

ORDER FOR SUPPLIES OR SERVICES										PAGE 1 OF 13	
1. CONTRACT/PURCH. ORDER/ AGREEMENT NO. N6600118A0005			2. DELIVERY ORDER/ CALL NO.		3. DATE OF ORDER/CALL 2017 Dec 21		4. REQ./ PURCH. REQUEST NO.			5. PRIORITY	
6. ISSUED BY SPAWAR SYSTEMS CENTER PACIFIC SHANE MAHELONA, CODE 22550 SHANE.MAHELONA@NAVY.MIL 53560 HULL STREET SAN DIEGO CA 92152-5001			CODE N66001		7. ADMINISTERED BY SEE ITEM 6			CODE		8. DELIVERY FOB <input type="checkbox"/> DEST <input checked="" type="checkbox"/> OTHER (See Schedule if other)	
9. CONTRACTOR CARASOFT TECHNOLOGY CORP. DUNS 088365767 1860 MICHAEL FARADAY DR, SUITE 100 RESTON VA 20190-5328			CODE 4VRA5		FACILITY		10. DELIVER TO FOB POINT BY (Date) SEE SCHEDULE			11. MARK IF BUSINESS IS <input type="checkbox"/> SMALL <input type="checkbox"/> SMALL DISADVANTAGED <input type="checkbox"/> WOMEN-OWNED	
							12. DISCOUNT TERMS			13. MAIL INVOICES TO THE ADDRESS IN BLOCK SEE INDIVIDUAL ORDERS	
14. SHIP TO SEE SCHEDULE			CODE		15. PAYMENT WILL BE MADE BY SEE SCHEDULE			CODE		MARK ALL PACKAGES AND PAPERS WITH IDENTIFICATION NUMBERS IN BLOCKS 1 AND 2.	
16. TYPE OF ORDER	DELIVERY/ CALL	This delivery order/call is issued on another Govt. agency or in accordance with and subject to terms and conditions of above numbered contract.									
	PURCHASE	Reference your quote dated Furnish the following on terms specified herein. REF:									
ACCEPTANCE. THE CONTRACTOR HEREBY ACCEPTS THE OFFER REPRESENTED BY THE NUMBERED PURCHASE ORDER AS IT MAY PREVIOUSLY HAVE BEEN OR IS NOW MODIFIED, SUBJECT TO ALL OF THE TERMS AND CONDITIONS SET FORTH, AND AGREES TO PERFORM THE SAME.											
NAME OF CONTRACTOR			SIGNATURE			TYPED NAME AND TITLE			DATE SIGNED (YYYYMMDD)		
<input type="checkbox"/> If this box is marked, supplier must sign Acceptance and return the following number of copies:											
17. ACCOUNTING AND APPROPRIATION DATA/ LOCAL USE											
18. ITEM NO.		19. SCHEDULE OF SUPPLIES/ SERVICES			20. QUANTITY ORDERED/ ACCEPTED*		21. UNIT	22. UNIT PRICE		23. AMOUNT	
		SEE SCHEDULE									
* If quantity accepted by the Government is same as quantity ordered, indicate by X. If different, enter actual quantity accepted below quantity ordered and encircle.			24. UNITED STATES OF AMERICA TEL: 619-553-5587 EMAIL: stacie.sedgwick@navy.mil BY: Stacie Sedgwick			<i>Stacie Sedgwick</i> CONTRACTING / ORDERING OFFICER			25. TOTAL		
26. QUANTITY IN COLUMN 20 HAS BEEN <input type="checkbox"/> INSPECTED <input type="checkbox"/> RECEIVED <input type="checkbox"/> ACCEPTED, AND CONFORMS TO THE CONTRACT EXCEPT AS NOTED DATE SIGNATURE OF AUTHORIZED GOVT. REP.			27. SHIP NO. <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL		28. DO VOUCHER NO.		30. INITIALS		29. DIFFERENCES		
36. I certify this account is correct and proper for payment. DATE SIGNATURE AND TITLE OF CERTIFYING OFFICER			31. PAYMENT <input type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL		32. PAID BY		33. AMOUNT VERIFIED CORRECT FOR		34. CHECK NUMBER		
									35. BILL OF LADING NO.		
37. RECEIVED AT		38. RECEIVED BY		39. DATE RECEIVED (YYYYMMDD)		40. TOTAL CONTAINERS		41. S/R ACCOUNT NO.		42. S/R VOUCHER NO.	

Section A - Solicitation/Contract Form

BPA TERMS AND CONDITIONS**DoD ESI BPA TERMS AND CONDITIONS****1. Introduction**1.1. Federal Acquisition Streamlining Act

1.1.1. In the spirit of the Federal Acquisition Streamlining Act, the Department of Defense (DoD), under the DoD Enterprise Software Initiative (ESI) (referred to hereafter as the “Government” or “DoD”) and Carahsoft Technology, Corp. (the “Reseller” or “Contractor”) enter into this Blanket Purchase Agreement, which includes all Attachments (collectively referred to as the “BPA” or “Agreement”) as of the Effective Date identified on the SF 1449.

1.2. GSA FSS Contract

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

1.2.2. This Agreement is entered to reduce the administrative costs of acquiring commercial products and services from the GSAFSS 70 Special Item Number (SIN) 132-8, 132-33 and 132- 50 on GSA Schedule contract GS-35F-0119F (the “FSS Contract”).

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

1.3. DoD ESI

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

1.4. Scope of Use

1.4.1. This Agreement is to provide the most current commercially available ForeScout brand name software licenses, proprietary appliances, and maintenance support to the DoD, Intelligence Community, and U.S. Coast Guard via licenses and software maintenance/support. Software offered through this DoD ESI ForeScout Agreement will meet the functional requirements and capabilities including, but not limited to, the following categories: ForeScout Integration Modules, CounterAct, ForeScout Training and Solution Support, and ActiveCare Support Services.

2. Obligation2.1. Extent of Obligation

2.1.1. The Government estimates, but does not guarantee, that the volume of purchases through this Agreement will be \$74.5 million. The Government is obligated only to the extent of authorized purchases actually made under this Agreement. There is no minimum order guarantee.

2.2. Funds Obligation

2.2.1. This Agreement does not obligate any funds. Funds will only be obligated on each delivery order.

3. Authorized Users3.1. DoD or Agency

3.1.1. This BPA is open for ordering by the “DoD or Agencies” on a world-wide basis. “DoD or Agency” is defined by the 48 Code of Federal Regulations, Section 202.101, to include the Intelligence Community and the U.S. Coast Guard.

3.2. GSA / Other U.S. Government Ordering Organizations

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

3.3. Government Contractors

3.3.1. Government contractors performing work for the DoD may place Orders under this Agreement on behalf of and for the benefit of the DoD if authorized by their cognizant Contracting Officer in accordance with the requirements of Federal Acquisition Regulation (FAR) 51 and/or Defense Federal Acquisition Regulation Supplement (DFARS) 251, Use of Government Sources by Contractors, as appropriate.

4. Term and Survival

4.1. Term

4.1.1. The ordering period of this Agreement shall commence on its Effective Date, and shall continue in force for five (5) years, unless otherwise terminated as provided herein or the GSA FSS contract from which this BPA was issued expires.

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

(a) The Ordering Office determines the initial Order with options was issued during the underlying GSA FSS contract's effective period, provided the contractor shall not be required to make any deliveries including options, 60 months following the expiration of the GSA FSS contract's effective period, and

(b) The Ordering Office satisfies all other applicable regulations for exercise of options.

4.2. Annual Review for Best Value

4.2.1. This Agreement will be reviewed annually to ensure it still represents the "best value."

4.3. Survival

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

5. Organization of this Agreement

5.1. BPA Structure

5.1.1. This BPA is organized in two major segments:

5.1.1.1. The general terms and conditions

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

5.2. Order of Precedence

5.2.1. The Order of Precedence for resolving any inconsistency between this Agreement and the GSA contract terms shall be as specified in the GSA Contract's Terms and Conditions for Commercial Items, FAR 52.212-4.

5.2.2. The contract terms and conditions of FAR 52.212-4, as required by Federal law, shall prevail over any terms of the commercial license.

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

5.2.4. All Orders placed against this Agreement shall incorporate the terms and conditions of this Agreement, including all Attachments. In the event of a conflict between an ordering document (including the Publisher's license, support, maintenance, or services agreements) and this Agreement, the Agreement and its Attachments shall take precedence over the Order

unless the parties specifically agree in writing that a term or condition of an Order has precedence over the corresponding term or condition in the general terms and conditions of the Agreement or its Attachments.

5.3. Glossary

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

5.4. Attachments List

The Attachments are set forth as follows:

Attachment	Title
#1	Applicable FAR and DFARS Clauses and Provisions
#2	BPA Product and Price List
#3	ForeScout End User License Agreement (EULA) DoD ESI Amendment
#4	ACT Fee Payment Instructions
#5	DoD ESI Quarterly Sales Report Format

6. **Product and Service Offerings**

6.1. Catalog

6.1.1. The Reseller shall make available to all authorized users of this Agreement the products and services contained in Attachment #2.

6.2. EULA Applicable to Products and Services Offered Under this BPA

6.2.1. The DoD ESI and ForeScout Technologies, Inc. entered into the DoD ESI Amendment (Attachment #3), which shall apply to all Orders placed under this BPA and are incorporated as binding licensing terms and conditions.

6.3. Technology Refreshment/Products and Services Improvement

6.3.1. The Reseller shall inform the DoD of changes to the products offered under this Agreement as they become commercially available. Quotes shall be submitted within thirty (30) days by the Reseller and include a description of the products and/or services, an electronic copy of the pricing tables, technical literature that describes the products and/or services, and evidence of inclusion on GSA schedule. Discounts shall be at the same or greater discount level as provided under the original BPA product prices.

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

6.3.3. Changes quoted by the Reseller shall become effective only by written acceptance by both the Reseller and the Government.

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

7. Pricing Terms

7.1. Base Pricing

- 7.1.1. Prices for commercial products and technical maintenance and support are specified in Attachment #2. The Reseller shall not charge prices in excess of those listed in this Agreement.
- 7.1.2. For Products on the Price List, prices shall not escalate and are not subject to upward adjustment during the term of this Agreement.
- 7.1.3. The prices in Attachment #2 will be reviewed annually or as required to determine whether a reduction is appropriate in accordance with section 7.2. Reseller shall include a 2.0% Acquisition, Contracting, and Technical (ACT) Fee in Reseller's prices for all products published in Attachment #2. The Reseller shall be responsible for the payment of all fees that are included in the product pricing (i.e. GSA IFF and ACT Fee), as calculated on the customer orders in accordance with Attachment #4.

7.2. Additional Price and Discount Terms

- 7.2.1. The Government may secure additional discounts at the time of placing an Order. Spot discounts are authorized and encouraged.
- 7.2.2. Additional price reductions may be negotiated for individual orders. DoD customers are encouraged to consolidate their purchases of ForeScout products prior to releasing requests for quotes under a DoD ESI Agreement.

7.3. SmartBUY Program Extension

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

8. Product and Pricing Data Submission

8.1. Data Submission Format

- 8.1.1. Reseller shall submit and keep current all products, service and pricing data in the format described in Attachment #2 (as amended from time to time) for publication in all web and other methods for private display and access.
- 8.1.2. Changes to Reseller's products or prices shall only be effective upon receipt of written approval from the BPA Procuring Contracting Officer ("PCO").

8.2. UNSPSC

- 8.2.1. The United Nations Standard Products and Services Code (UNSPSC) is a required field in the submission format required by DoD for products and prices. 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>.

9. Ordering

9.1. Orders

- 9.1.1. The scope of this effort is worldwide. Delivery requirements will be stipulated on Orders; ordering via this BPA is decentralized. Each ordering activity is responsible for managing its obligations under this agreement. While the agreement is centrally managed, resolution of

ordering and/or funding issues is the responsibility of the contracting office that issued the Order. Orders are prepared by a warranted Government Contracting Officer at each ordering activity in accordance with the terms and conditions of this BPA, the GSA Schedule, and all applicable regulations and statutes. A prime contractor authorized by a cognizant Government Contracting Officer in accordance with FAR Part 51 may place Orders against this agreement. Orders may be placed by Electronic Data Interchange (EDI), facsimile, or on an authorized form such as a BPA Call, Standard Form (SF) 1449, DoD (DD) Form 1155 or Government Purchase Card.

- 9.1.2. Delivery Schedule. Deliveries will be made to the address specified on the Orders issued against the BPA.
- 9.1.3. Reseller shall assist Government ordering offices with assuring accuracy of the order data. This includes rejecting any order that do not follow specified DoD ordering requirements. In the event of an error the Government will have 60 days after the order is processed to identify discrepancies and submit the changes to the Reseller and/or ForeScout for correction. Upon correction, Reseller shall work with ForeScout to ensure ordered licenses and associated maintenance support is appropriately recorded as it relates to the error.

9.2. Applicability of FAR and DFARS Provisions

- 9.2.1. Orders issued against this BPA are subject to the FAR clauses included in the underlying GSA Schedule.
- 9.2.2. Orders issued against this BPA are subject to the DFARS clauses as indicated in Attachment #1.
- 9.2.3. The DFARS clauses listed in Attachment #1 are those in effect as of the effective date of this BPA. Ordering Offices are responsible for incorporating the most current version of the applicable DFARS clauses in the Delivery Order as appropriate.
- 9.2.4. The Ordering Offices should consider the requirements of the FAR supplement of the end user component (local requirements), as they apply to commercial item acquisition and use of GSA Schedules, in determining what additional clauses may be required for incorporation in the Delivery Order issued by the Ordering Office.

9.3. Web Sites and Electronic Ordering

- 9.3.1. This BPA will be posted to the DoD ESI website as part of the ESI program. The web site can be viewed at <http://www.esi.mil> and is publicly accessible. The Government may also post this Agreement to other federal Government or DoD web sites, some of which may be publicly accessible.
- 9.3.2. 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 purchase card, and Contractor electronic ordering capability to create a paper-less ordering, invoicing, and payment process. During the term of the BPA, the Reseller shall participate to achieve this objective.

9.3.2.1. The Reseller shall ensure that the data and information relating to the Reseller's products, technical specifications, services, prices and other information related to this BPA is current, accurate, and complete.

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

9.3.2.3. The Reseller should provide electronic-commerce (EC)/Electronic Data Interchange (EDI) capabilities and accept and respond to secure on-line orders and customer requests consistent with the terms of this acquisition vehicle where applicable.

9.3.2.4. The Reseller shall use its commercially reasonable business efforts to adapt its business processes as technical requirements, environment and architecture evolve.

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

9.4. BPA Order Suspension

9.4.1. There may be occasions where the Government may suspend ordering (by CLIN up to and including the entire BPA.) If a suspension is announced, the Reseller shall adhere to this suspension by not accepting/processing delivery orders for the suspended item(s).

10. Reseller BPA Management Obligations

10.1. Report of Sales

10.1.1. The Reseller shall provide a Quarterly Sales Report to the Software Product Manager (SPM) and the PCO in electronic format within fifteen (15) days following completion of the quarterly reporting period, or as otherwise agreed to between the PCO and the Reseller. The report shall be submitted in the standard format shown in Attachment #5. Sales reports are required even in those instances where no sales are made. The SPM or PCO shall provide written approval of each report to the Reseller. At the end of each calendar quarter, the written approval provided to the Reseller will be accompanied by a request to remit the ACT fees in accordance with Attachment #4. Orders issued under this BPA shall be included on the Quarterly Sales Report.

10.2. Fees and Payments

10.2.1. The Reseller shall pay the ACT fees as described in Attachment #4 within 30 days after notification of approval from the applicable SPM or PCO for the sales report required pursuant to Section 10.1.

10.3. Centralized Administration

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

10.4. Records

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

10.5. Program Management Reviews (PMR)

10.5.1. The Reseller shall participate in regular reviews of the progress of the Agreement. Reviews may be held at least twice yearly as scheduled by the SPM. During these reviews the Reseller shall report on status of BPA sales, sales leakage (as required by Section 10.6) , marketing and any outstanding issues concerning the BPA, among other things. PMR agenda and presentation format shall be provided by the SPM to Reseller prior to each PMR. Travel expenses are the responsibility of the Reseller.

10.6. Sales Leakage Prevention

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

10.6.2. The Reseller in collaboration with the Publisher shall establish a process to regularly audit sales to Government buyers, determine where sales outside the BPA are occurring, and take

appropriate action to direct further sales through the BPA. Results of these audits will be presented as an agenda item during PMRs.

- 10.6.3. The Reseller in collaboration with the Publisher shall direct potential customers who are supporting the DoD to utilize DoD ESI for their purchases. Only customers within the scope of this BPA (Section 1.4) may order from this product catalog.

10.7. Marketing and Promotion

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

- 10.7.2. The Reseller may obtain standardized ESI marketing materials by requesting access from the SPM.

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

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

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

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

11. BPA On-Ramp/Off-Ramp Procedures

11.1. BPA On-Ramp procedures

- 11.1.1. The Government reserves the right to reopen competition at any time during the term of the Agreement. The Government will review the need for additional Resellers as needed. When an on-ramp is used, the Government will advertise the reopening of the competition on GSA ebuy, and awardees shall meet the criteria established in the initial solicitation. The evaluation and selection of awardees for any on-ramp will be exactly the same as the evaluation and award criteria used for the initial BPA awards. Any new awardees will compete with any existing or remaining Resellers for all delivery orders.

11.2. BPA Off-ramp procedures

- 11.2.1. To ensure success of this Agreement, each GSA Schedule Reseller is required to participate in the BPA Ordering process, in accordance with Section 9 (Ordering), by submitting quotes in response to Requests for Quotes (RFQs) for which the GSA Schedule Reseller has a reasonable chance for award, and to promptly improve performance when it does not meet the terms of the contract or orders issued thereunder. If a GSA Schedule Reseller does not meet these expectations, the Government, at its discretion, may "off-ramp" the Reseller by one of the following means:
- (a) Permitting such Reseller's BPA to expire; or
 - (b) Communicate a cease and desist of all ordering under the respective BPA.
- 11.2.2. If at any point during the period of performance the Reseller decides that it no longer will submit RFQs or to participate in this DoD ESI BPA Agreement, the Reseller may submit a request to the Contracting Officer. If the PCO accepts the Reseller's request, the PCO may at his or her discretion, permit the Reseller to off-ramp by one of the following means in accordance with Section 11.2.1. If an "off-ramped" Reseller is currently under contract to

perform under any Order, the Reseller will be required to continue to perform under the terms of the specific Order. This provision is independent of any other action permitted under the contract terms and conditions.

12. Indemnity

12.1. Indemnification for Harmful Conduct

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

12.2. Indemnification

12.2.1. The Anti-Deficiency Act prohibits the DoD from agreeing to indemnity provisions of undetermined potential. The DoD does agree to pay for any loss, liability, or expense that arises out of or relates to the DoD's acts or omissions with respect to its obligations hereunder, wherein a final determination of liability on the part of DoD is established by a court of law or where settlement has been agreed to by the DoD. This provision shall not be construed to limit the DoD's rights, claims or defenses which arise as a matter of law or pursuant to any other provision of the Agreement. This provision shall not be construed to limit the sovereign immunity of the DoD.

13. Personal Data and Personally Identifiable Information (PII)

13.1. Compliance with Privacy Act

13.1.1. Contractor must comply with the Personally Identifiable Information requirements as set forth in the Privacy Act of 1974, Public Law 93-579, as amended, including all policies and directives issued therein including, for example, DoD Directive 5400-11, DoD Program dated May 8, 2007, as may also be amended from time to time or superseded.

14. Termination

14.1. Effect of Termination

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

14.2. Surviving Provisions

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

15. Relationship of the Parties

15.1. Independent Contractors

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

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

16. General Provisions

16.1. Notices

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

16.2. Reference to Days

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

16.3. Severability

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

16.4. Federal Appropriations Law

16.4.1. All Orders under this agreement are required to comply with Federal Appropriations Law to include Purpose, Time, and Amount; the Anti-Deficiency Act; the Misappropriation Act; and the Bona Fide Need Rule (law).

16.5. Waiver

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

16.6. Dispute Resolution

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

16.7. Entire Agreement

16.7.1. This Agreement, together with all Attachments, constitutes the entire agreement between DoD and Reseller and supersedes all prior or contemporaneous communications, representations, and agreements, whether oral or written, regarding the subject matter of this Agreement. No modifications of, or amendments to, the terms of this Agreement shall be valid unless in writing and signed by an authorized representative of each party.

Appendix A

Glossary

All definitions are contained in the EULA and are applicable to this Agreement.

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

Licensee: means "DoD or Agency" as defined by the 48 Code of Federal Regulations, section 202.101 to include the 48 Intelligence Community, and the U.S. Coast Guard.

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

Product: means the Hardware and the Software that Licensee has ordered, and ForeScout has agreed to provide, as indicated on the applicable Order.

FAR/DFARS CLAUSES/PROVISIONS

ATTACHMENT 1: FAR AND DFARS CLAUSES AND PROVISIONS

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 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 order issued by the Ordering Office.

This BPA incorporates one or more provisions and clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Procurement Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this address:

<http://www.acq.osd.mil/dpap/dars/dfars/index.htm>

<http://acquisition.gov/comp/far/index.html>

<http://farsite.hill.af.mil/>

52.204-13	System for Award Management Maintenance (JUL 2013)
52.232-37	Multiple Payment Arrangements (MAY 1999)
252.203-7000	Requirements Relating to Compensation of Former DoD Officials (SEP 2011)
252.203-7005	Representation Relating to Compensation of Former DoD Officials (NOV 2011)
252.211-7003	Item Unique Identification and Valuation (MAR 2016)
252.215-7007	Notice of Intent to Resolicit (JUN 2012)
252.215-7008	Only One Offer (OCT 2013)
252.223-7008	Prohibition of Hexavalent Chromium (JUN 2013)
252.226-7001	Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns (Sep 2004)
252.227-7015	Technical Data—Commercial Items (FEB 2014)
252.227-7037	Validation of Restrictive Markings on Technical Data (SEP 2016)
252.232-7009	Mandatory Payment by Government-wide Commercial Purchase Card (DEC 2006)
252.232-7010	Levies on Contract Payments (DEC 2006)
252.239-7018	Supply Chain Risk (OCT 2015)
252.239-7017	Notice of Supply Chain Risk (NOV 2013)
252.243-7002	Requests for Equitable Adjustment (DEC 2012)

- 252.244-7000 Subcontracts for Commercial Items (JUN 2013)
- 252.244-7001 Contractor Purchasing System Administration – Alternate I (MAY 2014)
- 252.246-7007 Contractor Counterfeit Electronic Part Avoidance and Detection System (AUG 2016)
- 252.246-7008 Sources of Electronic Parts (OCT 2016)

Section B - Supplies or Services and Prices

BPA Master Dollar Limit: \$74,500,000.00

BPA Call Limit: \$50,000,000.00

Period of Performance: 21-Dec-2017 to 20-Dec-2022

FSC Codes:

7030