AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

1. CONTRACT ID CODE	PAGE OF PAGES	
	1	12

2. AMENDMENT/MODIFICATION NO.	3. EFFECTIVE DATE	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO.(If applicable)
P00003	29-Apr-2019		

6. ISSUED BY CODE N66001

NAVAL INFORMATION WARFARE CENTER PACIFIC
SHANE MAHELONA, CODE 22550
SHANE.MAHELONA@NAVY.MIL
53560 HULL STREET
SAN DIEGO CA 92152-5001

7. ADMINISTERED BY (If other than item 6) CODE

See Item 6

8. NAME AND ADDRESS OF CONTRACTOR (No., Street, County, State and Zip Code)
DLT SOLUTIONS, LLC
ED ABBOTT
2411 DULLES CORNER PARK STE 800
HERNDON VA 20171-6168

CODE 0S0H9 FACILITY CODE

	9A. AMENDMENT OF SOLICITATION NO.
	9B. DATED (SEE ITEM 11)
X	10A. MOD. OF CONTRACT/ORDER NO. N6600118A0008
X	10B. DATED (SEE ITEM 13) 09-May-2018

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

☐ The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offer ☐ is extended, ☐ 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).
X	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF: 52.212-4(c) CHANGES
	D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor ☐ is not, ☒ is required to sign this document and return 1 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: smahelon191229

The purpose of this modification is to 1) Update the BPA Terms and Conditions, and 2) Revise the BPA Attachment 2, Product and Price List for Tech Refresh.

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) SPENCER SESSIONS / CONTRACTING OFFICER TEL: 619-553-4523 EMAIL: spencer.sessions@navy.mil	
15B. CONTRACTOR/OFFEROR (Signature of person authorized to sign)	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA BY (Signature of Contracting Officer)	16C. DATE SIGNED 29-Apr-2019

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

1. CONTRACT ID CODE	PAGE OF PAGES	
	1	12

2. AMENDMENT/MODIFICATION NO.	3. EFFECTIVE DATE	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (If applicable)

6. ISSUED BY CODE N66001

NAVAL INFORMATION WARFARE CENTER PACIFIC
SHANE MAHELONA, CODE 22550
SHANE.MAHELONA@NAVY.MIL
53560 HULL STREET
SAN DIEGO CA 92152-5001

7. ADMINISTERED BY (If other than item 6) CODE

See Item 6

8. NAME AND ADDRESS OF CONTRACTOR (No., Street, County, State and Zip Code)
DLT SOLUTIONS, LLC
ED ABBOTT
2411 DULLES CORNER PARK STE 800
HERNDON VA 20171-6168

CODE 0S0H9 FACILITY CODE

	9A. AMENDMENT OF SOLICITATION NO.
	9B. DATED (SEE ITEM 11)
X	10A. MOD. OF CONTRACT/ORDER NO. N6600118A0008
X	10B. DATED (SEE ITEM 13) 09-May-2018

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

☐ The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offer ☐ is extended, ☐ 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).

X C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF: 52.212-4(c) CHANGES

☐ D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor ☐ is not, [X] is required to sign this document and return 1 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: smahelon191229

The purpose of this modification is to 1) Update the BPA Terms and Conditions, and 2) Revise the BPA Attachment 2, Product and Price List for Tech Refresh.

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)	
SCOTT NEEDLEMAN		TEL: EMAIL:	
15B. CONTRACTOR/OFFEROR (Signature of person authorized to sign)	15C. DATE SIGNED 4/22/19	16B. UNITED STATES OF AMERICA BY (Signature of Contracting Officer)	16C. DATE SIGNED

SECTION SF 30 BLOCK 14 CONTINUATION PAGE

SUMMARY OF CHANGES

SECTION A - SOLICITATION/CONTRACT FORM

The following have been modified:

BPA TERMS AND CONDITIONS

1. Introduction

1.1. Federal Acquisition Streamlining Act

1.1.1. In the spirit of the Federal Acquisition Streamlining Act, the Department of Navy, under the U.S. Department of Defense (DoD) Enterprise Software Initiative (ESI) (referred to hereafter as the "Government" or "DoD") and DLT Solutions LLC (the "Contractor") enter into this Blanket Purchase Agreement, which includes all Attachments (collectively referred to as the "BPA") as of the Effective Date as identified on the SF 1449.

1.2. General Service Administration Federal Supply Schedule Contract

1.2.1. General Service Administration (GSA) Federal Supply Schedule (FSS) Contracts reduce contracting and open market costs such as: search for sources, development of technical documents, solicitations, and evaluation of offers.

1.2.2. This BPA is entered to reduce the administrative costs of acquiring commercial products and services from the GSA FSS 70 contract.

1.2.3. All Orders placed against this BPA are subject to the terms and conditions of the FSS Contract.

1.3. DoD ESI

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

1.4. Scope of Use

1.4.1. This BPA is to provide the most current commercially available McAfee brand name hardware, software, and services to the DoD, Intelligence Community, and U.S. Coast Guard via licenses and Technical Support and Maintenance. Software offered through this DoD ESI McAfee BPA will meet the functional requirements and capabilities including, but not limited to, the following categories: Client Protection, Data Protection (Encryption), Data Loss Prevention (DLP), Vulnerability Management, Email Gateway Security, Server Protection, Web Gateway Security, Network Intrusion Prevention System (IPS), Security Incident Event Management (SIEM), Next Generation Firewall (NGFW), and Advanced Threat Defense.

1.5. Term

1.5.1. This Agreement shall commence on its Effective Date, and shall continue in force for a period of five (5) years after such date, unless otherwise terminated as provided herein and is contingent on maintaining or renewing a GSA FSS Schedule.

1.5.2. This Agreement includes a five (5) year ordering period with no options.

1.5.3. This Agreement expires upon completion of all Orders issued within the specified BPA ordering period. The BPA is contingent upon the Contractor maintaining or renewing its GSA FSS Schedule.

2. BPA On-Ramp/Off-Ramp Procedures

2.1. BPA On-Ramp procedures

2.1.1. The Government reserves the right to re-open competition at any time during the term of the Agreement. When an on-ramp is used, the Government will advertise the re-

opening of the competition on GSA ebuy, and awardees shall meet the criteria established in the initial solicitation.

2.1.2. Existing BPA holders will not be required to resubmit quotes. The evaluation and selection of awardees for any on-ramp will be the same as the evaluation and award criteria used for the initial BPA awards. The new awardees will be expected to compete with existing Contractors for delivery orders. All BPAs awarded as an on-ramp will have the same Period of Performance (POP) as the earliest awarded BPA for the OEM or category, regardless of the BPA effective start date. This may result in a base year period of less than one year for the on-ramped BPA in order to achieve co-termination.
For example:
Scenario #1: Company X is awarded a BPA on 01 Jan 2020 with a 12-month base period. Company Y is "on-ramped" 01 Mar 2020 with a base period of 10 months. On 01 Jan 2021, both companies will be eligible to have option year 1 exercised and remain co-termed for the remainder of the BPA ordering periods.
Scenario #2: Continuing the above example, Company Z is awarded a BPA 01 Jul 2022, while other awardees are in the middle of option year 2, the base period of Company Z will be shortened 6 months so that all awardees will be eligible to have the next option period exercised on the same date. Company Z will be eligible for two less option periods so that all BPAs conclude on the same date.

2.2. BPA Off-ramp procedures

2.2.1. To ensure success of this Agreement, each Contractor is required to participate in the BPA Ordering process by submitting quotes in response to Requests for Quotes (RFQs) for which the Contractor has a reasonable chance for award. In addition, the Contractor is expected to promptly improve performance when it does not meet the terms of the BPA or orders issued thereunder. If a Contractor does not meet these expectations, the Government, at its discretion, may "off-ramp" the Contractor via Termination for Convenience (if applicable and only if such action is in the Government's best interest).

2.2.2. If at any point during the period of performance the Contractor decides that it no longer prefers to participate in this DoD ESI BPA Agreement, the Contractor may submit a request to the Contracting Officer to suspend the BPA. The PCO may at his or her discretion, accept the request to cease active participation in the BPA. If a Contractor receives this permission and is currently under contract to perform under any Order, the Contractor will be required to continue to perform under the terms of the specific Order. This provision is independent of any other action permitted under the contract terms and conditions.

3. List of Attachments to the BPA

3.1. All Attachments and Exhibits to this BPA will be deemed a part of this BPA and incorporated by reference. Terms defined in this BPA and used in any Attachment or Exhibit will have the same meaning as in this BPA.

3.2. The parties agree the Attachments listed in this section apply to all orders placed under this BPA and are incorporated as binding terms and conditions.

3.3. The Attachments are set forth as follows:

ATTACHMENT #	TITLE
1	Applicable Federal Acquisition Regulation (FAR) and Defense Federal Acquisition Regulation Supplement (DFARS) Clauses
2	BPA Product and Price List
3	DoD ESI McAfee Master Agreement
4	Acquisition, Contracting, and Technical (ACT) Fees and Payments
5	Glossary
EXHIBIT	TITLE
A	Quarterly Report of Sales Format

4. Obligation

4.1. Extent of Obligation

4.1.1. The Government estimates, but does not guarantee that the volume of purchases through this BPA will be $550 million. The Government is obligated only to the extent of authorized purchases actually made under this BPA. There is no minimum order guarantee.

4.2. Funds Obligation

4.2.1. This BPA does not obligate any funds. Funds will only be obligated on each Order.

5. Authorized Users

5.1. DoD Agencies

5.1.1. The BPA is open for ordering by "DoD or Agencies" on a world-wide basis. "DoD or Agencies" are defined by the 48 Code of Federal Regulations, Section 202.202. In addition, "DoD or Agencies" include the Intelligence Community (IC) and the U.S. Coast Guard. For the purposes of this BPA, a DoD component is defined as follows: the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff, the Unified Combatant Commands, the Inspector General of the Department of Defense (DoD IG), the Defense Agencies, the DoD Field Activities. Authorized Users include the U. S. Coast Guard, the Intelligence Community (IC), and Foreign Military Sales (FMS).

NOTE: FMS require an executed Letter of Authorization and Acceptance as described in DFARS Subpart 225.73. Please be advised that this Agreement supports U.S. based licensing terms only. Any foreign licensing terms shall be executed outside of this Agreement.

5.2. GSA/Other Ordering Organizations

5.2.1. GSA or other applicable ordering organizations/agencies are authorized to place Orders under this Agreement on behalf of DoD end users and must comply with DFARS 208.74.

5.3. Contractors and Integrators

5.3.1. Government contractors performing work for a DoD component may place Orders under this BPA on behalf of the DoD entity if authorized by their cognizant Contracting Officer in accordance with the requirements of FAR 51 and/or DFARS 251, Use of Government Sources by Contractors, as appropriate.

6. Ordering Period and Survival

6.1. Ordering Period

6.1.1. If Orders issued within the BPA ordering period include options, the Order options may be exercised after the BPA ordering end date provided that:

6.1.1.1. The initial order that includes the option was issued during the BPA ordering period(s) and does not exceed 60 months past the expiration of the BPA.

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

6.1.1.3. The Ordering Office satisfies all other applicable regulations for exercise of options.

6.2. GSA Federal Supply Schedule Succession

6.2.1. This BPA is based on the Contractor's current GSA schedule contract number as referenced in section 1.1. In the event the current GSA schedule contract is canceled or expires and a new GSA schedule contract is awarded, this BPA shall automatically transfer to the new GSA schedule contract to the extent the new schedule contract includes the same scope and items as the canceled or expired GSA contract.

6.3. Annual Review for Best Value

6.3.1. This Agreement will be reviewed annually to ensure it still represents the "best value" in accordance with FAR Part 8.405-3 (e).

6.4. Acquisitions and Mergers

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

7. Organization of this Agreement

7.1. BPA Structure

7.1.1. This BPA is organized in two major segments:

7.1.1.1. The general terms and conditions

7.1.1.2. Exhibit and Attachments, which are binding agreements entered into and made effective at the award of this BPA.

7.2. Order of Precedence

7.2.1. The Order of Precedence for resolving any inconsistency between this Agreement and the GSA contract terms shall be as specified in the GSA Contract's Terms and Conditions for Commercial Items, General Services Acquisition Regulation (GSAR) Class Deviation 552.212-4 (s) (Contract Terms and Conditions – Commercial Items.(Alternate II)(FAR Deviation).

7.2.2. The contract terms and conditions of GSAR 552.212-4 (s)(4), as required by Federal law, shall prevail over any terms of the commercial license or any additional negotiated terms at the order level.

7.2.3. In the event of any inconsistency between the general terms and conditions of this Agreement and the terms and conditions of any Attachment to this Agreement, the general terms and conditions of this Agreement shall take precedence over the terms and conditions of any Attachment, unless the parties specifically agree in writing that a term or condition of an Attachment has precedence over the corresponding term or condition in the general terms and conditions of the Agreement.

7.2.4. All orders placed against this BPA shall incorporate the terms and conditions of this BPA, including all Attachments. In the event of a conflict between an ordering document or Contractor's license, support, maintenance or services agreement, the provisions of FAR 52.212-4(s) control.

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

7.3. Glossary

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

8. Product and Service Offerings

8.1. Catalog

8.1.1. The Contractor shall make available to all authorized users of this Agreement the products and services contained in Attachment 2.
All products offered by Contractor shall comply with appropriate standards enumerated in the Gig Technical Guidance Federation (GTG-F). The GTG-F is an online repository of Information Technology (IT) standards. GTG-F online supports the continuing evolution of the DoD Information Technology Standard Registry (DISR) and the automation of all its processes and is the repository for information related to DOD IT and National Security Systems (NSS) standards. GTG-F should be used by anyone involved in the management, development, or acquisition of new or improved systems within DoD.
IT Standards, and the mandated compendium can be obtained from the DoD IT standards management tool, which is available for use by CAC-equipped authorized parties and can be accessed for account requests at https://gtg.csd.disa.mil

8.1.2. The Master Agreement attached as Attachment 3 shall govern the grant, provision and use of all software licensed to and ordered by the DoD pursuant to this BPA.

8.2. Technology Refreshment/Products and Services Improvement

8.2.1. The Contractor shall inform the DoD of changes to the products offered under this Agreement as they become commercially available. Quotes shall be submitted by the Contractor and include a description of the products and/or services, an electronic copy of the pricing tables, technical literature that describes the products and/or services, and evidence of inclusion on GSA schedule. Discounts shall be at the same or greater discount level as provided under the original BPA product prices.

8.2.2. If at any time during the life of this Agreement, the software publisher schedules the products in Attachment 2 (include software, hardware, and firmware) for discontinuation, improvement and/or replacement, the Contractor shall provide a quote to include the new or revised products on the Agreement under the appropriate line items. Proposed prices for new or revised products shall be constructed in accordance with this Agreement for prices associated with the consideration of the overall purchasing by all authorized users. Discounts shall be at the same or greater discount level as provided under the original Agreement product prices. Quotes shall be submitted to the Contracting Officer within seven (7) days of the Contractor's awareness of McAfee's intent to discontinue, improve, and/or replace its originally offered products. Improvement of product includes new releases, updates, and upgrades including additional features and functionality, and successor or upgrade products.

8.2.3. Changes quoted by the Contractor shall become effective only by written acceptance by both the Contractor and the Government.

8.2.4. In the event the Contractor's catalog in Attachment 2 are not updated timely, the ordering office is authorized to issue an Order under this Agreement for items listed on the Contractor's GSA FSS catalog provided the required items are within the scope of this Agreement and included on the Contractor's GSA FSS catalog at time of purchase. Contractor shall quote their applicable Agreement discounted price at the same or greater discount level as the original Agreement product prices.

8.3. Cloud Computing

8.3.1. It is anticipated that products meeting the definition of cloud computing (per DFARS Subpart 239.7601) will be added to the BPA Product and Price List via modification during the term of this BPA. All cloud-based products made available for sale will list its certification status with FedRAMP (https://marketplace.fedramp.gov/) and the DoD Provisional Authority (http://www.disa.mil/computing/cloud-services/cloud-support).

9. Pricing Terms

9.1. Base Pricing

9.1.1. Prices for commercial products and technical maintenance and support are specified in Attachment 2. The Contractor shall not charge prices in excess of those listed in this BPA.

9.1.2. Prices are not subject to upward adjustment during the base period. The minimum BPA discount off of the GSA FSS prices is 2% and must remain at this level for the life of the BPA.
Contractor shall include ACT Fees in Contractor's prices in accordance with Section 12.2.

9.1.3. Technology refreshes shall be subject to paragraph 8.2. The prices in Attachment 2 will be reviewed annually or as required to determine whether a reduction is appropriate in accordance with section 8.2.

9.2. Most Favored Customer

9.2.1. Contractor shall ensure the prices under this BPA are as low as prices the Contractor has under any other contract instrument with any customer under like terms and conditions.

9.3. Additional Price and Discount Terms

9.3.1. The Government may secure additional discounts at the time of placing an Order. Spot discounts are authorized and encouraged.

9.3.2. Additional price reductions may be negotiated for individual orders. DoD customers are encouraged to consolidate their purchases of McAfee products prior to releasing requests for quotes under a DoD ESI Agreement.

9.4. GSA Program Extension

9.4.1. Office of Management and Budget (OMB) Federal Wide category management working with the GSA Software Purchase Agreements initiative to maximize cost savings and achieve best quality when acquiring commercial products and services. If during the term of this Agreement, Publisher and its Contractors enter into a government-wide Agreement with GSA, which includes pricing for the specific products or services under similar terms and conditions as those licensed by the DoD under this Agreement, Publisher and its Contractors agree to reduce the prices for the remaining term of this Agreement to meet the prices and fees under the ESA and GSA agreement, or shall license the products and sell the services under the ESA and GSA agreement for the same remaining term of this Agreement, at the discretion of the DoD. Neither the Publisher nor its Contractors shall preclude the government from purchasing or licensing commercial products or services under an ESA and GSA Agreement.

9.5. Product and Pricing Data Submission

9.5.1. Data Submission Format

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

9.5.1.2. Changes to Contractor's products or prices shall only be effective upon receipt of written approval from the Procuring Contract Officer ("PCO").

10. Ordering

10.1. Ordering Guide

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

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

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

10.1.4. This guide shall be continuously updated as required and shall not require formal modification to the BPA. All changes to the ordering guide shall be reviewed and approved by the PCO prior to posting. Administrative changes may be reviewed and approved by the SPM prior to posting.

10.2. Applicability of FAR and DFARS Clauses

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

10.2.2. Orders issued against this BPA are subject to the FAR and DFARS clauses as indicated in Attachment 1. Additional FAR and DFARS clauses may apply to the Delivery Order.

10.2.3. The FAR and DFARS clauses listed in Attachment #1 are those in effect as of the effective date of this BPA. Ordering Offices are responsible for incorporating the most current version of the applicable FAR and DFARS clauses in the Delivery Order if required.

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

10.3. Web Sites and Electronic Ordering

10.3.1. This BPA will be posted to the DoD ESI website as part of the ESI program. The web site can be viewed at http://www.esi.mil and is publicly accessible. The Government may also post this Agreement to other federal Government or DoD web sites, some of which may be publicly accessible.

10.3.2. Online ordering may also be accomplished through DoD controlled web sites.

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

10.3.4. This BPA may also be loaded into publicly accessible electronic catalog systems of other DoD agencies.

10.4. Order Suspension

10.4.1. There may be occasions where the Government may suspend ordering (by catalog line item or Contract Line Item Number (CLIN) and may include the entire BPA) or cancel the BPA for cause. Reasons for suspension or cancellation can include but are not limited to delinquent sales report submission, failure to submit quotes on RFQs, and non-compliance to BPA terms and conditions. If a suspension is announced, the Contractor shall adhere to this suspension by not accepting/processing Orders for the suspended item(s).

11. Invoicing and Payment

11.1. The requirements of a proper invoice will be specified in the order. Invoices will be submitted to the address specified within the order issued against this BPA.

11.2. The terms and conditions included in this BPA apply to all purchases made pursuant to it. In the event of an inconsistency between the provisions of this BPA and the Contractor's invoice, the provisions of this BPA will take precedence (see Section 7.2).

12. Contractor BPA Management Obligations

12.1. Report of Sales

12.1.1. The Contractor shall provide a Quarterly Sales Report to the Software Product Manager (SPM) and the PCO in electronic format within thirty (30) days following completion of the quarterly reporting period, or as otherwise requested by the SPM. The report shall be submitted in the standard format shown in Exhibit A. Sales reports are required even in those instances where no sales are made. The SPM or PCO shall provide written approval of each report to the Contractor. At the end of each calendar quarter, the written approval provided to the Contractor will be accompanied by a request to remit the ACT fees in accordance with Attachment 4. Orders issued under this BPA shall be included on the Quarterly Sales Report.

12.2. Fees and Payments

12.2.1. The Contractor shall pay the ACT fees as described in Attachment 4 within 30 days after notification of approval from the applicable SPM for the sales report required pursuant to Section 12.1.

12.2.2. Attachment 4 will be updated as required concerning Points of Contact and related information, and shall not require formal modification to the BPA. All changes to Attachment 4 will be reviewed and approved by the applicable SPM or PCO.

12.3. Centralized Administration

12.3.1. The Contractor shall provide centralized administration, in the form of a Program Manager, in support of all work performed under this Agreement. The Program Manager, at a minimum, is required to participate in periodic program management reviews (which may require travel to a Government named site). Additional functions of centralized administration would include customer service, educating the sales force, and submission of quarterly reports and approved fee payments.

12.4. Records

12.4.1. The Contractor shall maintain archival copies of all Orders for the term of the Agreement and in accordance with FAR Subpart 4.7 requirements. Copies shall be made available to the Government upon request.

12.5. Program Management Reviews (PMR)

12.5.1. The Contractor shall participate in regular reviews of the progress of the Agreement. Reviews may be held at least twice yearly as scheduled by the SPM. During these reviews the Contractor shall report on status of BPA sales, sales leakage (as required by Section 12.6), marketing and any outstanding issues concerning the BPA, among other things. PMR agenda and presentation format shall be provided by the SPM to Contractor prior to each PMR. Travel expenses are the responsibility of the Contractor.

12.6. Sales Leakage Prevention

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

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

12.6.3. The Contractor in collaboration with the Publisher shall direct potential customers who are supporting the DoD to utilize DoD ESI for their purchases. Only customers who are authorized users (Section 5) may order from this product catalog.

12.7. Marketing and Promotion

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

12.7.2. The Contractor may obtain standardized ESI marketing materials by requesting access from the SPM.

12.7.3. The Contractor's use of the ESI logo, seal or emblem shall be limited to materials describing the products and services which are specifically made available under this BPA. ESI reserves the right to review any materials that contain the ESI brand prior to use by the Contractor, and, at a minimum, requires the Contractor to follow these guidelines:

12.7.3.1. **Use Only The Approved Master Artwork.** Do not alter or distort the appearance of the logo in anyway, for example, by adding new design elements or colors or changing the font. The logo must always look sharp, clean, and well produced.

12.7.3.2. **Allow A Minimum Clear Space Around The ESI Logo.** Always allow for a minimum clear space around the logo. Never violate the clear space with any graphic elements, words or charts.

12.7.3.3. **Maintain Legibility.** Never reproduce the logo in a manner that causes the logo to become illegible or blurry, which may happen if the logo is reproduced too small.

12.7.4. All materials made available for public view must include the following statement: "The ESI logo/marking is used with permission. ESI procedures are explained in DFARS 208.74 and DoD CIO Guidance and Policy memorandum No. 12-8430 dated July 26, 2000."

12.8. Enterprise-wide Contract Management Application (ECMRA)

12.8.1. The contractor shall report contractor labor hours (including subcontractor labor hours) required for performance of services provided through this Agreement for SSC Pacific via a secure data collection site.

12.8.2. Contracted services excluded from reporting are based on Product Service Codes (PSCs). The excluded PSCs are:
W, Lease/Rental of Equipment;
X, Lease/Rental of Facilities;
Y, Construction of Structures and Facilities;
D, Automatic Data Processing and Telecommunications, IT and Telecom-Telecommunications Transmission (D304) and Internet (D322) ONLY;
S, Utilities ONLY;
V, Freight and Shipping ONLY.

12.8.3. The contractor is required to completely fill in all required data fields using the following web address: https://www.ecmra.mil.

12.8.4. Reporting inputs will be for the labor executed during the period of performance during each Government fiscal year (FY), which runs October 1 through September 30. While inputs may be reported any time during the FY, all data shall be reported no later than October 31 of each calendar year. Contractors may direct questions to the help desk, linked at https://www.ecmra.mil.

13. Indemnity/Liquidated Damages/Infringement Claims

13.1. To the maximum extent permitted by law, Contractor will defend, indemnify, protect and hold harmless the DoD and their respective officers, directors, employees, agents, and Affiliates from and against any and all claims, losses, liens, demands, attorneys' fees, damages, liabilities, costs, expenses, obligations, causes of action, or suits, (collectively "Claims") by a third party, that are caused by or arise out of: i) any wrongful act or omission, whether active or passive and whether actual or alleged, or willful misconduct of the Contractor or its employees subcontractors or agents; and ii) property loss, damage, personal injury or death, caused by the Contractor, or any of the Contractor's employees, subcontractors or agents.

13.2. Liquidated damages may be assessed in accordance with FAR Part 11.5 – Liquidated Damages, as specified in a BPA Call order.

13.3. Claims of Infringement will be handled in accordance with DFARS 227.7008.

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

14. Personal Data and Personally Identifiable Information (PII)

14.1. <u>Compliance with Privacy Act</u>

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

15. Termination

15.1. <u>Effect of Termination</u>

15.1.1. Effect of Termination by Contractor. Notwithstanding any termination of this BPA, by Contractor, including any Attachments to this Agreement, the DoD shall have the right to continue use of any perpetually licensed Products and Documentation that were purchased by a delivery order issued prior to the termination of the Agreement.

16. Surviving Provisions

16.1. The following Sections shall survive the termination or expiration of this Agreement: Section 13 (Indemnity), Section 14 (Personal Data and Personally Identifiable Information), Section 15 (Effect of Termination), Section 16 (Surviving Provisions), Section 18 (General Provisions) and any software licenses acquired pursuant to this BPA where usage rights extend beyond the expiration or termination date of this BPA.

17. Relationship of the Parties

17.1. Each party will act solely as an independent contractor. Nothing contained herein will be construed to create the relationship of principal and agent, employer and employee, partners or joint ventures.

Neither party assumes any liability for personal injury or property damage arising out of the other party's performance of this Agreement.

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

18. General Provisions

18.1. Notices

18.1.1. All notices required under this BPA will be in writing and will be sent to the Government PCO and the Contractor's designated Program Manager for this Agreement at the address set forth in the SF 1449, unless otherwise agreed to by the parties. Notices are considered to be "issued" when copies are either deposited in the mail, transmitted by facsimile, or sent by other electronic commerce methods, such as email.

18.2. Reference to Days

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

18.3. Severability

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

18.4. Waiver

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

18.5. Dispute Resolution

18.5.1. In the event of disagreement with respect to any aspect of this Agreement, the parties agree to discuss in good-faith to reach an amicable resolution, and to escalate such resolution process to the appropriate members of their respective management organization who have the power and authority to achieve a successful resolution. All disputes will be governed by the Contract Disputes Act of 1978.

18.6. Entire Agreement

18.6.1. This Agreement, together with all Attachments, constitutes the entire Agreement between DoD and Contractor and supersedes all prior or contemporaneous communications, representations, and agreements, whether oral or written, regarding the subject matter of this Agreement. No modifications to the terms of this Agreement shall be valid unless in writing and authorized, in accordance with FAR Part 43.

Attachment 5

Glossary

Definitions contained in the Master Agreement are applicable to this Agreement.
Contractor: The McAfee approved reseller, sometimes referred to as the Authorized Partner, from whom Orders for Products are placed.
DoD or Agency: As defined by the 48 Code of Federal Regulations, section 202.101 to include the Intelligence Community and the U.S. Coast Guard.

Order: means an ordering document executed against the aforementioned BPA, acceptable to McAfee, for the benefit of the Government, and describes in greater detail the Government's order-specific information, including, but not limited to, the Government's billing information, lists of Products ordered, pricing, payment and shipping information.

Product: means the Software, Appliances, and Maintenance Support that the Government has ordered, and McAfee has agreed to provide, as indicated on the applicable Order.

(End of Summary of Changes)