

SMS SmartBUY SAIR BPA Program

Terms and Conditions

A. TERMS AND CONDITIONS

1. Pursuant to GSA Contract Number [GS-35F-0538T](#), [SMS Data Products Group, Inc.](#), agrees to the following terms of a BPA with the SmartBUY PMO. All orders placed against this BPA are subject to the terms and conditions of the FSS Contract. The products and services available under this BPA are set forth in Attachment A. License terms and conditions applicable to products acquired under this BPA are defined in the SMS Data Products Group, Inc. License Agreement, included as Attachment B. 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.
2. **Extent of Obligation.** The Government estimates, but does not guarantee, that the dollar amount of purchases through this agreement, over its entire period of performance, will be \$20,000,000.00. 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.** In accordance with FAR 8.405-3(c), this BPA shall not exceed five years from the award effective date (Face Page, Block 31c). This BPA will be reviewed annually to ensure that it still represents a "best value".
5. **Pricing Terms.** Attachment A provides unit prices as explained below. Prices shall not escalate, and Attachment A is not subject to upward adjustment during the term of the BPA. Spot discounting is encouraged. The prices will be reviewed annually, or as required to determine whether a reduction is appropriate in accordance with the price reduction provisions of the agreement. A 2.0% Acquisition, Contracting, and Technical (ACT) Fee shall be included in the prices. The contractor shall be responsible for the payment of all fees that are included in the product pricing (i.e. GSA, ACT), as calculated on the customer orders, in accordance with Attachment D.
6. **Discount Terms and Conditions.** The products, services, and maintenance available under this BPA, including applicable discounts, are delineated on Attachment A.
7. **Out-Year Prices.** The products, services, and maintenance available under this BPA, including applicable discounts, are delineated on Attachment A.
8. **Price Reduction.**
 - 8.1 **Most Favored Customer Prices.** The prices under this BPA shall be at least as low as the prices that [SMS Data Products Group, Inc.](#) has under any other contract instrument under like terms and conditions. If at any time the prices under any other contract instrument become lower than the prices in this BPA, this BPA will be modified to include the lower prices.
 - 8.2 **SmartBUY Transition.** In the event that a federal agency has a current non-SmartBUY agreement for the supplies and services under the SmartBUY agreement, they shall have the right to acquire licenses and support under the SmartBUY agreement after expiration of the current term (prior to exercising the next annual option, if applicable).
9. **License Agreement.** Notwithstanding any provision to the contrary, licenses are transferable within the authorized users as stated in paragraph B.1. (Example: Software licenses available for purchase under this BPA are delineated on Attachment A and are subject to the licensing provisions and the terms of the

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GSA Contract. 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.)

- 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 GSA/FAS/SmartBUY PMO and the DoD/ESI are 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 SMS Data Products Group, Inc., its Successors and assigns. The software and agreement terms and conditions as covered under this agreement shall survive this agreement notwithstanding the acquisition or merger of SMS Data Products Group, Inc. 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.
- 10. Media.** This software is currently available on hard copy media. Software can, also, be downloaded from <http://support.mcafee.com>. Upon Credit Card or Purchase Order Approval, the end-users will be sent an email confirmation and their SMS Data Products Group, Inc. Customer ID (CID) will be validated for download capability. The end-user can go to <http://support.mcafee.com> and enter their valid CID for download of the Software products.
- 11. Support and Maintenance.** Support and Maintenance available under this BPA is delineated on Attachment A, under Special Item Number (SIN) 132-34.
- 12. Professional Services.** Professional Services are available under this BPA are delineated on Attachment A, under Special Item Number (SIN) 132-51.
- 13. On-Site Training.** On-Site Training is not available under this BPA.
- 14. Technology Improvement.** The Government may solicit and the BPA 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 70. Discounts shall be at the same or greater discount level as the original BPA product prices.
- 15. Substitution and Technology Refreshment.** If at any time during the life of this BPA, the original manufacturer of the equipment (includes software, hardware and firmware) schedules the products for discontinuation, improvement and/or replacement, the BPA holder shall provide a proposal to include the new or revised products on the BPA under the appropriate line items. Proposed prices for new or revised products shall be constructed in accordance with paragraph 8 of this BPA for most favored prices. Discounts shall be at the same or greater discount level as the original BPA product prices. Proposals shall be submitted to the Contracting Officer within seven (7) days of the BPA holder's awareness of the OEM's intent. Improvement of product includes new releases, updates, upgrades including additional features and functionality, and successor products.