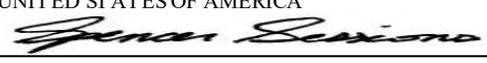


AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT			1. CONTRACT ID CODE	PAGE OF PAGES 1 15
2. AMENDMENT/MODIFICATION NO. P00001	3. EFFECTIVE DATE 07-Dec-2018	4. REQUISITION/PURCHASE REQ. NO.		5. PROJECT NO.(If applicable)
6. ISSUED BY SPAWAR SYSTEMS CENTER PACIFIC 2.0 SHANE MAHELONA, CODE 22550 SHANE.MAHELONA@NAVY.MIL 53560 HULL STREET SAN DIEGO CA 92152-5001	CODE N66001	7. ADMINISTERED BY (If other than item 6) See Item 6		
8. NAME AND ADDRESS OF CONTRACTOR (No., Street, County, State and Zip Code) SHI INTERNATIONAL CORP. LANCE LORENZ 290 DAVIDSON AVE STE 101 SOMERSET NJ 08873-4179		9A. AMENDMENT OF SOLICITATION NO.		
		9B. DATED (SEE ITEM 11)		
		X	10A. MOD. OF CONTRACT/ORDER NO. N6600119A0007	
		X	10B. DATED (SEE ITEM 13) 29-Nov-2018	
CODE 1HTFO	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).				
X C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF: FAR 52.212-4(c) Changes				
D. OTHER (Specify type of modification and authority)				
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: smahelon19496 The purpose of this modification is to 1) revise the POP end date by deleting Option Year 10, 2) replace SF1449 reference with DD 1155 in the BPA Terms and Conditions, and 3) clarifies Section I serves as Attachment 1.				
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 / CONTRACT SPECIALIST TEL: 619-553-4523 EMAIL: spencer.sessions@navy.mil		
15B. CONTRACTOR/OFFEROR	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA BY  (Signature of Contracting Officer)	16C. DATE SIGNED 07-Dec-2018	
(Signature of person authorized to sign)				

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT			1. CONTRACT ID CODE	PAGE OF PAGES	
2. AMENDMENT/MODIFICATION NO.		3. EFFECTIVE DATE	4. REQUISITION/PURCHASE REQ. NO.		5. PROJECT NO.(If applicable)
6. ISSUED BY SPAWAR SYSTEMS CENTER PACIFIC 2.0 SHANE MAHELONA, CODE 22550 SHANE.MAHELONA@NAVY.MIL 53560 HULL STREET SAN DIEGO CA 92152-5001		CODE N66001	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) SHI INTERNATIONAL CORP. LANCE LORENZ 290 DAVIDSON AVE STE 101 SOMERSET NJ 08873-4179			9A. AMENDMENT OF SOLICITATION NO.		
			9B. DATED (SEE ITEM 11)		
			X	10A. MOD. OF CONTRACT/ORDER NO. N6600119A0007	
			X	10B. DATED (SEE ITEM 13) 29-Nov-2018	
CODE 1HTFO		FACILITY CODE			
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS					
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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: FAR 52.212-4(c) Changes					
D. OTHER (Specify type of modification and authority)					
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: smahelon19496 The purpose of this modification is to 1) revise the POP end date by deleting Option Year 10, 2) replace SF1449 reference with DD 1155 in the BPA Terms and Conditions, and 3) clarifies Section I serves as Attachment 1.					
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)		
			TEL: _____ EMAIL: _____		
15B. CONTRACTOR/OFFEROR		15C. DATE SIGNED	16B. UNITED STATES OF AMERICA		16C. DATE SIGNED
_____ (Signature of person authorized to sign)			BY _____ (Signature of Contracting Officer)		

SECTION SF 30 BLOCK 14 CONTINUATION PAGE

SUMMARY OF CHANGES

SECTION A - SOLICITATION/CONTRACT FORM

The Period of Performance End Date has changed from 28-Nov-2029 to 28-Nov-2028.

The following have been modified:

BPA TERMS AND CONDITIONS

1. Introduction/Recitals

1.1. Federal Acquisition Streamlining Act

1.1.1. In the spirit of the Federal Acquisition Streamlining Act, the Department of the Navy, on behalf of the U.S. Department of Defense (DoD) Enterprise Software Initiative (ESI) (referred to hereafter as the “Government” or “DoD”) and SHI International Corp. (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 **DD 1155**.

1.2. GSA FSS Contract

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

1.2.2. This BPA is issued to reduce the administrative costs of acquiring commercial products and services from the GSA FSS 70 Contract(s) GS-35F-0111K, Special Item Number 132-32 Term Licenses, 132-33 Perpetual Licenses and Cloud Computing 132-40 (“FSS 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

The DoD ESI is a joint DoD initiative 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

This Agreement is to provide the most current commercially available Microsoft brand name licenses, Software Assurance [SA], and subscriptions (to include Windows, Office 365 [O365]), Azure, and bridge versions of Client Access Licenses among others) to the DoD. The scope of this effort is worldwide. Software offered through these DoD ESI Microsoft BPAs will meet the functional requirements and capabilities in the following categories: Business Solutions, Client Access Licenses, Developer Tools, Management Tools, Office Applications, Operating Systems, Server Software, Utility, Subscriptions, Mobility, and SA.

1.5. Term

1.5.1. This BPA shall commence on the Effective Date, and shall continue in force for a period of ten years after such date, unless otherwise modified or terminated as provided herein and is contingent on maintaining or renewing a GSA FSS Schedule.

1.5.2. This BPA includes a base ordering period, with nine (9) one-year option ordering periods.

BPA Base Ordering Period:	29 November 2018 – 28 November 2019
BPA Option Ordering Period 1:	29 November 2019 – 28 November 2020
BPA Option Ordering Period 2:	29 November 2020 – 28 November 2021
BPA Option Ordering Period 3:	29 November 2021 – 28 November 2022
BPA Option Ordering Period 4:	29 November 2022 – 28 November 2023
BPA Option Ordering Period 5:	29 November 2023 – 28 November 2024
BPA Option Ordering Period 6:	29 November 2024 – 28 November 2025
BPA Option Ordering Period 7:	29 November 2025 – 28 November 2026
BPA Option Ordering Period 8:	29 November 2026 – 28 November 2027
BPA Option Ordering Period 9:	29 November 2027 – 28 November 2028

1.5.3. This BPA expires upon completion of all Orders issued within the specified BPA ordering period, inclusive of any exercised BPA option periods. This BPA is contingent upon the Contractor maintaining or renewing its GSA FSS Schedule. The Government is not obligated to exercise the BPA options periods.

1.5.4. Other

1.5.4.1. On-ramp procedures: The Government reserves the right to reopen competition at any time during the term of the BPA based on its assessment of the marketplace. When an on-ramp is used, the Government will advertise the reopening of the competition on GSA eBuy, and awardees shall meet the criteria established in the initial solicitation. 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 award(s). New awardees will be expected to compete with the existing Contractors for 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.

1.5.4.2. Off-ramp procedures: To ensure success of DoD ESI, each Contractor is expected to participate and perform in accordance with the terms and conditions of the BPA. If the Contractor is not meeting the terms and conditions of the BPA, the Government reserves the right to terminate the agreement.

2. List of Attachments to the BPA

- 2.1. All attachments to this BPA will be deemed a part of this BPA and are incorporated by reference. Definitions and terms will be common throughout the document and Attachments.
- 2.2. The parties agree the Attachments listed in Section 2.3 apply to all orders placed under this BPA and are binding terms and conditions.
- 2.3. 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	Microsoft Master License Agreement

4 Fees and Payments

EXHIBIT

A Quarterly Sales Report Format

3. Obligation

3.1. Extent of Obligation

- 3.1.1. The Government estimates, but does not guarantee, that the volume of purchases through this BPA will be \$3.174 billion. The Government is obligated only to the extent of authorized purchases actually made under this BPA.

3.2. Funds Obligation

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

4. Authorized Users

4.1. DoD or Agencies

- 4.1.1. These BPAs are open for ordering by all DoD “Departments and Agencies” on a world-wide basis. “Departments and Agencies” are defined by Title 48 Code of Federal Regulations, Section 202.101. “Departments and Agencies” consist of the Chairman of the Joint Chiefs of Staff, the Unified Combatant Commands, the Inspector General of the Department of Defense (DoD IG), and DoD Field Activities. In addition, the BPA is open for ordering by the Intelligence Community (IC), the U.S. Coast Guard and Foreign Military Sales (FMS) with a Letter of Authorization.

4.2. GSA, Other Ordering Organizations, and Organizations

- GSA or other applicable ordering agencies /organizations, ordering on behalf of the DoD and/or FMS, are authorized to place Orders under this BPA and must comply with DFARS 208.74.

4.2.1. Contractors and Integrators

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

5. Ordering Period and Survival

5.1. Ordering Period

- 5.1.1. If Orders issued within the BPA Ordering Period(s) include options, the order options may be exercised after the BPA ordering end date(s) provided that:
- 5.1.1.1. The initial order that includes the option was issued during the BPA ordering period(s), and does not exceed 60 months past the expiration date of the BPA;
 - 5.1.1.2. 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
 - 5.1.1.3. The Ordering Office satisfies all other applicable regulations for exercise of options.

5.2. GSA Federal Supply Schedule Succession

- 5.2.1. This BPA is based on the Contractor’s current GSA schedule contract number as referenced in section 1.2.2. In the event the current GSA schedule contract is canceled or expires and a new GSA schedule contract is awarded, this BPA shall transfer to the new

GSA schedule contract to the extent the new schedule contract includes the same or substantially the same scope and items as the canceled or expired GSA contract.

5.3. Annual Review for Best Value

5.3.1. This BPA will be reviewed annually to ensure that it still represents “best value” as referenced in FAR 8.405-3(e).

5.4. Acquisitions and Mergers

5.4.1. This BPA shall survive unto Contractor, its Successors, all rights and assignments. The terms and conditions in this BPA 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 BPA.

6. **Organization of this BPA**

6.1. BPA Structure

6.1.1. This BPA is organized in two major segments:

6.1.1.1. The general terms and conditions

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

6.2. Order of Precedence

6.2.1. The Order of Precedence for resolving any inconsistency between this BPA and the GSA contract terms shall be as specified in the GSA contract’s Commercial Items clause, FAR 52.212-4 and the General Services Administration Acquisition Regulation (GSAR) Deviation thereto 552.212-4.

6.2.2. The provisions of FAR 52.212-4 and GSAR 552.212-4, as required by Federal law, shall prevail over any terms of the commercial License or any additional negotiated terms at the order level.

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

6.2.4. All Orders placed against this BPA shall hereby 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 Order of Precedence provisions of FAR 52.212-4(s) and GSAR 552.212-4(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.

6.3. Glossary

6.3.1 A glossary of all terms is contained in Appendix A.

7. **Product and Service Offerings**

7.1. Catalog

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

7.1.2 All products offered by Contractor shall comply with appropriate standards enumerated in the GIG Technical Guidance Federation (GTG-F). The GTG-F is maintained by the DoD Executive

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

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

7.2. Technology Refreshment / Products and Services Improvement

- 7.2.1. The Contractor shall propose improvements to the products and services offered under this BPA as products become commercially available. Proposals shall be submitted by the Contractor and include a description of the products and/or services, an electronic copy of the pricing tables, technical literature that describes the products and/or services, and evidence of inclusion on GSA schedule. Discounts shall be at the same or greater discount level as provided under the original BPA product and service prices.

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

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

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

7.3. Cloud Computing

Products meeting the definition of cloud computing (per DFARS Subpart 239.7601) are included in the BPA Product and Price List. All cloud-based products made available for sale shall at least meet the certification of FedRAMP "moderate" (<https://marketplace.fedramp.gov/>) and have been granted DoD Provisional Authorization for at least security Impact Level 2.

7.4. Microsoft Service Level Agreement Assistance

Reseller shall assist DoD customers with the claim process for service downtime and if requested shall work with the customer to ensure Microsoft's claim process is followed in accordance with Microsoft's Service Level Agreement when consuming cloud services.

7.5. Online Services Account Activation and Management.

Upon request, the Contractor shall work with the Government to develop a process for activating, managing and terminating accounts for Online Services. Contractor shall work with the Government to ensure a process is developed to enable successful tracking and transition of employee and contractor accounts when they are onboarding, getting reassigned, or exiting the Enrolled Affiliates' organization. Contractor shall assist the DoD in accounting for subscriptions of Online Services across the enterprise. Contractor shall enable the transfer of all account information for Online Services to another reseller in the case of any follow-on acquisition to the respective Enterprise Agreement (EA).

7.6. Azure Consumption Management.

- 7.6.1. Contractor shall assist Government users in establishing accounts by organization (where applicable) for consolidated billing and user accounts for detailed billing. The billing reports shall be made available for a minimum of three (3) months via online access or upon request manually as directed at the Order level. The billing reports shall be granular in nature to include:
- By the hour, day, or month
 - By each account participating on the applicable order.
 - By product or product resource
 - By tags that Government will define at the Order level (if applicable)
- 7.6.2. The Government will be responsible for their resource consumption in Azure and the commitment of resources. The Contractor shall also assist Government users establish billing alerts in the Azure portal and budget governance to ensure utilized resources do not exceed funded obligations.
- 7.6.3. Contractor shall monitor the monetary consumption levels of Azure services for each enrolled affiliate consuming Azure under the Azure Monetary Commitment SKUs on the BPA. Contractor shall report to enrolled affiliate and the DoD ESI Software Product Manager the total dollars consumed as the price paid between Microsoft and the Contractor for the purpose of calculating the fulfillment Consumption Threshold for the Azure Tiered Discount Table in Section 8.2.1.

8. Pricing Terms

8.1. Base Pricing

- 8.1.1. Prices for commercial products and services are specified in Attachment 2. The Contractor shall not charge prices in excess of those listed in this BPA.
- 8.1.2. Pricing on Select, Enterprise and Additional Products will be fixed for a three-year duration. In year 3, Years 4 through 6 will be negotiated and fixed for the following three years and Years 7 through 10 will be negotiated in Year 6.
- 8.1.3. Technology refreshes shall be subject to paragraph 7.2.2. 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. Contractor shall include ACT Fees in Contractor's prices in accordance with Section 11.4.

8.2. Azure Tiered Discount Table

- 8.2.1. Discount tiers are based on the aggregation of Azure consumption in dollars by enrollment over a one year period of time. The respective discount shall be applied in the subsequent year.

Tier	Consumption Threshold (Per Year)	Azure Commitment Discount
Tier 1	<\$1M	0%
Tier 2	\$1M - \$4.99M	7%
Tier 3	\$5M - \$9.99M	10%
Tier 4	\$10M - \$19.99M	12%

8.3. Most Favored Customer

- 8.3.1. The Contractor shall ensure these BPA prices are equal to the lowest prices the Contractor has under any other contract instrument with any customer under like quantities, terms and conditions.

8.4. Additional Price and Discount Terms

- 8.4.1. The Government may secure additional discounts at the time of placing an order. Additional spot discounts are authorized and encouraged.
- 8.4.2. Attachment 2 may contain additional discounts for volume-based or transaction-based discounts.
- 8.4.3. Licenses w/ SA (L&SA). Lump-sum payment that covers the remainder of an EA agreement. Installment payments for new license purchases are not allowed.
- 8.4.4. Subscription License (Annual Payment Not to Exceed 12 months per base/option year). Subscription prices shall be prorated from the actual start date of coverage to the end of the base or option year in which it was purchased. Proration shall be calculated on a full month basis.
- 8.4.5. Media and Documentation pricing shall be established at the Order level.

8.5. GSA Program Extension

- 8.5.1. Office of Management and Budget (OMB) Federal Wide category management as well as DoD ESI and the GSA Software Purchase Agreements initiative are working to maximize cost savings and achieve the best practices for acquiring commercial products and services. If during the term of the BPA, the OEM enters into a Government-wide agreement with another organization (such as GSA), which includes pricing for the specific products or services under similar terms and conditions as those licensed by this DoD ESI BPA, the Contractor will reduce the prices in Attachment 2 (if a reduction is applicable) for the remaining BPA term to match the new prices and fees. If the products or services are not available under the current BPA, it will be modified to provide the new products and services for the remaining term. NOTE: This scenario does not refer to the award of Government Wide Acquisition Contracts (GWAC) under the authority of section 5112(e) of the Clinger-Cohen Act (40 U.S.C. 11302(e)).
- 8.5.2. **Future Initiatives.** Office of Management and Budget (OMB) is leading the Federal Wide Category Management effort by collaborating with agencies such as DoD and GSA initiative to maximize cost savings and implement the best practices for acquiring commercial products and services. If during the term of the BPA, such an initiative comes to fruition, the Government reserves the right to expand the scope, the pricing and terms and conditions of this BPA to include these authorized customers. NOTE: This scenario does not apply to the award of Government Wide Acquisition Contracts (GWAC) under the Clinger-Cohen Act (40 U.S.C. 11302(e) section 5112(e)).

9. **Product and Pricing Data Submission**

9.1. Data Submission Format

- 9.1.1. Contractor shall submit and keep current all products, service and pricing data in the format described in Attachment 2 for publication in all web and other methods for public and private display and access.
- 9.1.2. Changes to Contractor's products or prices shall only be effective upon receipt of written approval from the 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, Contractor physical address, Contractor 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 a formal modification to the BPA.

10.2. Applicability of FAR and DFARS Provisions

- 10.2.1. Orders issued against this BPA are subject to the FAR clauses included in the underlying GSA Schedule.
- 10.2.2. Orders issued against this BPA are subject to the FAR and DFARS clauses as indicated in Attachment 1. Additional FAR and DFARS clauses may apply to the Order.
- 10.2.3. The 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 or superseding version of the applicable DFARS clauses in the Order if required.
- 10.2.4. The Ordering Offices will include applicable the end user component (local requirements) FAR supplement requirements, as required, for incorporation in the Delivery Order.

10.3. Web Sites and Electronic Ordering

- 10.3.1. This BPA will be posted to the DoD ESI website <http://www.esi.mil>. The Government may also post this BPA to other federal Government or DoD web sites, some of which may be publicly accessible.
- 10.3.2. During the term of the BPA, the Government may incorporate future electronic ordering improvements/capabilities. The Contractor shall partner with the Government to ensure any required electronic-commerce (EC) capabilities are implemented where applicable and accept and respond to secure on-line orders and customer requests consistent with the BPA terms.
- 10.3.3. On-line ordering may also be accomplished through DoD controlled web sites.
- 10.3.4. The Contractor shall maintain coordinated and integrated hypertext links to the ESI web site from their World Wide Web site(s).

10.4. 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).

10.5. Dealer Relationship

- 10.5.1. If a dealer is specifically named and authorized by the BPA Holder's GSA Contract, the authorized dealer may act as an agent of this BPA. The responsibilities of the BPA holder in this dealer relationship are as follows:

- 10.5.1.1. Receive all Orders issued against the BPA.

- 10.5.1.2. Submit invoices for payment.
- 10.5.1.3. Track and report sales from their dealers in accordance with 11.4 and 11.8.
- 10.5.2. The terms and conditions of this BPA and the underlying GSA Schedule contract shall also apply to the dealer.

11. Invoicing and Payment

- 11.1. The proper invoice requirements will be specified in the Order. Invoices will be submitted to the address specified within the Order issued against this 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 6.2.5).

11.3. Cloud Invoicing

- 11.3.1. If Microsoft provides a cloud service (i.e. IaaS, PaaS or SaaS) that is determined by the Government to qualify as a supply item (i.e. an Exception to the Prohibition on the Advance Payment of Services) payment shall be made at the time the service is provisioned to the customer and not contingent on actual use.
- 11.3.2. Payment for invoices for "actual use" services such as IaaS and PaaS which are consumed by the customer shall be paid in arrears for acceptable services. Actual services consumed by the customer shall be detailed in the invoice supporting documentation according to the terms contracted, and will be verified by the Government end use at the Order level as part of the acceptance process. These payments are considered "delivery/invoice payments" for Prompt Payment purposes in accordance with FAR part 32.001. Payment shall only be rendered upon completion of the work and acceptance by the COR.

11.4. Report of Sales

- 11.4.1. The Contractor shall provide a Report of Sales, Exhibit A, to the SPM and the PCO in electronic format within thirty (30) days following completion of the quarterly reporting period, or as otherwise requested by the SPM. The report shall be submitted in the standard format shown in Attachment 6. Sales reports are also required even in those instances where if no sales are made during the reporting period. 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. The SPM or PCO will provide a copy of the approved quarterly Report of Sales to the DoD Components participating in fee sharing.

11.5. Fees and Payments

- 11.5.1. The Contractor shall pay the ACT fees to the parties described in Attachment 4 within 30 days after notification of approval from the applicable SPM or PCO for the sales report required pursuant to section 11.4.
- 11.5.2. 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.
- 11.5.3. ACT Fees of 1% will be assessed on all software, software assurance, and subscriptions (to include all cloud products).

11.6. Centralized Administration

- 11.6.1. The Contractor must provide a Program Manager for centralized administration to support this BPA. The Program Manager, at a minimum, is required to participate in

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

11.7. Records

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

11.8. Program Management Reviews (PMR)

- 11.8.1. The Contractor shall participate in regular reviews of the progress of the BPA. Reviews shall be held at least twice yearly as scheduled by the SPM. During these reviews the Contractor shall report on status of BPA sales, sales leakage, 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.

11.9. Sales Leakage Prevention

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

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

11.10. Marketing and Promotion

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

- 11.10.2. The Contractor may obtain standardized ESI marketing materials by requesting from the SPM.

- 11.10.3. 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:

- 11.10.3.1. **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.

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

11.10.3.3. **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.

11.10.4. All materials made available for public view must include the following statement: "The ESI logo/markings 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. Indemnity/Liquidated Damages/Infringement Claims

- 12.1. To the maximum extent permitted by law, Contractor will indemnify, protect and hold harmless DoD and their respective officers, directors, employees, agents, and Affiliates from and against any and all claims, losses, liens, demands, attorneys' fees, damages, liabilities, costs, expenses, obligations, causes of action, or suits, (collectively "Claims") by a third party, that are caused by or arise out of: i) any wrongful act or omission, whether active or passive, and whether actual or alleged, or willful misconduct of the Contractor or its employees, subcontractors or agents; and ii) property loss, damage, personal injury or death, caused by the Contractor, or any of the Contractor's employees, subcontractors or agents.
- 12.2. Liquidated Damages may be assessed in accordance with FAR Subpart 11.5 – Liquidated Damages, as specified in a Sales or Order.
- 12.3. Claims of infringement are handled in accordance with DFARS 227.70.
- 12.4. 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.

13. Personal Data and Personally Identifiable Information (PII)

13.1. Compliance with Privacy Act

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

14. Termination

14.1. Effect of Termination.

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

14.2. Surviving Provisions.

- 14.2.1. The following sections shall survive the termination or expiration of this BPA: Section 12 (Indemnity), Section 13 (Personal Data and Personally Identifiable Information), Section 14.1 (Effect of Termination), Section 14.2 (Surviving provisions), Section 16 (General Provisions) and any software Licenses acquired pursuant to this BPA where usage rights extend beyond the expiration or termination date of this BPA.

15. Relationship of the Parties

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

16. General Provisions

16.1. Headings

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

16.2. Notices

- 16.2.1. 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 BPA at the address set forth in the **DD 1155**, unless otherwise agreed to by the parties in writing. Notices are considered to be "issued" when copies are either deposited in the mail, transmitted by facsimile, or sent by other electronic commerce methods, such as email.

16.3. Reference to Days

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

16.4. Severability

- 16.4.1. If any term or provision of this BPA is held to be illegal or unenforceable, the validity or enforceability of the remainder of this BPA 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 BPA or provide an equitable adjustment in the event no such provision can be added.

16.5. Waiver

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

16.6. Dispute Resolution

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

16.7. Hyper links

- 16.7.1. Any document or provision referenced in a URL included in Microsoft Product Terms, Service Level Agreements or Contractor submitted terms are found to violate federal law, then such provisions shall not apply.

16.8. Entire Agreement

- 16.8.1. This BPA, the underlying GSA FSS Contract, together with all Attachments and individual Orders issued against the BPA, 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 BPA. No modifications to the terms of this BPA shall be valid unless in writing and authorized, in accordance with FAR Part 43.

Appendix A Glossary

Affiliate: means any entity authorized to buy Products off of the BPA.

BPA Product List/Catalog: The list of products in Attachment #2 available under this agreement for order at time of award or added by bilateral modification in the form of a technical refresh.

Contractor: The Microsoft approved reseller, sometimes referred to as the “Government Partner”, from whom Orders for Products are placed.

Government Partner: The entity from whom you place your order for Products under the Government Contract also referred to as the “Contractor”.

Order: The order placed by you to the Government Partner under the Government Partner’s BPA.

Product: All products identified in the Product Terms, such as software, Online Services and other web-based services, including pre-release or beta versions. Availability of Online Services and other web-based services, including pre-release or beta versions may vary by region.

Product Terms: means the document that provides information about Microsoft Products available through volume licensing. The Product Terms document is published on the Volume Licensing Site at

<https://www.microsoft.com/en-us/Licensing/product-licensing/products.aspx> and is updated from time to time.

Software Assurance: An offering that provides new version rights and other benefits for Products as described in the Product Terms.

SECTION I - CONTRACT CLAUSES

The following have been added by full text:

ATTACHMENT 1

(End of Summary of Changes)