

STATE OF MICHIGAN  
DEPARTMENT OF MANAGEMENT AND BUDGET  
PURCHASING OPERATIONS  
P.O. BOX 30026, LANSING, MI 48909  
OR  
530 W. ALLEGAN, LANSING, MI 48933

February 25, 2008

NOTICE  
OF  
CONTRACT NO. 071B8200108  
between  
THE STATE OF MICHIGAN  
and

NAME & ADDRESS OF CONTRACTOR <b>Spectrum Office Systems Inc.</b> 11320 Random Hills Road, Suite 630 Fairfax, VA 22030  Email: <a href="mailto:Beverly.Dickerson@spectrum-systems.com">Beverly.Dickerson@spectrum-systems.com</a>	TELEPHONE Beverly Dickerson <b>(703) 591-7400 x203</b>
	CONTRACTOR NUMBER/MAIL ODE
	BUYER/CA (517) 373,3993 <b>Dale N. Reif</b>
Contract Compliance Inspector: Michael Breen <b>SAFEBOOT END USER LICENSE AGREEMENT</b>	
CONTRACT PERIOD: From: <b>February 29, 2008</b> To: <b>February 28, 2009</b>	
TERMS <b>N/A</b>	SHIPMENT <b>N/A</b>
F.O.B. <b>N/A</b>	SHIPPED FROM <b>N/A</b>
MINIMUM DELIVERY REQUIREMENTS <b>N/A</b>	
MISCELLANEOUS INFORMATION:	

Total Estimated Contract Value: \$64,990.00

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**FOR THE CONTRACTOR:**

Spectrum Office Systems Inc  
Firm Name

Authorized Agent Signature

Authorized Agent (Print or Type)

Date

**FOR THE STATE:**

Signature  
Dale N. Reif, Buyer

Name/Title  
IT Division

Division

Date



**STATE OF MICHIGAN  
Department of Management and Budget  
Purchasing Operations**

Information Technology Division  
Stevens T. Mason Building  
530 West Allegan Street  
P.O. Box 30026  
Lansing, MI 48909

Buyer Name: Dale N. Reif  
Telephone Number: (517) 373-3993  
E-Mail Address: reifd@michigan.gov

Contract Number 071B8200108

Michigan Department of Information Technology



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### Attachments and Exhibits:

Attachment A: Spectrum Systems & SafeBoot Encryption Promotion for State and Local Government

Attachment B: State of Michigan Safeboot End User License Agreement

Attachment C: General Service Administration (GSA) SmartBuy ESI BPA contract #FA8771-07-A-0304

Exhibit E; Letter requesting Approval for Subcontractors Safeboot, LLC , McAfee, Inc. and their affiliates

The following Exhibits referenced in this document are not applicable:

- Exhibit C
- Exhibit D
- Exhibit F,
- Exhibit I
- Exhibit J



## **Article 1 – Statement of Work (SOW)**

### **1.0 Project Identification**

#### **1.001 Project Request**

The State of Michigan desires to enter into a multi-year agreement with Spectrum Systems, Inc. that will provide the State with commodities and services furnished by Spectrum System, Inc. In addition, Spectrum in conjunction with SafeBoot will provide dedicated consulting services and auxiliary resources to specific work statements identified herein in Article 1 or such other subsequent Statements of Work as may be mutually agreed by the parties. This request utilizes the federal procurement initiative, Attachment C: General Service Administration (GSA) SmartBuy ESI BPA contract #FA8771-07-A-0304 and State of Michigan Purchase Order Number 084N8200412.

#### **1.002 Background**

Data encryption technology has become a necessity due to Federal and State regulations and their requirement regarding the protection of data (i.e., HIPPA, Graham Leach Biley Act, State of Michigan Identification Protection Act, etc). Based upon these regulations and other proactive measures, the Michigan Department of Information Technology (MDIT) formed an Enterprise Architecture Sub-Group to establish what actions would hold the best risk reduction strategy to insure that the state is not held liable in the event that the data is either lost or stolen. This Statement of Work (SOW) complies with the goals and the outcome of the Enterprise Architecture sub-group.

### **1.1 Scope of Work and Deliverables**

#### **1.101 In Scope**

**Products:** The scope of this agreement includes all SafeBoot encryption products as sold thru Spectrum Systems, Inc. which is listed in the GSA SmartBuy ESI BPA contract #FA8771-07-A-0304.

**Services:** The scope of work will include the services required to install, implement and train the client technical staff, call center staff, field services and users identified by the DIT. Implementation services will include client configuration and integration, planning, testing and deploying SafeBoot client software, configuring disk encryption, port control, and device control and integration with State of Michigan client and network policies. Assessment, Installation and Configuration is described in Attachment A and Attachment C. There will be no Key Personnel as described in Section 2.041: Contractor Personnel.

The specific training required will be as follows:

1. The server staff required to install and maintain the software
2. The security staff required to retrieve keys for forensics purposes
3. Helpdesk staff to support users in the resetting and retrieving of passwords
4. Field services staff for the purposes of client implementation.

Notwithstanding anything to the contrary, the implementation, consulting and training services shall be limited to the number of hours specified below in Section 1.104.

#### **1.102 Out Of Scope**

All products not listed in the Federal ESI/SmartBUY Master License Agreement. The purchasing of infrastructure components such as hardware is out of scope of this agreement. Software development, customization, enhancements and/or modifications are not within the scope of the SOW. Enhancements altering the functionality, and/or adding new functions not related to a maintenance modification are not within the scope of this SOW.



### **1.103 Technical Environment**

Information regarding the State's information technology architecture and standards may be found at <http://www.michigan.gov/dit>.

### **1.104 Work And Deliverable**

All work and deliverable details are listed under Attachment A, Spectrum Systems & SafeBoot Encryption Promotion for State and Local Government and Attachment C: GSA SmartBuy ESI BPA contract #FA8771-07-A-0304. Notwithstanding anything else to the contrary, the number of licenses and consulting hours provided by the Contractor as a result of this contract are as follows:

- 5000 licenses of the SafeBoot product(s) as identified within the SmartBuy contract (1000 licenses already purchased under delegated authority on 11/29/2007)
- 80 hours of on-site advanced systems integration
- 40 hours of on-site training for various personnel groups

## **1.2 Roles and Responsibilities**

### **1.201 Contractor Staff, Roles, And Responsibilities**

Contractor to provide staff, training and materials required to accomplish tasks described in Section 1.104 and other such roles and responsibilities as mutually agreed upon. The contractor providing on-site training is expected to comply with standard state operational hours which are, Monday thru Friday 8:00 AM until 5:00 PM Eastern Standard Time.

### **1.202 State Staff, Roles, And Responsibilities**

Self-Audits: The State agrees to perform a self-audit at least annually and upon termination of this agreement. The State agrees to report to Spectrum Systems the findings of the self-audits as mutually agreed.

### **1.203 Other Roles And Responsibilities - reserved**

## **1.3 Project Plan**

### **1.301 Project Plan Management - reserved**

### **1.302 Reports – reserved**

## **1.4 Project Management**

### **1.401 Issue Management - reserved**

### **1.402 Risk Management - reserved**

### **1.403 Change Management - reserved**

## **1.5 Acceptance**

### **1.501 Criteria**

The software will conform to and, perform in accordance with, SafeBoot's User Guide and Administrator's Manual specifications without material deficiency.



### **1.502 Final Acceptance**

Final acceptance is expressly conditioned upon the completion of the delivery of all commodities and services, including implementation, training, and the completion of all tasks as referenced in Article 1, and the agreement by the State that the deliverable is met, which agreement will not be unreasonably withheld or delayed.

- Safeboot software will be considered accepted upon delivery of products listed in Attachment A.
- Completion of training.
- Delivery of manuals and other support documents.
- Delivery of training manuals.

The services engagements that are necessary for the success of this solution are identified in Attachments A and C. These services engagements will be planned and agreed to before starting.

The scope of any additional engagements will be established beforehand and the contract administrator, MDIT Project Team, and associated Spectrum Systems and SafeBoot personnel will agree in writing upon the final acceptance of such engagements.

Acceptance criteria for each additional engagement will be as defined in 1.501 and 1.502 unless otherwise established before each engagement will begin.

## **1.6 Compensation and Payment**

### **1.601 Compensation And Payment**

A price commitment to purchase additional licenses for twelve (12) months through the Spectrum Systems Safeboot Special Promotion for US State and Local Government shall apply. Pricing during the term of contract is set forth in Attachment A: Enterprise Encryption Solution attached to this Contract.



## Article 2 – General Terms and Conditions

### 2.010 Contract Structure and Administration

#### **2.011 Definitions**

Capitalized terms used in this Contract (including its Exhibits) shall have the meanings given below, unless the context requires otherwise:

- (a) “Days” means calendar days unless otherwise specified.
- (b) “24x7x365” means 24 hours a day, seven days a week, and 365 days a year (including the 366th day in a leap year).
- (c) “Additional Service” means any Services/Deliverables within the scope of the Contract, but not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration. “Additional Service” does not include New Work.
- (d) “Amendment Labor Rates” means the schedule of fully-loaded hourly labor rates attached as **Attachment C** Service Administration (GSA) SmartBuy ESI BPA contract #FA8771-07-A-0304.
- (e) “Audit Period” has the meaning given in **Section 2.111**.
- (f) “Business Day,” whether capitalized or not, shall mean any day other than a Saturday, Sunday or State-recognized legal holiday (as identified in the Collective Bargaining Agreement for State employees) from 8:00am EST through 5:00pm EST unless otherwise stated.
- (g) “Incident” means any interruption in Services.
- (h) “Business Critical” means any function identified in any Statement of Work as Business Critical.
- (i) “Deliverable” means physical goods and/or commodities as required or identified by a Statement of Work
- (j) “Key Personnel” means any Personnel designated in **Article 1, or Section 1.201**, as Key Personnel.
- (k) “New Work” means any Services/Deliverables outside the scope of the Contract and not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration. “New Work” does not include Additional Service.
- (l) “Services” means any function performed for the benefit of the State.
- (m) “State Location” means any physical location where the State performs work. State Location may include state-owned, leased, or rented space.
- (n) “Subcontractor” means a company Contractor delegates performance of a portion of the Services to, but does not include independent contractors engaged by Contractor solely in a staff augmentation role.
- (o) “Work in Process” means a Deliverable that has been partially prepared, but has not been presented to the State for Approval.

#### **2.012 Attachments and Exhibits**

All Attachments and/or Exhibits attached to any and all Statement(s) of Work, attached to, or referencing this Contract, are incorporated in their entirety into, and form part of, this Contract.

#### **2.013 Statements of Work**

- (a) The parties agree that the Services/Deliverables to be rendered by Contractor pursuant to this Contract (and any future amendments of it) will be defined and described in detail in Statements of Work or Purchase Orders (PO) executed under this Contract. The initial Statement of Work is provided in Article 1 Contractor shall not be obliged or authorized to commence any work to implement a Statement of Work until authorized via a PO issued against this Contract, or an amendment to this Contract (see 2.106). Contractor shall perform in accordance with this Contract, including the Statements of Work/Purchase Orders executed under it.
- (b) Unless otherwise agreed by the parties, each Statement of Work (as defined in Article 1) will include, or incorporate by reference to the appropriate Contract Article 1 Attachment containing, the following information:
  - a description of the Services to be performed by Contractor under the Statement of Work;
  - a project schedule (including the commencement and completion dates for all tasks, subtasks (for all projects of sufficient duration and complexity to warrant sub task breakdown), and Deliverables;
  - a list of the Deliverables to be provided, if any, including any particular specifications and acceptance criteria for such Deliverables, and the dates on which the Deliverables are scheduled to be completed and delivered to the State;





- all Deliverable price schedules and other charges associated with the Statement of Work, the overall fixed price for such Statement of Work and any other appropriate pricing and payment terms;
- a specification of Contractor's and the State's respective performance responsibilities with respect to the performance or completion of all tasks, subtasks and Deliverables;
- a listing of any Key Personnel of Contractor and/or its Subcontractors for that Statement of Work and any future Statements of Work;
- any other information or provisions the parties agree to include.

(c) Reserved.

(d) The initial Statements of Work, as of the Effective Date, are included with this Contract as Article 1.

## 2.014 Issuing Office

The Department of Management and Budget, Purchasing Operations and the Department of Information Technology issue this Contract, including all other relevant State of Michigan departments and agencies ("State" collectively). Purchasing Operations is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract. **Purchasing Operations is the only State office authorized to change, modify, amend, alter or clarify the prices, specifications, terms and conditions of this Contract.** The Contractor Administrator within the Purchasing Operations for this Contract is:

Dale N. Reif, Buyer  
Purchasing Operations, IT Division  
Department of Management and Budget  
Mason Bldg, 2nd Floor  
PO Box 30026  
Lansing, MI 48909

## 2.015 Contract Compliance Inspector

Upon receipt at Purchasing Operations of the properly executed Contract, it is anticipated that the Director of Purchasing Operations, in consultation with the Department of Information Technology, will direct that the person named below, or any other person so designated, be authorized to monitor and coordinate the activities for the Contract on a day-to-day basis during its term. However, monitoring of this Contract implies **no authority to change, modify, clarify, amend, or otherwise alter the prices, terms, conditions and specifications of such Contract as that authority is retained by the Purchasing Operations.** The Contract Compliance Inspector for this Contract is:

Michael Breen  
Contracts and Procurement  
Department of Information Technology  
Constitution Hall, First Floor  
525 West Allegan Street  
Lansing, MI 48913

## 2.016 Project Manager

Scot Ellsworth  
Technical Services  
Department of Information Technology  
Romney Building, Fourth Floor  
Lansing, MI 48913

## 2.020 Contract Objectives/Scope/Background

## 2.021 Background

Please see section 1.002.

**2.022 Purpose**

Please see Section 1.001

**2.23 Objectives and Scope**

Please see Section 1.1

**2.024 Interpretation**

Sections 2.021 through 2.023 are intended to provide background and context for this Contract and are not intended to expand the scope of the obligations under this Contract or to alter the plain meaning of the terms and conditions of this Contract. However, to the extent the terms and conditions of this Contract are unclear or otherwise ambiguous, such terms and conditions are to be interpreted and construed in light of the provisions of this Section.

**2.025 Form, Function and Utility**

If the Contract is for use of more than one State agency and if the Deliverable/Service does not meet the form, function, and utility required by that State agency, that agency may, subject to State purchasing policies, procure the Deliverable/Service from another source.

**2.030 Legal Effect and Term****2.031 Legal Effect**

Except as otherwise agreed in writing by the parties, the State assumes no liability for costs incurred by Contractor or payment under this Contract, until Contractor is notified in writing that this Contract (or Change Order) has been approved by the State Administrative Board (if required), approved and signed by all the parties, and a Purchase Order against the Contract has been issued.

**2.032 Contract Term**

This Contract is for a period of one (1) year commencing on the date that the last signature required to make the Contract enforceable is obtained. All outstanding Purchase Orders shall also expire upon the termination (cancellation for any of the reasons listed in 2.210) of the Contract, unless otherwise extended pursuant to the Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of the Contract's stated term, will remain in effect for the balance of the fiscal year for which they were issued.

**2.033 Renewal(s)**

This Contract may be renewed in writing by mutual agreement of the parties not less than thirty (30) days before its expiration. The Contract may be renewed for up to three (5) additional one (1) year periods. Successful completion of negotiations surrounding the terms of the extension will be a pre-requisite for the exercise of any option year.

**2.040 Contractor Personnel****2.041 Contractor Personnel**

(a) **Personnel Qualifications.** All persons assigned by Contractor to the performance of Services under this Contract shall be employees of Contractor or its majority-owned (directly or indirectly, at any tier) subsidiaries (or a State-approved Subcontractor) and shall be fully qualified to perform the work assigned to them. Contractor shall include a similar provision in any subcontract entered into with a Subcontractor. For the purposes of this Contract, independent contractors engaged by Contractor solely in a staff augmentation role shall be treated by the State as if they were employees of Contractor for this Contract only; however, the State understands that the relationship between Contractor and Subcontractor is an independent contractor relationship.



(b) Key Personnel

(i) In discharging its obligations under this Contract, Contractor shall provide the named Key Personnel on the terms indicated. **Exhibit C** provides an organization chart showing the roles of certain Key Personnel, if any.

(ii) Key Personnel shall be dedicated as defined in **Exhibit C** to the Project for its duration in the applicable Statement of Work with respect to other individuals designated as Key Personnel for that Statement of Work.

(iii) The State will have the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor will notify the State of the proposed assignment, will introduce the individual to the appropriate State representatives, and will provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State will provide a written explanation including reasonable detail outlining the reasons for the rejection. Additionally, the State's request shall be based on legitimate, good faith reasons. Proposed alternative for the individual denied, shall be fully qualified for the position.

(iv) Reserved.

(v) Reserved.

(c) Re-assignment of non Key Personnel Reserved

(d) Re-assignment of Personnel at the State's Request. The State reserves the right to require the removal from the Project of Contractor personnel found, in the judgment of the State, to be unacceptable. The State's request shall be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request shall be based on legitimate, good faith reasons. Replacement personnel for the removed person shall be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed personnel, the State agrees to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any such incident with removed personnel results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Service will not be counted in **Section 2.076** for a time as agreed to by the parties.

(e) Staffing Levels - reserved.

(f) Personnel Turnover - reserved.

(g) Location. All staff assigned by Contractor to work on the Contract will perform their duties either primarily at Contractor's offices and facilities or at State facilities. Without limiting the generality of the foregoing, Key Personnel will, at a minimum, spend at least the amount of time on-site at State facilities as indicated in the applicable Statement of Work. Subject to availability, selected Contractor personnel may be assigned office space to be shared with State personnel.

## 2.042 Contractor Identification

Contractor employees shall be clearly identifiable while on State property by wearing a State-issued badge, as required. Contractor employees are required to clearly identify themselves and the company they work for whenever making contact with State personnel by telephone or other means.

## 2.043 Cooperation with Third Parties

Contractor agrees to cause its personnel and the personnel of any Subcontractors to cooperate with the State and its agents and other contractors including the State's Quality Assurance personnel, and, as reasonably requested by the State, to provide to the State's agents and other contractors with reasonable access to Contractor's Project personnel, systems and facilities to the extent they relate to activities specifically associated with this Contract and will not interfere or jeopardize the safety or operation of the systems or facilities and provided Contractor receives reasonable prior written notice of such request. The State acknowledges that Contractor's time schedule for the Contract is very specific and agrees not to unnecessarily or unreasonably interfere with, delay or otherwise impeded Contractor's performance under this Contract with such requests for access.



## **2.044 Subcontracting by Contractor**

- (a) Contractor shall have full responsibility for the successful performance and completion of all of the Services and Deliverables. The State will consider Contractor to be the sole point of contact with regard to all contractual matters under this Contract, including payment of any and all charges for Services and Deliverables.
- (b) Contractor shall not delegate any duties under this Contract to a Subcontractor unless the Department of Management and Budget, Purchasing Operations has given written consent to such delegation. The State shall have the right of prior written approval of all Subcontractors and to require Contractor to replace any Subcontractors found, in the reasonable judgment of the State, to be unacceptable. The State's request shall be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request shall be based on legitimate, good faith reasons. Replacement Subcontractor(s) for the removed Subcontractor shall be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed Subcontractor, the State will agree to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any such incident with a removed Subcontractor results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in **Section 2.076** for a time agreed upon by the parties.
- (c) In any subcontracts entered into by Contractor for the performance of the Services, Contractor shall require the Subcontractor, to the extent of the Services to be performed by the Subcontractor, to be bound to Contractor by the terms of this Contract specified in Section 2.044(d) herein and to assume toward Contractor all of such specified obligations and responsibilities that Contractor, by this Contract, assumes toward the State. The State reserves the right to receive copies of and review all subcontracts, although Contractor may delete or mask any proprietary information, including pricing, contained in such contracts before providing them to the State. The management of any Subcontractor will be the responsibility of Contractor, and Contractor shall remain responsible for the performance of its Subcontractors to the same extent as if Contractor had not subcontracted such performance. Contractor shall make all payments to Subcontractors or suppliers of Contractor. Except as otherwise agreed in writing by the State and Contractor, the State will not be obligated to direct payments for the Services other than to Contractor. The State's written approval of any Subcontractor engaged by Contractor to perform any obligation under this Contract shall not relieve Contractor of any obligations or performance required under this Contract. Attached as **Exhibit E** is a list of the Subcontractors, if any, approved by the State as of the execution of this Contract, together with a copy of the applicable subcontract.
- (d) Except where specifically approved in writing by the State on a case-by-case basis, Contractor shall flow down the obligations in **Sections 2.040, 2.110, 2.150, 2.160, 2.171(c), 2.172(b), 2.180, 2.260, 2.276, 2.297** in all of its agreements with any Subcontractors.
- (e) The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the Contract.

## **2.045 Contractor Responsibility for Personnel**

Contractor shall be responsible for all acts and omissions of its employees, as well as the acts and omissions of any other personnel furnished by Contractor to perform the Services.

### **2.050 State Standards**

#### **2.051 Existing Technology Standards**

The Contractor will adhere to all existing standards as described within the comprehensive listing of the State's existing technology standards at [http://www.michigan.gov/dit/0,1607,7-139-30639\\_30655---,00.html](http://www.michigan.gov/dit/0,1607,7-139-30639_30655---,00.html).

#### **2.052 PM Methodology Standards - Reserved**

#### **2.053 Adherence to Portal Technology Tools - Reserved**



## 2.054 Acceptable Use Policy

To the extent that Contractor has access to the State computer system, Contractor must comply with the State's Acceptable Use Policy, see <http://www.michigan.gov/dit/service/0,1607,7-179-25781-73760--,00.html>. All Contractor employees must be required, in writing, to agree to the State's Acceptable Use Policy before accessing the State system. The State reserves the right to terminate Contractor's access to the State system if a violation occurs.

## 2.060 Deliverables

### 2.061 Ordering

(a) Any Services/Deliverables to be furnished under this Contract shall be ordered by issuance of written Purchase Orders/Blanket Purchase Order by the State after approval by the Contract Administrator or his/her designee. All orders are subject to the terms and conditions of this Contract. In the event of conflict between an order and this Contract, the Contract shall take precedence as stated in **Section 2.293**. In no event shall any additional terms and conditions contained on a Purchase Order/Blanket Purchase Order be applicable, unless specifically contained in that Purchase Order/Blanket Purchase Order's accompanying Statement of Work.

(b) DIT will continue to oversee the use of this Contract by End Users. DIT may, in writing, delegate to agencies the authority to submit requests for certain services directly to the Contractor. DIT may also designate, in writing, some services as non-delegated and require DIT review and approval before agency acquisition. DIT will use Contractor provided management reports and periodic random agency audits to monitor and administer contract usage for delegated services.

### 2.062 Software

**Exhibit J** lists the items of software the State is required to purchase for execution the Contract. The list in **Exhibit J** includes all software required to complete the Contract and make the Deliverables operable; if any additional software is required in order for the Deliverables to meet the requirements of this Contract, such software shall be provided to the State by Contractor at no additional charge (except where agreed upon and specified in a Statement of Work or Contract Change Notice). **Exhibit J** also identifies certain items of software to be provided by the State.

### 2.063 Hardware

**Exhibit F** lists the items of hardware the State is required to purchase for execution the Contract. The list in **Exhibit F** includes all hardware required to complete the Contract and make the Deliverables operable; if any additional hardware is required in order for the Deliverables to meet the requirements of this Contract, such hardware shall be provided to the State by Contractor at no additional charge (except where agreed upon and specified in a Contract Change Notice). **Exhibit F** also identifies certain items of hardware to be provided by the State.

## 2.064 Equipment to be New and Prohibited Products

### (a) Equipment to be New

If applicable, all equipment provided under this Contract by Contractor shall be new where Contractor has knowledge regarding whether the equipment is new or assembled from new or serviceable used parts that are like new in performance or has the option of selecting one or the other. Equipment that is assembled from new or serviceable used parts that are like new in performance is acceptable where Contractor does not have knowledge or the ability to select one or other, unless specifically agreed otherwise in writing by the State.

### (b) Prohibited Products

The State will not accept salvage, distressed, outdated or discontinued merchandise. Shipping of such merchandise to any State agency, as a result of an order placed against the Contract, shall be considered default by the Contractor of the terms and conditions of the Contract and may result in cancellation of the Contract by the State. The brand and product number offered for all items shall remain consistent for the term of the Contract, unless Purchasing Operations has approved a change order pursuant to **Section 2.106**.





## 2.070 Performance

### **2.071 Performance, In General**

The State engages Contractor to execute the Contract and perform the Services/provide the Deliverables, and Contractor undertakes to execute and complete the Contract in its entirety in accordance with the terms and conditions of this Contract and with the participation of State representatives as specified in this Contract.

### **2.072 Time of Performance**

- (a) Contractor shall use commercially reasonable efforts to provide the resources necessary to complete all Services and Deliverables in accordance with the time schedules contained in the Statements of Work and other Exhibits governing the work, and with professional quality.
- (b) Without limiting the generality of **Section 2.072(a)**, Contractor shall notify the State in a timely manner upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion of any Deliverables/Services on the scheduled due dates in the latest State-approved delivery schedule and, in such event, shall inform the State of the projected actual delivery date.
- (c) If Contractor believes that a delay in performance by the State has caused or will cause Contractor to be unable to perform its obligations in accordance with specified Contract time periods, Contractor shall notify the State in a timely manner and shall use commercially reasonable efforts to perform its obligations in accordance with such Contract time periods notwithstanding the State's failure. Contractor will not be in default for a delay in performance to the extent such delay is caused by the State.

### **2.073 Liquidated Damages - reserved**

### **2.074 Bankruptcy**

If Contractor shall file for protection under the bankruptcy laws, or if an involuntary petition shall be filed against Contractor and not removed within thirty (30) days, or if the Contractor becomes insolvent, be adjudicated bankrupt, or if it should make a general assignment for the benefit of creditors, or if a receiver shall be appointed due to its insolvency, and Contractor and/or its affiliates are unable to provide reasonable assurances that Contractor and/or its affiliates can deliver the services provided herein, the State may, without prejudice to any other right or remedy, terminate this Contract, in whole or in part, and, at its option, may complete the implementation services on its own.

### **2.075 Time is of the Essence - reserved**

### **2.076 Service Level Agreements (SLAs) - reserved**

## 2.080 Delivery and Acceptance of Deliverables

### **2.081 Delivery Responsibilities**

Unless otherwise specified by the State within an individual order, the following shall be applicable to all orders issued under this Contract.

- (a) Shipment responsibilities - Services performed/Deliverables provided under this Contract shall be delivered "F.O.B. Destination, within Government Premises." The Contractor shall have complete responsibility for providing all Services/Deliverables to all site(s) unless otherwise stated. Actual delivery dates will be specified on the individual purchase order.
- (b) Delivery locations - Services will be performed/Deliverables will be provided at every State of Michigan location within Michigan unless otherwise stated in the SOW. Specific locations will be provided by the State or upon issuance of individual purchase orders.
- (c) Damage Disputes - At the time of delivery to State Locations, the State shall examine all packages. The quantity of packages delivered shall be recorded and any obvious visible or suspected damage shall be noted at time of delivery using the shipper's delivery document(s) and appropriate procedures to record such.

Where there is no obvious or suspected damage, all deliveries to a State Location must be opened by the State and the contents inspected for possible internal damage not visible externally within fourteen (14) days of



receipt. Any damage must be reported to the Contractor within five (5) days of inspection. If this inspection does not occur and damages not reported within thirty (30) days of receipt, the cure for such damaged deliveries shall transfer to the delivery signing party.

## **2.082 Delivery of Deliverables**

Where applicable, the Statements of Work/POs contain lists of the Deliverables to be prepared and delivered by Contractor including, for each Deliverable, the scheduled delivery date and a designation of whether the Deliverable is a document ("Written Deliverable"), a good ("Physical Deliverable") or a Service. All Deliverables shall be completed and delivered for State review and written approval and, where applicable, installed in accordance with the State-approved delivery schedule and any other applicable terms and conditions of the Contract.

## **2.083 Testing**

Testing will ensure that the Safeboot software will conform to and, perform in accordance with, SafeBoot's User Guide and Administrator's Manual specifications without material deficiency

## **2.084 Approval of Deliverables, In General**

Approval of Deliverables is provided in Article 1, Statement of Work.

## **2.085 Process For Approval of Written Deliverables - reserved**

## **2.086 Process for Approval of Services**

The State Review Period for approval of Services is governed by the applicable Statement of Work (failing which the State Review Period, by default, shall be thirty (30) Business Days for Services). The State agrees to notify Contractor in writing by the end of the State Review Period either stating that the Service is approved in the form delivered by Contractor or describing any deficiencies that must be corrected prior to approval of the Services (or at the State's election, subsequent to approval of the Service). If the State delivers to Contractor a notice of deficiencies, Contractor will correct the described deficiencies and within thirty (30) Business Days resubmit the Service in a form that shows all revisions made to the original version delivered to the State. Contractor's correction efforts will be made at no additional charge. Upon implementation of a corrected Service from Contractor, the State will have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Service for conformity and that the identified deficiencies have been corrected.

## **2.087 Process for Approval of Physical Deliverables**

Physical deliverables will be approved in accordance with Article 1.

## **2.088 Final Acceptance**

Final Acceptance of each Deliverable shall occur in accordance with Article 1.

## **2.090 Financial**

## **2.091 Pricing**

(a) Fixed Prices for Services/Deliverables

Prices for services/deliverables are provided in Attachment A: Spectrum Systems & SafeBoot Encryption Promotion for State and Local Government

## **2.092 Invoicing and Payment Procedures and Terms**

(a) Invoicing and Payment – In General

(i) Each Statement of Work issued under this Contract shall list (or indicate by reference to the appropriate Contract Exhibit) the prices for all Services/Deliverables, equipment and commodities to be provided, and the associated payment milestones and payment amounts.



(ii) Each Contractor invoice will show details as to charges by Service/Deliverable component and location at a level of detail reasonably necessary to satisfy the State's accounting and charge-back requirements. The charges for Services billed on a time and materials basis shall be determined based on the actual number of hours of Services performed, at the applicable Labor Rates specified in **Attachment C**, Service Administration (GSA) SmartBuy ESI BPA contract #FA8771-07-A-0304. Invoices for Services performed on a time and materials basis will show, for each individual, the number of hours of Services performed during the billing period, the billable skill/labor category for such person and the applicable hourly billing rate. Prompt payment by the State is contingent on the Contractor's invoices showing the amount owed by the State minus any holdback amount to be retained by the State in accordance with **Section 2.094**.

(iii) Correct invoices will be due and payable by the State, in accordance with the State's standard payment procedure as specified in 1984 Public Act No. 279, MCL 17.51 et seq., within forty-five (45) days after receipt, provided the State determines that the invoice was properly rendered.

(b) Taxes (See Section 2.305 and Article 3, Section 3.022-3.024 for additional)

The State is exempt from Federal Excise Tax, State and Local Sales Taxes, and Use Tax with respect to the sale to and use by it of tangible personal property. Such taxes shall not be included in Contract prices as long as the State maintains such exemptions. Copies of all tax exemption certificates shall be supplied to Contractor, if requested.

(c) Out-of-Pocket Expenses

Contractor acknowledges that the out-of-pocket expenses that Contractor expects to incur in performing the Services/ providing the Deliverables (such as, but not limited to, travel and lodging, document reproduction and shipping, and long distance telephone) are included in Contractor's fixed price for each Statement of Work unless specifically stated otherwise. Accordingly, Contractor's out-of-pocket expenses are not separately reimbursable by the State unless, on a case-by-case basis for unusual expenses, the State has agreed in advance and in writing to reimburse Contractor for such an expense at the State's current travel reimbursement rates. See [http://www.mi.gov/dmb/0,1607,7-150-9141\\_13132---,00.html](http://www.mi.gov/dmb/0,1607,7-150-9141_13132---,00.html) for current rates.

(d) Pro-ration

To the extent there are any Services that are to be paid for on a monthly basis, the cost of such Services shall be pro-rated for any partial month.

(e) Antitrust Assignment

The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

(f) Final Payment

The making of final payment by the State to Contractor does not constitute a waiver by either party of any rights or other claims as to the other party's continuing obligations under the Contract, nor will it constitute a waiver of any claims by one party against the other arising from unsettled claims or failure by a party to comply with this Contract, including claims for Services and Deliverables not reasonably known until after acceptance to be defective or substandard. Contractor's acceptance of final payment by the State under this Contract shall constitute a waiver of all claims by Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still unsettled.

## **2.093 State Funding Obligation**

The State's obligation under this Contract is payable only and solely from funds appropriated for the purpose of this Contract. Contractor acknowledges and agrees that all funds for payments after the end of the current fiscal year are subject to the availability of a legislative appropriation for the purpose of this Contract. Events of non-appropriation are addressed further in **Section 2.210** of this Contract.

## **2.094 Holdback - reserved**

## **2.095 Electronic Payment Availability**

Electronic transfer of funds is available to State contractors. Contractor is required to register with the State electronically at <http://www.cpexpress.state.mi.us>. Public Act 533 of 2004 requires all payments be transitioned over to EFT by October 2005.





## 2.100 Contract Management

### **2.101 Contract Management Responsibility**

(a) Contractor shall have overall responsibility for managing and successfully performing and completing the Services/Deliverables, subject to the overall direction and supervision of the State and with the participation and support of the State as specified in this Contract. Contractor's duties will include monitoring and reporting the State's performance of its participation and support responsibilities (as well as Contractor's own responsibilities) and providing timely notice to the State in Contractor's reasonable opinion if the State's failure to perform its responsibilities in accordance with **Article 1**) is likely to delay the timely achievement of any Contract tasks.

(b) The Services/Deliverables will be provided by the Contractor either directly or through its affiliates, subsidiaries, subcontractors or resellers. Regardless of the entity providing the Service/Deliverable, the Contractor will act as a single point of contact coordinating these entities to meet the State's need for Services/Deliverables. Nothing in this Contract, however, shall be construed to authorize or require any party to violate any applicable law or regulation in its performance of this Contract.

### **2.102 Problem and Contract Management Procedures**

Article 1 will govern problem Management and Contract Management procedures.

### **2.103 Reports and Meetings - reserved**

### **2.104 System Changes**

Contractor is not responsible for and not authorized to make changes to any State systems without written authorization from the State. Any changes Contractor makes to State systems with the State's approval shall be done in accordance with applicable State procedures, including security, access and configuration management procedures.

### **2.105 Reserved**

### **2.106 Change Requests**

The State reserves the right to request from time to time, any changes to the requirements and specifications of the Contract and the work to be performed by the Contractor under the Contract. During the course of ordinary business, it may become necessary for the State to discontinue certain business practices or create Additional Services/Deliverables. At a minimum, to the extent applicable, the State would like the Contractor to provide a detailed outline of all work to be done, including tasks necessary to accomplish the services/deliverables, timeframes, listing of key personnel assigned, estimated hours for each individual per task, and a complete and detailed cost justification.

If the State requests or directs the Contractor to perform any Services/Deliverables that are outside the scope of the Contractor's responsibilities under the Contract ("New Work"), the Contractor must notify the State promptly, and before commencing performance of the requested activities, that it believes the requested activities are New Work. If the Contractor fails to notify the State before commencing performance of the requested activities, any such activities performed before the Contractor gives notice shall be conclusively considered to be in-scope Services/Deliverables, not New Work.

If the State requests or directs the Contractor to perform any services or provide deliverables that are consistent with and similar to the Services/Deliverables being provided by the Contractor under the Contract, but which the Contractor reasonably and in good faith believes are not included within the Statements of Work, then before performing such services or providing such deliverables, the Contractor shall notify the State in writing that it considers the services or deliverables to be an Additional Service/Deliverable for which the Contractor should receive additional compensation. If the Contractor does not so notify the State, the Contractor shall have no right to claim thereafter that it is entitled to additional compensation for performing that service or providing that deliverable. If the Contractor does so notify the State, then such a service or deliverable shall be governed by the Change Request procedure in this Section.



In the event prices or service levels are not acceptable to the State, the Additional Services or New Work shall be subject to competitive bidding based upon the specifications.

(a) Change Requests

(i) State Requests

If the State should require Contractor to perform New Work, Additional Services or make changes to the Services that would affect the Contract completion schedule or the amount of compensation due Contractor (a "Change"), the State shall submit a written request for Contractor to furnish a proposal for carrying out the requested Change (a "Change Request").

(ii) Contractor Recommendations

Contractor shall be entitled to propose a Change to the State, on its own initiative, should it be of the opinion that this would benefit the Contract.

(iii) Upon receipt of a Change Request or on its own initiative, Contractor shall examine the implications of the requested Change on the technical specifications, Contract schedule and price of the Deliverables and Services and shall submit to the State without undue delay a written proposal for carrying out the Change. Contractor's proposal will include any associated changes in the technical specifications, Contract schedule and price and method of pricing of the Services. If the Change is to be performed on a time and materials basis, the Amendment Labor Rates shall apply to the provision of such Services. If Contractor provides a written proposal and should Contractor be of the opinion that a requested Change is not to be recommended, it shall communicate its opinion to the State but shall nevertheless carry out the Change as specified in the written proposal if the State directs it to do so.

(iv) By giving Contractor written notice within a reasonable time, the State shall be entitled to accept a Contractor proposal for Change, to reject it or to reach another agreement with Contractor. Should the parties agree on carrying out a Change, a written Contract Change Notice shall be prepared and issued under this Contract, describing the Change and its effects on the Services and any affected components of this Contract (a "Contract Change Notice").

(v) No proposed Change shall be performed until the proposed Change has been specified in a duly executed Contract Change Notice issued by the Department of Management and Budget, Purchasing Operations.

(vi) If the State requests or directs Contractor to perform any activities that Contractor believes constitute a Change, Contractor must notify the State that it believes the requested activities are a Change prior to commencing the performance of the requested activities. If Contractor fails to so notify the State prior to commencing performance of the requested activities, such activities shall be considered to be performed gratuitously by Contractor, and Contractor shall not have any right thereafter to assert any claim for additional compensation or time for the performance of such activities. If Contractor commences performance of gratuitous services outside the scope of this Contract and subsequently elects to stop performing such out-of-scope services, Contractor must, at the request of the State, back out or reverse any changes resulting from such performance that would adversely affect the Contract.

## **2.107 Management Tools - Reserved**

### **2.110 Records and Inspections**

#### **2.111 Records and Inspections**

The Contractor agrees that the State may, upon 24-hour notice, perform an audit at Contractor's location(s) to determine if the Contractor is complying with the requirements of the Contract. The Contractor agrees to cooperate with the State during the audit and produce all records and documentation that verifies compliance with the Contract requirements.

#### **2.112 Errors**

(a) If the audit demonstrates any errors in the statements provided to the State, then the amount in error shall be reflected as a credit or debit on the next invoice and in subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried for more than four (4) quarterly statements. If a balance remains after four (4) quarterly statements, then the remaining amount will be due as a payment or



refund within forty-five (45) days of the last quarterly statement that the balance appeared on or termination of the contract, whichever is earlier.

(b) In addition to other available remedies, the difference between the payment received and the correct payment amount is greater than ten percent (10%), then the Contractor shall pay all of the reasonable costs of the audit.

### 2.120 State Responsibilities

#### **2.121 State Performance Obligations**

(a) Equipment and Other Resources. To facilitate Contractor's performance of the Services/Deliverables, the State shall provide to Contractor such equipment and resources as identified in the Statements of Work or other Contract Exhibits as items to be provided by the State.

(b) Facilities. The State shall designate space as long as it is available and as provided in the Statement of Work, to house Contractor's personnel whom the parties agree will perform the Services/Deliverables at State facilities (collectively, the "State Facilities"). Contractor shall have reasonable access to, and unless agreed otherwise by the parties in writing shall observe and comply with all rules and regulations relating to, each of the State Facilities (including hours of operation) used by Contractor in the course of providing the Services. Contractor agrees that it will not, without the prior written consent of the State, use any State Facilities or access any State information systems provided for Contractor's use, or to which Contractor otherwise gains access in the course of performing the Services, for any purpose other than providing the Services to the State.

(c) Return. Contractor shall be responsible for returning to the State any State-furnished equipment, facilities and other resources when no longer required for the Contract in the same condition as when provided by the State, reasonable wear and tear excepted.

(d) Except as otherwise provided in **Section 2.220**, the State's failure to perform its responsibilities, as set forth in this Contract shall not be deemed to be grounds for termination by Contractor. However, Contractor will not be liable for any default or delay in the performance of its obligations under this Contract to the extent such default or delay is caused by nonperformance of the State's obligations under this Contract, provided Contractor provides the State with reasonable written notice of such nonperformance and Contractor uses commercially reasonable efforts to perform notwithstanding the State's failure to perform. In addition, if the State's nonperformance of its responsibilities under this Contract materially increases the time required for Contractor's performance or Contractor's cost of performance, Contractor shall be entitled to seek an equitable extension via the Change Request process described in **Section 2.106**.

### 2.130 Security

#### **2.131 Background Checks**

The Contractor shall authorize the investigation of its personnel proposed to have access to State facilities and systems on a case-by-case basis. The scope of the background check is at the discretion of the State and the results will be used to determine Contractor personnel eligibility for working within State facilities and systems. Such investigations will include Michigan State Police Background checks (ICHAT) and may include the National Crime Information Center (NCIC) Finger Prints. Proposed Contractor personnel may be required to complete and submit an RI-8 Fingerprint Card for the NCIC Finger Print Check. Any request for background checks will be initiated by the State and will be reasonably related to the type of work requested.

All Contractor personnel will also be expected to comply with the State's security and acceptable use policies for State IT equipment and resources. See <http://www.michigan.gov/ditservice/0,1607,7-179-25781-73760--00.html>. Furthermore, Contractor personnel will be expected to agree to the State's security and acceptable use policies before the Contractor personnel will be accepted as a resource to perform work for the State. It is expected the Contractor will present these documents to the prospective employee before the Contractor presents the individual to the State as a proposed resource. Contractor staff will be expected to comply with all Physical Security procedures in place within the facilities where they are working.



2.140 Reserved

2.150 Confidentiality

**2.151 Freedom of Information**

All information in any proposal submitted to the State by Contractor and this Contract is subject to the provisions of the Michigan Freedom of Information Act, 1976 Public Act No. 442, as amended, MCL 15.231, et seq (the "FOIA").

**2.152 Confidentiality**

Contractor and the State each acknowledge that the other possesses and will continue to possess confidential information that has been developed or received by it. As used in this Section, "Confidential Information" of Contractor shall mean all non-public proprietary information of Contractor (other than Confidential Information of the State as defined below) that is marked confidential, restricted, and proprietary or with a similar designation. "Confidential Information" of the State shall mean any information which is retained in confidence by the State (or otherwise required to be held in confidence by the State pursuant to applicable federal, state and local laws and regulations) or which, in the case of tangible materials provided to Contractor by the State pursuant to its performance under this Contract, is marked as confidential, proprietary or with a similar designation by the State. In the case of information of either Contractor or the State "Confidential Information" shall exclude any information (including this Contract) that is publicly available pursuant to the Michigan FOIA.

**2.153 Protection of Confidential Information**

The State and Contractor will each use at least the same degree of care to prevent disclosing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure, publication or dissemination of its own confidential information of like character, but in no event less than reasonable care. Neither Contractor nor the State will (i) make any use of the Confidential Information of the other except as contemplated by this Contract, (ii) acquire any right in or assert any lien against the Confidential Information of the other, or (iii) if requested to do so, refuse for any reason to promptly return the other party's Confidential Information to the other party. Each party will limit disclosure of the other party's Confidential Information to employees and Subcontractors who must have access in order to fulfill the purposes of this Contract. Disclosure to, and use by, a Subcontractor is permissible where (A) use of a Subcontractor is authorized under this Contract, (B) such disclosure is necessary or otherwise naturally occurs in connection with work that is within such Subcontractor's scope of responsibility and related to the performance of this Contract, and (C) Contractor obligates the Subcontractor in a written Contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor and of any Subcontractor having access or continued access to the State's Confidential Information may be required to execute an acknowledgment that the employee has been advised of Contractor's and the Subcontractor's obligations under this Section and of the employee's obligation to Contractor or Subcontractor, as the case may be, to protect such Confidential Information from unauthorized use or disclosure.

**2.154 Exclusions**

Notwithstanding the foregoing, the provisions of this Section will not apply to any particular information which the State or Contractor can demonstrate (i) was, at the time of disclosure to it, in the public domain; (ii) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of the receiving party; (iii) was in the possession of the receiving party at the time of disclosure to it without an obligation of confidentiality; (iv) was received after disclosure to it from a third party who had a lawful right to disclose such information to it without any obligation to restrict its further disclosure; or (v) was independently developed by the receiving party without reference to Confidential Information of the furnishing party. Further, the provisions of this Section will not apply to any particular Confidential Information to the extent the receiving party is required by law to disclose such Confidential Information, provided that the receiving party (i) promptly provides the furnishing party with notice of the legal request, and (ii) assists the furnishing party, at furnishing party's expense, in resisting or limiting the scope of such disclosure as reasonably requested by the furnishing party.

**2.155 No Implied Rights**

Nothing contained in this Section shall be construed as obligating a party to disclose any particular Confidential Information to the other party, or as granting to or conferring on a party, expressly or impliedly, any right or license to the Confidential Information of the other party.

**2.156 Remedies**

Each party acknowledges that, if it breaches (or attempts or threatens to breach) its obligations under this Section, the other party may be irreparably harmed. Accordingly, if a court of competent jurisdiction should find that a party has breached (or attempted or threatened to breach) any such obligations, the non-breaching party shall be entitled to seek an injunction preventing such breach (or attempted or threatened breach).

**2.157 Security Breach Notification**

In the event of a breach of this Section, Contractor shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations. Contractor and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized use or disclosure. Contractor shall report to the State in writing any use or disclosure of Confidential Information, whether suspected or actual, other than as provided for by the Contract within ten (10) days of becoming aware of such use or disclosure or such shorter time period as is reasonable under the circumstances.

**2.158 Survival**

The parties' respective obligations under this Section shall survive the termination or expiration of this Contract for any reason.

**2.159 Destruction of Confidential Information**

Promptly upon termination or cancellation of the Contract for any reason, Contractor shall certify to the State that Contractor has destroyed all State Confidential Information.

**2.160 Proprietary Rights****2.161 License**

Contractor grants to the State a non-exclusive, perpetual, non-transferable license limited to the number of users purchased by the State, to use the Software and related documentation according to the terms and conditions of this Contract and that of the third party license agreement, attached hereto as Attachment B. . For the purposes of this license, "site-wide" includes any State of Michigan office regardless of its physical location.

The State may not modify the Software and may not combine such with other programs or materials to form a derivative work.

The State will make and maintain no more than one archival copy of each item of Software, and each copy will contain all legends and notices and will be subject to the same conditions and restrictions as the original. The State may also make copies of the Software in the course of routine backups of hard drive(s) for the purpose of recovery of hard drive contents.

**2.162 Source Code Escrow - reserved****2.163 Rights in Data**

(a) The State will be and remain the owner of all data made available by the State to Contractor or its agents, Subcontractors or representatives pursuant to the Contract. Contractor will not use the State's data for any purpose other than providing the Services, nor will any part of the State's data be disclosed, sold, assigned, leased or otherwise disposed of to the general public or to specific third parties or commercially exploited by or on behalf of Contractor, nor will any employee of Contractor other than those on a strictly need to know basis have access to the State's data. Contractor will not possess or assert any lien or other right





against the State's data. Without limiting the generality of this Section, Contractor shall only use personally identifiable information as strictly necessary to provide the Services and shall disclose such information only to its employees who have a strict need to know such information. Contractor shall comply at all times with all laws and regulations applicable to such personally identifiable information.

(b) The State is and shall remain the owner of all State-specific data pursuant to the Contract. The State may use the data provided by the Contractor for any purpose. The State will not possess or assert any lien or other right against the Contractor's data. Without limiting the generality of this Section, the State shall only use personally identifiable information as strictly necessary to utilize the Services and shall disclose such information only to its employees who have a strict need to know such information, except as provided by law. The State shall comply at all times with all laws and regulations applicable to such personally identifiable information. Other material developed and provided to the State shall remain the State's sole and exclusive property.

#### **2.164 Ownership of Materials**

State and Contractor will continue to own their respective proprietary technologies. Any hardware bought through the Contractor by the State, and paid for by the State, will be owned by the State. Any software licensed through the Contractor and sold to the State, will be licensed directly to the State.

#### **2.165 Standard Software**

If applicable and necessary, all Standard Software used in performing the Services shall be provided to the State under a separate license agreement between the State and the owner (or authorized licensor) of such software. Standard Software to be licensed to the State is listed in **Exhibit J**.

#### **2.166 Pre-existing Materials for Custom Software Deliverables - Reserved**

#### **2.167 General Skills**

Notwithstanding anything to the contrary in this Section, each party, its Subcontractors and their personnel shall be free to use and employ its and their general skills, know-how and expertise, and to use, disclose and employ any generalized ideas, concepts, know-how, methods, techniques or skills gained or learned during the course of performing the Services, so long as it or they acquire and apply the foregoing without disclosure of any confidential or proprietary information of the other party.

#### **2.170 Warranties And Representations**

#### **2.171 Warranties and Representations**

The Contractor represents and warrants:

- (a) It is capable in all respects of fulfilling and shall fulfill all of its obligations under this Contract. The performance of all obligations under this Contract shall be provided in a timely, professional, and workman-like manner and shall meet the performance and operational standards required under this Contract.
- (b) The Contract Appendices, Attachments and Exhibits identify the equipment and software and services necessary for the Deliverable(s) to perform and Services to operate in compliance with the Contract's requirements and other standards of performance.
- (c) It is the lawful owner or licensee of any Deliverable licensed or sold to the State by Contractor or developed by Contractor under this Contract, and Contractor has all of the rights necessary to convey to the State the ownership rights or licensed use, as applicable, of any and all Deliverables. None of the Deliverables provided by Contractor to the State under this Contract, nor their use by the State, will infringe the patent, copyright, trade secret, or other proprietary rights of any third party.
- (d) If, under this Contract, Contractor procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Contractor under Contractor's name), then in addition to Contractor's other responsibilities with respect to such items in this Contract, Contractor shall assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable.
- (e) The contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into this Contract, on behalf of Contractor.



- (f) It is qualified and registered to transact business in all locations where required to perform under this Contract.
- (g) Neither the Contractor nor any Affiliates, nor any employee of either, has, shall have, or shall acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under this Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor shall notify the State within two (2) days of any such interest that may be incompatible with the interests of the State.
- (h) Neither Contractor nor any Affiliates, nor any employee of either has accepted or shall accept anything of value based on an understanding that the actions of the Contractor or Affiliates or employee on behalf of the State would be influenced. Contractor shall not attempt to influence any State employee by the direct or indirect offer of anything of value.
- (i) Neither Contractor nor any Affiliates, nor any employee of either has paid or agreed to pay any person, other than bona fide employees and consultants working solely for Contractor or such Affiliate, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.
- (j) The prices proposed by Contractor were arrived at independently, without consultation, communication, or agreement with any other bidder for the purpose of restricting competition; the prices quoted were not knowingly disclosed by Contractor to any other bidder; and no attempt was made by Contractor to induce any other person to submit or not submit a proposal for the purpose of restricting competition.
- (k) All financial statements, reports, and other information furnished by Contractor to the State as part of its response to the RFP or otherwise in connection with the award of this Contract fairly and accurately represent the business, properties, financial condition, and results of operations of Contractor as of the respective dates, or for the respective periods, covered by such financial statements, reports, other information. Since the respective dates or periods covered by such financial statements, reports, or other information, there has been no material adverse change in the business, properties, financial condition, or results of operations of Contractor.
- (l) All written information furnished to the State by or behalf of Contractor in connection with this Contract, including its bid, is true, accurate, and complete, and contains no untrue statement of material fact or omits any material fact necessary to make such information not misleading.
- (m) It is not in material default or breach of any other contract or agreement that it may have with the State or any of its departments, commissions, boards, or agencies. Contractor further represents and warrants that it has not been a party to any contract with the State or any of its departments that was terminated by the State or such department within the previous five (5) years for the reason that Contractor failed to perform or otherwise breached an obligation of such contract.

## 2.172 Software Warranties

- (a) **Performance Warranty** The Contractor represents and warrants that Deliverables, after Final Acceptance, will perform and operate in substantial compliance with Administrator's Manuals and User Guides for a period of ninety (90) days after delivery or Final Acceptance (if applicable). In the event of a breach of this warranty, Contractor will promptly correct the affected Deliverable(s) at no charge to the State.
- (b) **No Surreptitious Code Warranty** The Contractor represents and warrants that no copy of licensed Software provided to the State contains or will contain any Self-Help Code or any Unauthorized Code as defined below. This warranty is referred to in this Contract as the "No Surreptitious Code Warranty."

As used in this Contract, "Self-Help Code" means any back door, time bomb, drop dead device, or other software routine designed to disable a computer program automatically with the passage of time or under the positive control of a person other than the licensee of the software. Self-Help Code does not include Software routines in a computer program, if any, designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a licensee's computer system(s) (e.g. remote access via modem) for purposes of maintenance or technical support. Notwithstanding the foregoing, the State acknowledges that the Software is subject to limits on numbers of authorized users, as accounted for in the license key; and that the nature of the Software is that to prevent unauthorized access to systems or hardware, as such, the Software contains code intended to prevent such access.



As used in this Contract, "Unauthorized Code" means any virus, Trojan horse, spyware, worm or other Software routines or components designed to permit unauthorized access to disable, erase, or otherwise harm software, equipment, or data; or to perform any other such actions. The term Unauthorized Code does not include Self-Help Code. Unauthorized Code does not include Software routines in a computer program, if any, designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a licensee's computer system(s) (e.g. remote access via modem) for purposes of maintenance or technical support.

In addition, Contractor will use up-to-date commercial virus detection software to detect and remove any viruses from any software prior to delivering it to the State.

(c) **Calendar Warranty** The Contractor represents and warrants that all software for which the Contractor either sells or licenses to the State of Michigan and used by the State prior to, during or after the calendar year 2000, includes or shall include, at no added cost to the State, design and performance so the State shall not experience software abnormality and/or the generation of incorrect results from the software, due to date oriented processing, in the operation of the business of the State of Michigan.

The software design, to insure calendar year rollover compatibility, shall include, but is not limited to: data structures (databases, data files, etc.) that provide 4-digit date century; stored data that contain date century recognition, including, but not limited to, data stored in databases and hardware device internal system dates; calculations and program logic (e.g., sort algorithms, calendar generation, event recognition, and all processing actions that use or produce date values) that accommodates same century and multi-century formulas and date values; interfaces that supply data to and receive data from other systems or organizations that prevent non-compliant dates and data from entering any State system; user interfaces (i.e., screens, reports, etc.) that accurately show 4 digit years; and assurance that the year 2000 shall be correctly treated as a leap year within all calculation and calendar logic.

(d) Reserved

## **2.173 Equipment Warranty - reserved**

### **2.174 Physical Media Warranty**

(a) Contractor represents and warrants that each licensed copy of the Software provided by the Contractor is free from physical defects in the media that tangibly embodies the copy. This warranty does not apply to defects discovered more than thirty (30) days after that date of Final Acceptance of the Software by the State. This warranty does not apply to defects arising from acts of Excusable Failure. If the Contractor breaches this warranty, then the State shall be entitled to replacement of the non-compliant copy by Contractor, at Contractor's expense (including shipping and handling).

## **2.175 Standard Warranties- Reserved**

### **2.176 Consequences For Breach**

In addition to any remedies available in law, if the Contractor breaches any of the warranties contained in this section, such breach may be considered as a default in the performance of a material obligation of this Contract.

## **2.180 Insurance**

### **2.181 Liability Insurance**

(a) Liability Insurance. The Contractor is required to provide proof of the minimum levels of insurance coverage as indicated below. The purpose of this coverage shall be to protect the State from claims which may arise out of or result from the Contractor's performance of services under the terms of this Contract, whether such services are performed by the Contractor, or by any subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

The Contractor waives all rights against the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents for recovery of damages to the extent these damages are covered by the insurance policies the Contractor is required to maintain pursuant to this Contract.





All insurance coverages provided relative to this Contract/Purchase Order are PRIMARY and NON-CONTRIBUTING to any comparable liability insurance (including self-insurances) carried by the State.

The insurance shall be written for not less than any minimum coverage specified in this Contract or required by law, whichever is greater.

The insurers selected by Contractor shall have an A.M. Best rating of A or better, or as otherwise approved in writing by the State, or if such ratings are no longer available, with a comparable rating from a recognized insurance rating agency. All policies of insurance required in this Contract shall be issued by companies that have been approved to do business in the State. See [http://www.mi.gov/cis/0,1607,7-154-10555\\_22535---.00.html](http://www.mi.gov/cis/0,1607,7-154-10555_22535---.00.html).

Where specific limits are shown, they are the minimum acceptable limits. If Contractor's policy contains higher limits, the State shall be entitled to coverage to the extent of such higher limits.

After the Contract is signed by both parties or before the purchase order is issued by the State, the Contractor must furnish to the Director of Purchasing Operations, certificate(s) of insurance verifying insurance coverage ("Certificates"). The Certificate must be on the standard "accord" form or equivalent. **THE CONTRACT OR PURCHASE ORDER NO. MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING.** All Certificate(s) are to be prepared and submitted by the Insurance Provider. All Certificate(s) shall contain a provision indicating that coverages afforded under the policies WILL NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED without THIRTY (30) days prior written notice, except for ten (10) days for non-payment of premium, having been given to the Director of Purchasing Operations, Department of Management and Budget. The notice must include the Contract or Purchase Order number affected and be mailed to: Director, Purchasing Operations, Department of Management and Budget, P.O. Box 30026, Lansing, Michigan 48909. Failure to provide evidence of coverage, may, at the State's sole option, result in this Contract's termination.

The Contractor is required to pay for and provide the type and amount of insurance checked ☒ below:

- ☒ 1. Commercial General Liability with the following minimum coverage:  
 \$2,000,000 General Aggregate Limit other than Products/Completed Operations  
 \$2,000,000 Products/Completed Operations Aggregate Limit  
 \$1,000,000 Personal & Advertising Injury Limit  
 \$1,000,000 Each Occurrence Limit  
 \$500,000 Fire Damage Limit (any one fire)

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL INSURED on the Commercial General Liability certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

- ☒ 2. If a motor vehicle is used to provide services or products under this Contract, the Contractor must have vehicle liability insurance on any auto including owned, hired and non-owned vehicles used in Contractor's business for bodily injury and property damage as required by law.

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL INSURED on the vehicle liability certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

- ☒ 3. Workers' compensation coverage must be provided in accordance with applicable laws governing the employees and employers work activities in the state of the Contractor's domicile. If the applicable coverage is provided by a self-insurer, proof must be provided of approved self-insured authority by the jurisdiction of domicile. For employees working outside of the state of qualification, Contractor must provide appropriate certificates of insurance proving mandated coverage levels for the jurisdictions where the employees' activities occur.



Any certificates of insurance received must also provide a list of states where the coverage is applicable.

The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company. This provision shall not be applicable where prohibited or limited by the laws of the jurisdiction in which the work is to be performed.

☒ 4. Employers liability insurance with the following minimum limits:

\$100,000 each accident

\$100,000 each employee by disease

\$500,000 aggregate disease

☐ 5. Employee Fidelity, including Computer Crimes, insurance naming the State as a loss payee, providing coverage for direct loss to the State and any legal liability of the State arising out of or related to fraudulent or dishonest acts committed by the employees of Contractor or its Subcontractors, acting alone or in collusion with others, in a minimum amount of one million dollars (\$1,000,000.00) with a maximum deductible of fifty thousand dollars (\$50,000.00).

☐ 6. Umbrella or Excess Liability Insurance in a minimum amount of ten million dollars (\$10,000,000.00), which shall apply, at a minimum, to the insurance required in Subsection 1 (Commercial General Liability) above.

☐ 7. Professional Liability (Errors and Omissions) Insurance with the following minimum coverage: three million dollars (\$3,000,000.00) each occurrence and three million dollars (\$3,000,000.00) annual aggregate.

☐ 8. Fire and Personal Property Insurance covering against any loss or damage to the office space used by Contractor for any reason under this Contract, and the equipment, software and other contents of such office space, including without limitation, those contents used by Contractor to provide the Services to the State, up to the replacement value thereof, where such office space and its contents are under the care, custody and control of Contractor. Such policy shall cover all risks of direct physical loss or damage, including without limitation, flood and earthquake coverage and coverage for computer hardware and software. The State shall be endorsed on the policy as a loss payee as its interests appear.

(b) Subcontractors

Except where the State has approved in writing a Contractor subcontract with other insurance provisions, Contractor shall require all of its Subcontractors under this Contract to purchase and maintain the insurance coverage as described in this Section for the Contractor in connection with the performance of work by those Subcontractors. Alternatively, Contractor may include any Subcontractors under Contractor's insurance on the coverage required in this Section. Subcontractor(s) shall fully comply with the insurance coverage required in this Section. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.

(c) Certificates of Insurance and Other Requirements

After the Contract is signed, Contractor shall furnish to the Purchasing Operations certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "Certificates"). Upon written request of the State not more than once annually, the Contractor shall provide evidence verifying insurance coverage.

Contractor shall maintain all required insurance coverage throughout the term of the Contract and any extensions thereto and, in the case of claims-made Commercial General Liability policies, shall secure tail coverage for at least three (3) years following the expiration or termination for any reason of this Contract. The minimum limits of coverage specified above are not intended, and shall not be construed, to limit any liability or indemnity of Contractor under this Contract to any indemnified party or other persons. Contractor shall be responsible for all deductibles with regard to such insurance. If Contractor fails to pay any premium for required insurance as specified in this Contract, or if any insurer cancels or significantly reduces any required insurance as specified in this Contract without the State's written consent, at the State's election (but without any obligation to do so) after the State has given Contractor at least thirty (30) days written notice, the State may pay such premium or procure similar insurance coverage from another company or companies; and at the



State's election, the State may deduct the entire cost (or part thereof) from any payment due Contractor, or Contractor shall pay the entire cost (or any part thereof) upon demand by the State.

## 2.190 Indemnification

### **2.191 Indemnification**

#### **(a) General Indemnification**

To the extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State from liability, including all claims and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties), accruing or resulting to any person, firm or corporation that may be injured or damaged by the Contractor in the performance of this Contract and that are attributable to the negligence or tortious acts of the Contractor or any of its subcontractors, or by anyone else for whose acts any of them may be liable.

#### **(b) Code Indemnification**

To the extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State from any claim, loss, or expense arising from Contractor's breach of the No Surreptitious Code Warranty.

#### **(c) Employee Indemnification**

In any and all claims against the State of Michigan, its departments, divisions, agencies, sections, commissions, officers, employees and agents, by any employee of the Contractor or any of its subcontractors, the indemnification obligation under the Contract shall not be limited in any way by the amount or type of damages, compensation or benefits payable by or for the Contractor or any of its subcontractors under worker's disability compensation acts, disability benefit acts or other employee benefit acts. This indemnification clause is intended to be comprehensive. Any overlap in provisions, or the fact that greater specificity is provided as to some categories of risk, is not intended to limit the scope of indemnification under any other provisions.

#### **(d) Patent/Copyright Infringement Indemnification**

To the extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties) incurred in connection with any action or proceeding threatened or brought against the State to the extent that such action or proceeding is based on a claim that any piece of equipment, software, commodity or service supplied by the Contractor or its subcontractors, or the operation of such equipment, software, commodity or service, or the use or reproduction of any documentation provided with such equipment, software, commodity or service infringes any United States patent, copyright, trademark or trade secret of any person or entity, which is enforceable under the laws of the United States.

In addition, should the equipment, software, commodity, or service, or its operation, become or in the State's or Contractor's opinion be likely to become the subject of a claim of infringement, the Contractor shall at the Contractor's sole expense (i) procure for the State the right to continue using the equipment, software, commodity or service or, if such option is not reasonably available to the Contractor, (ii) replace or modify to the State's satisfaction the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if such option is not reasonably available to Contractor, (iii) accept its return by the State with appropriate credits to the State.

Notwithstanding the foregoing, the Contractor shall have no obligation to indemnify or defend the State for, or to pay any costs, damages or attorneys' fees related to, any claim based upon (i) equipment developed based on written specifications of the State; or (ii) use of the equipment in a configuration other than implemented or approved in writing by the Contractor, including, but not limited to, any modification of the equipment by the State; or (iii) the combination, operation, or use of the equipment with equipment or software not supplied by the Contractor under this Contract.

### **2.192 Continuation of Indemnification Obligations**

The Contractor's duty to indemnify pursuant to this Section continues in full force and effect, notwithstanding the expiration or early cancellation of the Contract, with respect to any claims based on facts or conditions that occurred prior to expiration or cancellation.



### **2.193 Indemnification Procedures**

The procedures set forth below shall apply to all indemnity obligations under this Contract.

(a) After receipt by the State of notice of the action or proceeding involving a claim in respect of which it will seek indemnification, the State shall promptly notify Contractor of such claim in writing and take or assist Contractor in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against Contractor. No failure to notify Contractor shall relieve Contractor of its indemnification obligations except to the extent that Contractor can demonstrate damages attributable to such failure. Within ten (10) days following receipt of written notice from the State relating to any claim, Contractor shall notify the State in writing whether Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying Contractor of a claim and prior to the State receiving Contractor's Notice of Election, the State shall be entitled to defend against the claim, at Contractor's expense, and Contractor will be responsible for any reasonable costs incurred by the State in defending against the claim during such period.

(b) If Contractor delivers a Notice of Election relating to any claim: (i) the State shall be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in the handling of such claim and to monitor and advise the State about the status and progress of the defense; (ii) Contractor shall, at the request of the State, demonstrate to the reasonable satisfaction of the State, Contractor's financial ability to carry out its defense and indemnity obligations under this Contract; (iii) Contractor shall periodically advise the State about the status and progress of the defense and shall obtain the prior written approval of the State before entering into any settlement of such claim or ceasing to defend against such claim and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State shall have the right, at its own expense, to control the defense of that portion of such claim involving the principles of Michigan governmental or public law. Notwithstanding the foregoing, the State may retain control of the defense and settlement of a claim by written notice to Contractor given within ten (10) days after the State's receipt of Contractor's information requested by the State pursuant to clause (ii) of this paragraph if the State determines that Contractor has failed to demonstrate to the reasonable satisfaction of the State Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State of Michigan, or any of its subdivisions pursuant to this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State pursuant to this Section, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

(c) If Contractor does not deliver a Notice of Election relating to any claim of which it is notified by the State as provided above, the State shall have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of Contractor. If it is determined that the claim was one against which Contractor was required to indemnify the State, upon request of the State, Contractor shall promptly reimburse the State for all such reasonable costs and expenses.

### **2.200 Limits of Liability and Excusable Failure**

#### **2.201 Limits of Liability**

The Contractor's liability for damages to the State shall be limited to the value of the Contract. The foregoing limitation of liability shall not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

The State's liability for damages to the Contractor shall be limited to the value of the Contract.

Neither the Contractor nor the State shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability shall not apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.





## 2.202 Excusable Failure

Neither party will be liable for any default, damage or delay in the performance of its obligations under the Contract to the extent such default, damage or delay is caused by government regulations or requirements (executive, legislative, judicial, military or otherwise), power failure, electrical surges or current fluctuations, lightning, earthquake, war, water or other forces of nature or acts of God, delays or failures of transportation, equipment shortages, suppliers' failures, or acts or omissions of common carriers, fire; riots, civil disorders; strikes or other labor disputes, embargoes; injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of such party; provided the non-performing party and its Subcontractors are without fault in causing such default or delay, and such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans.

In such event, the non-performing party will be excused from any further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such party continues to use its commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay and provided further that such party promptly notifies the other party in writing of the inception of the excusable failure occurrence, and also of its abatement or cessation.

If any of the above-enumerated circumstances substantially prevent, hinder, or delay Contractor's performance of the Services/provision of Deliverables for more than ten (10) Business Days, and the State determines that performance is not likely to be resumed within a period of time that is satisfactory to the State in its reasonable discretion, then at the State's option: (a) the State may procure the affected Services/Deliverables from an alternate source, and the State shall not be liable for payment for the unperformed Services/ Deliverables not provided under the Contract for so long as the delay in performance shall continue; (b) the State may terminate any portion of the Contract so affected and the charges payable there under shall be equitably adjusted to reflect those Services/Deliverables terminated; or (c) the State may terminate the affected Statement of Work without liability to Contractor as of a date specified by the State in a written notice of termination to Contractor, except to the extent that the State shall pay for Services/Deliverables provided through the date of termination.

Contractor will not have the right to any additional payments from the State as a result of any Excusable Failure occurrence or to payments for Services not rendered/Deliverables not provided as a result of the Excusable Failure condition. Defaults or delays in performance by Contractor which are caused by acts or omissions of its Subcontractors will not relieve Contractor of its obligations under the Contract except to the extent that a Subcontractor is itself subject to an Excusable Failure condition described above and Contractor cannot reasonably circumvent the effect of the Subcontractor's default or delay in performance through the use of alternate sources, workaround plans or other means.

## 2.203 Disaster Recovery

Contractor and the State recognize that the State provides essential services in times of natural or man-made disasters. Therefore, except as so mandated by Federal disaster response requirements, Contractor personnel dedicated to providing Services/Deliverables under this Contract will provide the State with priority service for repair and work around in the event of a natural or manmade disaster.

### 2.210 Termination/Cancellation by the State

The State may terminate this Contract without further liability or penalty to the State, its departments, divisions, agencies, offices, commissions, officers, agents and employees for any of the following reasons:

### 2.211 Termination for Cause

(a) In the event that Contractor breaches any of its material duties or obligations under this Contract (including a Chronic Failure to meet any particular SLA as defined in **Section 2.076**), which are either not capable of or subject to being cured, or are not cured within the time period specified in the written notice of breach provided by the State (such time period not to be less than thirty (30) days), or pose a serious and imminent threat to the health and safety of any person, or the imminent loss, damage or destruction of any real



or tangible personal property, the State may, having provided written notice of termination to Contractor, terminate this Contract in whole or in part, for cause, as of the date specified in the notice of termination.

(b) Reserved

(c) In the event the State chooses to partially terminate this Contract for cause, charges payable under this Contract will be equitably adjusted to reflect those Services/Deliverables that are terminated and the State shall pay for all Services/Deliverables for which Final Acceptance has been granted provided up to the termination date. Services and related provisions of this Contract that are terminated for cause shall cease on the effective date of the termination.

(d) In the event this Contract is terminated for cause pursuant to this Section, and it is determined, for any reason, that Contractor was not in breach of contract pursuant to the provisions of this section, that termination for cause shall be deemed to have been a termination for convenience, effective as of the same date, and the rights and obligations of the parties shall be limited to that otherwise provided in this Contract for a termination for convenience.

## **2.212 Termination for Convenience**

The State may terminate this Contract for its convenience, in whole or in part, if the State determines that such a termination is in the State's best interest. Reasons for such termination shall be left to the sole discretion of the State and may include, but not necessarily be limited to (a) the State no longer needs the Services or products specified in the Contract, (b) relocation of office, program changes, changes in laws, rules, or regulations make implementation of the Services no longer practical or feasible, (c) unacceptable prices for Additional Services or New Work requested by the State, or (d) falsification or misrepresentation, by inclusion or non-inclusion, of information material to a response to any RFP issued by the State. The State may terminate this Contract for its convenience, in whole or in part, by giving Contractor written notice at least thirty (30) days prior to the date of termination. Services and related provisions of this Contract that are terminated for cause shall cease on the effective date of the termination. In the event of termination for convenience, no refunds shall be issued.

## **2.213 Non-Appropriation**

(a) Contractor acknowledges that, if this Contract extends for several fiscal years, continuation of this Contract is subject to appropriation or availability of funds for this Contract. If funds to enable the State to effect continued payment under this Contract are not appropriated or otherwise made available, the State shall have the right to terminate this Contract and all affected Statements of Work, in whole or in part, at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to Contractor. The State shall give Contractor at least thirty (30) days advance written notice of termination for non-appropriation or unavailability (or such time as is available if the State receives notice of the final decision less than thirty (30) days before the funding cutoff).

(b) If funding for the Contract is reduced by law, or funds to pay Contractor for the agreed-to level of the Services or production of Deliverables to be provided by Contractor are not appropriated or otherwise made available, the State may, upon thirty (30) days written notice to Contractor, reduce the level of the Services or the change the production of Deliverables in such manner and for such periods of time as the State may elect. The charges payable under this Contract will be equitably adjusted to reflect any equipment, services or commodities not provided by reason of such reduction.

(c) In the event the State terminates this Contract, eliminates certain Deliverables, or reduces the level of Services to be provided by Contractor pursuant to this Section, the State shall pay Contractor for all Work-in-Process performed through the effective date of the termination or reduction in level, as the case may be and as determined by the State, to the extent funds are available. For the avoidance of doubt, this Section will not preclude Contractor from reducing or stopping Services/Deliverables and/or raising against the State in a court of competent jurisdiction, any claim for a shortfall in payment for Services performed or Deliverables finally accepted before the effective date of termination.

## **2.214 Criminal Conviction**

The State may terminate this Contract immediately and without further liability or penalty in the event Contractor, an officer of Contractor, or an owner of a 25% or greater share of Contractor is convicted of a criminal offense incident to the application for, or performance of, a State, public or private Contract or



subcontract; convicted of a criminal offense, including any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, attempting to influence a public employee to breach the ethical conduct standards for State of Michigan employees; convicted under State or federal antitrust statutes; or convicted of any other criminal offense which in the sole discretion of the State reflects upon Contractor's business integrity. No refunds shall be issued in such event.

### **2.215 Approvals Rescinded**

The State may terminate this Contract without further liability or penalty in the event any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services pursuant to **Constitution 1963, Article 11, § 5, and Civil Service Rule 7-1**. Termination may be in whole or in part and may be immediate as of the date of the written notice to Contractor or may be effective as of the date stated in such written notice. No refunds shall be issued in such event.

### **2.216 Rights and Obligations Upon Termination**

- (a) If this Contract is terminated by the State for any reason, Contractor shall (a) stop all work as specified in the notice of termination, (b) take any action that may be necessary, or that the State may direct, for preservation and protection of Deliverables or other property derived or resulting from this Contract that may be in Contractor's possession, (c) return all materials and property provided directly or indirectly to Contractor by any entity, agent or employee of the State, (d) in the event that the Contractor maintains title in Deliverables that is intended to be transferred to the State at the termination of the Contract, Contractor will transfer title in, and deliver to, the State, unless otherwise directed, all Deliverables intended to be transferred to the State at the termination of the Contract and which are resulting from the Contract (which shall be provided to the State on an "As-Is" basis except to the extent the amounts paid by the State in respect of such items included compensation to Contractor for the provision of warranty services in respect of such materials), and (e) take any action to mitigate and limit any potential damages, or requests for Contractor adjustment or termination settlement costs, to the maximum practical extent, including terminating or limiting as otherwise applicable those subcontracts and outstanding orders for material and supplies resulting from the terminated Contract.
- (b) In the event the State terminates this Contract prior to its expiration for its own convenience, the State shall pay Contractor for all charges due for Services provided prior to the date of termination and, if applicable, as a separate item of payment pursuant to this Contract, for Work In Process, on a percentage of completion basis at the level of completion determined by the State. All completed or partially completed Deliverables prepared by Contractor pursuant to this Contract shall, at the option of the State, shall be retained by the State, and Contractor shall be entitled to receive equitable fair compensation for such Deliverables. Regardless of the basis for the termination, the State shall not be obligated to pay, or otherwise compensate, Contractor for any lost expected future profits, costs or expenses incurred with respect to Services not actually performed for the State.
- (c) Upon a good faith termination, the State shall have the right to assume, at its option, any and all subcontracts and agreements for services and deliverables provided under this Contract, and may further pursue completion of the Services/Deliverables under this Contract by replacement contract or otherwise as the State may in its sole judgment deem expedient.

### **2.217 Reservation of Rights**

Any termination of this Contract or any Statement of Work issued under it by a party shall be with full reservation of, and without prejudice to, any rights or remedies otherwise available to such party with respect to any claims arising prior to or as a result of such termination.

### **2.218 Contractor Transition Responsibilities**

In the event this contract is terminated, for convenience or cause, dissolved, voided, rescinded, nullified, expires or is otherwise rendered unenforceable, the Contractor agrees to comply with direction provided by the State to assist in the orderly transition of equipment, services, software, leases, etc. to the State or a third party designated by the State. In the event of termination or the expiration of this Contract, the Contractor agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time that in no event will exceed ninety (90) days. These efforts shall include, but are not limited to, the following:

- (a) Personnel – Reserved



- (b) Information – Reserved
- (d) Software. – Reserved
- (e) Payment - If the transition results from a termination for any reason, reimbursement shall be governed by the termination provisions of this Contract. If the transition results from expiration, the Contractor will be reimbursed for all reasonable transition costs (i.e. costs incurred within the agreed period after contract expiration that result from transition operations) at the rates specified by **Attachment C**. The Contractor will prepare an accurate accounting from which the State and Contractor may reconcile all outstanding accounts.

## 2.219 State Transition Responsibilities

In the event that this Contract is terminated, dissolved, voided, rescinded, nullified, or otherwise rendered unenforceable, the State agrees to perform the following obligations, and any others upon which the State and the Contractor agree:

- (a) Reconciling all accounts between the State and the Contractor;
- (b) Completing any pending post-project reviews.

## 2.220 Termination by Contractor

### 2.221 Termination by Contractor

If the State materially breaches its obligation to pay Contractor undisputed amounts due and owing under this Contract in accordance with **Section 2.090**, or if the State breaches its other obligations under this Contract to an extent that makes it impossible or commercially impractical for Contractor to perform the Services, and if the State does not cure the breach within the time period specified in a written notice of breach provided to the State by Contractor (such time period not to be less than thirty (30) days), then Contractor may terminate this Contract, in whole or in part based on Statement of Work for cause, as of the date specified in the notice of termination; provided, however, that Contractor must discharge its obligations under **Section 2.250** before any such termination.

## 2.230 Stop Work

### 2.231 Stop Work Orders

The State may, at any time, by written stop work order to Contractor, require that Contractor stop all, or any part, of the work called for by the Contract for a period of up to ninety (90) calendar days after the stop work order is delivered to Contractor, and for any further period to which the parties may agree. The stop work order shall be specifically identified as such and shall indicate that it is issued under this **Section 2.230**. Upon receipt of the stop work order, Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop work order during the period of work stoppage. Within the period of the stop work order, the State shall either: (a) cancel the stop work order; or (b) terminate the work covered by the stop work order as provided in **Section 2.210**. Nevertheless, no refunds will be issued as a result of a stop work order and any non-recoverable expenses will be paid in accordance with Section 2.233,

### 2.232 Cancellation or Expiration of Stop Work Order

If a stop work order issued under this **Section 2.230** is canceled or the period of the stop work order or any extension thereof expires, Contractor shall resume work. The parties shall agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall be modified, in writing, accordingly, if: (a) the stop work order results in an increase in the time required for, or in Contractor's costs properly allocable to, the performance of any part of the Contract; and (b) Contractor asserts its right to an equitable adjustment within thirty (30) calendar days after the end of the period of work stoppage; provided that, if the State decides the facts justify the action, the State may receive and act upon a Contractor proposal submitted at any time before final payment under the Contract. Any adjustment will conform to the requirements of **Section 2.106**.





### 2.233 Allowance of Contractor Costs

If the stop work order is not canceled and the work covered by the stop work order is terminated for reasons other than material breach, such termination shall be deemed to be a termination for convenience under **Section 2.212**, and the State shall allow reasonable costs resulting from the stop work order in arriving at the termination settlement. For the avoidance of doubt, the State shall not be liable to Contractor for loss of profits because of a stop work order issued under this **Section 2.230**.

#### 2.240 Reserved

#### 2.250 Dispute Resolution

### 2.251 In General

Any claim, counterclaim, or dispute between the State and Contractor arising out of or relating to the Contract or any Statement of Work shall be resolved as follows. For all Contractor claims seeking an increase in the amounts payable to Contractor under the Contract, or the time for Contractor's performance, Contractor shall submit a letter executed by Contractor's Contract Administrator or his designee certifying that (a) the claim is made in good faith, (b) the amount claimed accurately reflects the adjustments in the amounts payable to Contractor or the time for Contractor's performance for which Contractor believes the State is liable and covers all costs of every type to which Contractor is entitled from the occurrence of the claimed event, and (c) the supporting data provided with such an affidavit are current and complete to Contractor's best knowledge and belief.

### 2.252 Informal Dispute Resolution

(a) All operational disputes between the parties shall be resolved under the Contract Management procedures developed pursuant to **Section 2.100**. If the parties are unable to resolve any disputes after compliance with such processes, the parties shall meet with the Director of Purchasing Operations, DMB, or designee, for the purpose of attempting to resolve such dispute without the need for formal legal proceedings, as follows:

(i) The representatives of Contractor and the State shall meet as often as the parties reasonably deem necessary in order to gather and furnish to each other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives shall discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.

(ii) During the course of negotiations, all reasonable requests made by one party to another for non-privileged information reasonably related to the Contract will be honored in order that each of the parties may be fully advised of the other's position.

(iii) The specific format for the discussions will be left to the discretion of the designated State and Contractor representatives, but may include the preparation of agreed upon statements of fact or written statements of position.

(iv) Following the completion of this process within sixty (60) calendar days, the Director of Purchasing Operations, DMB, or designee, shall issue a written opinion regarding the issue(s) in dispute within thirty (30) calendar days. The opinion regarding the dispute shall be considered the State's final action and the exhaustion of administrative remedies.

(b) This **Section 2.250** will not be construed to prevent either party from instituting, and a party is authorized to institute, formal proceedings earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or pursuant to **Section 2.253**.

(c) The State will not mediate disputes between the Contractor and any other entity, except state agencies, concerning responsibility for performance of work pursuant to the Contract.

### 2.253 Injunctive Relief

The only circumstance in which disputes between the State and Contractor will not be subject to the provisions of **Section 2.252** is where a party makes a good faith determination that a breach of the terms of the Contract by the other party is such that the damages to such party resulting from the breach will be so immediate, so



large or severe and so incapable of adequate redress after the fact that a temporary restraining order or other immediate injunctive relief is the only adequate remedy.

#### **2.254 Continued Performance**

Each party agrees to continue performing its obligations under the Contract while a dispute is being resolved except to the extent the issue in dispute precludes performance (dispute over payment shall not be deemed to preclude performance) and without limiting either party's right to terminate the Contract as provided in **Section 2.210** and **2.220**, as the case may be.

### **2.260 Federal and State Contract Requirements**

#### **2.261 Nondiscrimination**

In the performance of the Contract, Contractor agrees not to discriminate against any employee or applicant for employment, with respect to his or her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, physical or mental disability. Contractor further agrees that every subcontract entered into for the performance of this Contract or any purchase order resulting from this Contract will contain a provision requiring non-discrimination in employment, as specified here, binding upon each Subcontractor. This covenant is required pursuant to the Elliot Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, and any breach of this provision may be regarded as a material breach of the Contract.

#### **2.262 Unfair Labor Practices**

Pursuant to 1980 PA 278, MCL 423.231, *et seq.*, the State shall not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled pursuant to section 2 of the Act. This information is compiled by the United States National Labor Relations Board. A Contractor of the State, in relation to the Contract, shall not enter into a contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Pursuant to section 4 of 1980 PA 278, MCL 423.324, the State may void any Contract if, subsequent to award of the Contract, the name of Contractor as an employer or the name of the Subcontractor, manufacturer or supplier of Contractor appears in the register.

#### **2.263 Workplace Safety and Discriminatory Harassment**

In performing Services for the State, the Contractor shall comply with the Department of Civil Services Rule 2-20 regarding Workplace Safety and Rule 1-8.3 regarding Discriminatory Harassment. In addition, the Contractor shall comply with Civil Service regulations and any applicable agency rules provided to the Contractor. For Civil Service Rules, see <http://www.mi.gov/mdcs/0,1607,7-147-6877---,00.html>.

### **2.270 Litigation**

#### **2.271 Disclosure of Litigation - reserved**

#### **2.272 Governing Law**

The Contract shall in all respects be governed by, and construed in accordance with, the substantive laws of the State of Michigan without regard to any Michigan choice of law rules that would apply the substantive law of any other jurisdiction to the extent not inconsistent with, or pre-empted by federal law.

#### **2.273 Compliance with Laws**

Contractor shall comply with all applicable state, federal, and local laws and ordinances ("Applicable Laws") in providing the Services/Deliverables.



## 2.274 Jurisdiction

Any dispute arising from the Contract shall be resolved in the State of Michigan. With respect to any claim between the parties, Contractor consents to venue in Ingham County, Michigan, and irrevocably waives any objections it may have to such jurisdiction on the grounds of lack of personal jurisdiction of such court or the laying of venue of such court or on the basis of forum non conveniens or otherwise. Contractor agrees to appoint agents in the State of Michigan to receive service of process.

### 2.280 Environmental Provision

## 2.281 Environmental Provision

For the purposes of this Section, "Hazardous Materials" is a generic term used to describe asbestos, ACBMs, PCBs, petroleum products, such construction materials as paint thinners, solvents, gasoline, oil, etc., and any other material the manufacture, use, treatment, storage, transportation or disposal of which is regulated by the federal, state or local laws governing the protection of the public health, natural resources or the environment. This includes, but is not limited to, materials such as batteries and circuit packs, and other materials that are regulated as (1) "Hazardous Materials" under the Hazardous Materials Transportation Act, (2) "chemical hazards" under the Occupational Safety and Health Administration standards, (3) "chemical substances or mixtures" under the Toxic Substances Control Act, (4) "pesticides" under the Federal Insecticide Fungicide and Rodenticide Act, and (5) "hazardous wastes" as defined or listed under the Resource Conservation and Recovery Act. This Contract does not cover the handling, removal, or disposal of all Hazardous Materials.

(a) The Contractor shall use, handle, store, dispose of, process, transport and transfer any material considered a Hazardous Material in accordance with all federal, State and local laws. The State shall provide a safe and suitable environment for performance of Contractor's Work. Prior to the commencement of Work, the State shall advise Contractor of the presence at the work site of any Hazardous Material to the extent that the State is aware of such Hazardous Material. If the Contractor encounters material reasonably believed to be a Hazardous Material and which may present a substantial danger, the Contractor shall immediately stop all affected Work, give written notice to the State of the conditions encountered, and take appropriate health and safety precautions.

(b) Upon receipt of a written notice, the State will investigate the conditions. If (a) the material is a Hazardous Material that may present a substantial danger, and (b) the Hazardous Material was not brought to the site by the Contractor, or does not result in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Materials, the State shall order a suspension of Work in writing. The State shall proceed to have the Hazardous Material removed or rendered harmless. In the alternative, the State shall terminate the affected Work for the State's convenience.

(c) Once the Hazardous Material has been removed or rendered harmless by the State, the affected Work shall be resumed as directed in writing by the State. Any determination by the Michigan Department of Community Health and/or the Michigan Department of Environmental Quality (whichever is applicable) that the Hazardous Material has either been removed or rendered harmless shall be binding upon the State and Contractor for the purposes of resuming the Work. If any such incident with Hazardous Material results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in **Section 2.076** for a time as mutually agreed by the parties.

(d) If the Hazardous Material was brought to the site by the Contractor, or results in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Material, or from any other act or omission within the control of the Contractor, the Contractor shall bear its proportionate share of the delay and costs involved in cleaning up the site and removing and rendering harmless the Hazardous Material in accordance with Applicable Laws to the condition approved by applicable regulatory agency(ies). If the Contractor fails to take appropriate action pursuant to Applicable Laws and consistent with the State requirements, then the State may take appropriate action.



2.290 General

**2.291 Amendments**

The Contract may not be modified, amended, extended, or augmented, except by a writing executed by the parties.

**2.292 Assignment**

(a) Neither party shall have the right to assign the Contract, or to assign or delegate any of its duties or obligations under the Contract, to any other party (whether by operation of law or otherwise), without the prior written consent of the other party; provided, however, that the State may assign the Contract to any other State agency, department, division or department without the prior consent of Contractor and Contractor may assign the Contract to an affiliate so long as such affiliate is adequately capitalized and can provide adequate assurances that such affiliate can perform the Contract. Any purported assignment in violation of this Section shall be null and void. It is the policy of the State of Michigan to withhold consent from proposed assignments, subcontracts, or novations when such transfer of responsibility would operate to decrease the State's likelihood of receiving performance on the Contract or the State's ability to recover damages.

(b) Contractor may not, without the prior written approval of the State, assign its right to receive payments due under the Contract. In the event of any such permitted assignment, Contractor shall not be relieved of its responsibility to perform any duty imposed upon it herein, and the requirement under the Contract that all payments shall be made to one entity shall continue.

**2.293 Entire Contract; Order of Precedence**

(a) The Contract, including any Statements of Work and Exhibits, to the extent not contrary to the Contract, each of which is incorporated for all purposes, constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior agreements, whether written or oral, with respect to such subject matter and as additional terms and conditions on the purchase order shall apply as limited by **Section 2.061**.

(b) In the event of any inconsistency between the terms of the Contract and a Statement of Work, the terms of the Statement of Work will take precedence (as to that Statement of Work only); provided, however, that a Statement of Work may not modify or amend the terms of **Sections 2.110 through 2.220** of the Contract, which may be modified or amended only by a formal Contract amendment.

**2.294 Headings**

Captions and headings used in the Contract are for information and organization purposes. Captions and headings, including inaccurate references, do not, in any way, define or limit the requirements or terms and conditions of the Contract.

**2.295 Relationship of the Parties (Independent Contractor Relationship)**

The relationship between the State and Contractor is that of client and independent Contractor. No agent, employee, or servant of Contractor or any of its Subcontractors shall be or shall be deemed to be an employee, agent or servant of the State for any reason. Contractor will be solely and entirely responsible for its acts and the acts of its agents, employees, servants and Subcontractors during the performance of the Contract.

**2.296 Notices**

(a) Any notice given to a party under the Contract shall be deemed effective, if addressed to such party as addressed below, upon: (i) delivery, if hand delivered; (ii) receipt of a confirmed transmission by facsimile if a copy of the notice is sent by another means specified in this Section; (iii) the third (3rd) Business Day after being sent by U.S. mail, postage pre-paid, return receipt requested; or (iv) the next Business Day after being sent by a nationally recognized overnight express courier with a reliable tracking system.



State:

State of Michigan  
Department of Management and Budget  
Purchasing Operations  
Dale N. Reif  
PO Box 30026  
530 West Allegan  
Lansing, Michigan 48909

with a copy to:

State of Michigan  
Department of Information Technology  
Contracts and Procurement  
Michael Breen  
525 West Allegan Street  
Lansing, Michigan 48913

Contractor:

Spectrum Systems, Inc.  
Contracts Department  
11320 Random Hills Road, Suite 630  
Fairfax, VA 22030

Either party may change its address where notices are to be sent by giving notice in accordance with this Section.

(b) Binding Commitments - reserved

## **2.297 Media Releases and Contract Distribution**

(a) Media Releases

Neither Contractor nor the State will make any news releases, public announcements or public disclosures, nor will they have any conversations with representatives of the news media, pertaining to the Contract, the Services or the Contract without the prior written approval of the other party, and then only in accordance with explicit written instructions provided by that party. In addition, neither Contractor nor the State will use the name, trademarks or other proprietary identifying symbol of the other party or its affiliates without such party's prior written consent. Prior written consent of the Contractor must be obtained from authorized representatives.

(b) Contract Distribution

Purchasing Operations shall retain the sole right of Contract distribution to all State agencies and local units of government unless other arrangements are authorized by Purchasing Operations.

## **2.298 Reformation and Severability**

Each provision of the Contract shall be deemed to be severable from all other provisions of the Contract and, if one or more of the provisions of the Contract shall be declared invalid, the remaining provisions of the Contract shall remain in full force and effect.

## **2.299 Consents and Approvals**

Except as expressly provided otherwise in the Contract, if either party requires the consent or approval of the other party for the taking of any action under the Contract, such consent or approval shall be in writing and shall not be unreasonably withheld or delayed.

## **2.300 No Waiver of Default**

The failure of a party to insist upon strict adherence to any term of the Contract shall not be considered a waiver or deprive the party of the right thereafter to insist upon strict adherence to that term, or any other term, of the Contract.

**2.301 Survival**

Any provisions of the Contract that impose continuing obligations on the parties including the parties' respective warranty, indemnity and confidentiality obligations, shall survive the expiration or termination of the Contract for any reason. Specific references to survival in the Contract are solely for identification purposes and not meant to limit or prevent the survival of any other section.

**2.302 Covenant of Good Faith**

Each party agrees that, in its dealings with the other party or in connection with the Contract, it shall act reasonably and in good faith. Unless stated otherwise in the Contract, the parties will not unreasonably delay, condition or withhold the giving of any consent, decision or approval that is either requested or reasonably required of them in order for the other party to perform its responsibilities under the Contract.

**2.303 Permits - reserved****2.304 Website Incorporation**

State expressly states that it will not be bound by any content on the Contractor's website, even if the Contractor's documentation specifically referenced that content and attempts to incorporate it into any other communication, unless the State has actual knowledge of such content and has expressly agreed to be bound by it in a writing that has been manually signed by an authorized representation of the State.

**2.305 Taxes**

Vendors are expected to collect and pay all applicable federal, state, and local employment taxes, including the taxes defined in Section 3.022 for all persons involved in the resulting Contract.

The State may refuse to award a contract to any Vendor who has failed to pay any applicable State taxes. The State may refuse to accept Vendor's bid, if Vendor has any outstanding debt with the State. Prior to any award, the State will verify whether Vendor has any outstanding debt with the State.

**2.306 Prevailing Wage**

Reserved

**2.307 Call Center Disclosure - Reserved****2.308 Future Bidding Preclusion**

Contractor acknowledges that, to the extent this Contract involves the creation, research, investigation or generation of a future RFP, it may be precluded from bidding on the subsequent RFP. The State reserves the right to disqualify any bidder if the State determines that the bidder has used its position (whether as an incumbent Contractor, or as a Contractor hired to assist with the RFP development, or as a Vendor offering free assistance) to gain a leading edge on the competitive RFP.

2.310 Reserved

2.320 Extended Purchasing

**2.321 MiDEAL**

Public Act 431 of 1984 permits DMB to provide purchasing services to any city, village, county, township, school district, intermediate school district, non-profit hospital, institution of higher education, community, or junior college. A current listing of approved program members is available at: <http://www.michigan.gov/doingbusiness/0,1607,7-146-6586-16656--,00.html>. Unless otherwise stated, it is the responsibility of the Contractor to ensure that the non-state agency is an authorized purchaser before extending the Contract pricing.





The Contractor will supply Contract Services and equipment at the established State of Michigan contract prices and terms to the extent applicable and where available. Inasmuch as these are non-state agencies, all invoices will be submitted to and payment remitted by the local unit of government on a direct and individual basis.

To the extent that authorized local units of government purchase quantities of Services and/or equipment under this Contract, the quantities of Services and/or equipment purchased will be included in determining the appropriate rate wherever tiered pricing based on quantity is provided.

## **2.322 State Employee Purchases - Reserved**

### **2.330 Federal Grant Requirements**

#### **2.331 Federal Grant Requirements**

The following links contain certifications and terms that may be required for some purchases paid via Federal funds. They are included here to be utilized as required.

Lobbying Certifications are usually for agreements over \$100,000. The debarment certification is required for all agreements. The last link is where you can go and search for debarred or suspended contractors.

[http://straylight.law.cornell.edu/uscode/html/uscode31/usc\\_sec\\_31\\_00001352----000-.html](http://straylight.law.cornell.edu/uscode/html/uscode31/usc_sec_31_00001352----000-.html)

[http://www.archives.gov/federal\\_register/codification/executive\\_order/12549.html](http://www.archives.gov/federal_register/codification/executive_order/12549.html)

[http://www.archives.gov/federal\\_register/executive\\_orders/pdf/12869.pdf](http://www.archives.gov/federal_register/executive_orders/pdf/12869.pdf)

<http://www.epls.gov/epl/servlet/EPLSearchMain/1>



Today's Technology → Solutions for Tomorrow



## SPECTRUM SYSTEMS & SAFEBOOT SPECIAL ENCRYPTION PROMOTION FOR US STATE AND LOCAL GOVERNMENT

**ENDS OCTOBER 29, 2007**



### SafeBoot OMB License Bundle Includes:

- Full Disk (Device) Encryption (FDE)
- Content (File/Folder) Encryption (FES)
- Port Control
- All Connectors needed for directory and mobile devices
- 1st Year 7x24 Maintenance & Support
- Management Console
- Database Backup
- Scripting Tool
- Web Help Desk
- Home use of all licenses
- Single User License covers up to 5 devices (in use by that user)
- Immediate temporary enterprise license for use during natural disasters, acts of war and/or terror

### Special SafeBoot OMB License Bundle Promotion Pricing and Terms: (valid only through 10/29/07)

- \$11.56 per license for all inclusions listed above.
- 1,000 Seat Minimum Quantity Order.
- Purchase via Spectrum's GSA SmartBUY ESI BPA #FA8771-07-A-0304 only. No other purchase contracts or fees apply.
- \$550 for 4 Hours of Remote Installation / Configuration services.
- \$1,250 per day for Onsite Installation / Configuration service, Travel and Expenses Included.
- 40,000 Seat Orders include Named 0.5 FTE Level One Support Person.
- 60,000 Seat Orders include Named 1.0 FTE Level One Support Person.
- Year Two (2) Maintenance fee will be \$2.89 per license.
- A 3% year-over-year increase in Maintenance fee can be expected after Year Two (2).
- A Purchase Order received by October 29, 2007 locks in the \$11.56 per license price point for all additional licenses purchased through October 29, 2008.
- To accommodate funding / legal requirements, if Spectrum Systems, Inc. receives a Letter of Intent by October 29, 2007, a thirty 30 day price extension will be granted. The Purchase Order must be received by November 29, 2007.
- Each State will have the opportunity to work with SafeBoot to develop a Statewide EULA.

### For a quote or additional information:

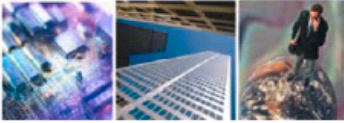
Contact Cheryl Mahoney at:  
703-591-7400 ext. 210





**Spectrum  
Systems, Inc.**

Today's Technology → Solutions for Tomorrow



### Core Technologies of the SafeBoot OMB Bundle:

**SafeBoot® Management Center™** provides unique, powerful central management tools, including central deployment, user management, policy management, recovery, audits and seamless integration with third-party enterprise systems and PKI.

**SafeBoot® Device Encryption** uses strong pre-boot user authentication and powerful encryption to prevent unauthorized access to or use of PCs, laptops, tablet PCs, PDAs and other portable devices, removable storage drives and media, and more. It supports Single Sign-On (SSO) capabilities and uses algorithms such as RC5-1024 and AES-256 to encrypt data, wherever it may be located. Encryption and decryption are transparent to the user and are performed on the fly, with virtually no performance loss.

**SafeBoot® Content Encryption** provides transparent file and folder encryption. Once an administrator has designated the folders and types of files to be encrypted, users do not even notice the encryption and decryption process. Groups of users with the same access rights can share files across the network. Private data stored on the network is safe even from an administrator's view!

**SafeBoot® Port Control** enables management of what kinds of devices can and cannot be attached to the organization's machines. SafeBoot® Port Control supports all port device classes and types, providing administrators with fine control of what device users can and cannot access, as well as tools that quickly identify newly attached devices.



## Software License Agreement

**1. License Grant.** The State of Michigan ("Licensee") is hereby granted by McAfee, Inc. ("McAfee"), and Licensee accepts, a non-exclusive, non-assignable, non-transferable, license to install and use MCAFEE's software ("Product(s)") and accompanying Administrator's Manuals and user guides (the "Documentation"), as referred to in the purchase order(s) ("PO") accepted by McAfee or its duly authorized reseller, solely for Licensee's own internal use and benefit and as authorized in these Terms & Conditions and solely for the agreed number of users or devices as specified and paid per the purchase order. For the purposes of counting the authorized number of users or devices, each device shall count as one user, and every additional user of such device shall count as one additional user, resulting in a 1:1 device/user ratio. Licensee shall not (i) lend, sell, lease or otherwise dispose of the Product(s) without MCAFEE's written approval; (ii) use the Product(s) and / or Documentation for any other purpose than provided in these Terms & Conditions; (iii) copy, modify, decompile or reverse compile by any means, including but not limited to analyses by debug or reverse assembler tools, the Product(s) or the Documentation. Product(s) will be provided in machine readable, object code form only. The intellectual property in the Product(s)- and the Documentation shall remain vested in MCAFEE at all times.

**2. Term — License Type and Restrictions.** Subject to the terms and conditions herein, and payment of all amounts due by Licensee, the license granted is a perpetual license, unless and until terminated by Licensee or by MCAFEE if Licensee fails to meet the material terms and conditions of this Agreement. Upon termination all Product(s) must be removed from all systems using the Product(s) and all Product(s) and Documentation and all copies thereof must be destroyed or promptly returned to MCAFEE.

**3. Maintenance and Support.** Upon payment of the applicable Maintenance & Support (M&S) fees, MCAFEE will provide M&S services to the Licensee. This includes: a) providing Licensee with corrections of any substantial defects or fixes of any serious bugs relating to the Product(s) as such solutions become known to MCAFEE, b) providing Licensee, from time to time, without additional charge, with New Releases that contain new enhancements, performance improvements, upgrades, service packs and/or patches, all within the same version class, which MCAFEE elects to make available to its Licensees base generally (MCAFEE reserves the right to charge separately for specific functionality enhancements or product options), c) during normal business hours, providing a help desk service (which can be contacted by Licensee through e-mail, the internet, fax and telephone) for queries by the Licensee in accordance with McAfee's then current Service Level Terms and Conditions, a copy of which Licensee acknowledges receiving. It is understood, however, that in respect to on-site support visits, training or hardware and related supplies, MCAFEE and Licensee shall agree in advance on the services to be provided and the fees for the services which may include reasonable time and materials and actual reasonable travel, living and accommodation costs and shall be performed under a separate agreement executed by both parties. MCAFEE will support Products as long as they comprise the latest version and for a period of 180 days after the release of a new version, however, an entire version class will continue to be supported for three (3) years following introduction of a new version (e.g., 5.x to 6.0), with the exception of bug fixes and error corrections that could have been addressed by using the current release, and further excluding features enhancements.

**4. Payment of Fees.** Licensee shall issue a Purchase Order ("PO") in accordance with the terms of this Agreement. Upon acceptance of the PO, McAfee, or its duly authorized reseller, shall invoice Licensee for the license fee and maintenance and support fees. The fee for Maintenance & Support will be charged to the Licensee at the amount specified in an accepted PO, or if no fee is specified, then at 20% of the agreed license fee, and will be payable at the time of the initial licensing for the term(s) specified in the PO. Subsequent terms for annual M&S may be purchased at Licensee's discretion, effective as of the expiration of the last paid-up Maintenance and Support term. License fees and maintenance and support fees for the term(s) indicated in the PO shall be payable within 45 days of the date of the invoice, unless other terms are specified in a separate agreement with a duly authorized reseller. Additional products or services may be ordered by submission of a PO referencing this License Agreement. Termination of the license and/or the M&S services will in no circumstance lead to a refund of fees. Any past due fees by Licensee may be subject to 0.75 percent interest per month.



5. **Warranty.** MCAFEE represents and warrants that it is the owner or authorized licensor of the Product(s). MCAFEE further warrants that at the time of delivery of the initial Product(s) and for a period of ninety (90) days thereafter, Product(s) will be in substantial accordance with the Documentation supplied to Licensee, provided the hardware and operating systems the Product(s) is installed on, comply with the requirements set out in the Documentation. MCAFEE's liability under this warranty and Licensee's sole and exclusive remedy for breach of this warranty shall be limited to the correction or replacement as soon as reasonably practical of any defective item(s) on the initial Product(s) which MCAFEE determines to be necessary at MCAFEE's sole cost and expense, provide notice of such defect is provided to MCAFEE during the warranty period. The warranty shall not apply if (i) an item of Product(s) was not used in accordance with MCAFEE's instructions; (ii) an item of Product(s) has been altered, modified or converted by Licensee not in accordance with the user Documentation as supplied by MCAFEE, or without MCAFEE's written approval; (iii) any of Licensee's equipment shall malfunction causing the defect in the Product(s). **THE WARRANTIES CONTAINED IN THIS AGREEMENT ARE IN PLACE OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. ALL OTHER WARRANTIES ARE HEREBY DISCLAIMED.** During the warranty period, new releases containing only corrections of errors of the Product(s) will be provided without additional charge, but MCAFEE may impose a charge for new releases that in MCAFEE's opinion contain other modifications, improvements or new material.

6. **Auto-Boot /Post Boot Mode.** McAfee shall have no liability to Licensee for any damages resulting from the use of the Licensed Product(s) in the "auto-boot" or "post-boot" mode. Licensee is advised that such tools are designed for product deployment purposes only, and any other use does not provide adequate data security. Any such contrary use shall be at Licensee's sole risk. Moreover, in the event of a data breach resulting from such contrary use, Licensee shall not publicize McAfee's name in connection with such breach, nor make any statements that unfairly disparage the reputation of McAfee products.

7. **Limitations of Warranties and Liabilities.** Except for the warranties set forth in this Agreement, THE PRODUCT IS PROVIDED "AS IS." MCAFEE DOES NOT WARRANT THAT THE PRODUCT IS FIT FOR THE USE LICENSEE INTENDS IT TO USE FOR. As far as permitted under applicable law and except under the exclusive remedy terms, MCAFEE's liability for direct/actual damages from any cause whatsoever will be limited to the consideration received by MCAFEE hereunder. MCAFEE shall in no event be liable for loss of sales, profit, goodwill, or other special, indirect or any consequential damages suffered by Licensee or others in anyway attributable to Licensee's use of Product(s) or any services provided hereunder.

8. **Nondisclosure/unauthorized use.** Licensee agrees to keep all information that is either marked as confidential, or that can reasonably be understood to be of a confidential nature confidential for a period of five (5) years from the date of disclosure. Licensee agrees to use all reasonable precautions to prevent the Product(s) and Documentation and any confidential information disclosed pursuant to this Agreement from being used by unauthorized persons and to take appropriate action, by instruction, agreement or otherwise, with regard to all persons permitted access to the Product(s) and Documentation, in order to insure the Product(s) is (are) protected.

9. **Governing Law.** These Terms & Conditions shall be governed by and construed in accordance with the laws of the state of Michigan, United States of America.

10. **Severability.** In the event that any of these terms or conditions conflicts with the applicable law(s), or if such provision is held invalid by a court with jurisdiction over Licensee and MCAFEE, such provision shall be restated to reflect, as nearly as possible, the original intentions of the parties in accordance with applicable law, and the remainder of these Terms & Conditions shall remain in full force.

11. **Assignment:** This Agreement may not be assigned or transferred by Licensee, by operation of law or otherwise, without the prior written consent of McAfee.

12. **Notices.** Any required notices hereunder shall be given in writing and personally delivered, delivered by a major commercial rapid delivery courier service with tracking capabilities, or mailed, postage prepaid, by certified or registered mail, return receipt requested, to a party at its address set forth herein.



13. **No Waiver.** The failure of either party to enforce any rights granted hereunder or to take action against the other party in the event of any breach hereunder shall not be deemed a waiver by that party as to subsequent enforcement of rights or subsequent actions in the event of future breaches.

14. **Export Control; Import Restrictions.** McAfee's obligation to provide the Product(s), and Licensee's license rights hereunder, are subject in all respects to laws and regulations of the United States of America, as from time to time govern the license and delivery of technology and products abroad by persons subject to the jurisdiction of such nation. Licensee is further advised that import restrictions governing the importation, sale and use of encryption technology, as embodied in the Products, exist in certain countries, including but not limited to, China. Licensee agrees to abide by all applicable export and import restrictions, at its own expense. For more information, please refer to "Legal Regulations on Encryption Software" tab at [www.safeboot.com](http://www.safeboot.com).

15. **Entire Agreement.** This Agreement contains the full understanding between the parties and may only be changed by a written amendment signed by both parties. This Agreement supersedes and shall control over any "click wrap" license that may accompany the Software. In the event Licensee purchases Products from a duly authorized McAfee reseller, any separate terms and conditions relating to pricing, invoicing, payment and the like shall control for Product ordered from reseller, but the remaining terms of this Agreement (including but not limited to the license grant and usage rights and the provisions of M&S) shall govern the use of the Products and the M&S if such M&S is supplied by McAfee. MCAFEE acceptance of any PO issued by Licensee shall evidence itself by MCAFEE or its duly authorized reseller sending (a) proper Invoice(s) to Licensee based on Licensee's PO. In the event of a conflict or inconsistency between the terms of this Agreement and the Contract, the terms of the Contract shall control, unless the varying terms are conspicuously identified as overriding the specific term of the Contract and signed by both parties. This Agreement may be signed via facsimile and/or counterpart signatures. Licensee represents that the person signing below on its behalf is authorized to execute instruments on behalf of the Licensee.

**Accepted this Agreement and all the terms and conditions contained herein:**

Name Licensee: **The State of Michigan** **McAfee, Inc.**

Officer's Signature: \_\_\_\_\_  
\_\_\_\_\_

Name Authorized  
Representative: \_\_\_\_\_  
\_\_\_\_\_

Title/Office Held: \_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_  
\_\_\_\_\_





SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, & 30				1. REQUISITION NUMBER		PAGE 1 OF 6	
2. CONTRACT NO. FA8771-07-A-0304		3. AWARD/EFFECTIVE DATE 15 JUN 2007		4. ORDER NUMBER		5. SOLICITATION NUMBER	
7. FOR SOLICITATION INFORMATION CALL:		8. NAME		9. TELEPHONE NUMBER (No collect call)		10. OFFER DUE DATE/LOCAL TIME	
9. ISSUED BY 754ELSG/KA		CODE FA8771		10. THIS ACQUISITION IS <input checked="" type="checkbox"/> UNRESTRICTED <input type="checkbox"/> SET ASIDE: % FOR <input type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> HUBZONE SMALL BUSINESS <input type="checkbox"/> EMERGING SMALL BUSINESS <input type="checkbox"/> 8(A) <input type="checkbox"/> SERVICE DISABLED VET SB NAICS: 423430 SIZE STANDARD:		11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED <input type="checkbox"/> SEE SCHEDULE <input checked="" type="checkbox"/> 13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700) 13b. RATING DQ-A7 14. METHOD OF SOLICITATION <input type="checkbox"/> RFQ <input type="checkbox"/> IFB <input type="checkbox"/> RFP	
DEPARTMENT OF THE AIR FORCE HQ 754 ELSG/KA 490 EAST MOORE DR., SUITE 270 MAFB - GUNTER ANNEX AL 36114-3000 SOPHIA D. SMITH 334 416-4823 sophia.smith@gunter.af.mil		15. DELIVER TO SEE SF1449 Continuation		16. ADMINISTERED BY HQ 754TH ELECTRONIC SYSTEMS GROUP ACQUISITION & COMMODITIES DIV (KA) 490 EAST MOORE DRIVE SUITE 270 MAFB-GUNTER ANNEX AL 36114 SCD: C PAS: (NONE)		12. DISCOUNT TERMS N	
17a. CONTRACTOR/OFFEROR SPECTRUM SYSTEMS, INC. 11320 RANDOM HILLS RD STE 630 FAIRFAX VA 22030-7477		CODE 0H5P8 FACILITY CODE		18a. PAYMENT WILL BE MADE BY AS DETERMINED BY THE ORDERING AGENCY AND AS CITED ON THEIR INDIVIDUAL ORDER		CODE FA8771	
TELEPHONE NO. (703) 591-7400		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 SF1449 Continuation (Attach Additional Sheets as Necessary)						
25. ACCOUNTING AND APPROPRIATION DATA				26. TOTAL AWARD AMOUNT (For Govt. Use Only)			
<input type="checkbox"/> 27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4. FAR 52.212-3 AND 52.212-5 ARE ATTACHED. ADDENDA <input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED.				<input checked="" type="checkbox"/> 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4. FAR 52.212-5 IS ATTACHED. ADDENDA <input checked="" type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED.			
<input checked="" type="checkbox"/> 28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN 1 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 HEREIN.				<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: SEE CONTINUATION.			
30a. SIGNATURE OF OFFEROR/CONTRACTOR				31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER)			
30b. NAME AND TITLE OF SIGNER (Type or print)		30c. DATE SIGNED		31b. NAME OF CONTRACTING OFFICER (Type or print) JOHN R. BUZAN		31c. DATE SIGNED	
32a. QUANTITY IN COLUMN 21 HAS BEEN <input type="checkbox"/> RECEIVED <input type="checkbox"/> INSPECTED <input type="checkbox"/> 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			
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. AMT VERIFIED CORRECT FOR	36. PAYMENT <input type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL	37. CHECK NUMBER			
38. S/R ACCT NUMBER	39. S/R VOUCHER NUMBER	40. PAID BY					
41a. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT				42a. RECEIVED BY (Print)			
41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER		41c. DATE		42b. RECEIVED AT (Location)			
				42c. DATE REC'D (YYMMDD)		42d. TOTAL CONTAINERS	



SF1449 CONTINUATION

ITEM	SUPPLIES OR SERVICES	Qty Purch Unit	Unit Price Total Item Amount
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Per applicable SINS from vendor's GSA Schedule

0001		0 Lot	\$0.00
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*Noun:* DATA AT REST (DAR) ENCRYPTION PRODUCTS  
*NSN:* N - Not Applicable  
*Contract type:* J - FIRM FIXED PRICE  
*Inspection:* DESTINATION  
*Acceptance:* DESTINATION  
*FOB:* DESTINATION  
*Descriptive Data:*  
 Per applicable SINS from vendor's GSA Schedule. Includes firm, fixed-price (FFP) commercial IT products and related services, such as Software Maintenance, and negotiated FFP services defined as individual tasks. Commercial interim payment for Software Maintenance is authorized.

Per applicable SINS from vendor's GSA Schedule

0002		0 Lot	\$0.00
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*Noun:* DATA AT REST (DAR) ENCRYPTION PRODUCTS/SERVICES  
*NSN:* N - Not Applicable  
*Contract type:* Y - TIME AND MATERIALS  
*Inspection:* DESTINATION  
*Acceptance:* DESTINATION  
*FOB:* DESTINATION  
*Descriptive Data:*  
 Per applicable SINS for Services from vendor's GSA Schedule. Includes SIN 132-51 IT Professional Services in accordance with Data at Rest Statement of Objectives, Atch 7 of the DAR Encryption ESA., when defined as individual tasks, such as implementation, maintenance, integration or training services, and travel and other direct costs in support of these tasks.



## ADDENDUM

**1. FAR 52.217-09 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 the effective period of the GSA Schedule; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least within the effective period of the GSA Schedule or 7 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 five years.

**2. DFARS 252.212-7001 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS APPLICABLE TO DEFENSE ACQUISITIONS OF COMMERCIAL ITEMS (Apr 2007)**

(a) The Contractor agrees to comply with the following Federal Acquisition Regulation (FAR) clause which, if checked, is included in this contract by reference to implement a provision of law applicable to acquisitions of commercial items or components.

☒ 52.203-03, Gratuities (APR 1984) (10 U.S.C. 2207).

(b) The Contractor agrees to comply with any clause that is checked on the following list of Defense FAR Supplement clauses which, if checked, is included in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items or components.

☒ (1) 252.205-7000, Provision of Information to Cooperative Agreement Holders (Dec 1991) (10 U.S.C. 2416).

☒ (5) 252.225-7012, Preference for Certain Domestic Commodities (Jan 2007) (10 U.S.C. 2533a).

☒ (6) 252.225-7014, Preference for Domestic Specialty Metals (Jun 2005) (10 U.S.C. 2533a).

☒ (9) 252.225-7021, Trade Agreements (Mar 2007) (19 U.S.C. 2501-2518 and 19 U.S.C. 3301 note).

☒ (10) 252.225-7027, Restriction on Contingent Fees for Foreign Military Sales (Apr 2003) (22 U.S.C. 2779).  
Para (b)(1), Sales to the Government(s) of those listed in DFARS 225-7303-4(b)

☒ (12)(ii) 252.225-7036, Buy American Act--Free Trade Agreements--Balance of Payments Program (Mar 2007) - Alternate I (Oct 2006) (41 U.S.C. 10a-10d and 19 U.S.C. 3301 note).

☒ (14) 252.226-7001, Utilization Of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns (Sep 2004) (Section 8021 of Public Law 107-248 and similar sections in subsequent DoD appropriations acts).



## ADDENDUM

☒ (17) 252.232-7003, Electronic Submission Of Payment Requests (MAR 2007) (10 U.S.C. 2227).

☒ (19) 252.243-7002, Requests for Equitable Adjustment (Mar 1998) (10 U.S.C. 2410).

☒ (20)(i) 252.247-7023, Transportation of Supplies by Sea (May 2002) (10 U.S.C. 2631).

☒ (21) 252.247-7024, Notification of Transportation of Supplies by Sea (Mar 2000) (10 U.S.C. 2631).

(c) In addition to the clauses listed in paragraph (e) of the Contract Terms and Conditions Required to Implement Statutes or Executive Orders--Commercial Items clause of this contract (FAR 52.212-5), the Contractor shall include the terms of the following clauses, if applicable, in subcontracts for commercial items or commercial components, awarded at any tier under this contract:

(1) 252.225-7014 Preference for Domestic Specialty Metals, Alternate I (Apr 2003) (10 U.S.C. 2533a).

(2) 252.237-7019 Training for Contractor Personnel Interacting with Detainees (Sep 2006) (Section 1092 of Pub. L. 108-375).

(3) 252.247-7023 Transportation of Supplies by Sea (May 2002) (10 U.S.C. 2631).

(4) 252.247-7024 Notification of Transportation of Supplies by Sea (Mar 2000) (10 U.S.C. 2631).

### 3. DFARS 252.232-7010 LEVIES ON CONTRACT PAYMENTS (Dec 2006)

(a) 26 U.S.C. 6331(h) authorizes the Internal Revenue Service (IRS) to continuously levy up to 100 percent of contract payments, up to the amount of tax debt.

(b) When a levy is imposed on a payment under this contract and the Contractor believes that the levy may result in an inability to perform the contract, the Contractor shall promptly notify the Procuring Contracting Officer in writing, with a copy to the Administrative Contracting Officer, and shall provide—

(1) The total dollar amount of the levy;

(2) A statement that the Contractor believes that the levy may result in an inability to perform the contract, including rationale and adequate supporting documentation; and

(3) Advice as to whether the inability to perform may adversely affect national security, including rationale and adequate supporting documentation.

(c) DoD shall promptly review the Contractor's assessment, and the Procuring Contracting Officer shall provide a written notification to the Contractor including—

(1) A statement as to whether DoD agrees that the levy may result in an inability to perform the contract, and

ADDENDUM

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(2)(i) If the levy may result in an inability to perform the contract and a lack of performance will adversely affect national security, the total amount of the monies collected that should be returned to the Contractor; or

(ii) If the levy may result in an inability to perform the contract but will not impact national security, a recommendation that the Contractor promptly notify the IRS to attempt to resolve the tax situation.

(d) Any DoD determination under this clause is not subject to appeal under the Contract Disputes Act.

#### 4. AF 5352.201-9101 OMBUDSMAN (Aug 2005)

(a) An ombudsman has been appointed to hear and facilitate the resolution of concerns from offerors, potential offerors, and others for this acquisition. When requested, the ombudsman will maintain strict confidentiality as to the source of the concern. The existence of the ombudsman does not affect the authority of the program manager, contracting officer, or source selection official. Further, the ombudsman does not participate in the evaluation of proposals, the source selection process, or the adjudication of protests or formal contract disputes. The ombudsman may refer the party to another official who can resolve the concern.

(b) Before consulting with an ombudsman, interested parties must first address their concerns, issues, disagreements, and/or recommendations to the contracting officer for resolution. Consulting an ombudsman does not alter or postpone the timelines for any other processes (e.g., agency level bid protests, GAO bid protests, requests for debriefings, employee-employer actions, contests of OMB Circular A-76 competition performance decisions).

(c) If resolution cannot be made by the contracting officer, concerned parties may contact the Center/MAJCOM ombudsmen, as designated by Electronic Systems Center. Concerns, issues, disagreements, and recommendations that cannot be resolved at the MAJCOM/DRU level, may be brought by the concerned party for further consideration to the Air Force ombudsman, Associate Deputy Assistant Secretary (ADAS) (Contracting), SAF/AQC, 1060 Air Force Pentagon, Washington DC 20330-1060, phone number (703) 588-7004, facsimile number (703) 588-1067.

(d) The ombudsman has no authority to render a decision that binds the agency.

(e) Do not contact the ombudsman to request copies of the solicitation, verify offer due date, or clarify technical requirements. Such inquiries shall be directed to the Contracting Officer.



CONTRACT DOCUMENTS, EXHIBITS AND ATTACHMENTS

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DOCUMENT	PGS	DATE	TITLE
EXHIBIT A	3		EXH A - SF 1449 CONTINUATION
EXHIBIT B	6		EXH B - ESI/SMARTBUY ENTERPRISE SOFTWARE AGREEMENT (ESA)
EXHIBIT C	28		EXH C - DATA AT REST TECHNICAL REQUIREMENTS
ATTACHMENT 1	3		ATCH 1 - DISCOUNTS, CONCESSIONS; PRODUCTS AND PRICE LIST; QUOTES 10K, 33K, 100K
ATTACHMENT 2	1		ATCH 2 - LICENSE AGREEMENT
ATTACHMENT 3	2		ATCH 3 - REPORT OF SALES FORMAT
ATTACHMENT 4	4		ATCH 4 - FEES AND PAYMENTS
ATTACHMENT 5	4		ATCH 5 - FY07 FEE TRANSMITTAL LETTERS
ATTACHMENT 6	1		ATCH 6 - CONFIRMATION OF FIPS VALIDATION
ATTACHMENT 7	7		ATCH 7 - STATEMENT OF OBJECTIVES
ATTACHMENT 8	1		ATCH 8 - CONTRACTOR TEAM ARRANGEMENTS



CONTINUATION of SF 1449

BPA FA8771-07-A-0304

FA8771-06-A-0304 is a Blanket Purchase Agreement (BPA) under GSA's Multiple Award Schedule Contract GS-35F-5192G, awarded as an Enterprise Software Agreement (ESA) under the DoD Enterprise Software Initiative (ESI) and GSA SmartBUY program in accordance with a commercial item offer by the Schedule contractor in response to the Government's Data at Rest (DAR) Encryption RFQ FA8771-07-R-0001.

1. Blocks 18a and 18b of SF 1449:

Submit invoices to addresses as determined by the ordering agency and as cited on their individual orders.

2. Spectrum Systems participates in Cooperative Purchasing with State and Local Governments. Spectrum will offer this contract to any State and Local Government that may want to purchase the Safeboot products or services to include waiving the 2% fee from purchase orders.

(a) Exhibit B, DAR ESI/SmartBUY ESA, Section B, "AUTHORIZED USERS AND POINTS OF CONTACT," shall include (and be modified if the attached text of Exhibit B does not include) sub-paragraph 1.1 as follows:

"1.1. On an optional basis, provided the Schedule contractor accepts their orders, State and local government may place orders under this ESI/SmartBUY ESA, in accordance with GSA's Cooperative Purchasing program. Orders will be placed as provided under the Cooperative Purchasing clauses of the GSA Schedule contract, including GSAR 552.238-78, GSAR 552.238-79, and GSAR 552.232-79, and this BPA."

(b) Notwithstanding any provision of Attachment 4, Fees and Payments, the Acquisition, Contracting, and Technical (ACT) Fee shall not be included in the prices quoted to or paid by State and local governments. The cost of awarding, administering and managing this BPA as it applies to State and local government in accordance with the provision of (a) above is not included in the prices.

3. Commercial interim payment for software maintenance is authorized. Contractor entitlement to payment of contract financing shall be the amount of each item of software maintenance ordered less the pro-rated portion representing reinstatement, if any, which is not financed. The basis for payment shall be presentation of a delivery invoice following the beginning of performance. Liquidation of contract financing shall be in equal daily amounts, pro-rated through the item's period of performance. The contractor's financial condition has been accepted as adequate security for commercial financing payments; and the contracting officer may exercise the Government's rights to require other security under paragraph (c), Security for Government Financing, of the clause at Federal Acquisition Regulation (FAR) 52.232-29, Terms for Financing of Purchases of Commercial Items, in the event the contractor's financial condition changes and is found not to be adequate security. In accordance with Defense FAR Supplement 232.206(f)(ii), the following standard prompt payment terms for commercial



interim payments applies: 30 days after receipt by the designated billing office of a proper request for payment. The prompt payment standards for commercial delivery payments shall be the same as specified in FAR Subpart 32.9 for invoice payments for the item delivered.

The following FAR clause is incorporated in SECTION I, Contract Clauses:

52.232-29 - Terms for Financing of Purchases of Commercial Items (Feb 2002)

(a) Contractor entitlement to financing payments. The Contractor may request, and the Government shall pay, a contract financing payment as specified elsewhere in this contract when: the payment requested is properly due in accordance with this contract; the supplies deliverable or services due under the contract will be delivered or performed in accordance with the contract; and there has been no impairment or diminution of the Government's security under this contract.

(b) Special terms regarding termination for cause. If this contract is terminated for cause, the Contractor shall, on demand, repay to the Government the amount of unliquidated contract financing payments. The Government shall be liable for no payment except as provided by the Termination for Cause paragraph of the clause at 52.212-4, Contract Terms and Conditions -- Commercial Items.

(c) Security for Government financing. In the event the Contractor fails to provide adequate security, as required in this contract, no financing payment shall be made under this contract. Upon receipt of adequate security, financing payments shall be made, including all previous payments to which the Contractor is entitled, in accordance with the terms of the provisions for contract financing. If at any time the Contracting Officer determines that the security provided by the Contractor is insufficient, the Contractor shall promptly provide such additional security as the Contracting Officer determines necessary. In the event the Contractor fails to provide such additional security, the Contracting Officer may collect or liquidate such security that has been provided and suspend further payments to the Contractor; and the Contractor shall repay to the Government the amount of unliquidated financing payments as the Contracting Officer at his sole discretion deems repayable.

(d) Reservation of rights.

(1) No payment or other action by the Government under this clause shall --

(i) Excuse the Contractor from performance of obligations under this contract; or

(ii) Constitute a waiver of any of the rights or remedies of the parties under the contract.

(2) The Government's rights and remedies under this clause --

(i) Shall not be exclusive, but rather shall be in addition to any other rights and remedies provided by law or this contract; and



(ii) Shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this clause or the exercise of any other right, power, or privilege of the Government.

(e) Content of Contractor's request for financing payment. The Contractor's request for financing payment shall contain the following:

- (1) The name and address of the Contractor;
- (2) The date of the request for financing payment;
- (3) The contract number and/or other identifier of the contract or order under which the request is made; and
- (4) An appropriately itemized and totaled statement of the financing payments requested and such other information as is necessary for computation of the payment, prepared in accordance with the direction of the Contracting Officer.

(f) Limitation on frequency of financing payments. Contractor financing payments shall be provided no more frequently than monthly.

(g) Dates for payment. A payment under this clause is a contract financing payment and not subject to the interest penalty provisions of the Prompt Payment Act. The designated payment office will pay approved payment requests within 30 days of submittal of a proper request for payment.

(h) Conflict between terms of offeror and clause. In the event of any conflict between the terms proposed by the offeror in response to an invitation to propose financing terms (52.232-31) and the terms in this clause, the terms of this clause shall govern.

(End of Clause)





Spectrum Systems, Inc.  
GS 35F-5192G  
BPA FA8771-07-A-0304  
Exhibit B

## **Blanket Purchase Agreement ESI/SmartBUY Enterprise Software Agreement (ESA)**

In the spirit of the Federal Acquisition Streamlining Act, the Department of Defense (DoD) and Spectrum Systems, Inc. enter into a cooperative agreement to further reduce the administrative costs of acquiring commercial items from the General Service Administration (GSA) Federal Supply Schedule Contract GS-35F-5192G,

This ESI/SmartBUY ESA is a joint project of the DoD Enterprise Software Initiative (ESI) and GSA SmartBUY Program to develop and implement a Government-wide enterprise process. This BPA is issued in the spirit of the policy and guidelines provided in the Defense Federal Acquisition Regulation Supplement (DFARS) Section 208.74.

Federal Supply Schedule Contract Blanket Purchase Agreements (BPAs) reduce contracting and open market costs such as: search for sources, the development of technical documents, solicitations, and the evaluation of bids and offers.

This BPA will further decrease costs, reduce paperwork, and save time by eliminating the need for repetitive, individual purchases from the schedule contract. The end result is to create a purchasing mechanism for the Government that works better and costs less.

Attachments to this agreement are:

- a. Attachment 1 – Discounts, Concessions; Product and Price List; and Quotes for 10K, 33K, and 100K Users
- b. Attachment 2 – License Agreement
- c. Attachment 3 – Report of Sales Format
- d. Attachment 4 – Fees and Payments
- e. Attachment 5 – FY07 Fee Transmittal Letters
- f. Attachment 6 – Confirmation of FIPS Validation
- g. Attachment 7 – Statement of Objectives
- h. Attachment 8 – Contractor Teaming Agreements

### **A. TERMS AND CONDITIONS**

1. Pursuant to General Services Administration (GSA) Federal Supply Services (FSS) Contract Number GS-35F-5192G, Spectrum Systems, Inc. agrees to the following terms of a Blanket Purchase Agreement (BPA) with the Air Force's 754<sup>th</sup> Electronic System Group. 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. License terms and conditions applicable to products acquired under this BPA are defined in the Safeboot License Agreement included as Attachment 2. The Order of Precedence for resolving any inconsistency shall be first, the terms of this BPA, and second, the GSA Schedule contract including the order of precedence provision of the clause at FAR 52.212-4. The Order of Precedence for resolving any inconsistency between the Commercial License and the GSA contract terms shall be as specified in the GSA contract's Commercial Item clause, FAR 52.212-4, and 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.

All Safeboot Products and Maintenance on the Spectrum Systems, Inc. GSA FSS Contract number GS-35F-5192G are available under this BPA. All Training and Services on the Spectrum Systems, Inc. GSA DAR Encryption ESI/SmartBUY ESA based on ESA Version 061206





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FSS Contract number GS-35F-5192G are available under this BPA. At any time during the life of this BPA, any new product, training, or service that is approved for GS-35F-5192G will be automatically incorporated into this BPA.

**2. Extent of Obligation.** The Government estimates, but does not guarantee, that the volume of purchases through agreement(s) under this solicitation could reach \$24 million. The Government is obligated only to the extent of authorized purchases actually made under this BPA.

**3. Funds Obligation.** The BPA does not obligate any funds. Funds will be obligated on each delivery order.

**4. BPA Term.** The BPA expires five years after award, if extended by option exercise (see BPA Option). This expiration is contingent upon Spectrum Systems, Inc. maintaining or renewing a GSA FSS Schedule. The BPA will be reviewed annually to ensure that it still represents a "best value".

**BPA Option.** The Government may extend the term of this BPA to five years from the date of this BPA's execution by written notice to Spectrum Systems, Inc. prior to the end of the current GSA FSS Schedule period, provided that Spectrum Systems, Inc.'s GSA FSS Schedule has been extended. If the Government exercises this option, the extended BPA shall be considered to include this option provision.

**5. Pricing Terms.** Attachment 1: Discounts, Concession, Product and Price List provides prices for information technology (IT) Special Item Numbers (SINs) applicable for Safeboot products and Spectrum Systems, Inc. training and services. Prices will be based on the current approved GSA price. 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. A 2.0% Acquisition, Contracting, and Technical (ACT) Fee shall be included in the prices. Spectrum Systems, Inc. shall be responsible for the payment of all fees that are included in the product pricing (i.e., ACT Fee and GSA's Industrial Funding Fee (IFF)), as calculated on the customer orders. The ACT Fee does not include GSA's IFF.

Spot discounting is encouraged in negotiating orders. Factors for consideration for Enterprise licensing discounts include, among others, program scope, support needs, user count, license term, and /or finance requirements.

**6. Discount Terms and Conditions.** Discount Terms and Conditions are provided in Attachment 1: Discounts, Concessions; Product and Price List; and Quotes for 10K, 33K, and 100K Users

**7. Out-Year Prices.** Out year prices are based on the GSA prices current at the time of order. Volume discounts for software licenses and maintenance are based on individual purchase orders.

**8. Price Reduction.**

**8.1 Most Favored Customer Prices.** The prices under this BPA shall be at least as low as the prices that Spectrum Systems, Inc. has under any other contract instrument under like terms and conditions. The most favored customer pricing shall be maintained in accordance with the GSA Schedule contract's clause GSAR 552.238-75, Price Reductions. Spectrum Systems, Inc. shall notify the Contracting Officer of any price reduction subject to the clause as soon as possible, but not later than 15 calendar days after its effective date. Modifications to the Schedule contract to reflect any price reduction which becomes applicable in accordance with the clause will be extended also to the BPA.



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**8.2 Mandatory SmartBUY Channel.** GSA and Office of Management and Budget (OMB) have indicated their intent to issue regulations that make this BPA a mandatory source for agencies of the Federal government. Spectrum Systems, Inc. and Safeboot acknowledge(s) that this BPA is a preferred contract vehicle for the Government, and will convey this to all employees, agents and teaming partners authorized to offer Safeboot products, pursuant to Paragraph E.7 of this BPA.

**9 License Agreement.** Software licenses purchased under this BPA are subject to the licensing provisions and the terms of the GSA Contract, except that notwithstanding any provision to the contrary, licenses are transferable within an acquiring agency, subject only to necessary administrative procedures; and with prior approval of the licensor also transferable among other authorized users in paragraph B.1, which approval shall not be unreasonably withheld. Any delivery order issued hereunder will serve as proof of purchase. Upon validation and receipt of software, customers will be provided an electronic version of the license agreement. The Order of Precedence for resolving any inconsistency between the Attachment 2 Commercial License, the BPA and the GSA contract terms shall be first, the terms of this BPA, and second, the GSA Schedule contract including the order of precedence provision of the Commercial Item clause at FAR 52.212-4. FAR 52.212-4, and 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. The following provisions will be included in a license addendum if the BPA is awarded to other than the software publisher:

**9.1 Functionality Replacement and Extended Support.** If the form, fit, or functionality contained in any licensed products acquired hereunder is substantially reduced or if the product is replaced, and/or (the contractor), provides this same or substantially similar functionality as a separate or renamed product, then the DoD is entitled to license such software at no additional licenses or maintenance fees. However, throughout the term of this agreement, the contractor will provide support services for a period of one year.

**9.2 Rights of Survivorship of the Agreement.** This Agreement shall survive unto Safeboot, Corp, its Successor, rights and assigns. The software and agreement terms and conditions as covered under this agreement shall survive this agreement notwithstanding the acquisition or merger of Safeboot Corp by or with another entity. 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.

**9.3 Audits.** In lieu of any audit provisions in the license agreement, Licensee may perform an internal audit and will use its best efforts to keep full and accurate accounts that may be used to properly ascertain and verify numbers of licenses in use. Licensee may permit Safeboot to have access to Licensee records and computer systems and the right to audit such systems to insure software use is in accordance with its license terms. All vendor personnel must have appropriate security clearances to gain access to Licensee site or data.

**9.4 Escrow.** Vendors may be required to successfully negotiate and execute a commercial source code escrow agreement with the Government when cumulative orders under the BPA exceed \$100,000. It is the Government's intent that the negotiated Source Code Escrow Agreement shall provide for deposit of source code for products on BPA with mutually agreeable commercial escrow agent and include technical verification that source code is complete and usable with obligation to deposit source code for updates and upgrades on semiannual basis. Release conditions shall include original equipment manufacturer (OEM) failure to provide support for product, OEM ceasing business operations, OEM bankruptcy filing, OEM inadequate support to address deficiencies following notice with right of beneficiary to invoke release, subject to resolution of any objections by arbitration within a total of 90 days. OEM shall bear cost of escrow.



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**10. Media.**

Software may be provided either on hard copy media or by download from the Safeboot web site. In case of the latter, the end user will be sent information about the download process to obtain the software.

**11. Support and Maintenance.**

**11.1. Support.** . See Attachment 1: Discounts, Concession, Product and Price List and Attachment 2: License Agreement and Attachment 2: License Agreement.

**11.2. Maintenance.** See Attachment 1: Discounts, Concession, Product and Price List and Attachment 2: License Agreement.

**12. Professional Services.** See Attachment 1: , Discounts, Concession, Product and Price List and Attachment 7: Statement of Objectives.

**13. Training.** See Attachment 1: , Discounts, Concession, Product and Price List and Attachment 7: Statement of Objectives.)

**14. Technology Improvement.** The Government may solicit and the ESI/SmartBUY ESA holder is encouraged to propose independently, technology improvements to the BPA. Proposals shall be submitted by the BPA holder and include a description of the products and/or services, an electronic copy of the pricing tables, technical literature that describes the products and/or services, and evidence of inclusion on GSA schedule. Discounts shall be at the same or greater discount level as the original BPA product prices.

**15. Substitution and Technology Refreshment.** At any time during the life of this BPA, any new product, training, or service that is approved for GS-35F-5192G will be automatically incorporated into this BPA. Discounts shall be at the same or greater discount level as the original BPA product prices.

**B. AUTHORIZED USERS AND POINTS OF CONTACT**

**1. Authorized Users.** This has been designated as a DoD ESI and GSA SmartBUY ESA and is open for ordering by all United States Executive Agencies, Independent Establishments, Department of Defense (DoD) Components, NATO, FMS (with written authorization) and contractors authorized to order in accordance with the FAR Part 51.

**2. BPA Points of Contact:**

**a. Contracting Office:**

Contract Specialist:  
HQ 754th Electronic Systems Group  
ESS ESI Software Team  
490 E Moore Dr Bldg 892 Ste 270  
Gunter Annex MAFB AL 36114

Procuring Contracting Officer (PCO):  
HQ 754<sup>th</sup> Electronic Systems Group  
ESS ESI Software Team  
490 E. Moore Dr Bldg 892 Ste 270  
Gunter Annex MAFB AL 36114

POC: TBD  
Phone: TBD  
Fax: TBD

PCO: John R. Buzan  
Phone: 334-416-4229  
Fax: 334-416-5571

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Email: TBD

Email: John.Buzan@Gunter.AF.Mil

**b. Software Product Manager (SPM):**

Information Assurance (IA) SPM:

HQ 754<sup>th</sup> Electronic Systems Group  
ESS ESI Software Team  
490 E Moore Dr Bldg 892 Ste 270  
Gunter Annex MAFB AL 36114

IA SPM: Capt Valerie Reid

Phone: 334-416-1074

Fax: 334-416-5571

Email: Valerie.Reid@Gunter.AF.Mil

or Air Force (AF) SPM:

HQ 754<sup>th</sup> Electronic Systems Group  
ESS ESI Software Team  
490 E. Moore Dr Bldg 892 Ste 270  
Gunter Annex MAFB AL 36114

AF SPM: Maurice Griffin

Phone: 334-416-6099

Fax: 334-416-5571

Email: Maurice.Griffin@Gunter.AF.Mil

**c. Business Office:**

HQ 754<sup>th</sup> Electronic Systems Group  
ESS Financial Management  
490 E Moore Dr Bldg 892 Ste 270  
Gunter Annex MAFB AL 36114

POC: TBD

Phone: TBD

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

**C. ORDERING**

1. DFARS Section 208.74 directs DoD software buyers and requiring officials to check the DoD ESI website for DoD inventory or an ESA before using another method of acquisition. These steps for the buyer are summarized from the DFARS:

- a. Check the Enterprise Agreement Summary Table to determine if software rights or maintenance have already been purchased and are available from DoD inventory. If they are available, purchase the designated software from DoD inventory and reimburse the SPM.
- b. If the required software rights or maintenance are not available from inventory or from an ESA, you may use an alternate method of acquisition, subject to laws and policy.
- c. If the required software rights or maintenance are not available from inventory but are available from an ESA, you must follow the procedure in the DFARS Section 208.74.
- d. If you must obtain the software or software maintenance outside the DoD ESA, you may seek a waiver from a management official designated by your DoD Component.

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>.



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**2. Delivery Orders.** The scope of this effort is in accordance with Spectrum Systems, Inc.'s GSA FSS Contract Number GS-35F-5192G.. Delivery requirements and administration will be stipulated on Delivery Orders. Delivery outside CONUS, AK, HI, and PR shall be FOB Origin.

**Notice to Ordering Offices:** Requiring officials and ordering officers are responsible for complying with applicable statutes, regulations and policies. Good business judgment in finding the best value to meet the needs of the United States should be exercised in all acquisitions.

Ordering via this BPA is decentralized. Orders may be credit card, facsimile, on an authorized form such as an Ordering Sheet and MIPR (DD Form 448), Standard Form (SF) 1449 or Department of Defense (DD) Form 1155. Authorized credit card users may place telephone orders by calling 703-591-7400.

Orders will be submitted to the following address:

Spectrum Systems, Inc.  
ATTN: Sales  
11320 Random Hills Road, Suite 630  
Fairfax, VA 22030

Requests for Quotation (RFQs) may be posted to GSA's electronic RFQ system, e-Buy. E-Buy, GSA's electronic RFQ system, allows ordering activities to post requirements and obtain quotes electronically. Ordering activities may access e-Buy at <http://www.ebuy.gsa.gov>.

DoD agencies: Follow the procedures in DFARS 208.405-70(b) and (c).

Government prime contractors: Follow the terms of this BPA, the GSA schedule, your contract and the direction of its Government contracting officer in accordance with FAR Part 51 for ordering from Federal Supply Schedules.

Professional services: This single BPA may be used for acquiring IT Professional services when defined as individual tasks, within scope of the Statement of Objectives for Data at Rest (DAR) Encryption.

Contractor team arrangements must be identified and company relationships fully disclosed in each offer for cost-reimbursement, time-and-materials, or labor-hour subcontracts; and fixed-price subcontracts that exceed 5 percent of the total amount.

Payments for hardware and software maintenance will be in accordance with Safeboot's standard Commercial Practice.

**3. Users' Ordering Guide.** Spectrum Systems, Inc. shall develop a Users' Ordering Guide in coordination with the Government that will be posted to Spectrum Systems, Inc. web site and various Government sites. The Ordering Guide shall be submitted to the SPM and PCO within thirty (30) days of BPA issuance and made available on Spectrum Systems, Inc.'s web site upon written approval. This guide shall be continuously updated as required. 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 Points of Contact

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- c. Description of the ordering process
- d. Program Terms and Conditions
- e. License Terms and Conditions
- f. Information necessary to complete a DD350 (such as CAGE, DUNS, TIN, Business Size, etc.)
- g. Range of discounts
- h. Links to DoD ESI and the Government web sites

4. **E-Commerce Site.** It is the intention of the Government to use existing and future capability of the DoD Standard Procurement System, Electronic Data Interchange (EDI) capability, Government procurement card, and vendor electronic ordering capability to create a paper-less ordering, invoicing and payment process. During the term of the BPA, Spectrum Systems, Inc. shall participate to achieve this objective.

On-line ordering can also be accomplished at a web site to be mutually agreed upon.

This BPA may also be loaded into the electronic catalog systems of other DoD agencies.

5. **Delivery Schedule.** The delivery shall be in accordance with the established GSA FSS delivery schedule.

6. **Delivery Notice.** Domestic delivery is delivery within CONUS ( the 48 contiguous states), Alaska, Hawaii, Puerto Rico, and the District of Columbia. Domestic delivery also includes a port or consolidation point, within the aforementioned areas, for orders received from overseas activities. All domestic deliveries shall be FOB Destination. Delivery outside CONUS, AK, HI, PR, and DC shall be FOB Origin. 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 purchase
- 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

Partial shipments and partial payments are allowed under the BPA unless otherwise specified by the ordering activity.

7. **Suspension.** There may be occasions where the Government may suspend ordering (by CLIN up to and including the entire BPA.) If a suspension is announced, Spectrum Systems, Inc. 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 by FAR 32.905(b). DFARS 252.232-7003, Electronic Submission of Payment Requests, applies. Full text of these can be found on the web at URL: <http://farsite.hill.af.mil/>.



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Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (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 purchases 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. Full text of this clause can be found on the web at URL: <http://farsite.hill.af.mil/>.

**3. Precedence.** The terms and conditions included in this BPA apply to all purchases made pursuant to it. In the event of an inconsistency between the provisions of the BPA and Spectrum Systems, Inc.'s invoice, the provisions of the BPA will take precedence.

#### **E. BPA MANAGEMENT AND OVERSIGHT**

**1. Spectrum Systems, Inc.** 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 quarterly reports.

**2. Report of Sales.** Consistent with Clause C.23 of the GSA Schedule, a Report of Sales as described herein shall accompany the remittance of the ACT Fees to enable verification of the fee amounts rendered. Submission of the Report of Sales shall be submitted to the SPM and the PCO in electronic format within fifteen (15) days following the completion of the monthly reporting period, or as otherwise requested by the SPM. The report shall be submitted in the standard format shown in Attachment 3. Negative reports are required. The SPM or PCO shall provide written approval of each report. At the end of each quarter, the written approval provided to Spectrum Systems, Inc. will be accompanied by a request to remit ACT fees. The SPM or PCO will provide copies of the Report of Sales on a monthly basis to the DoD Components participating in fee sharing. If the BPA contains services, current ACT fee paid by Delivery Order and total ACT fees paid will be included in the report.

**3. United Nations Standard Products and Services Code.** The United Nations Standard Products and Services Code (UNSPSC) is a required field of the Report of Sales found in Attachment 3. The UNSPSC code permits software asset management through a standard coding structure. The UNSPSC is a coding system used to classify both products and services for use throughout the global marketplace. The management and development of the UNSPSC Code is coordinated by GS1 US. The current version is available free as a download at <http://www.unspsc.org>. The UNSPSC Code will be included only if provided by on the purchase order.

**4. Records.** Spectrum Systems, Inc. shall maintain archival copies of all orders for the life of the BPA. Copies shall be made available to the Government upon request.

**5. Program Management Reviews (PMR).** Spectrum Systems, Inc. shall participate in regular reviews of the progress of the BPA. Reviews shall be held at least twice yearly as scheduled by the Software Product Manager. During these reviews Spectrum Systems, Inc. shall report on among other things, status of BPA sales, marketing and any outstanding issues concerning the BPA. PMR agenda and presentation format shall be provided prior to each PMR. Travel expenses are the responsibility of Spectrum Systems, Inc. .



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6. **Sales Leakage.** The goals of the ESI Program can only be realized through cooperation between the Government and Spectrum Systems, Inc. to direct appropriate sales through the ESI vehicles. Spectrum Systems, Inc. shall ensure that all sales personnel are aware of the ESI Program and enforce the policy that this BPA is the preferred procurement vehicle for the products within. Spectrum Systems, Inc. shall also establish a process to regularly audit sales to Government buyers, determine where sales outside the ESI vehicle are occurring, and take appropriate action to direct further sales through the ESI vehicle. Results of these audits will be presented as an agenda item during PMRs.

7. **Marketing.** Spectrum Systems, Inc. shall ensure that all assigned Federal sales personnel are knowledgeable of the details of this BPA and will dedicate reasonable resources to the effort of marketing and advertising this agreement as part of the normal sales cycle of participating in customer trade shows and sponsored events.

8. **Enterprise Integration Toolkit.** The Enterprise Integration Toolkit is a program developed by the Assistant Deputy Under Secretary of Defense (L&MR) Logistics Systems Management (LSM) to assist DoD Program Managers, Contracting Officers and members of the Integrated Project Team (IPT) in the acquisition and implementation of Commercial Off The Shelf (COTS) Business Systems software.

The Toolkit provides guidance, processes and tools to define program needs and determine how to best meet these needs through an external acquisition via a three-tiered Roadmap to guide the entire life-cycle from problem definition to solution roll-out. It provides a collection of best practice tools adopted from the commercial industry, and includes more than 100 best practice templates, guides, checklists, and samples.

Because the Toolkit is not vendor specific and may be applied across a variety of COTS software package implementations, including this BPA, Spectrum Systems, Inc., shall include as part of the Marketing effort required above, a link to the Enterprise Toolkit web site at: <http://www.eitoolkit.com>.

#### F. Standards.

1. **YEAR 2000 Compliance.** All products provided under this BPA shall be Y2K compliant as defined in FAR 39.002.

2. **Federal Information Processing Standards (FIPS) Publication (PUB) 140-2.** The cryptographic module used in the product offered must be National Institute of Standards and Technology (NIST) FIPS 140-2 validated or National Security Agency (NSA) approved.

3. **JTA Compliance.** DoD shall provide Safeboot with access to the appropriate Publicly Available Standards (PAS) (e.g., TIA, EIA, ANSI, IEEE, ISO) and the applicable DoD information technology standards contained in the Joint Technical Architecture (JTA) found at <http://jta.disa.mil>. Safeboot shall review the PAS and JTA standards and shall make commercially reasonable efforts to comply with any applicable PAS and JTA standards.

4. **Section 508 of the Rehabilitation Act Compliance.** All products provided in fulfillment of delivery orders under this BPA must meet the applicable accessibility standards at 36 CFR Part 1194 as required by FAR Case 1999-607 or Safeboot is currently in the process of bringing products into compliance with the 508 standards. . General information regarding the Section 508 Act can be found at the web site [www.section508.gov](http://www.section508.gov). Please refer to Spectrum's Ordering Guide for Safeboot's Section 508 VPAT information.

4. **Additional Clauses.** Orders issued against this BPA are subject to the clauses included in the underlying GSA Schedule and the additional DFARS clauses listed below that are incorporated by DAR Encryption ESI/SmartBUY ESA based on ESA Version 061206



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reference in this BPA. Ordering Offices should consider the requirements of DFARS and the FAR supplement of the end user component, as it applies to commercial item acquisition and use of GSA schedules, in determining what additional clauses may be required for incorporation in the delivery order issued by the Ordering Office.

The following FAR/DFARS clauses and provisions are hereby incorporated by reference with the same force and effect as if it was given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at these addresses:

<http://www.acq.osd.mil/dpap/dars/dfars/index.htm>  
<http://acquisition.gov/comp/far/index.html>  
<http://farsite.hill.af.mil/>

- 252.204-7000 Disclosure of Information (DEC 1991)
- 252.204-7004 Alternate A (Nov 2003) - substitute paragraph (a) of this clause for paragraph (a) of the clause at FAR 52.204-7 - Central Contractor Registration (JUL 2006)
- 252.209-7001 Disclosure of Ownership or Control by the Government of a Terrorist Country (OCT 2006)
- 252.209-7004 Subcontracting with Firms That Are Owned or Controlled by the Government of a Terrorist Country (DEC 2006)
- 252.225-7002 Qualifying Country Sources as Subcontractors (APR 2003)
- 252.232-7009 Mandatory Payment by Governmentwide Commercial Purchase Card (DEC 2006)
- 252.232-7010 Levies on Contract Payments (DEC 2006)
- 252.246-7000 Material Inspection and Receiving Report (MAR 2003)
- 252.212-7001 Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items (JAN 2007)

(a) Spectrum Systems, Inc. agrees to comply with the following Federal Acquisition Regulation (FAR) clause, which, if checked, is included in this contract by reference to implement a provision of law applicable to acquisitions of commercial items or components.

  x   52.203-3 Gratuities (APR 1984) (10 U.S.C. 2207)

(b) Spectrum Systems, Inc. agrees to comply with any clause that is checked on the following list of Defense FAR Supplement clauses, which, if checked, is included in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items or components.





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- ☒ 252.205-7000 Provision of Information to Cooperative Agreement Holders (DEC 1991) (10 U.S.C. 2416).
- ☒ 252.225-7012 Preference for Certain Domestic Commodities (JAN 2007) (10 U.S.C. 2533a).
- ☒ 252.225-7014 Preference for Domestic Specialty Metals (JUN 2005) (10 U.S.C. 2533a).
- ☒ 252.225-7021 Trade Agreements (NOV 2006) (19 U.S.C. 2501-2518 and 19 U.S.C. 3301 note).
- ☒ 252.226-7001 Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns (SEP 2004) (Section 8021 of Pub. L. 107-248 and similar sections in subsequent DoD appropriations acts).
- ☒ 252.227-7015 Technical Data--Commercial Items (NOV 1995) (10 U.S.C. 2320).
- ☒ 252.227-7037 Validation of Restrictive Markings on Technical Data (SEP 1999) (10 U.S.C. 2321).
- ☒ 252.232-7003 Electronic Submission of Payment Requests (MAY 2006) (10 U.S.C. 2227).
- ☒ 252.243-7002 Requests for Equitable Adjustment (MAR 1998) (10 U.S.C. 2410).
- ☒ 252.247-7023 Transportation of Supplies by Sea (MAY 2002) (☒ Alternate I) (MAR 2000) (☐ Alternate II) (MAR 2000) (☐ Alternate III) (MAY 2002) (10 U.S.C. 2631).
- ☒ 252.247-7024 Notification of Transportation of Supplies by Sea (MAR 2000) (10 U.S.C. 2631).

(c) In addition to the clauses listed in paragraph (e) of the Contract Terms and Conditions Required to Implement Statutes or Executive Orders--Commercial Items clause of this contract (FAR 52.212-5), Spectrum Systems, Inc. shall include the terms of the following clauses, if applicable, in subcontracts for commercial items or commercial components, awarded at any tier under this contract:

- 252.225-7014 Preference for Domestic Specialty Metals, Alternate I (APR 2003) (10 U.S.C. 2533a).
- 252.237-7019 Training for Contractor Personnel Interacting with Detainees

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(SEP 2006) (Section 1092 of Pub. L. 108-375).

252.247-7023      Transportation of Supplies by Sea (MAY 2002) (10 U.S.C.  
2631).



Spectrum Systems

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## DAR Technical & Functional Requirements

Req. Number	Product Category		Technical & Functional Requirements	Category Rankings	SPECTRUM TEAM RESPONSE
	FDE	FES			
CERTIFICATION AND STANDARDS					
1	X	X	The cryptographic module used in the product offered must be NIST FIPS 140-2 compliant.	CRITICAL	SafeBoot's integrated FDE/FES Encryption <i>meets</i> the FIPS-140-2 requirement as the core cryptographic modules used within SafeBoot's product portfolio were awarded FIPS 140-2 (Certification #506) on July 27th 2005. Please refer to Attachment A for a copy of SafeBoot's FIPS 140-2 Validation Certificate.
2	X	X	Product shall be NIAP certified	IMPORTANT	SafeBoot's integrated FDE/FES solution <i>exceeds</i> the requirement for the National Information Assurance Partnership (NIAP). In 2006, SafeBoot's product offering was awarded EAL 4 Common Criteria Certification (Certification #227). Please refer to Attachment B for a copy of SafeBoot's EAL 4 Common Criteria Certificate.
3	X	X	Product shall be compliant with American Disabilities Act Section 508.	IMPORTANT	SafeBoot's integrated FDE/FES <i>meets</i> the Section 508 compliance requirement. Please refer to Attachment C entitled "Section_508_SafeBoot Compliance_Checklist.pdf."
4	X	X	Product shall be in the NIAP certification process	DESIRABLE	SafeBoot's integrated FDE/FES solution <i>meets</i> this requirement as it is EAL4 Common Criteria Certified (Certification #227). SafeBoot is the only encryption solution certified based on the new 2006 EAL 4 Certification criteria.



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ENCRYPTION					
5	X	X	The product provides Full Disk Encryption (FDE), File/Folder Encryption System (FES), <u>or</u> Integrated FDE and FES.	CRITICAL	<p>SafeBoot's integrated FDE/FES solutions <i>meet</i> the requirement for integrated FDE and FES by offering a true centralized and integrated FDE &amp; FES product. SafeBoot uses strong access control and pre-boot authentication for both users and machines to prevent unauthorized access to PCs, laptops, Tablet PCs, and smart phones and/or PDA's. SafeBoot provides industry-leading encryption with FIPS 140-2 L2 certified, AES 256 algorithm and additionally RC5-1024. SafeBoot supports dual factor authentication in the pre-boot environment with CAC/ PKI certificates.</p> <p>SafeBoot's Management Center and associated components afford a unique ability to centrally monitor, manage and revoke user identities across the enterprise. The SafeBoot Management tools provide policy creation and enforcement for both FDE and FES encryption. This allows central deployment, remote upgrades, and creation and enforcement of mandatory security policies. SafeBoot's FDE module encrypts at a rate of approximately 10GB- 50GB per hour depending on the drive speed, CPU, RAM and other hardware factors. The pre-boot footprint installs in sectors 0-60 on the endpoint device's hard drive where SafeBoot replaces the existing Microsoft Master Boot Record (MBR) as the trusted MBR. Further, SafeBoot's FDE module is compliant with industry standard GINAs to provide Single Sign On (SSO) or Password Synchronization transparently to the end user. Encryption is transparent to the end user as their existing network or local user ID and password is synchronized with SafeBoot. They will continue to authenticate as normal. Further, the initial impact of the encryption process is configurable to any endpoint via a centrally created and deployed policy. This SafeBoot advantage provides Federal Agencies the ability to select specific users to encrypt at specified frequencies; such as encrypt only when the pc or laptop is idle or use all available resources to encrypt. All users can continue working on their associated PC as they normally would during the one time initial drive encryption. SafeBoot's FDE component encrypts all sectors of the hard drive. Performance benchmarks have proven that during the initial encryption process up to twenty percent (20%) of CPU, RAM, and disk performance will be impacted. Upon</p>



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					<p>completion of the initial encryption process, the ongoing impact on the end-point device is completely transparent to an end user as it accounts for nearly 2%. SafeBoot's Device Encryption contains a robust pre-boot authentication engine, requiring the user authenticate before any of the disk is decrypted. The pre-boot operating environment has a Windows look and feel, with mouse support, on-screen keyboard support for tablets, support for tokens from over 60 industry leading token vendors. The pre-boot environment can be customized as administrators see fit, with changes to the text, language, and graphics as may be required. SafeBoot was awarded the SC Magazine Reader Trust Award for Best Authentication Product 2006.</p>
6		X	<p>The product provides a capability to automatically encrypt data that is transferred to removable storage media, for example, CD/DVD, USB pin-drives, tapes, external hard drives, etc., without user intervention or circumvention</p>	CRITICAL	<p>SafeBoot's integrated FES module <i>meets</i> the requirement to automatically and transparently encrypt data that is transferred to removable storage media.</p> <p>SafeBoot FES uses a "header" technology to specify user permissions to access file across the network by only adding 4-5KB to the original file regardless of the initial file size. The media encryption feature can be used to establish centrally managed rules to ensure data copied to removable media (hardware agnostic), or other locations are encrypted. In its simplest mode the system can be set to indiscriminately encrypt all data copied to a device. Or, more granularity can be achieved, for example, by setting rules to encrypt (a) all output from a process (for example - if you encrypt the output from the WinWord process, all files created by Microsoft Word will be encrypted regardless of where they are stored. (b) A specific file, for example any file with specific extension will be automatically encrypted regardless of where it is created or stored. (c) encrypt all items stored in a specified folder regardless of who created it or where it was created. SafeBoot FES automatically encrypts temporary files and page files. The SafeBoot FES module leverages the same integrated database that includes access to the users already created from a SafeBoot FDE implementation. SafeBoot's FES software provides Persistent Encryption Technology (PET) protecting Federal Agency data as it moves throughout the enterprise, including but not limited to network file servers, USB drives or media, CD-Rom's or email attachments. SafeBoot's FES offers the only persistent encryption solution in the market. SafeBoot's FES solution</p>



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				obtains this unique ability by its policy driven approach. Each individual file that is encrypted with FES also includes a 4-6KB stub file that is encrypted. This header file moves everywhere the file moves to ensure that it is and remains encrypted. This provides assurance to Federal Agencies that the Network Administrators are enforcing the encryption policies and not end users. Although network administrators have rights and privileges in the overall Microsoft environment, SafeBoot's FES restricts access to specific files and folders that can be viewed ONLY by the SafeBoot "trusted" user (this is often used to keep Executive Level data non-viewable by help desk, network administrators, and/or third party contractors). Other solutions take an altogether different approach whereby the encryption model is static and refers only to a specific virtual container. Once the data is moved out of the container (even by an end user) the data is unencrypted. SafeBoot's FES module provides dynamic and persistent encryption that is centrally managed and enforced. Finally, SafeBoot's integrated FDE/FES solution includes additional tools sets that increase deployment speeds, efficiencies and the end user experience. SafeBoot's Scripting Tool, SafeBoot Connectors (AD, NDS, and LDAP), SafeBoot Web Help Desk Recovery, and SafeBoot's SafeTech Diagnostic Tool Set components are used by both of the integrated FDE/FES SafeBoot modules.
7	X		Product must be capable of using the user's PKI encryption certificate within the DoD CAC or PIV II compliant Smartcard to protect the full volume encryption key	<p><b>CRITICAL</b></p> <p>SafeBoot's integrated FDE/FES <i>meets</i> the requirement to provide the capability to use a Federal Government user's PKI encryption certificate contained within their DoD CAC or PIV II compliant Smartcard protecting the full volume encryption key by integrating with a wide variety of PKI environments – examples include ActiveIdentity, Baltimore, Entrust, Novell, Microsoft, etc., and provides true PKI authentication using certificates stored on tokens such as smart cards and USB keys, including RSA SID800 and Aladdin eTokens.</p> <p>The SafeBoot connector provides a soft (electronic only) copy of the user by looking up the user certificate in the PKI, and using the public key to encrypt the user's personal SafeBoot authentication key. When the user attempts to authenticate, SafeBoot sends this data to the token and ask it to decrypt it using the appropriate matching private key. This architecture enables SafeBoot to use the PKI certificates for authentication. SafeBoot can monitor the certificate validity periods, CRLs, Cert rollover, etc for appropriate changes and take corresponding actions.</p>





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					<p>This is a standard part of our product offering, and is currently in its 2nd Generation. Per our market research, SafeBoot is the ONLY product with true PKI interoperability in pre-boot. We have used this system to integrate other National PKI identity cards in other countries, such as Estonia and Singapore.</p>
8		X	<p>Product must be capable of using the user's PKI encryption certificate contained in the DoD CAC or PIV II compliant Smartcard to encrypt the file that contains the system generated file/folder encryption key</p>	CRITICAL	<p>SafeBoot integrated FDE/FES <i>meets</i> the requirement to provide the capability to use a Federal Government user's PKI encryption certificate contained within their DoD CAC or PIV II compliant Smartcard protecting their authentication encryption key by integrating with a wide variety of PKI environments – examples include ActivIdentity, Baltimore, Entrust, Novell, Microsoft, etc., and provides true PKI authentication using certificates stored on tokens such as smart cards and USB keys, including RSA SID800 and Aladdin eTokens.</p> <p>The SafeBoot connector provides a soft (electronic only) copy of the user by looking up the user certificate in the PKI, and using the public key to encrypt the user's personal SafeBoot authentication key. When the user attempts to authenticate, SafeBoot sends this data to the token and ask it to decrypt it using the appropriate matching private key. This architecture enables SafeBoot to use the PKI certificates for authentication. SafeBoot can monitor the certificate validity periods, CRLs, Cert rollover, etc for appropriate changes and take corresponding actions. This is a standard part of our product offering, and is currently in its 2nd Generation.</p> <p>Per our market research, SafeBoot is the ONLY product with true PKI interoperability in pre-boot. We have used this system to integrate other National PKI identity cards in other countries, such as Estonia and Singapore.</p>



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9	X	X	The product's process for encryption and decryption of data is configurable to be transparent to user	IMPORTANT	SafeBoot's integrated FDE/FES solutions exceed the requirement for end user transparency. Both encryption modules (FDE/FES) within SafeBoot are completely transparent to the end user. SafeBoot's FDE module prompts an end user for authentication. Once successfully authenticated, the key is loaded into memory and all data called or written is encrypted or decrypted on the hard drive. Further, both modules are centrally controlled and managed from the SafeBoot Management software. Within the FDE encryption module, at no time is an end user provided with the ability to remove or uninstall the encryption keys or associated software. Only authorized SafeBoot Administrators with access to the SafeBoot Database and access to the machine information can decrypt the endpoint device. SafeBoot's FES module restricts access to protect files and/or folders – only authorized users or administrators can access protected files with proper authentication. SafeBoot's FES solution eliminates the inherent security vulnerability of Root or Administrative users from accessing or deleting data. SafeBoot policies become the trusted mechanism by which access to specific content is authorized. Further, the FES module allows Federal Agencies to set policies to that enforce the encryption of the data file or folder as it moves throughout the enterprise. For example, the data can be encrypted as it is burned to a CD-ROM, USB stick or attached in an e-mail.
10	X	X	Products shall provide an option to use only FIPS 180-2 compliant algorithms for hashing and signing	IMPORTANT	SafeBoot's FDE/FES algorithms are certified to FIPS140-2. In FIPS mode, SafeBoot does not provide the means for users to choose non-FIPS 180-2 hashing and signing algorithms. SafeBoot has SHA1 certificate 254 <a href="http://csrc.nist.gov/cryptval/shs/shaval.htm">http://csrc.nist.gov/cryptval/shs/shaval.htm</a>
11	X	X	Product uses an approved random number generator specified in FIPS 140-2 Annex C for key generation	IMPORTANT	SafeBoot's FDE/FES algorithms are certified to FIPS140-2. In FIPS mode, SafeBoot does not provide the means for users to choose non-FIPS 140-2 RNG. SafeBoot has RNG certificate 15 <a href="http://csrc.nist.gov/cryptval/mg/rngval.html">http://csrc.nist.gov/cryptval/mg/rngval.html</a>
12	X	X	The product must allow data from an encrypted source to be decrypted to allow transfer of data unencrypted to another destination	IMPORTANT	SafeBoot's integrated FDE/FES <i>exceeds</i> the requirement allowing users to send a file from an encrypted origin in an unencrypted fashion given the permitting policy to do so from the SafeBoot Management Center. The policy defined by the administrator in the SafeBoot Management Center determines if the user is able to send encrypted or decrypted files. The policy may be automated such that it does not require any intervention from



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					the user.
13	X	X	The product supports distribution of encrypted data to trusted or business partners for data exchange using authenticated self extraction	IMPORTANT	<p>SafeBoot's integrated FDE/FES <i>exceeds</i> the requirement to distribute encrypted data to trusted parties. SafeBoot's FES module provides Federal Agencies with flexible deployment options. One applicable deployment strategy is to create and implement specific policies that provide only specific users or groups access to encrypted files. A second option that may be required is to provide the ability to transport specific encrypted information via CD/DVD-Rom, USB or e-mail to a trusted third party that does not have access to a SafeBoot license. Should Federal Agencies choose this option, SafeBoot's FES module provides a self-extraction tool that is embedded in the encrypted file. This file can be transported physically or electronically and will remain persistently encrypted until it reaches its destination. This encrypted file or folder can only be accessed by successfully authenticating with a password.</p> <p>Further, SafeBoot's FDE module affords Federal Agencies to ability to create a virtual container within the FDE environment whereby users can provide encryption to files placed into the virtual container. SafeBoot is the sole vender in the marketplace that delivers two (2) integrated approaches to address removable media.</p>
14	X	X	If product offers optional encryption algorithms to be used for encryption, the product allows encryption algorithm selection by an administrator	IMPORTANT	SafeBoot integrated FDE/FES <i>exceeds</i> the requirement for a SafeBoot administrator to select the encryption algorithm during the installation. The chosen algorithm cannot be modified by lower-level administrators or end users. Further, in a SafeBoot environment, to change the encryption type (i.e. 128 to 256) of an existing SafeBoot client, an authorized SafeBoot administrator must decrypt the end-point device and then re-encrypt.
15	X	X	If product is an integrated FDE and FES solution, the product provides FDE and FES under a single product management console	IMPORTANT	<p>SafeBoot's integrated FDE/FES <i>exceeds</i> the requirement for a fully integrated FDE/FES. SafeBoot's product portfolio is built upon one centralized console, namely the SafeBoot Management Center. The integrated components that comprise this solution are SafeBoot for Device Encryption, SafeBoot for Content Encryption and SafeBoot Port Control. From the SafeBoot Management Center, all SafeBoot product modules are configured, managed and maintained.</p> <p>SafeBoot offers advanced centralized management system to enable</p>



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				<p>efficient management of FDE/FES encryption for all users, user groups, and machine groups. The SafeBoot Management center provides an administration console to manage and enforce all FDE/FES encryption policy for all users/ machines and user/ machine groupings.</p> <p>The SafeBoot Management Center, through its connector technology, allows administrators to interface with existing directory structures (including Microsoft Active Directory, Novell, LDAP) further simplifying setup, deployment, hot user revocation, and ongoing administration.</p> <p>The SafeBoot Management Center also provides a centrally managed Port Control technology that permits or denies users/groups the ability to use specific hardware devices and I/O on the machine. SafeBoot Port control is user- and device-based, wherein granular permission policies can enforce device usage to users or groups based on specific hardware identifiers.</p> <p>SafeBoot's Management center also provides an application control technology that creates "white" and "black" lists of applications that may be used or disallowed. This allows administrators the ability to enforce standard or approved applications in use on endpoint devices. The SafeBoot Management Center additionally provides a central push/pull update engine for applying updates to the SafeBoot system or any other technologies residing on the client machine. Administrators can manage any aspect of the SafeBoot security environment from the SafeBoot Management Center.</p>
16	X	X	If the product offers optional encryption algorithms to be used for encryption, the product should have the capability for the administrator to deactivate or 'grey out' undesirable or unauthorized options.	<p><b>DESIRABLE</b></p> <p>SafeBoot's integrated FDE/FES <i>exceeds</i> the requirement for a SafeBoot administrator to select the encryption algorithm during the installation. The selection for encryption algorithms is voided and cannot be modified by lower level administrators or end users. The encryption algorithm is selected by the administrator during installation. It cannot be modified by the end user.</p>



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17		X	Product is capable of file compression and encryption in a single step by the user	DESIRABLE	SafeBoot's FES encryption module <i>exceeds</i> the requirement to encrypt existing compressed files. SafeBoot's FES solution works seamlessly with standard, third-party compression applications. This process is transparent to the end user and is enforced by a centralized policy.
<b>AUTHENTICATION</b>					
18	X		Product provides boot authentication	CRITICAL	<p>SafeBoot's integrated FDE/FES meets this requirement providing enhanced pre-boot authentication. SafeBoot FDE contains a complete pre-boot authentication engine, requiring the user authenticate with strong password and/or token/smartcard before any of the disk is decrypted (prior to the device operating system is loaded/booted). DoD-, CAC- or POV II-compliant cards are a supported form of the SafeBoot pre-boot environment.</p> <p>This SafeBoot pre-boot environment affords a Windows look and feel, with mouse support, on-screen keyboard support for tablets. Additionally, the pre-boot environment can be re-styled as administrators see fit, with changes to the text, language, and graphics required to provide transparency to end users.</p>
19	X		Product must support use of DoD CAC or PIV II compliant Smartcard for boot authentication with no modification of card required	CRITICAL	<p>SafeBoot's integrated FDE/FES solution meets the requirement for support and use of DoD-, CAC-, or PIV II- compliant smartcard for boot authentication with no modification to smartcards.</p> <p>SafeBoot's previous responses in requirements #8 &amp; #9 describe this functionality. SafeBoot uses the certificate public/private keypair to perform encryption operations. No changes to the mask or updates to the card is required. This is proven, mature technology in use at several global enterprises.</p>





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20	X		Product must support use of DoD CAC or PIV II compliant Smartcard on a Government approved token for boot authentication	CRITICAL	SafeBoot's FDE/FES integrated solution <i>meets</i> this requirement. SafeBoot's pre-boot environment supports DoD-, CAC-, or PIV II- compliant smartcards. When creating a client image within the SafeBoot environment, an authorized SafeBoot administrator simply selects two-factor authentication and selects the appropriate card or token required for authentication. No modification to the card is required. SafeBoot's architecture and design affords authorized Federal Agency administrators with the ability to maintain business continuity should an end user lose or have a DoD-, CAC-, or PIV II- compliant smartcard lost or stolen. In this event, the SafeBoot Management Center will afford authorized SafeBoot administrators the ability to remotely change the two-factor, pre-boot requirement from a two-factor authentication to a single-factor authentication. Once a new card is deployed to the remote user, the authorized SafeBoot Administrator can re-enable the two-factor, pre-boot authentication.
21	X		Product shall allow the administrators to set a configurable limit for pre-boot logon attempts and invokes lockout for failed logon attempts after exceeding the limit	CRITICAL	SafeBoot's integrated FDE/FES <i>meets</i> the requirement to lock out users after a configurable limit of pre-boot logon attempts. The SafeBoot Management Center enforces a customizable policy that will automatically lock out any user when maximum number of logon attempts has failed. Once locked out, the end user must follow the existing Agency challenge-and-response procedures for resetting a password (including contacting the helpdesk or leveraging a secure, self-service password reset).  SafeBoot also provides a configurable phone-home feature within any given client file. Should it be enabled, if an end-point device does not communicate with an Agency SafeBoot database within a predetermined threshold (hours, days, weeks, months, etc.), the end-point device will lock and the current password becomes void – and the user must follow internal procedure to reset the password.
22	X		Product supports password based pre-boot authentication	IMPORTANT	SafeBoot's integrated FDE/FES <i>exceeds</i> the requirement to support strength-customizable, password-based, pre-boot authentication. SafeBoot contains a complete pre-boot authentication engine, requiring the user to authenticate before any of the disk is decrypted. The pre-boot environment has a Windows look and feel, with mouse support, on-screen keyboard support for tablets.



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ADMINISTRATION & CONFIGURATION					
23	X		The product allows multiple users of the same laptop or device to use their individual DoD CAC or PIV II compliant Smartcard for boot authentication	CRITICAL	SafeBoot <i>meets</i> the requirement for multiple users of the same laptop to authenticate, pre-boot, with their individual DoD-, CAC- and PIV II-compliant smartcards coupled with passwords. SafeBoot supports up to 16,700 individual users per machine. SafeBoot supports a one-to-many relationship with users and machine. Each user has their own unique profile that allows them to access the device using their own CAC- or PIV II-compliant smartcard and/or strong password for authentication at pre-boot. It is not possible for one user to authenticate with another user's card -- SafeBoot maintains a one-to-one mapping between the certificate and user.
24	X		The product shall have the capability to allow administrators to update user's credentials when issued a new DoD CAC, PIV II compliant Smartcard, or token	CRITICAL	SafeBoot's integrated FDE/FES <i>meets</i> this requirement. SafeBoot's pre-boot environment is F2-PBA-compliant and is capable of re-using existing tokens. Updates made to the DoD, CAC, PIV II or token is synchronized automatically with the SafeBoot database, allowing the new credentials to be used at the next authentication.  Furthermore, SafeBoot's Connector technology also leverages a CRL (Certificate Revocation List) Check providing a centralized mechanism for hot or immediate revocation for any user identity across the enterprise. Simply put, with a push of a button, an authorized SafeBoot administrator can enroll or disallow a user across hundreds or thousands of machines.
25	X		Product shall have the capability to allow administrators to provide remote assistance to users who are locked out	CRITICAL	SafeBoot's integrated FDE/FES <i>meets</i> the requirement to permit SafeBoot administrators the ability to efficiently provide remote assistance to users who are 'locked out' of a device using three methods of online or offline recovery. Lost user passwords are reset using various supported methods; both online or offline. Any or all of which can be enabled or disabled for specific administrator levels in accordance with your SafeBoot security policies. The following methods are available for recovering a user.  1. If the user is connected to the network, the administrator resets the password (to known value or use the default password provided by SafeBoot) from the SafeBoot Management Center and synchronizes the machine.



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					<p>2. WebHelpDesk</p> <p>a. User self-help reset via SafeBoot's WebHelpDesk – A dedicated Web server component that provides secure challenge/response authentication of users via a sequence of question/answer, such as user's employee number, birthplace, etc (configurable). This is available for users to self-reset their passwords through a connected kiosk.</p> <p>b. Administrator-assisted Web recovery – A dedicated Web server component that allows an administrator to drive the password reset process on behalf of the user through a Web portal. This involves the exchange of short-typed code sequences. In this case, the administrator authenticates as him/herself, and then assists the user in resetting their password/smartcard.</p> <p>3. Administrator-assisted recovery using the SafeBoot Management Center, or remote administrator console, to perform a challenge/response recovery with the user.</p>
26	X		Product shall have the capability to allow administrators to configure the product for decryption and uninstall of encryption product by a system administrator only	CRITICAL	<p>SafeBoot integrated FDE/FES <i>meets</i> the requirement to allow only provisioned administrators the ability to decrypt data or uninstall the product. Only an authorized administrator, with elevated privileges, has the ability change the policy to remove SafeBoot and decrypt the drive(s) and/or uninstall the product.</p>



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27	X	X	Product shall prohibit vendor's ability to access, modify, or decrypt data	CRITICAL	<p>SafeBoot integrated FDE/FES <i>meets</i> the requirement prohibiting SafeBoot Corp. any ability to access, modify, or decrypt data contained on Government devices. Simply put, SafeBoot has no backdoors into any SafeBoot system. Each Federal Agency maintains its independent SafeBoot database where unique keys are securely escrowed. Further, access to this escrow and database are governed solely by the individual Federal Agencies.</p> <p>NOTE: SafeBoot has experience with private sector organizations where they had locked themselves out of the secure escrow. When this happened, there was and still is nothing that SafeBoot can do to resolve the situation. The keys to unlock the data rest with each individual customer, not SafeBoot.</p>
28	X	X	Product does not interfere with imaging of hard drive after encryption product is installed	CRITICAL	<p>SafeBoot's integrated FDE/FES <i>meets</i> the requirement to support hard drive or device drive imaging without interference after SafeBoot is installed. After authenticating, any standard imaging tool may be used to image a drive or device after it is encrypted with SafeBoot. Additionally, SafeBoot offers plug-ins for tools such as WinPE and BartPE which can be used to image the drive after authenticating.</p>
29	X	X	Product does not interfere with Restoration/Recovery of encrypted data from backup media	CRITICAL	<p>SafeBoot's integrated FDE/FES <i>meets</i> the requirement to allow the restoration and recovery of encrypted data from backup media, without interference, utilizing the SafeBoot diagnostic toolkit comprised of the SafeBoot Backup Tool, SafeBoot DR Toolkit, and boot methods. SafeBoot's Backup Tool provides business continuity by allowing a copy of the SafeBoot database to be made highly available. To this end, SafeBoot has two (2) levels of transparent, high-availability embedded in the FDE/FES solution. The SafeBoot client software affords administrators to define diverse paths for connecting to a primary and secondary communication server and SafeBoot database. Furthermore, the number of paths can be exponential based on DHCP versus static Internet protocol.</p> <p>The SafeBoot Backup Tool Set allows Agencies the ability to leverage their existing disaster recovery/operations continuity procedures by installing multiple databases, leveraging SAN, NAS and clusters for SafeBoot databases. SafeBoot databases can be installed as cold, warm or hot configurations.</p>



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					<p>1. Disaster or Catastrophic Disk Failure: In the event of disaster, catastrophic disk failure, or other instances that may necessitate the disk be repaired or imaged by a professional recovery agency, such recovery can be performed and will not be impeded by encryption. Once the (encrypted) data has been made available, it can be decrypted using the standard SafeBoot disaster recovery tools (DR toolkit). All tools are included in the SafeBoot proposal. The SafeBoot DR toolkit requires an authorized administrator retrieve the keys for the disk in question from the SafeBoot Management Center – without the keys, no data can be accessed, as there are no back doors. From this point, a simple copy of the data, or complete decryption of the disk can be performed.</p> <p>2. For Errors, Other Than Those Deemed Catastrophic - In the event of a less severe error, such as simple corruption of the OS, the machine can be booted using various tools such as WinPE and BartPE. SafeBoot provides information on how to add the SafeBoot drivers to these CD tools to enable access (again by authorized users) to the affected machines. It is important to note there will be no additional data loss with disk encryption than would otherwise occur if disk encryption had not been used. SafeBoot maintains copies of all keys and essential information in the SafeBoot database, as such there are never keys stored only on the user machine. Essential keys are backed up and available to appropriate, authorized administrators.</p>
30	X	X	Product does not interfere with full disk data erasure tools	CRITICAL	SafeBoot's integrated FDE/FES solutions <i>meet</i> the requirement for compliance with disk/data erasure tools. SafeBoot does not interfere or interact in any way with disk/data erasure or clearing products. There is no interaction, or prevention of their normal operation.
31	X	X	The product is capable of secure escrow and recovery of the symmetric encryption key	CRITICAL	SafeBoot's integrated FDE/FES solutions <i>meet</i> the requirement for ensuring secure escrow and recovery of the SafeBoot symmetric encryption key. SafeBoot's architecture affords for the centralized and secure key management. In fact, in FIPS mode, SafeBoot mandates that all encryption keys are securely offloaded for recovery into a dedicated, encrypted policy store. At no time can a user perform any action that would prevent encrypted data being inaccessible to an appropriately privilege administrator.





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32	X	X	The product shall implement NIST SP 800-53, Control IA-5	CRITICAL	SafeBoot's integrated FDE/FES <i>meets</i> the requirement ensuring password implementing NIST SP 800-53, Control IA-5. All SafeBoot passwords are encrypted and stored in the database. The data remains encrypted when transmitted. SafeBoot passwords are NEVER displayed when they are entered; all characters entered at login prompts are blocked with a generic placeholder. A centrally managed policy in the SafeBoot Management Center enforces password minimum and maximum lifetime restrictions and prohibits password reuse for a specified number of generations.
33	X		If the product requires modification of the Master Boot Record, it shall be validated by the pre-boot environment	CRITICAL	SafeBoot's integrated FDE/FES <i>meets</i> the requirement for validating the Master Boot Record by the pre-boot environment. SafeBoot copies the original Master Boot Record to the SafeBoot Encrypted File System that is used to boot the machine. The SafeBoot File System contains all the properties and users associated with the machine. After authenticating and validation occurs at pre-boot using the SafeBoot Encrypted File System, the original MBR is loaded.
34	X	X	The product's encryption/decryption process must occur without loss or corruption of data or content modification	CRITICAL	SafeBoot integrated FDE/FES <i>meets</i> the requirement ensuring that no data loss, content modification, or corruption will occur during the encryption/decryption process. SafeBoot encryption simply encrypts, sector-by-sector, the selected disk partitions or all sectors providing no data loss and/or modification during the encryption/decryption process.
35		X	Product will be capable of encrypting swap, free, slack, temp, and Internet temp files	CRITICAL	SafeBoot's integrated FDE/FES <i>meets</i> the requirement to encrypt swap, free, slack, temp, and Internet temp files by automatic and transparent encryption of data targeted in set policies defined in the SafeBoot Management Center.  The FDE module, seamlessly encrypts every sector on the hard drive. The FES Module utilizes policies to encrypt specific partitions of the hard drive on the specified endpoint. The SafeBoot Management Center customizable FES policies includes but are not limited to swap, free, slack, temp, and Internet temp files without user intervention or circumvention. SafeBoot also automatically encrypts temporary and page files.



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36	X	Product allows modification of boot authentication screen by administrators to reflect Federal Agency warning banners	CRITICAL	SafeBoot integrated FDE/FES <i>meets</i> the requirement providing the ability for administrators to customize many aspects of the boot authentication screen including displaying Federal Agency warning banners. Administrators not only have the ability to add Federal Agency warning banners on the boot authentications screen, but can also completely modify the look and background display that could include an all black background, display of Federal Agency logos/banners, and also include text incorporated in the background environment. SafeBoot allows customization in the pre-boot environment including the use of logos and text displayed to your users at pre-boot. This option is set via the SafeBoot Management Center.
37	X	When only password authentication is used for boot authentication, the product shall allow the administrator to enforce complex passwords to include a minimum of 9 characters in length, upper and lower case, alphanumeric, and special characters	IMPORTANT	SafeBoot's integrated FDE/FES <i>meets or exceeds</i> the requirement to allow administrators the ability to construct policies enforcing complex passwords. SafeBoot will mandate that passwords conform to the following restrictions:  1. a minimum length 2. a maximum length 3. contain a number of letters, case, numbers, or special characters 4. cannot be an anagram or palindrome of a previous password 5. can not contain words from a predefined dictionary.
38	X	Product supports ability for administrators to require / restrict which pre-boot authentication mechanism will be used (i.e. CAC, Smartcard, token or password only)	IMPORTANT	SafeBoot's integrated FDE/FES <i>exceeds</i> the requirement providing administrators the ability to select and restrict the enforcement of which pre-boot authentication processes(es) are used. SafeBoot administrators can choose and enforce either logical (passwords), physical (DoD CAC or PIV II Smartcards), or a combination of authentication processes for users at pre-boot. SafeBoot supports multiple authentication methods simultaneously. The administrator may define and assign the method of authentication to the user or user group during the initial client build or at any point in time.



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39	X		Product has the ability to allow administrators to maintain administrator password for pre-boot authentication for each system	IMPORTANT	SafeBoot's integrated FDE/FES <i>exceeds</i> the requirement to allow SafeBoot administrators to maintain administrator password or smartcard for pre-boot authentication for each system they have the appropriate permissions to administer. Both the SafeBoot software architecture and licensing models provide Federal Agencies administrators' to maintain administrative accounts for the endpoints they are responsible for supporting. This requires no customization or additional license fees.
40	X	X	Product does not change the content of the GINA.dll file	IMPORTANT	SafeBoot's integrated FDE/FES <i>exceeds</i> the requirement by not changing the content of a systems GINA.dll file. The selectable SafeBoot Single Sign On feature intercepts the Windows Logon mechanism, using a "Pass through Gina" on Windows NT, 2000 and XP, and the Unified Logon Architecture on Windows 95, 98 and ME. On all operating systems a custom .ini file (SBGINA.INI) is used to help SafeBoot analyze the logon screen and apply the credentials into the correct boxes on screen.
41	X	X	Product should not conflict with the host based security solutions running simultaneously on a mobile computing device such as Host Intrusion or Prevention Systems (HIDS or HIPS), Firewalls, and Anti-virus.	IMPORTANT	SafeBoot's integrated FDE/FES <i>exceeds</i> the requirement of not interfering with host based security systems. SafeBoot is known to not interfere with the major host intrusion, antivirus and firewall vendors ensuring mutual compatibility of our respective products.  Furthermore, through the password synchronization available with the SafeBoot solution, Federal Agencies may also synchronize VPN login credentials.
42	X	X	Product is capable of silent and remote installation and updates of the product	IMPORTANT	SafeBoot's integrated FDE/FES solution <i>exceeds</i> the silent installation requirement. SafeBoot offers the option to install the product silently. Software installation can be achieved using tools such as Radia, SMS, LANDesk, Tivoli, Altiris, Zenworks and others. As soon as SafeBoot is installed, the SafeBoot Integrated Deployment Service can be used to install any software package. The SafeBoot Management Center has the capability to deploy patches and updates to protected workstations.



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43	X	X	During the product's encryption/decryption process, if the process is interrupted, the product is capable of resuming the process from point of disruption	IMPORTANT	SafeBoot's integrated FDE/FES solution <i>exceeds</i> the power interruption requirement. SafeBoot has its own built-in power fail protection. If the device loses power during encryption, the encryption process will simply resume when power is restored.
44	X	X	Product will support or have built-in auditing, monitoring, analysis, and reporting capabilities	IMPORTANT	SafeBoot's integrated FDE/FES solution <i>exceeds</i> the built-in auditing, monitoring, analysis, and reporting capability requirements. The SafeBoot client attempts to connect to its home server or directory every time the machine boots or establishes a new dial-up connection. During this process, any configuration changes made by the SafeBoot administrator are collected and implemented by the SafeBoot client. In addition, the SafeBoot Client uploads the latest audit information that may include encryption status, any user password changes and security breaches to the Object directory. The Report Tool provides a graphical representation of the user's activity. Reports may be customized to meet your business needs.
45	X	X	Product shall allow logging of access events to the product and encrypted data (success and failure)	IMPORTANT	SafeBoot's integrated FDE/FES solution <i>meets</i> the audit log requirements. The SafeBoot client connects to its home server or directory each time the machine boots or establishes a new dial-up connection. During this process, any configuration changes made by the SafeBoot administrator are collected and refreshed by the SafeBoot client.  In addition, the SafeBoot client uploads the latest audit information including encryption status, any user password changes and security breaches to the object directory.
46	X		Product allows export of encrypted file that contains system generated full volume encryption key	IMPORTANT	SafeBoot's integrated FDE/FES solution <i>exceeds</i> the encrypted file exportation requirement. SafeBoot Management Center allows authorized SafeBoot administrators to export configuration information that is used for diagnostic or troubleshooting purposes. The keys are encrypted and centrally stored with the machine ID in the SafeBoot database.  In addition, to eliminate backdoors, machines are permanently deleted from the database and there is no backup, the machine cannot be recovered in



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					case of a disaster.
47	X		Product allows authorized user to validate disk encryption has occurred and is maintained	IMPORTANT	SafeBoot's integrated FDE/FES solution <i>exceeds</i> the requirement for empirical proof that end user disks are encrypted. There is no way for an end user to remove, delete or manipulate the encryption status. Once an end user has successfully authenticated, they locate the SafeBoot icon in the Windows system tray. SafeBoot's Report Viewer provides graphical dashboard reports of the current and historical encryption state.
48	X		Product can support pre-boot integrity	IMPORTANT	SafeBoot's integrated FDE/FES solution <i>meets</i> the requirement to support pre-boot integrity. Safeboot performs validity checks on the boot loader and core load code to prevent against corruption and unintentional damage.
49	X	X	Product allows administrators the option to install and configure the product on systems and devices not requiring DoD CAC or PIV II compliant Smartcard for boot authentication and/or encryption	IMPORTANT	SafeBoot's integrated FDE/FES solution <i>exceeds</i> the requirement to support the use of the DoD CAC, PIV II compliant Smartcard or token or password for boot authentication. SafeBoot policy driven configuration supports multiple combinations of authentication methods including the DoD CAC, PIV II compliant Smartcard, other tokens and passwords. In the case a user loses a token a privileged administrator reset the end user authentication method to single factor provide immediate access to the data. Note: An additional option is to remotely configure a replacement token to maintain two (2) factor authentication.
50	X	X	Product can be integrated into Federal Agency host-based security solutions as a module running on an endpoint computer	DESIRABLE	SafeBoot's integrated FDE/FES solution <i>exceeds</i> the requirement for integrated host-based security systems. SafeBoot is compliant with host-based security solutions. SafeBoot works with the major host intrusion, prevention, antivirus and firewall vendors to ensure mutual compatibility of our respective products. SafeBoot's password synchronization affords authorized SafeBoot Administrators the ability to synchronize host based security passwords.





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51	X	X	Product supports Trusted Platform Module (TPM) chip version 1.2 or higher	DESIRABLE	SafeBoot's integrated FDE/FES solution <i>exceeds</i> the TPM requirements for mobile computing devices. SafeBoot administrators deploy current encryption algorithms to provide key- generation using the onboard TPM chip. The algorithm reverts to the NIST-certified mechanisms on Windows operating systems.
52	X	X	Product must be compatible with standard applications, protocols, and communications within the Federal Government	DESIRABLE	SafeBoot <i>exceeds</i> the requirement to comply with Federal Government standard applications, protocols, and communications. SafeBoot encrypts the drive at the sector level; therefore, operability of applications is not affected. Whereas many full-disk encryption vendors store their data on the user disk in areas marked as bad sectors. SafeBoot stores information as standard data. Information is unaffected by Checkdisk, Scandisk, Defrag, etc.  SafeBoot is the ONLY product with data files specifically handled by Defrag and correspondingly affords protection of SafeBoot files from corruption. SafeBoot maintains a long-standing relationship with Microsoft and relationship with the authors of the Microsoft DeFrag Tool (formerly Executive Software).
53	X		Product supports boot into multiple operating systems on a single device	DESIRABLE	SafeBoot's integrated FDE/FES solution <i>exceeds</i> the dual-boot requirement. SafeBoot supports multiple operating systems on a single device. The user will authenticate in the pre-boot environment. After authenticating, the user is able to choose the desired operating system.
54	X	X	Provides open APIs or an SDK to support application integration	DESIRABLE	SafeBoot <i>exceeds</i> the API requirement. SafeBoot is committed to its customers needs to enhance its core product functionality to meet specific business or operation requirements. This is documented in SafeBoot's support of over sixty (60) token vendors. SafeBoot R&D team, is continuously enhancing its APIs and SDKs.
55	X		The product supports Single Sign-On (simultaneous pre-boot and O/S logon)	DESIRABLE	SafeBoot's integrated FDE/FES solution <i>exceeds</i> the requirement to provide SSO with fully integrated, flexible, single sign-on (SSO) capability. Multiple users are supported at pre-boot, and their SSO credentials are stored and presented. SafeBoot utilizes standard GINAs to allow seamless login to the operating system while entering credentials in the secure, pre-boot authentication environment. In situations where a non-standard GINA is used, SafeBoot provides configuration options.



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CENTRALIZED MANAGEMENT CONSOLE					
56	X		The product's administrator management console allows for failover functionality (fault tolerance/redundancy)	CRITICAL	SafeBoot's integrated FDE/FES solution <i>exceeds</i> the failover functionality requirement. The SafeBoot Management Center provides failover functionality through the use of the SafeBoot Database Backup Utility that creates a remote "hot backup" of the management console. The SafeBoot client includes a transparent, real-time failover functionality. If the primary SafeBoot database is unavailable, it will automatically connect to the secondary database. In the event that neither database is available, the client will automatically re-connect at the pre-determined frequency.
57	X		The product's administrator management console supports capability to add/modify/delete admin users	CRITICAL	SafeBoot's integrated FDE/FES solution <i>meets</i> the requirement to add/modify/delete administrators from the management console. The SafeBoot Management Center features the ability to enforce hot revocation for administrators. SafeBoot supports 32 levels of parent/child administration permissions. Administrator tiers are centrally managed.
58	X	X	The product shall provide the capability to set a limit on the number of unsuccessful consecutive logon attempts to the administrator management console and invokes lockout for exceeding the limit	CRITICAL	SafeBoot's integrated FDE/FES solution <i>meets</i> the requirement to configure a policy to lock out an Administrator account based on unsuccessful logon attempts. SafeBoot defends against brute force attacks to the SafeBoot Administrator accounts by defining a policy in the SafeBoot Management Center allowing a pre-determined maximum number of failed logon attempts. SafeBoot requires that a "locked" admin account only be restored by a "parent" administrator not by a peer.
59	X		The product's administrator management console supports retrieval of computer, user, and user-group information from Active Directory	CRITICAL	SafeBoot's integrated FDE/FES solution <i>meets</i> the requirement of the retrieval of computer, user and user-group information from Active Directory. SafeBoot's Connector software for LDAP, Active Directory and Novell monitors the parent directory (AD or Novell/LDAP) for policy changes, new users, disabled users, and other directory-hosted user denotations. The Connector manager pulls information from Active Directory and does not extend the schema. Authorized administrators have the option to choose if they will continue to manage user adds, changes, and deletes within the SafeBoot management console or from within the native directory (AD, NDS, LDAP, etc.)



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60	X	The product's administrator management console must support ability to secure the PK-enabled administrative interface by using the DoD CAC or PIV II compliant Smartcard for authentication	CRITICAL	SafeBoot's integrated FDE/FES solution, <i>meets</i> the requirement for DoD CAC or PIV II compliant Smartcard authentication for administrative access to the console. SafeBoot's FDE & FES solution supports DoD CAC & PIV II compliant Smartcards for administrator authentication to access the SafeBoot administrative console. The SafeBoot Management Center supports soft or logical tokens (user name and password) and hard or physical tokens (DoD CAC & PIV II smartcards, etc). The authentication method assigned to the user is replicated throughout the enterprise.
61	X	Product will support or integrate with existing asset/license tracking and management tools	IMPORTANT	SafeBoot's integrated FDE/FES solution <i>meets</i> the requirement to support asset tracking and management tools. SafeBoot's FDE/FES modules are compliant with industry standard asset tracking and management tools.
62	X	Product shall support secure remote management of devices to support remote users	IMPORTANT	SafeBoot's integrated FDE/FES solution <i>meets</i> the requirement to support secure remote administration. SafeBoot's client/server architecture coupled with SafeBoot's proprietary Web Certificates provide secure remote access to authorized administrators from any web browser at anytime.
63	X	Product shall support secure remote access to the administrator management console for administrators	IMPORTANT	SafeBoot's integrated FDE/FES solutions <i>meets</i> the secure remote access requirement. SafeBoot uses SSL encrypted network links between its policy servers and administration consoles ensuring integrity of the data. The link uses AES-256 encryption, Diffie-Hellman key exchange, and 2048bit DSA signatures.
64	X	The product's administrator management console must be scalable to support large enterprise environments	IMPORTANT	SafeBoot's integrated FDE/FES solution <i>meets</i> the enterprise class scalability requirement. SafeBoot's global customer base is made up of many 75,000 - 140,000+ user environments. A single server easily supports 50,000 users.
65	X	The product's administrator management console permits multiple administrator logins for simultaneous access	IMPORTANT	SafeBoot's integrated FDE/FES solution <i>meets</i> the requirement to support simultaneous administrator logons. The SafeBoot Management Center enables secure support of any number of administrators and users, and any number of simultaneous administrators. SafeBoot has customers running more than 1,000 administrators to a single server simultaneously (network and server hardware permitting).



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66	X		The product's administrator management console supports retrieval of computer, user, and user-group information from LDAP Servers	IMPORTANT	SafeBoot's integrated FDE/FES solution <i>meets</i> the requirement of the retrieval of computer, user and user-group information from Active Directory. SafeBoot's Connector software for LDAP, Active Directory and Novell monitors the parent directory (AD or Novell/LDAP) for policy changes, new users, disabled users, and other directory-hosted user denotations. The Connector manager pulls information from Active Directory and does not extend the schema. Authorized administrators have the option to choose if they will continue to manage user adds, changes, and deletes within the SafeBoot management console or from within the native directory (AD, NDS, LDAP, etc.)
67	X	X	The product or encryption system must be configurable to not interfere with remote distribution and full installation of applications, patches, and updates while connected to the network, and without user intervention	IMPORTANT	SafeBoot's integrated FDE/FES solution <i>meets</i> the requirement for compliance with Federal Agency applications, patches and updates. SafeBoot ensures compatibility with leading file and patch employment vendors.
68	X		The product or encryption system shall allow administrator to configure product to enforce zeroization, 'wipe' or key destruction to render the data unusable.	IMPORTANT	SafeBoot's integrated FDE/FES solution <i>meets</i> the requirement to remotely remove the symmetrical key from an endpoint device. SafeBoot's Management Center, allows the administrator to push a policy and force a synchronization that removes the encryption key from the device and disables this account and the user from any associated machines.



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## SUPPORTED OPERATING SYSTEM, HARDWARE, FIRMWARE

## NOTE:

It is CRITICAL that product supports at least one of the following operating systems.

It is IMPORTANT that product supports more than one of the following operating systems.

It is DESIRABLE that product supports 3 or more operating systems.

Of the list below, identify all operating systems supported to include version.

69	X	X	Microsoft Windows 2000		SafeBoot <b>supports</b> Windows NT through Server 2003 operating systems.
70	X	X	Microsoft Windows 2003		SafeBoot <b>supports</b> Windows NT through Server 2003 operating systems.
71	X	X	Microsoft Windows XP		SafeBoot <b>supports</b> Windows 9x through XP operating systems.
72	X	X	Microsoft Windows Vista		SafeBoot <b>supports</b> Windows Vista operating systems.
73	X	X	UNIX / Sun Solaris		SafeBoot does not currently have plans to support UNIX/ Sun Solaris.
74	X	X	Mac OS X		SafeBoot has roadmap plans to support Mac OS X, no release date has been set.
75	X	X	Windows Mobile 5.0		SafeBoot <b>supports</b> the Windows Mobile 5.0 operating system.
76	X	X	Windows CE		SafeBoot <b>supports</b> Windows CE.
77	X	X	RIM/Blackberry		SafeBoot will provide functionality to manage policies for the use of Blackberry's native AES 256 bit FIPS 140-2 strong encryption. Future versions of our management environment are planned to support policy control over blackberry devices.
78	X	X	Palm		SafeBoot <b>supports</b> the Palm operating system.
79	X	X	Symbian		SafeBoot <b>supports</b> the Symbian operating system.
80	X	X	Linux to include Red Hat,		SafeBoot for Linux will include <b>support</b> for Red Hat and SuSE.





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			SuSE		
<b>GENERAL AND TECHNICAL SUPPORT</b>					
<b>81</b>	<b>X</b>	<b>X</b>	Under software maintenance agreement, vendors must notify the Government and deliver product within 10 working days of commercial release for new updates	<b>CRITICAL</b>	SafeBoot's integrated FDE/FES solution <i>meets</i> the requirement for ten (10) working day notification of software releases. SafeBoot notifies customers and delivers (customer decides delivery option) new updates within 10 days of general availability commercial releases. All available patches are accessible for download as an authorized customer from the SafeBoot Website.
<b>82</b>	<b>X</b>	<b>X</b>	For every product patch or upgrade release, vendor will provide verification that the product still meets all of the initial critical requirements	<b>CRITICAL</b>	SafeBoot's integrated FDE/FES solution <i>meets</i> the patch and upgrade requirements. When SafeBoot patches or updates, SafeBoot will provide verification that SafeBoot still <i>meets</i> all critical requirements.
<b>83</b>	<b>X</b>	<b>X</b>	Vendor will maintain disclosure-requirements to the DoD when any commercial acquisitions of or by their company affects foreign ownership or influences foreign controls of that company.	<b>CRITICAL</b>	SafeBoot's integrated FDE/FES solution <i>meets</i> the country of origin requirement. SafeBoot, as an US end product, is assembled in the US, made of components generated in the UK and US. In the case of any commercial acquisition or event that affects foreign ownership or influences foreign controls of SafeBoot, a representative from SafeBoot's General Council will contact the Contracting Officer in writing within 10 business days.
<b>84</b>	<b>X</b>	<b>X</b>	Vendor must provide several technical support delivery options, to include phone, online, onsite, etc.	<b>CRITICAL</b>	SafeBoot's integrated FDE/FES solution <i>meets</i> the minimum of technical support delivery systems. SafeBoot offers support via multiple delivery options including phone, online, on-site, etc. Please refer to Attachment xx, SafeBoot's Service Level Agreement: Support for more information on SafeBoot's Technical Support offerings.
<b>85</b>	<b>X</b>	<b>X</b>	Provide one (1) administrator & one (1) user's guide in hard copy and in electronic formats (PDF) with unlimited reproduction privileges for	<b>CRITICAL</b>	SafeBoot's integrated FDE/FES solution <i>meets</i> the documentation requirements. SafeBoot's license and fulfillment process includes an electronic format (PDF) administrator guides, or hard copy administrator guides.



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			internal purposes per order		
86	X	X	For every patch or upgrade release, new product releases will be backward compatible and be capable of using or decrypting previously encrypted data	CRITICAL	SafeBoot's integrated FDE/FES solution <i>meets</i> the product and patch release schedule requirements. SafeBoot patches and upgrade provide a seamless upgrade path and do not interfere with the database or the recovery of encrypted data.
87	X	X	Provide troubleshooting guidance for product	CRITICAL	SafeBoot's integrated FDE/FES solutions <i>meet</i> the requirement for troubleshooting guides. SafeBoot's product documentation includes commonly identified trouble shooting techniques. In addition, SafeBoot encourages customers to enroll in a training and certification class. The number of customer enrollees varies upon the user population.
88	X	X	Product must provide user-friendly feedback messages when errors or warnings occur	IMPORTANT	SafeBoot's integrated FDE/FES solution <i>meets</i> the user notification requirements. SafeBoot provides simple user-friendly messages with specific error codes when errors or warnings occur.
89	X	X	System installation documentation should include steps to verify proper operation upon completion of installation.	IMPORTANT	SafeBoot's integrated FDE/FES solution <i>meets</i> the requirements for system installation documentation. SafeBoot provides customers with various options for knowledge transfer including but not limited to Administrative Guides, Quick Start Guides, Implementation Guides, Certifications and Trainings.
90	X	X	Provide SIN (Special Item Number) 132-51 for professional services offered	DESIRABLE	SafeBoot's integrated solution <i>meets</i> the requirement for SIN 132-51 for professional services. SafeBoot offers remote and onsite implementation services including Assessments, Proof of Concept, Lab Evaluations, Client Analysis, Product Configuration, Product Validation and Product Implementation. SafeBoot is willing to discuss this request further to customize the appropriate services bundle to meet the business requirements.
<b>LICENSING &amp; COSTING</b>					
91	X	X	Licenses are transferable within each Federal Agency	CRITICAL	SafeBoot's integrated FDE/FES solution <i>meets</i> the license transfer requirement. SafeBoot's licensing model affords the flexibility to accommodate the transferable request.



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92	X	X	Provide license pricing that is user based and includes secondary-use rights.	CRITICAL	SafeBoot's integrated FDE/FES solution <i>meets</i> the secondary-use software rights. SafeBoot's licensing model affords multiple users to utilize the same device.
93	X	X	Product licenses are perpetual	CRITICAL	SafeBoot's integrated FDE/FES solution <i>meets</i> the perpetual license requirement. SafeBoot licenses are perpetual. SafeBoot will provide all Federal Agencies with perpetual licenses access to updates and support based on valid maintenance contracts.
94	X	X	Price of product licenses	CRITICAL	SafeBoot offers several categories of licensing models - User based, Device based and Enterprise based licensing. SafeBoot is willing to discuss these options to customize a licensing model to afford the business requirements. Please see Attachment #1 for requested pricing information.
95	X	X	Price of annual software maintenance	CRITICAL	SafeBoot's integrated FDE/FES solution provides annual maintenance options. SafeBoot offers several custom maintenance options. SafeBoot is willing to discuss this item to customize the most effective maintenance program. Please see Attachment #1 for requested pricing information.
96	X	X	Price of all tiered support options	IMPORTANT	SafeBoot's integrated FDE/FES solution <i>meets</i> the requirement for multiple support options. SafeBoot offers two (2) levels of support - Business Day & 7x24 support. Please see Attachment #1 for requested pricing information.
97	X	X	Product training is available for system administrators as separate price	IMPORTANT	SafeBoot's integrated FDE/FES solution <i>meets</i> the requirement for separate administrator training. SafeBoot offers line item pricing for administrator training and certification. Please see Attachment #1 for requested pricing information.
98	X	X	Provide license pricing that is device-based regardless of the number of users	IMPORTANT	SafeBoot's integrated FDE/FES solution <i>meets</i> the requirement for device based licensing. SafeBoot's Licensing models accommodates the need for additional users to a specific device. Please see Attachment #1 for requested pricing information.
99	X	X	When maintenance is included with the purchase of a license, support begins at the time of installation phase	IMPORTANT	SafeBoot's integrated FDE/FES solution <i>meets</i> the requirement for inclusion of the requirements for 1st year maintenance with purchase of the license product.
100	X	X	Licenses include home-use rights	DESIRABLE	SafeBoot's integrated FDE/FES solution <i>meets</i> the requirement for home use rights.



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101	X	X	Users should require minimal or no training to utilize the product	IMPORTANT	SafeBoot's integrated FDE/FES solution <i>meets</i> the no training requirement for end users. SafeBoot's product offerings do not require end-user training.
102	X	X	Onsite product training is available	IMPORTANT	SafeBoot offers a comprehensive certification and training program that are typically hosted at Government customer locations.
103	X	X	Vendor shall provide virtual web-based training for the product	IMPORTANT	SafeBoot's integrated FDE/FES <i>meets</i> the requirement for virtual web-based product training. SafeBoot offers custom Web-based certification and training. Should we include some training documentation/list of training, etc. with this package?



ATCH 1  
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SPECTRUM

<b>SmartBUY ESA Discounts, Concessions</b>
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**Listed below are the SafeBoot GSA / SmartBUY Price Concessions and Value Added Solutions:**

**1) Licensing:**

- \*1st year 7x24 maintenance included with all license purchases
- \*SafeBoot grants home use for all licenses acquired
- \*SafeBoot grants secondary use right for all licenses acquired
- \*SafeBoot grants transfer of acquired licenses within DoD Agencies
- \*SafeBoot grants an immediate temporary enterprise license for use during natural disasters, acts of war and/or terror
- \*SafeBoot's SmartBUY pricing represents thirty-three (33%) to fifty percent (50%) discount off of the SafeBoot GSA prices.

**2) Value Added Services:**

\*SafeBoot awards the following services upon orders placed for the non-cumulative quantities listed below:

- 1-500 Licenses includes 4 hours of SafeBoot Remote Configuration Services.
- 501-1,000 Licenses includes 8 hours of SafeBoot Remote Configuration Services.
- 1001 - 2501 Licenses includes one (1) day of onsite SafeBoot Configuration Services.
- 2,501 - 5,000 Licenses includes two (2) days of onsite SafeBoot Configuration Services.
- 5,001 - 10,000 Licenses includes three (3) days of onsite SafeBoot Configuration Services.
- 10,001 - 20,000 Licenses includes two (2) days of onsite SafeBoot Assessment Services, three (3) days of SafeBoot onsite Certification Services, and three (3) days of onsite Configuration Services (Gold Image Build) and .5 dedicated remote Level 1 SafeBoot FTE
- 20,0001 - 40,000 License includes two (2) days of onsite SafeBoot Assessment Services, three (3) days of SafeBoot onsite Certification Services, and three (3) days of onsite Configuration Services (Gold Image Build) and one (1) dedicated remote Level 1 SafeBoot FTE





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Atch 1 - SmartBUY ESA Product and Price List

SmartBUY ESA Product and Price List					
SIN	GSA Part No.	Description	List Price	GSA Price	SmartBUY ESA Price
132-33	22.10.01A	SafeBoot® Device Encryption Software License Price (Quantity up to 99)	\$123.00	\$99.76	\$66.33
132-34	22.10.01A-M	SafeBoot® Device Encryption Annual Maintenance & Support * (Quantity up to 99)	\$18.45	\$14.96	\$13.27
132-33	22.10.01B	SafeBoot® Device Encryption Software License Price (Quantity 100-499)	\$123.00	\$99.76	\$64.98
132-34	22.10.01B-M	SafeBoot® Device Encryption Annual Maintenance & Support * (Quantity 100-499)	\$18.45	\$14.96	\$13.00
132-33	22.10.01C	SafeBoot® Device Encryption Software License Price (Quantity 500-999)	\$123.00	\$99.76	\$64.31
132-34	22.10.01C-M	SafeBoot® Device Encryption Annual Maintenance & Support * (Quantity 500-999)	\$18.45	\$14.96	\$12.86
132-33	22.10.01D	SafeBoot® Device Encryption Software License Price (Quantity 1000-2999)	\$123.00	\$99.76	\$62.30
132-34	22.10.01D-M	SafeBoot® Device Encryption Annual Maintenance & Support * (Quantity 1000-2999)	\$18.45	\$14.96	\$12.46
132-33	22.10.01E	SafeBoot® Device Encryption Software License Price (Quantity 3000-4999)	\$123.00	\$99.76	\$52.50
132-34	22.10.01E-M	SafeBoot® Device Encryption Annual Maintenance & Support * (Quantity 3000-4999)	\$18.45	\$14.96	\$10.50
132-33	22.10.01F	SafeBoot® Device Encryption Software License Price (Quantity 5000-9999)	\$123.00	\$99.76	\$48.37
132-34	22.10.01F-M	SafeBoot® Device Encryption Annual Maintenance & Support * (Quantity 5000-9999)	\$18.45	\$14.96	\$9.68
132-33	22.10.01G	SafeBoot® Device Encryption Software License Price (Quantity 10000-19999)	\$123.00	\$99.76	\$44.83
132-34	22.10.01G-M	SafeBoot® Device Encryption Annual Maintenance & Support * (Quantity 10000-19999)	\$18.45	\$14.96	\$8.97
132-33	22.10.01H	SafeBoot® Device Encryption Software License Price (Quantity 20000 and up)	\$123.00	\$99.76	\$35.00
132-34	22.10.01H-M	SafeBoot® Device Encryption Annual Maintenance & Support * (Quantity 20000 and up)	\$18.45	\$14.96	\$7.00
132-33	23.10.01A	SafeBoot® Content Encryption Software License Price (Quantity up to 99)	\$130.00	\$105.44	\$66.33
132-34	23.10.01A-M	SafeBoot® Content Encryption Annual Maintenance & Support * (Quantity up to 99)	\$19.50	\$15.82	\$13.27
132-33	23.10.01B	SafeBoot® Content Encryption Software License Price (Quantity 100-499)	\$130.00	\$105.44	\$64.98
132-34	23.10.01B-M	SafeBoot® Content Encryption Annual Maintenance & Support * (Quantity 100-499)	\$19.50	\$15.82	\$13.00
132-33	23.10.01C	SafeBoot® Content Encryption Software License Price (Quantity 500-999)	\$130.00	\$105.44	\$64.31
132-34	23.10.01C-M	SafeBoot® Content Encryption Annual Maintenance & Support * (Quantity 500-999)	\$19.50	\$15.82	\$12.86
132-33	23.10.01D	SafeBoot® Content Encryption Software License Price (Quantity 1000-2999)	\$130.00	\$105.44	\$62.30
132-34	23.10.01D-M	SafeBoot® Content Encryption Annual Maintenance & Support * (Quantity 1000-2999)	\$19.50	\$15.82	\$12.46
132-33	23.10.01E	SafeBoot® Content Encryption Software License Price (Quantity 3000-4999)	\$130.00	\$105.44	\$62.21
132-34	23.10.01E-M	SafeBoot® Content Encryption Annual Maintenance & Support * (Quantity 3000-4999)	\$19.50	\$15.82	\$9.33
132-33	23.10.01F	SafeBoot® Content Encryption Software License Price (Quantity 5000-9999)	\$130.00	\$105.44	\$62.21
132-34	23.10.01F-M	SafeBoot® Content Encryption Annual Maintenance & Support * (Quantity 5000-9999)	\$19.50	\$15.82	\$9.33



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132-33	23.10.01G	SafeBoot® Content Encryption Software License Price (Quantity 10000-19999)	\$130.00	\$105.44	\$62.21
132-34	23.10.01G-M	SafeBoot® Content Encryption Annual Maintenance & Support * (Quantity 10000-19999)	\$19.50	\$15.82	\$9.33
132-33	23.10.01H	SafeBoot® Content Encryption Software License Price (Quantity 20000 and up)	\$130.00	\$105.44	\$35.00
132-34	23.10.01H-M	SafeBoot® Content Encryption Annual Maintenance & Support * (Quantity 20000 and up)	\$19.50	\$15.82	\$7.00
132-33	22.10.10A	SafeBoot® Port Control Software License Price (Quantity up to 99)	\$35.00	\$28.39	\$18.87
132-34	22.10.10A-M	SafeBoot® Port Control Annual Maintenance & Support * (Quantity up to 99)	\$5.25	\$4.26	\$2.83
132-33	22.10.10B	SafeBoot® Port Control Software License Price (Quantity 100-499)	\$35.00	\$28.39	\$18.49
132-34	22.10.10B-M	SafeBoot® Port Control Annual Maintenance & Support * (Quantity 100-499)	\$5.25	\$4.26	\$2.77
132-33	22.10.10C	SafeBoot® Port Control Software License Price (Quantity 500-999)	\$35.00	\$28.39	\$18.30
132-34	22.10.10C-M	SafeBoot® Port Control Annual Maintenance & Support * (Quantity 500-999)	\$5.25	\$4.26	\$2.75
132-33	22.10.10D	SafeBoot® Port Control Software License Price (Quantity 1000-2999)	\$35.00	\$28.39	\$17.73
132-34	22.10.10D-M	SafeBoot® Port Control Annual Maintenance & Support * (Quantity 1000-2999)	\$5.25	\$4.26	\$2.66
132-33	22.10.10E	SafeBoot® Port Control Software License Price (Quantity 3000-4999)	\$35.00	\$28.39	\$17.00
132-34	22.10.10E-M	SafeBoot® Port Control Annual Maintenance & Support * (Quantity 3000-4999)	\$5.25	\$4.26	\$2.55
132-33	22.10.10F	SafeBoot® Port Control Software License Price (Quantity 5000-9999)	\$35.00	\$28.39	\$15.63
132-34	22.10.10F-M	SafeBoot® Port Control Annual Maintenance & Support * (Quantity 5000-9999)	\$5.25	\$4.26	\$2.35
132-33	22.10.10G	SafeBoot® Port Control Software License Price (Quantity 10000-19999)	\$35.00	\$28.39	\$14.49
132-34	22.10.10G-M	SafeBoot® Port Control Annual Maintenance & Support * (Quantity 10000-19999)	\$5.25	\$4.26	\$2.17
132-33	22.10.10H	SafeBoot® Port Control Software License Price (Quantity 20000 and up)	\$35.00	\$28.39	\$13.35
132-34	22.10.10H-M	SafeBoot® Port Control Annual Maintenance & Support * (20000 and up)	\$5.25	\$4.26	\$2.00

**Spectrum and SafeBoot offer additional discounts for Bundle Purchases as outlined below:**

**Bundles consist of all the above GSA part numbers grouped together:**  
**Bundle Includes: Device Encryp(FDE), Content Encryp(FES), Port Control, all connectors as needed for directory and mobile devices, Management Console, Database Backup, Scripting Tool, Web Help Desk. (See part number inclusions as stated above)**

132-33	22.10.01/23.10.01/22.10.10	SafeBoot® Software OMB Bundle License Price (Quantity up to 99)	\$288.00	\$233.59	\$92.86
132-34	22.21.01/23.21.01/22.21.10	SafeBoot® Software OMB Bundle Annual Maintenance & Support * (Quantity up to 99)	\$43.20	\$35.04	\$18.57
132-33	22.10.01/23.10.01/22.10.10	SafeBoot® Software OMB Bundle License Price (Quantity 100-499)	\$288.00	\$232.85	\$90.98
132-34	22.21.01/23.21.01/22.21.10	SafeBoot® Software OMB Bundle Annual Maintenance & Support * (Quantity 100-499)	\$43.20	\$35.04	\$18.20
132-33	22.10.01/23.10.01/22.10.10	SafeBoot® Software OMB Bundle License Price (Quantity 500-999)	\$288.00	\$232.85	\$90.04
132-34	22.21.01/23.21.01/22.21.10	SafeBoot® Software OMB Bundle Annual Maintenance & Support * (Quantity 500-999)	\$43.20	\$35.04	\$18.01
132-33	22.10.01/23.10.01/22.10.10	SafeBoot® Software OMB Bundle License Price (Quantity 1000-2999)	\$288.00	\$232.85	\$87.23



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132-34	22.21.01/23.21.01/22.21.10	SafeBoot® Software OMB Bundle Annual Maintenance & Support * (Quantity 1000-2999)	\$43.20	\$35.04	\$17.45
132-33	22.10.01/23.10.01/22.10.10	SafeBoot® Software OMB Bundle License Price (Quantity 3000-4999)	\$288.00	\$232.85	\$73.51
132-34	22.21.01/23.21.01/22.21.10	SafeBoot® Software OMB Bundle Annual Maintenance & Support * (Quantity 3000-4999)	\$43.20	\$35.04	\$14.70
132-33	22.10.01/23.10.01/22.10.10	SafeBoot® Software OMB Bundle License Price (Quantity 5000-9999)	\$288.00	\$232.85	\$67.73
132-34	22.21.01/23.21.01/22.21.10	SafeBoot® Software OMB Bundle Annual Maintenance & Support * (Quantity 5000-9999)	\$43.20	\$35.04	\$13.55
132-33	22.10.01/23.10.01/22.10.10	SafeBoot® Software OMB Bundle License Price (Quantity 10000-19999)	\$288.00	\$232.85	\$62.77
132-34	22.21.01/23.21.01/22.21.10	SafeBoot® Software OMB Bundle Annual Maintenance & Support * (Quantity 10000-19999)	\$43.20	\$35.04	\$12.56
132-33	22.10.01/23.10.01/22.10.10	SafeBoot® Software OMB Bundle License Price (20000 and up)	\$288.00	\$232.85	\$49.00
132-34	22.21.01/23.21.01/22.21.10	SafeBoot® Software OMB Bundle Annual Maintenance & Support * (20000 and up)	\$43.20	\$35.04	\$9.80

**\* NOTE**      **Standard Maintenance is provided 8x5. For ESI/SmartBuy purchases, Safeboot is offering an upgrade to 24x7 maintenance.**

132-51	EASI	Advanced Systems Integrator	\$235.00	\$193.55	\$189.68
132-51	EOSC	Onsite Software Installation, Complex	\$335.00	\$275.91	\$270.39
132-51	ESEN	Systems Engineer	\$144.99	\$119.42	\$117.03
132-51	ESSA	Sr. Systems Administrator	\$125.00	\$102.95	\$100.89
132-51	ESSC	Sr. Systems Consultant	\$285.00	\$234.73	\$230.04
132-51	ESSE	Sr. Systems Engineer	\$175.00	\$144.13	\$141.25
132-51	ESSI	Senior Systems Integrator	\$285.00	\$234.73	\$230.04
132-51	ROSC	Onsite Software Installation, Noncomplex	\$260.00	\$214.14	\$209.86
132-51	SAS	Applications Specialist	\$199.00	\$163.90	\$160.62
132-51	SDAM	Database Administrator	\$90.01	\$74.13	\$72.65
132-51	SDAS	Database Applications Specialist	\$110.00	\$90.60	\$88.79
132-51	SDE	Data Entry Technician	\$35.00	\$28.83	\$28.25
132-51	SNA	Network Administrator	\$65.01	\$53.54	\$52.47
132-51	SPA	Programmer/ Analyst	\$70.00	\$57.65	\$56.50
132-51	SPSC	On-Site Consultation, Hourly Rate	\$220.01	\$181.20	\$177.58
132-51	SSA	Software/Systems Analyst	\$90.01	\$74.13	\$72.65
132-51	SSAC	Sr. Applications Consultant	\$245.00	\$201.79	\$197.75
132-51	SSDS	Sr. Database Specialist	\$150.00	\$123.54	\$121.07
132-51	SSDT	Sr. Data Entry Technician	\$60.00	\$49.42	\$48.43
132-51	SSNA	Sr. Network Administrator	\$80.00	\$65.89	\$64.57
132-51	SSPA	Sr. Programmer/ Analyst	\$85.00	\$70.01	\$68.61
132-51	SSSA	Sr. Software/Systems Analyst	\$125.00	\$102.95	\$100.89
132-51	SSST	Sr. Support Technician	\$80.00	\$65.89	\$64.57
132-51	SSSU	Sr. Support Analyst	\$75.00	\$61.77	\$60.53
132-51	SST	Support Technician	\$55.00	\$45.30	\$44.39
132-51	SSU	Support Analyst	\$55.00	\$45.30	\$44.39
132-51	SUN	System Administrator (UNIX, NT)	\$80.00	\$65.89	\$64.57
132-51	SWCS	On-Site Consultation, Daily Rate	\$879.00	\$723.96	\$709.48



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Atch 1 - SmartBUY ESA Quotes for 10K, 33K, and 100K Users

**SmartBUY ESA Quotes for 10K, 33K, and  
100K Users**

*(Provide three quotes of products and services necessary for successful Enterprise implementation and maintenance of organizations for 10,000, 33,000 or 100,000 users, including spot discounts and/or other concessions beyond those in your SmartBUY ESA Product and Price List. All products/services must track to your GSA Schedule(s) and prices, including spot discounts (and any items offered at no additional cost), and citing all concessions in policies, terms and conditions. Include all assumptions.)*

Quantity		Price per seat	Total
10,000		\$44.83	\$448,300.00

**Includes three (3) days of onsite SafeBoot Configuration Services**

Quantity		Price per seat	Total
33,000		\$28.00	\$924,000.00

**Includes two (2) days of onsite SafeBoot Assessment Services, three (3) days of SafeBoot onsite Certification Services, and three (3) days of onsite Configuration Services (Gold Image Build) and one (1) dedicated remote Level 1 SafeBoot FTE**

Quantity		Price per seat	Total
100,000		\$14.00	\$1,400,000.00

**Includes two (2) days of onsite SafeBoot Assessment Services, three (3) days of SafeBoot onsite Certification Services, three (3) days of onsite Configuration Services (Gold Image Build), five (5) days of onsite implementation services, and one (1) dedicated remote Level 1 SafeBoot FTE**

**NOTE: All discounts and concessions noted in Atch 1 - Discounts, Concessions apply to the above quotations.**



## Software License Agreement

\_\_\_\_ ("Licensee") is hereby granted by SafeBoot Corp. ("SAFEBOOT"), and Licensee accepts, a non-exclusive, non-assignable, non-transferable, license to install and use SafeBoot's software ("Product(s)") and accompanying documentation ("Documentation"), as referred to in the attached proposal solely for Licensee's own internal use and benefit and as authorized in these Terms & Conditions and solely for the agreed number of users. Licensee shall not (i) lend, sell, lease or otherwise dispose of the Product(s) without SafeBoot's written approval; (ii) use the Product(s) and / or Documentation for any other purpose than provided in these Terms & Conditions; (iii) copy, modify, decompile or reverse compile by any means, including but not limited to analyses by debug or reverse assembler tools, the Product(s) or the Documentation. Product(s) will be provided in machine readable, object code form only. The intellectual property in the Product(s) — and the Documentation shall remain vested in SafeBoot at all times.

### Term — License Type and Restrictions

Provided issuance of a purchase order ("PO") and payment of all amounts due by Licensee, the license granted is a perpetual license, unless and until terminated by Licensee or by SafeBoot if Licensee fails to meet these terms and conditions or the conditions of any preceding agreement between Licensee and SafeBoot. Upon termination, all Product(s) must be removed from all systems using the Product(s) and all Product(s) and Documentation and all copies thereof must be destroyed or promptly returned to SafeBoot.

### Maintenance and Support

Upon payment of the applicable Maintenance & Support (M&S) fees, SafeBoot will provide M&S services to the Licensee. This includes: a) providing Licensee with corrections of any substantial defects or fixes of any serious bugs relating to the Product(s) as such solutions become known to SafeBoot, b) providing Licensee, from time to time, without additional charge, with New Releases that contain new enhancements, performance improvements, upgrades, service packs and/or patches, all within the same version class, which SafeBoot elects to make available to its Licensees base generally (SafeBoot reserves the right to charge separately for specific functionality enhancements or product options), c) during normal business hours, providing a help desk service (which can be contacted by Licensee through e-mail, the internet, fax and telephone) for queries by the Licensee. It is understood, however, that in respect to on-site support visits, training or hardware and related supplies, SafeBoot and Licensee shall agree in advance on the services to be provided and the fees for the services which may include reasonable time and materials and actual reasonable travel, living and accommodation costs. SafeBoot will support Products as long as they comprise the latest version and for a period of 6 months after the release of a new version.

### Payment of Fees

Licensees that have issued a PO, which is accepted by SafeBoot, shall pay a license fee to SafeBoot in accordance with the relevant PO. Termination of the license and/or the M&S services will in no circumstance lead to a refund of fees. Any fees unpaid by Licensee shall be subject to one percent interest per month.

### Warranty

SafeBoot represents and warrants that it is the owner or authorized licensor of the Product(s). SafeBoot further warrants that at the time of delivery of the initial Product(s) and for a period of ninety (90) days thereafter, Product(s) will be in substantial accordance with the Documentation supplied to Licensee, provided the hardware and operating systems the Product(s) is installed on, comply with the requirements set out in the Documentation. SafeBoot's liability under this warranty shall be limited to the correction or replacement as soon as reasonably practical of any defective item(s) on the initial Product(s) which SafeBoot determines to be necessary at SafeBoot's sole cost and expense, provide notice of such defect is provided to SafeBoot during the warranty period. The warranty shall not apply if (i) an item of Product(s) was not used in accordance with SafeBoot's instructions; (ii) an item of Product(s) has been altered, modified or converted by Licensee not in accordance with the user Documentation as supplied by SafeBoot, or without SafeBoot's written approval; (iii) any of Licensee's equipment shall malfunction causing the defect in the Product(s). THE WARRANTIES CONTAINED IN THIS AGREEMENT ARE IN PLACE OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.

If provided during the warranty period, new releases containing only corrections of errors of the Product(s) will be provided without additional charge, but SafeBoot may impose a charge for new releases that in SafeBoot's opinion contain other modifications, improvements or new material.

### Limitations of Warranties and/or Liabilities

THE PRODUCT IS PROVIDED "AS IS." SafeBoot DOES NOT WARRANT THAT THE PRODUCT IS FIT FOR THE USE LICENSEE INTENDS IT TO USE FOR. As far as permitted under applicable law SafeBoot's liability for direct/actual damages from any cause whatsoever will be limited to the consideration received by SafeBoot from Licensee in the six (6) months preceding a claim. SafeBoot shall in no event be liable for loss of sales, profit, goodwill, or other special, indirect or any consequential damages suffered by Licensee or others in anyway attributable to Licensee's use of Product(s) or any services provided hereunder.

### Nondisclosure/unauthorized use

Licensee agrees to keep all information that is either marked as confidential, or that can reasonably be understood to be of a confidential nature confidential for a period of five (5) years from the date of disclosure. Licensee agrees to use all reasonable precautions to prevent the Product(s) and Documentation from being used by unauthorized persons and to take appropriate action, by instruction, agreement or otherwise, with regard to all persons permitted access to the Product(s) and Documentation, in order to insure the Product(s) is (are) protected.

### Governing Law

These Terms & Conditions shall be governed by and construed in accordance with all applicable federal laws and regulations.

### Severability

In the event that any of these terms or conditions conflicts with the applicable law(s), or if such provision is held invalid by a court with jurisdiction over Licensee and SafeBoot, such provision shall be restated to reflect, as nearly as possible, the original intentions of the parties in accordance with applicable law, and the remainder of these Terms & Conditions shall remain in full force.

SafeBoot has contracted with Iron Mountain to escrow the SafeBoot intellectual property (IP). The escrow service affords optimal protection to SafeBoot licensees against unfortunate circumstances; circumstances that may adversely affect SafeBoot's ability to maintain and support the software.

### Entire Agreement

This Proposal, \_\_\_\_\_'s contract # \_\_\_\_\_ and the escrow agreement contains the full understanding between the parties and may only be changed by a written amendment signed by both parties. SafeBoot acceptance of any PO issued by Licensee shall evidence itself by SafeBoot sending (a) proper Invoice(s) to Licensee based on Licensee's PO.

### **Accepted this Proposal and all the terms and conditions contained herein:**

Name Licensee: \_\_\_\_\_

Signature: \_\_\_\_\_

Name Authorized Representative: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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Official Proposal — Confidential

**SafeBoot**  
MOBILE DATA SECURITY



FEDERAL DOD  
SMARTBUY ESA  
REPORT OF SALES  
  
SPECTRUM SYSTEMS, INC.

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Atch 3 - Report of Sales Format

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Ordering Activity Delivery Order #	Reseller Order #	End User Agency or Service	End User Ship-To Activity (Govt. Licensee)	CLIN	Description	Reseller P/N	Publisher P/N	UNSPSC	Unit Price on GSA	Unit Price on Order	Unit Price on Order w/o Fees	QTY	Total Price on Order w/o Fees	Total IFF Fee @ .75%	Total ACT Fee @ 2%	Total Price on Order	GSA Price of Order	Cost Avoidance	Date Ordered	Actual Ship Date	
ARMY SALES																					
00000000	000000	ARMY	86TH REGIMENTAL SUPPORT CMD 00000, 00	000	000000	000000	000000		70.00	82.00	\$60.34	1	\$60.34	\$0.45	\$1.21	\$62.00	\$70.00	\$8.00	no/no/no	no/no/no	
00000000	000000	ARMY	US ARMY CORPS OF ENGINEERS	000	000000	000000	000000		98.00	92.70	\$90.22	6	\$541.31	\$4.06	\$10.83	\$556.20	\$598.00	\$31.80	no/no/no	no/no/no	
00000000	000000	ARMY	FORT MCNAIR 00000, 00	000	000000	000000	000000		119.00	103.00	\$100.24	1	\$100.24	\$0.75	\$2.00	\$103.00	\$119.00	\$16.00	no/no/no	no/no/no	
																\$14.04	TOTAL ACT FEE ON ARMY SALES				
																\$7.92	ARMY ACT FEE @ 1%				
																\$7.92	AIR FORCE ACT FEE @ 1%				
NAVY SALES																					
00000000	000000	NAVY	NAVICP CODE 00, MECHANICSBURG, PA	000	000000	000000	000000		119.00	103.00	\$100.24	3	\$300.73	\$2.26	\$6.01	\$309.00	\$357.00	\$48.00	no/no/no	no/no/no	
00000000	000000	NAVY	NAVICP CODE 00, MECHANICSBURG, PA	000	000000	000000	000000		96.00	82.40	\$80.19	3	\$240.58	\$1.80	\$4.81	\$247.20	\$288.00	\$40.80	no/no/no	no/no/no	
00000000	000000	NAVY	SPAWAR PD15G SAN DIEGO, CA	000	000000	000000	000000		61.50	51.50	\$50.12	2	\$100.24	\$0.75	\$2.00	\$103.00	\$123.00	\$20.00	no/no/no	no/no/no	
00000000	000000	NAVY	000000	000	000000	000000	000000		119.00	103.00	\$100.24	1	\$100.24	\$0.75	\$2.00	\$103.00	\$119.00	\$16.00	no/no/no	no/no/no	
00000000	000000	NAVY	000000	000	000000	000000	000000		66.80	61.80	\$60.15	1	\$60.15	\$0.45	\$1.21	\$61.80	\$66.80	\$5.00	no/no/no	no/no/no	
																\$18.04	TOTAL ACT FEE ON NAVY SALES				
																\$6.02	NAVY ACT FEE @ 1%				
																\$6.02	AIR FORCE ACT FEE @ 1%				
DLA SALES																					
00000000	000000	DLA	000000	000	000000	000000	000000		27.00	23.00	\$22.38	8	\$179.08	\$1.34	\$3.58	\$184.00	\$216.00	\$32.00	no/no/no	no/no/no	
00000000	000000	DLA	000000	000	000000	000000	000000		61.50	51.50	\$50.12	5	\$250.61	\$1.88	\$5.01	\$257.50	\$307.50	\$50.00	no/no/no	no/no/no	
00000000	000000	DLA	000000	000	000000	000000	000000		95.00	79.00	\$78.89	3	\$236.66	\$1.73	\$4.61	\$237.00	\$285.00	\$48.00	no/no/no	no/no/no	
																\$13.21	TOTAL ACT FEE ON DLA SALES				
																\$6.60	DLA ACT FEE @ 1%				
																\$6.60	AIR FORCE ACT FEE @ 1%				
SMARTBUY NON-ESI FEDERAL AND NON-ESI FEDERAL SUPPORT CONTRACTOR SALES																					
00000000	000000	AGENCY	Federal Government Civilian Agency	000	000000	000000	000000		96.00	82.40	\$80.19	8	\$641.56	\$4.81	\$12.83	\$659.20	\$768.00	\$108.80	no/no/no	no/no/no	
																\$12.83	TOTAL ACT FEE ON NON-ESI SMARTBUYS				
																\$6.42	NON-ESI SMARTBUY ACT FEE @ 1%				
																\$6.42	AIR FORCE ACT FEE @ 1%				
AIR FORCE & OTHER DOD ESI SALES (INCLUDING DOD ESI CONTRACT SUPPORT SALES, INTELLIGENCE COMMUNITY AND COAST GUARD SALES)																					
00000000	000000	AIR FORCE	HILL AFB 00000, 00	000	000000	000000	000000		96.00	82.40	\$80.19	8	\$641.56	\$4.81	\$12.83	\$659.20	\$768.00	\$108.80	no/no/no	no/no/no	
00000000	000000	AIR FORCE	EGLIN AFB 00000, 00	000	000000	000000	000000		61.50	49.00	\$47.89	5	\$238.44	\$1.79	\$4.77	\$245.00	\$307.50	\$62.50	no/no/no	no/no/no	
00000000	000000	AIR FORCE	SCOTT AFB 00000, 00	000	000000	000000	000000		96.00	82.40	\$80.19	3	\$240.58	\$1.80	\$4.81	\$247.20	\$288.00	\$40.80	no/no/no	no/no/no	
00000000	000000	DOD	NATIONAL IMAGERY AND MAPPING	000	000000	000000	000000		66.80	61.80	\$60.15	5	\$300.73	\$2.26	\$6.01	\$309.00	\$334.00	\$25.00	no/no/no	no/no/no	
00000000	000000	DOD	000000	000	000000	000000	000000		66.80	61.80	\$60.15	5	\$300.73	\$2.26	\$6.01	\$309.00	\$334.00	\$25.00	no/no/no	no/no/no	
																\$34.44	ACT FEE ON AF & OTHER ESI SALES @ 2%				
																\$7.82	ARMY ACT FEE				
																\$6.02	NAVY ACT FEE				
																\$6.68	DLA ACT FEE				
																\$6.42	SMARTBUY ACT FEE				
																\$6.42	AIR FORCE & OTHER ESI ACT FEE				
												TOTAL SALES FOR MONTH		MMM YYYY	68	\$4,527.79	\$33.96	\$90.56	\$4,652.39	\$5,338.80	\$666.50
																ARMY ACT FEE		OCT - DEC			
																NAVY ACT FEE		OCT - DEC			
																DLA ACT FEE		OCT - DEC			
																SMARTBUY ACT FEE		OCT - DEC			
																AIR FORCE & OTHER ESI ACT FEE		OCT - DEC			
																TOTAL SALES FOR QUARTER		OCT - DEC			
																TOTAL SALES FOR FISCAL YEAR		2005			
																		(OCT 2004 - SEPT 2005)			
																TOTAL SALES BPA TO DATE					



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Atch 3 - Report of Sales Format

[illegible]



FA8771-07-A-0304  
Attachment 4

## **Fees and Payments**

**GSA Industrial Funding Fee.** The unit prices include a markup to account for GSA's Industrial Funding Fee. The contractor shall be responsible for all required filings to GSA and for payment of this fee in accordance with applicable GSA instructions. The ACT Fee does not include GSA's Industrial Funding Fee.

**1. Acquisition, Contracting, and Technical (ACT) Fee.** The cost of awarding, administering and managing this BPA is included in the prices charged to ordering activities. The ACT fee is 2%. Remittance of the ACT fee shall be made on a monthly basis (i.e. January, February, March, etc.) or as otherwise indicated below or requested by the Software Product Manager (SPM) and is due thirty (30) days following approval of the report for the completed reporting period. 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 BPA.

**Fee Distribution.** The Air Force, Army, DLA, Navy and GSA (for SmartBUY Federal government Civilian Agency orders) are participating in an ACT fee-sharing program. For orders within DoD, the 2% ACT fee is split equally between the DoD Component whose customer places the order and the Component that manages the contract. The Contractor shall collect the 2% ACT fee and distribute in accordance with the following procedures. ACT fee sharing shall be determined by the End User Agency or Service identified in the monthly Report of Sales. This field shall be notated Air Force, Army, DLA, Navy, DoD or Non-DoD as appropriate. In the case of SmartBUY orders (Federal Government Civilian Agencies) non-DoD orders and non DoD support contractor orders, excluding the Intelligence Community and non Coast Guard orders or support vendors to same, the 2% ACT fee is split equally between the Agency that manages the contract and GSA SmartBUY Program Management Office.

### **ALL SALES:**

The 2% ACT fee is split equally between the DoD Component whose customer places the order or GSA SmartBUY for non-DoD Federal agencies and the DoD Component that manages the ESI/SmartBUY agreement. In other words, any Air Force order against an ESI/SmartBUY agreement managed by the Army results in a 1% portion of the 2% fee being returned to the Air Force acquisition organization (listed under Air Force Sales). The Air Force will retain the entire 2% fee under orders issued for Air Force activities or those activities that do not collect a fee under the ESI agreements managed by the Air Force. The contractor is responsible for distributing the ACT fee to all applicable Services and GSA SmartBUY Program in accordance with the instructions herein. The amount of ACT Fee due the Air Force shall be calculated at 1% for Army sales, 1% for DLA sales, 1% for Navy sales and 2% for all other sales. For SmartBUY agreements, GSA would receive a 1% ACT fee of Federal non-DoD agency sales.



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Attachment 4

Remit ACT Fee to DFAS Denver by corporate or cashier's check made payable to "Treasurer of the United States" notated with the following information:  
ESI/SmartBUY ESA agreement BPA FA8771-07-A-0304

\*\*\*Checks must be accompanied by a transmittal letter (sample enclosed) that cites the applicable accounting data to ensure proper crediting of the payment.

Send check and transmittal letter to:  
DFAS-DE/ATDT/DEDE  
Attn: Ms. Shanna Olinger  
For: 3801-LI  
6760 East Irvington Place  
Denver, CO 80279

Mail a copy of the check & letter to:  
HQ 754 ELSG/KABS  
Bldg 892  
490 East Moore Drive  
MAFB-Gunter Annex, AL 36114-3014  
FAX: (334) 416-1351

Or send via fax or email to:  
Fax: 334-416-7795 or 334-416-1351  
Email: kabfinance@gunter.af.mil

## 2.1 ARMY SALES:

The amount of ACT Fee due the Program Executive Office (PEO) Enterprise Information Systems (EIS) shall be calculated at 1% of all Army sales.

Remit ACT Fee to PEO EIS by corporate or cashier's check made payable to "Treasurer of the United States" notated with the following information:  
BPA FA8771-07-A-0304.  
SCP Fee Reimbursement

\*\*\*Checks must be accompanied by a transmittal letter (sample enclosed) that cites the applicable accounting data to ensure proper crediting of the payment.

Send check and transmittal letter to:  
Program Executive Office (PEO) Enterprise Information Systems (EIS)  
Assistant Program Manager (APM), Army Small Computer Program  
Attn: SFAE-PS-EI-SCP (Attn: Financial Support Group)  
Fort Monmouth, NJ 07703-5605

Email a copy of the check and letter to: [AMSEL-dsa-scp-CR@mail1.monmouth.army.mil](mailto:AMSEL-dsa-scp-CR@mail1.monmouth.army.mil)

## 2.2 DLA SALES

The amount of ACT Fee due DLA shall be calculated at 1% of all DLA sales.



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Attachment 4

Remit ACT Fee to the address provided below by corporate or cashier's check made payable to "Treasurer of the United States". No transmittal letter is required with submission of DLA fee checks.

Checks must include the following information to ensure proper crediting of the payment:  
BPA FA8771-07-A-0304  
DoD *DAR ESI SmartBUY* Enterprise Software Agreement  
Quarterly ACT Fee

Send check to:  
Defense Logistics Agency  
DES Acquisition Staff Directorate  
Attn: Connie House, DES-A  
8725 John J. Kingman Road, Room 1145  
Fort Belvoir, VA 22060-6220

Mail a copy of the check to:  
Defense Logistics Agency  
Attn: Susan Lizzi, J-654  
8725 John J. Kingman Road  
Fort Belvoir, VA 22060-6221

Or send via email to:  
Email: [Susan.Lizzi@dla.mil](mailto:Susan.Lizzi@dla.mil)

### 2.3 NAVY SALES:

The amount of ACT Fee due the Financial Management Office (FMO) shall be calculated at 1% of all Navy sales.

Remit ACT Fee to the Financial Management Office (FMO) by corporate or cashier's check made payable to "Treasurer of the United States". No transmittal letter is required with submission of Navy fee checks.

Checks must include the following information to ensure proper crediting of the payment:  
BPA FA8771-07-A-0304  
DoD *DAR ESI SmartBUY* Enterprise Software Agreement  
ACT Fee

If using overnight or express mail,  
send check to:  
SPAWAR Systems Center Charleston  
Attn: Elizabeth Vonasek  
Norfolk Office  
Code 846.2, Bldg. V53  
9456 Fourth Avenue  
Norfolk, VA 23511-2130

If using regular mail, send  
check to:  
SPAWARSSYSCEN Charleston  
Attn: Elizabeth Vonasek  
Norfolk Office  
Code 846.2, Bldg V53  
P.O. Box 1376  
Norfolk, VA 23501-1376

Email a copy of the FMO check to the SPM: [Linda.Greenwade@navy.mil](mailto:Linda.Greenwade@navy.mil)



FA8771-07-A-0304  
Attachment 4

## **2.4 GSA SALES**

The amount of ACT Fee due GSA shall be calculated at 1% of all Civilian agency sales.

Remit ACT Fee by corporate or cashier's check made payable to "Treasurer of the United States" notated with the following information:

BPA FA8771-07-A-0304

ESI-SW Fee Sharing

\*\*\*Checks must be accompanied by a transmittal letter (sample enclosed) that cites the applicable accounting data to ensure proper crediting of the payment.

Send check and transmittal letter to:

Mail a copy of the check and transmittal letter to:

GSA

Attn: Sharon Terango

SmartBUY Program Management Office

10304 Eaton Plan

Fairfax, VA 22030



BPA FA8771-07-A-0304  
Attachment 5

## **Attachment 5**

### **FY07 Fee Transmittal Letters**





BPA FA8771-07-A-0304  
Attachment 5

SPECTRUM SYSTEMS, INC.

(Date)

MEMORANDUM FOR DEFENSE FINANCE and ACCOUNTING SERVICE

DFAS-DE/ATDT/DEDE  
(Attn: Ms. Shanna Olinger)  
FOR: 3801-LI  
6760 East Irvington Place  
Denver, Colorado 80279

FROM: (Company Name)  
(Street Address)  
(City, State and Zip Code)

SUBJECT: Collection of Checks for **ESI SW – FY07 (CPEA00)** For BPA  
(Contract # \_\_\_\_\_)

1. This transmittal letter is to be used in lieu of a cash collection voucher (DD Form 1131).
2. Line of accounting to collect this check into is as follows:  
5773400 307 47MZ 4KT0SW 04 592RR CSN: 007999 72806F 97 667100  
FSR: 035480 PSR: 085647 DSR:  
MORD: F2XTKB6269M007

**NOTE: Please do not alter any of the information above.**

3. Direct questions to (Company POC, Phone Number).

(Signature)

1 Atch: Check # -----

Note: Also provide a copy of the check payable to 3801-LI and transmittal letter sent to DFAS, Denver to the following address:

HQ 754 ELSG/KABS  
Bldg 892  
490 East Moore Drive  
MAFB-Gunter Annex, AL 36114-3014

Email is an preferred means for forwarding copies to HQ 754 ELSG/KABS. Email address is: kabfinance@gunter.af.mil. Subject Line Format of e-mail should be:

Contract Number with hyphens, CCR or DOSR Month Year, Contract Name, and Contractor Name

Example: FA0000-00-A-0000, CCR June 2006, ESI, Vendor, Inc.



BPA FA8771-07-A-0304  
Attachment 5

Date:

MEMORANDUM FOR Army Small Computer Program  
PEO Enterprise Information Systems  
Assistant Project Manager, Army Small Computer Program  
SFAE-PS-EI-SCP (Attn: Financial Support Group)  
Fort Monmouth, NJ 07703-5605

From: (Company name):  
(POC for this transaction):  
(Street Address):  
(City, State, and Zip Code):

SUBJECT: Collection of Checks for (name of company and BPA/contract Number)-  
FY04-05, etc.

1. Collection of the check will include the following:

- a. Please make check payable to United States Treasury
- b. Mail original check to address below:

PEO Enterprise Information Systems  
Assist Project Manager, Army Small Computer Program  
SFAE-PS-EI-SCP (Attn: Financial Support Group)  
Fort Monmouth, NJ 07703-5605

2. Direct questions to: Margie Kirsch  
732.427.6613

3. Provide copies of this letter and check to:

[AMSEL-dsa-scp-CR@mail1.monmouth.army.mil](mailto:AMSEL-dsa-scp-CR@mail1.monmouth.army.mil)



BPA FA8771-07-A-0304  
Attachment 5

Date:

**MEMORANDUM FOR General Service Administration**

SmartBUY Program Management Office

Attn: *Sharon Terango*

10304 Eaton Place

Fairfax, VA 22030

From: (Company name):  
(POC for this transaction):  
(Street Address):  
(City, State, and Zip Code):

SUBJECT: Collection of Checks for (name of company and BPA/contract Number)- FY04-05, etc.

1. Collection of the check will include the following:
2. Please make check payable to General Services Administration
3. Mail original check to address below:

GSA  
SmartBUY Program Management Office  
Attn: *Sharon Terango (3A-08)*  
10304 Eaton Place  
Fairfax, VA 22030

4. . Direct questions to: *Sharon Terango*  
*703-306-6104*



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Atch 6 - FIPS Crypto Template

#### Confirmation of FIPS Validation

[SafeBoot Corporation SafeBoot Device Encryption version 5.0] is the following validated cryptographic module or incorporates the following validated module [SafeBoot Client 4.2 AES].

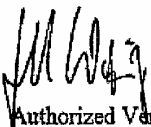
For this product, the module is operated only in the FIPS approved mode.

Current validation certificate [number 506] is located on NIST's website at [<http://csrc.nist.gov/cryptval/140-1/140cert/140cert506.pdf>].

The specific operating environment(s) within which this module or product was validated and may be used [are identified on the certificate as Windows 2000 Professional (service pack 2) and Windows XP Professional in single-user mode].


Although not tested and validated within them, this product or module is also installed without any modifications in the following operating systems or other product versions and thus the cryptography will operate correctly. This product will be submitted for validation of the above. [N/A].

This product or module has not been validated for and may not be used in operating systems or products other than as specifically identified above.

 GERHARD WATZINGER, CEO  
Authorized Vendor Representative Printed Name and Signature

April 23, 2007

Date

 ALAN GORNALL  
Authorized Agency Representative Printed Name and Signature

April 25 2007

Date



Spectrum Systems, Inc.  
GS-35F5192G  
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Atch 7 – Statement of Objectives

**Statement of Objectives  
For  
Data at Rest (DAR) Encryption**

**SIN 132-51 - INFORMATION TECHNOLOGY (IT) PROFESSIONAL SERVICES**

IT Professional Services under this SmartBUY Enterprise Software Agreement provide for implementation, maintenance, integration, or training services in direct support of a DAR encryption product.

All non-professional labor categories must be incidental to and used solely to support hardware, software and/or professional services, and cannot be purchased separately.

This SmartBUY ESA permits reselling of IT Professional Services only for the provision of implementation, maintenance, integration, or training services in direct support of a product. Under such circumstances the services must be performed by the publisher or manufacturer or one of their authorized agents.

**1. SCOPE**

- a. The prices, terms and conditions stated under Special Item Number (SIN) 132-51 Information Technology Professional Services apply exclusively to IT Services within the scope of the GSA Information Technology Schedule.
- b. The Contractor shall provide services at the Contractor's facility and/or at the ordering activity location, as agreed to by the Contractor and the ordering activity.

**2. PERFORMANCE INCENTIVES**

- a. Performance incentives may be agreed upon between the Contractor and the ordering activity on individual fixed price orders in accordance with this clause.
- b. The ordering activity must establish a maximum performance incentive price for these services and/or total solutions on individual orders.
- c. Incentives should be designed to relate results achieved by the contractor to specified targets. To the maximum extent practicable, ordering activities shall consider establishing incentives where performance is critical to the ordering activity's mission and incentives are likely to motivate the contractor. Incentives shall be based on objectively measurable tasks.

**3. ORDER**

- a. Agencies may use written orders, EDI orders, individual purchase orders, or task orders for ordering services under this blanket purchase agreement (BPA). All services and delivery shall be made and the contract terms and conditions shall continue in effect



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Atch 7 – Statement of Objectives

until the completion of the order. Orders for severable tasks which extend beyond the fiscal year for which funds are available shall include FAR 52.232-19 (Deviation – May 2003) Availability of Funds for the Next Fiscal Year. The purchase order shall specify the availability of funds and the period for which funds are available.

b. All task orders are subject to the terms and conditions of the Schedule contract. In the event of conflict between a task order and the contract, the contract will take precedence.

#### **4. PERFORMANCE OF SERVICES**

a. The Contractor shall commence performance of services on the date agreed to by the Contractor and the ordering activity.

b. The Contractor agrees to render services only during normal working hours, unless otherwise agreed to by the Contractor and the ordering activity.

c. The ordering activity should include the criteria for satisfactory completion for each task in the Statement of Work or Delivery Order. Services shall be completed in a good and workmanlike manner.

d. Any Contractor travel required in the performance of IT Services must comply with the Federal Travel Regulation or Joint Travel Regulations, as applicable, in effect on the date(s) the travel is performed. Established Federal Government per diem rates will apply to all Contractor travel. Contractors cannot use GSA city pair contracts.

#### **5. STOP-WORK ORDER (FAR 52.242-15) (AUG 1989)**

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

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of the Schedule contract.

(b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting





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Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if-

- (1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
  - (2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.
- (c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- (d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

## **6. INSPECTION OF SERVICES**

The Inspection of Services–Fixed Price (AUG 1996) (Deviation – May 2003) clause at FAR 52.246-4 applies to firm-fixed price orders placed under this BPA. The Inspection–Time-and-Materials and Labor-Hour (JAN 1986) (Deviation – May 2003) clause at FAR 52.246-6 applies to time-and-materials and labor-hour orders placed under this BPA.

## **7. RESPONSIBILITIES OF THE CONTRACTOR**

The Contractor shall comply with all laws, ordinances, and regulations (Federal, State, City, or otherwise) covering work of this character. If the end product of a task order is software, then FAR 52.227-14 (Deviation – May 2003) Rights in Data – General, may apply.

## **8. RESPONSIBILITIES OF THE ORDERING ACTIVITY**

Subject to security regulations, the ordering activity shall permit Contractor access to all facilities necessary to perform the requisite IT Services.

## **9. INDEPENDENT CONTRACTOR**

All IT Services performed by the Contractor under the terms of this contract shall be as an independent Contractor, and not as an agent or employee of the ordering activity.



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## **10. ORGANIZATIONAL CONFLICTS OF INTEREST**

### **a. Definitions.**

“Contractor” means the person, firm, unincorporated association, joint venture, partnership, or corporation that is a party to this contract.

“Contractor and its affiliates” and “Contractor or its affiliates” refers to the Contractor, its chief executives, directors, officers, subsidiaries, affiliates, subcontractors at any tier, and consultants and any joint venture involving the Contractor, any entity into or with which the Contractor subsequently merges or affiliates, or any other successor or assignee of the Contractor.

An “Organizational conflict of interest” exists when the nature of the work to be performed under a proposed ordering activity contract, without some restriction on ordering activities by the Contractor and its affiliates, may either (i) result in an unfair competitive advantage to the Contractor or its affiliates or (ii) impair the Contractor’s or its affiliates’ objectivity in performing contract work.

b. To avoid an organizational or financial conflict of interest and to avoid prejudicing the best interests of the ordering activity, ordering activities may place restrictions on the Contractors, its affiliates, chief executives, directors, subsidiaries and subcontractors at any tier when placing orders against schedule contracts. Such restrictions shall be consistent with FAR 9.505 and shall be designed to avoid, neutralize, or mitigate organizational conflicts of interest that might otherwise exist in situations related to individual orders placed against the schedule contract. Examples of situations, which may require restrictions, are provided at FAR 9.508.

## **11. INVOICES**

The Contractor, upon completion of the work ordered, shall submit invoices for IT services. Progress payments may be authorized by the ordering activity on individual orders if appropriate. Progress payments shall be based upon completion of defined milestones or interim products. Invoices shall be submitted monthly for recurring services performed during the preceding month.

## **12. PAYMENTS**

For firm-fixed price orders the ordering activity shall pay the Contractor, upon submission of proper invoices or vouchers, the prices stipulated for services rendered and accepted. Progress payments shall be made only when authorized by the order. For time-and-materials orders, the Payments under Time-and-Materials and Labor-Hour Contracts at FAR 52.232-7 (DEC 2002), (Alternate II – Feb 2002) (Deviation – May 2003) applies to time-and-materials orders placed under this contract. For labor-hour orders, the Payment under Time-and-Materials and Labor-Hour Contracts at FAR



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52.232-7 (DEC 2002), (Alternate II – Feb 2002) (Deviation – May 2003)) applies to labor-hour orders placed under this contract.

### **13. RESUMES**

Resumes shall be provided to the BPA Contracting Officer or the user ordering activity upon request.

### **14. INCIDENTAL SUPPORT COSTS**

Incidental support costs are available outside the scope of this contract. The costs will be negotiated separately with the ordering activity in accordance with the guidelines set forth in the FAR.

### **15. APPROVAL OF SUBCONTRACTS**

The ordering activity may require that the Contractor receive, from the ordering activity's Contracting Officer, written consent before placing any subcontract for furnishing any of the work called for in a task order.

### **16. DESCRIPTION OF IT SERVICES AND PRICING**

As is noted in “2) Value Added Services Section of our Attachment 1, Worksheet 1, SmartBUY ESA Discounts, Concessions”, the Spectrum Team is offering the following services on orders placed for the non-cumulative quantities listed below:

- 1-500 Licenses includes 4 hours of SafeBoot Remote Configuration Services.
- 501-1,000 Licenses includes 8 hours of SafeBoot Remote Configuration Services.
- 1,001 – 2,501 Licenses includes one (1) day of onsite SafeBoot Configuration Services.
- 2,501 – 5,000 Licenses includes two (2) days of onsite SafeBoot Configuration Services.
- 5,001 – 10,000 Licenses includes three (3) days of onsite SafeBoot Configuration Services.
- 10,001 – 20,000 Licenses includes two (2) days of onsite SafeBoot Assessment Services, three (3) days of SafeBoot onsite Certification Services, and three (3) days of onsite Configuration Services (Gold Image Build) and .5 dedicated remote Level 1 SafeBoot FTE.



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- 20,001 – 40,000 Licenses includes two (2) days of onsite SafeBoot Assessment Services, three (3) days of SafeBoot onsite Certification Services, and three (3) days of onsite Configuration Services (Gold Image Build) and one (1) dedicated remote Level 1 SafeBoot FTE.

For this BPA, Spectrum proposes that any additional support services, whether provided by the Manufacturer, SafeBoot, or Spectrum Systems, Inc. will be ordered using Spectrum's already established GSA Labor Categories as an attachment.

### **Implementation Support & Training**

SafeBoot and Spectrum can provide a wealth of implementation and training services customized to meet the Air Force's needs. Our team of certified technicians guide each administrator through the implementation process, providing project management and hands-on technical expertise.

Individualized training is provided and is designed to meet individual client needs. Our programs range from training helpdesk personnel and administrators - all the way through SafeBoot's® "Training the Trainers" modulated program. Our technical team's goal is to ensure your success.

### **IT Security Consulting**

The Spectrum and SafeBoot® teams of experienced IT security professionals helps to establish and maintain your corporate security requirements. Our technicians and visionaries guide your organization through the myriad of security vulnerabilities in order to enable you to defend against attacks, reduce risk, and comply with corporate, government, and industry security requirements.



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Atch 8 – Contractor Team Arrangements

### **Attachment 8 – Contractor Team Arrangements**

While Spectrum Systems does not anticipate teaming with anyone other than the manufacturer, Safeboot, to provide the implementation services, if such a situation does arise, Spectrum will maintain the necessary teaming flexibility throughout the contract's life to ensure the proper application, integration, and comprehensive use of all supplied products, resources, and technologies.







January 25, 2008

Dale N. Reif, Buyer  
Purchasing Operations, IT Division  
Department of Management and Budget  
Mason Bldg, 2nd Floor  
PO Box 30026  
Lansing, MI 48909

Dear Mr. Reif:

As indicated in the Statement of Work, Spectrum Systems, Inc. hereby requests that Safeboot, LLC; McAfee, Inc. and their affiliates be approved subcontractors on State of Michigan Purchase Order Number 084N8200412. As the manufacturer of the software, the Safeboot technical staff is qualified to perform the requested installation, configuration, and training that is included in the packages offered to the State of Michigan.

Please indicate your approval of Safeboot, LLC; McAfee, Inc. and their affiliates by signing, dating, and returning a copy of this letter to me. If you have any questions, please feel free to call me at 703-591-7400, Ext. 203.

We look forward to working with the State of Michigan to provide critical data encryption technology to all state agencies that require it.

Sincerely,

Beverly Dickerson  
Director of Contracts

Approved by:	_____
	(signature)
Printed Name:	_____
Date:	_____