

SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS <i>OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, AND 30</i>				1. REQUISITION NUMBER		PAGE 1 OF 47	
2. CONTRACT NO. HC108420A0003		3. AWARD/EFFECTIVE DATE 01-Nov-2019	4. ORDER NUMBER		5. SOLICITATION NUMBER HC108419R0018		6. SOLICITATION ISSUE DATE 03-Oct-2019
7. FOR SOLICITATION INFORMATION CALL:		a. NAME CARRIE M. ROSS			b. TELEPHONE NUMBER (No Collect Calls) 618-418-6569		8. OFFER DUE DATE/LOCAL TIME 09:00 PM 18 Oct 2019
9. ISSUED BY DISA/DITCO-SCOTT-PL84 2300 EAST DRIVE SCOTT AFB IL 62225 TEL: FAX:		CODE HC1084	10. THIS ACQUISITION IS <input checked="" type="checkbox"/> UNRESTRICTED OR <input type="checkbox"/> SET ASIDE: _____ % FOR: <input type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> WOMEN-OWNED SMALL BUSINESS (WOSB) ELIGIBLE UNDER THE WOMEN-OWNED SMALL BUSINESS PROGRAM <input type="checkbox"/> HUBZONE SMALL BUSINESS <input type="checkbox"/> EDWOSB <input type="checkbox"/> SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS <input type="checkbox"/> 8(A) NAICS: 511210 SIZE STANDARD: \$38,500,000				
11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED <input type="checkbox"/> SEE SCHEDULE		12. DISCOUNT TERMS		<input type="checkbox"/> 13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)		13b. RATING	
						14. METHOD OF SOLICITATION <input checked="" type="checkbox"/> RFQ <input type="checkbox"/> IFB <input type="checkbox"/> RFP	
15. DELIVER TO SEE SCHEDULE		CODE		16. ADMINISTERED BY SEE ITEM 9			
17a. CONTRACTOR/OFFEROR DELL FEDERAL SYSTEMS L.P. 1 DELL WAY ROUND ROCK TX 78682-7000 BRAD CARR TELEPHONE NO. (646)573-0885		CODE 3XAU1	FACILITY CODE	18a. PAYMENT WILL BE MADE BY DFAS COLUMBUS HQ0810 ATTN HQ0810 PO BOX 182317 COLUMBUS OH 43218-2317			
<input type="checkbox"/> 17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER		18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a. UNLESS BLOCK BELOW IS CHECKED <input type="checkbox"/> SEE ADDENDUM					
19. ITEM NO.	20. SCHEDULE OF SUPPLIES/ SERVICES			21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
	SEE SCHEDULE						
25. ACCOUNTING AND APPROPRIATION DATA					26. TOTAL AWARD AMOUNT (For Govt. Use Only) \$0.00		
<input type="checkbox"/> 27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1. 52.212-4. FAR 52.212-3. 52.212-5 ARE ATTACHED. ADDENDA <input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED							
<input type="checkbox"/> 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4. FAR 52.212-5 IS ATTACHED. ADDENDA <input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED							
<input type="checkbox"/> 28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED.					<input type="checkbox"/> 29. AWARD OF CONTRACT: REF. OFFER DATED . YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS:		
30a. SIGNATURE OF OFFEROR/CONTRACTOR				31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER) <i>Lisa O. Cravens</i>			
30b. NAME AND TITLE OF SIGNER (TYPE OR PRINT)		30c. DATE SIGNED		31b. NAME OF CONTRACTING OFFICER (TYPE OR PRINT) LISA O. CRAVENS / CONTRACTING OFFICER TEL: 618-418-6295 EMAIL: lisa.o.cravens.civ@mail.mil		31c. DATE SIGNED 01-Nov-2019	

**SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS
(CONTINUED)**

19. ITEM NO.	20. SCHEDULE OF SUPPLIES/ SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
<p>SEE SCHEDULE</p>					

32a. QUANTITY IN COLUMN 21 HAS BEEN
 RECEIVED INSPECTED ACCEPTED, AND CONFORMS TO THE CONTRACT, EXCEPT AS NOTED: _____

32b. SIGNATURE OF AUTHORIZED GOVERNMENT REPRESENTATIVE	32c. DATE	32d. PRINTED NAME AND TITLE OF AUTHORIZED GOVERNMENT REPRESENTATIVE
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32e. MAILING ADDRESS OF AUTHORIZED GOVERNMENT REPRESENTATIVE	32f. TELEPHONE NUMBER OF AUTHORIZED GOVERNMENT REPRESENTATIVE
	32g. E-MAIL OF AUTHORIZED GOVERNMENT REPRESENTATIVE

33. SHIP NUMBER <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL	34. VOUCHER NUMBER	35. AMOUNT VERIFIED CORRECT FOR	36. PAYMENT <input type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL	37. CHECK NUMBER
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38. S/R ACCOUNT NUMBER	39. S/R VOUCHER NUMBER	40. PAID BY
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41a. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT	42a. RECEIVED BY (<i>Print</i>)		
41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER	41c. DATE	42b. RECEIVED AT (<i>Location</i>)	
		42c. DATE REC'D (<i>YY/MM/DD</i>)	42d. TOTAL CONTAINERS

Section SF 1449 - CONTINUATION SHEET

DOD TERMS

**Blanket Purchase Agreement (BPA)
Department of Defense (DoD)
MS Joint Enterprise License Agreement**

In the spirit of the Federal Acquisition Streamlining Act, the Defense Information Systems Agency (DISA), on behalf of the U.S. DoD Enterprise Software Initiative (ESI) (referred to hereafter as the “Government” or “DoD”) and Dell Federal Systems L. P. (“Dell Technologies”) (the “contractor”) enter into this BPA, which includes all attachments (collectively referred to as the “BPA”) as of the effective date as identified on SF 1449.

Attachments to this BPA will be deemed a part of this BPA (Attachments 1 through 6) and incorporated by reference. Terms defined in this BPA and used in any attachment will have the same meaning as in this BPA. The parties agree the attachments listed below apply to all orders placed under this BPA and are incorporated as binding terms and conditions. Attachments to this agreement are set forth as follows:

- Attachment 1 – Product and Price List
- Attachment 2 – Report of Sales Format
- Attachment 3 – Microsoft Master License Agreement
- Attachment 4 – Product Terms – September 2019
- Attachment 5 – Online Service Terms – September 2019
- Attachment 6 - ESI Fees

A. TERMS AND CONDITIONS

1. Pursuant to GSA FSS contract number GS-35F-0884P, contractor agrees to the following terms of a BPA, HC1084-20-A-0003 with the Defense Information Technology Contracting Organization (DITCO). All orders placed against this BPA are subject to the terms and conditions of the FSS contract. The items on this BPA are set forth in Attachment 1 as defined by the contractor. License terms and conditions applicable to products acquired under this BPA are defined in the License Terms included as Attachment 3,4, & 5.

2. Order of Precedence.

- a. The provisions of FAR 52.212-4 specified in FAR 12.302, as required by Federal law, shall prevail over any terms of the commercial license.
- b. In the event of any inconsistency between the general terms and conditions of this BPA and the terms and conditions of any attachment or Attachment to this BPA, the general terms and conditions shall take precedence over the terms and conditions of any attachment.

c. The terms and conditions of Contract **HC1084-20-A-0003** (hereafter Contract"')] shall supersede all other agreements, including End User License Agreements (EULAs), governing the use of software used in performing the tasks under the Contract. In addition, no other agreements, including EULAs, can modify the Contract unless they are signed by a warranted Contracting Officer of the United States Government. The Contractor shall seek prior written approval from the Government to use software applications in performing the tasks under the Contract and shall provide a copy of all EULAs to the Contracting Officer for review. The Contractor shall not use any software applications in performing the tasks under the Contract that require a shrink wrap, web-wrap, click-wrap or other such End User Licensing Agreements.

d. Any clauses that give the contractor the right to audit the government's use of software licenses do not meet the Government's needs as a matter of security. Any such clause is hereby modified as follows:

The contractor can request that the Government conduct a self-audit and provide the contractor with results of the audit, but the contractor will not have access to the government's systems to conduct the audit.

3. Extent of Obligation. The Government is obligated only to the extent of authorized delivery/call orders actually made under this BPA.

In the event another DoD-wide cloud contract becomes available, the government will work with Microsoft to enable the migration of the Enterprise Bundle that includes O365 Office Pro Plus from JELA3 to the new agreement.

4. Funds Obligation. The Government estimates, but does not guarantee, that the volume of purchases through this BPA will be \$2.2 billion. The Government is obligated only to the extent of authorized purchases actually made under this BPA. There is no minimum order guarantee. The BPA does not obligate any funds. Funds will only be obligated on each delivery order.

5. BPA Term. The period of performance (PoP) will include a 1-year base period and two 1-year options. The Government is not obligated to exercise any BPA option period. This BPA expires upon completion of all orders issued within the specified BPA ordering periods, inclusive of any exercised BPA option periods. The BPA is contingent upon the contractor maintaining products/services of the BPA on the applicable GSA Schedule. This BPA is based on the contractor's current GSA schedule contract. 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.

Base Year: November 1, 2019 through October 31, 2020
 Option Year 1: November 1, 2020 through October 31, 2021
 Option Year 2: November 1, 2021 through October 31, 2022

6. Pricing Terms. Attachment 1 provides unit prices as explained below. Prices shall not escalate after the BPA is awarded, and Attachment 1 is not subject to upward adjustment during the term of the BPA. The government may secure additional discounts at the time of placing an order. Spot discounts are authorized and encouraged. The prices will be reviewed annually, or as required to determine whether a reduction is appropriate in accordance with the price reduction provisions of the agreement. *Contractor shall include a 1.0% Acquisition, Contracting, and Technical (ACT) fee in contractor's prices for all items that are under the umbrella of the ESI BPAs and on their GSA Schedule. The contractor shall pay the ACT fees within 30 days after notification of approval from the applicable software product manager (SPM) or procuring Contracting Officer (PCO) for the sales report required.*

- a. Renewals of Software Assurance (SA) transferring onto this BPA shall be prorated to include coverage for the first year and annual payments thereafter with a final coterminous end date of October 31, 2019, assuming all option periods are exercised. SA renewals are limited to 12 month payments per option year (Base Year, Option Year 1, or Option Year 2).
- b. All mid-term enrollees will have their orders prorated from the date of the order through 31 October of the year, or subsequent year, in which the enrollment occurs.
- c. If any license or service tied to periodic payment is provided under this agreement (e.g., annual software maintenance), such license or service shall not renew automatically upon expiration of its current term without prior express Government approval by a warranted contracting officer.

7. Option Periods.

a. Prices. Discounts shall be provided off the GSA Schedule. Spot discounts are authorized and encouraged. The prices will be reviewed annually, or as required to determine whether a reduction is appropriate in accordance with the price reduction provisions of the agreement.

b. Ordering Period. 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: the initial order that includes the option was issued during the BPA ordering period(s), 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 the Ordering Office satisfies all other applicable regulations for exercise of options. Coverage shall commence upon purchase of License plus SA by the end user and continue for a three-year term.

8. Price Reduction.

a. Most Favored Customer Prices. Contractor shall ensure the prices under this BPA are as low as the prices contractor has under any other contract instrument with any customer under like terms and conditions. If at any time the prices under any other contract instrument (ESI, GSA, etc) with any customer become lower than the prices in this BPA, this BPA will be immediately modified by mutual agreement to include the lower prices.

b. The Government does not agree to any clauses purporting to make the Government responsible for all taxes. Any taxes the vendor believes to be payable by the Government must be submitted individually to the contracting officer for adjudication or included in the firm-fixed price.

c. SmartBUY Program Extension. Office of Management and Budget (OMB) has announced the SmartBUY initiative to maximize cost savings and achieve best quality when acquiring commercial products and services. If during the term of this BPA, contractor and its resellers enter into a government-wide agreement with the GSA under the SmartBUY Initiative, which includes pricing for the specific products or services under similar terms and conditions as those licensed by the DoD under this BPA, contractor and its resellers agree to reduce the prices for the remaining term of this BPA to meet the prices and fees under the SmartBUY agreement, or shall license the products and sell the services under the SmartBUY agreement for the same remaining term of this BPA, at the discretion of the DoD. The Government reserves the right to unilaterally modify the BPA to reflect these pricing reductions. Neither the contractor nor its resellers shall preclude the government from purchasing or licensing commercial products or services under a SmartBUY Agreement.

9. Rights of Survivorship of the Agreement. This BPA shall survive unto contractor, its successors, rights and assigns. 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. Any software name changes, re-packing, or merger of similar products that carry forward the same or similar function of the software shall be supported with updates, upgrades, and new releases under this agreement at no additional cost.

10. **Notices.** All notices required under this BPA will be in writing and will be sent to the Government CO and the contractor's designated Program Manager for this BPA at the address set forth in the SF1449, 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.

11. **Reference to Days.** All references in this BPA to "days" will, unless otherwise specified, mean calendar days.

12. **Severability.** 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.

a. Assignment of government contracts without the government's prior approval is prohibited by statute, except for assignment of payment to a financial institution, which must comply with the Assignment of Claims Act (31 U.S.C. § 3727, 41 U.S.C. § 15) and Federal Acquisition Regulation Subpart 32.8.

b. The Government does not agree to any provisions giving the contractor the right to unilaterally change the license terms, with or without notice to the customer.

c. The Government does not agree to any clauses permitting unilateral termination of the contract or license agreement by the contractor. Any such clause is hereby modified as follows: Recourse against the United States for any alleged breach of this agreement must be made under the terms of the contract disputes clause (Contract Disputes Act). While a dispute is pending, the Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and must comply with any decision of the Contracting Officer.

13. **Entire Agreement.** This BPA, 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.

14. **GSA Federal Supply Schedule Succession**

a. This BPA is based on the Contractor's current GSA schedule contract number. 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 that the new schedule contract includes the same scope and items as the canceled or expired GSA contract.

b. The BPA is contingent upon the Contractor maintaining products/services of the BPA on the applicable GSA Schedule. The Contractor is responsible for notifying the COR and Contracting

Officer of any changes in the status of the applicable GSA Schedule (validity status and modifications to the schedule contract) through the life of the BPA. The Contractor must maintain all product/service offerings of the BPA on the applicable GSA Schedule.

B. AUTHORIZED USERS AND POINTS OF CONTACT

1. Authorized Users. All of DoD

a. Entities may transition into the Agreement.

b. Each entity, prior to entry, will be required to provide asset inventories. This data will be collected using industry standard tools and processes to include Microsoft Excel. MapToolkit and System Center Configuration Manager may be used but are not the only tools that can be used.

c. This BPA is also open to the participating agencies' contractors authorized to order in accordance with the FAR Part 51.

2. BPA Points of Contact (POCs): The BPA POCs are outlined below. Each delivery order issued against the BPA will contain POCs.

a. Contracting Office:

Defense Information Technology Contracting Organization (DITCO)/PL8414
2300 East Drive
Scott Air Force Base, IL 62225-5406

POC: Lisa Cravens / Contracting Officer
Phone: (618) 418-6295
Email: lisa.o.cravens.civ@mail.mil

POC: Alie Harder / Contract Specialist
Phone: (618) 418-6244
Email: alison.k.harder.civ@mail.mil

b. Software Product Manager (SPM):

SPM: Jonnice Medley
Phone: (301) 225-8081
E-mail: jonnice.medley.civ@mail.mil

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

d. Contractor Point of Contact:

Contractor name, business size: Dell Federal Systems L. P. (“Dell Technologies”), Large
DUNS: 149530219
CAGE: 3XAU1
Contractor POC name: Brad Carr
Contractor phone number: (646) 573-0885
Contractor POC email: Brad_Carr@dell.com

e. BPA Contracting Officer’s Representative (COR):

COR: Tarnya Green
Phone: (301) 225-2362
Email: Tarnya.l.green.civ@mail.mil

C. ORDERING

1. Orders. The scope of this effort is worldwide. Delivery requirements will be stipulated on Orders; ordering via this BPA is decentralized. Each ordering activity is responsible for managing its obligations under this agreement. While the agreement is centrally managed, resolution of ordering and/or funding issues is the responsibility of the contracting office that issued the Order. Orders are prepared by a warranted Government Contracting Officer (a duly warranted Contracting Officer whose warrant authorizes delivery orders from the GSA Schedule) at each ordering activity in accordance with the terms and conditions of this BPA, the GSA Schedule, and all applicable regulations and statutes. A prime contractor authorized by a cognizant Government Contracting Officer in accordance with FAR Part 51 may place Orders against this agreement if using the software in support of the Agencies activities. Orders may be placed by Electronic Data Interchange (EDI), facsimile, or on an authorized form such as a BPA Call, Standard Form (SF) 1449, DoD (DD) Form 1155 or Government Purchase Card.

2. Delivery Schedule. Deliveries will be made to the address specified on the Orders issued against the BPA.

3. Contractor shall assist Government ordering offices with ensuring accuracy of the order data, including the identification of the proper license owner and enrollment number prior to processing Orders.

4. Instructions for Ordering Offices. This is a single-award BPA established competitively against GSA Schedule per FAR 8.405-3(b)(1), Blanket Purchase Agreements (BPA). The brand name products offered on this BPA were approved in accordance with FAR 8.405-6, Limited Sources, for the Agencies’ purchase through a Class Brand Name Limited Source Justification. It is the responsibility of the Ordering Office to:

- i. Ensure compliance with all fiscal laws prior to issuing an order under this BPA;
- ii. Incorporate into the order any regulatory and statutory requirements that are applicable to the ordering entity for which the order is placed, if pertinent requirements are not already included in this BPA; and,
- iii. Include clear invoicing, delivery, and distribution instructions

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>. The Government may also post this BPA to other federal Government or DoD websites, some of which may be publicly accessible.

5. Users' Ordering Guide. The contractor shall develop a Users' Ordering Guide in coordination with the Government that will be posted to the contractor web site and various Government sites. The Ordering Guide shall be submitted to the COR and CO within sixty (60) days of BPA award and made available on the contractor's home page upon written approval. The contractor shall immediately notify the Contracting Officer in the event of any changes to contractor COR information, contractor physical address, contractor web address, or any other relevant information in the Ordering Guide. 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 COR and CO prior to posting. The guide shall contain all information necessary for geographically dispersed activities to place orders, including, as a minimum:

- a. URL where a complete list of products available, with appropriate contract line item numbers (CLINs) and associated prices can be found
- b. Government and contractor POCs
- c. Description of the ordering process
- d. Program Terms and Conditions
- e. License Terms and Conditions
- f. Information such as Commercial and Government Entity Code (CAGE), Data Universal Numbering System (DUNS), Taxpayer Identification Number (TIN), business size, etc. necessary to complete a Contract Action Report in the Federal Procurement Data System - Next Generation system
- g. Range of quantity discounts
- h. Links to DoD ESI and the Government web sites

6. E-Commerce Site. It is the intention of the Government to use existing and future capability of the DoD Standard Procurement System, EDI capability, Government procurement card, and contractor electronic ordering capability to create a paperless ordering, invoicing, and payment process. During the term of the BPA, the contractor shall participate to achieve this objective. 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 BPA to other federal government or DoD web sites, some of which may be publicly accessible. On-line ordering may also be accomplished through DoD controlled web sites. The contractor shall ensure that the data and information relating to contractor's products, technical specifications, services, prices, and other information related to this BPA is current, accurate, complete, and delivered by the contractor in the standard format(s). The contractor shall maintain coordinated and integrated hypertext links to the ESI web site from their web site(s).

The contractor shall provide electronic-commerce/EDI capabilities and accept and respond to secure on-line orders and customer requests consistent with the terms of this acquisition vehicle. The contractor shall use its commercially reasonable business efforts to adapt its business processes as technical requirements, environment, and architecture evolve. This BPA may also be loaded into publicly accessible electronic catalog systems of other DoD agencies.

- a. The Contractor shall provide a website for accessing and downloading software and documentation electronically within 30 days of the acceptance of this BPA. This site may include links to the Microsoft Volume Licensing Service Center (VLSC) site or other appropriate site to manage product downloads, product keys, and SA benefits. Use of VLSC to deliver license keys is acceptable; however, the contractor shall notify the customer that the keys will be available through the VLSC and receipt permissions will be granted by the applicable Software Benefit Manager for the respective enrollment.
- b. SA benefits are managed by a Government representative assigned to each enrollment under this BPA through the Microsoft VLSC website located at <https://www.microsoft.com/licensing/servicecenter/Home.aspx>.
- c. The Contractor shall provide the Government Software Benefits Manager and COR training on software download, installation, product usage, product key information, product usage rights, licensing model changes and how to manage the VLSC site on behalf of their organizations, as requested and access to view all benefits assigned, including the ability to download software and product keys from the VLSC website. In addition, the Contractor will assign a Software Assurance Benefits Specialist who can assist the Government with any questions concerning SA. The contractor shall review orders prior to fulfillment and assist the Government with proper enrollment number identification and designation.
- d. The Government shall not be charged for downloading software disks or downloads that contain additional product options that were not part of the original product ordered and were not identified by the Contractor in advance. If a download is executed for any product and usage is recorded in a production environment, the downloaded software that has been used will be included in the annual usage report.

7. Delivery Notice. Unless otherwise agreed to, all deliveries ordered under this BPA must be accompanied by a delivery notice, ticket, or sales slips that must contain at a minimum the following information:

- a. Name of contractor
- b. GSA contract number
- c. BPA number
- d. Product description/model numbers
- e. Delivery order number
- f. Date of delivery/call order
- g. Quantity, unit price, and extension of each item (unit prices need not be shown when incompatible with the use of automated systems; provided that the invoice is itemized to show the information)

- h. Date of shipment/delivery and/or PoP as applicable
- i. NOTE: Copies of delivery orders are to be sent via email to the SPM office as electronic attachments.

8. **Proof of License.** The contractor shall provide the Government a proof of license certificate with all delivery orders. The Contractor shall submit the proof of license to the designated POC listed in the Order and furnish a duplicate to the Enrollment Software Benefits Manager POC.

9. **Suspension.** There may be occasions where the Government may suspend ordering (by contract line item number (CLIN) up to and including the entire BPA) or cancel the BPA. If a suspension is announced, the contractor shall adhere to this suspension by not accepting/processing delivery orders for the suspended item(s).

D. INVOICING AND PAYMENT

1. **Invoicing.** The requirements of a proper invoice are as specified below as required by FAR 52.212-4 in the Federal Supply Schedule contract. The contractor shall submit an electronic invoice to the address (es) specified within the delivery orders issued against the BPA. An invoice must include --

- a. Name and address of the contractor;
- b. Invoice date and number;
- c. Contract number, CLIN, and, if applicable, the order number;
- d. Description, quantity, unit of measure, unit price, and extended price of the items delivered and PoP;
- e. Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;
- f. Terms of any prompt payment discount offered;
- g. Name and address of official to whom payment is to be sent;
- h. Name, title, and phone number of the person to be notified in event of defective invoice;
- i. TIN. The contractor shall include its TIN on the invoice only if required elsewhere in this contract; and
- j. Electronic funds transfer banking information.

Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and OMB Circular A-125. Prompt payment contractors are encouraged to assign an identification number to each invoice.

2. **Fast Payment Procedure.** The provisions of FAR 52.213-1 FAST PAYMENT PROCEDURE (MAY 2006) are incorporated in this BPA by reference and pertain to credit card delivery/call orders or other applicable order deliveries. Fast Payment procedures may be used when the conditions of FAR 13.402 are met and the delivery order authorizes Fast Payment.

3. **Precedence.** The terms and conditions included in this BPA apply to all delivery/call orders made pursuant to it. In the event of an inconsistency between the provisions of the BPA and the contractor's invoice, the provisions of the BPA will take precedence.

4. **Pricing.** The unit prices included in the Product and Price List will be annual prices for Software Assurance. The annual Software Assurance prices shall be prorated based on the actual start date of coverage for customers with expiring Software Assurance that are transitioning to this Agreement. The unit price list in the Product and Price List for new products plus software assurance will have a prorated price for the base year, option year 1 and option year 2. New licenses with associated software assurance coverage through October 31, 2022 will be paid on a lump-sum basis.

E. PRODUCT AND SERVICE OFFERINGS

1. Catalog

a. The Contractor shall make available to all authorized users of this BPA the products and services contained in Attachment 1.

b. Technology Refreshment / Products and Services Improvement

(1). The Contractor shall inform the Agencies of changes to the products offered under this BPA as they become commercially available. Proposals shall be submitted within thirty (30) days 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.

(2). Discounts shall be at the same or greater discount level as provided under the original BPA product and service prices.

(3). If at any time during the life of this BPA, Microsoft schedules the originally offered products in Attachment 1 (including firmware where applicable) for discontinuation, improvement and/or replacement, the contractor 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 prices associated with the consideration of the overall Enterprise commitment. Discounts shall be at the same or greater discount level as provided under the original BPA product and service prices. Proposals shall be submitted to the Contracting Officer within seven (7) days of the contractor's awareness of Microsoft'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.

(4). Changes proposed by the Contractor shall become effective only upon written acceptance by the Government.

- (5). In the event the Contractor's catalog changes are not timely updated in Attachment 1 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.
2. Throughout the duration of the BPA, the Contractor shall provide notice of software version upgrades, updates, and patch releases on the contractor website.

F. BPA MANAGEMENT AND OVERSIGHT

1. **Management.** The contractor must provide centralized administration, in the form of a Program Manager, in support of all work performed under this BPA. The Program Manager, at a minimum, is required to participate in periodic program management reviews (which may require travel to a Government named site). Additional functions would include customer service, periodic program management reviews, invoicing, payment, and submission of monthly and quarterly reports and approved fee payments. The contractor shall ensure that all sales personnel are aware of the ESI Program and enforce the policy that this BPA is the preferred DoD procurement vehicle for the products within.
2. **Microsoft Enterprise Roadmap.** Upon written request, the Contractor shall provide one hard copy of this publication within 30 days of enrollment to the COR and Software Assurance Benefit Administrator identified for each Enrollment.
3. **Records.** The contractor shall maintain archival copies of all orders for the life of the BPA in accordance with GSA and FAR Subpart 4.7 requirements. Copies shall be made available to the Government upon request. The Contractor is responsible for notifying the SPM and CO of any changes in the status of the applicable GSA Schedule (validity status as well as modifications to the schedule contract that impact items on the BPA) throughout the life of the BPA.
4. **Program Management Reviews (PMR).**
- a. The Contractor shall participate in regular reviews of the progress of the BPA. Reviews may be held at least twice yearly as scheduled by the COR. 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 COR to Contractor prior to each PMR. Travel expenses are the responsibility of the Contractor.
 - b. The Reseller shall provide advance notice and summarized agenda to the Government Contracting Officer for this Agreement and for review in accordance with applicable DoD Joint Ethics Regulation Standards.

5. BPA Transition. If the Agencies award a contract for Microsoft licenses after this BPA expires or terminates and the Contractor does not obtain the subsequent contract, the Contractor shall ensure that the Government has received all records pertaining to the accounting and tracking of license transfers and reductions to the Agencies 30 days after the BPA expires or is terminated. The current BPA holder shall transfer all JELA subscription continuations to the new BPA holder within 30 days after the BPA expiration.

6. Sales Leakage Prevention.

- a. The goals of the Agencies can only be realized through cooperation between the Agencies and the Contractor to direct appropriate sales through this BPA. The Contractor shall ensure that all its sales personnel are aware of this BPA and will take appropriate action to notify Agencies participating customers regarding the proper use of the BPA. Additionally, the Contractor shall include advertising the availability and benefits of this BPA on the Contractor's web site. 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 BPA and shall keep current the plan throughout the term of this BPA.
- b. The Contractor shall establish a process to regularly audit their 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.
- c. The Contractor shall direct potential customers to the DoD JELA PM.

Additional Value Added Services:

Dell & Microsoft would like to include the ability to offer Value Added Services. The below language is required to perform and deliver Microsoft Services, such as FastTrack. The government is under no obligation to accept such services.

- a. Description of Supplier Services.** The precise scope of the Professional Services may be specified in a Statement of Services. Enrolled Affiliate or any of Enrolled Affiliate's Affiliates may enter into Statements of Services under this Agreement with Microsoft's local Affiliates. Microsoft's ability to deliver the Professional Services depends upon Enrolled Affiliate's full and timely cooperation, as well as the accuracy and completeness of any information Enrolled Affiliate provides. This Agreement does not obligate either party or its Affiliates to enter into any Statements of Services.
- b. Proprietary Rights.**
 - (i) Pre-existing Work.** Each party owns and retains all rights, title and interest to its pre-existing Confidential Information and technology, including technologies developed outside of this agreement, together with all related intellectual property rights (as to each party, its "Pre-Existing Work"). Subject to compliance with the terms of this agreement, each party grants to the other a worldwide, non-exclusive, non-assignable, fully paid-up license to use, reproduce, and create derivative works of its Pre-existing Work, provided that: (i) Microsoft's license to Enrolled Affiliate's Pre-Existing Work is solely for the purposes of providing technical resources under this agreement; (ii) Enrolled Affiliate's license to Microsoft Pre-Existing Work will be in accordance with this agreement; (iii) neither party may use the other party's Pre-Existing Work on a standalone basis and (iv) neither party may distribute or otherwise transfer any of the other party's Pre-Existing Work to a third party.
 - (ii) Improvements.** Each party shall exclusively own all modifications and derivative works created under this agreement to that party's Pre-Existing Work ("Improvements"), regardless of who authors such Improvements. Each party assigns to the other party all rights, title, and interest to any Improvements that it makes to the other party's Pre-Existing work. Subject to compliance with the terms of this agreement, the parties license Improvements as follows: (i) Microsoft grants Enrolled Affiliate a worldwide, non-exclusive, non-assignable, fully paid-up license to use, reproduce, and create derivative works, but not distribute or otherwise transfer, Improvements to Microsoft's Pre-Existing Work; and (ii) Enrolled Affiliate grants Microsoft a worldwide, non-exclusive, non-assignable, fully paid-up license to use, reproduce, distribute, and create derivative works of only those Improvements Microsoft may create to Enrolled Affiliate's Pre-Existing Work that are generic solutions or services.
 - (iii) Developments.** Either party may create new technology, written materials, or proofs of concept under this agreement that do not include any Pre-Existing Work or Improvements ("Developments"). All Developments will be owned by Microsoft and Enrolled Affiliate assigns to Microsoft all rights, title, and interest to any Developments that it makes. Microsoft grants Enrolled Affiliate a worldwide, non-exclusive, non-assignable, fully paid-up license to use, reproduce, and create derivative works, but not distribute or otherwise transfer to a third party, Developments.
- c. Open Source.** Microsoft may elect to release to Enrolled Affiliate certain Improvements or Developments as open source software, published with related end user documentation to a public repository on GitHub or another mutually accepted venue, under the terms of the MIT License (<http://opensource.org/licenses/MIT>) or another mutually accepted open source license. The open source license, and not the terms above, will apply to such Improvements or Developments.
 - d. Data.** Customer owns all rights to data that Customer or its affiliates may elect to share with Microsoft in Microsoft's performance of Professional Services. The data protection terms of the Microsoft Professional Services Limited Data Protection Addendum apply and are available at <http://aka.ms/mpsldpa>.
- d. Feedback.** Either party may provide suggestions, comments, ideas, know-how, or other feedback to the other party. Feedback is voluntary and the receiving party is not required to hold it in confidence. The receiving party will not disclose the source of feedback without the providing party's consent. Feedback may be used for any purpose without obligation of any kind.

- e. **Retained Rights.** Except as expressly set forth in this agreement, neither party grants the other (by implication, estoppel or otherwise) any right, title, interest, or license, in such party's patents, patent applications, trade secrets, copyrights, mask work rights, trademarks or other intellectual property.

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0001	Enterprise Products FFP The contractor shall provide all Microsoft Enterprise solutions as identified in the RFQ and the following Attachments: Attachment 1 - MS Product List and Descriptions Attachment 2 - Sales Format Attachment 3 - MLA Attachment 4 - Product Terms - September 2019 Attachment 5 - Online Service Terms - September 2019 FOB: Destination	1	Each		NSP

NET AMT

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0002	Additional Products FFP The contractor shall provide all Microsoft Additional Products as identified in the RFQ and the following Attachments: Attachment 1 - MS Product List and Descriptions Attachment 2 - Sales Format Attachment 3 - MLA Attachment 4 - Product Terms - September 2019 Attachment 5 - Online Service Terms - September 2019 FOB: Destination	1	Each		NSP

NET AMT

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0003		1	Each		NSP

External Ordering Fee
FFP

Joint Enterprise License Agreements Decentralized Ordering Fee: 0.10%

External Agencies Ordering .10% Fee – IAW G3, Ordering Procedures for External Agencies/Organizations. This applies to ALL EXTERNAL ORDERS. The contractor shall reject all orders and modifications that do not include the .10% fee. The Fee Breakdown Summary Document within the BPA gives an example on how this is calculated.

** Attention Contracting Officers/Contract Specialist a decentralized fee of .10% shall be included on all external orders, ensure to include a CLIN on all new delivery orders.

FOB: Destination

NET AMT

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
1001 OPTION		1	Each		NSP

Enterprise Products
FFP

The contractor shall provide all Microsoft Enterprise solutions as identified in the RFQ and the following Attachments:

Attachment 1 - MS Product List and Descriptions

Attachment 2 - Sales Format

Attachment 3 - MLA

Attachment 4 - Product Terms - September 2019

Attachment 5 - Online Service Terms - September 2019

FOB: Destination

NET AMT

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
1002		1	Each		NSP
OPTION	Additional Products FFP The contractor shall provide all Microsoft Additional Products as identified in the RFQ and the following Attachments: Attachment 1 - MS Product List and Descriptions Attachment 2 - Sales Format Attachment 3 - MLA Attachment 4 - Product Terms - September 2019 Attachment 5 - Online Service Terms - September 2019 FOB: Destination				

NET AMT

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
1003		1	Each		NSP
OPTION	External Ordering Fee FFP Joint Enterprise License Agreements Decentralized Ordering Fee: 0.10% External Agencies Ordering .10% Fee – IAW G3, Ordering Procedures for External Agencies/Organizations. This applies to ALL EXTERNAL ORDERS. The contractor shall reject all orders and modifications that do not include the .10% fee. The Fee Breakdown Summary Document within the BPA gives an example on how this is calculated. **Attention Contracting Officers/Contract Specialist a decentralized fee of .10% shall be included on all external orders, ensure to include a CLIN on all new delivery orders. FOB: Destination				

NET AMT

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
2001		1	Each		NSP
OPTION	Enterprise Products FFP The contractor shall provide all Microsoft Enterprise solutions as identified in the RFQ and the following Attachments: Attachment 1 - MS Product List and Descriptions Attachment 2 - Sales Format Attachment 3 - MLA Attachment 4 - Product Terms - September 2019 Attachment 5 - Online Service Terms - September 2019 FOB: Destination				

NET AMT

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
2002		1	Each		NSP
OPTION	Additional Products FFP The contractor shall provide all Microsoft Additional Products as identified in the RFQ and the following Attachments: Attachment 1 - MS Product List and Descriptions Attachment 2 - Sales Format Attachment 3 - MLA Attachment 4 - Product Terms - September 2019 Attachment 5 - Online Service Terms - September 2019 FOB: Destination				

NET AMT

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
2003		1	Each		NSP

OPTION

External Ordering Fee
FFP

Joint Enterprise License Agreements Decentralized Ordering Fee: 0.10%

External Agencies Ordering .10% Fee – IAW G3, Ordering Procedures for External Agencies/Organizations. This applies to ALL EXTERNAL ORDERS. The contractor shall reject all orders and modifications that do not include the .10% fee. The Fee Breakdown Summary Document within the BPA gives an example on how this is calculated.

** Attention Contracting Officers/Contract Specialist a decentralized fee of .10% shall be included on all external orders, ensure to include a CLIN on all new delivery orders.

FOB: Destination

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This agreement is entered into this 1st day of November 2019, by the United States of America (the “Government”) represented by DISA/DITCO, the Contracting Officer, and Dell Federal Systems L.P, a corporation organized and existing under the laws of the State of Texas (the “Contractor”).

AGREEMENT INFORMATION:

AGREEMENT CEILING AMOUNT	\$2,200,000,000.00
AGREEMENT PERIOD START DATE	01-NOV-2019
AGREEMENT PERIOD END DATE	31-OCT-2022

INSPECTION AND ACCEPTANCE TERMS

Supplies/services will be inspected/accepted at:

CLIN	INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
0001	N/A	N/A	N/A	Government
0002	N/A	N/A	N/A	Government
0003	N/A	N/A	N/A	Government
1001	N/A	N/A	N/A	Government
1002	N/A	N/A	N/A	Government
1003	N/A	N/A	N/A	Government
2001	N/A	N/A	N/A	Government

2002	N/A	N/A	N/A	Government
2003	N/A	N/A	N/A	Government

DELIVERY INFORMATION

CLIN	DELIVERY DATE	QUANTITY	SHIP TO ADDRESS	DODAAC / CAGE
0001	POP 01-NOV-2019 TO 31-OCT-2020	N/A	N/A FOB: Destination	
0002	POP 01-NOV-2019 TO 31-OCT-2020	N/A	N/A FOB: Destination	
0003	POP 01-NOV-2019 TO 31-OCT-2020	N/A	N/A FOB: Destination	
1001	POP 01-NOV-2020 TO 31-OCT-2021	N/A	N/A FOB: Destination	
1002	POP 01-NOV-2020 TO 31-OCT-2021	N/A	N/A FOB: Destination	
1003	POP 01-NOV-2020 TO 31-OCT-2021	N/A	N/A FOB: Destination	
2001	POP 01-NOV-2021 TO 31-OCT-2022	N/A	N/A FOB: Destination	
2002	POP 01-NOV-2021 TO 30-NOV-2022	N/A	N/A FOB: Destination	
2003	POP 01-NOV-2021 TO 31-OCT-2022	N/A	N/A FOB: Destination	

CLAUSES INCORPORATED BY REFERENCE

52.202-1	Definitions	NOV 2013
52.203-3	Gratuities	APR 1984
52.203-6 Alt I	Restrictions On Subcontractor Sales To The Government (Sep 2006) -- Alternate I	OCT 1995
52.203-17	Contractor Employee Whistleblower Rights and Requirement To Inform Employees of Whistleblower Rights	APR 2014
52.204-4	Printed or Copied Double-Sided on Postconsumer Fiber Content Paper	MAY 2011
52.204-10	Reporting Executive Compensation and First-Tier Subcontract Awards	OCT 2018
52.204-13	System for Award Management Maintenance	OCT 2018

52.204-18	Commercial and Government Entity Code Maintenance	JUL 2016
52.204-22	Alternative Line Item Proposal	JAN 2017
52.209-6	Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment	OCT 2015
52.209-9	Updates of Publicly Available Information Regarding Responsibility Matters	OCT 2018
52.219-8	Utilization of Small Business Concerns	OCT 2018
52.222-19	Child Labor -- Cooperation with Authorities and Remedies	JAN 2018
52.222-21	Prohibition Of Segregated Facilities	APR 2015
52.222-26	Equal Opportunity	SEP 2016
52.222-35	Equal Opportunity for Veterans	OCT 2015
52.222-36	Equal Opportunity for Workers with Disabilities	JUL 2014
52.222-37	Employment Reports on Veterans	FEB 2016
52.222-40	Notification of Employee Rights Under the National Labor Relations Act	DEC 2010
52.222-50	Combating Trafficking in Persons	JAN 2019
52.222-54	Employment Eligibility Verification	OCT 2015
52.223-18	Encouraging Contractor Policies To Ban Text Messaging While Driving	AUG 2011
52.225-1	Buy American--Supplies	MAY 2014
52.225-13	Restrictions on Certain Foreign Purchases	JUN 2008
52.229-3	Federal, State And Local Taxes	FEB 2013
52.232-17	Interest	MAY 2014
52.232-33	Payment by Electronic Funds Transfer--System for Award Management	OCT 2018
52.232-37	Multiple Payment Arrangements	MAY 1999
52.233-1	Disputes	MAY 2014
252.203-7000	Requirements Relating to Compensation of Former DoD Officials	SEP 2011
252.203-7002	Requirement to Inform Employees of Whistleblower Rights	SEP 2013
252.203-7003	Agency Office of the Inspector General	DEC 2012
252.203-7004	Display of Hotline Posters	MAY 2019
252.204-7000	Disclosure Of Information	OCT 2016
252.204-7003	Control Of Government Personnel Work Product	APR 1992
252.204-7015	Notice of Authorized Disclosure of Information for Litigation Support	MAY 2016
252.205-7000	Provision Of Information To Cooperative Agreement Holders	DEC 1991
252.209-7004	Subcontracting With Firms That Are Owned or Controlled By The Government of a Country that is a State Sponsor of Terrorism	MAY 2019
252.223-7008	Prohibition of Hexavalent Chromium	JUN 2013
252.225-7012	Preference For Certain Domestic Commodities	DEC 2017
252.225-7021	Trade Agreements--Basic	DEC 2017
252.225-7051	Prohibition on Acquisition of Certain Foreign Commercial Satellite Services.	DEC 2018
252.227-7013	Rights in Technical Data--Noncommercial Items	FEB 2014
252.227-7014	Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation	FEB 2014
252.227-7015	Technical Data--Commercial Items	FEB 2014
252.227-7016	Rights in Bid or Proposal Information	JAN 2011
252.227-7030	Technical Data--Withholding Of Payment	MAR 2000
252.227-7037	Validation of Restrictive Markings on Technical Data	SEP 2016
252.232-7003	Electronic Submission of Payment Requests and Receiving Reports	DEC 2018

252.232-7006	Wide Area WorkFlow Payment Instructions	DEC 2018
252.232-7009	Mandatory Payment by Governmentwide Commercial Purchase Card	MAY 2018
252.232-7010	Levies on Contract Payments	DEC 2006
252.239-7010	Cloud Computing Services	OCT 2016
252.239-7018	Supply Chain Risk	FEB 2019
252.243-7001	Pricing Of Contract Modifications	DEC 1991
252.243-7002	Requests for Equitable Adjustment	DEC 2012
252.244-7000	Subcontracts for Commercial Items	JUN 2013
252.247-7023	Transportation of Supplies by Sea	FEB 2019

CLAUSES INCORPORATED BY FULL TEXT

52.212-4 CONTRACT TERMS AND CONDITIONS-- COMMERCIAL ITEMS (OCT 2018)

(a) Inspection/Acceptance. The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. If repair/replacement or reperformance will not correct the defects or is not possible, the Government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its post-acceptance rights (1) within a reasonable time after the defect was discovered or should have been discovered; and (2) before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(b) Assignment. The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727). However, when a third party makes payment (e.g., use of the Governmentwide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.

(c) Changes. Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) Disputes. This contract is subject to 41 U.S.C. chapter 71, Contract Disputes", as amended (41 U.S.C. 601-613). Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) Definitions. The clause at FAR 52.202-1, Definitions, is incorporated herein by reference.

(f) Excusable delays. The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement or any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(g) Invoice.

(1) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include--

(i) Name and address of the Contractor;

(ii) Invoice date and number;

(iii) Contract number, line item number and, if applicable, the order number;

(iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;

(v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;

(vi) Terms of any discount for prompt payment offered;

(vii) Name and address of official to whom payment is to be sent;

(viii) Name, title, and phone number of person to notify in event of defective invoice; and

(ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(x) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (e.g., 52.232-33, Payment by Electronic Funds Transfer—System for Award Management, or 52.232-34, Payment by Electronic Funds Transfer--Other Than System for Award Management), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(2) Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR part 1315.

(h) Patent indemnity. The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(i) Payment.--

(1) Items accepted. Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

(2) Prompt payment. The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and prompt payment regulations at 5 CFR part 1315.

(3) Electronic Funds Transfer (EFT). If the Government makes payment by EFT, see 52.212-5(b) for the appropriate EFT clause.

(4) Discount. In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(5) Overpayments. If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall--

(i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the--

(A) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(B) Affected contract number and delivery order number, if applicable;

(C) Affected line item or subline item, if applicable; and

(D) Contractor point of contact.

(ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(6) Interest.

(i) All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in 41 U.S.C. 7109, which is applicable to the period in which the amount becomes due, as provided in (i)(6)(v) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(ii) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(iii) Final decisions. The Contracting Officer will issue a final decision as required by 33.211 if--

(A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt within 30 days;

(B) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(C) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see 32.607-2).

(iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(v) Amounts shall be due at the earliest of the following dates:

(A) The date fixed under this contract.

(B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(vi) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on--

(A) The date on which the designated office receives payment from the Contractor;

(B) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(vii) The interest charge made under this clause may be reduced under the procedures prescribed in 32.608-2 of the Federal Acquisition Regulation in effect on the date of this contract.

(j) Risk of loss. Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

(k) Taxes. The contract price includes all applicable Federal, State, and local taxes and duties.

(l) Termination for the Government's convenience. The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) Termination for cause. The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) Title. Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(o) Warranty. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(p) Limitation of liability. Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(q) Other compliances. The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

(r) Compliance with laws unique to Government contracts. The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. chapter 37, Contract Work Hours and Safety Standards; 41 U.S.C. chapter 87, Kickbacks; 41 U.S.C. 4712 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. chapter 21 relating to procurement integrity.

(s) Order of precedence. Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order: (1) the schedule of supplies/services; (2) The Assignments, Disputes, Payments, Invoice, Other Compliances, Compliance with Laws Unique to Government Contracts, and Unauthorized Obligations paragraphs of this clause; (3) the clause at 52.212-5; (4) addenda to this solicitation or contract, including any license agreements for computer software; (5) solicitation provisions if this is a solicitation; (6) other paragraphs of this clause; (7) the Standard Form 1449; (8) other documents, exhibits, and attachments; and (9) the specification.

(t) Reserved.

(u) Unauthorized Obligations.

(1) Except as stated in paragraph (u)(2) of this clause, when any supply or service acquired under this contract is subject to any End User License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause requiring the Government to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:

(i) Any such clause is unenforceable against the Government.

(ii) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument or agreement is invoked through an "I agree" click box or other comparable mechanism (e.g., "click-wrap" or "browse-wrap" agreements), execution does not bind the Government or any Government authorized end user to such clause.

(iii) Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.

(2) Paragraph (u)(1) of this clause does not apply to indemnification by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

(v) Incorporation by reference. The Contractor's representations and certifications, including those completed electronically via the System for Award Management (SAM), are incorporated by reference into the contract.

(End of Clause)

52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS--COMMERCIAL ITEMS (AUG 2019)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

(1) 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (JAN 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).

(2) 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Jul 2018) (Section 1634 of Pub. L. 115-91).

(3) 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (AUG 2019) (Section 889(a)(1)(A) of Pub. L. 115-232).

(4) 52.209-10, Prohibition on Contracting with Inverted Domestic Corporations (Nov 2015).

(5) 52.233-3, Protest After Award (AUG 1996) (31 U.S.C. 3553).

(6) 52.233-4, Applicable Law for Breach of Contract Claim (OCT 2004) (Public Laws 108-77 and 108-78 (19 U.S.C. 3805 note)).

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items: (Contracting Officer check as appropriate.)

___ (1) 52.203-6, Restrictions on Subcontractor Sales to the Government (Sept 2006), with Alternate I (Oct 1995) (41 U.S.C. 4704 and 10 U.S.C. 2402).

___ (2) 52.203-13, Contractor Code of Business Ethics and Conduct (Oct 2015) (41 U.S.C. 3509).

___ (3) 52.203-15, Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (June 2010) (Section 1553 of Pub. L. 111-5). (Applies to contracts funded by the American Recovery and Reinvestment Act of 2009.)

___ (4) 52.204-10, Reporting Executive Compensation and First-Tier Subcontract Awards (Oct 2018) (Pub. L. 109-282) (31 U.S.C. 6101 note).

___ (5) [Reserved]

___ (6) 52.204-14, Service Contract Reporting Requirements (Oct 2016) (Pub. L. 111-117, section 743 of Div. C).

___ (7) 52.204-15, Service Contract Reporting Requirements for Indefinite-Delivery Contracts (Oct 2016) (Pub. L. 111-117, section 743 of Div. C).

___ (8) 52.209-6, Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment. (Oct 2015) (31 U.S.C. 6101 note).

___ (9) 52.209-9, Updates of Publicly Available Information Regarding Responsibility Matters (Oct 2018) (41 U.S.C. 2313).

___ (10) [Reserved]

___ (11)(i) 52.219-3, Notice of HUBZone Set-Aside or Sole-Source Award (NOV 2011) (15 U.S.C. 657a).

___ (ii) Alternate I (NOV 2011) of 52.219-3.

___ (12) (i) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (OCT 2014) (if the offeror elects to waive the preference, it shall so indicate in its offer) (15 U.S.C. 657a).

___ (ii) Alternate I (JAN 2011) of 52.219-4.

- ____ (13) [Reserved]
- ____ (14)(i) 52.219-6, Notice of Total Small Business Set-Aside (NOV 2011) (15 U.S.C. 644).
- ____ (ii) Alternate I (NOV 2011).
- ____ (iii) Alternate II (NOV 2011).
- ____ (15)(i) 52.219-7, Notice of Partial Small Business Set-Aside (June 2003) (15 U.S.C. 644).
- ____ (ii) Alternate I (Oct 1995) of 52.219-7.
- ____ (iii) Alternate II (Mar 2004) of 52.219-7.
- ____ (16) 52.219-8, Utilization of Small Business Concerns (Oct 2018) (15 U.S.C. 637(d)(2) and (3)).
- ____ (17)(i) 52.219-9, Small Business Subcontracting Plan (Aug 2018) (15 U.S.C. 637(d)(4)).
- ____ (ii) Alternate I (Nov 2016) of 52.219-9.
- ____ (iii) Alternate II (Nov 2016) of 52.219-9.
- ____ (iv) Alternate III (Nov 2016) of 52.219-9.
- ____ (v) Alternate IV (Aug 2018) of 52.219-9.
- ____ (18) 52.219-13, Notice of Set-Aside of Orders (NOV 2011) (15 U.S.C. 644(r)).
- ____ (19) 52.219-14, Limitations on Subcontracting (JAN 2017) (15 U.S.C. 637(a)(14)).
- ____ (20) 52.219-16, Liquidated Damages—Subcontracting Plan (Jan 1999) (15 U.S.C. 637(d)(4)(F)(i)).
- ____ (21) 52.219-27, Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (NOV 2011) (15 U.S.C. 657f).
- ____ (22) 52.219-28, Post Award Small Business Program Rerepresentation (July 2013) (15 U.S.C. 632(a)(2)).
- ____ (23) 52.219-29, Notice of Set-Aside for, or Sole Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns (Dec 2015) (15 U.S.C. 637(m)).
- ____(24) 52.219-30, Notice of Set-Aside for, or Sole Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program (Dec 2015) (15 U.S.C. 637(m)).
- ____ (25) 52.222-3, Convict Labor (June 2003) (E.O. 11755).
- ____(26) 52.222-19, Child Labor--Cooperation with Authorities and Remedies (Jan 2018) (E.O. 13126).
- ____ (27) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).
- X (28)(i) 52.222-26, Equal Opportunity (SEPT 2016) (E.O. 11246).
- ____ (ii) Alternate I (Feb 1999) of 52.222-26.
- X (29)(i) 52.222-35, Equal Opportunity for Veterans (OCT 2015)(38 U.S.C. 4212).

___ (ii) Alternate I (July 2014) of 52.222-35.

X___ (30)(i) 52.222-36, Equal Opportunity for Workers with Disabilities (JUL 2014) (29 U.S.C. 793).

___ (ii) Alternate I (July 2014) of 52.222-36.

___ (31) 52.222-37, Employment Reports on Veterans (FEB 2016) (38 U.S.C. 4212).

X (32) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496).

X (33)(i) 52.222-50, Combating Trafficking in Persons (JAN 2019) (22 U.S.C. chapter 78 and E.O. 13627).

___ (ii) Alternate I (Mar 2015) of 52.222-50 (22 U.S.C. chapter 78 and E.O. 13627).

___ (34) 52.222-54, Employment Eligibility Verification (Oct 2015). (E. O. 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial items as prescribed in 22.1803.)

___ (35)(i) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Items (May 2008) (42 U.S.C. 6962(c)(3)(A)(ii)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

___ (ii) Alternate I (May 2008) of 52.223-9 (42 U.S.C. 6962(i)(2)(C)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

___ (36) 52.223-11, Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (Jun 2016) (E.O. 13693).

___ (37) 52.223-12, Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners (Jun 2016) (E.O. 13693).

___ (38) (i) 52.223-13, Acquisition of EPEAT® Registered Imaging Equipment (Jun 2014) (E.O.s 13423 and 13514).

___ (ii) Alternate I (OCT 2015) of 52.223-13.

___ (39)(i) 52.223-14, Acquisition of EPEAT® Registered Televisions (Jun 2014) (E.O.s 13423 and 13514).

___ (ii) Alternate I (Jun 2014) of 52.223-14.

___ (40) 52.223-15, Energy Efficiency in Energy-Consuming Products (Dec 2007) (42 U.S.C. 8259b).

___ (41)(i) 52.223-16, Acquisition of EPEAT®-Registered Personal Computer Products (OCT 2015) (E.O.s 13423 and 13514).

___ (ii) Alternate I (Jun 2014) of 52.223-16.

___ (42) 52.223-18, Encouraging Contractor Policies to Ban Text Messaging While Driving (Aug 2011) (E.O. 13513).

___ (43) 52.223-20, Aerosols (Jun 2016) (E.O. 13693).

___ (44) 52.223-21, Foams (Jun 2016) (E.O. 13693).

____ (45)(i) 52.224-3, Privacy Training (JAN 2017) (5 U.S.C. 552a).

____ (ii) Alternate I (JAN 2017) of 52.224-3.

X (46) 52.225-1, Buy American--Supplies (May 2014) (41 U.S.C. chapter 83).

X (47) (i) 52.225-3, Buy American--Free Trade Agreements--Israeli Trade Act (May 2014) (41 U.S.C. chapter 83, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note, 19 U.S.C. 3805 note, 19 U.S.C. 4001 note, Pub. L. 103-182, 108-77, 108-78, 108-286, 108-302, 109-53, 109-169, 109-283, 110-138, 112-41, 112-42, and 112-43.

____ (ii) Alternate I (May 2014) of 52.225-3.

____ (iii) Alternate II (May 2014) of 52.225-3.

____ (iv) Alternate III (May 2014) of 52.225-3.

____ (48) 52.225-5, Trade Agreements (AUG 2018) 19 U.S.C. 2501, et seq., 19 U.S.C. 3301 note).

____ (49) 52.225-13, Restrictions on Certain Foreign Purchases (JUNE 2008) (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

____ (50) 52.225-26, Contractors Performing Private Security Functions Outside the United States (Oct 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note).

____ (51) 52.226-4, Notice of Disaster or Emergency Area Set-Aside (Nov 2007) (42 U.S.C. 5150

____ (52) 52.226-5, Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov 2007) (42 U.S.C. 5150).

____ (53) 52.232-29, Terms for Financing of Purchases of Commercial Items (Feb 2002) (41 U.S.C. 4505, 10 U.S.C. 2307(f)).

____ (54) 52.232-30, Installment Payments for Commercial Items (Jan 2017) (41 U.S.C. 4505, 10 U.S.C. 2307(f)).

X (55) 52.232-33, Payment by Electronic Funds Transfer—System for Award Management (Oct 2018) (31 U.S.C. 3332).

X (56) 52.232-34, Payment by Electronic Funds Transfer—Other than System for Award Management (July 2013) (31 U.S.C. 3332).

____ (57) 52.232-36, Payment by Third Party (MAY 2014) (31 U.S.C. 3332).

____ (58) 52.239-1, Privacy or Security Safeguards (Aug 1996) (5 U.S.C. 552a).

____ (59) 52.242-5, Payments to Small Business Subcontractors (JAN 2017)(15 U.S.C. 637(d)(13)).

____ (60)(i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx. 1241(b) and 10 U.S.C. 2631).

____ (ii) Alternate I (Apr 2003) of 52.247-64.

____ (iii) Alternate II (Feb 2006) of 52.247-64.

(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items: (Contracting Officer check as appropriate.)

_____ (1) 52.222-17, Nondisplacement of Qualified Workers (May 2014) (E.O. 13495).

_____ (2) 52.222-41, Service Contract Labor Standards (AUG 2018) (41 U.S.C. chapter 67).

_____ (3) 52.222-42, Statement of Equivalent Rates for Federal Hires (MAY 2014) (29 U.S.C. 206 and 41 U.S.C. chapter 67).

_____ (4) 52.222-43, Fair Labor Standards Act and Service Contract Labor Standards--Price Adjustment (Multiple Year and Option Contracts) (AUG 2018) (29 U.S.C. 206 and 41 U.S.C. chapter 67).

_____ (5) 52.222-44, Fair Labor Standards Act and Service Contract Labor Standards--Price Adjustment (MAY 2014) (29 U.S.C 206 and 41 U.S.C. chapter 67).

_____ (6) 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment--Requirements (MAY 2014) (41 U.S.C. chapter 67).

_____ (7) 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services--Requirements (MAY 2014) (41 U.S.C. chapter 67).

_____ (8) 52.222-55, Minimum Wages Under Executive Order 13658 (DEC 2015) (E.O. 13658).

_____ (9) 52.222-62, Paid Sick Leave Under Executive Order 13706 (JAN 2017) (E.O. 13706).

_____ (10) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations (MAY 2014) (42 U.S.C. 1792).

(d) Comptroller General Examination of Record. The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at 52.215-2, Audit and Records--Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) (1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in this paragraph (e)(1) in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—

(i) 52.203-13, Contractor Code of Business Ethics and Conduct (Oct 2015) (41 U.S.C. 3509).

- (ii) 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (JAN 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).
- (iii) 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Jul 2018) (Section 1634 of Pub. L. 115-91).
- (iv) 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (AUG 2019) (Section 889(a)(1)(A) of Pub. L. 115-232).
- (v) 52.219-8, Utilization of Small Business Concerns (Oct 2018) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$700,000 (\$1.5 million for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.
- (vi) 52.222-17, Nondisplacement of Qualified Workers (MAY 2014) (E.O. 13495). Flow down required in accordance with paragraph (l) of FAR clause 52.222-17.
- (vii) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).
- (viii) 52.222-26, Equal Opportunity (Sep 2016) (E.O. 11246).
- (ix) 52.222-35, Equal Opportunity for Veterans (Oct 2015) (38 U.S.C. 4212).
- (x) 52.222-36, Equal Opportunity for Workers with Disabilities (Jul 2014) (29 U.S.C. 793).
- (xi) 52.222-37, Employment Reports on Veterans (Feb 2016) (38 U.S.C. 4212).
- (xii) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause 52.222-40.
- (xiii) 52.222-41, Service Contract Labor Standards (Aug 2018), (41 U.S.C. chapter 67).
- (xiv) _____ (A) 52.222-50, Combating Trafficking in Persons (JAN 2019) (22 U.S.C. chapter 78 and E.O. 13627).
_____ (B) Alternate I (March 2, 2015) of 52.222-50 (22 U.S.C. chapter 78 and E.O. 13627).
- (xv) 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment--Requirements (May 2014) (41 U.S.C. chapter 67.)
- (xvi) 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services--Requirements (May 2014) (41 U.S.C. chapter 67)
- (xvii) 52.222-54, Employment Eligibility Verification (Oct 2015) (E. O. 12989).
- (xviii) 52.222-55, Minimum Wages Under Executive Order 13658 (Dec 2015) (E.O. 13658).
- (xix) (A) 52.224-3, Privacy Training (JAN 2017) (5 U.S.C. 552a).
(B) Alternate I (JAN 2017) of 52.224-3.
- (xx) 52.222-62 Paid Sick Leave Under Executive Order 13706 (JAN 2017) (E.O. 13706).
- (xxi) 52.225-26, Contractors Performing Private Security Functions Outside the United States (Oct 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note).

(xxii) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations. (May 2014) (42 U.S.C. 1792). Flow down required in accordance with paragraph (e) of FAR clause 52.226-6.

(xxiii) 52.247-64, Preference for Privately-Owned U.S. Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx 1241(b) and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.

(2) While not required, the Contractor may include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(End of clause)

52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000)

(a) The Government may extend the term of this contract by written notice to the Contractor within 5 days; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 5 days before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed 36 months.

(End of clause)

52.227-19 COMMERCIAL COMPUTER SOFTWARE LICENSE (DEC 2007)

(a) Notwithstanding any contrary provisions contained in the Contractor's standard commercial license or lease agreement, the Contractor agrees that the Government will have the rights that are set forth in paragraph (b) of this clause to use, duplicate or disclose any commercial computer software delivered under this contract. The terms and provisions of this contract shall comply with Federal laws and the Federal Acquisition Regulation.

(b)(1) The commercial computer software delivered under this contract may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b)(2) of this clause or as expressly stated otherwise in this contract.

(2) The commercial computer software may be--

(i) Used or copied for use with the computer(s) for which it was acquired, including use at any Government installation to which the computer(s) may be transferred;

(ii) Used or copied for use with a backup computer if any computer for which it was acquired is inoperative;

(iii) Reproduced for safekeeping (archives) or backup purposes;

(iv) Modified, adapted, or combined with other computer software, provided that the modified, adapted, or combined portions of the derivative software incorporating any of the delivered, commercial computer software shall be subject to same restrictions set forth in this contract;

(v) Disclosed to and reproduced for use by support service Contractors or their subcontractors, subject to the same restrictions set forth in this contract; and

(vi) Used or copied for use with a replacement computer.

(3) If the commercial computer software is otherwise available without disclosure restrictions, the Contractor licenses it to the Government without disclosure restrictions.

(c) The Contractor shall affix a notice substantially as follows to any commercial computer software delivered under this contract:

Notice--Notwithstanding any other lease or license agreement that may pertain to, or accompany the delivery of, this computer software, the rights of the Government regarding its use, reproduction and disclosure are as set forth in HC1084-20-A-0003.

(End of clause)

252.204-7006 BILLING INSTRUCTIONS (OCT 2005)

When submitting a request for payment, the Contractor shall--

(a) Identify the contract line item(s) on the payment request that reasonably reflect contract work performance; and

(b) Separately identify a payment amount for each contract line item included in the payment request.

(End of clause)

252.204-7012 SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING (OCT 2016)

(a) Definitions. As used in this clause--

Adequate security means protective measures that are commensurate with the consequences and probability of loss, misuse, or unauthorized access to, or modification of information.

Compromise means disclosure of information to unauthorized persons, or a violation of the security policy of a system, in which unauthorized intentional or unintentional disclosure, modification, destruction, or loss of an object, or the copying of information to unauthorized media may have occurred.

Contractor attributional/proprietary information means information that identifies the contractor(s), whether directly or indirectly, by the grouping of information that can be traced back to the contractor(s) (e.g., program description, facility locations), personally identifiable information, as well as trade secrets, commercial or financial information, or other commercially sensitive information that is not customarily shared outside of the company.

Controlled technical information means technical information with military or space application that is subject to controls on the access, use, reproduction, modification, performance, display, release, disclosure, or dissemination.

Controlled technical information would meet the criteria, if disseminated, for distribution statements B through F using the criteria set forth in DoD Instruction 5230.24, Distribution Statements on Technical Documents. The term does not include information that is lawfully publicly available without restrictions.

Covered contractor information system means an unclassified information system that is owned, or operated by or for, a contractor and that processes, stores, or transmits covered defense information.

Covered defense information means unclassified controlled technical information or other information, as described in the Controlled Unclassified Information (CUI) Registry at <http://www.archives.gov/cui/registry/category-list.html>, that requires safeguarding or dissemination controls pursuant to and consistent with law, regulations, and Governmentwide policies, and is--

(1) Marked or otherwise identified in the contract, task order, or delivery order and provided to the contractor by or on behalf of DoD in support of the performance of the contract; or

(2) Collected, developed, received, transmitted, used, or stored by or on behalf of the contractor in support of the performance of the contract.

Cyber incident means actions taken through the use of computer networks that result in a compromise or an actual or potentially adverse effect on an information system and/or the information residing therein.

Forensic analysis means the practice of gathering, retaining, and analyzing computer-related data for investigative purposes in a manner that maintains the integrity of the data.

Information system means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.

Malicious software means computer software or firmware intended to perform an unauthorized process that will have adverse impact on the confidentiality, integrity, or availability of an information system. This definition includes a virus, worm, Trojan horse, or other code-based entity that infects a host, as well as spyware and some forms of adware.

Media means physical devices or writing surfaces including, but is not limited to, magnetic tapes, optical disks, magnetic disks, large-scale integration memory chips, and printouts onto which covered defense information is recorded, stored, or printed within a covered contractor information system.

Operationally critical support means supplies or services designated by the Government as critical for airlift, sealift, intermodal transportation services, or logistical support that is essential to the mobilization, deployment, or sustainment of the Armed Forces in a contingency operation.

Rapidly report means within 72 hours of discovery of any cyber incident.

Technical information means technical data or computer software, as those terms are defined in the clause at DFARS 252.227-7013, Rights in Technical Data--Noncommercial Items, regardless of whether or not the clause is incorporated in this solicitation or contract. Examples of technical information include research and engineering data, engineering drawings, and associated lists, specifications, standards, process sheets, manuals, technical reports, technical orders, catalog-item identifications, data sets, studies and analyses and related information, and computer software executable code and source code.

(b) Adequate security. The Contractor shall provide adequate security on all covered contractor information systems. To provide adequate security, the Contractor shall implement, at a minimum, the following information security protections:

(1) For covered contractor information systems that are part of an information technology (IT) service or system operated on behalf of the Government, the following security requirements apply:

(i) Cloud computing services shall be subject to the security requirements specified in the clause 252.239-7010, Cloud Computing Services, of this contract.

(ii) Any other such IT service or system (i.e., other than cloud computing) shall be subject to the security requirements specified elsewhere in this contract.

(2) For covered contractor information systems that are not part of an IT service or system operated on behalf of the Government and therefore are not subject to the security requirement specified at paragraph (b)(1) of this clause, the following security requirements apply:

(i) Except as provided in paragraph (b)(2)(ii) of this clause, the covered contractor information system shall be subject to the security requirements in National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171, "Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations" (available via the internet at <http://dx.doi.org/10.6028/NIST.SP.800-171>) in effect at the time the solicitation is issued or as authorized by the Contracting Officer.

(ii)(A) The Contractor shall implement NIST SP 800-171, as soon as practical, but not later than December 31, 2017. For all contracts awarded prior to October 1, 2017, the Contractor shall notify the DoD Chief Information Officer (CIO), via email at osd.dibcsia@mail.mil, within 30 days of contract award, of any security requirements specified by NIST SP 800-171 not implemented at the time of contract award.

(B) The Contractor shall submit requests to vary from NIST SP 800-171 in writing to the Contracting Officer, for consideration by the DoD CIO. The Contractor need not implement any security requirement adjudicated by an authorized representative of the DoD CIO to be nonapplicable or to have an alternative, but equally effective, security measure that may be implemented in its place.

(C) If the DoD CIO has previously adjudicated the contractor's requests indicating that a requirement is not applicable or that an alternative security measure is equally effective, a copy of that approval shall be provided to the Contracting Officer when requesting its recognition under this contract.

(D) If the Contractor intends to use an external cloud service provider to store, process, or transmit any covered defense information in performance of this contract, the Contractor shall require and ensure that the cloud service provider meets security requirements equivalent to those established by the Government for the Federal Risk and Authorization Management Program (FedRAMP) Moderate baseline (<https://www.fedramp.gov/resources/documents/>) and that the cloud service provider complies with requirements in paragraphs (c) through (g) of this clause for cyber incident reporting, malicious software, media preservation and protection, access to additional information and equipment necessary for forensic analysis, and cyber incident damage assessment.

(3) Apply other information systems security measures when the Contractor reasonably determines that information systems security measures, in addition to those identified in paragraphs (b)(1) and (2) of this clause, may be required to provide adequate security in a dynamic environment or to accommodate special circumstances (e.g., medical devices) and any individual, isolated, or temporary deficiencies based on an assessed risk or vulnerability. These measures may be addressed in a system security plan.

(c) Cyber incident reporting requirement.

(1) When the Contractor discovers a cyber incident that affects a covered contractor information system or the covered defense information residing therein, or that affects the contractor's ability to perform the requirements of the contract that are designated as operationally critical support and identified in the contract, the Contractor shall--

(i) Conduct a review for evidence of compromise of covered defense information, including, but not limited to, identifying compromised computers, servers, specific data, and user accounts. This review shall also include analyzing covered contractor information system(s) that were part of the cyber incident, as well as other information

systems on the Contractor's network(s), that may have been accessed as a result of the incident in order to identify compromised covered defense information, or that affect the Contractor's ability to provide operationally critical support; and

(ii) Rapidly report cyber incidents to DoD at <http://dibnet.dod.mil>.

(2) Cyber incident report. The cyber incident report shall be treated as information created by or for DoD and shall include, at a minimum, the required elements at <http://dibnet.dod.mil>.

(3) Medium assurance certificate requirement. In order to report cyber incidents in accordance with this clause, the Contractor or subcontractor shall have or acquire a DoD-approved medium assurance certificate to report cyber incidents. For information on obtaining a DoD-approved medium assurance certificate, see <http://iase.disa.mil/pki/eca/Pages/index.aspx>.

(d) Malicious software. When the Contractor or subcontractors discover and isolate malicious software in connection with a reported cyber incident, submit the malicious software to DoD Cyber Crime Center (DC3) in accordance with instructions provided by DC3 or the Contracting Officer. Do not send the malicious software to the Contracting Officer.

(e) Media preservation and protection. When a Contractor discovers a cyber incident has occurred, the Contractor shall preserve and protect images of all known affected information systems identified in paragraph (c)(1)(i) of this clause and all relevant monitoring/packet capture data for at least 90 days from the submission of the cyber incident report to allow DoD to request the media or decline interest.

(f) Access to additional information or equipment necessary for forensic analysis. Upon request by DoD, the Contractor shall provide DoD with access to additional information or equipment that is necessary to conduct a forensic analysis.

(g) Cyber incident damage assessment activities. If DoD elects to conduct a damage assessment, the Contracting Officer will request that the Contractor provide all of the damage assessment information gathered in accordance with paragraph (e) of this clause.

(h) DoD safeguarding and use of contractor attributional/proprietary information. The Government shall protect against the unauthorized use or release of information obtained from the contractor (or derived from information obtained from the contractor) under this clause that includes contractor attributional/proprietary information, including such information submitted in accordance with paragraph (c). To the maximum extent practicable, the Contractor shall identify and mark attributional/proprietary information. In making an authorized release of such information, the Government will implement appropriate procedures to minimize the contractor attributional/proprietary information that is included in such authorized release, seeking to include only that information that is necessary for the authorized purpose(s) for which the information is being released.

(i) Use and release of contractor attributional/proprietary information not created by or for DoD. Information that is obtained from the contractor (or derived from information obtained from the contractor) under this clause that is not created by or for DoD is authorized to be released outside of DoD--

(1) To entities with missions that may be affected by such information;

(2) To entities that may be called upon to assist in the diagnosis, detection, or mitigation of cyber incidents;

(3) To Government entities that conduct counterintelligence or law enforcement investigations;

(4) For national security purposes, including cyber situational awareness and defense purposes (including with Defense Industrial Base (DIB) participants in the program at 32 CFR part 236); or

(5) To a support services contractor ("recipient") that is directly supporting Government activities under a contract that includes the clause at 252.204-7009, Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information.

(j) Use and release of contractor attributional/proprietary information created by or for DoD. Information that is obtained from the contractor (or derived from information obtained from the contractor) under this clause that is created by or for DoD (including the information submitted pursuant to paragraph (c) of this clause) is authorized to be used and released outside of DoD for purposes and activities authorized by paragraph (i) of this clause, and for any other lawful Government purpose or activity, subject to all applicable statutory, regulatory, and policy based restrictions on the Government's use and release of such information.

(k) The Contractor shall conduct activities under this clause in accordance with applicable laws and regulations on the interception, monitoring, access, use, and disclosure of electronic communications and data.

(l) Other safeguarding or reporting requirements. The safeguarding and cyber incident reporting required by this clause in no way abrogates the Contractor's responsibility for other safeguarding or cyber incident reporting pertaining to its unclassified information systems as required by other applicable clauses of this contract, or as a result of other applicable U.S. Government statutory or regulatory requirements.

(m) Subcontracts. The Contractor shall--

(1) Include this clause, including this paragraph (m), in subcontracts, or similar contractual instruments, for operationally critical support, or for which subcontract performance will involve covered defense information, including subcontracts for commercial items, without alteration, except to identify the parties. The Contractor shall determine if the information required for subcontractor performance retains its identity as covered defense information and will require protection under this clause, and, if necessary, consult with the Contracting Officer; and

(2) Require subcontractors to--

(i) Notify the prime Contractor (or next higher-tier subcontractor) when submitting a request to vary from a NIST SP 800-171 security requirement to the Contracting Officer, in accordance with paragraph (b)(2)(ii)(B) of this clause; and

(ii) Provide the incident report number, automatically assigned by DoD, to the prime Contractor (or next higher-tier subcontractor) as soon as practicable, when reporting a cyber incident to DoD as required in paragraph (c) of this clause.

(End of clause)

252.225-7048 EXPORT-CONTROLLED ITEMS (JUNE 2013)

(a) Definition. "Export-controlled items," as used in this clause, means items subject to the Export Administration Regulations (EAR) (15 CFR Parts 730-774) or the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120-130). The term includes--

(1) "Defense items," defined in the Arms Export Control Act, 22 U.S.C. 2778(j)(4)(A), as defense articles, defense services, and related technical data, and further defined in the ITAR, 22 CFR Part 120; and

(2) "Items," defined in the EAR as "commodities," "software", and "technology," terms that are also defined in the

EAR, 15 CFR 772.1.

(b) The Contractor shall comply with all applicable laws and regulations regarding export-controlled items, including, but not limited to, the requirement for contractors to register with the Department of State in accordance with the ITAR. The Contractor shall consult with the Department of State regarding any questions relating to compliance with the ITAR and shall consult with the Department of Commerce regarding any questions relating to compliance with the EAR.

(c) The Contractor's responsibility to comply with all applicable laws and regulations regarding export-controlled items exists independent of, and is not established or limited by, the information provided by this clause.

(d) Nothing in the terms of this contract adds, changes, supersedes, or waives any of the requirements of applicable Federal laws, Executive orders, and regulations, including but not limited to—

(1) The Export Administration Act of 1979, as amended (50 U.S.C. App. 2401, et seq.);

(2) The Arms Export Control Act (22 U.S.C. 2751, et seq.);

(3) The International Emergency Economic Powers Act (50 U.S.C. 1701, et seq.);

(4) The Export Administration Regulations (15 CFR Parts 730-774);

(5) The International Traffic in Arms Regulations (22 CFR Parts 120-130); and

(6) Executive Order 13222, as extended.

(e) The Contractor shall include the substance of this clause, including this paragraph (e), in all subcontracts.

(End of clause)

G1, POINTS OF CONTACT

Contracting Officer

Name: Lisa Cravens

Organization/Office Symbol: DISA/DITCO/PL8413

Phone No.:(618)418-6295

E-Mail Address: lisa.o.cravens.civ@mail.mil

Contract Specialist

Name: Alison Harder

Organization/Office Symbol: DISA/DITCO/PL8413

Phone No.: (618)418-6244

E-Mail Address: alison.k.harder.civ@mail.mil

COR/Mission Partner Point of Contact

Name: Tarnya Green

Organization/Office Symbol: DISA/BD

Phone No.: 301-225-2362

E-Mail Address: tarnya.l.green.civ@mail.mil

Contractor Point of Contact

Contractor Legal Business Name: Dell Federal Systems L.P

DUNS: 149530219

CAGE CODE: 3XAU1
Contractor POC: Brad Carr
E-Mail Address: Brad_Carr@dell.com
Phone Number: (646) 573-0885

(End of text)

G2, CONTRACT/ORDER CLOSEOUT - FIXED-PRICE, TIME-AND-MATERIALS, OR LABOR-HOURS

Timely contract closeout is a priority under this contract/order. The Contractor shall submit a final invoice within ninety (90) calendar days after the expiration of this contract/order, unless the Contractor requests and is granted an extension by the Contracting Officer, in writing. In addition, and concurrent with the submission of the final invoice, the Contractor shall notify the Contracting Officer of the amount of excess funds that can be deobligated from this contract/order so the closeout process can begin as soon as possible upon expiration of this contract/order. A bilateral contract/order closeout modification will be forwarded to the Contractor by the Contracting Officer and must be signed by the Contractor and returned to the Contracting Officer within thirty (30) calendar days of issuance of the modification. A Contractor's failure to respond and/or sign the bilateral closeout modification within thirty (30) calendar days of receipt will constitute approval of the terms of the modification and the modification will subsequently be processed unilaterally by the Contracting Officer to deobligate excess funds and close this contract/order.

If this contract/order contains option periods, the Contractor is required to submit an invoice within ninety (90) calendar days after expiration of the base period of performance and the expiration of each exercised option period of performance to allow for deobligation of excess funds that were obligated in those respective periods of performance.

(End of text)

ORGANIZATIONAL AND CONSULTANT CONFLICTS OF INTEREST (OCCI)

(a) An offeror shall identify in its proposal, quote, bid or any resulting contract, any potential or actual Organizational and Consultant Conflicts of Interest (OCCI) as described in FAR Subpart 9.5. This includes actual or potential conflicts of interests of proposed subcontractors. If an offeror identifies in its proposal, quote, bid or any resulting contract, a potential or actual conflict of interests the offeror shall submit an Organizational and Consultant Conflicts of Interest Mitigation Plan to the contracting officer. The Organizational and Consultant Conflicts of Interest Mitigation Plan shall describe how the offeror addresses potential or actual conflicts of interest and identify how they will avoid, neutralize, or mitigate present or future conflicts of interest.

(b) Offerors must consider whether their involvement and participation raises any OCCI issues, especially in the following areas when:

- (1) Providing systems engineering and technical direction.
- (2) Preparing specifications or work statements and/or objectives.
- (3) Providing evaluation services.
- (4) Obtaining access to proprietary information.

(c) If a prime contractor or subcontractor breaches any of the OCCI restrictions, or does not disclose or

misrepresents any relevant facts concerning its conflict of interest, the government may take appropriate action, including terminating the contract, in addition to any remedies that may be otherwise permitted by the contract or operation of law.

(End of text)

ESI/ACT FEE

Attachment 6 Fees and Payments

1. **Government-wide Acquisition Contract (GWAC) fees.** The Enterprise Agreement (EA) unit prices include any applicable GWAC fees, such as the GSA Industrial Funding Fee. The contractor shall be responsible for all required filings to the GWAC holder and for payment of the fees in accordance with applicable GWAC holder instructions.
2. **Acquisition, Contracting, and Technical (ACT) Fee.** The cost of awarding, administering and managing this BPA under ESI is included in the prices for all products and/or services offered under this BPA.

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

3. **Remittance of Fees.** Payment is due thirty (30) days following approval of the Report of Sales for the completed quarter or as otherwise requested by the Procurement Contracting Office (PCO) or Software Product Manager (SPM). ACT fees that have not been paid within the prescribed thirty (30) days shall be considered a debt to the United States Government under the terms of FAR 32.6. The Government may exercise all its rights under the contract, including withholding or setting off payments and interest on the debt (see contract FAR clause 52.232-17, Interest). Failure of the Contractor to pay the ACT Fee in a timely manner may result in termination of the EA.
4. **Fee Transmittal.** The Contractor shall remit the 1% ESI ACT fee in accordance with the report of sales instructions. Fee checks shall not be issued until written approval is received for the Report of Sales.

The SPM or each Military Service or Agency participating in the management of a DoD EA will provide instructions for remittance of ACT fees collected by the Contractor. Provided below is an example of the Department of Navy instructions for fee submission:

The contractor shall remit ACT Fee to the address provided below by corporate or cashier's check made payable to "Treasurer of the United States". A transmittal letter is not required with submission of Navy fee checks.

EA (fill in applicable #)

Department of Defense Enterprise Software Initiative (DoD ESI) Agreement ACT Fee

For US Postal Service mail or USPS Express Mail, send check to:
 Naval Information Warfare Center (NIWC) Pacific
 Attn: Nick Thomas

Code 55350, Bldg. 81
53560 Hull Street
San Diego, CA 92152-5001

For Federal Express, United Parcel Service, DHL or Other Courier Services, send check to:
Naval Information Warfare Center (NIWC) Pacific
Shipping and Receiving
Receiving Officer (OT 7)
Attn: Nick Thomas
Code 55350, Bldg. 81
4297 Pacific Hwy.
San Diego, CA 92110

Email a copy of the ACT Fee remittance check to the Government Points of Contact found [above](#).

G3 - EXTERNAL ORDERING FEE

G3, ORDERING PROCEDURES FOR EXTERNAL AGENCIES/ORGANIZATIONS

- (a) An external agency is any contracting office outside of DISA. External organizations are those DISA organizations outside of DITCO which have duly appointed Ordering Officers.
- (b) The External Agency Contracting Officer will be the contracting officer for task orders awarded under this contract, BPA by an external agency contracting office. All of the task orders are negotiable and agency decisions and determinations for the task order will be made by the External Agency Contracting Officer. These issues must be resolved consistently with External Agency procedures oversight.
- (c) The following procedures apply to External Agencies placing orders against this contract, BPA:
- (1) The External Agency Contracting Officer shall add the Contract Line Item Number (CLIN) set forth in Section B, entitled External Ordering Agency Fee, to add a .10% fee to each order placed under this contract. Modifications that increase the total order amount shall adjust the amount of this CLIN to account for the modification increase. NOTE: The contractor shall reject all orders and modifications that do not include the .10% fee.
 - (2) The External Agency Contracting Officer shall not use any order numbers which are identified by using serial numbers with 0001 thru 9999. DoD agencies should use ordering numbers as specified in DFARS 204.7004(d)(2)(i). Non-DoD federal agencies may use any numbering system provided it does not conflict with either of these numbering systems.
- (d) The following reporting procedures apply to contractors receiving external orders.
- (1) The contractor shall provide a copy of the order and all modifications electronically to disa.scott.ditco.mbx.pl83-decentralized-order-info@mail.mil quarterly in conjunction with paragraphs (d)(2), (3) and (4).

(2) Quarterly, the contractor shall submit a check made payable to DITCO/RM3221 to pay the required .10% fee on all payments received from external orders during the prior quarter. Contractor shall include a copy of the Quarterly Progress Report for Orders placed by any non-DITCO Office (Decentralized Orders) Spreadsheet for Remote Ordering (Attachment 2) with the check. Payment is due the 30th of the month following the end of the calendar year quarter and shall be submitted to the following address (if using USPS):

DISA/RM3221
2300 East Drive
ATTN: RM3221
Scott AFB IL 62225-5406

If submitting payment via Fed Ex or other means which requires specific individual POC information to ensure delivery, please address as follows (check still made payable to DITCO/RM3221):

DISA RM3221
ATTN: Financial Management Specialist
2300 East Drive
Scott AFB, IL 62225
(618) 418-6128

Alternatively, payment of external order fee may be made via Electronic Funds Transfer (EFT) Automated Clearing House (ACH). Prior to submission of first EFT/ACH payment, arrangements must be made with DFAS Cleveland Division Director for Disbursing Operations, J. Lukasik at jeffery.f.lukasik.civ@mail.mil or Carmen Laboy at carmen.laboy@dfas.mil to establish baseline for transmission.

DFAS Cleveland can receive funds via ACH using the following:

Bank Name:	Credit Gateway
RTN:	051036706
A/C:	220031

DFAS Cleveland can receive funds via wire using the following:

Bank Name:	US Treasury
City:	New York, NY
Country:	USA
RTN:	021030004
Account Name:	DFAS-Cleveland
Account Number:	00008522

Once confirmation of EFT/ACH transmission is received from DFAS Cleveland, a copy shall be e-mailed to disa.scott.rm.mbx.rm3222-decentralized-orders@mail.mil so appropriate transactions to process the disbursement can be established with DFAS through coordination

with RM32221.

(3) Quarterly, the contractor shall submit an electronic copy of the spreadsheet entitled Quarterly Progress Report for Orders placed by any non-DITCO Office (Decentralized Orders) Spreadsheet for Remote Ordering (Attachment {insert #}) to disa.scott.rm.list.rm322-personnel@mail.mil and disa.scott.ditco.mbx.pl83-decentralized-order-info@mail.mil. The spreadsheet is due the 30th of the month following the end of the calendar year quarter. If External Agencies have issued orders against the contract, BPA, but no payments were received during the quarter, send the spreadsheet to disa.scott.ditco.mbx.pl83-decentralized-order-info@mail.mil and state in the email no payments were received for the quarter.

(4) An entry shall be made on the spreadsheet for each order, and modification(s) that increase or decrease the amount of the basic order.

(5) The contractor may remit the DITCO fee using one check for all payments received in the prior quarter.

(6) The spreadsheet shall be cumulative of all orders placed by External Agencies during the life of the contract, BPA. The Decentralized ordering fee paid to DITCO (column Y on the report of sales spread sheet) is the .10% fee paid to DITCO. This fee is the .10% of the total amount of the order. The fee shall be listed on a separate CLIN and be .10% of the total order amount. The contractor shall reject all orders and modifications that do not include the .10% fee. In column Y on the report of sales the contractor shall apply the .10% fee to the ESA total price. The .10% fee will also be tracked the Report of Sales Template.

(7) Customer Department on the spreadsheet should reflect the ordering agency that places the order. For example, if the ordering agency is a military department, insert the appropriate department, such as Air Force or Army; if the ordering agency is another DoD agency, insert the agency name, such as Defense Logistics Agency (DLA); if the ordering agency is a federal agency, insert the department name, such as Department of Justice (DoJ).

(e) The Government may audit the contractor's books with relation to any orders issued by an External agency.

(f) Schedule - Checks and spreadsheets are required in accordance with the following schedule:

<u>Quarter</u>	<u>Due Date</u>
Nov, Dec, Jan	30 Feb
Feb, Mar, Apr	30 May
May, Jun, Jul	30 Aug
Aug, Sep, Oct	30 Nov

(End of text)

ATTACHMENT 1 - PRODUCT LIST



Attachment 1 -
HC108420A0003.xlsx

ATTACHMENT 2 - SALES REPORT



Attachment 2 -
Monthly Sales Data

ATTACHMENT 4 - PRODUCT TERMS



Attachment 4 -
Product Terms - HC1

ATTACHMENT 5 - ONLINE TERMS



Attachment 5 -
Online Terms - HC10

ATTACHMENT 3 - MICROSOFT MLA



Attachment 3 - MLA
HC108420A0003.doc