advisories, health

advisories, area (i.e. "off-limits"), prostitution and human trafficking and curfew restrictions.

(o) Vehicle or equipment licenses. IAW USFK Regulation 190-1, Contractor personnel shall possess the required licenses to operate all vehicles or equipment necessary to perform the contract in the theater of operations. All contractor employees/dependents must have either a Korean driver's license or a valid international driver's license to legally drive on Korean roads.

(p) Evacuation.

(1) If the COMUSK orders a non-mandatory or mandatory evacuation of some or all personnel, the Government will provide assistance, to the extent available, to United States and third country national contractor personnel.

(2) Non-combatant Evacuation Operations (NEO).

(i) The contractor shall designate a representative to provide contractor personnel and dependents information to the servicing NEO warden as required by direction of the Responsible Officer.

(ii) If contract period of performance in the Republic of Korea is greater than six months, non-emergency essential contractor personnel and all IC/TR dependents shall participate in at least one USFK sponsored NEO exercise per year.

(q) Next of kin notification and personnel recovery.

(1) The Contractor shall be responsible for notification of the employee-designated next of kin in the event an employee dies, requires evacuation due to an injury, or is missing, captured, or abducted.

(2) In the case of missing, captured, or abducted contractor personnel, the Government will assist in personnel recovery actions in accordance with DOD Directive 2310.2, Personnel Recovery.

(3) IC/TR personnel shall accomplish Personnel Recovery/Survival, Evasion, Resistance and Escape (PR/SERE) training in accordance with USFK Reg 525-40, Personnel Recovery

Procedures and USFK Reg 350-2 Theater Specific Required Training for all Arriving Personnel and Units Assigned to, Rotating to, or in Temporary Duty Status to USFK.

(r) Mortuary affairs. Mortuary affairs for contractor personnel who die while providing support in the theater of operations to U.S. Armed Forces will be handled in accordance with DOD Directive 1300.22, Mortuary Affairs Policy and Army Regulation 638-2, Care and Disposition of Remains and Disposition of Personal Effects.

(s) USFK Responsible Officer (RO). The USFK appointed RO will ensure all IC/TR personnel complete all applicable training as outlined in this clause.

(End of Clause)

(End of Summary of Changes)

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT				1. CONTRACT ID CODE J		PAGE OF PAGES 1 20	
2. AMENDMENT/MODIFICATION NO. P00007		3. EFFECTIVE DATE 02-Feb-2018		4. REQUISITION/PURCHASE REQ. NO. SEE SCHEDULE		5. PROJECT NO.(If applicable)	
6. ISSUED BY US ARMY CONTRACTING COMMAND US ACC NEW JERSEY PICATINNY NJ 07806-5000		CODE W15QKN		7. ADMINISTERED BY (If other than item 6) See Item 6		CODE	
8. NAME AND ADDRESS OF CONTRACTOR (No., Street, County, State and Zip Code) PIVOTAL SOFTWARE, INC. 875 HOWARD ST 5TH FLR SAN FRANCISCO CA 94103-3021				9A. AMENDMENT OF SOLICITATION NO.			
				9B. DATED (SEE ITEM 11)			
				X 10A. MOD. OF CONTRACT/ORDER NO. W15QKN-17-9-0044			
				X 10B. DATED (SEE ITEM 13) 04-Aug-2017			
CODE 71BN7		FACILITY CODE					
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS							
<input type="checkbox"/> The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offer <input type="checkbox"/> is extended, <input type="checkbox"/> is not extended. Offer must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended by one of the following methods: (a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.							
12. ACCOUNTING AND APPROPRIATION DATA (If required) See Schedule							
13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.							
A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.							
B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(B).							
C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:							
X D. OTHER (Specify type of modification and authority) In accordance with the terms and conditions of the base OTA.							
E. IMPORTANT: Contractor <input type="checkbox"/> is not, <input checked="" type="checkbox"/> is required to sign this document and return <u> 1 </u> copies to the issuing office.							
14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.) Modification Control Number: (b)(6) The purpose of this modification is to: 1) Incrementally fund Milestones 4.7, 4.1.7 and 4.1.8 in the total amount of \$1,242,292.00. 2) Execute and fund Option work, Milestones 4.10, 4.11, 4.12 - 4.17, 4.21 and 4.22 in the amount of \$4,258,334.00. All other terms and conditions remain unchanged.							
Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.							
15A. NAME AND TITLE OF SIGNER (Type or print)				16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) (b)(6)			
15B. CONTRACTOR/OFFEROR (Signature of person authorized to sign)		15C. DATE SIGNED		16B. UNITED STATES OF AMERICA BY (b)(6) (Signature of Contracting Officer)		16C. DATE SIGNED 02-Feb-2018	

SECTION SF 30 BLOCK 14 CONTINUATION PAGE

SUMMARY OF CHANGES

SECTION A - SOLICITATION/CONTRACT FORM

The total cost of this contract was increased by \$4,635,959.00 from \$15,431,681.00 to \$20,067,640.00.

The following have been deleted:

EXECUTIVE SUMMARY

SECTION B - SUPPLIES OR SERVICES AND PRICES

(b)(4)

SUBCLIN 100106 is added as follows:

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
100106	Funding for CLIN 1001 FFP (b)(4) FOB: Destination PURCHASE REQUEST NUMBER: U17AP1231ANG01				(b)(4)
NET AMT					(b)(4)
ACRN AN CIN: U17AP1231ANG010001					(b)(4)

SUBCLIN 100107 is added as follows:

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
100107					(b)(4)

Funding for CLIN 1001

FFP

(b)(4)

FOB: Destination

PURCHASE REQUEST NUMBER: U17AP1231ANG01

NET AMT

(b)(4)

ACRN AN

CIN: U17AP1231ANG010002

(b)(4)

SUBCLIN 100801 is added as follows:

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
100801					(b)(4)

Funding for CLIN 1008

(b)(4)

(b)(4)

FOB: Destination

PURCHASE REQUEST NUMBER: U17AP1241ANG01

NET AMT

(b)(4)

(b)(4)

(b)(4)

CLIN 4010 is added as follows:

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
4010		(b)(4)	(b)(4)	(b)(4)	(b)(4)

(b)(4)

(b)(4)

(b)(4)

FOB: Destination

NET AMT

(b)(4)

SUBCLIN 401001 is added as follows:

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
401001					(b)(4)

Funding for CLIN 4010

FFP

(b)(4)

FOB: Destination

PURCHASE REQUEST NUMBER: U18AP1611ANG01

NET AMT

(b)(4)

ACRN AP

CIN: U18AP1611ANG010001

(b)(4)

CLIN 4011 is added as follows:

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
4011		(b)(4)	(b)(4)	(b)(4)	(b)(4)

(b)(4)

FOB: Destination

NET AMT

(b)(4)

SUBCLIN 401101 is added as follows:

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
401101	Funding for CLIN 4011 FFP (b)(4)				(b)(4)
	FOB: Destination PURCHASE REQUEST NUMBER: U18AP1611ANG01				

NET AMT

(b)(4)

ACRN AP
CIN: U18AP1611ANG010002

CLIN 4012 is added as follows:

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
4012	(b)(4)	(b)(4)	(b)(4)	(b)(4)	(b)(4)
	(b)(4)				
	FOB: Destination				

NET AMT

(b)(4)

SUBCLIN 401201 is added as follows:

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
401201					(b)(4)

Funding for CLIN 4012

FFP

(b)(4)

FOB: Destination

PURCHASE REQUEST NUMBER: U18AP1611ANG01

NET AMT

(b)(4)

ACRN AP

CIN: U18AP1611ANG010003

(b)(4)

CLIN 4013 is added as follows:

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
4013		(b)(4)	(b)(4)	(b)(4)	(b)(4)

(b)(4)

(b)(4)

FOB: Destination

NET AMT

(b)(4)

SUBCLIN 401301 is added as follows:

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
401301					(b)(4)

Funding for CLIN 4013

(b)(4)

(b)(4)

FOB: Destination

PURCHASE REQUEST NUMBER: U18AP1611ANG01

NET AMT

(b)(4)

ACRN AP

CIN: U18AP1611ANG010004

(b)(4)

CLIN 4014 is added as follows:

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
4014		(b)(4)			(b)(4)

(b)(4)

(b)(4)

FOB: Destination

NET AMT

(b)(4)

SUBCLIN 401401 is added as follows:

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
401401					(b)(4)

Funding for CLIN 4014

FFP

(b)(4)

FOB: Destination

PURCHASE REQUEST NUMBER: U18AP1611ANG01

NET AMT

(b)(4)

ACRN AP

CIN: U18AP1611ANG010005

(b)(4)

CLIN 4015 is added as follows:

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
4015		(b)(4)			

(b)(4)

(b)(4)

FOB: Destination

NET AMT

(b)(4)

SUBCLIN 401501 is added as follows:

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
401501					(b)(4)

Funding for CLIN 4015

FFP

(b)(4)

FOB: Destination

PURCHASE REQUEST NUMBER: U18AP1611ANG01

NET AMT

(b)(4)

ACRN AP

CIN: U18AP1611ANG010006

(b)(4)

CLIN 4016 is added as follows:

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
4016		(b)(4)			

(b)(4)

(b)(4)

FOB: Destination

NET AMT

(b)(4)

SUBCLIN 401601 is added as follows:

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
401601					(b)(4)

Funding for CLIN 4016

FFP

(b)(4)

FOB: Destination

PURCHASE REQUEST NUMBER: U18AP1611ANG01

NET AMT

(b)(4)

ACRN AP

CIN: U18AP1611ANG010007

(b)(4)

CLIN 4017 is added as follows:

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
4017		(b)(4)			

(b)(4)

(b)(4)

FOB: Destination

NET AMT

(b)(4)

SUBCLIN 401701 is added as follows:

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
401701	Funding for CLIN 4017 FFP (b)(4)				(b)(4)
	FOB: Destination PURCHASE REQUEST NUMBER: U18AP1611ANG01				

NET AMT

(b)(4)

ACRN AP
CIN: U18AP1611ANG010008

(b)(4)

CLIN 4021 is added as follows:

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
4021	(b)(4)	(b)(4)			(b)(4)
	(b)(4)				
	FOB: Destination				

NET AMT

(b)(4)

SUBCLIN 402101 is added as follows:

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
402101	Funding for CLIN 4021 FFP (b)(4)				(b)(4)
	FOB: Destination PURCHASE REQUEST NUMBER: U17AP1241ANG01				

NET AMT

(b)(4)

ACRN AM
CIN: U17AP1241ANG010002

(b)(4)

CLIN 4022 is added as follows:

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
4022	(b)(4)	(b)(4)			(b)(4)
	(b)(4)				
	FOB: Destination				

NET AMT

(b)(4)

SUBCLIN 402201 is added as follows:

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
402201					(b)(4)

Funding for CLIN 4022

FFP

(b)(4)

FOB: Destination

PURCHASE REQUEST NUMBER: U17AP1241ANG01

NET AMT

(b)(4)

ACRN AM

CIN: U17AP1241ANG010003

(b)(4)

The following have been modified:

MILESTONE PAYMENT INFO

(b)(4)

(b)(4)



SECTION E - INSPECTION AND ACCEPTANCE

The following Acceptance/Inspection Schedule was added for SUBCLIN 100106:

INSPECT AT
N/A

INSPECT BY
N/A

ACCEPT AT
N/A

ACCEPT BY
Government

The following Acceptance/Inspection Schedule was added for SUBCLIN 100107:

INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
N/A	N/A	N/A	Government

The following Acceptance/Inspection Schedule was added for SUBCLIN 100801:

INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
N/A	N/A	N/A	Government

The following Acceptance/Inspection Schedule was added for CLIN 4010:

INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
N/A	N/A	N/A	Government

The following Acceptance/Inspection Schedule was added for SUBCLIN 401001:

INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
N/A	N/A	N/A	Government

The following Acceptance/Inspection Schedule was added for CLIN 4011:

INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
N/A	N/A	N/A	Government

The following Acceptance/Inspection Schedule was added for SUBCLIN 401101:

INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
N/A	N/A	N/A	Government

The following Acceptance/Inspection Schedule was added for CLIN 4012:

INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
N/A	N/A	N/A	Government

The following Acceptance/Inspection Schedule was added for SUBCLIN 401201:

INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
N/A	N/A	N/A	Government

The following Acceptance/Inspection Schedule was added for CLIN 4013:

INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
N/A	N/A	N/A	Government

The following Acceptance/Inspection Schedule was added for SUBCLIN 401301:

INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
N/A	N/A	N/A	Government

The following Acceptance/Inspection Schedule was added for CLIN 4014:

INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
N/A	N/A	N/A	Government

The following Acceptance/Inspection Schedule was added for SUBCLIN 401401:

INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
N/A	N/A	N/A	Government

The following Acceptance/Inspection Schedule was added for CLIN 4015:

INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
N/A	N/A	N/A	Government

The following Acceptance/Inspection Schedule was added for SUBCLIN 401501:

INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
N/A	N/A	N/A	Government

The following Acceptance/Inspection Schedule was added for CLIN 4016:

INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
N/A	N/A	N/A	Government

The following Acceptance/Inspection Schedule was added for SUBCLIN 401601:

INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
N/A	N/A	N/A	Government

The following Acceptance/Inspection Schedule was added for CLIN 4017:

INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
N/A	N/A	N/A	Government

The following Acceptance/Inspection Schedule was added for SUBCLIN 401701:

INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
N/A	N/A	N/A	Government

The following Acceptance/Inspection Schedule was added for CLIN 4021:

INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
N/A	N/A	N/A	Government

The following Acceptance/Inspection Schedule was added for SUBCLIN 402101:

INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
N/A	N/A	N/A	Government

The following Acceptance/Inspection Schedule was added for CLIN 4022:

INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
N/A	N/A	N/A	Government

The following Acceptance/Inspection Schedule was added for SUBCLIN 402201:

INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
N/A	N/A	N/A	Government

SECTION G - CONTRACT ADMINISTRATION DATA

Accounting and Appropriation

Summary for the Payment Office

As a result of this modification, the total funded amount for this document was increased by \$5,500,626.33 from \$13,567,369.67 to \$19,067,996.00.

(b)(4)



(b)(4)



(b)(4)



(b)(4)



AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT				1. CONTRACT ID CODE		PAGE OF PAGES 1 50	
2. AMENDMENT/MODIFICATION NO. P00008		3. EFFECTIVE DATE 04-Apr-2018		4. REQUISITION/PURCHASE REQ. NO. SEE SCHEDULE		5. PROJECT NO.(If applicable)	
6. ISSUED BY US ARMY CONTRACTING COMMAND US ACC NEW JERSEY PICATINNY NJ 07806-5000		CODE W15QKN		7. ADMINISTERED BY (If other than item 6) See Item 6		CODE	
8. NAME AND ADDRESS OF CONTRACTOR (No., Street, County, State and Zip Code) PIVOTAL SOFTWARE, INC. 875 HOWARD ST 5TH FLR SAN FRANCISCO CA 94103-3021				9A. AMENDMENT OF SOLICITATION NO.			
				9B. DATED (SEE ITEM 11)			
				X 10A. MOD. OF CONTRACT/ORDER NO. W15QKN-17-9-0044			
				X 10B. DATED (SEE ITEM 13) 04-Aug-2017			
CODE 71BN7		FACILITY CODE					
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS							
<input type="checkbox"/> The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offer <input type="checkbox"/> is extended, <input type="checkbox"/> is not extended.							
Offer must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended by one of the following methods: (a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.							
12. ACCOUNTING AND APPROPRIATION DATA (If required) See Schedule							
13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.							
A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.							
B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(B).							
C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:							
X D. OTHER (Specify type of modification and authority) In accordance with the terms and conditions of the base OTA.							
E. IMPORTANT: Contractor <input type="checkbox"/> is not, <input checked="" type="checkbox"/> is required to sign this document and return <u>1</u> copies to the issuing office.							
14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.) Modification Control Number: (b)(6) The purpose of this modification is to: 1) Incrementally fund Milestones (b)(6) in the amount of \$865,144.00 and (b)(4) the amount of \$134,500.00. 2) Execute and fund Option work, (b)(4) in the amount of \$881,125.00. 3) Update the WAWF Invoicing Instructions within Article IV. All other terms and conditions remain unchanged.							
Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.							
15A. NAME AND TITLE OF SIGNER (Type or print)				16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) (b)(6)			
15B. CONTRACTOR/OFFEROR (Signature of person authorized to sign)		15C. DATE SIGNED		16B. UNITED STATES OF AMERICA BY (b)(6) (Signature of Contracting Officer)		16C. DATE SIGNED 04-Apr-2018	

SECTION SF 30 BLOCK 14 CONTINUATION PAGE

SUMMARY OF CHANGES

SECTION A - SOLICITATION/CONTRACT FORM

The total cost of this contract was increased by \$881,125.00 from \$20,067,640.00 to \$20,948,765.00.

SECTION B - SUPPLIES OR SERVICES AND PRICES

SUBCLIN 100101

The FOB Destination has been deleted.

The WSC Equipment code 000 has been deleted.

SUBCLIN 100102

The FOB Destination has been deleted.

SUBCLIN 100103

The FOB Destination has been deleted.

SUBCLIN 100104

The FOB Destination has been deleted.

SUBCLIN 100105

The FOB Destination has been deleted.

SUBCLIN 100106

The FOB Destination has been deleted.

SUBCLIN 100107

The FOB Destination has been deleted.

SUBCLIN 100201

The FOB Destination has been deleted.

SUBCLIN 100202

The FOB Destination has been deleted.

SUBCLIN 100301

The FOB Destination has been deleted.

SUBCLIN 100302

The FOB Destination has been deleted.

SUBCLIN 100303

The FOB Destination has been deleted.

SUBCLIN 100304

The FOB Destination has been deleted.

SUBCLIN 100401

The FOB Destination has been deleted.

SUBCLIN 100402

The FOB Destination has been deleted.

SUBCLIN 100501

The FOB Destination has been deleted.

SUBCLIN 100502

The FOB Destination has been deleted.

SUBCLIN 100601

The FOB Destination has been deleted.

SUBCLIN 100602

The FOB Destination has been deleted.

SUBCLIN 100603

The FOB Destination has been deleted.

SUBCLIN 100701

The FOB Destination has been deleted.

SUBCLIN 100801

The FOB Destination has been deleted.

SUBCLIN 401001

The FOB Destination has been deleted.

SUBCLIN 401101

The FOB Destination has been deleted.

SUBCLIN 401201

The FOB Destination has been deleted.

SUBCLIN 401301

The FOB Destination has been deleted.

SUBCLIN 401401

The FOB Destination has been deleted.

SUBCLIN 401501

The FOB Destination has been deleted.

SUBCLIN 401601

The FOB Destination has been deleted.

SUBCLIN 401701

The FOB Destination has been deleted.

SUBCLIN 402101

The FOB Destination has been deleted.

SUBCLIN 402201

The FOB Destination has been deleted.

SUBCLIN 100305 is added as follows:

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
100305	Funding for CLIN 1003 FFP (b)(4)				(b)(4)
	SOW. PURCHASE REQUEST NUMBER: U18AP3101ANG01				

NET AMT

(b)(4)

ACRN AQ
CIN: U18AP3101ANG010001

(b)(4)

SUBCLIN 100702 is added as follows:

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
100702	Funding for CLIN 1007 FFP (b)(4)				(b)(4)
	PURCHASE REQUEST NUMBER: U18AP3121ANG01				

NET AMT

(b)(4)

ACRN AQ
CIN: U18AP3121ANG010001

(b)(4)

CLIN 4018 is added as follows:

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
4018	Option, Platform Install	(b)(4)			
	(b)(4)				
	FOB: Destination				
	PSC CD: 7030				

NET AMT

(b)(4)

SUBCLIN 401801 is added as follows:

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
401801	Funding for CLIN 4018				(b)(4)
	FFP				
	(b)(4)				
	PURCHASE REQUEST NUMBER: U18AP3131ANG01				

NET AMT

(b)(4)

ACRN AQ
CIN: U18AP3131ANG010001

(b)(4)

CLIN 4019 is added as follows:

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
4019	(b)(4)	(b)(4)			
	(b)(4)				
	FOB: Destination				
	PSC CD: 7030				

NET AMT

(b)(4)

SUBCLIN 401901 is added as follows:

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
401901	Funding for CLIN 4019				(b)(4)
	FFP				
	(b)(4)				
	PURCHASE REQUEST NUMBER: U18AP3131ANG01				

NET AMT

(b)(4)

ACRN AQ
CIN: U18AP3131ANG010002

(b)(4)

CLIN 4020 is added as follows:

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
4020	Option, Platform Install	(b)(4)			
	(b)(4)				
	FOB: Destination				
	PSC CD: 7030				

NET AMT

(b)(4)

SUBCLIN 402001 is added as follows:

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
402001	Funding for CLIN 4020 (b)(4)				(b)(4)
	PURCHASE REQUEST NUMBER: U18AP3131ANG01				

NET AMT

(b)(4)

ACRN AQ
CIN: U18AP3131ANG010003

(b)(4)

CLIN 4023 is added as follows:

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
4023	(b)(4)	(b)(4)			
	FOB: Destination PSC CD: 7030				

NET AMT

(b)(4)

SUBCLIN 402301 is added as follows:

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
402301					(b)(4)

Funding for CLIN 4023

FFP

(b)(4)

PURCHASE REQUEST NUMBER: U18AP3141ANG01

NET AMT

(b)(4)

ACRN AQ

CIN: U18AP3141ANG010001

(b)(4)

CLIN 4024 is added as follows:

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
4024		(b)(4)			

(b)(4)

FOB: Destination

PSC CD: 7030

NET AMT

(b)(4)

SUBCLIN 402401 is added as follows:

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
402401					(b)(4)

Funding for CLIN 4024

FFP

(b)(4)

PURCHASE REQUEST NUMBER: U18AP3141ANG01

NET AMT

(b)(4)

ACRN AQ

CIN: U18AP3141ANG010002

(b)(4)

CLIN 4025 is added as follows:

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
4025	(b)(4)				

(b)(4)

FOB: Destination

PSC CD: 7030

NET AMT

(b)(4)

SUBCLIN 402501 is added as follows:

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
402501	Funding for CLIN 4025				(b)(4)

FFP

(b)(4)

PURCHASE REQUEST NUMBER: U18AP3141ANG01

NET AMT

(b)(4)

ACRN AQ

CIN: U18AP3141ANG010003

(b)(4)

CLIN 4026 is added as follows:

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
4026	(b)(4)				

(b)(4)

FOB: Destination

PSC CD: 7030

NET AMT

(b)(4)

SUBCLIN 402601 is added as follows:

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
402601					(b)(4)

Funding for CLIN 4026

FFP

(b)(4)

PURCHASE REQUEST NUMBER: U18AP3141ANG01

NET AMT

(b)(4)

ACRN AQ

CIN: U18AP3141ANG010004

(b)(4)

The following have been modified:

MILESTONE PAYMENT INFO

(b)(4)

(b)(4)



(b)(4)

SECTION E - INSPECTION AND ACCEPTANCE

The Acceptance/Inspection Schedule for SUBCLIN 100101 has been changed from:

INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
N/A	N/A	N/A	Government

To:

INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
N/A	N/A	N/A	N/A

The Acceptance/Inspection Schedule for SUBCLIN 100102 has been changed from:

INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
N/A	N/A	N/A	Government

To:

INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
N/A	N/A	N/A	N/A

The Acceptance/Inspection Schedule for SUBCLIN 100103 has been changed from:

INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
N/A	N/A	N/A	Government

To:	INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
	N/A	N/A	N/A	N/A

The Acceptance/Inspection Schedule for SUBCLIN 100104 has been changed from:

INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
N/A	N/A	N/A	Government

To:	INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
	N/A	N/A	N/A	N/A

The Acceptance/Inspection Schedule for SUBCLIN 100105 has been changed from:

INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
N/A	N/A	N/A	Government

To:	INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
	N/A	N/A	N/A	N/A

The Acceptance/Inspection Schedule for SUBCLIN 100106 has been changed from:

INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
N/A	N/A	N/A	Government

To:	INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
	N/A	N/A	N/A	N/A

The Acceptance/Inspection Schedule for SUBCLIN 100107 has been changed from:

INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
N/A	N/A	N/A	Government

To:	INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
	N/A	N/A	N/A	N/A

The Acceptance/Inspection Schedule for SUBCLIN 100201 has been changed from:

INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
N/A	N/A	N/A	Government

To:	INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
	N/A	N/A	N/A	N/A

The Acceptance/Inspection Schedule for SUBCLIN 100202 has been changed from:

INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
N/A	N/A	N/A	Government

To:	INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
	N/A	N/A	N/A	N/A

The Acceptance/Inspection Schedule for SUBCLIN 100301 has been changed from:

INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
N/A	N/A	N/A	Government

To:	INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
	N/A	N/A	N/A	N/A

The Acceptance/Inspection Schedule for SUBCLIN 100302 has been changed from:

INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
N/A	N/A	N/A	Government

To:	INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
	N/A	N/A	N/A	N/A

The Acceptance/Inspection Schedule for SUBCLIN 100303 has been changed from:

INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
N/A	N/A	N/A	Government

To:	INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
	N/A	N/A	N/A	N/A

The Acceptance/Inspection Schedule for SUBCLIN 100304 has been changed from:

INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
N/A	N/A	N/A	Government

To:	INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
	N/A	N/A	N/A	N/A

The following Acceptance/Inspection Schedule was added for SUBCLIN 100305:

INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
N/A	N/A	N/A	N/A

The Acceptance/Inspection Schedule for SUBCLIN 100401 has been changed from:

INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
N/A	N/A	N/A	Government

To:	INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
	N/A	N/A	N/A	N/A

The Acceptance/Inspection Schedule for SUBCLIN 100402 has been changed from:

INSPECT AT
N/A

INSPECT BY
N/A

ACCEPT AT
N/A

ACCEPT BY
Government

To:

INSPECT AT
N/A

INSPECT BY
N/A

ACCEPT AT
N/A

ACCEPT BY
N/A

The Acceptance/Inspection Schedule for SUBCLIN 100501 has been changed from:

INSPECT AT
N/A

INSPECT BY
N/A

ACCEPT AT
N/A

ACCEPT BY
Government

To:

INSPECT AT
N/A

INSPECT BY
N/A

ACCEPT AT
N/A

ACCEPT BY
N/A

The Acceptance/Inspection Schedule for SUBCLIN 100502 has been changed from:

INSPECT AT
N/A

INSPECT BY
N/A

ACCEPT AT
N/A

ACCEPT BY
Government

To:

INSPECT AT
N/A

INSPECT BY
N/A

ACCEPT AT
N/A

ACCEPT BY
N/A

The Acceptance/Inspection Schedule for SUBCLIN 100601 has been changed from:

INSPECT AT
N/A

INSPECT BY
N/A

ACCEPT AT
N/A

ACCEPT BY
Government

To:

INSPECT AT
N/A

INSPECT BY
N/A

ACCEPT AT
N/A

ACCEPT BY
N/A

The Acceptance/Inspection Schedule for SUBCLIN 100602 has been changed from:

INSPECT AT
N/A

INSPECT BY
N/A

ACCEPT AT
N/A

ACCEPT BY
Government

To:

INSPECT AT
N/A

INSPECT BY
N/A

ACCEPT AT
N/A

ACCEPT BY
N/A

The Acceptance/Inspection Schedule for SUBCLIN 100603 has been changed from:

INSPECT AT
N/A

INSPECT BY
N/A

ACCEPT AT
N/A

ACCEPT BY
Government

To:

INSPECT AT
N/A

INSPECT BY
N/A

ACCEPT AT
N/A

ACCEPT BY
N/A

The Acceptance/Inspection Schedule for SUBCLIN 100701 has been changed from:

INSPECT AT
N/A

INSPECT BY
N/A

ACCEPT AT
N/A

ACCEPT BY
Government

To:

INSPECT AT
N/A

INSPECT BY
N/A

ACCEPT AT
N/A

ACCEPT BY
N/A

The following Acceptance/Inspection Schedule was added for SUBCLIN 100702:

INSPECT AT
N/A

INSPECT BY
N/A

ACCEPT AT
N/A

ACCEPT BY
N/A

The Acceptance/Inspection Schedule for SUBCLIN 100801 has been changed from:

INSPECT AT
N/A

INSPECT BY
N/A

ACCEPT AT
N/A

ACCEPT BY
Government

To:

INSPECT AT
N/A

INSPECT BY
N/A

ACCEPT AT
N/A

ACCEPT BY
N/A

The Acceptance/Inspection Schedule for SUBCLIN 401001 has been changed from:

INSPECT AT
N/A

INSPECT BY
N/A

ACCEPT AT
N/A

ACCEPT BY
Government

To:

INSPECT AT
N/A

INSPECT BY
N/A

ACCEPT AT
N/A

ACCEPT BY
N/A

The Acceptance/Inspection Schedule for SUBCLIN 401101 has been changed from:

INSPECT AT
N/A

INSPECT BY
N/A

ACCEPT AT
N/A

ACCEPT BY
Government

To:

INSPECT AT
N/A

INSPECT BY
N/A

ACCEPT AT
N/A

ACCEPT BY
N/A

The Acceptance/Inspection Schedule for SUBCLIN 401201 has been changed from:

INSPECT AT
N/A

INSPECT BY
N/A

ACCEPT AT
N/A

ACCEPT BY
Government

To:

INSPECT AT
N/A

INSPECT BY
N/A

ACCEPT AT
N/A

ACCEPT BY
N/A

The Acceptance/Inspection Schedule for SUBCLIN 401301 has been changed from:

INSPECT AT
N/A

INSPECT BY
N/A

ACCEPT AT
N/A

ACCEPT BY
Government

To:

INSPECT AT

INSPECT BY

ACCEPT AT

ACCEPT BY

N/A

N/A

N/A

N/A

The Acceptance/Inspection Schedule for SUBCLIN 401401 has been changed from:

INSPECT AT

INSPECT BY

ACCEPT AT

ACCEPT BY

N/A

N/A

N/A

Government

To:

INSPECT AT

INSPECT BY

ACCEPT AT

ACCEPT BY

N/A

N/A

N/A

N/A

The Acceptance/Inspection Schedule for SUBCLIN 401501 has been changed from:

INSPECT AT

INSPECT BY

ACCEPT AT

ACCEPT BY

N/A

N/A

N/A

Government

To:

INSPECT AT

INSPECT BY

ACCEPT AT

ACCEPT BY

N/A

N/A

N/A

N/A

The Acceptance/Inspection Schedule for SUBCLIN 401601 has been changed from:

INSPECT AT

INSPECT BY

ACCEPT AT

ACCEPT BY

N/A

N/A

N/A

Government

To:

INSPECT AT

INSPECT BY

ACCEPT AT

ACCEPT BY

N/A

N/A

N/A

N/A

The Acceptance/Inspection Schedule for SUBCLIN 401701 has been changed from:

INSPECT AT

INSPECT BY

ACCEPT AT

ACCEPT BY

N/A

N/A

N/A

Government

To:

INSPECT AT

INSPECT BY

ACCEPT AT

ACCEPT BY

N/A

N/A

N/A

N/A

The following Acceptance/Inspection Schedule was added for CLIN 4018:

INSPECT AT

INSPECT BY

ACCEPT AT

ACCEPT BY

N/A

N/A

N/A

Government

The following Acceptance/Inspection Schedule was added for SUBCLIN 401801:

INSPECT AT

INSPECT BY

ACCEPT AT

ACCEPT BY

N/A

N/A

N/A

N/A

The following Acceptance/Inspection Schedule was added for CLIN 4019:

INSPECT AT

INSPECT BY

ACCEPT AT

ACCEPT BY

N/A

N/A

N/A

Government

The following Acceptance/Inspection Schedule was added for SUBCLIN 401901:

INSPECT AT
N/A

INSPECT BY
N/A

ACCEPT AT
N/A

ACCEPT BY
N/A

The following Acceptance/Inspection Schedule was added for CLIN 4020:

INSPECT AT
N/A

INSPECT BY
N/A

ACCEPT AT
N/A

ACCEPT BY
Government

The following Acceptance/Inspection Schedule was added for SUBCLIN 402001:

INSPECT AT
N/A

INSPECT BY
N/A

ACCEPT AT
N/A

ACCEPT BY
N/A

The Acceptance/Inspection Schedule for SUBCLIN 402101 has been changed from:

INSPECT AT
N/A

INSPECT BY
N/A

ACCEPT AT
N/A

ACCEPT BY
Government

To:

INSPECT AT
N/A

INSPECT BY
N/A

ACCEPT AT
N/A

ACCEPT BY
N/A

The Acceptance/Inspection Schedule for SUBCLIN 402201 has been changed from:

INSPECT AT
N/A

INSPECT BY
N/A

ACCEPT AT
N/A

ACCEPT BY
Government

To:

INSPECT AT
N/A

INSPECT BY
N/A

ACCEPT AT
N/A

ACCEPT BY
N/A

The following Acceptance/Inspection Schedule was added for CLIN 4023:

INSPECT AT
N/A

INSPECT BY
N/A

ACCEPT AT
N/A

ACCEPT BY
Government

The following Acceptance/Inspection Schedule was added for SUBCLIN 402301:

INSPECT AT
N/A

INSPECT BY
N/A

ACCEPT AT
N/A

ACCEPT BY
N/A

The following Acceptance/Inspection Schedule was added for CLIN 4024:

INSPECT AT
N/A

INSPECT BY
N/A

ACCEPT AT
N/A

ACCEPT BY
Government

The following Acceptance/Inspection Schedule was added for SUBCLIN 402401:

INSPECT AT
N/A

INSPECT BY
N/A

ACCEPT AT
N/A

ACCEPT BY
N/A

The following Acceptance/Inspection Schedule was added for CLIN 4025:

INSPECT AT
N/A

INSPECT BY
N/A

ACCEPT AT
N/A

ACCEPT BY
Government

The following Acceptance/Inspection Schedule was added for SUBCLIN 402501:

INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
N/A	N/A	N/A	N/A

The following Acceptance/Inspection Schedule was added for CLIN 4026:

INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
N/A	N/A	N/A	Government

The following Acceptance/Inspection Schedule was added for SUBCLIN 402601:

INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
N/A	N/A	N/A	N/A

(b)(4)



(b)(4)



(b)(4)



The following have been modified:
PIVOTAL SOFTWARE INC OTA

AGREEMENT BETWEEN

UNITED STATES ARMY CONTRACTING COMMAND – NEW JERSEY
PICATINNY ARSENAL, NJ 07806-5000

AND

Pivotal Software Inc.
875 Howard Street, 5th Floor
San Francisco, CA 94103

Agreement No.: W15QKN-17-9-0044

Total Amount of the Agreement: \$21,372,783.00

Authority: 10 U.S.C. § 2371b

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ARTICLE I: SCOPE OF THE AGREEMENT

A. Background

This Other Transaction Agreement (OTA) is awarded based upon the prototype project proposed by Pivotal Software Inc., hereinafter referred to as “The Company” or “Pivotal” in response to the Defense Innovation Unit – Experimental (DIUx) Commercial Solutions Offering (CSO). The principle purpose of this OTA is to establish the underlying terms and conditions between the government and Pivotal for the Agreement No. W15KN-17-9-0044. This includes elements from both DIUx’s model Other Transaction contract and Pivotal’s software licenses and professional services agreement.

BRIEFLY SUMMARIZE THE PROTOTYPE PROJECT: This pilot is intended to demonstrate a method to develop, operate, and maintain software for complex information technology systems in the DoD. Through this methodology the DoD will increase the speed and effectiveness of application delivery, decrease spending for operations, and radically enhance the tactical and strategic responsiveness of the Air Operations Center (AOC). Pivotal will accomplish these outcomes by installing its cloud native platform, Pivotal Cloud Foundry (PCF), at several locations annotated in the Statement of Work (SOW) to run Pivotal Cloud Foundry and demonstrate the utility of this commercial methodology.

B. Definitions

“Agreement” or “OTA” refers to the Other Transaction Agreement, as authorized under 10 U.S.C. 2371b, between the Government and Pivotal Software Inc., Agreement No. **W15QKN-17-9-0044**.

“Affiliate” means a legal entity controlled by, controlling, or that is under common control of Pivotal or Customer, with control meaning more than fifty percent (50%) of the voting power or ownership interests then outstanding of that entity.

“Agreements Officer (AO)” is the United States Army Contracting Command – New Jersey Contracting Activity warranted Contracting Officer authorized to sign the final agreement for the Government.

“Agreements Officer’s Representative (AOR)” is the individual designated by the Government on a per project basis to monitor all technical aspects; the AOR shall only assist in agreement administration of the specific project to the extent expressly delegated such administration authority in writing in the Project Agreement by the responsible Agreements Officer.

“Infringement Claim” means any third party claim, notice, demand, action, proceeding, litigation, investigation, or judgment relating IP infringement. With respect to Software, such Claim must be related to Customer’s use of the Software during the Subscription Period (or renewal thereof).

“Contracting Activity” means an element of an agency designated by the agency head and delegated broad authority regarding acquisition functions. It also means elements or another agency designated by the director of a defense agency which has been delegated contracting authority through its agency charter.

“Date of Completion” is the date on which all work is completed or the date on which the period of performance ends.

“Discovery and Framing (D&F)” means upfront period during application development focused on Pivotal’s methodology towards defining user requirements for the minimal viable product (MVP).

“Effective Date” means the date when this Agreement is signed and executed by the Agreements Officer for the Government.

“Excluded Materials” mean Pivotal Materials, Open Source Software, and Third Party Materials.

“Government” or “the Customer” means the U.S. Government.

“Government Fiscal Year” means the period commencing on October 1 and ending September 30 of the following calendar year.

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“Major Release” means a generally available release of Software that Pivotal designates with a change in the digit to the left of the first decimal point (e.g., 5.0 >> 6.0).

“Milestone” means a scheduled event signifying the completion of a major deliverable or a set of related deliverables as identified in the Statement of Work.

“Minimum Viable Product (MVP)” creation of baseline requirements defined by the government delineating user acceptance for an operational setting for each application developed.

“Minor Release” means a generally available release of Software that Pivotal designated with a change in the digit to the right of the decimal point (e.g., 5.0 >> 5.1).

“Open Source Software” or OSS means software components licensed under a license approved by the Open Source Initiative or similar open source or freeware license and included in, embedded in, utilized by, provided or distributed with Software or Developments.

“Other Transactions Agreement (OTA)” is the term commonly used to refer to the 10 USC 2371b authority to enter into transactions other than contracts, grants or cooperative agreements. The Department of Defense (DoD) currently has authority to make awards that are directly relevant to enhancing the mission effectiveness of military personnel and the supporting platforms, systems, components, or materials proposed to be acquired or developed by the Department of Defense, or to improvement of platforms, systems, components, or materials in use by the armed forces. OTAs are acquisition instruments that generally, are not subject to the federal laws and regulations governing procurement (FAR based) contracts. As such, they are not required to comply with the Federal Acquisition Regulation (FAR), its supplements (i.e. DFARS) or laws that are limited in applicability to procurement contracts.

“Parties” means Government and the COMPANY by its authorized agent where collectively identified and “Party” where each entity is individually identified.

“Partial Payment Milestone” means partial completion of the payable milestone based on the invoice submitted by the company

“Payable Milestone” means that once a milestone has been met (see definition of “milestone”), the Government can approve payment to the COMPANY of a predetermined dollar amount in relation to performance of a particular project or defined services under the Other Transaction Agreement or the SOW.

“PCF Dojo services” are focused on Day One (deployment and testing) and Day Two (operationalization and utilization) concerns. The actual work on site will be tailored to specific program objectives and tailored to each environment’s unique role in the continuous fielding process for the AOC. The Designated Operations Engineer(s) shall provide ongoing support of the platform over the extent of this pilot engagement and shall pair with the customer to work on backlog priorities while operationalizing PCF.

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“Perpetual License” means access to Software and Documentation subject to the licensing terms and restrictions in the Pivotal Product Guide available at (b)(4) on a perpetual basis.

“Pivotal Materials” means any materials developed by Pivotal: (a) prior to the Effective Date; (b) other than in performance of this Agreement; (c) that are generally applicable to Pivotal’s products and services and are not unique to the business of Customer or the SOW; or (d) that are improvements to Software or Pivotal’s internal processes.

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“Signatory Authority” refers to the individual that has the authority to legally bind a party to an agreement.

“Software” means Pivotal computer programs listed in the Guide and identified in a Quote, indicating a Subscription License excluding code written as part of a (b)(4)

“Subscription License” means (a) access to Software (and Documentation) set forth in the SOW subject to the Guide; and (b) Support Services, which include any Minor and Major Releases and related upgrades on a “when and if available” basis, all during the Subscription Period.

“Subscription Period” means the period starting upon notification to Customer that Software is available for download, and continues for the period specified in the Quote or mutually-signed Order

“Support Services” means services described at: (b)(4)

“Third Party Materials” means materials (including tools that are used to deliver the Professional Services) that are not owned or created by Pivotal (other than Open Source Software).

“The Company” or “The Contractor” means Pivotal Software Inc.

“Work Product” means the works of authorship or other products developed or created and delivered by Pivotal to Customer (excluding the Excluded Materials) in the course of performing Services described in the applicable SOW.

C. Scope

STATEMENT OF WORK for “AOC Pathfinder”

1.0 BACKGROUND: The Department of Defense, in partnership with the Air Operations Center (AOC) Weapons System Program Management Office (PMO) and supporting government organizations,

plans to prototype the use of agile software development for large enterprise architectures, adopting commercial best practices that are not utilized in the DoD. This methodology has the potential to change how the government manages and implements large IT enterprises. Through this methodology, users will also receive more capability in the applications they leverage to perform day-to-day operations.

To effectively implement and leverage this methodology, the government must first establish environments, leveraging commercial software licenses, to provide the underpinning software development platform. Once that environment is realized, the government can then leverage commercial best practices of agile software development to produce user-centered design, test-driven development, continuous integration, and continuous delivery of new and enhanced software code. Additionally, the mentorship and training to government personnel on how to leverage the environment is paramount realizing the utility for this approach. This is in stark contrast to how the DoD currently implements software. That current process is accomplished in a serial fashion known as the waterfall approach. *The waterfall approach can be summarized as follows: manual orchestration of low-level steps, which generate repetitive work that is highly susceptible to errors. Automation, if used at all within DoD, is typically script-based and ad hoc. As a result, software processes to build, test, deploy and operate each application are custom, complex, and frequently inconsistent, resulting in additional operational complexity and chaos. Organizations manage such complexity by slowing down release processes to ensure correctness and consistency, and consequently struggle to release new functionality quickly. The end result is a track record of major IT programs that are over-budget and over-timeline.*

While having the underlying platform is critical for the iterative deployment of the enhanced software, the true power of the agile methodology is ensuring the software developers (people) are enabled to leverage the development platform. **To that end, this project will prototype the use of agile software development methodology in conjunction with a modernized software platform (Pivotal Cloud Foundry) to assess whether this commercial methodology can provide similar benefits in a government use case.** To affect this prototype project, the contractor shall perform co-development on all aspects of the prototype project to include:

- 1.1 Establishment and optimal configuration of the Pivotal Cloud Foundry (PCF) 'environment' for Administrators through the contractor's DoJo offering
- 1.2 Net-New Application development - this includes partnering with contractor designers, product managers, and software engineers in order to deploy Agile software development where new features are deployed to the end users on a regular cadence.
- 1.3 App Replatforming - This effort is focused on taking legacy applications and retooling the software code so that the application can operate on a modern cloud infrastructure, to include the Pivotal Cloud Foundry platform, allowing for reduced sustainment costs and higher system reliability.
- 1.4 Third Party Application Integration - The PCF platform is extremely robust, but it does not have all the tools required by the government. The government will provide personnel to partner with pivotal to identify the correct suite of third party applications and implement those capabilities into the development platform to either gain access to additional data sets or applications for end users whether they are the app development team or a user of the application.
- 1.5 Training: While learning is inherent in each activity provided by the teaming methodology, the contractor offers additional acceleration courses to ensure new team members joining various functions of the agile methodology do not slow down the S/W development team. This methodology is extremely collaborative and the learning curve steep for personnel newly introduced to its utilization. The methodology and technologies are new to government software developers, requiring some initial training for some of them before being able to take advantage of the platform.

The AOC PMO is the first major IT program to implement this methodology. If successful, it is the intent of the DoD to leverage this methodology across several other IT program offices. Fundamental to introducing commercial best practices is to ensure the personnel as well as the technology is synchronized to perform the Agile Software Development methodology. From management, to design, to development, to test and finally to production, the entire process must be integrated and fully understood or else just like a three-legged stool, without one leg the entire system collapses. In the technical requirements, the SOW will highlight how the government intends to employ this methodology to enhance operations within the AOC. Additionally, this prototype project will be broken into two phases: Base Period and Option Period. The base period will be defined by specific targeted environments and applications to be developed / replatformed. The option period will define potential augmentation for known interest items to the government.

1.6 Environment Setup:

- 1.6.1 Base period: The contractor shall deliver and establish three separate environments. One unclassified environment for software development, a second to act as the staging and test environment on a classified network, and a third as the production (or operations) environment on a classified network. This will prove out the methodology by developing a direct pipeline from application development all the way to application utilization in an operational setting. This is unique and currently is not done in the Department of Defense.
- 1.6.2 Option period: The base period sets-up a simple one to one relationship from development to production; however, the AOC has multiple Command and Control (C2) operation centers geographically dispersed across the globe. The option period will aim to establish multiple production and staging environments to prove the scalability of one development environment for consistency across multiple geographically disparate systems. Additionally, the government may establish an environment on the JWICs network which will introduce additional layers of complexity.

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1.8 App Replatforming: 1.8.1 Base Period: The Government has identified three initial candidates for the prototype effort to be replatformed and deployable on the PCF platform. They are: the 'Battle Damage Assessment' (BDA), 'Integrated Air and Missile Defense' (IAMD) and 'Joint Targeting Toolbox' (JTT). These applications were chosen based on high priority to the user community and level of complexity.

- 1.8.2 Option Period: The PMO may pick additional applications for replatforming to test the methodology with its own developers as well as include applications with enhanced technical complexity. One application designated for the option period is the Command and Control (C2) Air Operations Suite-C2 Information Services (C2AOS-C2IS) which was originally developed to replace several legacy applications being used in the AOC today.

1.9 Training:

- 1.9.1 Period: Fundamental to employing the methodology is to ensure government personnel utilizing the platform get up to speed and become contributors from day one. The base period training is designated to account for roll-on personnel through the life-cycle of the prototype effort. The amount of additional training opportunities is correlated with the amount of environment and applications

being developed/replatformed.

- 1.10 Recommendations: The government is interested in understanding additional integration tools to protect the platform based on government requirements. This is with regards to establishing single sign-on and security architecture.

2. TECHNICAL REQUIREMENTS/Approach: This Section highlights the major technical aspects of each offering described in the background paragraph and what the government and the contractor shall accomplish through the duration of the project to prototype the methodology.

- 2.1 Platform:** Part of establishing the platform environment includes the requirement for the company to partner with government personnel in order to teach the administrator function. The company shall provide three DoJo offerings per platform install. PCF Platform DoJo offering are designed to accelerate success with PCF by pairing Pivotal experts with USAF personnel to plan, implement, customize, use, and scale the platform to meet the needs of the DoD. By working together, the government improves project outcomes and enables faster fielding of user centric products. All Platforming is expected to occur during Phase II. The contractor shall:

- 2.1.1 Travel to location to perform PCF platform installation
- 2.1.2 Establish PCF platform subscription services
- 2.1.3 Train government personnel system administrators how to operate and customize the PCF platform
- 2.1.4 Ensure government system administrators understand contractor Guide for reach back support
- 2.1.5 Deliver a report after platform is established detailing when, where, who (gov't personnel), how long, and any outstanding issues pertaining to the install. The report will be a text document or however the contractor deems appropriate.
- 2.1.6 For the Option period, the same actions detailed in 2.1.1-2.1.5 shall apply

- 2.2 Pivotal subscription:** A mixture of Pivotal subscriptions will be required at each designated environment. The base period shall consist of three environments to include: an (1) development environment, (2) testing and backup production environment, and (3) operational production environment. Attachment 1 (b)(4)

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- 2.2.1 PCF Operations Manager
- 2.2.2 PCF Elastic Runtime Service
- 2.2.3 PCF Services Suite
- 2.2.4 (b)(4)

Additionally, the contractor shall:

- 2.2.5 Start the base year-long subscription license on no earlier than 29 September 2017.
- 2.2.6 The contractor shall provide a report on PCF subscription mix to maximize operation effectiveness for AOC deployment. The report will be a text document or however the contractor deems appropriate.
- 2.2.7 (b)(4)

- 2.3 Training:** The Contractor will offer an extensive portfolio of role-based training courses

that will build and enhance government product expertise. Courses are designed by industry experts and aligned with the latest Pivotal products. The lab-based curriculum enables the government team to maximize skills retained and offer flexible delivery options. The training can take place at the government location discretion and

Attachment 3 (b)(4)

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- 2.3.1. *PCF Developer* - Three-day course shall provide participants an understanding of how deploy to PCF, exploring concepts and features of the platform including: services, log draining, metrics, build packs, service brokers, and route services. The course can support up to 12 people and shall be provided for the base period.
- 2.3.2. *Core Spring* - Four-day course shall teach participants how to build a Spring-powered Java application that demonstrates the Spring Framework and other Spring technologies - including Spring aOP and Spring Security. The course can support up to 12 people and shall be provided for the base period.
- 2.3.3. *PCF Administrator* - Five-day course shall provide hands-on experience required to manage a PCF installation by exploring "Day 1" and "Day 2 Operations" which includes: installing the Ops Manager, configuring users, roles and quotes, backing up and restoring files, using BOSH, etc. The course can support up to 12 people and shall be provided for the base period.
- 2.3.4. *Spring Boot Developer* - Two-day course shall provide application developers the ability to create enterprise-ready applications using Spring Boot. This will explore major Spring Boot features to include: auto-configuration, data access, actuator, etc. The course can support up to 12 people and shall be provided for the base period.
- 2.3.5. *Platform Acceleration Lab (PAL)*: Four-week course to provide training on legacy platform app transition and re-platforming legacy apps. Four people to be sent to a scheduled public offering of the PAL.
- 2.3.6. *Training Report*: certificates of individuals who attended will be provided by the contractor and training effectiveness surveys will be provided to the government at the end of each class so that feedback can be incorporated into future training sessions. A summary report will be provided at the end of the PoP to highlight the notice of successful completion, and aggregate the staff who participated and packaging of participants and survey data.

2.4 Application Replatforming: The Contractor shall provide a methodology for the transition of an application from its existing infrastructure by changing certain environmental and configuration properties to enable it to run on modern cloud technology, while preserving existing functionality. This work involves modernizing (refactoring or rewriting) certain incompatible modules - moving them from vertical (application servers and relational database management systems) to horizontal "scale-out" and "cloud first" models. The two applications identified for 'Replatforming' are as follows: BDA, JTT, and IAMD. Each will undergo the following replatforming process and at the end, the app shall be replatformed and deployed on PCF environments established in section 2.1 and 2.2. Each App Replatforming shall:

- 2.4.1 Develop business goals for the project
- 2.4.2 Break down understanding of the first user problem
- 2.4.3 Develop backlog planning & prioritization during the initial inception phase.
- 2.4.4 Organize into developer teams
- 2.4.5 Begin to migrate the identified applications
- 2.4.6 Build PCF extensions
- 2.4.7 Develop automated testing

- 2.4.8 Pair to develop the pipelines to continuously execute automated tests.
- 2.4.9 Apply process to the remaining applications
- 2.4.10 Pairing on development of documentation that outline replatforming patterns discovered during the engagement for subsequent transition of efforts
- 2.4.11 Government Product owner with Contractor shall perform application acceptance test in PCF environment

- 2.5 Net-new application development:** The Contractor will provide its methodology to new application builds as an incremental process. It should be noted that no specific deliverable is tied to this effort since software can always improve. The contractor shall provide monthly invoices to ensure the government is tracking the monthly effort of the contractors FTE (hours) towards four identified applications which are: (b)(4)

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- 2.6 Security:** Demonstrate Identity and Access Management: The Contractor shall collaborate and provide recommendations for incorporating single sign on and identity access management into each of the appropriate projects. This will be accomplished during Phase II and III of the project.
- 2.7 Single Sign-on:** Contractor shall provide a recommendation on whether robust single sign on architecture is warranted. This will be accomplished during Phase II and Phase III of the project.
- 2.8 Jira Core Integration:** The Contractor shall integrate Jira Core workflow API into PCF. This will be accomplished during Phase II and Phase III of the project.
- 2.9 Mapbox Integration:** The Contractor shall integrate Mapbox API into PCF. This will be accomplished during Phase II and Phase III of the project.

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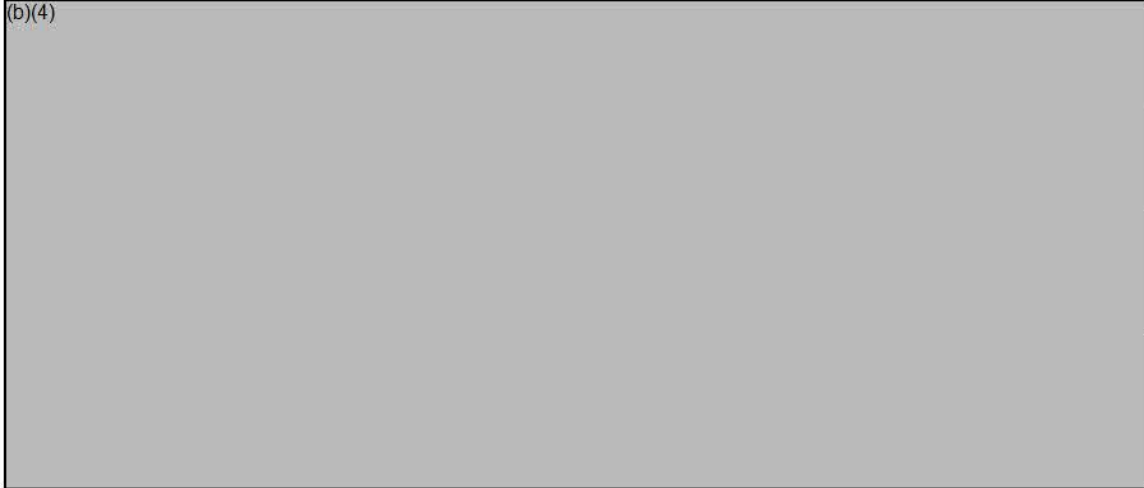
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5.0 PERIOD OF PERFORMANCE: The period of performance (PoP) for this statement of work is twelve (12) months.

5.1 The subscription licenses are for a year and will extend beyond the PoP

5.2 Option periods exercised will be accomplished inside the original twelve (12) month PoP

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8.0 SECURITY: A DD 254 to the Top Secret/Special Compartmentalized Information (TS/SCI) level will be

issued as a part of this effort. OPSEC language can be found in Article XI of the contract. Operations Security (OPSEC) requirements apply to this contract. OPSEC program managers will provide the appropriate Critical Information (CI) lists to the Contractor under separate cover. Contractors conducting work on military installations will participate in the Installation OPSEC Program. Contractors will receive periodic training along with military and Government civilian counterparts. OPSEC program managers will provide the appropriate CI lists and the Program Protection Plan (PPP) to the contractor under separate cover.

9.0 GOVERNMENT FURNISHED EQUIPMENT/PROPERTY/DATA

GFE/P/D Reference	Delivery Date Required	Asserted Rights Category	Name of Organization Asserting Restrictions/POC	Milestone Association
Personnel: Government code developers (X)	seven days after contract award	N/A	HBB / Lt Col (b)(6)	N/A
Source Code for all applications being replatformed	at the beginning of the milestone delivery	Distribution Category D	HBB / Lt Col (b)(6)	4.3, 4.4, 4.5
3 rd Party Licenses: Mapbox, MongoDB, CrunchyBase, Jira Core, Security Tools, Cloud Solution Provider	90 days after contract award	N/A	HBB / Lt Col (b)(6)	4.5.1

SOW Attachments:

Attachment One -	(b)(4)
Attachment Two -	
Attachment Three	
Attachment Four -	
Attachment Five -	

ARTICLE II: TERM & TERMINATION

A. The Term of this Agreement

This OTA will be available for use for a period of **twelve (12) months** from the date the OTA is awarded. Provisions of this Agreement, which, by their express terms or by necessary implication, apply for periods of time other than specified in Article II herein, shall be given effect, notwithstanding this Article.

B. Early Termination of Agreement Provision

1. Subject to a reasonable determination that the program, or a project will not produce beneficial results

commensurate with the expenditure of resources, the Government may stop performance of work under this OTA, in whole or in part, if the AO determines that a termination is in the Government's interest. The AO shall terminate by delivering to the COMPANY a Notice of Termination specifying the extent of termination and the effective date. Such termination shall not constitute a "termination" as the term is used to mean a termination for convenience or default under public sector contracting laws and regulations.

- (2) Either Party may terminate this Agreement effective immediately upon written notice to the other party if:
- i. Customer fails to pay any portion of fees due under a valid Invoice, Quote or Order ninety days after interest begins to accrue under the Prompt Payment Act;
 - ii. the other party suffers an insolvency or analogous event;
 - iii. the other party commits a material breach of this Agreement that is incapable of being cured; or
 - iv. the other party breaches any other provision of this Agreement and does not cure the breach within thirty (30) days after receiving written notice of breach.

(3) Either Party may terminate this Agreement upon 30 days written notice to the other, however such termination shall not affect existing Software Orders or SOWs. Customer may terminate any SOW for any or no reason by providing at least fourteen (14) calendar days prior written notice to Pivotal. For the avoidance of doubt, upon such termination for convenience: Customer shall not be entitled to any refund for any fees paid for Services performed prior to the effective date of termination. Any Software Orders signed and agreed to prior to such termination taking effect are non-cancelable and non-refundable (meaning they cannot be terminated by either party for convenience).

(4) In the event of expiration of a Subscription License, Customer must remove and destroy all copies of Software, including all backup copies, from the server, virtual machine, and all computers and terminals on which Software (including copies) is installed or used and certify destruction thereof.

In the event of termination for default relating to the Government's use Software, Customer must remove and destroy all copies of Software, including all backup copies, from the server, virtual machine, and all computers and terminals on which Software (including copies) is installed or used and certify destruction thereof.

Termination does not relieve Customer of its obligation to pay all fees and expenses for all Services performed, as of the date of termination. All provisions of this Agreement will survive any termination or expiration if by its nature and context it is intended to survive.

(5) After receipt of a Notice of Termination, and except as directed by the AO, the COMPANY shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due:

- i. Stop work as specified in the notice.
- ii. Place no further orders for materials, services, or facilities, except as necessary to complete the continued portion of the OTA.
- iii. Terminate all orders to the extent they relate to the work terminated.
- iv. Reserved.
- v. With approval or ratification to the extent required by the AO, settle all outstanding liabilities and termination settlement proposals arising from the termination of orders; the approval or ratification will be final for purposes of this clause.
- vi. Reserved
- vii. Complete performance of any work not terminated, if applicable.

(6) Notwithstanding any term to the contrary herein, the parties agree that termination of the Agreement shall not relieve the Government from its obligations to pay the non-cancelable and non-refundable fees associated with any Subscription License herein. Failure of the Parties to agree to an equitable adjustment shall be resolved pursuant to Article V, Disputes. Nothing in this section shall be construed as a limitation of the rights of either party in the event of a breach of contract or default by the other party.

C. Stop Work Clause

(1) As directed by the AO, the COMPANY shall stop all, or any part, of the work called for under this Agreement for

a period of 90 days after the written order is delivered, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this Article. Upon receipt of the order, the COMPANY shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered, or within any extension of that period to which the parties shall have agreed, the AO shall either:

- i. Cancel the stop-work order; or
- ii. Terminate the work covered this Agreement.

(2) If a stop work order issued under this clause is canceled, the COMPANY shall resume work. The Government shall make an equitable adjustment in the delivery schedule or negotiated price, or both, and the Government's share of this Agreement shall be modified, in writing, accordingly, if:

- i. The stop-work order results in an increase in the time required for, or in the cost properly allocable to, the performance of any part of this Agreement; and
- ii. The COMPANY asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Government decides the facts justify the action, the Government may receive and act upon a proposal submitted at any time before final payment under this Agreement.

ARTICLE III: AGREEMENT ADMINISTRATION

Unless otherwise provided in this Agreement, approvals permitted or required to be made by the ACC-NJ Contracting Activity may be made only by the ACC-NJ Contracting Activity Agreements Officer. Administrative and contractual matters under this Agreement shall be referred to the following representatives of the parties:

(b)(6)



Each party may change its representatives named in this Article by written notification to the other party.

Cognizant Defense Finance and Accounting Service Office:

DFAS COLUMBUS CENTER WEST
DFAS-CO/WEST ENTITLEMENT OPERATIONS
P.O. Box 182381
Columbus, OH 43218-2381

ARTICLE IV: OBLIGATION AND PAYMENT

A. Obligation: Except as specified in Article V: Disputes, the Government's liability to make payments to the COMPANY is limited only to those funds obligated under this Agreement or by modification to the Agreement. The ACC-NJ Contracting Activity may incrementally fund this Agreement. If modification becomes necessary in performance of this Agreement, pursuant to Article IV of this Agreement, the AO and the COMPANY shall establish and execute a mutually agreed to revised Schedule of Payable Milestones consistent with the current Project Plan.

B. Project Payments: Reference Milestone Payment Schedule, Table 4.0 in the SOW.

C. Payable Milestones: The COMPANY shall submit invoices for processing according to the milestone payment schedule via the Invoice, Receipt, Acceptance, and Property Transfer (iRAPT) application of the Wide Area Work Flow (WAWF) system, according to the guidelines set forth below. Payments will be made by Defense Finance and Accounting Service, DFAS COLUMBUS CENTER WEST.

1. The WAWF system is the method to electronically process vendor payment requests and receiving reports. To access WAWF, the COMPANY shall have a designated electronic business point of contact in the System for Award Management at <https://www.acquisition.gov>; and be registered to use WAWF at <https://wawf.eb.mil/> following the step-by-step procedures for self-registration available at this web site. The COMPANY shall follow the training instructions of the WAWF Web-Based Training Course and use the Practice Training Site before submitting payment requests through WAWF. Both can be accessed by selecting the "Web Based Training" link on the WAWF home page at <https://wawf.eb.mil/>.

2. The COMPANY shall submit a Service Invoice 2 in 1 request through WAWF utilizing the following Routing Data to fill in the applicable fields in WAWF when creating payment requests in the system.

Routing Data Table

<i>Field Name in WAWF</i>	<i>Data to be entered in WAWF</i>
Pay Official DoDAAC	HQ0339
Issue By DoDAAC	W15QKN
Admin DoDAAC	W15QKN
Inspect By DoDAAC	HQ0833
Accept at Other DoDAAC	HQ0833

3. All payment requests shall include an invoice (contractor's format is acceptable) to include at a minimum, invoice number, milestone payment number and contract number. Note, all invoices shall be for exact payment amount as referenced B. Partial milestones shall not be submitted.

4. The COMPANY shall include the following WAWF email notifications when submitting invoices to assure payment approval:

(b)(6)

5. For technical WAWF help, contact the WAWF helpdesk at 866-618-5988.

D. Electronic Fund Transfer: COMPANY must be enrolled in EFT by contacting the paying office designated in the Agreement and requesting Form SF 3881, Automated Clearing House (ACH) Vendor/Miscellaneous Payment Enrollment Plan. This form must be completed by the COMPANY and the COMPANY's financial institution, and returned to the paying office. The paying office will complete the process and notify the COMPANY that EFT enrollment is complete. All payments under this agreement will be held until the COMPANY provides the required EFT enrollment information.

The CAGE Code and DUNS number for the COMPANY are as follows:

CAGE Code: **71BN7**

DUNS number: **078824783**.

Registration in the System Award for Management (SAM) is mandatory.

E. Limitation of Funds: Except as set forth in Article V, the Government's financial liability will not exceed the amount obligated under this Agreement and available for payment.

F. Financial Records and Reports: The COMPANY shall maintain adequate records to account for Federal funds received under this Agreement and shall maintain adequate records to account for COMPANY Project Agreement funding provided under this Agreement, should cost sharing procedures be implemented for funding a particular project. COMPANY relevant financial records are subject to examination or audit on behalf of the ACC-NJ Contracting Activity by the Government for a period not to exceed three (3) years after expiration of the term of the Agreement. The AO or designee shall have direct access to sufficient records and information of the, COMPANY to ensure full accountability for all funding under this Agreement. Such audit, examination or access shall be performed during business hours on business days upon prior written notice and shall be subject to the security requirements of the audited party. Any audit required during the course of the program may be conducted by the Government using Government auditors or, at the request of COMPANY's external CPA accounting firm at the expense of the COMPANY

ARTICLE V: DISPUTES

A. General

The Parties shall communicate with one another in good faith and in a timely and cooperative manner when raising issues under this Article.

B. Dispute Resolution Procedures

(1) Any disagreement, claim or dispute between the ACC-NJ and the COMPANY concerning questions of fact or law arising from or in connection with this Agreement, and, whether or not involving an alleged breach of this Agreement, may be raised only under this Article.

(2) Whenever disputes, disagreements, or misunderstandings arise, the Parties shall attempt to resolve the issue(s) involved by discussion and mutual agreement as soon as practicable. In no event shall a dispute, disagreement or misunderstanding which arose more than twelve (12) months prior to the notification, made under this subsection constitute the basis for relief under this article unless the Chief of the Contracting Office, ACC-NJ in the interest of justice waives this requirement.

(3) Failing resolution by mutual agreement, or no later than four (4) months after notification was made to the other Party, the aggrieved Party shall document the dispute, disagreement, or misunderstanding by notifying the other Party (through the respective AO or AOR, as the case may be) in writing documenting the relevant facts, identifying unresolved issues, specifying the clarification or remedy sought, and documenting the rationale as to why the clarification/remedy is appropriate. Within ten (10) working days after providing notice to the other Party, the aggrieved Party may, in writing, request a decision by the Chief of the Contracting Office, ACC-NJ. The other Party shall submit a written position on the matter(s) in dispute within thirty (30) calendar days after being notified that a decision has been requested. The Chief of the Contracting Office, ACC-NJ, will conduct a review of the

matter(s) in dispute and render a decision in writing within thirty (30) calendar days of receipt of such position. Any such decision is final and binding, unless a Party shall, within thirty (30) calendar days request further review as provided by this article.

(4) If requested within thirty (30) calendar days of the decision by the Chief of the Contracting Office, ACC-NJ, further review will be conducted by the Vice-President of the COMPANY Federal business and the ACC-NJ Director of Contracting. In the event of a decision, or in absence of a decision within sixty (60) calendar days of referral to the Vice President of the COMPANY federal business and the ACC-NJ Director of Contracting (or such other period as agreed to by the parties), either party may pursue any right or remedy provided by law in a court of competent jurisdiction, including any remedies available in an action before the Court of Federal Claims. Alternatively, the parties may agree to explore and establish an additional Alternate Disputes Resolution procedure to resolve this dispute.

C. Limitation of Liability and Damages

In no event shall the liability of the COMPANY under any basis exceed the funding received for their performance of this Agreement.

No Party shall be liable to any other Party for consequential, punitive, special and incidental damages or other indirect damages, whether arising in contract (including warranty), tort (whether or not arising from the negligence of a Party) or otherwise, except to the extent such damages are caused by a Party's willful misconduct. Notwithstanding the foregoing, claims for contribution toward third-party personal injury, are not waived, released, or disclaimed.

ARTICLE VI: CONFIDENTIAL INFORMATION

A. Definitions

"Disclosing Party" means COMPANY, or their subcontractors or suppliers, or the Government who discloses Confidential Information as contemplated by the subsequent Paragraphs.

"Receiving Party" means COMPANY, or their subcontractors or suppliers, or the Government who receives Confidential Information disclosed by a Disclosing Party.

"Confidential Information" means information and materials of a Disclosing Party which are designated as confidential or as a Trade Secret in writing by such Disclosing Party, whether by letter or by use of an appropriate stamp or legend, prior to or at the same time any such information or materials are disclosed by such Disclosing Party to the Receiving Party. Confidential Information includes the terms of this Agreement, Software, and all confidential and proprietary information of The COMPANY or the Government, including without limitation, all business plans, product plans, financial information, software, designs, and technical, business and financial data of any nature whatsoever, provided that such information is marked or designated in writing as "confidential," "proprietary," or with a similar term or designation, and projects for other companies that may be occurring concurrently in The COMPANY's offices while The COMPANY is performing the Services. Notwithstanding the foregoing, materials and other information which are orally, visually, or electronically disclosed by a Disclosing Party, or are disclosed in writing without an appropriate letter, stamp, or legend, shall constitute Confidential Information or a Trade Secret if such Disclosing Party, within thirty (30) calendar days after such disclosure, delivers to the Receiving Party a written document or documents describing the material or information and indicating that it is confidential or a Trade Secret, provided that any disclosure of information by the Receiving Party prior to receipt of such notice shall not constitute a breach by the Receiving Party of its obligations under this Paragraph. "Confidential Information" includes any information and materials considered a Trade Secret by the COMPANY on its own behalf or on behalf of their subcontractors or suppliers.

"Trade Secret" means all forms and types of financial, business, scientific, technical, economic, or engineering or otherwise proprietary information, including, but not limited to, patterns, plans, compilations, program devices,

formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if:

- i. The owner thereof has taken reasonable measures to keep such information secret; and
- ii. The information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, the public.

B. Exchange of Information: The Government may from time to time disclose Government Confidential Information to the COMPANY and its subcontractors or suppliers, in connection with Annual Plan and similar processes or particular projects, and the COMPANY their subcontractors or suppliers, may from time to time disclose information that is Trade Secret or Confidential Information to the Government in connection with the OTA, an OTA project proposal, Project Milestone and Payment Instruction, Project Agreement, or performance thereunder. Neither the Government nor COMPANY or their subcontractors or suppliers, nor the AOR shall be obligated to transfer Confidential Information or Trade Secrets independently developed by the Government or the COMPANY or their subcontractors or suppliers, absent an express written agreement between the Parties providing the terms and conditions for such disclosure.

C. Confidentiality and Authorized Disclosure: The Receiving Party agrees that Confidential Information and Trade Secrets shall remain the property of the Disclosing Party (no one shall disclose unless they have the right to do so), and that, unless otherwise agreed to by the Disclosing Party, Confidential Information and Trade Secrets shall not be disclosed, divulged, or otherwise communicated by it to third parties or used by it for any purposes other than in connection with specified project efforts and the licenses granted in Article VIII, Data Rights, provided that the duty to protect such "Confidential Information" and "Trade Secrets" shall not extend to materials or information that:

- i. Are received or become available without restriction to the Receiving Party under a proper, separate agreement,
- ii. Are not identified with a suitable notice or legend per Article entitled "Confidential Information" herein,
- iii. Are lawfully in possession of the Receiving Party without such restriction to the Receiving Party at the time of disclosure thereof as demonstrated by prior written records,
- iv. Are or later become part of the public domain through no fault of the Receiving Party,
- v. Are received by the Receiving Party from a third party having no obligation of confidentiality to the Disclosing Party that made the disclosure,
- vi. Are developed independently by the Receiving Party without use of Confidential Information or Trade Secrets as evidenced by written records, or
- vii. Are required by law or regulation to be disclosed; provided, however, that the Receiving Party has provided written notice to the Disclosing Party promptly so as to enable such Disclosing Party to seek a protective order or otherwise prevent disclosure of such information.

Confidential Information does not include information that is:

- i. rightfully in the receiving party's possession without prior obligation of confidentiality from the disclosing party;
- ii. a matter of public knowledge (or becomes a matter of public knowledge other than through breach of confidentiality by the other party);
- iii. rightfully furnished to the receiving party by a third party without confidentiality restriction; or
- iv. Independently developed by the receiving party without reference to the disclosing party's Confidential Information.

D. Return of Proprietary Information: Upon the request of COMPANY, the Government shall promptly return all copies and other tangible manifestations of the Confidential Information or Trade Secrets disclosed. Upon request by the Government, COMPANY shall promptly return all copies and other tangible manifestations of the Confidential Information disclosed by the Government. As used in this section, tangible manifestations include

human readable media as well as magnetic and digital storage media.

E. Term: Except to the extent covered by and subject to other provisions of this Agreement or the specific Project Agreement, the obligations of the Receiving Party under this Article shall continue to the maximum extent allowed by Federal law.

The Government and the COMPANY shall flow down the requirements of this Article VI to their respective personnel, agents, partners, and team members receiving such Confidential Information or Trade Secrets under this OTA.

ARTICLE VII: PUBLICATION AND ACADEMIC RIGHTS

A. Classified Research Projects: If a release of Confidential Information or Trade Secrets is for a classified Research Project, the provisions of the DoD Security Agreement (DD Form 441), Certificate Pertaining to Foreign Interests (SF 328), and the DoD Contract Security Classification Specification (DD Form 254) apply. The Government will be responsible for the completion of the DD Form 254. The COMPANY must complete the DD Form 441 and SF 328 and provide them to the Government through for review by the proper Government representatives, the Industrial Security Representative at the cognizant Defense Security Service (DSS) office for DD Form 441 and SF 328 and the VRA's local Security office for the DD Form 254.

B. Review or Approval of Technical Information for Public Release.

(a) At least 30 days prior to the scheduled release date, COMPANY shall submit to the AO two copies of the information to be released along with Clearance of Technical Information for Public Release.

The AOR is hereby designated as the approval authority for the AO for such releases.

(b) Reserved

(c) Parties to this Agreement are also responsible for assuring that every publication of material based on or developed under this project contains the following disclaimer:

“The views and conclusions contained herein are those of the authors and should not be interpreted as necessarily representing the official policies or endorsements, either expressed or implied, of the U.S. Government.”

The COMPANY shall flow down these requirements to its partners and team members, at all tiers.

ARTICLE VIII: LICENSING & PROPRIETARY RIGHTS//DATA RIGHTS

A. Definitions

“**Government Purpose Rights**” (GPR)” means the rights to use, modify, duplicate or disclose the “Data” licensed with such rights as set forth in Table 3.0 of the SOW under this Agreement within the Government for United States Government purposes only; and to release or disclose data outside the Government to any authorized persons pursuant to an executed non-disclosure agreement for such persons’ use, modification, or reproduction for United States Government purposes only. United States Government purposes include Foreign Military Sales purposes and competitive re-procurement.

(b)(4)

(b)(4)



(b)(4)

C. PROPRIETARY RIGHTS FOR PROFESSIONAL SERVICES. (PRPS)

(1) Professional Services. Other than the Excluded Materials, Customer shall own all intellectual property rights associated with the Work Product, as well as Customer's derivative works thereof, subject to Customer's payment in full under such SOW and subject to Pivotal's rights in the underlying intellectual property embodied therein or used by Pivotal to perform the Professional Services.

(b)(4)

(3) Open Source Materials Exclusion. OSS identified in the applicable SOW or subsequently agreed to in writing by the parties may be included in, or necessary for Customer to use, the Work Product, but are excluded from Customer's ownership rights set forth in Article III(1). Pivotal may (a) obtain such OSS on Customer's behalf, (b) incorporate such OSS into the Work Product, and (c) submit back to open source libraries any improvements made to the OSS during the course of performing the Professional Services, to the extent such submissions do not violate the confidentiality obligations set forth herein. Other than the OSS referenced in the applicable SOW, Pivotal will not include OSS in the Work Product without obtaining Customer's written permission.

(4) Third Party Materials Exclusion. Third Party Materials may be included in, or necessary for Customer to use, the Work Product, but are excluded from Customer's ownership rights set forth in Article III(1). Customer will be solely responsible for obtaining necessary licenses to the Third Party Materials and liable for their use.

(5) Customer's Underlying Rights. Customer represents and warrants to Pivotal that (a) Customer owns or controls all rights in and to all Customer information and materials provided by or on behalf of Customer to Pivotal pursuant to this Agreement, including without limitation all rights to exploit all such Customer information and materials worldwide in all media and languages in perpetuity without encumbrance or restriction, and (b) Customer grants to Pivotal a nonexclusive, nontransferable, worldwide paid-up license to make, use, modify, reproduce, and prepare derivative works of Customer information and materials, solely for the purpose of performing Professional Services in accordance with the Statement of Work of this Agreement, with no right to grant sublicenses.

(6) Feedback. The Parties agree that any feedback or suggestions ("Feedback") (if any) given hereunder is voluntary. Each party is free to use, disclose, reproduce, license or otherwise distribute the Feedback relating to its own products and services, without any obligations or restrictions of any kind, including intellectual property rights subject to Article XI, G, except that under no circumstances may Pivotal use such Feedback for the purpose of

stating or implying any endorsement by the Government of Pivotal, its products or services.

(7) Reservation of IP Rights. Except as expressly stated, nothing herein shall be construed to (a) directly or indirectly grant to a receiving party any title or license to or ownership of a providing party's intellectual property rights in Professional Services, Software or materials furnished by such providing party; (b) preclude such providing party from:

(i) independently developing, marketing, acquiring, using, licensing, modifying or otherwise freely exploiting products or services that are similar to or related to the Professional Services, Software or materials provided hereunder;

(ii) restricting the assignment of persons performing Professional Services; or

(iii) using and employing their general skills, know-how, and expertise, and to use, disclose, and employ any generalized ideas, concepts, know-how, methods, techniques, or skills gained or learned during the course of any assignment, so long as that party complies with confidentiality obligations herein.

Pivotal is not being engaged to perform any investigation of third party intellectual property rights including any searches of patents, copyrights, or trademarks related to the Work Product.

(b)(4)

ARTICLE IX: PATENT RIGHTS

RESERVED

ARTICLE X: FOREIGN ACCESS TO TECHNOLOGY AND EXPORT CONTROL

1. Foreign Access to Technology

This Article X shall remain in effect during the term of this Agreement.

A. Definition

a) "Foreign Firm or Institution" means a firm or institution organized or existing under the laws of a country other than the United States, its territories, or possessions. The term includes, for purposes of this Agreement, any agency or instrumentality of a foreign government; and firms, institutions or business organizations which are owned or substantially controlled by foreign governments, firms, institutions, or individuals.

b) "Work Product" means the works of authorship or other products developed or created and delivered by Pivotal to Customer (excluding the Excluded Materials) in the course of performing Services described in the applicable SOW.

B. General: The Parties agree that research findings, Work Products and Customer Information and Materials (under Article XIII paragraph 5 i.e. government source code used for replatforming, i.e., existing government applications that are provided to COMPANY for replatforming) arising under this Agreement may constitute a significant enhancement to the national defense, and to the economic vitality of the United States. Accordingly, access to important technology developments under this Agreement by Foreign Firms or Institutions must be carefully controlled. The controls contemplated in this Article are in addition to, and are not intended to change or supersede, the provisions of the International Traffic in Arms Regulation (22 CFR Part 121 et seq.), the DoD Industrial Security Regulation (DoD 5220.22-R) and the Department of Commerce Export Regulation (15 CFR Part 770 et seq.). But, this Agreement shall not require Company to make its corporate network capable of handling ITAR or national security classified information pursuant to the regulations above.

C. Restrictions on Sale or Transfer of Work Products to Foreign Firms or Institutions

- a) In order to promote the national security interests of the United States and to effectuate the policies that underlie the regulations cited above, the procedures stated in subparagraphs C(b), C(c), and C(d) below shall apply to any transfer of Work Products. For purposes of this paragraph, a transfer includes a sale of the company, and sales or licensing of Work Products. Transfers do not include:
- (i) sales of products or components, or
 - (ii) licenses of software or documentation related to sales of products or components, or
 - (iii) transfer to foreign subsidiaries of the COMPANY member entities for purposes related to this Agreement, or
 - (iv) transfer which provides access to Work Products to a Foreign Firm or Institution which is an approved source of supply or source for the conduct of research under this Agreement provided that such transfer shall be limited to that necessary to allow the firm or institution to perform its approved role under this Agreement.
 - (v) releases pursuant to Article VII hereof ("Publication and Academic Rights")
- b) The COMPANY shall provide timely notice to the Government of any proposed transfers of Work Products developed under this Agreement to Foreign Firms or Institutions. If the Government determines that the transfer may have adverse consequences to the national security interests of the United States, the COMPANY and the Government shall jointly endeavor to find alternatives to the proposed transfer which obviate or mitigate potential adverse consequences of the transfer but which provide substantially equivalent benefits to the COMPANY.
- c) In any event, the COMPANY shall provide written notice to the Government AO's Representative and AO of any proposed transfer to a foreign firm or institution at least sixty (60) calendar days prior to the proposed date of transfer. Such notice shall cite this Article and shall state specifically what is to be transferred and the general terms of the transfer. Within thirty (30) calendar days of receipt of the COMPANY's written notification, the Government AO shall advise the COMPANY whether it objects to the proposed transfer. If the government does not object within 30 days the COMPANY may proceed with the transfer. .

D) Lower Tier Agreements

The COMPANY shall include this Article, suitably modified, to identify the Parties, in all Project Agreements or lower tier agreements, regardless of tier, for experimental, Work Products, or research work.

2. Export Control

A. Export Compliance.

Each Party agrees to comply with U.S. Export regulations including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C. § § 2751-2794, including the International Traffic in Arms Regulation (ITAR), 22 C.F.R. § 120 et seq. ; and the Export Administration Act, 50 U.S.C. app. § 2401-2420. Each party is responsible for obtaining from the Government export licenses or other authorizations/approvals, if required, for information or materials provided from one party to another under this Agreement. Accordingly, the COMPANY shall not export, directly, or indirectly, any Work Products, Confidential Information, Trade Secrets, or Classified and Unclassified Technical Data in violation of any U.S. Export laws or regulations.

B. Flowdown.

The COMPANY shall include this Article, suitably modified, to identify all Parties, in all lower tier agreements. This Article shall, in turn, be included in all sub-tier subcontracts or other forms of lower tier

agreements, regardless of tier.

ARTICLE XI: OPSEC TAILOR THIS LANGUAGE ACCORDINGLY

- (a) Access and General Protection/Security Policy and Procedures. All contractor employees, including subcontractor employees, shall comply with all installation and facility access and local security policies and procedures (provided by Government representative), and security/emergency management exercises. The contractor shall also provide all information required for background checks to meet installation access requirements to be accomplished by the Installation Provost Marshal Office, Director of Emergency Services, or Security Office. The contractor workforce shall comply with all personal identity verification and accountability requirements as directed by DoD, HQDA, and/or local policy. Should the Force Protection Condition (FPCON) at any individual facility or installation change, the Government may require changes in contractor security matters or processes. During FPCONs Charlie and Delta, services/installation access may be discontinued/postponed due to higher threat. Services will resume when FPCON level and/or threat is reduced to an acceptable level as determined by the Installation Commander. Contractor person working on an installation shall participate in the installation Random Antiterrorism Measures Program as directed. Contractor shall be subject to and comply with vehicle searches, wearing of ID badges, etc.
- (b) iWatch (See Something, Say Something) Training: All contractor employees, including subcontractor employees, shall receive training and participate in the local iWATCH program (training standards provided by the requiring activity ATO). This locally developed training will be used to inform employees of the types of behavior to watch for and instruct employees to report suspicious activity to the AOR. This training shall be completed within 45 calendar days after contract start date or effective date of incorporation of this requirement into the contract, whichever applies, and then annually thereafter. The contractor shall submit certificates of completion for each affected contractor employee and subcontractor employee to the AOR within 14 calendar days after completion of training by all employees and subcontractor personnel.
- (c) Access to DoD Facility or Installation: All contractor employees, including subcontractor employees, shall comply with adjudication standards and procedures using the National Crime Information Center Interstate Identification Index (NCIC-III) and Terrorist Screening Database (Army Directive 2014-05/AR 190-13); applicable installation, facility and area commander installation and facility access and local security policies and procedures (provided by the AOR).
- (d) Information Management Army Information Technology/IA: This project will access For Official Use Only (FOUO) information via UPS mail, Safe Access File Exchange (SAFE) or approved Impact Level cloud service providers. This Agreement shall not require Company to store, handle, receive or otherwise manage aforementioned information on its corporate servers or network.
- (e) For Official Use Only Information (FOUO) and Controlled Unclassified Information (CUI): See subsection (d).
- (f) OPSEC Training: In accordance with AR 530-1 (or DoDM 5205.02-M), new contractor employees, including subcontractor employees, shall complete initial OPSEC training within 30 calendar days of award and must also complete annual OPSEC awareness as provided by the appropriately designated OPSEC level II trained OPSEC Officer/Coordinator. The contractor shall arrange training through the AOR.
- (g) Public Release of Information: In accordance with AR 530-1 (or DoDM 5205.02-M), an OPSEC review will be performed by the Government prior to all public release of information. All Government information intended for public release by a contractor shall undergo a Government OPSEC review prior to release. The OPSEC review will be performed as part of the Public Review Process described in Article VII.

(b)(4)

ARTICLE XIII: EXECUTION

This Agreement constitutes the entire agreement of the Parties and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions among the Parties, whether oral or written, with respect to the subject matter hereof. This Agreement may be revised only by written consent of the COMPANY and the ACC-NJ Agreements Officer designated in this Agreement. By executing this agreement, the COMPANY affirms that it is a nontraditional defense contractor as that term is defined in 10 U.S.C. 2302 and, as a result, is eligible to be awarded this Agreement.

ARTICLE XIV IP INDEMNITY.

(1) **IP Indemnity for Software.** Subject to the remainder of this Article XV and the Limitation of Liability in Article V.C, Pivotal shall (a) defend Customer against any Infringement Claim that Software infringes a copyright or patent enforceable in a Berne Convention signatory country; and (b) pay resulting costs and damages finally awarded against Customer by a court of competent jurisdiction, or pay amounts stated in a written settlement negotiated and approved by Pivotal.

(2) **IP Indemnity for Professional Services.** Subject to this Article XIV and the Limitation of Liability in Article V.C, Pivotal shall (a) defend Customer against any Infringement Claim that the Professional Services and/or Work Product (excluding any Excluded Materials) infringe a trade secret, or a copyright enforceable in a Berne Convention country, and (b) pay resulting costs and damages finally awarded against Customer by a court of competent jurisdiction, or pay amounts stated in a written settlement negotiated and approved by Pivotal. Customer shall provide non-infringing materials for any such materials they bring to the engagement.

(3) **Procedure and Remedies.** The foregoing obligations apply only if indemnitee:

- (a) promptly notifies indemnitor in writing of such Infringement Claim;
- (b) grants Pivotal sole control over the defense and settlement thereof to the extent such control does not contradict or contravene 28 U.S.C. 516;
- (c) reasonably cooperates in response to indemnitor's request for assistance;
- (d) is not in material breach of this Agreement (including any Exhibits); and
- (e) is current in payment of all applicable fees prior to Infringement Claim.

If the allegedly infringing Software, Professional Services and/or Work Product ("Indemnified Elements") are held to constitute an infringement, or in Pivotal's opinion, any such Indemnified Elements are likely to become infringing and their use enjoined, Pivotal may, at its sole option and expense:

- (i) procure for Customer the right to make continued use of the affected Indemnified Elements;
- (ii) replace or modify the affected Indemnified Elements to make them non-infringing; or
- (iii) notify Customer to return the affected Indemnified Elements and, upon receipt, discontinue the related Support Services (if applicable) and, for Subscription Licenses, refund unused prepaid fees calculated based on each month remaining in the Subscription Period.

(4) **IP Indemnity Exclusions.** Neither Pivotal nor any Distributor shall have any obligation under this Article IV or otherwise with respect to any Infringement Claim that arises out of or relates to: (a) combination, operation or use of the Indemnified Elements with any other software, hardware, technology, data, or other materials; (b) use for a purpose or in a manner for which Indemnified Elements were not designed or use after Pivotal notifies Customer to cease such use due to a possible or pending Infringement Claim; (c) any modifications to Indemnified Elements made by any person other than Pivotal or its authorized representatives; (d) any modifications to Indemnified Elements made by Pivotal pursuant to instructions, designs, specifications, or any other information or materials provided to Pivotal by or on behalf of Customer; (e) use of any version of Software when an upgrade or a newer iteration of Software made available by Pivotal could have avoided the infringement; (f) any data or information which Customer or a third party utilizes in connection with Software; or (g) any Open Source Software. THIS

SECTION STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND PIVOTAL'S ENTIRE LIABILITY FOR ANY INFRINGEMENT CLAIMS.

(End of Summary of Changes)

AWARD/CONTRACT		1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)		RATING		PAGE OF PAGES 1 34	
2. CONTRACT (Proc. Inst. Ident.) NO. W15QKN-17-9-0044		3. EFFECTIVE DATE 04 Aug 2017		4. REQUISITION/PURCHASE REQUEST/PROJECT NO. SEE SCHEDULE			
5. ISSUED BY ARMY CONTRACTING COMMAND - NJ BUILDING 10 PHIPPS ROAD PICATINNY ARSENAL NJ 07806-5000		CODE W15QKN		6. ADMINISTERED BY (If other than Item 5)		CODE	
				See Item 5			
7. NAME AND ADDRESS OF CONTRACTOR (No., street, city, county, state and zip code) PIVOTAL SOFTWARE, INC. 875 HOWARD ST 5TH FLR SAN FRANCISCO CA 94103-3021				8. DELIVERY [] FOB ORIGIN [X] OTHER (See below)			
				9. DISCOUNT FOR PROMPT PAYMENT Net 30 days			
				10. SUBMIT INVOICES (4 copies unless otherwise specified) TO THE ADDRESS SHOWN IN:		ITEM	
CODE 71BN7		FACILITY CODE					
11. SHIP TO/MARK FOR See Schedule		CODE		12. PAYMENT WILL BE MADE BY DFAS COLUMBUS CENTER WEST DFAS-COWEST ENTITLEMENT OPERATIONS P.O. BOX 182381 FAX: 877-749-4843 COLUMBUS OH 43218-2381		CODE HQ0339	
13. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: [] 10 U.S.C. 2304(c)() [] 41 U.S.C. 253(c)()				14. ACCOUNTING AND APPROPRIATION DATA See Schedule			
15A. ITEM NO.	15B. SUPPLIES/ SERVICES		15C. QUANTITY	15D. UNIT	15E. UNIT PRICE	15F. AMOUNT	
SEE SCHEDULE							
15G. TOTAL AMOUNT OF CONTRACT \$3,430,156.67							
16. TABLE OF CONTENTS							
(X)	SEC.	DESCRIPTION	PAGE(S)	(X)	SEC.	DESCRIPTION	PAGE(S)
PART I - THE SCHEDULE				PART II - CONTRACT CLAUSES			
X	A	SOLICITATION/ CONTRACT FORM	1 - 2	I	CONTRACT CLAUSES		
X	B	SUPPLIES OR SERVICES AND PRICES/ COSTS	3 - 5	PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.			
	C	DESCRIPTION/ SPECS./ WORK STATEMENT		X	J	LIST OF ATTACHMENTS	34
	D	PACKAGING AND MARKING		PART IV - REPRESENTATIONS AND INSTRUCTIONS			
	E	INSPECTION AND ACCEPTANCE		K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS		
	F	DELIVERIES OR PERFORMANCE		L	INSTRS., CONDS., AND NOTICES TO OFFERORS		
X	G	CONTRACT ADMINISTRATION DATA	6	M	EVALUATION FACTORS FOR AWARD		
X	H	SPECIAL CONTRACT REQUIREMENTS	7 - 33				
CONTRACTING OFFICER WILL COMPLETE ITEM 17 (SEALED-BID OR NEGOTIATED PROCUREMENT) OR 18 (SEALED-BID PROCUREMENT) AS APPLICABLE							
17. [X] CONTRACTOR'S NEGOTIATED AGREEMENT Contractor is required to sign this document and return [] copies to issuing office. Contractor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified above and on any continuation sheets for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this award/contract, (b) the solicitation, if any, and (c) such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein. (Attachments are listed herein.)				18. [] SEALED-BID AWARD (Contractor is not required to sign this document.) Your bid on Solicitation Number _____ including the additions or changes made by you which additions or changes are set forth in full above, is hereby accepted as to the terms listed above and on any continuation sheets. This award consummates the contract which consists of the following documents: (a) the Government's solicitation and your bid, and (b) this award/contract. No further contractual document is necessary. (Block 18 should be checked only when awarding a sealed-bid contract.)			
19A. NAME AND TITLE OF SIGNER (Type or print)				20A. NAME OF CONTRACTING OFFICER (b)(6)			
19B. NAME OF CONTRACTOR		19C. DATE SIGNED		20B. UNITED STATES OF AMERICA (b)(6)		20C. DATE SIGNED 04-Aug-2017	
BY _____ (Signature of person authorized to sign)				BY _____ (Signature of Contracting Officer)			

Section A - Solicitation/Contract Form

EXECUTIVE SUMMARY

- 1) The purpose of this action is to award an Other Transaction Agreement (OTA), W15QKN-17-9-0044, between the United States Army Contracting Command - New Jersey and Pivotal Software, Inc. in support of the Defense Innovation Unit Experimental (DIUx).
- 2) This agreement is derived from the Request for Prototype Proposal (RPP) # DIUx-17-R-0044.
- 3) The total amount of this OTA is not to exceed \$21,372,783.00. The term for this agreement is twelve (12) months from the date of award of this agreement.
- 4) Agreement Milestones will be funded incrementally when and if funding becomes available. The contractor may only proceed with work which has been funded and authorized by modification. The contractor may only invoice for Milestones in which delivery requirements have been met per SOW table 3.0, Delivery Schedule. The designated AOR will review each submitted invoice and approve or deny in accordance with the Milestone Payment Schedule and Delivery Schedule found in the SOW table 4.0 and table 3.0 respectively.

Section B - Supplies or Services and Prices

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
1001	Net New Application Development FFP FOB: Destination	(b)(4)			
NET AMT					(b)(4)

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
100101	Funding for CLIN 1001 FFP FOB: Destination PURCHASE REQUEST NUMBER: U16KA1011ANG02	(b)(4)			(b)(4)
NET AMT					(b)(4)
(b)(4)					(b)(4)

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
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1002

(b)(4)

FOB: Destination

NET AMT

(b)(4)

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
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100201

Funding for CLIN 1002

FFP

(b)(4)

FOB: Destination

PURCHASE REQUEST NUMBER: AN6AP3301ANG01

NET AMT

(b)(4)

(b)(4)

(b)(4)

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
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1003

(b)(4)

FFP

(b)(4)

FOB: Destination

NET AMT

(b)(4)

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
100301					(b)(4)

Funding for CLIN 1003

FFP

(b)(4)

FOB: Destination

PURCHASE REQUEST NUMBER: AN6AP3301ANG01

NET AMT

(b)(4)

ACRN AB

CIN: AN6AP3301ANG010002

MILESTONE PAYMENT INFO

(b)(4)

Section G - Contract Administration Data

ACCOUNTING AND APPROPRIATION DATA

AA: 576360029647ML6453506TRXSS8210064858F503000F03000C102000BMJ65447AA079043484701F4FBFQ7174G101
AMOUNT: \$0.00
CIN U16KA1011ANG020001: \$0.00

AB: 7604001120P64340309253H000000049447DWAM63330
AMOUNT: \$270,000.00
CIN AN6AP3301ANG010001: \$251,750.00
CIN AN6AP3301ANG010002: \$18,250.00

Section H - Special Contract Requirements

PIVOTAL SOFTWARE INC OTA

AGREEMENT BETWEEN

UNITED STATES ARMY CONTRACTING COMMAND – NEW JERSEY
PICATINNY ARSENAL, NJ 07806-5000

AND

Pivotal Software Inc.
875 Howard Street, 5th Floor
San Francisco, CA 94103

Agreement No.: W15QKN-17-9-0044
Total Amount of the Agreement: \$21,372,783.00
Authority: 10 U.S.C. § 2371b

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ARTICLE I: SCOPE OF THE AGREEMENT

A. Background

This Other Transaction Agreement (OTA) is awarded based upon the prototype project proposed by Pivotal Software Inc., hereinafter referred to as “The Company” or “Pivotal” in response to the Defense Innovation Unit – Experimental (DIUx) Commercial Solutions Offering (CSO). The principle purpose of this OTA is to establish the underlying terms and conditions between the government and Pivotal for the Agreement No. W15KN-17-9-0044. This includes elements from both DIUx’s model Other Transaction contract and Pivotal’s software licenses and professional services agreement.

BRIEFLY SUMMARIZE THE PROTOTYPE PROJECT: This pilot is intended to demonstrate a method to develop, operate, and maintain software for complex information technology systems in the DoD. Through this methodology the DoD will increase the speed and effectiveness of application delivery, decrease spending for operations, and radically enhance the tactical and strategic responsiveness of the Air Operations Center (AOC). Pivotal will accomplish these outcomes by installing its cloud native platform, Pivotal Cloud Foundry (PCF), at several locations annotated in the Statement of Work (SOW) to run Pivotal Cloud Foundry and demonstrate the utility of this commercial methodology.

B. Definitions

“Agreement” or “OTA” refers to the Other Transaction Agreement, as authorized under 10 U.S.C. 2371b, between the Government and Pivotal Software Inc., Agreement No. **W15QKN-17-9-0044**.

“Affiliate” means a legal entity controlled by, controlling, or that is under common control of Pivotal or Customer, with control meaning more than fifty percent (50%) of the voting power or ownership interests then outstanding of that entity.

“Agreements Officer (AO)” is the United States Army Contracting Command – New Jersey Contracting Activity warranted Contracting Officer authorized to sign the final agreement for the Government.

“Agreements Officer’s Representative (AOR)” is the individual designated by the Government on a per project basis to monitor all technical aspects; the AOR shall only assist in agreement administration of the specific project to the extent expressly delegated such administration authority in writing in the Project Agreement by the responsible Agreements Officer.

“Infringement Claim” means any third party claim, notice, demand, action, proceeding, litigation, investigation, or judgment relating IP infringement. With respect to Software, such Claim must be related to Customer’s use of the Software during the Subscription Period (or renewal thereof).

“Contracting Activity” means an element of an agency designated by the agency head and delegated broad authority regarding acquisition functions. It also means elements or another agency designated by the director of a defense agency which has been delegated contracting authority through its agency charter.

“Date of Completion” is the date on which all work is completed or the date on which the period of performance ends.

“Discovery and Framing (D&F)” means upfront period during application development focused on Pivotal’s methodology towards defining user requirements for the minimal viable product (MVP).

“Effective Date” means the date when this Agreement is signed and executed by the Agreements Officer for the Government.

“Excluded Materials” mean Pivotal Materials, Open Source Software, and Third Party Materials.

“Government” or “the Customer” means the U.S. Government.

“Government Fiscal Year” means the period commencing on October 1 and ending September 30 of the following calendar year.

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“Major Release” means a generally available release of Software that Pivotal designates with a change in the digit to the left of the first decimal point (e.g., 5.0 >> 6.0).

“Milestone” means a scheduled event signifying the completion of a major deliverable or a set of related deliverables as identified in the Statement of Work.

“Minimum Viable Product (MVP)” creation of baseline requirements defined by the government delineating user acceptance for an operational setting for each application developed.

“Minor Release” means a generally available release of Software that Pivotal designated with a change in the digit to the right of the decimal point (e.g., 5.0 >> 5.1).

“Open Source Software” or OSS means software components licensed under a license approved by the Open Source Initiative or similar open source or freeware license and included in, embedded in, utilized by, provided or distributed with Software or Developments.

“Other Transactions Agreement (OTA)” is the term commonly used to refer to the 10 USC 2371b authority to enter into transactions other than contracts, grants or cooperative agreements. The Department of Defense (DoD) currently has authority to make awards that are directly relevant to enhancing the mission effectiveness of military personnel and the supporting platforms, systems, components, or materials proposed to be acquired or developed by the Department of Defense, or to improvement of platforms, systems, components, or materials in use by the armed forces. OTAs are acquisition instruments that generally, are not subject to the federal laws and regulations governing procurement (FAR based) contracts. As such, they are not required to comply with the Federal Acquisition Regulation (FAR), its supplements (i.e. DFARS) or laws that are limited in applicability to procurement contracts.

“Parties” means Government and the COMPANY by its authorized agent where collectively identified and “Party” where each entity is individually identified.

“Partial Payment Milestone” means partial completion of the payable milestone based on the invoice submitted by the company

“Payable Milestone” means that once a milestone has been met (see definition of “milestone”), the Government can approve payment to the COMPANY of a predetermined dollar amount in relation to performance of a particular project or defined services under the Other Transaction Agreement or the SOW.

“PCF Dojo services” are focused on Day One (deployment and testing) and Day Two (operationalization and utilization) concerns. The actual work on site will be tailored to specific program objectives and tailored to each environment’s unique role in the continuous fielding process for the AOC. The Designated Operations Engineer(s) shall provide ongoing support of the platform over the extent of this pilot engagement and shall pair with the customer to work on backlog priorities while operationalizing PCF.

(b)(4)

(b)(4)

“Perpetual License” means access to Software and Documentation subject to the licensing terms and restrictions in the Pivotal Product Guide available at (b)(4) on a perpetual basis.

“Pivotal Materials” means any materials developed by Pivotal: **(a)** prior to the Effective Date; **(b)** other than in performance of this Agreement; **(c)** that are generally applicable to Pivotal’s products and services and are not unique to the business of Customer or the SOW; or **(d)** that are improvements to Software or Pivotal’s internal processes.

(b)(4)

“Signatory Authority” refers to the individual that has the authority to legally bind a party to an agreement.

“Software” means Pivotal computer programs listed in the Guide and identified in a Quote, indicating a Subscription License excluding code written as part of a (b)(4)

“Subscription License” means (a) access to Software (and Documentation) set forth in the SOW subject to the Guide; and (b) Support Services, which include any Minor and Major Releases and related upgrades on a “when and if available” basis, all during the Subscription Period.

“Subscription Period” means the period starting upon notification to Customer that Software is available for download, and continues for the period specified in the Quote or mutually-signed Order

“Support Services” means services described at (b)(4)

“Third Party Materials” means materials (including tools that are used to deliver the Professional Services) that are not owned or created by Pivotal (other than Open Source Software).

“The Company” or “The Contractor” means Pivotal Software Inc.

“Work Product” means the works of authorship or other products developed or created and delivered by Pivotal to Customer (excluding the Excluded Materials) in the course of performing Services described in the applicable SOW.

C. Scope

STATEMENT OF WORK for “AOC Pathfinder”

1.0 BACKGROUND: The Department of Defense, in partnership with the Air Operations Center (AOC) Weapons System Program Management Office (PMO) and supporting government organizations,

plans to prototype the use of agile software development for large enterprise architectures, adopting commercial best practices that are not utilized in the DoD. This methodology has the potential to change how the government manages and implements large IT enterprises. Through this methodology, users will also receive more capability in the applications they leverage to perform day-to-day operations.

To effectively implement and leverage this methodology, the government must first establish environments, leveraging commercial software licenses, to provide the underpinning software development platform. Once that environment is realized, the government can then leverage commercial best practices of agile software development to produce user-centered design, test-driven development, continuous integration, and continuous delivery of new and enhanced software code. Additionally, the mentorship and training to government personnel on how to leverage the environment is paramount realizing the utility for this approach. This is in stark contrast to how the DoD currently implements software. That current process is accomplished in a serial fashion known as the waterfall approach. *The waterfall approach can be summarized as follows: manual orchestration of low-level steps, which generate repetitive work that is highly susceptible to errors. Automation, if used at all within DoD, is typically script-based and ad hoc. As a result, software processes to build, test, deploy and operate each application are custom, complex, and frequently inconsistent, resulting in additional operational complexity and chaos. Organizations manage such complexity by slowing down release processes to ensure correctness and consistency, and consequently struggle to release new functionality quickly. The end result is a track record of major IT programs that are over-budget and over-timeline.*

While having the underlying platform is critical for the iterative deployment of the enhanced software, the true power of the agile methodology is ensuring the software developers (people) are enabled to leverage the development platform. **To that end, this project will prototype the use of agile software development methodology in conjunction with a modernized software platform (Pivotal Cloud Foundry) to assess whether this commercial methodology can provide similar benefits in a government use case.** To affect this prototype project, the contractor shall perform co-development on all aspects of the prototype project to include:

- 1.1 Establishment and optimal configuration of the Pivotal Cloud Foundry (PCF) 'environment' for Administrators through the contractor's DoJo offering
- 1.2 Net-New Application development - this includes partnering with contractor designers, product managers, and software engineers in order to deploy Agile software development where new features are deployed to the end users on a regular cadence.
- 1.3 App Replatforming - This effort is focused on taking legacy applications and retooling the software code so that the application can operate on a modern cloud infrastructure, to include the Pivotal Cloud Foundry platform, allowing for reduced sustainment costs and higher system reliability.
- 1.4 Third Party Application Integration - The PCF platform is extremely robust, but it does not have all the tools required by the government. The government will provide personnel to partner with pivotal to identify the correct suite of third party applications and implement those capabilities into the development platform to either gain access to additional data sets or applications for end users whether they are the app development team or a user of the application.
- 1.5 Training: While learning is inherent in each activity provided by the teaming methodology, the contractor offers additional acceleration courses to ensure new team members joining various functions of the agile methodology do not slow down the S/W development team. This methodology is extremely collaborative and the learning curve steep for personnel newly introduced to its utilization. The methodology and technologies are new to government software developers, requiring some initial training for some of them before being able to take advantage of the platform.

The AOC PMO is the first major IT program to implement this methodology. If successful, it is the intent of the DoD to leverage this methodology across several other IT program offices. Fundamental to introducing commercial best practices is to ensure the personnel as well as the technology is synchronized to perform the Agile Software Development methodology. From management, to design, to development, to test and finally to production, the entire process must be integrated and fully understood or else just like a three-legged stool, without one leg the entire system collapses. In the technical requirements, the SOW will highlight how the government intends to employ this methodology to enhance operations within the AOC. Additionally, this prototype project will be broken into two phases: Base Period and Option Period. The base period will be defined by specific targeted environments and applications to be developed / replatformed. The option period will define potential augmentation for known interest items to the government.

1.6 Environment Setup:

- 1.6.1 Base period: The contractor shall deliver and establish three separate environments. One unclassified environment for software development, a second to act as the staging and test environment on a classified network, and a third as the production (or operations) environment on a classified network. This will prove out the methodology by developing a direct pipeline from application development all the way to application utilization in an operational setting. This is unique and currently is not done in the Department of Defense.
- 1.6.2 Option period: The base period sets-up a simple one to one relationship from development to production; however, the AOC has multiple Command and Control (C2) operation centers geographically dispersed across the globe. The option period will aim to establish multiple production and staging environments to prove the scalability of one development environment for consistency across multiple geographically disparate systems. Additionally, the government may establish an environment on the JWICs network which will introduce additional layers of complexity.

1.7

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1.8 App Replatforming: 1.8.1 Base Period: The Government has identified three initial candidates for the prototype effort to be replatformed and deployable on the PCF platform. They are: the 'Battle Damage Assessment' (BDA), 'Integrated Air and Missile Defense' (IAMD) and 'Joint Targeting Toolbox' (JTT). These applications were chosen based on high priority to the user community and level of complexity.

- 1.8.2 Option Period: The PMO may pick additional applications for replatforming to test the methodology with its own developers as well as include applications with enhanced technical complexity. One application designated for the option period is the Command and Control (C2) Air Operations Suite-C2 Information Services (C2AOS-C2IS) which was originally developed to replace several legacy applications being used in the AOC today.

1.9 Training:

- 1.9.1 Period: Fundamental to employing the methodology is to ensure government personnel utilizing the platform get up to speed and become contributors from day one. The base period training is designated to account for roll-on personnel through the life-cycle of the prototype effort. The amount of additional training opportunities is correlated with the amount of environment and applications

being developed/replatformed.

- 1.10 Recommendations: The government is interested in understanding additional integration tools to protect the platform based on government requirements. This is with regards to establishing single sign-on and security architecture.

2. TECHNICAL REQUIREMENTS/Approach: This Section highlights the major technical aspects of each offering described in the background paragraph and what the government and the contractor shall accomplish through the duration of the project to prototype the methodology.

- 2.1 Platform:** Part of establishing the platform environment includes the requirement for the company to partner with government personnel in order to teach the administrator function. The company shall provide three DoJo offerings per platform install. PCF Platform DoJo offering are designed to accelerate success with PCF by pairing Pivotal experts with USAF personnel to plan, implement, customize, use, and scale the platform to meet the needs of the DoD. By working together, the government improves project outcomes and enables faster fielding of user centric products. All Platforming is expected to occur during Phase II. The contractor shall:

- 2.1.1 Travel to location to perform PCF platform installation
- 2.1.2 Establish PCF platform subscription services
- 2.1.3 Train government personnel system administrators how to operate and customize the PCF platform
- 2.1.4 Ensure government system administrators understand contractor Guide for reach back support
- 2.1.5 Deliver a report after platform is established detailing when, where, who (gov't personnel), how long, and any outstanding issues pertaining to the install. The report will be a text document or however the contractor deems appropriate.
- 2.1.6 For the Option period, the same actions detailed in 2.1.1-2.1.5 shall apply

- 2.2 Pivotal subscription:** A mixture of Pivotal subscriptions will be required at each designated environment. The base period shall consist of three environments to include: an (1) development environment, (2) testing and backup production environment, and (3) operational production environment. Attachment 1 (b)(4)

(b)(4)

- 2.2.1 PCF Operations Manager
- 2.2.2 PCF Elastic Runtime Service
- 2.2.3 PCF Services Suite
- 2.2.4 (b)(4)

Additionally, the contractor shall:

- 2.2.5 Start the base year-long subscription license on no earlier than 29 September 2017.
- 2.2.6 The contractor shall provide a report on PCF subscription mix to maximize operation effectiveness for AOC deployment. The report will be a text document or however the contractor deems appropriate.
- 2.2.7 (b)(4)

- 2.3 Training:** The Contractor will offer an extensive portfolio of role-based training courses

that will build and enhance government product expertise. Courses are designed by industry experts and aligned with the latest Pivotal products. The lab-based curriculum enables the government team to maximize skills retained and offer flexible delivery options. The training can take place at the government location discretion and

Attachment 3 (b)(4)

(b)(4)

- 2.3.1. *PCF Developer* - Three-day course shall provide participants an understanding of how deploy to PCF, exploring concepts and features of the platform including: services, log draining, metrics, build packs, service brokers, and route services. The course can support up to 12 people and shall be provided for the base period.
- 2.3.2. *Core Spring* - Four-day course shall teach participants how to build a Spring-powered Java application that demonstrates the Spring Framework and other Spring technologies - including Spring aOP and Spring Security. The course can support up to 12 people and shall be provided for the base period.
- 2.3.3. *PCF Administrator* - Five-day course shall provide hands-on experience required to manage a PCF installation by exploring "Day 1" and "Day 2 Operations" which includes: installing the Ops Manager, configuring users, roles and quotes, backing up and restoring files, using BOSH, etc. The course can support up to 12 people and shall be provided for the base period.
- 2.3.4. *Spring Boot Developer* - Two-day course shall provide application developers the ability to create enterprise-ready applications using Spring Boot. This will explore major Spring Boot features to include: auto-configuration, data access, actuator, etc. The course can support up to 12 people and shall be provided for the base period.
- 2.3.5. *Platform Acceleration Lab (PAL)*: Four-week course to provide training on legacy platform app transition and re-platforming legacy apps. Four people to be sent to a scheduled public offering of the PAL.
- 2.3.6. *Training Report*: certificates of individuals who attended will be provided by the contractor and training effectiveness surveys will be provided to the government at the end of each class so that feedback can be incorporated into future training sessions. A summary report will be provided at the end of the PoP to highlight the notice of successful completion, and aggregate the staff who participated and packaging of participants and survey data.

2.4 Application Replatforming: The Contractor shall provide a methodology for the transition of an application from its existing infrastructure by changing certain environmental and configuration properties to enable it to run on modern cloud technology, while preserving existing functionality. This work involves modernizing (refactoring or rewriting) certain incompatible modules - moving them from vertical (application servers and relational database management systems) to horizontal "scale-out" and "cloud first" models. The two applications identified for 'Replatforming' are as follows: BDA, JTT, and IAMD. Each will undergo the following replatforming process and at the end, the app shall be replatformed and deployed on PCF environments established in section 2.1 and 2.2. Each App Replatforming shall:

- 2.4.1 Develop business goals for the project
- 2.4.2 Break down understanding of the first user problem
- 2.4.3 Develop backlog planning & prioritization during the initial inception phase.
- 2.4.4 Organize into developer teams
- 2.4.5 Begin to migrate the identified applications
- 2.4.6 Build PCF extensions
- 2.4.7 Develop automated testing

- 2.4.8 Pair to develop the pipelines to continuously execute automated tests.
- 2.4.9 Apply process to the remaining applications
- 2.4.10 Pairing on development of documentation that outline replatforming patterns discovered during the engagement for subsequent transition of efforts
- 2.4.11 Government Product owner with Contractor shall perform application acceptance test in PCF environment

2.5 Net-new application development: The Contractor will provide its methodology to new application builds as an incremental process. It should be noted that no specific deliverable is tied to this effort since software can always improve. The contractor shall provide monthly invoices to ensure the government is tracking the monthly effort of the contractors FTE (hours) towards four identified applications which are: (b)(4)

(b)(4)

- 2.6 Security:** Demonstrate Identity and Access Management: The Contractor shall collaborate and provide recommendations for incorporating single sign on and identity access management into each of the appropriate projects. This will be accomplished during Phase II and III of the project.
- 2.7 Single Sign-on:** Contractor shall provide a recommendation on whether robust single sign on architecture is warranted. This will be accomplished during Phase II and Phase III of the project.
- 2.8 Jira Core Integration:** The Contractor shall integrate Jira Core workflow API into PCF. This will be accomplished during Phase II and Phase III of the project.
- 2.9 Mapbox Integration:** The Contractor shall integrate Mapbox API into PCF. This will be accomplished during Phase II and Phase III of the project.

(b)(4)

(b)(4)



(b)(4)



(b)(4)



5.0 PERIOD OF PERFORMANCE: The period of performance (PoP) for this statement of work is twelve (12) months.

5.1 The subscription licenses are for a year and will extend beyond the PoP

5.2 Option periods exercised will be accomplished inside the original twelve (12) month PoP

(b)(4)



8.0 SECURITY: A DD 254 to the Top Secret/Special Compartmentalized Information (TS/SCI) level will be issued as a part of this effort. OPSEC language can be found in Article XI of the contract. Operations Security (OPSEC) requirements apply to this contract. OPSEC program managers will provide the appropriate Critical Information (CI) lists to the Contractor under separate cover. Contractors conducting work on military installations will participate in the Installation OPSEC Program. Contractors will receive periodic training along with military and Government civilian counterparts. OPSEC program managers will provide the appropriate CI lists and the Program Protection Plan (PPP) to the contractor under separate cover.

9.0 GOVERNMENT FURNISHED EQUIPMENT/PROPERTY/DATA

GFE/P/D Reference	Delivery Date Required	Asserted Rights Category	Name of Organization Asserting Restrictions/POC	Milestone Association
Personnel: Government code developers (X)	seven days after contract award	N/A	HBB / Lt Col (b)(6)	N/A
Source Code for all applications being replatformed	at the beginning of the milestone delivery	Distribution Category D	HBB / Lt Col (b)(6)	4.3, 4.4, 4.5
3rd Party Licenses: Mapbox, MongoDB, CrunchyBase, Jira Core, Security Tools, Cloud Solution Provider	90 days after contract award	N/A	HBB / Lt Col (b)(6)	4.5.1

SOW Attachments:

Attachment One -	(b)(4)
Attachment Two -	
Attachment Three -	
Attachment Four -	
Attachment Five -	

ARTICLE II: TERM & TERMINATION**A. The Term of this Agreement**

This OTA will be available for use for a period of **twelve (12) months** from the date the OTA is awarded. Provisions of this Agreement, which, by their express terms or by necessary implication, apply for periods of time other than specified in Article II herein, shall be given effect, notwithstanding this Article.

B. Early Termination of Agreement Provision

1. Subject to a reasonable determination that the program, or a project will not produce beneficial results commensurate with the expenditure of resources, the Government may stop performance of work under this OTA, in whole or in part, if the AO determines that a termination is in the Government's interest. The AO shall terminate by delivering to the COMPANY a Notice of Termination specifying the extent of termination and the effective date. Such termination shall not constitute a "termination" as the term is used to mean a termination for convenience or default under public sector contracting laws and regulations.

(2) Either Party may terminate this Agreement effective immediately upon written notice to the other party if:

- i. Customer fails to pay any portion of fees due under a valid Invoice, Quote or Order ninety days after interest begins to accrue under the Prompt Payment Act;
- ii. the other party suffers an insolvency or analogous event;
- iii. the other party commits a material breach of this Agreement that is incapable of being cured; or
- iv. the other party breaches any other provision of this Agreement and does not cure the breach within thirty (30) days after receiving written notice of breach.

(3) Either Party may terminate this Agreement upon 30 days written notice to the other, however such termination shall not affect existing Software Orders or SOWs. Customer may terminate any SOW for any or no reason by providing at least fourteen (14) calendar days prior written notice to Pivotal. For the avoidance of doubt, upon such termination for convenience: Customer shall not be entitled to any refund for any fees paid for Services performed prior to the effective date of termination. Any Software Orders signed and agreed to prior to such termination taking effect are non-cancelable and non-refundable (meaning they cannot be terminated by either party for convenience).

(4) In the event of expiration of a Subscription License, Customer must remove and destroy all copies of Software, including all backup copies, from the server, virtual machine, and all computers and terminals on which Software (including copies) is installed or used and certify destruction thereof.

In the event of termination for default relating to the Government's use Software, Customer must remove and destroy all copies of Software, including all backup copies, from the server, virtual machine, and all computers and terminals on which Software (including copies) is installed or used and certify destruction thereof.

Termination does not relieve Customer of its obligation to pay all fees and expenses for all Services performed, as of the date of termination. All provisions of this Agreement will survive any termination or expiration if by its nature and context it is intended to survive.

(5) After receipt of a Notice of Termination, and except as directed by the AO, the COMPANY shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due:

- i. Stop work as specified in the notice.
- ii. Place no further orders for materials, services, or facilities, except as necessary to complete the continued portion of the OTA.
- iii. Terminate all orders to the extent they relate to the work terminated.
- iv. Reserved.
- v. With approval or ratification to the extent required by the AO, settle all outstanding liabilities and termination settlement proposals arising from the termination of orders; the approval or ratification will be final for purposes of this clause.
- vi. Reserved
- vii. Complete performance of any work not terminated, if applicable.

(6) Notwithstanding any term to the contrary herein, the parties agree that termination of the Agreement shall not relieve the Government from its obligations to pay the non-cancelable and non-refundable fees associated with any Subscription License herein. Failure of the Parties to agree to an equitable adjustment shall be resolved pursuant to Article V, Disputes. Nothing in this section shall be construed as a limitation of the rights of either party in the event of a breach of contract or default by the other party.

C. Stop Work Clause

(1) As directed by the AO, the COMPANY shall stop all, or any part, of the work called for under this Agreement for a period of 90 days after the written order is delivered, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this Article. Upon receipt of the order, the COMPANY shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered, or within any extension of that period to which the parties shall have agreed, the AO shall either:

- i. Cancel the stop-work order; or
- ii. Terminate the work covered this Agreement.

(2) If a stop work order issued under this clause is canceled, the COMPANY shall resume work. The Government shall make an equitable adjustment in the delivery schedule or negotiated price, or both, and the Government's share of this Agreement shall be modified, in writing, accordingly, if:

- i. The stop-work order results in an increase in the time required for, or in the cost properly allocable to, the performance of any part of this Agreement; and
- ii. The COMPANY asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Government decides the facts justify the action, the Government may receive and act upon a proposal submitted at any time before final payment under this Agreement.

ARTICLE III: AGREEMENT ADMINISTRATION

Unless otherwise provided in this Agreement, approvals permitted or required to be made by the ACC-NJ Contracting Activity may be made only by the ACC-NJ Contracting Activity Agreements Officer. Administrative and contractual matters under this Agreement shall be referred to the following representatives of the parties:



Each party may change its representatives named in this Article by written notification to the other party.

Cognizant Defense Finance and Accounting Service Office:

DFAS COLUMBUS CENTER WEST
 DFAS-CO/WEST ENTITLEMENT OPERATIONS
 P.O. Box 182381
 Columbus, OH 43218-2381

ARTICLE IV: OBLIGATION AND PAYMENT

A. Obligation: Except as specified in Article V: Disputes, the Government's liability to make payments to the COMPANY is limited only to those funds obligated under this Agreement or by modification to the Agreement. The ACC-NJ Contracting Activity may incrementally fund this Agreement. If modification becomes necessary in

performance of this Agreement, pursuant to Article IV of this Agreement, the AO and the COMPANY shall establish and execute a mutually agreed to revised Schedule of Payable Milestones consistent with the current Project Plan.

B. Project Payments: Reference Milestone Payment Schedule, Table 4.0 in the SOW.

C. Payable Milestones: The COMPANY shall submit invoices for processing according to the milestone payment schedule via the Invoice, Receipt, Acceptance, and Property Transfer (iRAPT) application of the Wide Area Work Flow (WAWF) system, according to the guidelines set forth below. Payments will be made by Defense Finance and Accounting Service, DFAS COLUMBUS CENTER WEST.

1. The WAWF system is the method to electronically process vendor payment requests and receiving reports. To access WAWF, the COMPANY shall have a designated electronic business point of contact in the System for Award Management at <https://www.acquisition.gov>; and be registered to use WAWF at <https://wawf.eb.mil/> following the step-by-step procedures for self-registration available at this web site. The COMPANY shall follow the training instructions of the WAWF Web-Based Training Course and use the Practice Training Site before submitting payment requests through WAWF. Both can be accessed by selecting the "Web Based Training" link on the WAWF home page at <https://wawf.eb.mil/>.

2. The COMPANY shall submit a Combo request through WAWF utilizing the following Routing Data to fill in the applicable fields in WAWF when creating payment requests in the system.

Routing Data Table

<i>Field Name in WAWF</i>	<i>Data to be entered in WAWF</i>
Pay Official DoDAAC	HQ0339
Issue By DoDAAC	W15QKN
Admin DoDAAC	W15QKN
Inspect By DoDAAC	W15BW9
Accept at Other DoDAAC	W15BW9

3. All payment requests shall include an invoice (contractor's format is acceptable) to include at a minimum, invoice number, milestone payment number and contract number. Note, all invoices shall be for exact payment amount as referenced B. Partial milestones shall not be submitted.

4. The COMPANY shall include the following WAWF email notifications when submitting invoices to assure payment approval:

(b)(6)

5. For technical WAWF help, contact the WAWF helpdesk at 866-618-5988.

D. Electronic Fund Transfer: COMPANY must be enrolled in EFT by contacting the paying office designated in the Agreement and requesting Form SF 3881, Automated Clearing House (ACH) Vendor/Miscellaneous Payment Enrollment Plan. This form must be completed by the COMPANY and the COMPANY's financial institution, and returned to the paying office. The paying office will complete the process and notify the COMPANY that EFT enrollment is complete. All payments under this agreement will be held until the COMPANY provides the required EFT enrollment information.

The CAGE Code and DUNS number for the COMPANY are as follows:

CAGE Code: **71BN7**

DUNS number: **078824783**.

Registration in the System Award for Management (SAM) is mandatory.

E. Limitation of Funds: Except as set forth in Article V, the Government's financial liability will not exceed the amount obligated under this Agreement and available for payment.

F. Financial Records and Reports: The COMPANY shall maintain adequate records to account for Federal funds received under this Agreement and shall maintain adequate records to account for COMPANY Project Agreement funding provided under this Agreement, should cost sharing procedures be implemented for funding a particular project. COMPANY relevant financial records are subject to examination or audit on behalf of the ACC-NJ Contracting Activity by the Government for a period not to exceed three (3) years after expiration of the term of the Agreement. The AO or designee shall have direct access to sufficient records and information of the, COMPANY to ensure full accountability for all funding under this Agreement. Such audit, examination or access shall be performed during business hours on business days upon prior written notice and shall be subject to the security requirements of the audited party. Any audit required during the course of the program may be conducted by the Government using Government auditors or, at the request of COMPANY's external CPA accounting firm at the expense of the COMPANY

ARTICLE V: DISPUTES

A. General

The Parties shall communicate with one another in good faith and in a timely and cooperative manner when raising issues under this Article.

B. Dispute Resolution Procedures

(1) Any disagreement, claim or dispute between the ACC-NJ and the COMPANY concerning questions of fact or law arising from or in connection with this Agreement, and, whether or not involving an alleged breach of this Agreement, may be raised only under this Article.

(2) Whenever disputes, disagreements, or misunderstandings arise, the Parties shall attempt to resolve the issue(s) involved by discussion and mutual agreement as soon as practicable. In no event shall a dispute, disagreement or misunderstanding which arose more than twelve (12) months prior to the notification, made under this subsection constitute the basis for relief under this article unless the Chief of the Contracting Office, ACC-NJ in the interest of justice waives this requirement.

(3) Failing resolution by mutual agreement, or no later than four (4) months after notification was made to the other Party, the aggrieved Party shall document the dispute, disagreement, or misunderstanding by notifying the other Party (through the respective AO or AOR, as the case may be) in writing documenting the relevant facts, identifying unresolved issues, specifying the clarification or remedy sought, and documenting the rationale as to why the clarification/remedy is appropriate. Within ten (10) working days after providing notice to the other Party, the aggrieved Party may, in writing, request a decision by the Chief of the Contracting Office, ACC-NJ. The other Party shall submit a written position on the matter(s) in dispute within thirty (30) calendar days after being notified that a decision has been requested. The Chief of the Contracting Office, ACC-NJ, will conduct a review of the matter(s) in dispute and render a decision in writing within thirty (30) calendar days of receipt of such position. Any such decision is final and binding, unless a Party shall, within thirty (30) calendar days request further review as provided by this article.

(4) If requested within thirty (30) calendar days of the decision by the Chief of the Contracting Office, ACC-NJ, further review will be conducted by the Vice-President of the COMPANY Federal business and the ACC-NJ

Director of Contracting. In the event of a decision, or in absence of a decision within sixty (60) calendar days of referral to the Vice President of the COMPANY federal business and the ACC-NJ Director of Contracting (or such other period as agreed to by the parties), either party may pursue any right or remedy provided by law in a court of competent jurisdiction, including any remedies available in an action before the Court of Federal Claims.

Alternatively, the parties may agree to explore and establish an additional Alternate Disputes Resolution procedure to resolve this dispute.

C. Limitation of Liability and Damages

In no event shall the liability of the COMPANY under any basis exceed the funding received for their performance of this Agreement.

No Party shall be liable to any other Party for consequential, punitive, special and incidental damages or other indirect damages, whether arising in contract (including warranty), tort (whether or not arising from the negligence of a Party) or otherwise, except to the extent such damages are caused by a Party's willful misconduct.

Notwithstanding the foregoing, claims for contribution toward third-party personal injury, are not waived, released, or disclaimed.

ARTICLE VI: CONFIDENTIAL INFORMATION

A. Definitions

"Disclosing Party" means COMPANY, or their subcontractors or suppliers, or the Government who discloses Confidential Information as contemplated by the subsequent Paragraphs.

"Receiving Party" means COMPANY, or their subcontractors or suppliers, or the Government who receives Confidential Information disclosed by a Disclosing Party.

"Confidential Information" means information and materials of a Disclosing Party which are designated as confidential or as a Trade Secret in writing by such Disclosing Party, whether by letter or by use of an appropriate stamp or legend, prior to or at the same time any such information or materials are disclosed by such Disclosing Party to the Receiving Party. Confidential Information includes the terms of this Agreement, Software, and all confidential and proprietary information of The COMPANY or the Government, including without limitation, all business plans, product plans, financial information, software, designs, and technical, business and financial data of any nature whatsoever, provided that such information is marked or designated in writing as "confidential," "proprietary," or with a similar term or designation, and projects for other companies that may be occurring concurrently in The COMPANY's offices while The COMPANY is performing the Services. Notwithstanding the foregoing, materials and other information which are orally, visually, or electronically disclosed by a Disclosing Party, or are disclosed in writing without an appropriate letter, stamp, or legend, shall constitute Confidential Information or a Trade Secret if such Disclosing Party, within thirty (30) calendar days after such disclosure, delivers to the Receiving Party a written document or documents describing the material or information and indicating that it is confidential or a Trade Secret, provided that any disclosure of information by the Receiving Party prior to receipt of such notice shall not constitute a breach by the Receiving Party of its obligations under this Paragraph. "Confidential Information" includes any information and materials considered a Trade Secret by the COMPANY on its own behalf or on behalf of their subcontractors or suppliers.

"Trade Secret" means all forms and types of financial, business, scientific, technical, economic, or engineering or otherwise proprietary information, including, but not limited to, patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if:

- i. The owner thereof has taken reasonable measures to keep such information secret; and

- ii. The information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, the public.

B. Exchange of Information: The Government may from time to time disclose Government Confidential Information to the COMPANY and its subcontractors or suppliers, in connection with Annual Plan and similar processes or particular projects, and the COMPANY their subcontractors or suppliers, may from time to time disclose information that is Trade Secret or Confidential Information to the Government in connection with the OTA, an OTA project proposal, Project Milestone and Payment Instruction, Project Agreement, or performance thereunder. Neither the Government nor COMPANY or their subcontractors or suppliers, nor the AOR shall be obligated to transfer Confidential Information or Trade Secrets independently developed by the Government or the COMPANY or their subcontractors or suppliers, absent an express written agreement between the Parties providing the terms and conditions for such disclosure.

C. Confidentiality and Authorized Disclosure: The Receiving Party agrees that Confidential Information and Trade Secrets shall remain the property of the Disclosing Party (no one shall disclose unless they have the right to do so), and that, unless otherwise agreed to by the Disclosing Party, Confidential Information and Trade Secrets shall not be disclosed, divulged, or otherwise communicated by it to third parties or used by it for any purposes other than in connection with specified project efforts and the licenses granted in Article VIII, Data Rights, provided that the duty to protect such "Confidential Information" and "Trade Secrets" shall not extend to materials or information that:

- i. Are received or become available without restriction to the Receiving Party under a proper, separate agreement,
- ii. Are not identified with a suitable notice or legend per Article entitled "Confidential Information" herein,
- iii. Are lawfully in possession of the Receiving Party without such restriction to the Receiving Party at the time of disclosure thereof as demonstrated by prior written records,
- iv. Are or later become part of the public domain through no fault of the Receiving Party,
- v. Are received by the Receiving Party from a third party having no obligation of confidentiality to the Disclosing Party that made the disclosure,
- vi. Are developed independently by the Receiving Party without use of Confidential Information or Trade Secrets as evidenced by written records, or
- vii. Are required by law or regulation to be disclosed; provided, however, that the Receiving Party has provided written notice to the Disclosing Party promptly so as to enable such Disclosing Party to seek a protective order or otherwise prevent disclosure of such information.

Confidential Information does not include information that is:

- i. rightfully in the receiving party's possession without prior obligation of confidentiality from the disclosing party;
- ii. a matter of public knowledge (or becomes a matter of public knowledge other than through breach of confidentiality by the other party);
- iii. rightfully furnished to the receiving party by a third party without confidentiality restriction; or
- iv. Independently developed by the receiving party without reference to the disclosing party's Confidential Information.

D. Return of Proprietary Information: Upon the request of COMPANY, the Government shall promptly return all copies and other tangible manifestations of the Confidential Information or Trade Secrets disclosed. Upon request by the Government, COMPANY shall promptly return all copies and other tangible manifestations of the Confidential Information disclosed by the Government. As used in this section, tangible manifestations include human readable media as well as magnetic and digital storage media.

E. Term: Except to the extent covered by and subject to other provisions of this Agreement or the specific Project Agreement, the obligations of the Receiving Party under this Article shall continue to the maximum extent allowed by Federal law.

The Government and the COMPANY shall flow down the requirements of this Article VI to their respective personnel, agents, partners, and team members receiving such Confidential Information or Trade Secrets under this OTA.

ARTICLE VII: PUBLICATION AND ACADEMIC RIGHTS

A. Classified Research Projects: If a release of Confidential Information or Trade Secrets is for a classified Research Project, the provisions of the DoD Security Agreement (DD Form 441), Certificate Pertaining to Foreign Interests (SF 328), and the DoD Contract Security Classification Specification (DD Form 254) apply. The Government will be responsible for the completion of the DD Form 254. The COMPANY must complete the DD Form 441 and SF 328 and provide them to the Government through for review by the proper Government representatives, the Industrial Security Representative at the cognizant Defense Security Service (DSS) office for DD Form 441 and SF 328 and the VRA's local Security office for the DD Form 254.

B. Review or Approval of Technical Information for Public Release.

(a) At least 30 days prior to the scheduled release date, COMPANY shall submit to the AO two copies of the information to be released along with Clearance of Technical Information for Public Release.

The AOR is hereby designated as the approval authority for the AO for such releases.

(b) Reserved

(c) Parties to this Agreement are also responsible for assuring that every publication of material based on or developed under this project contains the following disclaimer:

“The views and conclusions contained herein are those of the authors and should not be interpreted as necessarily representing the official policies or endorsements, either expressed or implied, of the U.S. Government.”

The COMPANY shall flow down these requirements to its partners and team members, at all tiers.

ARTICLE VIII: LICENSING & PROPRIETARY RIGHTS//DATA RIGHTS

A. Definitions

“**Government Purpose Rights**” (GPR)” means the rights to use, modify, duplicate or disclose the “Data” licensed with such rights as set forth in Table 3.0 of the SOW under this Agreement within the Government for United States Government purposes only; and to release or disclose data outside the Government to any authorized persons pursuant to an executed non-disclosure agreement for such persons’ use, modification, or reproduction for United States Government purposes only. United States Government purposes include Foreign Military Sales purposes and competitive re-procurement.

(b)(4)



(b)(4)



(b)(4)

C. PROPRIETARY RIGHTS FOR PROFESSIONAL SERVICES. (PRPS)

(1) Professional Services. Other than the Excluded Materials, Customer shall own all intellectual property rights associated with the Work Product, as well as Customer's derivative works thereof, subject to Customer's payment in full under such SOW and subject to Pivotal's rights in the underlying intellectual property embodied therein or used by Pivotal to perform the Professional Services.

(b)(4)

(3) Open Source Materials Exclusion. OSS identified in the applicable SOW or subsequently agreed to in writing by the parties may be included in, or necessary for Customer to use, the Work Product, but are excluded from Customer's ownership rights set forth in Article III(1). Pivotal may (a) obtain such OSS on Customer's behalf, (b) incorporate such OSS into the Work Product, and (c) submit back to open source libraries any improvements made to the OSS during the course of performing the Professional Services, to the extent such submissions do not violate the confidentiality obligations set forth herein. Other than the OSS referenced in the applicable SOW, Pivotal will not include OSS in the Work Product without obtaining Customer's written permission.

(4) Third Party Materials Exclusion. Third Party Materials may be included in, or necessary for Customer to use, the Work Product, but are excluded from Customer's ownership rights set forth in Article III(1) Customer will be solely responsible for obtaining necessary licenses to the Third Party Materials and liable for their use.

(5) Customer's Underlying Rights. Customer represents and warrants to Pivotal that (a) Customer owns or controls all rights in and to all Customer information and materials provided by or on behalf of Customer to Pivotal pursuant to this Agreement, including without limitation all rights to exploit all such Customer information and materials worldwide in all media and languages in perpetuity without encumbrance or restriction, and (b) Customer grants to Pivotal a nonexclusive, nontransferable, worldwide paid-up license to make, use, modify, reproduce, and prepare derivative works of Customer information and materials, solely for the purpose of performing Professional Services in accordance with the Statement of Work of this Agreement, with no right to grant sublicenses.

(6) Feedback. The Parties agree that any feedback or suggestions ("Feedback") (if any) given hereunder is voluntary. Each party is free to use, disclose, reproduce, license or otherwise distribute the Feedback relating to its own products and services, without any obligations or restrictions of any kind, including intellectual property rights subject to Article XI, G, except that under no circumstances may Pivotal use such Feedback for the purpose of stating or implying any endorsement by the Government of Pivotal, its products or services.

(7) Reservation of IP Rights. Except as expressly stated, nothing herein shall be construed to (a) directly or indirectly grant to a receiving party any title or license to or ownership of a providing party's intellectual property rights in Professional Services, Software or materials furnished by such providing party; (b) preclude such providing party from:

(i) independently developing, marketing, acquiring, using, licensing, modifying or otherwise freely exploiting products or services that are similar to or related to the Professional Services, Software or materials provided hereunder;

(ii) restricting the assignment of persons performing Professional Services; or

(iii) using and employing their general skills, know-how, and expertise, and to use, disclose, and employ any generalized ideas, concepts, know-how, methods, techniques, or skills gained or learned during the course of any assignment, so long as that party complies with confidentiality obligations herein.

Pivotal is not being engaged to perform any investigation of third party intellectual property rights including any searches of patents, copyrights, or trademarks related to the Work Product.

(b)(4)

ARTICLE IX: PATENT RIGHTS

RESERVED

ARTICLE X: FOREIGN ACCESS TO TECHNOLOGY AND EXPORT CONTROL

I. Foreign Access to Technology

This Article X shall remain in effect during the term of this Agreement.

A. Definition

a) "Foreign Firm or Institution" means a firm or institution organized or existing under the laws of a country other than the United States, its territories, or possessions. The term includes, for purposes of this Agreement, any agency or instrumentality of a foreign government; and firms, institutions or business organizations which are owned or substantially controlled by foreign governments, firms, institutions, or individuals.

b) "Work Product" means the works of authorship or other products developed or created and delivered by Pivotal to Customer (excluding the Excluded Materials) in the course of performing Services described in the applicable SOW.

B. General: The Parties agree that research findings, Work Products and Customer Information and Materials (under Article XIII paragraph 5 i.e. government source code used for replatforming, i.e., existing government applications that are provided to COMPANY for replatforming) arising under this Agreement may constitute a significant enhancement to the national defense, and to the economic vitality of the United States. Accordingly, access to important technology developments under this Agreement by Foreign Firms or Institutions must be carefully controlled. The controls contemplated in this Article are in addition to, and are not intended to change or supersede, the provisions of the International Traffic in Arms Regulation (22 CFR Part 121 et seq.), the DoD Industrial Security Regulation (DoD 5220.22-R) and the Department of Commerce Export Regulation (15 CFR Part 770 et seq.). But, this Agreement shall not require Company to make its corporate network capable of handling ITAR or national security classified information pursuant to the regulations above.

C. Restrictions on Sale or Transfer of Work Products to Foreign Firms or Institutions

a) In order to promote the national security interests of the United States and to effectuate the policies that underlie the regulations cited above, the procedures stated in subparagraphs C(b), C(c), and C(d) below shall apply to any transfer of Work Products. For purposes of this

paragraph, a transfer includes a sale of the company, and sales or licensing of Work Products. Transfers do not include:

- (i) sales of products or components, or
- (ii) licenses of software or documentation related to sales of products or components, or
- (iii) transfer to foreign subsidiaries of the COMPANY member entities for purposes related to this Agreement, or
- (iv) transfer which provides access to Work Products to a Foreign Firm or Institution which is an approved source of supply or source for the conduct of research under this Agreement provided that such transfer shall be limited to that necessary to allow the firm or institution to perform its approved role under this Agreement.
- (v) releases pursuant to Article VII hereof ("Publication and Academic Rights")

b) The COMPANY shall provide timely notice to the Government of any proposed transfers of Work Products developed under this Agreement to Foreign Firms or Institutions. If the Government determines that the transfer may have adverse consequences to the national security interests of the United States, the COMPANY and the Government shall jointly endeavor to find alternatives to the proposed transfer which obviate or mitigate potential adverse consequences of the transfer but which provide substantially equivalent benefits to the COMPANY.

c) In any event, the COMPANY shall provide written notice to the Government AO's Representative and AO of any proposed transfer to a foreign firm or institution at least sixty (60) calendar days prior to the proposed date of transfer. Such notice shall cite this Article and shall state specifically what is to be transferred and the general terms of the transfer. Within thirty (30) calendar days of receipt of the COMPANY's written notification, the Government AO shall advise the COMPANY whether it objects to the proposed transfer. If the government does not object within 30 days the COMPANY may proceed with the transfer. .

D) Lower Tier Agreements

The COMPANY shall include this Article, suitably modified, to identify the Parties, in all Project Agreements or lower tier agreements, regardless of tier, for experimental, Work Products, or research work.

2. Export Control

A. Export Compliance.

Each Party agrees to comply with U.S. Export regulations including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C. § 2751-2794, including the International Traffic in Arms Regulation (ITAR), 22 C.F.R. § 120 et seq. ; and the Export Administration Act, 50 U.S.C. app. § 2401-2420. Each party is responsible for obtaining from the Government export licenses or other authorizations/approvals, if required, for information or materials provided from one party to another under this Agreement. Accordingly, the COMPANY shall not export, directly, or indirectly, any Work Products, Confidential Information, Trade Secrets, or Classified and Unclassified Technical Data in violation of any U.S. Export laws or regulations.

B. Flowdown.

The COMPANY shall include this Article, suitably modified, to identify all Parties, in all lower tier agreements. This Article shall, in turn, be included in all sub-tier subcontracts or other forms of lower tier agreements, regardless of tier.

ARTICLE XI: OPSEC TAILOR THIS LANGUAGE ACCORDINGLY

- (a) Access and General Protection/Security Policy and Procedures. All contractor employees, including

subcontractor employees, shall comply with all installation and facility access and local security policies and procedures (provided by Government representative), and security/emergency management exercises. The contractor shall also provide all information required for background checks to meet installation access requirements to be accomplished by the Installation Provost Marshal Office, Director of Emergency Services, or Security Office. The contractor workforce shall comply with all personal identity verification and accountability requirements as directed by DoD, HQDA, and/or local policy. Should the Force Protection Condition (FPCON) at any individual facility or installation change, the Government may require changes in contractor security matters or processes. During FPCONs Charlie and Delta, services/installation access may be discontinued/postponed due to higher threat. Services will resume when FPCON level and/or threat is reduced to an acceptable level as determined by the Installation Commander. Contractor person working on an installation shall participate in the installation Random Antiterrorism Measures Program as directed. Contractor shall be subject to and comply with vehicle searches, wearing of ID badges, etc.

- (b) iWatch (See Something, Say Something) Training: All contractor employees, including subcontractor employees, shall receive training and participate in the local iWATCH program (training standards provided by the requiring activity ATO). This locally developed training will be used to inform employees of the types of behavior to watch for and instruct employees to report suspicious activity to the AOR. This training shall be completed within 45 calendar days after contract start date or effective date of incorporation of this requirement into the contract, whichever applies, and then annually thereafter. The contractor shall submit certificates of completion for each affected contractor employee and subcontractor employee to the AOR within 14 calendar days after completion of training by all employees and subcontractor personnel.
- (c) Access to DoD Facility or Installation: All contractor employees, including subcontractor employees, shall comply with adjudication standards and procedures using the National Crime Information Center Interstate Identification Index (NCIC-III) and Terrorist Screening Database (Army Directive 2014-05/AR 190-13); applicable installation, facility and area commander installation and facility access and local security policies and procedures (provided by the AOR).
- (d) Information Management Army Information Technology/IA: This project will access For Official Use Only (FOUO) information via UPS mail, Safe Access File Exchange (SAFE) or approved Impact Level cloud service providers. This Agreement shall not require Company to store, handle, receive or otherwise manage aforementioned information on its corporate servers or network.
- (e) For Official Use Only Information (FOUO) and Controlled Unclassified Information (CUI): See subsection (d).
- (f) OPSEC Training: In accordance with AR 530-1 (or DoDM 5205.02-M), new contractor employees, including subcontractor employees, shall complete initial OPSEC training within 30 calendar days of award and must also complete annual OPSEC awareness as provided by the appropriately designated OPSEC level II trained OPSEC Officer/Coordinator. The contractor shall arrange training through the AOR.
- (g) Public Release of Information: In accordance with AR 530-1 (or DoDM 5205.02-M), an OPSEC review will be performed by the Government prior to all public release of information. All Government information intended for public release by a contractor shall undergo a Government OPSEC review prior to release. The OPSEC review will be performed as part of the Public Review Process described in Article VII.

(b)(4)



ARTICLE XIII: EXECUTION

This Agreement constitutes the entire agreement of the Parties and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions among the Parties, whether oral or written, with respect to the subject matter hereof. This Agreement may be revised only by written consent of the COMPANY and the ACC-NJ Agreements Officer designated in this Agreement. By executing this agreement, the COMPANY affirms that it is a nontraditional defense contractor as that term is defined in 10 U.S.C. 2302 and, as a result, is eligible to be awarded this Agreement.

ARTICLE XIV IP INDEMNITY.

(1) **IP Indemnity for Software.** Subject to the remainder of this Article XV and the Limitation of Liability in Article V.C, Pivotal shall (a) defend Customer against any Infringement Claim that Software infringes a copyright or patent enforceable in a Berne Convention signatory country; and (b) pay resulting costs and damages finally awarded against Customer by a court of competent jurisdiction, or pay amounts stated in a written settlement negotiated and approved by Pivotal.

(2) **IP Indemnity for Professional Services.** Subject to this Article XIV and the Limitation of Liability in Article V.C, Pivotal shall (a) defend Customer against any Infringement Claim that the Professional Services and/or Work Product (excluding any Excluded Materials) infringe a trade secret, or a copyright enforceable in a Berne Convention country, and (b) pay resulting costs and damages finally awarded against Customer by a court of competent jurisdiction, or pay amounts stated in a written settlement negotiated and approved by Pivotal. Customer shall provide non-infringing materials for any such materials they bring to the engagement.

(3) **Procedure and Remedies.** The foregoing obligations apply only if indemnitee:

- (a) promptly notifies indemnitor in writing of such Infringement Claim;
- (b) grants Pivotal sole control over the defense and settlement thereof to the extent such control does not contradict or contravene 28 U.S.C. 516;
- (c) reasonably cooperates in response to indemnitor's request for assistance;
- (d) is not in material breach of this Agreement (including any Exhibits); and
- (e) is current in payment of all applicable fees prior to Infringement Claim.

If the allegedly infringing Software, Professional Services and/or Work Product ("Indemnified Elements") are held to constitute an infringement, or in Pivotal's opinion, any such Indemnified Elements are likely to become infringing and their use enjoined, Pivotal may, at its sole option and expense:

- (i) procure for Customer the right to make continued use of the affected Indemnified Elements;
- (ii) replace or modify the affected Indemnified Elements to make them non-infringing; or
- (iii) notify Customer to return the affected Indemnified Elements and, upon receipt, discontinue the related Support Services (if applicable) and, for Subscription Licenses, refund unused prepaid fees calculated based on each month remaining in the Subscription Period.

(4) **IP Indemnity Exclusions.** Neither Pivotal nor any Distributor shall have any obligation under this Article IV or otherwise with respect to any Infringement Claim that arises out of or relates to: (a) combination, operation or use of the Indemnified Elements with any other software, hardware, technology, data, or other materials; (b) use for a purpose or in a manner for which Indemnified Elements were not designed or use after Pivotal notifies Customer to cease such use due to a possible or pending Infringement Claim; (c) any modifications to Indemnified Elements made by any person other than Pivotal or its authorized representatives; (d) any modifications to Indemnified Elements made by Pivotal pursuant to instructions, designs, specifications, or any other information or materials provided to Pivotal by or on behalf of Customer; (e) use of any version of Software when an upgrade or a newer iteration of Software made available by Pivotal could have avoided the infringement; (f) any data or information which Customer or a third party utilizes in connection with Software; or (g) any Open Source Software. THIS SECTION STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND PIVOTAL'S ENTIRE LIABILITY FOR ANY INFRINGEMENT CLAIMS.

Section J - List of Documents, Exhibits and Other Attachments**ATTACHMENTS**

DOCUMENT	DESCRIPTION	DATE
Attachment One - Attachment Two - Attachment Three - Attachment Four - Attachment Five - Attachment Six -	(b)(4)	

The attachments are provided separately via email.

Area of Interest**Project: Agile Systems Development Environment****Contract: W15QKN-17-9-0044**

Seeking the prototyping of a robust and scalable software development environment to enable the modernization of Department of Defense (DoD) command and control systems in a cloud infrastructure. Environment must include a scalable software development and production platform to enable continuous integration, continuous delivery, and operation of new applications, as well as the containerization, rehosting, and refactoring of existing DoD applications. Additionally, ideal solutions will consist of an ecosystem of software and platforms to rapidly deploy advanced commercial capabilities, to include, but not limited to, workflow, geospatial services, data analytics and visualization, and data management. Prototype will be deployed to a government cloud and/or an on premise cloud infrastructure, and the effectiveness of the solutions will be demonstrated through the migration and modernization of a collection of current DoD applications. Solutions must be commercially viable and ready to support the application migration within 30 days of award.