



All using Agencies of the Commonwealth, Participating Political Subdivision, Authorities, Private Colleges and Universities

Your SAP Vendor Number with us: 506690

**Supplier Name/Address:**

E-BUILDER INC  
1800 NW 69TH AVE STE 201  
PLANTATION FL 33313-4583 US

Supplier Phone Number: 954-513-3105

**Contract Name:**

DGS Capitol Programs Trimble Ebuilder PA

Solicitation No.: Issuance Date:

Supplier Bid or Proposal No. (if applicable): Solicitation Submission Date:

This contract is comprised of: The above referenced Solicitation, the Supplier's Bid or Proposal, and any documents attached to this Contract or incorporated by reference.

Item	Material/Service Desc	Qty	UOM	Price	Per Unit	Total
1	E-Builder Product	0.000	Each	0.00	1	0.00

**General Requirements for all Items:**

**Header Text**

This contract is the result of the negotiated participating addendum between The Department of General Services and E-Builder for the purchase of Construction Management Software and related services as outlined in the contract documents attached and under the Contractors Federal supply contract No. GS-35F-408AA

No further information for this Contract

**Information:**

**Total Amount:**

2,000,000.00

Currency: USD

Supplier's Signature \_\_\_\_\_

Title \_\_\_\_\_

Printed Name \_\_\_\_\_

Date \_\_\_\_\_

**PARTICIPATING ADDENDUM FOR  
CONSTRUCTION PROGRAM MANGAGEMENT SOFWARE**

This participating addendum for construction program management software between the Commonwealth of Pennsylvania (“Commonwealth”), acting through the Department of General Services (“Agency”), with its principal offices located at 515 North Office Building, Harrisburg, Pennsylvania 17125-0001, and e-Builder Inc. (“Contractor”), with its principal offices located at 13450 W. Sunrise Blvd, Suite 600, Sunrise, Florida 33323-2946.

The Commonwealth in entering this participating addendum with the Contractor in response to a need for construction program management software. The Commonwealth has the authority under Sections 1902 and 1908 of the Commonwealth Procurement Code, 62 Pa. C.S. §§ 1902, 1908, to undertake this type of contractual arrangement.

The Commonwealth has determined that the Contractor’s e-Builder Enterprise software meets the needs of the Agency for construction program management. The Contractor, under its General Services Administration Federal Supply Contract, provides the e-Builder Enterprise software and related integration and maintenance services. The Commonwealth and the Contractor have agreed to enter into this participating addendum to obtain the e-Builder Enterprise software and related services, as needed, available under Contractor’s Federal Supply Contract No. GS-35F-408AA.

The parties, intending to be legally bound, agree as follows:

1. Order of Precedence. This contract is comprised of the following documents, which are listed in the order of precedence:
  - a. this participating addendum;
  - b. the IT Contract Terms and Conditions, set forth in Exhibit A
  - c. Requirements for Non-Commonwealth Hosted Applications/Services, set forth in Exhibit B;
  - d. the Contractor’s quotation (Order Form) as set forth in the Exhibit C; and
  - e. the Contractor’s General Services Administration Multiple Award Schedule Contract No. GS-35F-408AA (Federal Supply Contract) and the pricing set forth therein, set forth in Exhibit D;
  - f. the General Services Administration Contract Clause Document for the Federal Supply Contract, set forth in Exhibit E.
2. Effective Date and Term: This participating addendum will become effective on the date the Commonwealth sends a copy of a fully-executed and approved participating

addendum. The participating addendum will terminate or expire upon the earlier of (a) expiration or termination of the Federal Supply Contract, or (2) termination of this addendum in accordance with the terms of the Federal Supply Contract. If the Federal Supply Contract is renewed or extended, this participating addendum will automatically renew or extend for a term consistent with the term of the Federal Supply Contract.

3. Services. The Contractor shall provide the e-Builder Enterprise GSA Bundle as set forth in Exhibit C. Pricing will be updated annually to match published pricing on the Federal Supply Contract. Any updated pricing will be reflected on an Order, as defined in Exhibit C, and incorporated into a purchase order(s) issued against this participating addendum. Purchase orders may be issued for a single year or for multiple years so long as the services fall with the term of the Federal Supply Contract and this participating addendum.
4. Cost. The Contractor shall provide the Services for the price set forth in Exhibit C.
5. Terms: The Commonwealth and the Contractor agreed to be bound by the terms and conditions set forth in this participating addendum. For the purpose of this participating addendum, all references to "Contract" in the IT Contract Terms and Conditions, set for in Exhibit A, will refer to this participating addendum.
6. Required Forms: In accordance with Pennsylvania statutes and policies, the Contractor must provide the following completed and executed certifications:
  - a. Iran Free Procurement Certification Form, BOP-1701; and
  - b. Worker Protection and Investment Certification, BOP-2201.
7. Signatures: The fully-executed participating addendum may not contain ink signatures by the Commonwealth. In that event, the Contractor understand and agrees that the receipt of an electronically-printed participating addendum with the printed name of Commonwealth purchasing agency constitutes a valid, binding agreement with Commonwealth. The printed name of the purchasing agent represents the signature of that individual who is authorized to bind the Commonwealth to the obligations contained in the participating addendum. The printed name also indicates that all approvals required by Commonwealth contracting procedures have been obtained.

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The parties, through their authorized representatives, have signed this contract on the dates indicated below.

**E-BUILDER, INC.**

DocuSigned by:

 5/3/2024  
Signature Date

Carlos Abaunza  
Printed Name

Lead Counsel  
Title

59-3305657  
Federal I.D. Number

**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF GENERAL SERVICES**

<<To be signed electronically.>>

Deputy Secretary or Designee Date

APPROVED AS TO FORM AND LEGALITY:

<<To be obtained electronically.>>

Office of Chief Counsel Date

<<To be obtained electronically.>>

Office of General Counsel Date

<<To be obtained electronically.>>

Office of Attorney General Date

APPROVED:

<<To be obtained electronically.>>

Comptroller Operations Date

## DATA AND INFORMATION SECURITY ADDENDUM

This Data and Information Security Addendum (“Addendum”) forms part of Contract No. 4400029949 (the “Agreement”) by the Commonwealth of Pennsylvania, (COPA) to e-Builder, Inc. a wholly owned subsidiary of Trimble Inc., a Software as a Service (SaaS) Service Organization (“Contractor”), is hereby incorporated into Exhibit B (Requirements for Non-Commonwealth Hosted Applications/Services) and sets forth additional terms and conditions with respect to data and information security applicable to the Agreement.

### RECITALS

WHEREAS, COPA and Contractor acknowledge that the Agreement will or may require (i) COPA to disclose certain data and information to Contractor, (ii) Contractor to accept, collect and/or use that data and information and (iii) Contractor to create data and information; and

WHEREAS, COPA and Contractor agree to protect and provide for the privacy and confidentiality of all such data and information.

NOW THEREFORE, in consideration of the foregoing recitals, which are incorporated herein, and the mutual promises and undertakings hereinafter set forth, and the exchange of data and information pursuant to the Agreement and this Addendum, the parties hereto agree as follows:

#### 1. Definitions. As used in this Addendum:

- (a) “Applicable Standards” has the meaning specified in Section 2 (a) hereof.
- (b) “Authorized Person” means a Contractor’s employee, contractor and any other individual or entity acting for Contractor who has (i) COPA’S authorization and (ii) a specific need for access to COPA’S Confidential Information to perform Contractor’s services for COPA. Contractor shall be deemed in control of all Authorized Persons.
- (c) “Cloud Computing Services” means any computing service managed infrastructure regardless of deployment model (public, private, or hybrid) or type, such as, but not limited to, software-as-a-service (SaaS) for web-based applications, infrastructure-as-a-service (IaaS) for Internet-based access to storage and computing power, or platform-as-a-service (PaaS) that gives developers the tools to build and host Web applications, that is procured through and hosted by or within a third-party vendor, licensor, contractor, or supplier (“Service Organization”) or its subcontractor(s) (commonly referred to as “Subservice Organizations”). This term includes solutions deployed through traditional hosting methods and without the use of NIST Cloud capabilities (i.e., rapid elasticity, resource pooling, measured service, broad network access, and on demand self-service).
- (d) “Cloud Use Case Review” means an established process to ensure the procurement and/or implementation of any Cloud Computing Service is aligned with COPA’ overall business and intellectual technology vision, strategy, goals, and policies. This term includes representation and review from all domains to proactively identify, manage, and mitigate risk, if any, with the Cloud Computing

Service being considered. The foregoing process requires that the Service Organization (third-party vendor, licensor, contractor, or supplier), must complete the Cloud Services Requirements (CSR) document provided by COPA that is specific to the Cloud Computing Service being considered. Any procurement or use of a Cloud Computing Service requires an approved cloud use case.

- (e) "CONUS" means any state in the Continental United States and Hawaii.
- (f) "Documentation" means all documentation related to the Services, including, if applicable, a SOW.
- (g) "ISP" has the meaning specified in Section 3 (a) hereof.
- (h) "Industry Standards" means any of the following: (i) National Institute of Standards and Technology (NIST) 800 Series; (ii) NIST Cybersecurity Framework; and (iii) ISO 27001/2, the successor thereto or their generally recognized equivalents.
- (i) "Multi-Factor Authentication" means the use of two or more of the authentication methods listed below. Two-factor employs two of the methods. Three-factor employs one each of all three methods:
  - i. something you know (e.g. PIN, password, shared information);
  - ii. something you possess (e.g. token, smart card, digital certificate); and
  - iii. something you are (biometrics - e.g. fingerprint, voice, iris, face).
- (j) "COPA'S Confidential Information" means COPA'S Data that is not Public Data, including information containing personally identifiable information (commonly referred to as "PII"), investment portfolio information and trade secrets. Trade secrets include limited partnership agreements, side letters, private placement memoranda and similar information.
- (k) "COPA'S Data" means any data or information that Contractor creates, obtains, accesses, receives from COPA or on behalf of COPA, hosts or uses in the course of its performance of the Agreement.
- (l) "Public Data" means any specific data or information, regardless of form or format, that COPA has actively and intentionally disclosed, disseminated, or made available to the public.
- (m) "Security Breach" has the meaning specified in Section 4 (b)(i) hereof.
- (n) "Services" means the services described in the Agreement, and if applicable, any SOW.
- (o) "SOW" means a statement of work made in relation to Services.

## 2. Data Security.

- (a) Compliance. Contractor shall comply with and ensure that Services are provided under the Agreement in compliance with the requirements set forth in the following subparagraphs (i), (ii) and (iii) (individually and collectively referred to herein as the "Applicable Standards"):
  - (i) Industry Standards (as defined above in Section 1(h)).
- (b) Data Protection. To the extent that Contractor's obligations under the Agreement involve creating, accessing, transmitting, maintaining, accepting,

hosting or using COPA Data, Contractor shall preserve the confidentiality, integrity and availability of COPA'S Data by implementing and maintaining administrative, technical and physical controls that conform to Applicable Standards. Contractor shall implement security controls that provide a level of security consistent with accepted information security standards which are commensurate with the sensitivity of the COPA'S Data to be protected.

- (c) Data Use and Access. Contractor shall use COPA'S Data only and exclusively to support the performance of Services, as otherwise allowed in the Agreement, and not for any other purpose. With the exception of Public Data, absent COPA'S prior written consent or as required by law, Contractor shall not disclose to or allow access to COPA'S Data by any person, other than an Authorized Person in connection with the performance of Services and COPA'S authorized employees and agents who have a need to know to perform their services for COPA. If such disclosure is required by law, Contractor shall notify COPA in writing before such disclosure, unless such notification is prohibited by law.
- (d) Access to COPA'S Specific Data. Contractor shall limit access to COPA-specific data, and provide access only, to Authorized Persons located within CONUS.
- (e) Data Hosting. Contractor shall only host, store, or backup COPA'S Data in physical locations within the CONUS.
- (f) Multi-Factor Authentication. For services or applications exposed to the Internet, where sensitive data or information is stored, accessed, processed or transmitted, Contractor's software solution shall include Multi-Factor Authentication functionality for user authentication to the web application via workstation and mobile browsers. If a service is provided via mobile application, Contractor's mobile application shall also include Multi-Factor Authentication functionality.
- (g) Data Backup. If appropriate to protect the integrity and availability of COPA'S Data in accordance with accepted industry practice, Contractor shall maintain (and cause any third-party hosting company that it uses to maintain) a means to backup and recover COPA'S Data if that COPA'S Data is lost, corrupted or destroyed. Contractor shall store backups offline, or online with immutable storage media, to prevent modification or encryption by ransomware or other malicious software. COPA shall have the right to export its data on a self-service basis for backup and security purposes.

### 3. Contractor Security.

- (a) Information Security Program. Contractor represents, acknowledges and agrees that Contractor has in place and will continue to maintain a formal information security program ("ISP") with written policies and procedures consistent with Industry Standards and reasonably designed to protect the confidentiality and integrity of COPA'S Data when such COPA'S Data is in the possession or control of Contractor. The ISP shall include administrative, technical, and physical safeguards. The safeguards shall appropriately: (i) relate to the type of data and

information concerned, (ii) be reasonably designed to maintain the integrity, confidentiality, and availability of the data and information; (iii) protect against anticipated threats or hazards to the security or integrity of the data and information; (iv) protect against unauthorized access to or use of the data and information that could result in substantial harm or inconvenience to COPA; (v) provide for secure disposal of the data and information; and (vi) prescribe actions to be taken in the event that a security incident occurs or is suspected to have occurred.

- (b) Contractor Personnel. Contractor hereby agrees that it shall only use Authorized Persons who are qualified in performing under the Agreement and have passed a background check. Contractor shall use a background check that is recognized under industry standards as appropriate to address the security concerns that apply to the specific individual and the services to be provided by the individual under the Agreement.
- (c) Acceptance of Acceptable Use Policy. If Contractor requires access to COPA'S network as a part of performing under the Agreement, any access will be in compliance with COPA'S Acceptable Use Policy as found in Management Directive 205.34, as it may be amended from time to time and any successor thereto (the current version being located at: [https://www.oa.pa.gov/Policies/md/Documents/205\\_34.pdf](https://www.oa.pa.gov/Policies/md/Documents/205_34.pdf)) before such access.
- (d) Security Awareness Training. Contractor shall ensure that its employees, agents, contractors, subcontractors are provided cybersecurity awareness education and are adequately trained to perform their information security-related duties and responsibilities consistent with Applicable Standards.

#### 4. Documentation and Required Notification.

- (a) Security Incident Handling. As part of the ISP, Contractor represents, acknowledges and agrees that Contractor has in place and will continue to maintain a documented security incident management process. The security incident management process shall:
  - (i) provide for the timely detection of security incidents and responses thereto; and
  - (ii) require the recordation of the applicable facts of each security incident and responses thereto, including the application or non-application of the security incident management process, escalation procedures and the responsibilities of each affected party.
- (b) Notice to COPA and Response of Security Breach. Contractor shall notify by telephone COPA'S Pennsylvania Computer Security Incident Response Team (PA-CSIRT) at 1-877-552-7478. COPA shall provide updated contact information to Contractor within ten (10) business days of any change to the COPA'S contact information. Contractor notification must occur without undue delay and in any event within 72 hours of first having knowledge of:
  - i. an unauthorized access, loss, alteration, theft or corruption of COPA'S Data;

- ii. any event that creates a substantial risk to the confidentiality, integrity or availability of COPA'S Data;
- iii. a breach of any of Contractor's security obligations under this Addendum;
- iv. the occurrence of an event described in clauses (1) or (2) (without reference to COPA'S Data) involving data or information other than COPA'S Data if Contractor has not reasonably determined that such event will not be an event described in clause (1) or (2); or
- v. any other event requiring notification under applicable law (each of the events described in clauses (1) – (4) and this clause (5)) is hereinafter referred to as a “Security Breach”, and

(c) In the event of a Security Breach, Contractor shall:

- I. preserve forensic evidence and eliminate the cause of the risk or breach within Contractor's reasonable control; and
- II. undertake a thorough forensic investigation of any compromise or improper use and provide to COPA all information necessary to enable COPA to fully understand the nature and extent of the compromise or improper use to the extent known.

(d) Intentionally Omitted.

(e) Security Incident Investigations. Contractor hereby agrees to reasonably communicate and cooperate with COPA regarding Contractor's investigation of a security incident and provide the contact information, who shall respond to COPA in a timely manner, dependent on criticality, in the event that COPA must investigate a security incident. The current Contractor security contact is:

Name	Phone Number	Email
Trimble Security Operations Center	(408) 481-6202	cybersecurity_support@trimble.com

(f) Contractor shall provide updated contact information to COPA within ten (10) business days of any change to the currently applicable security contact information provided to COPA.

## 5. Maintenance of Safeguards.

- (a) Contractor shall maintain and follow Applicable Standards with respect to any of COPA's Confidential Information in Contractor's possession or control and protect such information against any loss, alteration, theft or corruption by an unauthorized third party.
- (b) At COPA' request, Contractor shall provide COPA with copies of its disaster recovery policy, business continuity policy, and respond to a security questionnaire issued by COPA within 30 days.

## 6. Information Security Audit.

- (a) System and Organization Controls (SOC) Reporting. COPA shall have the right to review Contractor's ISP through Contractor's annual submission to COPA of its

current SOC report(s) as required to be provided under this Addendum. Contractors shall submit: (i) a SOC 1 Type II report, if hosting financial information; (ii) a SOC 2 Type II report, if hosting, handling or processing COPA'S Confidential Information; and (iii) a SOC for Cybersecurity Report if any of the following conditions exist: (A) reoccurring material findings in SOC 1-Type II or SOC 2-Type II reports; (B) a cybersecurity incident or security breach has occurred; (C) cybersecurity incidents or breaches are not being detected, prevented, reported, and/or mitigated in a timely manner (as reasonably determined by COPA); (D) cybersecurity incidents or breaches are not being properly managed by Contractor; (E) uncertainty that Contractor has an effective cybersecurity risk management program; (F) Contractor has been engaged in a merger or acquisition during the term of the Agreement (for clarity, Section F shall not include a merger between e-Builder, Inc. and its parent company Trimble, Inc.); or (G) Contractor has restructured its service offerings and/or business model. Any report required to be provided hereunder shall document an assessment conducted by a qualified, independent third party. The assessment scope must address the services provided to COPA, including related people, process and technology.

- (b) Assessment Questionnaire. Intentionally Omitted.

7. Intentionally Omitted.

8. Cloud Computing Services.

Contractors shall meet the following requirements to the extent that Contractor provides Cloud Computing Services:

- (a) Cloud Use Case (CUC) Review. Contractor shall coordinate with COPA to complete the Cloud Services Requirements (CSR) as part of the CUC review process. Contractor hereby agrees that CUC review and approval is required prior to procurement or use of any Cloud Computing Service.
- (b) Monitoring and Audit Logging. Contractor shall ensure system monitoring and security audit logging is enabled and accessible to the COPA'S Chief Information Security Officer or designee. Contractor shall:
  - I. provide monitoring (in addition, COPA recommends verbose logging);
  - II. provide software with ability to correlate events and create security alerts; and
  - III. maintain reports that are easily accessible and in a readable format online for a minimum of 90 days and archived for a minimum of one (1) year.
- (c) Data Segmentation/Boundary Protection. Contractor shall provide a network/architecture diagram showing what technical controls are performing the network segmentation. If solution spans more than one hosting environment (such as integration to COPA'S managed environments, or across multiple hosting providers), Contractor shall provide details on what solution components and data are deployed in which environment and describe data

encryption methods at rest and in transit across environments and perimeter protection methods. Contractor shall describe how data segregation (physically or logically) of COPA'S data from non-COPA data is guaranteed and maintain the diagram as long as Contractor is subject to the terms of this Addendum and provide updates if changes occur.

- (d) Exploit and Malware Protection. Contractor shall provide security controls required to identify attacks, identify changes to files, protect against malware, protect user web services, data loss prevention (DLP) and to perform forensic analysis. Contractor shall provide: (i) file Integrity Monitoring Controls; (ii) Anti-Malware and Antivirus Controls; (iii) Intrusion Detection System (IDS)/Intrusion Prevention System (IPS) Controls; (iv) Data Loss Prevention (DLP) Controls; (v) Forensic Controls; and (vi) Advanced Persistent Threat (APT) Controls.
- (e) Encryption. Contractor shall enable industry standard strong encryption for all records involved with Software as a Service (SaaS) cloud services. Contractor shall provide technical controls with strong encryption to protect Data in Transit and Data at Rest.
- (f) Identity & Access Management. Contractor shall provide technical controls for authenticating users, provisioning and deprovisioning users, identity interaction and nonrepudiation needs for administrators, internet users and internal users. Multi-Factor Authentication (MFA) shall be implemented by the Contractor for users requiring direct access to any COPA'S application from outside the Commonwealth of Pennsylvania network. Where possible, the Commonwealth of Pennsylvania's MFA solution shall be utilized.”
- (g) Vulnerability Assessment. Contractor shall ensure all cloud applications are securely coded, vetted and scanned. Contractor shall: (i) conduct a third-party independent vulnerability assessment annually (for clarity, Contractor may perform these assessments using third-party provided tooling) or sooner if due to compliance regulations or other requirements, or upon a major change to the solution; (ii) upon request, provide critical, high, or medium vulnerability assessment results to COPA on an annual basis during the period the Contractor is subject to the terms of this Addendum; (iii) identify and validate vulnerabilities required for remediation; and iv) ensure patching is up to date.
- (h) Data Protection / Recovery. Upon COPA'S request, Contractor shall provide a business continuity plan that addresses:
  - (i) Data/Database Recovery;
  - (ii) Application Recovery;
  - (iii) Operating System Recovery; and
  - (iv) Infrastructure Recovery.

In connection therewith, Contractor shall describe:

- (A) its capability to do a complete restoration in the event of a disaster;

- (B) what tests are performed as part of its disaster recovery plan; and
- (C) its capability to provide services during a pandemic event.

(i) **Inventory.** Contractor shall ensure a complete, accurate and up-to-date inventory of COPA'S deployed resources within the cloud infrastructure and must be made available for review by COPA upon request

**9. Compliance with Applicable Federal, State and Local Laws.** Contractor shall comply with all applicable federal, state, and local laws concerning data protection and privacy when handling COPA'S Data.

**10. Enforcing Compliance.** Contractor shall enforce and be responsible for compliance by all its personnel and contractors with the provisions of this Addendum and all other confidentiality obligations owed to COPA.

**11. Accommodation of Additional Protections.** Contractor hereby agrees to comply with such additional protections as COPA shall reasonably request subject to execution of a mutually agreed written amendment setting forth the applicable scope and fees as well as applicability to other customers.

**12. Termination.** If COPA determines that the Contractor has breached any provision of this Addendum, such breach shall constitute a material breach of the Agreement and shall provide grounds for immediate termination of the Agreement by COPA pursuant to the Agreement.

13. Intentionally Omitted.

14. Intentionally Omitted.

15. Intentionally Omitted.

16. Intentionally Omitted.

17. Intentionally Omitted.

18. Intentionally Omitted.

19. Intentionally Omitted.

## **Exhibit A**

### **IT CONTRACT TERMS AND CONDITIONS**

#### **1. DEFINITIONS.**

- (a) **Agency**. The department, board, commission or other agency of the Commonwealth of Pennsylvania listed as the Purchasing Agency. If a COSTARS entity or external procurement activity has issued an order against this Contract, that entity shall also be identified as "Agency."
- (b) **Commonwealth**. The Commonwealth of Pennsylvania.
- (c) **Contracting Officer**. The person authorized to administer this Contract for the Commonwealth and to make written determinations with respect to the Contract.
- (d) **Data**. Any recorded information, regardless of the form, the media on which it is recorded or the method of recording.
- (e) **Days**. Calendar days, unless specifically indicated otherwise.
- (f) **Documentation**. All materials required to support and convey information about the Services or Supplies required by this Contract, including, but not limited to: written reports and analyses; diagrams maps, logical and physical designs; system designs; computer programs; flow charts; and disks and/or other machine-readable storage media.
- (g) **Expiration Date**. The last valid date of the Contract, as indicated in the Contract documents to which these IT Contract Terms and Conditions are attached.
- (h) **Purchase Order**. Written authorization for Contractor to proceed to furnish Supplies or Services.
- (i) **Proposal**. Contractor's response to a Solicitation issued by the Issuing Agency, as accepted by the Commonwealth.
- (j) **Services**. All Contractor products (including Software) and professional services to be provided by Contractor as identified in Exhibit "C" and any amendments to the Contract.
- (k) **Software**. A collection of one or more programs, databases or microprograms fixed in any tangible medium of expression that comprises a sequence of instructions (source code) to carry out a process in, or convertible into, a form executable by an electronic computer (object code).
- (l) **Subcontracts**. For the purpose of this Contract, subcontracts shall not include Contractors agreements with third parties who perform services ancillary to this Contract, including without limitation Contractor's agreement with its hosting provider.

#### **2. CONTRACT TERM.**

The term of the Contract shall be as set forth in Section 2 of Participating Addendum No. 4400029949.

### **3. PURCHASE ORDERS.**

- (a) Purchase Orders. The Commonwealth may issue Purchase Orders against the Contract or issue a Purchase Order as the Contract. These Purchase Orders constitute the Contractor's authority to make delivery. All Purchase Orders received by the Contractor up to, and including, the Expiration Date of the Contract are acceptable and must be performed in accordance with the Contract. Each Purchase Order will be deemed to incorporate the terms and conditions set forth in the Contract. Any additional terms and conditions in a Purchase Order shall be of no legal effect.
- (b) Electronic transmission. Purchase Orders may be issued electronically or through facsimile equipment. The electronic transmission of a Purchase Order shall require acknowledgement of receipt of the transmission by the Contractor.
- (c) Receipt. Receipt of the electronic or facsimile transmission of the Purchase Order shall constitute receipt of a Purchase Order.
- (d) Received next business day. Purchase Orders received by the Contractor after 4 p.m. will be considered received the following business day.

### **4. INFORMATION TECHNOLOGY POLICIES.**

- (a) General. The Contractor shall ensure that Services and Supplies procured under the Contract comply with the applicable standards set forth in Exhibit B.
- (b) With regard to the Commonwealth requirements for accessibility called out in IT Policy ACC001 and the accessibility of Software provided under this Contract, Contractor's compliance with accessibility requirements shall be limited to its then current Accessibility Conformance Report, which will be provided upon request. The indemnification obligations in Section 27 do not apply to Contractor to the extent it is compliant with this Section 4(b).

### **5. INDEPENDENT PRIME CONTRACTOR.**

- (a) Independent contractor. In performing its obligations under the Contract, the Contractor will act as an independent contractor and not as an employee or agent of the Commonwealth.
- (b) Sole point of contact. The Contractor will be responsible for all Services and Supplies in this Contract whether or not Contractor provides them directly. Further, the Contractor is the sole point of contact with regard to all contractual matters, including payment of any and all charges resulting from the Contract.

### **6. ENHANCED MINIMUM WAGE.**

- (a) Enhanced Minimum Wage. Contractor shall pay no less than \$15.00 per hour to its employees for all hours worked directly performing the services called for in this contract/lease, and for an employee's hours performing ancillary services necessary for the performance of the services or lease when the employee spends at least 20% of their time performing ancillary services in a given work week.
- (b) Adjustment. Beginning July 1, 2023, and annually thereafter, the minimum wage rate will be increased by an annual cost-of-living adjustment using the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) for Pennsylvania, New Jersey, Delaware, and Maryland. The Commonwealth will publish applicable adjusted amount in the Pennsylvania Bulletin by March 1 of each year to be effective the following July 1.
- (c) Exceptions. These Enhanced Minimum Wage Provisions do not apply to employees
  - (i) Exempt from minimum wage under the Minimum Wage Act of 1968;
  - (ii) covered by a collective bargaining agreement;
  - (iii) required to be paid a higher wage under another state or federal law governing the services, including the Prevailing Wage Act and Davis-Bacon Act; or
  - (iv) required to be paid a higher wage under any state or local policy or ordinance.
- (d) Notice. The Contractor shall: (1) post this Enhanced Minimum Wage Provision for the entire period of the contract conspicuously in easily-accessible and well-lighted places customarily frequented by employees at or near where the contracted services are performed; or (2) for the entire period of the contract, provide electronic notice of this clause to its employees not less than annually.
- (e) Records. Contractor must maintain and, upon request and within the time periods requested by the Commonwealth, provide to the Commonwealth all employment and wage records necessary to document compliance with these Enhanced Minimum Wage Provisions.
- (f) Sanctions. Contractor's failure to comply with these Enhanced Minimum Wage Provisions may result in the imposition of sanctions, which may include, but are not limited to, termination of the contract or lease, nonpayment, debarment, or referral to the Office of General Counsel for appropriate civil or criminal referral.
- (g) Subcontractors. The Contractor shall include these Enhanced Minimum Wage Provisions in its subcontracts under this contact or lease to ensure that these provisions are binding on its subcontractors

## 7. COMPENSATION.

- (a) General. The Contractor shall be required to perform at the price(s) quoted in the Contract. All items shall be performed within the time period(s) specified in the Contract. The Contractor shall be compensated only for items supplied and Services performed in accordance with the terms of this Contract.

(b) Travel. The Contractor shall not be allowed or paid travel or per diem expenses except as specifically set forth in the Contract. If not otherwise specified in the Contract, travel and related expenses shall be reimbursed in accordance with [Management Directive 230.10 Amended, Commonwealth Travel Policy](#), and [Manual 230.1, Commonwealth Travel Procedures Manual](#).

## 8. BILLING REQUIREMENTS.

(a) Unless the Contractor has been authorized by the Commonwealth for Evaluated Receipt Settlement or Vendor Self-Invoicing, the Contractor shall include in all of its invoices the following minimum information:

- (i) Vendor name and “Remit to” address, including SAP Vendor number;
- (ii) Bank routing information, if ACH;
- (iii) SAP Purchase Order number;
- (iv) Delivery Address, including name of Commonwealth agency;
- (v) Description of the supplies/services delivered in accordance with SAP Purchase Order (include Purchase Order line number if possible);
- (vi) Quantity provided;
- (vii) Unit price;
- (viii) Price extension;
- (ix) Total price; and
- (x) Delivery date of supplies or services.

(b) If an invoice does not contain the minimum information set forth in this section, and comply with the provisions located at <https://www.budget.pa.gov/Programs/Pages/E-Invoicing.aspx>, relating to the Commonwealth E-Invoicing Program, the Commonwealth may return the invoice as improper. If the Commonwealth returns an invoice as improper, the time for processing a payment will be suspended until the Commonwealth receives a correct invoice. The Contractor may not receive payment until the Commonwealth has received a correct invoice.

## 9. PAYMENT.

(a) Payment Date. The Commonwealth shall make payment by the required payment date. The required payment date is:

- (i) the date on which payment is due under the terms of the Contract;
- (ii) **thirty (30) days** after a proper invoice actually is received at the “Bill To” address if a date on which payment is due is not specified in the Contract (a “proper”

invoice is not received until the Commonwealth accepts the service as satisfactorily performed); or

(iii) the payment date specified on the invoice if later than the dates established by paragraphs (a)(i) and (a)(ii), above.

(b) **Delay; Interest.** Payment may be delayed if the payment amount on an invoice is not based upon the price(s) as stated in the Contract. If any payment is not made within **15 days** after the required payment date, the Commonwealth may pay interest as determined by the Secretary of Budget in accordance with Act of December 13, 1982, P.L. 1155, No. 266, 72 P. S. § [1507](#), (relating to interest penalties on Commonwealth accounts) and accompanying regulations 4 Pa. Code §§ [2.31—2.40](#) (relating to interest penalties for late payments to qualified small business concerns).

(c) Payment should not be construed by the Contractor as acceptance of the Service performed by the Contractor. The Commonwealth reserves the right to conduct further testing and inspection after payment, but within a reasonable time after performance, and to reject the service if such post payment testing or inspection discloses a defect or a failure to meet specifications.

## **10. AUTOMATED CLEARING HOUSE (ACH) PAYMENTS.**

(a) **Payment Method.** The Commonwealth shall make contract payments through the Automated Clearing House (ACH). Within 10 days of award of the contract or purchase order, the Contractor must submit or must have submitted its ACH information within its user profile in the Commonwealth's procurement system (SRM).

(b) **Unique Identifier.** The Contractor must submit a unique invoice number with each invoice submitted. The Commonwealth shall list the Contractor's unique invoice number on its ACH remittance advice to enable the Contractor to properly apply the state agency's payment to the invoice submitted.

(c) **ACH Information in SRM.** The Contractor shall ensure that the ACH information contained in SRM is accurate and complete. The Contractor's failure to maintain accurate and complete information may result in delays in payments.

## **11. CHANGES.**

(a) At any time during the performance of the Contract, the Commonwealth or the Contractor may request a change to the Contract. Contractor will make reasonable efforts to investigate the impact of the change request on the price, timetable, specifications, and other terms and conditions of the Contract. If the Commonwealth is the requestor of the change, the Contractor will inform the Commonwealth of any charges for investigating the change request prior to incurring such charges. If the Commonwealth and the Contractor agree on the results of the investigation and any necessary changes to the Contract, the parties must complete and execute a change order to modify the Contract and implement the change. The change order will be evidenced by a writing in accordance with the Commonwealth's change order procedures. No work may begin on the change order until the Contractor has received the executed change order. If the parties are not able to agree

upon the results of the investigation or the necessary changes to the Contract, a Commonwealth-initiated change request will be implemented at Commonwealth's option and the Contractor shall perform the Services; and either party may elect to have the matter treated as a dispute between the parties under **Section 13, Contract Controversies**. During the pendency of any such dispute, Commonwealth shall pay to Contractor any undisputed amounts.

- (b) Changes outside the scope of this Contract shall be accomplished through the Commonwealth's procurement procedures, and may result in an amended Contract or a new contract. No payment will be made for services outside of the scope of the Contract for which no amendment has been executed.

## 12. BACKGROUND CHECKS.

- (a) The Contractor, at its expense, must arrange for a background check for each of its employees who will have access to Commonwealth Data or Commonwealth facilities (including leased facilities or facilities owned by third parties but utilized by the Commonwealth), either through on-site access or through remote access. Background checks shall be conducted via the Request for Criminal Record Check for in-state Contractor employees or via a criminal background check through the appropriate State Agency for the out of state Contractor employees. The background check shall be conducted prior to initial access by the Contractor employee.
- (b) Before the Commonwealth permits access to the Contractor, the Contractor must provide written confirmation that the background checks have been conducted. If, at any time, it is discovered that an employee of the Contractor or an employee of a subcontractor of the Contractor has a criminal record that includes a felony or misdemeanor involving terroristic behavior, violence, use of a lethal weapon, or breach of trust/fiduciary responsibility or which raises concerns about building, system or personal security or is otherwise job-related, the Contractor shall not assign that employee to any Commonwealth facilities, shall remove any access privileges already given to the employee and shall not permit that employee remote access unless the Commonwealth consents to the access, in writing, prior to the access. The Commonwealth may withhold its consent in its sole discretion. Failure of the Contractor to comply with the terms of this section on more than one occasion or Contractor's failure to cure any single failure to the satisfaction of the Commonwealth may result in the Contractor being deemed in default of its Contract.

## 13. CONTRACT CONTROVERSIES.

- (a) Pursuant to Section 1712.1 of the *Commonwealth Procurement Code*, 62 Pa. C.S. § 1712.1, in the event of a claim arising from the Contract or a purchase order, the Contractor, within **six (6) months** after the cause of action accrues, must file a written claim with the Contracting Officer for a determination. For the purpose of this Contract, a claim shall accrue 90 days after the payment due date on a proper invoice. The claim shall state all grounds upon which the Contractor asserts a controversy exists. If the Contractor fails to file a claim or files an untimely claim, the Contractor is deemed to have waived its right to assert a claim in any forum. At the time the claim is filed, or within **60 days** thereafter, either party may request mediation through the Commonwealth Office of General Counsel Dispute Resolution Program,

<https://www.ogc.pa.gov/Services%20to%20Agencies/Mediation%20Procedures/Pages/default.aspx>.

- (b) If the Contractor or the Contracting Officer requests mediation, and the other party agrees, the Contracting Officer shall promptly make arrangements for mediation. Mediation shall be scheduled so as to not delay the issuance of the final determination beyond the required **120 days** after receipt of the claim if mediation is unsuccessful. If mediation is not agreed to or if resolution is not reached through mediation, the Contracting Officer shall review timely-filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within **120 days** of the receipt of the claim, unless extended by consent of the Contracting Officer and the Contractor. The Contracting Officer shall send his/her written determination to the Contractor. If the Contracting Officer fails to issue a final determination within the **120 days** (unless extended by consent of the parties), the claim shall be deemed denied. The Contracting Officer's determination shall be the final order of the purchasing agency.
- (c) Within **15 days** of the mailing date of the determination denying a claim or within **135 days** of filing a claim if, no extension is agreed to by the parties, whichever occurs first, the Contractor may file a statement of claim with the Commonwealth Board of Claims. Pending a final judicial resolution of a controversy or claim, subject to the suspension provisions in Exhibit C, the Contractor shall proceed diligently with the performance of the Contract or Purchase Order in a manner consistent with the determination of the contracting officer and the Commonwealth shall compensate the Contractor pursuant to the terms of the Contract or Purchase Order.

## 14. CONFIDENTIALITY, PRIVACY AND COMPLIANCE.

- (a) General. The Contractor agrees to protect the confidentiality of the Commonwealth's confidential information. The Commonwealth agrees to protect the confidentiality of Contractor's confidential information. Unless the context otherwise clearly indicates the need for confidentiality, information is deemed confidential only when the party claiming confidentiality designates the information as "confidential" in such a way as to give notice to the other party (for example, notice may be communicated by describing the information, and the specifications around its use or disclosure, in the Solicitation or in the Proposal). For clarity, Contractor's SOC audit reports shall be treated as Contractor's confidential information. Neither party may assert that information owned by the other party is such party's confidential information. Notwithstanding the foregoing, all Data provided by, or collected, processed, or created on behalf of the Commonwealth is Confidential Information unless otherwise indicated in writing.
- (b) Copying; Disclosure; Termination. The parties agree that confidential information shall not be copied, in whole or in part, or used or disclosed except when essential for authorized activities under this Contract and, in the case of disclosure, where the recipient of the confidential information has agreed to be bound by confidentiality requirements no less restrictive than those set forth herein. Each copy of confidential information shall be marked by the party making the copy with any notices appearing in the original. Upon expiration or termination of this Contract or any license granted hereunder, the receiving party will return to the disclosing party, or certify as to the destruction of, all confidential information in the receiving party's possession, other than one copy (where permitted by law or regulation), which may be maintained for archival purposes only, and which will

remain subject to this Contract's security, privacy, data retention/destruction and confidentiality provisions. A material breach of these requirements may result in termination for default.

(c) Insofar as information is not otherwise protected by law or regulation, the obligations stated in this section do not apply to information:

- (i) already known to the recipient at the time of disclosure other than through the contractual relationship;
- (ii) independently generated by the recipient and not derived from the information supplied by the disclosing party;
- (iii) known or available to the public, except where such knowledge or availability is the result of unauthorized disclosure by the recipient of the proprietary information;
- (iv) disclosed to the recipient without a similar restriction by a third party who has the right to make such disclosure; or
- (v) required to be disclosed by the recipient by law, regulation, court order, or other legal process.

There shall be no restriction with respect to the use or disclosure of any ideas, concepts, know-how or data processing techniques developed alone or jointly with the Commonwealth in connection with services provided to the Commonwealth under this Contract.

(d) The Contractor shall use the following process when submitting information to the Commonwealth it believes to be confidential and/or proprietary information or trade secrets:

- (i) Prepare and submit an un-redacted version of the appropriate document;
- (ii) Prepare and submit a redacted version of the document that redacts the information that is asserted to be confidential or proprietary information or a trade secret. The Contractor shall use a redaction program that ensures the information is permanently and irreversibly redacted; and
- (iii) Prepare and submit a signed written statement that identifies confidential or proprietary information or trade secrets and that states:
  - (1) the attached material contains confidential or proprietary information or trade secrets;
  - (2) the Contractor is submitting the material in both redacted and un-redacted format, if possible, in accordance with 65 P.S. § [67.707\(b\)](#); and
  - (3) the Contractor is requesting that the material be considered exempt under 65 P.S. § [67.708\(b\)\(11\)](#) from public records requests.

(e) Restrictions on Use. All Data and all intellectual property provided to the Contractor pursuant to this Contract or collected or generated by the Contractor on behalf of the Commonwealth pursuant to this Contract shall be used only for the work of this Contract or as otherwise allowed pursuant to Exhibit "C." No Data, intellectual property, or Documentation may be used, disclosed, or otherwise opened for access by or to the Contractor or any third party unless directly related to and necessary or otherwise allowed under the Contract.

## **15. DATA BREACH OR LOSS.**

(a) The Contractor shall comply with all applicable data protection, data security, data privacy and data breach notification laws, including but not limited to the *Breach of Personal Information Notification Act*, as amended November 22, 2022, P.L. 2139, No. 151, 73 P.S. §§ 2301—2330. Further, to the extent the Contractor maintains, stores, or manages computerized data on behalf of the Commonwealth that constitutes personal information, as defined in the *Breach of Personal Information Notification Act*, the Contractor shall comply with the then current version of the following IT Policies (ITPs): *ITP-SEC019, Policy and Procedures for Protecting Commonwealth Electronic Data; ITP-SEC024, IT Security Incident Reporting Policy; ITP-SEC025, Proper Use and Disclosure of Personally Identifiable Information (PII); and ITP-SEC031, Encryption Standards*.

(b) For Data and Confidential Information in the possession, custody, and control of the Contractor or its employees, agents, and/or subcontractors:

- (i) The Contractor shall report unauthorized access, use, release, loss, destruction or disclosure of Data or Confidential Information ("Incident") to the Commonwealth within **seventy-two (72) hours** of when the Contractor knows of or reasonably suspects such Incident, and the Contractor must promptly take all reasonable steps to mitigate any potential harm or further access, use, release, loss, destruction or disclosure of such Data or Confidential Information.
- (ii) The Contractor shall provide timely notice to all individuals that may require notice under any applicable law or regulation as a result of an Incident. The notice must be pre-approved by the Commonwealth. At the Commonwealth's request, Contractor shall, at its sole expense, provide credit monitoring services to all individuals that may be impacted by any Incident requiring notice.
- (iii) The Contractor shall be solely responsible for any costs, losses, fines, or damages incurred by the Commonwealth due to Incidents.

(c) As to Data and Confidential Information fully or partially in the possession, custody, or control of the Contractor and the Commonwealth, the Contractor shall diligently perform all of the duties required in this section in cooperation with the Commonwealth, until the time at which a determination of responsibility for the Incident, and for subsequent action regarding the Incident, is made final.

## **16. INSURANCE.**

(a) General. Unless otherwise indicated in the Solicitation, the Contractor shall maintain at its expense and require its agents, contractors and subcontractors to procure and maintain, as appropriate, the following types and amounts of insurance, issued by companies acceptable to the Commonwealth and authorized to conduct such business under the laws of the Commonwealth:

- (i) Workers' Compensation Insurance for all of the Contractor's employees and those of any subcontractor engaged in performing Services in accordance with the *Workers' Compensation Act*, Act of June 2, 1915, P.L. 736, No. 338, reenacted and amended June 21, 1939, P.L. 520, No. 281, as amended, 77 P.S. §§ 1—2708.
- (ii) Commercial general liability insurance providing coverage from claims for damages for personal injury, death and property of others, including loss of use resulting from any property damage which may arise from its operations under this Contract, whether such operation be by the Contractor, by any agent, contractor or subcontractor, or by anyone directly or indirectly employed by either. The limits of such insurance shall be in an amount not less than **\$2,000,000** per occurrence, personal injury and property damage combined. Such policies shall be occurrence based rather than claims-made policies and shall name the Commonwealth of Pennsylvania as an additional insured, as its interests may appear. The insurance shall not contain any endorsements or any other form designed to limit and restrict any action by the Commonwealth as an additional insured against the insurance coverages in regard to the Services performed for or Supplies provided to the Commonwealth.
- (iii) Professional and Technology-Based Services Liability Insurance (insuring against damages and claim expenses as a result of claims arising from any actual or alleged wrongful acts in performing cyber and technology activities) in the amount of **\$2,000,000**, per accident/occurrence/annual aggregate.
- (iv) Professional Liability/Errors and Omissions Insurance in the amount of **\$2,000,000**, per accident/occurrence/annual aggregate, covering the Contractor, its employees, agents, contractors, and subcontractors in the performance of all services.
- (v) Network/Cyber Liability Insurance (including coverage for Professional and Technology-Based Services Liability if not covered under Company's Professional Liability/Errors and Omissions Insurance referenced above) in the amount of **\$3,000,000**, per accident/occurrence/annual aggregate, covering the Contractor, its employees, agents, contractors, and subcontractors in the performance of all services.
- (vi) Completed Operations Insurance in the amount of **\$2,000,000**, per accident/occurrence/annual aggregate, covering the Contractor, its employees, agents, contractors, and subcontractors in the performance of all services.

(b) Certificate of Insurance. Prior to commencing Services under the Contract, and annually thereafter, the Contractor shall provide the Commonwealth with a copy of each current certificate of insurance required by this section. The Contractor shall provide the Commonwealth with 10 days advance notice in the event it receives a notice of

cancellation. Such cancellation or change shall not relieve the Contractor of its continuing obligation to maintain insurance coverage in accordance with this section.

(c) Insurance coverage length. The Contractor agrees to maintain such insurance for the latter of the life of the Contract, or the life of any Purchase Orders issued under the Contract.

## 17. CONTRACTOR RESPONSIBILITY.

(a) Definition. For the purpose of these provisions, the term “Contractor” means as any person, including, but not limited to, a bidder, offeror, loan recipient, grantee or lessor, who has furnished or performed or seeks to furnish or perform, goods, supplies, services, leased space, construction or other activity, under a contract, grant, lease, purchase order or reimbursement agreement with the Commonwealth. The term also includes a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other public entity in the Commonwealth.

(b) Contractor Representations.

(i) The Contractor represents for itself and its subcontractors required to be disclosed or approved by the Commonwealth, that as of the date of its execution of this contract, that neither the Contractor, nor any such subcontractors, are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot make this representation, the Contractor shall submit, along with its contract, a written explanation of why such certification cannot be made.

(ii) The Contractor represents that as of the date of its execution of this contract it has no tax liabilities or other Commonwealth obligations, or has filed a timely administrative or judicial appeal if such liabilities or obligations exist, or is subject to a duly approved deferred payment plan if such liabilities exist.

(c) Notification. The Contractor shall notify the Commonwealth if, at any time during the term of this contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or, to the best of its knowledge, any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. The Contractor shall provide this notification within 15 days of the date of suspension or debarment.

(d) Default. The Contractor’s failure to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government constitutes an event of default of the contract with the Commonwealth.

(e) Reimbursement. The Contractor shall reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Contractor’s compliance with the terms of this contract or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. These costs include, but are not limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor’s suspension or debarment.

(f) Suspension and Debarment List. The Contractor may obtain a current list of suspended and debarred Commonwealth contractors by visiting the eMarketplace website at <http://www.emarketplace.state.pa.us> and clicking the Debarment list tab.

**18. OFFSET PROVISION FOR COMMONWEALTH CONTRACTS.**

The Commonwealth may set off the amount of any state tax liability or other obligation of the Contractor, or its subsidiaries, owed to the Commonwealth against any payments due the Contractor under any contract between the Commonwealth and Contractor.

**19. TAXES-FEDERAL, STATE AND LOCAL.**

The Commonwealth is exempt from all excise taxes imposed by the Internal Revenue Service and has accordingly registered with the Internal Revenue Service to make tax-free purchases under registration No. 23-7400001-K. With the exception of purchases of the following items, no exemption certificates are required and none will be issued: undyed diesel fuel, tires, trucks, gas-guzzler emergency vehicles, and sports fishing equipment. The Commonwealth is also exempt from Pennsylvania sales tax, local sales tax, public transportation assistance taxes, and fees and vehicle rental tax. The Department of Revenue regulations provide that exemption certificates are not required for sales made to governmental entities and none will be issued. Nothing in this section is meant to exempt a construction contractor from the payment of any of these taxes or fees which are required to be paid with respect to the purchase, use, rental or lease of tangible personal property or taxable services used or transferred in connection with the performance of a construction contract.

**20. LIMITATION OF LIABILITY.**

(a) General. The Contractor's cumulative liability to the Commonwealth under this Contract shall be limited to the greater of **\$250,000** or the value of payments made under this Contract (including any amendments) within the 12 month period prior to the action giving rise to the liability. This limitation will apply, except as otherwise stated in this section, regardless of the form of action, whether in contract or in tort, including negligence. This limitation does not, however, apply to any damages:

- (i) for gross negligence or intentional or willful misconduct;
- (ii) under **Section 23, Patent, Copyright, Trademark and Trade Secret Protection**;
- (iii) under **Section 15, Data Breach or Loss**; or
- (iv) under **Section 22, Virus, Malicious, Mischievous or Destructive Programming**.

(b) For Contractor's breach of Sections 15 and 22 and damages arising thereunder, Contractor's cumulative liability for all claims, regardless of the form of action, whether in contract, tort, or any other theory, shall be limited to the greater of \$500,000.00 or the value of payments made under this Contract (including any amendments) within the 36 month period prior to the action giving rise to the liability.

(c) The Contractor will not be liable for consequential or incidental damages, except for damages as set forth in **paragraphs (a)(i)–(vii)** above, or as otherwise specified in the Contract.

## **21. INDEMNIFICATION.**

(a) **Contractor Obligations.** The Contractor shall indemnify the Commonwealth against all third-party claims, suits, demands, losses, damages, costs, and expenses, including without limitation, litigation expenses, attorneys' fees, and liabilities, arising out of or in connection with any activities performed by the Contractor or its employees and agents that are related to this contract, as determined by the Commonwealth in its sole discretion.

(b) **Commonwealth Attorneys Act.** The Commonwealth shall provide the Contractor with prompt notice of any claim or suit of which it learns. Pursuant to the Commonwealth Attorneys Act (71 P.S. Section 732-101, et seq.), the Office of Attorney General (OAG) has the sole authority to represent the Commonwealth in actions brought against the Commonwealth. The OAG may, however, in its sole discretion and under any terms as it deems appropriate, delegate its right of defense. If OAG delegates the defense to the Contractor, the Commonwealth will cooperate with all reasonable requests of Contractor made in the defense of such suits.

(c) **Settlement.** Notwithstanding the above, neither party may enter into a settlement of any claim or suit without the other party's written consent, which will not be unreasonably withheld. The Commonwealth may, in its sole discretion, allow the Contractor to control the defense and any related settlement negotiations.

## **22. VIRUS, MALICIOUS, MISCHIEVOUS OR DESTRUCTIVE PROGRAMMING.**

(a) The Contractor shall be liable for any damages incurred by the Commonwealth if the Contractor or any of its employees, subcontractors or consultants introduces a virus or malicious, mischievous or destructive programming into the Commonwealth's software or computer networks and has failed to comply with the Commonwealth software security standards. The Commonwealth must demonstrate that the Contractor or any of its employees, subcontractors or consultants introduced the virus or malicious, mischievous or destructive programming. The Contractor's liability shall cease if the Commonwealth has not fully complied with its own software security standards.

(b) The Contractor shall be liable for any damages incurred by the Commonwealth including, but not limited to, the expenditure of Commonwealth funds to eliminate or remove a computer virus or malicious, mischievous or destructive programming that results from the Contractor's failure to take proactive measures to keep virus or malicious, mischievous or destructive programming from originating from the Contractor or any of its employees, subcontractors or consultants through appropriate firewalls and maintenance of anti-virus software and software security updates (such as operating systems security patches, etc.).

(c) In the event of destruction or modification of Software, the Contractor shall eliminate the virus, malicious, mischievous or destructive programming and be liable to the Commonwealth for any resulting damages.

- (d) The Contractor shall be responsible for reviewing Commonwealth software security standards specifically incorporated into this Contract and complying with those standards.
- (e) Intentionally Omitted.
- (f) Intentionally Omitted.
- (g) Intentionally Omitted.

**23. Patent, Copyright, Trademark and Trade Secret Protection. See Exhibit "C" Addendum 7, Section 2.**

**24. Intentionally Omitted.**

**25. CONTRACTOR HOSTED SECURITY, LOCATION, STATUS AND DISPOSITION OF DATA.**

Unless the Solicitation specifies otherwise:

- (i) All Data must be stored within the United States;
- (ii) The Contractor shall be responsible for maintaining the privacy, security and integrity of Data in the Contractor's or its subcontractors' possession;
- (iii) All Data will be available on a self-serve basis during the term. If the Commonwealth requires Contractor to provide an extract of its Data during the term, additional fees will apply;
- (iv) Subject to mutual agreement on scope and fees, any Data shall be removed from the Commonwealth's instance by the Contractor at the Commonwealth's request;
- (v) Any Data shall be held for litigation or public records purposes by the Contractor at the Commonwealth's request, and in accordance with the security, privacy and accessibility requirements of this Contract. For clarity, any post termination or expiration data retention beyond the Retention Period will require a mutually agreed amendment setting for the applicable scope and fees); and
- (vi) The Contractor shall comply with the provisions set forth in **Exhibit B, Requirements for Non-Commonwealth Hosted Applications/Services**.

**26. CHANGE IN CONTRACTOR'S OWNERSHIP.**

In the event that the Contractor should change majority ownership, the Commonwealth shall have the exclusive option of:

- (i) continuing under the terms and conditions of this Contract with the Contractor or its successors or assigns for the full remaining term of this Contract;

- (ii) continuing under the terms and conditions of this Contract with the Contractor or its successors or assigns for such period of time as is necessary to replace the products, materials, reports, studies, or computer programs; or
- (iii) immediately terminating this Contract.

## **27. AMERICANS WITH DISABILITIES ACT.**

- (a) **No Exclusion.** Pursuant to the Americans with Disabilities Act, 42 U.S. Code § 12101, et seq., no qualified individual with a disability may, on the basis of the disability, be excluded from participation in this contract or from activities provided for under this contract.
- (b) **Compliance.** For all goods and services provided pursuant to this contract, the Contractor shall comply with Title II of the Americans with Disabilities Act, the "General Prohibitions Against Discrimination" set forth in 28 C. F. R. § 35.130, and all other regulations promulgated under Title II of the Americans with Disabilities Act that apply to state and local governments.
- (c) **Indemnification.** The Contractor shall indemnify the Commonwealth against all third-party claims, suits, demands, losses, damages, costs, and expenses, including without limitation, litigation expenses, attorneys' fees, and liabilities, arising out of or in connection with the Contractor's failure or its employee's or agent's failure to comply with the provisions of paragraph a, as determined by the Commonwealth in its sole discretion.

## **28. EXAMINATION OF RECORDS.**

- (a) The Contractor agrees to maintain, using its standard procedures, and in accordance with Generally Accepted Accounting Principles, books, records, documents, and other evidence pertaining to the charges under this Contract to the extent and in such detail as will properly reflect all charges for which reimbursement is claimed under the provisions of this Contract.
- (b) The Contractor agrees to make available at the office of the Contractor at all reasonable times, and upon reasonable written notice, during the term of this Contract and the period set forth in **subsection (c)** below, any of the records for inspection, audit, or reproduction by any authorized Commonwealth representative. To the extent allowed by applicable laws or regulations, the Commonwealth agrees to maintain any documents so provided in accordance with the confidentiality provisions in **Section 14, Confidentiality, Privacy and Compliance.**
- (c) The Contractor shall preserve and make available its records for a period of **three (3) years** from the date of final payment under this Contract.
  - (i) If this Contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of **three (3) years** from the date of any resulting final settlement.

- (ii) Non-privileged records which relate to litigation or the settlement of claims arising out of the performance of this Contract, or charges under this Contract as to which exception has been taken by the auditors, shall be retained by the Contractor until such litigation, claims, or exceptions have been finally resolved.
- (d) Except for documentary evidence retained pursuant to [paragraph \(c\)\(ii\)](#) above, the Contractor may in fulfillment of its obligation to retain its records as required by this section substitute photographs, microphotographs, or other authentic reproductions of such records, after the expiration of **two (2) years** following the last day of the month of reimbursement to the Contractor of the invoice or voucher to which such records relate, unless a shorter period is authorized by the Commonwealth with the concurrence of its auditors.
- (e) The provisions of this section shall be applicable to and included in each subcontract hereunder.

## **29. NONDISCRIMINATION/SEXUAL HARASSMENT.**

- (a) Representations. The Contractor represents that it is presently in compliance with and will remain in compliance with all applicable federal, state, and local laws, regulations, and policies relating to nondiscrimination and sexual harassment for the term of the contract. The Contractor shall, upon request and within the time periods requested by the Commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to its books, records, and accounts by the Commonwealth for the purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.
- (b) Nondiscrimination/Sexual Harassment Obligations. The Contractor shall not:
  - (i) in any manner discriminate in the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under this contract or any subcontract, by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the Pennsylvania Human Relations Act (“PHRA”) and applicable federal laws, against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
  - (ii) in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under this contract.
  - (iii) in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, in the provision of services under this contract.
  - (iv) in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of PHRA and applicable

federal laws, against any subcontractor or supplier who is qualified to perform the work to which this contract relates.

- (v) in any manner discriminate against employees by reason of participation in or decision to refrain from participating in labor activities protected under the Public Employee Relations Act, Pennsylvania Labor Relations Act or National Labor Relations Act, as applicable and to the extent determined by entities charged with such Acts' enforcement and shall comply with any provision of law establishing organizations as employees' exclusive representatives.
- (c) Establishment of Contractor Policy. The Contractor shall establish and maintain a written nondiscrimination and sexual harassment policy that complies with the applicable law and these Nondiscrimination/Sexual Harassment provisions and shall inform its employees in writing of the policy. The policy must contain a provision that states that sexual harassment will not be tolerated and employees who practice it will be disciplined. For the entire period of the contract, the Contractor shall: (1) post its written nondiscrimination and sexual harassment policy or these Nondiscrimination/Sexual Harassment provisions conspicuously in easily accessible and well-lighted places customarily frequented by employees at or near where the contracted services are performed; or (2) provide electronic notice of the policy or this clause to its employees not less than annually.
- (d) Notification of Violations. The Contractor's obligations pursuant to these provisions are ongoing from the effective date and through the termination date of the contract. Accordingly, the Contractor shall notify the Commonwealth if, at any time during the term of this contract, it becomes aware of any actions or occurrences that would result in violation of these provisions.
- (e) Cancellation or Termination of Contract. The Commonwealth may cancel or terminate this contract and all money due or to become due under this contract may be forfeited for a violation of the terms and conditions of these Nondiscrimination/Sexual Harassment provisions. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.
- (f) Subcontracts. The Contractor shall include these Nondiscrimination/Sexual Harassment provisions in its contracts with all subcontractors providing goods or services under this contract. The incorporation of these provisions in the Contractor's subcontracts does not create privity of contract between the Commonwealth and any subcontractor, and no third-party beneficiaries are created by those provisions. If the Contractor becomes aware of a subcontractor's violation of this clause, the Contractor shall use its best efforts to ensure the subcontractor's compliance with these provisions.

## **30. CONTRACTOR INTEGRITY.**

- (a) Definitions. For purposes of these Contractor Integrity Provisions, the following definitions apply:
  - (i) "Affiliate" means two or more entities where (a) a parent entity owns more than 50% of the voting stock of each of the entities; (b) a common shareholder or group of shareholders owns more than 50% of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.

- (ii) “Contractor” means the individual or entity, that has entered into this contract with the Commonwealth.
- (iii) “Contractor Related Parties” means any Affiliates of the Contractor and the Contractor’s executive officers, Pennsylvania officers and directors, or owners of five percent or more interest in the Contractor.
- (iv) “Financial Interest” means ownership of more than a five percent interest in any business or holding a position as an officer, director, trustee, partner, employee, or holding any position of management.
- (v) “Gratuity” means tendering, giving, or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the [Governor’s Code of Conduct, Executive Order 1980-18](#), as may be amended, 4 Pa. Code §7.153(b), apply.
- (vi) “Non-bid Basis” means a contract awarded or executed by the Commonwealth with Contractor without seeking bids or proposals from any other potential bidder or offeror.

(b) Representations and Warranties.

- (i) Contractor Representation and Warranties. The Contractor represents, to the best of its knowledge and belief, and warrants that within the last five years neither the Contractor nor Contractor Related Parties have:
  - (1) been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;
  - (2) been suspended, debarred, or otherwise disqualified from entering into any contract with any governmental agency;
  - (3) had any business license or professional license suspended or revoked;
  - (4) had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust; and
  - (5) been, and are not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency or civil anti-trust investigation by any federal, state, or local prosecuting or investigative agency.
- (ii) Contractor Explanation. If the Contractor cannot make the representations and warranties set forth above at the time of its submission of its bid or proposal or if this contract is awarded on a non-bid basis at the time of the execution of the contract, the Contractor shall submit a written explanation outlining the reasons why it cannot make those representations and warranties. The Commonwealth may, based on its evaluation of the explanation provided, determine whether it is in the Commonwealth’s best interest to execute the contract.

- (iii) Further Representations. By submitting any bills, invoices, or requests for payment pursuant to this contract, the Contractor further represents that it has not violated any of these Contractor Integrity Provisions during the term of the contract.
- (iv) Notice. The Contractor shall immediately notify the Commonwealth, in writing, if at any time during the term of the contract it becomes aware of any event that would cause the Contractor's certification or explanation to change. The Contractor acknowledges that the Commonwealth may, in its sole discretion, terminate the contract for cause if it learns that any of the certifications made in these provisions are currently false or misleading due to intervening factual circumstances or were false or misleading or should have been known to be false or misleading when entering into the contract.

(c) Contractor Responsibilities. During the term of this contract, the Contractor shall:

- (i) maintain the highest standards of honesty and integrity.
- (ii) take no action in violation of any applicable laws, regulations, or other requirements applicable to the Contractor that govern Commonwealth contracting and procurement.
- (iii) establish and implement a written business integrity policy that includes, at a minimum, the requirements of these provisions as they relate to the Contractor's activity with the Commonwealth and Commonwealth employees and ensure that its employees comply with the policy.
- (iv) not accept, agree to give, offer, confer, agree to confer, or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order, statement of policy, management directive, or bulletin applicable to the provision of goods or services under this contract.
- (v) not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material under this contract, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Contractor's financial interest. The Contractor must disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than the date the Contractor signs the contract. The Commonwealth shall be deemed to have consented if the required disclosure is received and all of the required Commonwealth signatures are affixed.
- (vi) comply with the requirements of the Lobbying Disclosure Act (65 Pa.C.S. §13A01 et seq.) regardless of the method of award.
- (vii) comply with the requirements of Section 1641 of the Pennsylvania Election Code (25 P.S. §3260a) if this contract was awarded on a Non-bid Basis.
- (viii) immediately notify the Commonwealth contracting officer or the Office of the State Inspector General, in writing, when the Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct,

or these Contractor Integrity Provisions has occurred or may occur, including, but not limited to, contact by a Commonwealth officer or employee, which, if acted upon, would violate the ethical standards.

- (d) Investigations. If a State Inspector General investigation is initiated, the Contractor shall:
  - (i) reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of the State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
  - (ii) cooperate with the Office of the State Inspector General in its investigation of any alleged Commonwealth agency or employee breach of ethical standards and any alleged Contractor non-compliance with these Contractor Integrity Provisions and make identified Contractor employees available for interviews at reasonable times and places.
  - (iii) upon the inquiry or request of an Inspector General, provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Office of the State Inspector General to Contractor's integrity and compliance with these provisions. This information may include, but is not be limited to, Contractor's business or financial records, documents or files of any type or form that refer to or concern this contract.
- (e) Termination. For violation of any of these Contractor Integrity Provisions, the Commonwealth may terminate this and any other contract with the Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these Contractor Integrity provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this contract, and debar and suspend the Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one does not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or contract.
- (f) Subcontracts. The Contractor shall include these Contractor Integrity Provisions in its contracts with all subcontractors providing goods or services under this contract. The incorporation of this provision in the Contractor's subcontracts does not create privity of contract between the Commonwealth and any subcontractor, and no third-party beneficiaries are created by the inclusion of these provisions. If the Contractor becomes aware of a subcontractor's violation of these provisions, the Contractor shall use its best efforts to ensure the subcontractor's compliance with these provisions.

### **31. ASSIGNMENT OF RIGHTS UNDER THE ANTITRUST LAWS.**

The Contractor and the Commonwealth recognize that in actual economic practice, overcharges by Contractor's suppliers resulting from violations of state and federal antitrust laws are in fact borne by the Commonwealth. As part of the consideration for the award of this Contract, and intending to be legally bound, the Contractor assigns to the Commonwealth all rights, title, and interest in

and to any claims Contractor now has or may hereafter acquire under state and federal antitrust laws relating to the goods and services which are subject to this Contract.

## **32. SERVICE LEVELS.**

- (a) The Contractor shall comply with the procedures and requirements of the Service Level Agreements, if any, which are made part of this Contract.
- (b) Where there are expressly defined Service Levels, Contractor shall measure and report its performance against these standards on at least a monthly basis, except as may otherwise be agreed between the parties. Regardless of the presence or absence of expressly defined Service Levels, any failure to adequately or timely perform a Service may result in consequences under this Contract, up to and including Contract termination.
- (c) The Commonwealth's acceptance of any financial credit incurred by the Contractor in favor of the Commonwealth for a Service Level default ("Service Level Credit") shall not bar or impair Commonwealth's rights and remedies in respect of the failure or root cause as set forth elsewhere in this Contract, including without limitation other claims for liquidated damages, injunctive relief and termination rights; provided however, Service Level Credits paid would be credited against any such claims for damages.

## **33. PUBLICITY/ADVERTISEMENT.**

The Contractor shall not issue news releases, internet postings, advertisements, endorsements, or any other public communication without prior written approval of the Commonwealth, and then only in coordination with the Commonwealth. This includes the use of any trademark or logo.

## **34. TERMINATION ASSISTANCE.**

- (a) Upon the Commonwealth's request and subject to mutual written agreement on scope and fees, Contractor shall provide termination assistance services (Termination Assistance Services) directly to the Commonwealth, or to any vendor designated by the Commonwealth. The Commonwealth may request termination assistance from the Contractor upon full or partial termination of the Contract and/or upon the expiration of the Contract term, including any renewal periods. Contractor shall take all necessary and appropriate actions to accomplish a complete, timely and seamless transition of any Services from Contractor to the Commonwealth, or to any vendor designated by the Commonwealth, without material interruption of or material adverse impact on the Services subject to the Commonwealth's payment of agreed upon fees associated with the Termination Assistance Services. Contractor shall cooperate with the Commonwealth and any new contractor and otherwise promptly take all steps required or reasonably requested to assist the Commonwealth in effecting a complete and timely transition of any Services.
- (b) Such Termination Assistance Services shall first be rendered using resources included within the fees for the Services, provided that the use of such resources shall not adversely impact the level of service provided to the Commonwealth; then by resources already included within the fees for the Services, to the extent that the Commonwealth permits the level of service to be relaxed; and finally, using additional resources at costs determined by the Parties via **Section 11, Changes**.

## **35. NOTICE.**

Any written notice to any party under this Contract shall be deemed sufficient if delivered personally, or by facsimile, telecopy, electronic or digital transmission (provided such delivery is confirmed), or by a recognized overnight courier service (e.g., DHL, Federal Express, etc.), with confirmed receipt, or by certified or registered United States mail, postage prepaid, return receipt requested, sent to the address such party may designate by notice given pursuant to this section.

## **36. RIGHT-TO-KNOW LAW.**

- (a) Applicability. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, (“RTKL”) applies to this contract.
- (b) Contractor Assistance. If the Commonwealth needs the Contractor’s assistance in any matter arising out of the RTKL related to this contract, the Commonwealth shall notify the Contractor that it requires the Contractor’s assistance, and the Contractor shall provide to the Commonwealth:
  - (i) access to, and copies of, any document or information in the Contractor’s possession (Requested Information) arising out of this contract that the Commonwealth reasonably believes is a public record under the RTKL, within ten calendar days after receipt of written notification; and
  - (ii) any other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this contract.
  - (iii) Depending on the scope of the Requested Information, additional fees may apply.
- (c) Trade Secret or Confidential Proprietary Information. If the Contractor considers the Requested Information to include a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the Contractor considers exempt from production under the RTKL, the Contractor shall notify the Commonwealth and provide, within seven calendar days of receipt of the written notice a written statement, signed by a representative of the Contractor, that explains why the requested material is exempt from public disclosure under the RTKL. If the Commonwealth determines that the Requested Information is clearly not exempt from disclosure, the Contractor shall provide the Requested Information to the Commonwealth within five business days of receipt of written notice of the Commonwealth’s determination.
- (d) Reimbursement.
  - (i) Commonwealth Reimbursement. If the Contractor fails to provide the Requested Information and the Commonwealth is ordered to produce the Requested Information by a court of law or other administrative body with jurisdiction, the Contractor shall reimburse the Commonwealth for any damages, penalties, or costs that the Commonwealth may incur as a result of the Contractor’s failure, including any statutory damages assessed against the Commonwealth.
  - (ii) Contractor Reimbursement. The Commonwealth will reimburse the Contractor for any costs that the Contractor incurs as a direct result of complying with these

provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL.

- (e) Challenges of Commonwealth Release. The Contractor may file a legal challenge to any Commonwealth decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, to the extent the Contractor's legal challenge is rejected in whole, the Contractor shall reimburse the Commonwealth for any legal expenses incurred by the Commonwealth as a result of the challenge, including any damages, penalties or costs that the Commonwealth may incur as a result of the Contractor's legal challenge, regardless of the outcome.
- (f) Waiver. As between the parties, the Contractor waives all rights or remedies that may be available to it as a result of the Commonwealth's disclosure of Requested Information pursuant to the RTKL, so long as the Commonwealth complies with the RTKL.
- (g) Survival. The Contractor's obligations contained in this Section survive the termination or expiration of this contract.

### **37. APPLICABLE LAW AND FORUM.**

This contract is governed by and must be interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of laws provisions) and the decisions of the Pennsylvania courts. The Contractor consents to the jurisdiction of any court of the Commonwealth of Pennsylvania and any federal courts in Pennsylvania, and waives any claim or defense that such forum is not convenient or proper. Any Pennsylvania court or tribunal has in personam jurisdiction over the Contractor, and the Contractor consents to service of process in any manner authorized by Pennsylvania law. This provision may not be interpreted as a waiver or limitation of the Commonwealth's rights or defenses.

### **38. CONTROLLING TERMS AND CONDITIONS.**

The terms and conditions of this Contract shall be the exclusive terms of agreement between the Contractor and the Commonwealth. Unless mutually agreed in a fully executed written amendment or similar document, other terms and conditions or additional terms and conditions included or referenced in the Commonwealth's Purchase Orders or the Contractor's website, quotations, invoices, business forms, click-through agreements, or other documentation shall not become part of the parties' agreement and shall be disregarded by the parties, unenforceable by the Contractor, and not binding on the Commonwealth.

### **39. WORKER PROTECTION AND INVESTMENT.**

- (a) The Contractor shall comply with all applicable Pennsylvania state labor laws and worker safety laws including, but not limited to, the following:
  - (i) Construction Workplace Misclassification Act;
  - (ii) Employment of Minors Child Labor Act;
  - (iii) Minimum Wage Act;

- (iv) Prevailing Wage Act;
- (v) Equal Pay Law;
- (vi) Employer to Pay Employment Medical Examination Fee Act;
- (vii) Seasonal Farm Labor Act;
- (viii) Wage Payment and Collection Law;
- (ix) Industrial Homework Law;
- (x) Construction Industry Employee Verification Act;
- (xi) Act 102: Prohibition on Excessive Overtime in Healthcare;
- (xii) Apprenticeship and Training Act; and
- (xiii) Inspection of Employment Records Law.

**EXHIBIT B**  
**Requirements for Non-Commonwealth Hosted Applications/Services**

The purpose of this Attachment is to define requirements for business or technology solutions and services procured by the Commonwealth that are hosted within the Service Organization (Contractor's) or its Subservice Organization(s) (subcontractors) managed infrastructure. Any reference to Contractor below applies to Contractor and its subcontractors.

**A. Hosting Requirements**

1. The Contractor, including its hosting provider, shall supply and maintain all hosting equipment (hardware and software) required for the delivery of the computing services.
2. The Contractor shall provide secure access to users leveraging the principle of least privilege and delegating administration to the Commonwealth where possible.
3. The Contractor shall use commercially reasonable resources and efforts to maintain adequate network bandwidth and server capacity to meet expected service levels.
4. The Contractor shall maintain all components of the Contractor hosted solution with commercially reasonable support and replace as necessary to maintain compliance.
5. The Contractor shall monitor, prevent, and deter unauthorized system access. The Contractor shall use all commercially reasonable methods to confirm suspected breaches. In the event of any impermissible disclosure, unauthorized loss or destruction of Confidential Information, the receiving Party must immediately notify the disclosing Party and take all reasonable steps to mitigate any potential harm or further disclosure of such Confidential Information. The Contractor shall provide the Commonwealth with any requested logs, reports, and other information concerning unauthorized access or disclosure of Commonwealth data, including any mitigation efforts by Contractor. Any such information provided by Contractor shall be treated as confidential. In addition, pertaining to the unauthorized access, use, release, or disclosure of data, the Contractor shall comply with state and federal data breach notification statutes and regulations, and shall report security incidents to the Commonwealth within **seventy-two (72) hours** of when the Contractor has reasonable confirmation of such unauthorized access, use, release, or disclosure of data.
6. Intentionally Omitted.
7. The Contractor's employees or subcontractors, who are directly responsible for day-to-day monitoring and maintenance of the hosted system, shall have industry standard certifications applicable to the environment and system architecture used.
8. The Contractor or its hosting provider shall house all servers and equipment in an operational environment that meets industry standards including, but not limited to, climate control, fire and security hazard detection and response, electrical needs, and physical security.

9. The Contractor shall examine applicable system and error logs, which should include, but not be limited to, security events. Such logs shall be examined on a continual basis, at least daily, to minimize and predict system problems and initiate appropriate action.
10. The Contractor shall update and patch all applicable systems and third-party software security configurations to reduce security risk in alignment with industry best practices beginning prior to service release and on an ongoing basis.
11. During the term of the contract, the Contractor shall provide or make available all Commonwealth data to the Commonwealth, at no cost on a self-serve basis. If the Commonwealth requests an extract of its data, additional fees may apply. Contractor currently provides extracts via an S3 bucket, but extracts may be provided in an alternate format upon mutual agreement of the Parties. If the parties are unable to reach an agreement regarding format or method, data shall be provided in an industry standard format and method.

## **B. System and Organization Controls (SOC) Reporting Requirements**

1. Subject to this section and unless otherwise agreed to in writing by the Commonwealth, the Contractor shall, and shall require its subcontractors who process, transmit, or store COPA Data to, engage, on an annual basis, a CPA certified third-party auditing firm to conduct the following, as applicable:
  - (i) a SOC 1 Type II report with respect to controls used by the Contractor relevant to internal and external procedures and systems that process Commonwealth financial transactions; and
  - (ii) a SOC 2 Type II report with respect to controls used by the Contractor relevant to internal and external procedures and systems that access, process, host or contain Commonwealth Data designated as Class “C” Classified Records or Closed Records, as defined in ITP-SEC019, or in compliance with mandates by federal or state audit requirements and/or policy.

The Contractor shall receive and review their subcontractor’s relevant SOC reports, and upon COPA’s request, the Contractor shall provide the Commonwealth with a Letter of Attestation indicating that an analysis of their subcontractor’s SOC report has been performed.

2. Unless otherwise agreed to in writing by the Commonwealth, the Contractor’s SOC Report(s) shall be provided upon contract execution and annually thereafter. While it is preferable that SOC Reports coincide with Pennsylvania’s fiscal year (July 1 through June 30), SOC Reports, at the very least, must cover at least **6 consecutive months** of Pennsylvania’s fiscal year. The SOC Reports(s) shall be treated as confidential information.
3. SOC 2 Type II reports shall address the following:
  - (i) Security of Information and Systems;
  - (ii) Availability of Information and Systems; and
  - (iii) Confidentiality;

4. At the request of the Commonwealth and at Contractor's expense, the Contractor shall complete a SOC for Cybersecurity audit in the event:
  - (i) Reoccurring material findings in any SOC report required by subsection 1 above; or
  - (ii) A cybersecurity incident or breach that impacts the Commonwealth has occurred and was not handled in accordance with Contractor's Incident Response Plan (IRP) including, but not limited to, providing timely notice to the Commonwealth as required by Contract or applicable law; or
  - (iii) As agreed upon by the parties.

The SOC for Cybersecurity report shall detail the controls used by the Contractor or its subcontractor setting forth the description and effectiveness of the Contractor's or subcontractor's cybersecurity risk management program and the policies, processes and controls enacted to achieve each cybersecurity objective.

The Contractor shall provide to the Commonwealth a report of the SOC for Cybersecurity audit findings within **60 days** of its completion.

5. Additional standards, certifications or audits as required by law shall be supported by Contractor as mutually agreed upon in writing by the parties.
6. The Contractor shall adhere to the then current American Institute of Certified Public Accountants (AICPA) audit standards. The Contractor acknowledges that the AICPA guidance may be updated during the Term of this Contract, and the Contractor shall comply with such updates, which shall be reflected in the next annual SOC report.
7. In the event an audit reveals any material non-conformity within Contractor's SOC Reports, the Contractor shall provide the Commonwealth, within **45 days** of the issuance of the SOC report, a documented corrective action plan that addresses each non-conformity that is identified within the SOC report. For purposes of this Section 7, "material" means any finding that in the reasonable opinion of the Commonwealth, raises a significant concern regarding the confidentiality, availability, or integrity of the Contractor's Software. The corrective action plan shall provide, in detail:
  - (i) clear responsibilities of the personnel designated to resolve the non- conformity;
  - (ii) the remedial action to be taken by the Contractor or its subcontractor(s);
  - (iii) the dates when each remedial action is to be implemented; and
  - (iv) a summary of potential risks or impacts to the Commonwealth that are associated with the non-conformity(ies).
8. The Commonwealth may in its sole discretion agree, in writing, to accept alternative security report in lieu of a SOC report.

## C. Security Requirements

1. The Contractor shall conduct a third-party independent security/vulnerability scans (for clarity, Contractor may conduct these scans using tooling provided by a third-party) at its own expense no less frequently than on an annual basis.
2. Once per calendar year, the Contractor shall provide, at minimum, an executive summary of vulnerability assessment results to the Commonwealth upon request. Summary shall include, at minimum, scan date, identified vulnerabilities, severity classification, and remediation status.
3. The Contractor shall remediate and/or mitigate critical, high, and medium security/vulnerability assessment findings to align with the industry standards.
4. The Contractor shall use industry best practices to protect access to the system with a firewall and firewall rules to prevent access by non-authorized users and block all improper and unauthorized access attempts.
5. The Contractor shall use industry best practices to secure access to public web interfaces, which shall include, but is not limited to, web application firewall (WAF) for services that handle non-public Commonwealth records.
6. The Contractor shall use industry best practices to provide applicable system intrusion detection and prevention in order to detect intrusions in a timely manner.
7. The Contractor shall use industry best practices, such as those outlined in NIST 800-83, to provide appropriate exploit and malware controls, on all servers, endpoints, and network components.
8. The Contractor shall provide access to Commonwealth data only to authorized staff located within CONUS (any of the Continental United States and Hawaii). Access shall be based on the principle of least privilege.
9. The Contractor shall provide the services using security technologies and techniques in accordance with industry best practices including, but not limited to, the prevention and detection of intrusions, and any other inappropriate use or access of systems and networks.
10. The Contractor shall provide the Commonwealth with access to audit logs with respect to the services being provided to the Commonwealth on a self-serve basis.

#### **D. Data Protection**

1. The Contractor shall only host, handle, and process data in physical locations within CONUS.
2. The Contractor shall use industry best practices to protect their operational systems with applicable anti-virus, intrusion protection, incident response monitoring and reporting, network firewalls, application firewalls, and employ system and application patch management to protect its network and customer data from unauthorized disclosure.
3. The Contractor shall be solely responsible for applicable data storage required.

4. The Contractor shall encrypt all Commonwealth data in transit and at rest. The Contractor's method of data encryption shall meet or exceed National Institute Standards and Technology (NIST) encryption guidelines and standards.
5. The Contractor shall take all commercially viable and appropriate measures to protect the data availability including, but not limited to, real-time replication, traditional backup, and/or georedundant storage of Commonwealth data in accordance with industry best practices and encryption techniques.
6. The Contractor shall have appropriate controls in place to protect critical or sensitive data and shall employ stringent policies, procedures, to protect that data particularly in instances where such critical or sensitive data may be stored on a Contractor-controlled or Contractor-owned electronic device.
7. The Contractor shall utilize a secured backup solution to prevent loss of data. Stored backups must be kept in an all-hazards protective storage environment at the primary location and any additional locations where the data is being maintained. All back up data and media shall be encrypted.

#### **E. Adherence to Standards**

1. The Contractor support and problem resolution solution shall provide a means to classify problems as to criticality and impact and with appropriate resolution procedures and escalation process for classification of each problem.
2. The Contractor shall comply with all provisions of this Exhibit B and the attached Data Security and Information Addendum.
  - (i) With regard to accessibility, Contractor's compliance with the policies shall be limited to its then current Accessibility Conformance Report, which shall be provided upon the Commonwealth's request.
3. The Contractor shall comply with all pertinent federal and state regulations and laws, including but not limited to, data protections, data security, privacy, and data breach notification.

#### **F. Closeout**

Upon expiration or termination of the Agreement, Contractor will retain Commonwealth data for 90 days (the "Retention Period"). During the Retention Period and upon the Commonwealth's written request, Contractor will provide the Commonwealth with one (1) extract of all documents and files stored within its e-Builder instance free of charge via an S3 Bucket or other mutually agreeable format. Upon conclusion of the Retention Period, all documents and files stored within the Commonwealth's instance will be deleted from Contractor's documents stores. Thereafter, all Commonwealth Data will be sanitized in accordance with NIST 800-88 standards.



### ORDER FORM

<b>Order Date:</b>	Date of the last signature on the Participating Addendum
<b>Contract:</b>	GS-35F-408AA
<b>Trimble Entity Name ("Trimble") and Address:</b>	e-Builder Inc. a Trimble company 13450 West Sunrise Blvd Suite 600, Sunrise, FL
<b>Customer Entity Name ("Customer") and Address:</b>	Pennsylvania Department of General Services
<b>Billing Contact Name and E-Mail Address:</b>	
<b>Is a Purchase Order Required?</b>	Yes  <i>Purchase orders issued by Customer are issued for administrative purposes only; terms and conditions contained in any such purchase order shall be null and void.</i>
<b>Is Customer Tax Exempt? Is Customer a Public Entity?</b>	Yes Yes
<b>Initial Term:</b>	12 months from the Order Date
<b>Miscellaneous:</b>	<p>The SaaS Annual Amount is based on an Average Annual Capital Spend provided by the Customer. Trimble reserves the right to adjust the Annual Amount accordingly to align with the Customer's Actual Average Annual Capital Spend. "Annual Capital Spend" means the expenses incurred by Customer to demolish, plan, design, build, repair, remodel and furnish a building or site over a period of one year. "Average Annual Capital Spend" means the average of the estimated next three (3) fiscal years of the Customer's Annual Capital Spend. Trimble will have the right, during normal business hours and upon at least five (5) days' prior written notice, to have an independent firm audit the amount of Annual Capital Spend that the customer has incurred. The audit will be conducted at Trimble's expense, unless it reveals that Customer has not complied in which case Customer will (i) reimburse Trimble for all reasonable costs and expenses incurred by Trimble regarding such audit; and (ii) pay Trimble any annual license fee underpayment disclosed by the audit.</p> <p>The Addendums to this Order Form are in addition to the terms and conditions found in the Contract, GS-35F-408AA. In the event of a conflict between the Addendums and the Contract, the Addendums shall prevail.</p> <p><u>Post-Termination Extract.</u> Upon termination or expiration of this Agreement, Trimble will retain Customer Data for 90 days (the "Retention Period"). During the Retention Period, Trimble will provide an extract of all Customer documents and files stored within its e-Builder instance free of charge upon written request from Customer. After the Retention Period, all Customer Data will be sanitized in accordance with NIST 800-88 standards.</p> <p><u>Roadmap Disclaimer.</u> CUSTOMER AGREES THAT ITS PURCHASES ARE NOT CONTINGENT ON THE DELIVERY OF ANY FUTURE FUNCTIONALITY OR FEATURES, OR DEPENDENT ON ANY ORAL OR WRITTEN PUBLIC COMMENTS MADE BY TRIMBLE REGARDING FUTURE FUNCTIONALITY OR FEATURES.</p>

**Annual Software Subscription:**

SIN	Part Number	Product Description	UOI	Total Amount
54151ECOM	eB-Ent-GSA-1000M-Capital_Program	e-Builder Enterprise GSA Bundle which includes core platform and unlimited users for capital programs up to \$1000 million USD. One year subscription license with auto renewal. Includes e-Builder Enterprise 1000M Capital Program, Business Intelligence Add-on, Shared Testing Environment, and Data Warehouse	1	\$370,277.08
		<b>Discount (1%)</b>		(\$3,702.77)
<b>Total Annual Software Subscription</b>				\$366,574.31

**Addendums:**

1. Annual Software Subscription Details
2. Trimble General Transaction Terms (the “General Terms”)
3. Supplemental Terms for Software and Subscriptions (the “Software Terms”)
4. Supplemental Terms for Support and Maintenance (the “Support Terms”)
5. Supplemental Terms for Services (the “Services Terms”)
6. Supplemental Terms for Hardware (the “Hardware Terms”)
7. Supplemental Terms for U.S. Public Entities
8. Availability Service Level Agreement; Data Security and Restoration

**TERMS AND CONDITIONS**

1. Terms and Conditions. All offerings are made available by Trimble subject to the terms and conditions set forth in this Order and the above referenced Addendums.
2. RENEWALS. *This Order will automatically renew for subsequent 12 month term(s) at then-current pricing so long as the Participating Addendum remains in effect.*
3. Payment Terms. All fees are due net 30 from the date of the Trimble invoice.
  - **Annual Software Subscription:** Trimble will invoice \$366,574.31 upon execution of this Order Form. For renewal terms, Trimble will invoice 30 days in advance of each successive anniversary date.
4. Annual Price Increase. At each renewal, Trimble has a right to increase the annual fees by the fees found on the Contract.
5. Electronic Invoices. Customer hereby consents to the receipt of invoices electronically at the indicated e-mail address(es) and accepts such invoices as if received by mail. Customer's e-mail address may be changed by written notice given by Customer to Trimble at: customer\_master@trimble.com. Customer is responsible for maintaining a current e-mail address and shall under no circumstances be excused from payment of applicable charges by its failure to access its designated e-mail address.

**Addendum #1**

**Annual Software Subscription Details**

**Annual Software Subscription Details:**

***SaaS***

SaaS includes:

- Unlimited Projects
- Unlimited Document Storage
- 24x7 Help Desk
- Quarterly Enhancement/Upgrades
- Maintenance Releases
- Business Intelligence\*
- Data Warehouse\*
- Shared Test Environment\*

Business Intelligence, Data Warehouse, and Shared Test Environment are included in the Customer's subscription. These subscriptions items are not considered active as activation, configuration, and training have not been purchased by Customer. If activation of one these items is desired, Customer agrees to pay for activation via an amendment to the Order Form

## Addendum #2

### **Trimble General Transaction Terms** Version 1.1 (Last updated: October 7, 2023)

Trimble's provision of Offerings is governed exclusively by these Trimble General Transaction Terms (the "General Terms"). The Order, the SOW, these General Terms, any applicable Supplemental Terms, and all other terms referenced or incorporated therein, collectively constitute the "Agreement". Any conflict or inconsistency in the Agreement will be resolved in the following order of precedence: (1) the Order, (2) any applicable Supplemental Terms, (3) these General Terms, (4) the SOW, and (5) the Documentation.

1. **Definitions.** Capitalized terms have the meaning associated with them in this Section 1 (Definitions) or with the definition provided elsewhere in the Agreement.

- 1.1. "**Affiliate**" means an entity that, directly or indirectly, owns or controls, is owned or controlled by or is under common ownership or control with a party, where "ownership" means the direct or indirect ownership of more than fifty percent (50%) of an entity's outstanding voting rights or other equivalent voting interests.
- 1.2. "**Customer**" is the entity or person identified in the Order or SOW.
- 1.3. "**Dispute(s)**" means any dispute, claim, or controversy arising from or related to the Agreement.
- 1.4. "**Documentation**" means Trimble's then-current usage guidelines, standard technical documentation, acceptable use policies, support policies, service level commitments, or other policies referenced in the Agreement.
- 1.5. "**Hardware**" means hardware products specified in the Order.
- 1.6. "**High Risk Activities**" means any mission critical, hazardous, strict liability, or other activity(ies) where use or failure of the Offerings could lead to death, personal injury, or physical or environmental damage. Examples of High Risk Activities include, but are not limited to: aircraft or other modes of human mass transportation, nuclear or chemical facilities, life support systems, implantable medical equipment, motor vehicles, autonomous vehicles, air traffic control, emergency services, or weaponry systems. High Risk Activities do not include utilization of Offerings for administrative purposes, to store configuration data, engineering and/or configuration tools, or other non-control applications, the failure of which would not result in death, personal injury, or physical or environmental damage. These non-controlling applications may communicate with the applications that perform the control, but must not be directly or indirectly responsible for the control function.
- 1.7. "**Intellectual Property Rights**" means any and all right, title and interest in and to any and all trade secrets, patents, copyrights, service marks, trademarks, know-how, trade names, rights in trade dress and packaging, moral rights, rights of privacy, publicity, database rights and similar rights of any type, including any applications, continuations or other registrations with respect to any of the foregoing, under the laws or regulations of any foreign or domestic governmental, regulatory or judicial authority, and the right to sue for, settle and release past, present and future infringement of any of the foregoing.
- 1.8. "**Law(s)**" means all applicable local, state/provincial, federal and international laws, rules, regulations, directives, ordinances and conventions, including, but not limited to, those related to data privacy and data transfer, international communications and export of technical or personal data.
- 1.9. "**Licensed Software**" means the object code form of Trimble's proprietary installed software product for deployment on premises or on a device, as well as any Documentation, maintenance releases, and features and functionality enhancements, and application programming interfaces (APIs), in each case as may be made available pursuant to the Order. For clarity, Licensed Software excludes firmware.
- 1.10. "**Offerings**" means Trimble's Hardware, Software, Services, Support, and other Trimble goods or services specified on an Order or SOW.
- 1.11. "**Order**" means the quotation, proposal, sales agreement or similar documents provided by Trimble and accepted by Customer.
- 1.12. "**Services**" means any services described in the Order or a Statement of Work, including, without limitation, training, enablement, implementation, configuration, hosting, or content provision.
- 1.13. "**Software**" means the Licensed Software and/or Software-as-a-Service specified on an Order.
- 1.14. "**Software-as-a-Service**" or "**SaaS**" means a Trimble proprietary cloud service, as well as any Documentation, features and functionality enhancements, and application programming interfaces, in each case as may be made available pursuant to the Order.
- 1.15. "**Statement of Work**" or "**SOW**" means a statement of work or similar agreement governing the provision of Services.
- 1.16. "**Supplemental Terms**" are any additional Trimble terms and conditions referenced in the Order as "Supplemental Terms."
- 1.17. "**Support**" means support and/or maintenance for Software, and as may be further described in the applicable Supplemental Terms, Documentation, or otherwise as specified by Trimble in writing.
- 1.18. "**Trimble**" means Trimble Inc. or its Affiliate identified on the Order or SOW, or if none is specified, as set forth in Exhibit A (Trimble Entities; Governing Law; Exclusive Venue/Jurisdiction) based on the applicable Customer location.
- 1.19. "**Trimble IP**" means the Offerings, Documentation, and any written and electronic materials, proprietary information, documentation, code, technology, systems, infrastructure, equipment, and trade secrets developed, provided or used by Trimble or its subcontractors to produce and provide the Offerings together with all Intellectual Property Rights therein, together with all modifications, improvements, changes thereto or derivative works thereof, including without limitation: (a) proprietary electronic architecture and other non-literal elements of the Offerings developed by Trimble, (b) functional and technical specifications and other technical, training, reference or service information, documentation and manuals and updates thereto, (c) APIs, customized applications and computer programs, (d) processes, methods, algorithms, ideas, and other "know how," (e) data and information provided or sourced by Trimble, (f) Offerings which Customer has the right to use via a subscription, and (g) network equipment and architecture.

2. **Orders; Validity.** An Order is valid for acceptance by Customer within the period indicated in the Order and if no such period is provided, for thirty (30) calendar days from the issue date. The Agreement is formed by Customer's execution of the Order. Changes to an Order or belated acceptance by Customer are not valid unless Trimble accepts them in writing, and Trimble's partial or complete delivery against an Order modified by Customer, or acceptance of payment, shall not be deemed to be an acceptance of the modification. Orders that Customer has accepted cannot be canceled for any reason without Trimble's prior written consent.

3. **Payment Terms; Invoicing**

3.1. Fees are as set forth in the Order or SOW. Fees do not include applicable sales taxes, value added taxes, goods and services taxes, export or import charges, transportation or insurance charges, customs and duty fees, personal property taxes, surcharges and fees, or similar charges, all of which are Customer's responsibility to pay. Unless Customer provides Trimble with direct payment authority or a valid exemption certificate for the appropriate jurisdiction, Customer will pay Trimble all such taxes, charges, and fees invoiced by Trimble in connection with the Offerings. Customer will pay any foreign exchange transaction fees and any foreign exchange profits or losses incurred on such transactions.

3.2. Trimble will issue invoices in accordance with the billing frequency stated in the Order or SOW. Customer consents to the receipt of invoices electronically at the email address(es) it provided to Trimble for billing purposes, and accepts such invoices as if received by mail. Customer is responsible for maintaining current email address(es) with Trimble. Trimble's transmission of an invoice to the provided billing email address(es) (regardless of whether actually received by Customer) shall be considered delivery of that invoice by Trimble. Trimble's failure to issue an invoice in accordance with this Section 3 (Payment Terms; Invoicing) shall not be deemed to be a waiver by Trimble of its right to receive payment pursuant to the Agreement, but Customer shall not be obligated to make such payment until an invoice for such payment is issued by Trimble to Customer.

3.3. Unless otherwise set forth in the Order or SOW, payments are due net 30 days from the date of invoice. Customer will make payment in the currency indicated on the Order or SOW. Trimble is entitled to offset payments against prior debt balances in Customer's account. Subject to any Laws to the contrary or as otherwise expressly stated in the Agreement, payments are not refundable. No credit, carryover, or refund will be given for any unused Offerings (e.g., services hours, data usage) allocated or available for use during an indicated period of time.

3.4. Delinquent payments not subject to a bona fide dispute will bear interest as set forth in Exhibit A. If Customer does not object in writing to an invoiced amount by the invoice due date, Customer will be deemed to have acknowledged the correctness of that invoice and to have waived its right to dispute that invoice. A dispute as to a portion of any invoice or amount owed will give Customer the right to withhold or delay payment of the disputed portion only. Customer will be liable for all costs of collection of past due amounts (including attorneys' fees).

3.5. Trimble may suspend Customer's access to or Trimble's provision of Offerings, as applicable, on thirty (30) days prior written notice if Customer fails to pay any invoice not subject to a bona fide payment dispute within sixty (60) days of its due date.

3.6. For any breach of Customer's payment obligations under any Order(s), Trimble may, without limiting Trimble's other rights and remedies, declare Customer's unbilled future fees under any and all Orders immediately due and payable.

3.7. Trimble has the continuing right to review Customer's credit and, if reasonably determined necessary by Trimble, change Customer's payment terms, and may at any time demand advance payment, satisfactory security (such as, but not limited to, a confirmed, irrevocable letter of credit acceptable to Trimble), or a guarantee of prompt payment prior to shipment or service activation.

3.8. Offerings purchased or licensed under Trimble's United States General Services Administration ("GSA") Schedules are subject to all of the pricing and other terms and conditions described in the applicable GSA Schedule.

4. **Term and Termination**

4.1. **Term.** The term and any renewals thereof applicable for an Offering (collectively, the "Term(s)") shall be as set forth in the Order, SOW, or Supplemental Terms. Different Offerings may have different Terms.

4.2. **Termination for Cause.** Either party may terminate the Agreement if the other party (a) fails to cure a material breach of the Agreement (including a failure to pay fees), or fails to provide a written plan of cure reasonably acceptable to the non-breaching party, within thirty (30) days after the non-breaching party's receipt of written notice specifying such breach or failure, (b) becomes designated by an applicable governmental entity as a business with which a party is prohibited from doing business with (e.g., via governmental sanctions program), or (c) seeks protection under insolvency or comparable proceeding, or if such proceedings are instituted against that party and not dismissed within sixty (60) days.

4.3. **Survival.** These Sections survive expiration or termination of the Agreement: 1 (Definitions), 3 (Payment Terms; Invoicing), 4.3 (Survival), 6 (Warranty Disclaimers), 7 (Limitations of Liability), 8 (Indemnification), 9 (Confidentiality), 11 (Personal Information; Data Protection), 12 (Miscellaneous), any other provisions identified in any applicable Supplemental Terms referencing this provision, and any other term or provision in the Agreement that applies to events occurring following termination or expiration. Except where an exclusive remedy is provided, exercising a remedy under the Agreement, including termination, does not limit other remedies a party may have.

5. **Customer Obligations**

5.1. **High Risk Activities.** Customer will not use the Offerings for High Risk Activities. Customer acknowledges that the Offerings are not intended to meet any legal obligations for High Risk Activities. Trimble and its suppliers specifically disclaim any responsibility for, and will not be liable in any manner arising from, any use of the Offerings in connection with High Risk Activities.

5.2. **Compliance with Laws.** Customer shall comply with all Laws in connection with its use or receipt of the Offerings.

5.3. **Dependencies and Compatibilities.**

(a) Offerings may (i) require certain dependencies, including, without limitation, internet connection, electronic communications, hardware, data connections, operating systems, third-party products and services, other Trimble products and services, satellite

signals, etc. (collectively, “**Dependencies**”), and (ii) allow compatibility and/or interoperability with other products or services made available by Trimble, Customer, or a third party (collectively, “**Compatibilities**”).

- (b) Dependencies and Compatibilities may require payment of a separate fee and are governed by their respective terms of service, end user license agreement, or other agreement, and not by the Agreement. Unless otherwise expressly agreed upon by the parties in writing, Customer is responsible for all Dependencies and Compatibilities. Trimble may modify the Offerings from time to time, and Trimble does not guarantee that the Offerings will continue to operate or be compatible with any Dependencies or Compatibilities. Trimble makes no warranty or guarantee, and will have no liability or obligations under the Agreement, with respect to any Dependencies, Compatibilities, or other factors outside of Trimble’s control.
- (c) Customer represents and warrants that it shall, and shall use best efforts to require any provider of any Dependencies and Compatibilities to: (i) establish and maintain industry standard technical, organizational, physical, and administrative safeguards designed to ensure the security and integrity of the Offerings; and (ii) comply with the security controls, configuration requirements, and access limitations imposed by Trimble, as may be modified by Trimble from time to time.

## 6. WARRANTY DISCLAIMERS.

THE LIMITED WARRANTY TERMS, IF ANY, EXPRESSLY SET FORTH IN ANY APPLICABLE SUPPLEMENTAL TERMS ARE IN LIEU OF ALL OBLIGATIONS OR LIABILITIES ON TRIMBLE’S PART ARISING OUT OF, OR IN CONNECTION WITH, THE OFFERINGS, AT ANY TIME EITHER DURING OR AFTER EXPIRATION OF THE APPLICABLE WARRANTY, AND STATE TRIMBLE’S ENTIRE LIABILITY AND CUSTOMER’S EXCLUSIVE REMEDIES RELATING TO THEM. EXCEPT FOR ANY LIMITED WARRANTY TERMS EXPRESSLY PROVIDED IN ANY APPLICABLE SUPPLEMENTAL TERMS, THE OFFERINGS ARE PROVIDED “AS-IS” AND WITHOUT EXPRESS OR IMPLIED WARRANTY OR CONDITION OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE, AND NONINFRINGEMENT. SUPPLEMENTAL TERMS MAY HAVE ADDITIONAL DISCLAIMERS. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON DURATION OR THE EXCLUSION OF AN IMPLIED WARRANTY, SO THE ABOVE LIMITATION(S) MAY NOT APPLY OR FULLY APPLY TO CUSTOMER.

## 7. Limitations of Liability.

### 7.1. Waiver; Liability Cap.

- (a) EXCEPT FOR EXCLUDED CLAIMS, (i) NEITHER PARTY (OR ITS SUPPLIERS) SHALL BE LIABLE FOR DAMAGES FOR LOSS OF PROFIT OR REVENUE, DATA THAT IS LOST OR CORRUPTED, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS, LOSS OF GOODWILL, OR ANY SPECIAL, INCIDENTAL, RELIANCE, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND; AND (ii) EACH PARTY’S (AND EACH OF ITS SUPPLIER’S) ENTIRE LIABILITY FOR ANY AND ALL DAMAGES ARISING OUT OF OR RELATED TO THE AGREEMENT WILL NOT EXCEED IN AGGREGATE THE AMOUNTS PAID OR PAYABLE BY CUSTOMER TO TRIMBLE DURING THE PRIOR 12 MONTHS UNDER THE AGREEMENT FOR THE APPLICABLE OFFERING(S) GIVING RISE TO THE LIABILITY.
- (b) “EXCLUDED CLAIMS” MEANS (i) CUSTOMER’S PAYMENT OBLIGATIONS UNDER THE AGREEMENT, (ii) DAMAGES PAYABLE TO A THIRD PARTY (I.E., NOT AN INDEMNIFIED PARTY) EITHER AWARDED BY A COURT OF COMPETENT JURISDICTION OR INCLUDED IN A SETTLEMENT AGREED TO BY THE INDEMNIFYING PARTY, WHICH DAMAGES ARE SUBJECT TO A PARTY’S INDEMNIFICATION OBLIGATIONS IN SECTION 8 (INDEMNIFICATION), AND (iii) ANY ADDITIONAL “EXCLUDED CLAIMS” EXPRESSLY IDENTIFIED IN ANY APPLICABLE SUPPLEMENTAL TERMS.
- (c) THE ABOVE LIMITATIONS OF LIABILITY WILL APPLY TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF SUCH DAMAGES COULD HAVE BEEN FORESEEN OR IF A PARTY HAS BEEN APPRAISED OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF WHETHER SUCH DAMAGES ARE ARISING IN BREACH OF ANY ONE OR MORE WARRANTIES, NON-CONFORMITY, IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, BREACH OF ANY STATUTORY DUTY, OR OTHERWISE.
- (d) SOME JURISDICTIONS DO NOT ALLOW A LIMITATION OF LIABILITY FOR DEATH, PERSONAL INJURY, FRAUDULENT MISREPRESENTATIONS, CERTAIN INTENTIONAL OR NEGLIGENT ACTS, VIOLATION OF SPECIFIC STATUTES, OR THE LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES. IN SUCH AN EVENT, THE FOREGOING LIMITATION(S) WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

7.2. **Nature of Claims and Failure of Essential Purpose.** The waivers and limitations in this Section 7 (Limitations of Liability) are agreed-upon allocations of risk constituting in part the consideration for Trimble’s performance under the Agreement, and will survive and apply even if any limited remedy in the Agreement fails of its essential purpose.

## 8. Intentionally Omitted.

## 9. Confidentiality.

9.1. **Definition.** “**Confidential Information**” means information disclosed to the receiving party under the Agreement that is designated by the disclosing party as proprietary or confidential or that should be reasonably understood to be proprietary or confidential due to its nature and the circumstances of its disclosure. Trimble’s Confidential Information includes, without limitation, the terms and conditions of the Agreement, and any technical or performance information about the Offerings, including the Documentation.

9.2. **Obligations.** As a receiving party, each party (a) will protect the confidentiality of the disclosing party’s Confidential Information using the same degree of care it uses for its own information of like importance (but not less than reasonable care), (b) will not share the disclosing party’s Confidential Information with third parties except as permitted in the Agreement or with the disclosing party’s prior written or electronic consent, and (c) will only use Confidential Information to fulfill its obligations and exercise its rights in the Agreement. The receiving party may disclose Confidential Information to its employees, agents, Affiliates, contractors, and other representatives (collectively, “**Representatives**”) having a legitimate need to know (including, for Trimble, its subcontractors), provided (i) the Representatives are subject to confidentiality obligations no less protective than those in

this Section 9 (Confidentiality), and (ii) the receiving party is responsible for any breach of this Section 9 (Confidentiality) by the acts or omissions of its Representatives.

**9.3. Exclusions.** These confidentiality obligations do not apply to information that the receiving party can document (a) is or becomes public knowledge through no fault of the receiving party or its Representatives, (b) it rightfully knew or possessed on a non-confidential basis prior to receipt under the Agreement, (c) it rightfully received from a third party without obligation of confidentiality, or (d) it independently developed without using the disclosing party's Confidential Information. Supplemental Terms may have additional exclusions.

**9.4. Remedies.** Unauthorized use or disclosure of Confidential Information may cause substantial harm for which remedies at law (e.g., monetary damages) alone are an insufficient remedy. In the event of such actual or threatened breach by a party, the other party may seek injunctive relief, in addition to other available rights and remedies, for breach or threatened breach of this Section 9 (Confidentiality), without proof of actual damages or the requirement of posting a bond or other security.

**9.5. Required Disclosures.** Nothing in the Agreement prohibits either party from making disclosures if required by Law or government or court order, provided (if permitted by Law) it notifies the other party in advance and reasonably cooperates in any effort by the other party to obtain confidential treatment.

## 10. Intellectual Property Rights.

**10.1. Trimble IP.** As between the parties, except for any limited usage rights set forth in any Supplemental Terms, Trimble and its suppliers have and will retain all Intellectual Property Rights in and to Trimble IP and all copies, modifications, and derivative works thereof. No Intellectual Property Rights are granted by Trimble to Customer except as expressly provided under the Agreement.

**10.2. Feedback.** Customer may from time to time provide suggestions, comments, or other feedback (collective, "Feedback") to Trimble with respect to the Offerings. Both parties agree that all Feedback is and will be given entirely voluntarily, and shall not be considered Confidential Information of Customer. Customer shall not provide any Feedback that is subject to license terms that seek to require any of Customer's products, technology, service, or documentation incorporating or derived from such Feedback, or any of Customer's intellectual property to be licensed or otherwise shared with any third party. Customer hereby grants to Trimble and its Affiliates a nonexclusive, worldwide, perpetual, irrevocable, transferable, sublicensable, royalty-free, fully paid up license to use and otherwise exploit the Feedback.

## 11. Personal Information; Data Protection.

**11.1.** This Section 11 (Personal Information; Data Protection) applies if Customer is a legal person (i.e., a business or legal entity). All Laws relating to the protection of privacy and data protection are referred to as "**Data Protection Legislation**". "**Personal Information**" is defined as in the Applicable Data Protection Legislation, or if no definition is provided, any personally identifiable information which is either (a) provided by Customer or on its behalf, or (b) automatically collected through the Offering on Customer's behalf. "**Applicable**", in this context, means the Data Protection Legislation applicable to Customer at Customer's principal place of business or to Trimble at Trimble's principal place of business, and such Laws that the parties mutually agree apply.

**11.2.** Each party will comply with all Applicable requirements of the Data Protection Legislation. This Section 11 (Personal Information; Data Protection) is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the applicable Data Protection Legislation.

**11.3.** The parties acknowledge that: (a) when performing its obligations under the Agreement, Trimble processes Personal Information on Customer's behalf, except for user registration and software licensing and usage data, for which Trimble acts as responsible party, and (b) the Personal Information may be transferred or stored, and/or accessed from outside of the country where Customer's principal place of business is located in order to provide the Software and Trimble's other obligations under the Agreement.

**11.4.** Customer will ensure that it has all necessary appropriate consents and notices in place to enable (a) lawful transfer of the Personal Information to Trimble for the duration and purposes of the Agreement and (b) Trimble to lawfully use, process and transfer the Personal Information in accordance with the Agreement, including on Customer's behalf.

**11.5.** If the processing of Personal Information by Trimble is subject to the General Data Protection Regulation ((EU) 2016/679) or the Data Protection Act 2018 of the United Kingdom, then, in addition, at the written request of Customer, the parties will execute an applicable data processing addendum, available at <https://www.trimble.com/privacy/DPA-TI-EuroSubs> (or any successor url). Transfers of Personal Information from Trimble entities located in Europe, acting as data exporter, to Trimble entities in the USA, acting as data importer, are governed, for the benefit of Customer, by the Standard Contractual Clauses available at the same url or upon written request to Trimble.

**11.6.** If the processing of Personal Information by Trimble is subject to US data protection laws, rules or regulations, then the US Data Processing Addendum for Customer Personal Information (available at [https://dl.trimble.com/www/us\\_dpa\\_customer.pdf](https://dl.trimble.com/www/us_dpa_customer.pdf) or any successor url) is herein incorporated by reference.

## 12. Miscellaneous.

**12.1. Assignment.** Trimble may assign the Agreement upon notice to and acceptance by Customer. Customer may not assign or transfer the Agreement (by operation of law or otherwise) without the prior written consent of Trimble. Any non-permitted assignment is void. The Agreement will bind and inure to the benefit of each party's permitted successors and assigns.

**12.2. Amendments.** Any Amendments to this Agreement must be inwriting and signed by all Parties. Notwithstanding the foregoing, Trimble may modify Documentation upon written notice to Customer to reflect new features or changing practices, provided that the modifications will not materially decrease Trimble's overall obligations with respect to such Offering(s).

**12.3. Waiver and Severability.** No waiver of any provision or breach of the Agreement (a) will be effective unless made in writing, or (b) will operate as or be construed to be a continuing waiver of such provision or breach. In the event any portion of the Agreement is held to be invalid or unenforceable, such portion will be construed as nearly as possible to reflect the original intent of the

parties, or if such construction cannot be made, such provision or portion thereof will be severable from the Agreement, provided that the invalidity, illegality, or unenforceability in whole or in part of any provision does not affect the validity of other provisions.

**12.4. Force Majeure.** Neither party will be liable for any default, delay, or non-performance of its obligations under the Agreement (except for payment obligations) due to causes beyond its reasonable control, including, without limitation, strikes, blockades, war, terrorism, riot, internet or utility failures, governmental orders or actions, national or regional emergency, pandemics, or natural disasters, provided that such party promptly notifies the other in writing of such occurrence and uses commercially reasonable efforts to resume performance of its affected obligations as soon as feasible. Delays or failures that are excused as provided in this Section 12.4 (Force Majeure) will result in automatic extensions of dates for performance for a period of time equal to the duration of the events excusing such delay or failure.

**12.5. Notices.** Any notice or other communication given by either party to the other regarding the Agreement will be deemed given and served when personally delivered or delivered by reputable international courier requiring signature for receipt addressed to the party at its notice address. Notice will be deemed effective upon delivery or refused delivery attempt. Either party may change its notice address by written notice to the other. Customer's notice address will be the address appearing on the Order or SOW. Trimble's notice address will be the applicable address on [Exhibit A](#) (Trimble Entities; Governing Law; Exclusive Venue/Jurisdiction), or if the Trimble entity is not listed there, then on the Order. In addition, any valid notice to Trimble shall include a required copy to: Trimble Inc., Attn: General Counsel - Important Legal Notice, 510 De Guigne Drive, Sunnyvale, CA 94085, USA. Trimble may send operational notices to Customer by email or through the Offering, including, without limitation, modifications of the Agreement or Documentation, suspension, collection, and termination notices related to overdue fees.

**12.6. Export Control.** Customer acknowledges that the Offerings are subject to export restrictions by the United States government and import restrictions by certain foreign governments. Customer will not, and will not allow any third party to, remove or export from the United States or allow the export or re-export of any part of the Offerings or any direct product thereof: (a) into (or to a national or resident of) any embargoed or terrorist-supporting country; (b) to anyone on the U.S. Commerce Department's Table of Denial Orders or U.S. Treasury Department's list of Specially Designated Nationals; (c) to any country to which such export or re-export is restricted or prohibited, or as to which the United States government or any agency thereof requires an export license or other governmental approval at the time of export or re-export without first obtaining such license or approval; or (d) otherwise in violation of any export or import restrictions, Laws of any United States or foreign agency or authority. Customer warrants that it is not located in, under the control of, or a national or resident of any such prohibited country or on any such prohibited party list. The Offerings are further restricted from being used for the design or development of nuclear, chemical, or biological weapons or missile technology, or for terrorist activity, without the prior permission of the United States government. Customer will defend, indemnify, and hold Trimble harmless against any liability (including attorneys' fees) arising out of Customer's failure to comply with the terms of this Section. Customer's obligations under this Section 12.6 (Export Control) will survive the termination of the Agreement for any reason whatsoever.

**12.7. Anti-Corruption Compliance.** Each party, and any third party acting on its behalf, will comply with all applicable United States and international anti-corruption and anti-bribery laws and regulations, including, without limitation, the U.S. Foreign Corrupt Practices Act, the U.K. Bribery Act, and others (collectively, "**Anti-Corruption Laws**"). Each party, and any third party acting on its behalf, will not directly or indirectly offer, promise, or give any payment or anything of value to a government official, or any other individual or entity, where the intent is to improperly influence any act or decision of the government official, or other individual or entity, to obtain or retain business or some other benefit or commercial advantage for either party. Each party, and any third party acting on its behalf, also will not solicit or accept any sort of payment or anything of value from anyone, where the intent is to improperly influence any acts of a party or any third party acting on its behalf.

**12.8. GSA.** Offerings purchased or licensed under Trimble's United States General Services Administration ("GSA") Schedules are subject to all of the pricing and other terms and conditions described in the applicable GSA Schedule.

**12.9. Governing Law and Venue.** Governing Law and Forum are set forth in Exhibit A to the Contract (The Commonwealth's IT Terms and Conditions).

**12.10. WAIVER OF JURY TRIAL – UNITED STATES CLAIMS. FOR ANY CLAIM BROUGHT IN A STATE, FEDERAL, OR OTHER COURT IN ANY JURISDICTION WITHIN THE UNITED STATES, EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL ACTION, PROCEEDING, CAUSE OF ACTION, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THE AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY; PROVIDED, HOWEVER, THAT THIS PROVISION SHALL NOT BE ENFORCED OR ENFORCEABLE TO THE EXTENT A WAIVER OF THE RIGHT TO A TRIAL BY JURY IS PROHIBITED BY, OR CONTRARY TO, THE PUBLIC POLICY OF THE STATE IN WHICH SUCH LEGAL ACTION, PROCEEDING, CAUSE OF ACTION, OR COUNTERCLAIM IS FILED.**

**12.11. Region-Specific Terms.** Additional terms and conditions for specified regions are as set forth in [Exhibit B](#) (Region-Specific Terms).

**12.12. Publicity.** Customer agrees that (a) Trimble may issue a press release in the form approved by the parties regarding the parties' entry into the Agreement, and (b) Trimble may identify Customer (including through use of its name and logo) as Trimble's customer, including on Trimble's website, and may include Customer in its customer list and marketing materials, but will cease this use upon Customer's written request.

**12.13. Headings; Language.** The headings in the Agreement have been inserted for convenience only and shall have no substantive effect. The language of all parts of the Agreement shall in all cases be considered as a whole, according to its fair meaning, and not strictly for or against any of the parties. The parties hereby acknowledge and agree that the language of the Agreement shall be considered jointly drafted.

**12.14. Subcontractors.** Trimble may use subcontractors in the performance of its obligations under the Agreement, and will be responsible for the acts and omissions of its subcontractors in their performance of Trimble's obligations in the Agreement.

**12.15. No Third-Party Beneficiaries.** Except as may be expressly stated in any Supplemental Terms, there are no third-party beneficiaries under the Agreement.

**12.16.Independent Contractors.** Each party is an independent contractor of, and is not an employee, agent, fiduciary, or authorized representative of, the other party.

**12.17.Entire Agreement.** The Agreement sets forth the entire understanding between the parties in connection with its subject matter, and supersedes all prior or contemporaneous proposals, communications, agreements, negotiations, and representations, whether written or oral, regarding the subject matter thereof. Any additional, contrary, and/or pre-printed terms or conditions appearing on Customer's acceptance, orders, or associated purchase documentation are hereby rejected and will be of no effect.

**12.18.Counterparts.** The Agreement, or portions thereof, may be executed in several counterparts and, if applicable, by each party on a separate counterpart, each of which, when so executed and delivered will be an original, but all of which together will constitute but one and the same instrument. A signature, digital signature, or electronic signature delivered through other means (e.g., email) shall have the same force and effect as an original ink signature.

**Exhibit A**  
**Trimble Entities; Notice Address**

<b>Customer Location*</b>	<b>Trimble Entity and Notice Address**</b>
United States	Trimble Inc. 10368 Westmoor Drive Westminster, CO 80021 USA
Belgium	Trimble Belgium BV, Geldenaaksebaan 329 3001 Leuven, Belgium
Canada	Trimble Canada Corporation 600-1741 Lower Water Street Halifax, Nova Scotia B3J 0J2, Canada
France	Trimble France S.A.S. 1 quai Gabriel Péri 94340 Joinville-le-Pont, France
Any other country or geography not specified above	Trimble Europe B.V. Industrieweg 187a, 5683 CC Best, The Netherlands

*\* Customer location is Customer's billing address specified on the Order, or if none, then the address provided by Customer to Trimble when registering its online account.*

*\*\* Addresses for Trimble entities not listed shall be as set forth on the Order or SOW. See additional required notice address for Trimble in Section 12.5 (Notices).*

**Exhibit B**  
**Intentionally Omitted.**

## Addendum #3

### **Supplemental Terms for Software and Subscriptions**

*Version 1.1 (Last Updated: October 7, 2023)*

**1. Definitions.** Capitalized terms not defined herein have the meanings given in the General Terms.

1.1. **“Active Project”** means any Project on which the Software may be used by Customer during any Annual Subscription Term.

1.2. **“Annual Subscription Term”** means each 12-month period of a Subscription Term.

1.3. **“Anonymized Data”** means any data collected in connection with the Offerings (including Customer Data) that has been aggregated and/or de-identified in such a manner that neither Customer nor any of its Authorized Users or any other individual can be identified from the data when it is shared outside of Trimble or its Affiliates.

1.4. **“Authorized User”** means any employee of Customer or third-party user authorized by Customer to access and use the Offerings on Customer’s behalf in accordance with the Agreement, including, without limitation, Section 6.6 (Third-Party Access).

1.5. **“Correction Services”** means subscription-based services that provide GNSS position correction data.

1.6. **“Concurrent User”** means any type of User authorized by Customer to access and use the Offerings on Customer’s behalf simultaneously at a given point in time.

1.7. **“Customer Data”** means any information, documents, materials, or other data of any type that is input by or on behalf of Customer into the Offerings or that is created or generated by Customer through Customer’s use of the Offerings, including without limitation information or data that is submitted manually by Authorized Users or through a Third-Party Platform. For clarity, Customer Data expressly excludes Usage Data.

1.8. **“Customer Group”** means Customer’s business units, Affiliates, or Joint Ventures, if any, listed in the Order that may authorize Authorized Users to use the Offerings on behalf of those business units, Affiliates, or Joint Ventures.

1.9. **“Gross Annual Revenue”** or **“GAR”** means Customer’s (and Customer Group’s, if applicable) income and revenue from all sources, before expenses or taxes, calculated on an annual basis according to generally accepted accounting principles and as reported in company financial statements. The various equivalent definitions may be used interchangeably.

1.10. **“Joint Venture”** means a business arrangement in which Customer and one or more other third parties agree to pool their resources to accomplish a Project or other commercial enterprise.

1.11. **“License Keys”** means electronic passwords, authorization codes, or other enabling mechanisms provided for use with the Offerings.

1.12. **“Named User”** means any type of Authorized User designated by Customer by name or other identifier to access and use the Offerings on Customer’s behalf.

1.13. **“Prohibited Data”** means any (a) patient, medical, or other protected health information regulated by the Health Insurance Portability and Accountability Act (as amended and supplemented) (“HIPAA”); (b) credit, debit, or other payment card data subject to the Payment Card Industry Data Security Standards (PCI DSS); (c) information subject to regulation or protection under the Children’s Online Privacy Protection Act or Gramm-Leach Bliley Act, or (d) any other information which is regulated under Laws and is not required for use of the Software for its intended purpose.

1.14. **“Project”** means the initiation, delivery, operations, and maintenance of a construction project.

1.15. **“Provision Date”** means the date on which Trimble first provides access to the Offerings. For an Offering bundle comprised of multiple Software, the Provision Date will be the date on which the entire Offering bundle becomes fully provisioned.

1.16. **“Subscription”** means access to any Software, Support, Correction Services, content, data, or other information, in each case made available for the applicable Subscription Term(s).

1.17. **“Support Terms”** means the then-current Supplemental Terms for Support and Maintenance available at

<https://www.trimble.com/en/legal/customer-terms> or any successor url.

1.18. **“Third-Party Materials”** means any third-party data, content, or proprietary software not provided by Trimble. Third-Party Materials is not part of Software.

1.19. **“Project Budget”** means the total projected cost allocated to carry out, manage, and complete one or more Active Project(s) over the entire Subscription Term. The various defined terms are equivalent and may be used interchangeably, including in other defined terms.

1.20. **“Total Project Value”** or **“Project Value”** means Project Budget divided by the number of Annual Subscription Terms in the Subscription Term (and not any renewal). The various defined terms are equivalent and may be used interchangeably, including in other defined terms.

1.21. **“Usage Limitations”** means Customer’s authorized scope of use for the Offerings as specified in the applicable Order, Supplemental Terms, or Documentation, which may include any user (e.g., Named User, Concurrent User, etc.), seat, copy, instance, data storage, CPU, computer, field of use, location, project, or other restrictions.

1.22. **“Usage Data”** means Trimble’s technical logs, data, and learnings about Customer’s use of the Offerings, excluding Customer Data.

## **2. Generally**

### **2.1 Offerings.**

(a) **Subscriptions (other than Licensed Software)**. Customer may access and use the Subscriptions during the Subscription Term only for its internal business purposes in accordance with the Documentation, Usage Limitations, and the Agreement. Unless otherwise specified by Trimble, any Licensed Software provided with a Subscription is subject to the terms applicable to Licensed Software under the Agreement.

(b) **Licensed Software**. Trimble hereby grants Customer a non-transferable, non-sublicensable, non-exclusive license, during Term, to install, copy, and use the Licensed Software on systems or devices under Customer’s control only for its internal business purposes in accordance with the Documentation, Usage Limitations, and the Agreement. Licensed Software is licensed, not sold. Any Licensed Software deployed through hosting services delivered by Trimble are subject to the terms and conditions applicable to Licensed Software.

2.2 **Authorized Users**. Only Authorized Users may access or use the Offerings. User IDs are granted to individual, named persons, and each Authorized User will keep login credentials confidential and not share them with anyone else. Customer is responsible for its Authorized Users’ compliance with the Agreement and actions taken through their accounts. In the event an Authorized User is no longer authorized to use an Offering on Customer’s behalf, Customer will promptly de-activate such Authorized User’s access. Unless expressly permitted in the Order, Supplemental Terms, or

Documentation, Customer may not transfer Authorized User status from one individual to another. Customer will promptly notify Trimble if it becomes aware that any of its Authorized User login credentials have been compromised.

2.3. **Restrictions.** Customer will not (and will not permit, encourage, or assist anyone else to) do any of the following: (a) provide access to, distribute, sell, or sublicense the Offerings to a third party; (b) use the Offerings on behalf of, or to provide any product or service to, third parties; (c) use the Offerings to develop a similar or competing product or service; (d) reverse engineer, decompile, disassemble, or seek to access the source code or non-public APIs to any element of the Offerings, except to the extent expressly permitted by Law (and then only after providing prior written notice to Trimble); (e) modify or create derivative works of the Offerings or copy any element of the Offerings (other than in connection with making copies of Licensed Software authorized under the Agreement); (f) remove or obscure any proprietary notices in the Offerings; (g) publish benchmarks or performance information about the Offerings, except to the extent expressly permitted by Law; (h) interfere with the Offerings' operation or its use by others, circumvent its access restrictions or, without the prior written permission of Trimble, conduct any security or vulnerability test of the Offerings; (i) transmit any viruses or other harmful materials to the Offerings; (j) submit to the Offerings any information that is inappropriate, defamatory, obscene, salacious, or unlawful, or use the Offerings to defame, harass, stalk, threaten, or otherwise violate the rights of others; (k) use the Offerings to advertise, offer to sell or buy goods, or otherwise for business promotional purposes; (l) for Licensed Software, unless expressly permitted in the Order, Supplemental Terms, or the Documentation, use or host any Licensed Software in a virtual server environment, or (m) for Corrections Services, re-broadcast the Corrections Services without the prior written consent of Trimble.

2.4 **Free Versions; Trials and Betas.** “**Free Versions**” means any Offerings made available to Customer for use without a fee. “**Trials and Betas**” means any Offerings or any features thereof made available on a evaluation or trial basis or as an alpha, beta, or early access offering, in any case free or otherwise. Unless otherwise set forth in the Documentation or the Agreement, Customer may only use Free Versions in a non-production environment and for non-commercial purposes, and Trials and Betas may only be used solely for Customer’s internal evaluation to determine whether to purchase a license or subscription to the Offerings. The evaluation term for Trials and Betas shall be 30 days unless otherwise designated by Trimble in writing. Free Versions and Trials and Betas are optional, and Trimble may cease making available such Offerings at any time for any reason. Trials and Betas may be inoperable, incomplete, or include features that Trimble may never release, and their features and performance information are Trimble’s Confidential Information. In the event Customer has purchased Services related to any Free Version or Trial and Beta, any unused Services upon any termination or expiration of the applicable term for the Free Version or Trial and Beta shall be forfeit. **Notwithstanding anything else in the Agreement: (a) Trimble has no obligation to retain Customer Data used with Free Versions and Trials and Betas; (b) Trimble provides the Free Versions and Trial and Betas “AS-IS” with no warranty, indemnity, service levels, or support; (c) Trimble’s liability for Free Versions and Trials and Betas will not exceed US\$50, and (d) either party may terminate access to a Free Version or Trial and Beta, for any reason or no reason, immediately upon written notice to the other party.**

2.5 **Educational Versions.** For any version of the Offerings designated as “educational,” or a similar term, Customer may use the Offerings solely for educational purposes - e.g., by an instructor or a student at an educational institution and while engaged in educational work. Such educational versions may not be used (a) by any other person; (b) by any educational institution for any non-educational purposes; or (c) for any for-profit purpose, including professional work or training offered for a fee, or by commercial entities.

2.6 **Delivery.** Offerings and License Keys, if any, will be delivered by electronic means unless otherwise specified on the applicable Order. Delivery is deemed to occur on the date on which the Offering and License Key, if any, are first made available to Customer.

## 2.7 Software Activation and Metering; Audits.

- (a) Offerings may gather and transmit to Trimble license usage, compliance, and activation data. Customer will not disable, modify, or interfere with the operation of any such functionality of the Offerings. Trimble may use the foregoing information to validate the authenticity of Authorized Users, to confirm Customer’s compliance with the Agreement, to register the Offerings, to monitor and validate compliance with Usage Limitations, for license metering, and to protect Trimble against unlicensed or illegal use of the Offerings.
- (b) Upon Trimble’s written request, Customer shall certify in writing that its use of the Offerings is in full compliance with the Agreement (including any Usage Limitations). In addition to the other license compliance monitoring rights in the Agreement, Trimble, or its authorized representative, may, upon prior reasonable notice of at least ten (10) days, inspect and audit Customer’s records and use of the Offerings to confirm Customer’s compliance with the Agreement. All such inspections and audits will be conducted during regular business hours and in a manner that does not unreasonably interfere with Customer’s business activities. Customer is responsible for such audit costs only in the event the audit reveals that the use is not in accordance with the Usage Limitations or other licensed scope of use and for unpaid fees. Customer shall promptly pay all unpaid fees.

## 3. **Data Usage and Ownership.**

3.1 **Ownership.** Except for Trimble’s limited rights set forth in the Agreement, as between the parties, Customer retains all Intellectual Property Rights in Customer Data. Trimble owns all Intellectual Property Rights in Anonymized Data and Usage Data.

3.2. **Limited Usage Rights.** Customer hereby grants to Trimble and its Affiliates the non-exclusive, worldwide, irrevocable, royalty-free right: (i) to use Customer Data during the Term to provide the Offerings, Support, and Services to Customer; (ii) to use and disclose Customer Data as otherwise permitted pursuant to the Agreement or any written consent or instructions of Customer; and, (iii) subject to Trimble’s confidentiality obligations in Section 9 (Confidentiality) of the General Terms and all applicable Data Protection Legislation, to use Customer Data in perpetuity to develop, maintain, and improve the products, software, and services of Trimble or its Affiliates, including, without limitation, analytics, model training, and machine learning.

3.3 **Access.** Customer will not have access to Customer Data after termination or expiration of the Term, unless otherwise indicated in the Order, Supplemental Terms, or the Documentation, or the parties agree otherwise in writing.

3.4 **Confidentiality.** In the event of any conflict between the terms of Section 9 (Confidentiality) of the General Terms and this Section 3 (Data Usage and Ownership), the terms of this Section 3 (Data Usage and Ownership) will control.

## 4. **Customer Obligations.**

4.1 **Dependencies and Compatibilities.** If Customer enables Dependencies or Compatibilities with an Offering, Trimble may access and exchange Customer Data with the Dependencies or Compatibilities on Customer’s behalf. Trimble will have no liability or obligations under the Agreement with respect to how any Dependencies or Compatibilities uses or processes Customer Data. If Trimble hosts any Dependency or Compatibilities at

Customer's request, Customer represents and warrants to Trimble that Customer has all rights necessary. Trimble may charge additional fees for such hosting services.

4.2 No Prohibited Data. Customer will not use the Offerings with Prohibited Data. Customer acknowledges that the Offerings are not intended to meet any legal obligations for these uses, including HIPAA requirements, and that Trimble is not a Business Associate as defined under HIPAA.

4.3 Customer Data. Customer is responsible for its Customer Data, including its content, accuracy, and compliance with Laws. Customer represents and warrants that it has made all disclosures and has all rights, consents, and permissions necessary to use its Customer Data with the Offerings and grant Trimble the rights in Section 3 (Data Use and Ownership), all without violating or infringing Laws, third-party rights (including intellectual property, publicity, or privacy rights), or any terms or privacy policies that apply to its Customer Data. If Customer utilizes data fields available in the Offerings to store data not required for the normal use and operation of the Offerings for their intended purpose, Customer agrees that Trimble is not responsible for, and will not be liable in any manner for such data, and Customer assumes all risks associated with, and agrees to hold Trimble harmless from and against any and all claims, losses, damages, liabilities, and expenses (including reasonable attorneys' fees) related to or arising from, Customer's use of data fields to store such data.

4.4 Excluded Claims. In addition to the Excluded Claims stated Section 7 (Limitation of Liability) in the General Terms, the following shall also be Excluded Claims for purposes of the Agreement: Section 10 (Indemnification) of these Software Terms and any breaches of Sections 2.3 (Restrictions) or Section 4 (Customer Obligations) of these Software Terms.

4.5 License Compliance. Customer shall promptly notify Trimble if Customer become aware of (i) any breach of confidentiality obligations regarding the Offerings, or (ii) any infringement (whether actual or alleged) of Trimble's intellectual property rights in the Offerings, or (iii) any unauthorized use of the Offerings by any person, and provide reasonable assistance to Trimble in connection with any suit or proceeding relating to such events.

4.6. Usage Limitations. Customer will comply with all Usage Limitations. If Customer exceeds the Usage Limitations during the Term, Trimble may invoice Customer for the use that exceeded the applicable Usage Limitations at Trimble's then-current list price, and Customer shall pay in accordance with the Agreement. The parties may also agree on a Usage Limitation adjustment, in which case Customer must sign a new Order and pay the applicable fees.

4.7 Fee Criteria. If the Order states Software is made available based on GAR, Project Budget, Total Project Value, population, specific-department usage, Affiliate-limitations, or similar criteria (any such criteria, the "**Fee Criteria**"), the fees for that Software are calculated based on that Fee Criteria as of the date of Order issuance by Trimble. Unless otherwise provided the Order, if the Fee Criteria increases by more than 10% during the Subscription Term, (i) Customer shall promptly notify Trimble in writing, (ii) Trimble has the right to adjust such fees based on changes in the Fee Criteria and its then-current list price for that Software (including on a prorated basis for the current term), and (iii) Customer shall pay any applicable additional fees upon receipt of the invoice in accordance with the Agreement. At the request of Trimble, Customer will promptly provide documentation satisfactory to Trimble evidencing Customer's then-applicable Fee Criteria.

**5. Suspension of Access.** Trimble may suspend Customer's access to an Offering, without liability, and in whole or in part, if (a) Customer breaches any Usage Limitations, Sections 2.2 (Authorized Users), 2.3 (Restrictions), 4 (Customer Obligations) or 6.2 (Offering Content); (b) Customer's account is five (5) business days or more overdue; or (c) immediately if Customer or any of its Authorized Users' acts or omissions threaten the integrity, availability, or security of the Offerings or Trimble's systems, products, or infrastructure (provided Trimble will use commercially reasonable efforts to provide Customer with advance notice of such suspension where Trimble determines exigent circumstances do not exist). Trimble will lift such suspension once the related issue or failure is cured to Trimble's reasonable satisfaction. Fees will continue to apply during the suspension period. Customer may be prohibited from entering new Customer Data or processing or accessing existing Customer Data and data reports during the suspension period. If Customer attempts to access or manipulate Customer Data utilizing third-party software during suspension, Trimble disclaims and is not responsible for any liability relating to lost or altered Customer Data or related damages.

**6. Certain Features.** The following provisions apply to the extent applicable to the Offerings.

6.1 Third-Party Materials. The Offerings may provide Customer with access to Third-Party Materials. Third-Party Materials are not part of the Offerings. To the extent specified by Trimble (including in any Supplemental Terms or Documentation), use of the Third-Party Materials may be subject to additional terms or restrictions ("**Third-Party Terms**"). Customer is solely responsible for its compliance with any Third-Party Terms, and failure to comply with such terms may result in termination of Customer's right to access any features of the Offerings that utilize such Third-Party Materials. If no Third-Party Terms are specified, Customer may use Third-Party Materials solely in support of Customer's authorized use of the Offerings in accordance with the Agreement.

6.2 Offering Content. "**Offering Content**" shall be any Trimble IP or Third-Party Materials made available as data or information through the Offering, whether included as part of the Offering or as a separate subscription. Any Offering Content that is Trimble IP will be deemed part of the Offering. Any Offering Content that is Third-Party Materials shall be subject to any applicable Third-Party Terms. If no Third-Party Terms apply, then unless otherwise authorized by Trimble in writing or the applicable Documentation, such Third-Party Materials, and any derivative thereof, may only be used or accessed by an Authorized User. Third-Party Materials will be used solely for Customer's internal purposes during the Term and must be accessed pursuant to a manual Authorized User request. Customer will not: (i) access, extract, or download any Third-Party Materials, or portions thereof, in batch or en masse by any means; (ii) use any device, software, or routine to bypass any hardware or software that prohibits volume requests for information; (iii) sell, offer to sell, rent, sublicense, or transfer any copies of the Third-Party Materials, or portions thereof, to a third party or allow a third party to use the Third-Party Materials; (iv) use the Third-Party Materials to develop services or products for sale or include any portion of the Third-Party Materials in any product or service; (v) use any portion of the Third-Party Materials to create a competitive service, product, or technology; (vi) recreate the Third-Party Materials or create otherwise a separate database or other repository of Third-Party Materials; (vii) use Third-Party Materials to train, augment, or correct another database or information repository; (viii) unless otherwise specified in the Documentation, permit any individual other than an Authorized User to access or use the Offering Content and any derivative thereof, or (ix) make any portion of the Third-Party Materials available to the public in any manner. Upon notice from Trimble and/or any termination or expiration of the Term, Customer will immediately cease using and delete/destroy all electronic and physical copies of Third-Party Materials.

6.3 Open Source. The Offerings may incorporate third-party open source software ("**Open Source**"), as listed in the Documentation or otherwise made available by Trimble. To the extent the terms of the Open Source license prohibit the terms of the Agreement from applying to the Open Source, the terms of the Open Source license will apply to the Open Source on a stand-alone basis instead of the Agreement.

#### 6.4 Third-Party Application Stores.

(a) Purchase from Application Store. If Customer obtains the Offering (or portions thereof) through a third-party application store, marketplace, or other site or service (each, an “**Application Store**”), such Application Store is considered a reseller. All fees are non-refundable once paid. Customer’s download of the Offering may be subject to other terms as specified by the operator of the Application Store from which Customer downloaded the Offering.

(b) Apple-Specific Terms. If Customer downloaded the Offering from Apple Inc.’s (“**Apple**”) Application Store, the following terms are part of the Agreement. The Agreement is between Customer and Trimble, and not with Apple. However, as required by Apple, Apple and its subsidiaries will be third-party beneficiaries of the Agreement and will have the right (and will be deemed to have accepted the right) to enforce the Agreement against Customer as a third-party beneficiary. To the maximum extent permitted by Law, Apple will have no warranty obligation with respect to the Offering, and, as between Apple and Trimble, any other claims, losses, liabilities, damages, costs, or expenses attributable to a failure to conform to a warranty will be Trimble’s responsibility. Apple has no obligation whatsoever to furnish any maintenance or support services with respect to the Offering. As between Trimble and Apple, Trimble is solely responsible for the Offering and for addressing any claims Customer or any third parties have about the Offering or Customer’s possession or use of the Offering, including without limitation (i) product liability claims; (ii) any claim that the Offering fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation. In the event of any third-party claim that the Offering or Customer’s possession or use of the Offering infringes that third party’s intellectual property rights, Apple will not be responsible for the investigation, defense, settlement, or discharge of such claim.

6.5 Security for SaaS or Hosting Services for Licensed Software. This Section 6.5 (Security for SaaS or Hosting Services for Licensed Software) applies to Offerings that are SaaS or hosting services for Licensed Software. During the Term, Trimble or its third party hosting provider(s) will use commercially reasonable efforts to establish and maintain reasonable administrative, physical, and technical safeguards designed to protect (a) the security, confidentiality, and integrity of Customer Data; (b) against anticipated threats or hazards to the security, confidentiality, and integrity of Customer Data; (c) against unauthorized access to or use of Customer Data; and (d) against unlawful processing, accidental destruction, or loss of Customer Data. In the event Trimble is not in breach of the foregoing obligations and an unauthorized third party nonetheless gains access to the Customer Data, such disclosure of Customer Data in such circumstances shall not be a breach of Section 9 (Confidentiality) of the General Terms. In the event of any conflict between the terms of Section 9 (Confidentiality) of the General Terms and this Section 6.5 (Security for SaaS or Hosting Services for Licensed Software), the terms of this Section 6.5 (Security for SaaS or Hosting Services for Licensed Software) will control.

#### 6.6 Third-Party Access.

(a) Contractors and Affiliates. Unless prohibited by Trimble in the Order, Documentation, any Supplemental Terms, or otherwise by Trimble in writing, Authorized Users may include individuals who are contractors or consultants of Customer or employees, contractors, or consultants of its Affiliates; provided, however, any such access and usage may require additional fees as described in Section 4.7 (Fee Criteria), if applicable.

(b) Other Third-Parties. If expressly authorized by Trimble in the Order, Documentation, any Supplemental Terms, or otherwise by Trimble in writing, the Offerings may allow Customer to invite other third parties to become Authorized Users and/or access Customer Data.

(c) Generally. Customer authorizes Trimble to share Customer Data with any third-party Authorized Users or as otherwise instructed by Customer. Customer is solely responsible for such third-parties’ compliance with the Agreement and for any and all acts or omissions of any such third parties. Such third parties are not intended third-party beneficiaries under the Agreement. Trimble shall have no liability for any act or omission of any such third party, including by way of access or use of Customer Data. Such third-party access or use of the Offerings must be solely and exclusively for the benefit of Customer, and any other purpose is prohibited. For clarity, as between Customer and any such third parties, any data or other information uploaded by such third party to the Offerings on Customer’s behalf will be deemed Customer Data of Customer.

(d) Customer as a Third-Party. In the event that Customer is invited to access an Offering as a third party, any data or other information uploaded by Customer on behalf of such third party shall be deemed “Customer Data” of such third party.

**7. Support.** If Customer is eligible for Support and pays any applicable fees, Trimble will make such Support available in accordance with the Support Terms or as Trimble may otherwise expressly provide in writing. Unless otherwise set forth in writing by Trimble, Support is not available for Free Versions or Trials and Betas.

### **8. Term and Termination.**

8.1 Perpetual License. If Customer purchases a perpetual license to Licensed Software, Customer’s license to the Licensed Software will continue in perpetuity subject to the terms and conditions of the Agreement. Support for Licensed Software is purchased separately unless otherwise indicated by Trimble in writing or on an Order.

#### 8.2 Subscriptions.

(a) Subscription Term. If Customer purchases access to a SaaS or a license to Licensed Software for a limited period of time, the duration of the initial term and any renewals are as set forth in the Order (collectively, the “**Subscription Term(s)**”). Notwithstanding anything to the contrary in the Order, the start date for each Subscription Term for each Offering will begin on the Provision Date for that Offering. For clarity, each Offering may have a different Provision Date.

(b) Additional Subscriptions. If Customer previously purchased one or more Subscriptions for a particular Offering (“**Existing Subscription(s)**”) and subsequently purchases one or more additional Subscriptions (for any Offering) while the Existing Subscription(s) is in effect (the “**Additional Subscription(s)**”), the duration of the Subscription Term for the Additional Subscription will be as set forth in the Order. Unless otherwise set forth by Trimble in writing, all Customer’s Subscriptions shall have the same end date and Trimble may invoice all fees for all such Subscriptions on a single invoice.

8.3 Effect of Termination. Upon expiration or termination of the Agreement or the Order, Customer’s right to use the Offerings will cease and Customer will immediately cease any and all use of and access to the Offerings and will delete (or, upon request, return) all copies of any Offerings. At the disclosing party’s request upon expiration or termination of the Agreement, the receiving party will delete all of the disclosing party’s Confidential Information (excluding Customer Data, which is addressed in Section 3 (Date Usage and Ownership)). Customer Data and other Confidential Information may be retained in the receiving party’s standard backups after deletion but will remain subject to the Agreement’s confidentiality restrictions.

8.4 **Survival**. In reference to Section 4.3 of the General Terms (Survival), the following Sections of these Software Terms survive any expiration or termination of the Agreement: 1 (Definitions), 2.3 (Restrictions), 3.1 (Data Usage and Ownership), 4 (Customer Obligations), 8.3 (Effect of Termination), 8.4 (Survival), 9.3 (Additional Disclaimers), and 10 (Indemnification). Except where an exclusive remedy is provided, exercising a remedy under the Agreement, including termination, does not limit other remedies a party may have.

## 9. Warranties and Additional Disclaimers.

9.1 **Limited Warranty**. Subject to the Agreement and any mandatory Laws to the contrary, Trimble warrants to Customer that during the Warranty Period, the Offerings will perform materially as described in the Documentation. The “**Warranty Period**” is (a) 90 days for Licensed Software licensed on a perpetual basis, and (b) for the duration of the applicable Subscription Term, for any Subscriptions. Notwithstanding the foregoing, Trimble makes no warranties with respect to Correction Services, which are provided as-is and as-available.

### 9.2 **Warranty Remedy**.

- (a) If the Offering fails to conform to Section 9.1 (Limited Warranty) during the Warranty Period, Customer may make a reasonably detailed warranty claim within 30 days of discovering the issue. For any such claims reported by Customer within such period that Trimble determines are valid, Trimble will correct such non-conformity by issuing corrected instructions, a restriction, or a bypass, or by replacing the Offerings, at Trimble’s option. Subject to any mandatory Laws to the contrary, these procedures are Customer’s exclusive remedy, and Trimble’s entire liability, for the failure of the Offerings to conform to the warranty in Section 9.1 (Limited Warranty).
- (b) The foregoing limited warranty only applies if and to the extent that (i) any Offering associated with the warranty is properly and correctly installed, configured, interfaced, maintained, stored, and operated in accordance with the Documentation, and (ii) any Offerings associated with the warranty is not modified or misused. The foregoing limited warranty does not apply to (1) issues caused by unauthorized use or modifications; (2) unsupported or unauthorized versions of any Offerings; (3) operating the Offerings under any specification other than, or in addition to, the Documentation; (4) issues in or resulting from Dependencies, Compatibilities, or third-party systems, products, or services; or (5) Free Versions, Trials and Betas or other similar versions.

9.3 **Additional Disclaimers**. Trimble makes the following disclaimers in addition to Section 6 (Warranty Disclaimer) in the General Terms.

(a) **General**. TRIMBLE MAKES NO EXPRESS WARRANTY THAT CUSTOMER’S USE OF THE OFFERINGS WILL BE UNINTERRUPTED, ERROR-FREE, OR FREE OF VIRUSES OR OTHER MALWARE OR PROGRAM LIMITATIONS; THAT TRIMBLE WILL REVIEW CUSTOMER DATA FOR ACCURACY; OR THAT TRIMBLE WILL MAINTAIN CUSTOMER DATA OR OTHER DATA WITHOUT LOSS. TRIMBLE IS NOT LIABLE FOR DELAYS, FAILURES, OR PROBLEMS INHERENT IN USE OF THE INTERNET, SATELLITES, ELECTRONIC COMMUNICATIONS, OR OTHER SYSTEMS OUTSIDE TRIMBLE’S CONTROL. TRIMBLE WILL NOT BE LIABLE IN ANY MANNER FOR THE OUTPUT OBTAINED THROUGH USE OF THE OFFERINGS OR CUSTOMER’S RELIANCE ON SUCH OUTPUT. CUSTOMER IS RESPONSIBLE FOR THE SUPERVISION, MANAGEMENT, AND CONTROL OF CUSTOMER’S USE OF THE OFFERINGS. THIS RESPONSIBILITY INCLUDES THE DETERMINATION OF APPROPRIATE USES FOR THE OFFERINGS AND THE SELECTION OF THE OFFERINGS TO ACHIEVE INTENDED RESULTS. ANY FORMS, POLICIES, OR OTHER MATERIALS PROVIDED BY TRIMBLE THROUGH THE OFFERINGS OR DOCUMENTATION ARE NOT INTENDED AND SHOULD NOT BE RELIED UPON AS LEGAL ADVICE OR LEGAL OPINION. CUSTOMER SHOULD CONSULT ITS OWN LEGAL COUNSEL REGARDING THE USE OF ANY SUCH MATERIALS. CUSTOMER IS ALSO RESPONSIBLE FOR ESTABLISHING THE ADEQUACY OF INDEPENDENT PROCEDURES FOR TESTING THE RELIABILITY AND ACCURACY OF ANY OUTPUT OF THE OFFERINGS. CUSTOMER MAY HAVE OTHER STATUTORY RIGHTS, BUT ANY STATUTORILY REQUIRED WARRANTIES WILL BE LIMITED TO THE SHORTEST LEGALLY PERMITTED PERIOD.

(b) **Correction Services Disclaimers**. Customer acknowledges that the Correction Services and related network access are subject to transmission limitations caused by a variety of factors such as atmospheric conditions, topographical obstructions, limitations or lack of coverage of the underlying carrier service and other natural or manmade conditions. Additionally, motor and ignition noise, metal shielding, and interference by users of the same or adjacent radio channels may limit or interfere with Correction Services. Trimble is not responsible for the operation or failure of operation of GNSS satellites or the availability of GNSS satellite signals.

(c) **Third-Party Materials**. Third-Party Materials are provided “AS IS” and Customer assumes all risk and liability regarding any use of (or results obtained through) Third-Party Materials. Trimble and its suppliers make no warranty or guarantee with respect to any Third-Party Materials, including regarding their accuracy or continued availability or compatibility.

(d) **Dependencies and Compatibilities**. Trimble makes no warranty or guarantee with respect to any Dependencies, Compatibilities, or other factors outside of Trimble’s control, including their continued availability or compatibility.

(e) **Prohibited Data**. Trimble and its suppliers specifically disclaim any responsibility for, and will not be liable in any manner arising from, any use of the Offerings in connection with Prohibited Data.

## 10. Intentionally Omitted.

11. **Government End-Users**. Elements of the Offerings are commercial computer software. If the user or licensee of the Offerings is an agency, department, or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Offerings or any related documentation of any kind, including technical data and manuals, is restricted by the terms of the Agreement in accordance with Federal Acquisition Regulation 12.212 for civilian purposes and Defense Federal Acquisition Regulation Supplement 227.7202 for military purposes. The Offerings were developed fully at private expense. All other use is prohibited.

12. **Region-Specific Terms - France**. Solely for purposes of Customers who’s billing address is in France, the following shall apply: Prohibited Data included any patient, medical or other protected health information regulated by the French Public Health Code and the GDPR; and Customer’s grant of rights in Section 3.1 (Generally) shall be for so long as the Customer Data is protected by intellectual property law.

## Addendum #4

### **Supplemental Terms for Support and Maintenance** Version 1.0 (Last Updated: April 3, 2023)

Capitalized terms not defined herein have the meanings given in the General Terms and the Software Terms.

**1. Scope.** Provided that Customer has paid the applicable fees, Trimble shall provide the Support described in these Support Terms during the Maintenance Term (as defined below). The “**Maintenance Term**” shall be: (a) for Support for SaaS or Licensed Software licensed for a limited term, the applicable Subscription Term, and (b) for Support for Licensed Software licensed on a perpetual basis, the term specified in the Order, or if not specified, for a period of one (1) year.

**2. Support.**

2.1 During the applicable Maintenance Term, Trimble shall use reasonable efforts to correct or provide a workaround for any reproducible programming error in the Software attributable to Trimble with a level of effort commensurate with the severity of the error, as reasonably determined by Trimble. Upon identification of any programming error, Customer shall promptly notify Trimble of such error and shall provide Trimble with enough information to reproduce the error, including a listing of output and any other data that Trimble may reasonably request in order to reproduce the error and operating conditions under which the error occurred or was discovered. Trimble shall not be responsible for correcting any errors not attributable to Trimble.

2.2 For certain Software, Trimble may provide additional or different support services or procedures as set forth in the applicable Documentation, support handbook, or other written documentation provided by Trimble, if any (collectively, the “**Additional Support Documentation**”). If there is any conflict between these Support Terms and such Additional Support Documentation with respect to the description of support services, requirements or procedures, the provisions of such Additional Support Documentation will prevail. Customer agrees and acknowledges that Trimble may use third parties to provide Support on its behalf. Customer expressly consents to Trimble permitting such third parties to access Customer’s information and data to perform the Support for Customer.

**3. Licensed Software Updates and Upgrades.** During the applicable Maintenance Term, Customer shall be entitled to receive all upgrades and updates to the Software that are publicly released by Trimble. The contents and timing of all upgrades and updates will be decided by Trimble in its sole discretion. Any such updates and upgrades will be deemed to be “Software” and licensed under the terms and conditions of the Agreement, including any applicable software end user terms or license agreement. Updates and upgrades exclude (a) new versions of the Software (e.g., a change to the left of the decimal in the version number [e.g., 1.x to 2.x] or otherwise designated by Trimble), and (b) any separate modules and other functionality for which Trimble charges a separate fee.

**4. Limitations and Exceptions.** The following matters are not covered (and Trimble will not have any obligations with respect to such matters) pursuant to these Support Terms:

- 4.1. Any Software for which applicable fees have not been paid;
- 4.2. Any problem resulting from the misuse, improper use, alteration, or damage of the Software;
- 4.2. Any problem resulting from improper or inadequate installation, maintenance, or storage of the Software;
- 4.3. Any problem caused by modifications of the Software not made or authorized by Trimble;
- 4.4. Any problem resulting from any hardware or software in either case not developed or supported by Trimble, including, without limitation: any computers, tablets, disk drives, operating systems, network hardware or software, database, or any other hardware or third-party software;
- 4.5. Any problem resulting from the combination of the Software with other programming or equipment to the extent that such combination has not been approved by Trimble; and
- 4.6. Errors in any version of the Software other than the most recent release, provided that Trimble will continue to provide Support for superseded releases for a reasonable period (not to exceed ninety (90) days).

Support excludes on-site visits, installation and training, file conversion, optional products and services, directories, consulting services, shipping charges, or any recommended hardware.

**5. Termination or Expiration.** Support will automatically terminate with respect to any Software that is no longer licensed for use as a result of expiration or termination of the Agreement, or replacement of the applicable Software with new releases.

## Additional Support Documentation

Version 1.1

### 1. Generally.

- 1.1. Trimble shall use the applicable level of effort to correct or provide a workaround for any reproducible error in the Offering attributable to Trimble commensurate with the severity of the error, as reasonably determined by Trimble in accordance with Section 3 (Severity Priority Levels) below.
- 1.2. For certain Offerings as set forth in Section 2 below, Trimble may provide a customer support portal (the “**Support Portal**”), which may allow Customer to submit support requests, report issues, view case histories, search the general knowledge database, and other features, as applicable. In the event of any conflicts between the terms set forth herein and any set forth in the applicable Support Portal, the terms herein shall govern.
- 1.3. For certain Offerings as set forth in Section 2 below, Trimble will provide support to Customer only by communication with the contacts designated by Customer in the Support Portal or otherwise as instructed by Trimble (each, a “**Authorized Support Contact**”). Customer may update Authorized Support Contact(s) from time to time as instructed by Trimble. Trimble may require the Authorized Support Contact(s) to have the relevant technical knowledge regarding the Offerings necessary to assist Trimble as needed.
- 1.4. Upon identification of any error that cannot be resolved by Customer as first line of support (e.g., via the Support Portal, its internal staff, etc.), then Customer (through its Authorized Support Contact(s)) shall promptly notify Trimble of such error and shall provide Trimble with enough information, assistance, and cooperation to reproduce the error, including a listing of output and any other data that Trimble may reasonably request in order to reproduce the error and operating conditions under which the error occurred or was discovered. Trimble shall not be responsible for correcting any errors not attributable to Trimble.

### 2. Support Portals. Support portals with information about reporting and general availability are described below.

Offering	Support Portal*	Authorized Support Contacts Only?**
AgileAssets	<a href="https://agileassets.com/techsupport">https://agileassets.com/techsupport</a>	Yes
Cityworks	<a href="https://mycityworks.force.com">https://mycityworks.force.com</a>	Yes
e-Builder (non-Fed Ramp)	<a href="https://www.e-builder.net/customer-center">https://www.e-builder.net/customer-center</a>	No
e-Builder (Fed Ramp)	None.***	No
Trimble Water	<a href="https://mytrimblewater.force.com/s/login">https://mytrimblewater.force.com/s/login</a>	No

\* Additional phone numbers and hours of availability for contacting Trimble with support requests may be listed in the Support Portal.

\*\* For any Products that do not require an Authorized Support Contact, any Authorized User of Customer may contact support.

\*\*\* Authorized Users of e-Builder Enterprise Government Edition may submit support requests by phone (866-254-1531) or email ([ebuilder-gov-support@trimble.com](mailto:ebuilder-gov-support@trimble.com) ). Hours of operation are Monday through Friday 8:00 AM to 6:00 PM Eastern Time. Non-urgent and after-hours support requests should be submitted via email. All support requests submitted via email must include the following information: 1) Authorized User name and email address, 2) Phone number, 3) Account Name, and 4) Brief description of the issue. e-Builder Community and Salesforce are not currently available for the Government Edition.

### 3. Severity Priority Levels. As soon as reasonably practicable after Customer submits the relevant case information, Trimble will collect additional information and categorize the issue into one of four classifications as set forth below in good faith. Upon Customer submission of the case information, Trimble will use commercially reasonable efforts to issue a Response (as defined below) by the indicated target response goal set forth below. Once the priority level is determined, Trimble will use the level of effort for resolution described below.

Priority Level*	Priority Criteria	Target Response Goal**	Level of Effort for Resolution
P1	most urgent and impactful	½ hour	Trimble and Customer will prioritize any reasonably available resources to resolve the situation or identify a work around.
P2	urgent and impactful, but usually has an acceptable temporary workaround	½ hour	Trimble and Customer will prioritize any reasonably available resources during standard business hours to resolve the situation or identify a work around.
P3	important, but not urgent and impactful	4 hrs	Trimble and Customer will use generally available resources during standard business hours to resolve the situation or identify a work around.
P4	a low priority, informational, or an enhancement request	24 hrs	Trimble and Customer are willing to use generally available resources during standard business hours to provide information or assistance.

\* See Priority Matrix and definitions below. The main factors in determining priority level are urgency and impact. Trimble will also consider in good faith any additional relevant facts and circumstances in consultation with Customer that may result in a mutually agreed upon change in priority level.

\*\* The use of the term "hour(s)" refers to business hours based on Trimble's regular business schedule, and excludes nights, weekends and locally-observed holidays (e.g., 24 hrs equals 3 business days at 8 hrs a day). "Response" means acknowledgment of the issue via the creation of a case number. Determination of priority level will occur as soon as practicable thereafter.

Priority matrix					
		Impact			
		Widespread	Large	Localized	Individualized
Urgency	Critical	P1	P1	P2	P2
	High	P1	P2	P2	P3
	Medium	P2	P3	P3	P3
	Low	P4	P4	P4	P4

Definitions	
<b>Impact</b>	Impact is a measure of the number of users, sites, or devices affected.
	<b>Widespread.</b> More than three quarters of users or devices are affected.
	<b>Large.</b> (1) Multiple sites are affected or (2) between one-half and three-quarters of users or devices are affected.
	<b>Localized.</b> (1) A single site is affected or (2) less than one half of users or devices are affected.
<b>Urgency</b>	Urgency is a measure of the severity of the issue on the Customer's operations.
	<b>Critical.</b> Use of Offering as a whole or core functionality is stopped with no work around and with severe immediate impact to the Customer's operations (e.g., outage).
	<b>High.</b> Use of Offering as a whole or core functionality is severely degraded or a work around is available, and with immediate impact to the Customer's operations.
	<b>Medium.</b> Use of Offering or any functionality is not working as expected, and can be addressed through education, training, work around, work order, or a future enhancement.
	<b>Low.</b> All other requests that are not the above.

4. Additional Limitations and Conditions.

- (a) Unless otherwise expressly provided by Trimble in writing, Trimble does not support: (i) use of the Offering in a manner other than as authorized in the Agreement; (ii) conversions of Customer's databases to accommodate new hardware or software, (iii) Customer Data debugging or manipulation, (iv) recurring support issues where Customer failed to initiate corrective actions previously recommended by Trimble or to provide information requested by Trimble, (v) implementation, report creation, onsite support, customizations (e.g., scripting or integration), or assistance with server migrations are not included as part of Support, but such services but may be purchased separately, (vi) any Offering where Customer has failed to meet its obligations with respect to the Agreement, including, without limitation, as set forth below.
- (b) Customer must (i) require its personnel to obtain adequate training to operate the Offering, (ii) if required by Trimble for the particular Offering, designate Authorized Support Contacts who will submit all support cases to Trimble, (iii) provide internet and/or network access for Trimble when requesting support; and (iv) provide all information and assistance reasonably requested by Trimble related to the support request.
- (c) For Licensed Software not hosted by Trimble, Customer is responsible for (i) securing the server environment, local network, and system security and protocols, including having staff qualified to assume responsibility for management administration and support for Customer's hardware, database, and any Third-Party Materials, Dependencies, or Compatibilities, (ii) maintaining regular and frequent data backups, and recovering such data if necessary from backups maintained by Customer, (iii) establishing a secure method of access to Customer's network as well as maintaining security protocols for Customer's network; and (iv) incorporating Releases and any associated data migration.
- (d) If any Customer support request is subject to any of the foregoing, then Trimble reserves the right to impose support fees at its then standard commercial time and materials rates for all such services, including pre-approved travel and per diem expenses to be reimbursed consistent with Customer's policies. Trimble will notify Customer in advance of incurring any such fees.

## Addendum #5

### **Supplemental Terms for Services**

*(Training, e-learning content, implementation, configuration, and other services)*

*Version 1.0 (Last Updated: April 3, 2023)*

Capitalized terms not defined herein have the meanings given in the General Terms.

- 1. Generally.** Trimble or its authorized service providers will use commercially reasonable efforts to provide Services to Customer as described in an Order or SOW. Any changes in scope must be made in writing and approved by authorized representatives of Customer and Trimble.
- 2. Training and E-Learning.** For any Services consisting of delivery of training or e-learning (e.g., videos, manuals, etc.), any content made available by Trimble shall not be deemed a Deliverable (as defined below), notwithstanding anything in an Order or SOW to the contrary, and no Intellectual Property Rights therein are assigned or transferred to the Customer. Unless an Order or Documentation states otherwise, prepaid training and e-learning content will expire if not completed within six months from the effective date of the Order or SOW. Trimble reserves the right to reschedule training if it determines in good faith that attendance is not sufficient or the originally scheduled time or location are no longer feasible. If the Order states a date that Services must be completed by, such date is presented for illustrative purposes. The actual completion date for such Services will be provided on the invoice.
- 3. Customer Materials.** Customer shall provide Trimble with reasonable access to Customer's technical data, computer programs, files, documentation, and/or other materials (collectively, "**Customer Materials**") and to Customer's resources, personnel, equipment, and facilities to the extent necessary for the performance of Services. Client will be responsible for, and assumes the risk of any problems resulting from the content, accuracy, completeness, competence, or consistency of Customer Materials or its personnel. To the extent that Customer does not timely provide the foregoing access required for Trimble to perform the Services, Trimble shall be excused from performance until such items or access are provided. Customer hereby grants Trimble a limited and revocable right to use the Customer Materials for the purpose of performing the Services. Customer owns and will retain ownership (including all intellectual property rights) in the Customer Materials.
- 4. Customer Premises.** Customer shall provide Trimble with safe access to Customer's premises as reasonably required for Trimble to perform the Services, if onsite performance of Services is needed and agreed to by Customer. Trimble personnel shall comply with the reasonable written rules and regulations of Customer related to use of its premises, provided that such written rules and regulations are provided to Trimble prior to commencement of the Services.
- 5. Customer Dependencies.** Customer is responsible for taking all actions identified or described in the Agreement which are a condition for Trimble to provide Services. Should Customer's failure to take such actions result in a delay of Trimble against a delivery schedule, or result in additional provable costs incurred by Trimble, Trimble shall not be considered to be delayed in its obligations, and Trimble shall be entitled to payment of such additional costs.
- 6. Deliverables.** "**Deliverable(s)**" shall mean any Trimble deliverables as expressly set forth on a SOW or Order. Trimble hereby grants Customer a worldwide, royalty-free, non-exclusive license to use the Deliverables for its internal business purposes in connection with the Offerings associated with such Deliverables and only for the period of time that Customer has ownership or authorized use of such Offerings. Unless expressly stated otherwise in the applicable Order or SOW, Trimble owns and will retain ownership (including all intellectual property rights) in and to the Deliverables (excluding any Customer Materials) and any modifications, improvements, and derivative works thereof (including to the extent incorporating any Feedback). If the parties have agreed that Trimble will assign ownership of Deliverables to Customer, the relevant SOW must set forth the terms and conditions regarding such assignment.
- 7. Limited Warranty.** Trimble will perform Services in a professional and workmanlike manner. If notified of a non-conformity within ten (10) days of delivery of the applicable Services, and if Customer provides a sufficiently detailed justification to Trimble to allow Trimble to identify the non-conforming Services, Trimble will, as its sole liability and obligation for failure to provide Services meeting this warranty, either (a) re-perform the non-conforming Services at no additional cost to Customer, or (b) issue a credit for any Services which Trimble identifies as non-conforming.
- 8. Travel Expenses.** Trimble will invoice Customer for reasonable and pre-approved out-of-pocket travel expenses incurred in connection with performing Services. Expenses may be invoiced separately from fees and may include, but are not limited to, airfare and other transportation, lodging, and incidentals. Expenses may also include meals reimbursable per a flat per diem rate, available upon request.

**9. Other Offerings.** These Services Terms only apply to Services, and not to any other Offerings, even if such other Offerings are referenced in an Order or SOW. For clarity, all such other Offerings shall not be considered a Deliverable hereunder, and the provision thereof shall be governed by one or more separate agreements between Trimble and Customer.

**10. Intentionally omitted. .**

**Addendum #6**

Intentionally omitted

## Addendum #7

### **Supplemental Terms for U.S. Public Entities**

*Version 1.0 (Last Updated: October 7, 2023)*

Capitalized terms not defined herein have the meanings given in the General Terms and the Software Terms.

1. **Scope.** To the extent Customer is a public or governmental entity, these Supplemental Terms provisions apply to the extent Customer is a public or governmental entity in the United States.
2. **Intellectual Property Indemnification by Trimble.** Trimble shall defend Customer from and against any claim of infringement of a U.S. patent, U.S. copyright, or U.S. trademark asserted against Customer by a third party based upon Customer's use of the Offerings in accordance with the terms of this Agreement, and pay any resulting settlement or final judgment. If Customer's use of any of the Offerings are, or in Trimble's opinion are likely to be, enjoined due to the type of infringement specified above, or if required by settlement, Trimble may, in its sole discretion: (a) substitute for the Offerings substantially functionally similar programs and documentation; (b) procure for Customer the right to continue using the Offerings; or if (a) and (b) are commercially impracticable, (c) terminate the Agreement and refund to Customer the fee paid by Customer as reduced to reflect a five year straight-line depreciation from the applicable purchase date. The foregoing indemnification obligation of Trimble will not apply: (1) if the Offerings are modified by any party other than Trimble; (2) if the Offerings are combined with other non-Trimble products, but solely to the extent that the alleged infringement is caused by such combination; (3) to any unauthorized use of the Offerings; (4) to any unsupported release of the Offerings; or (5) to any third-party code, content, and/or data contained in and/or delivered with the Offerings.
3. **Tax Exemption.** If Customer is a tax-exempt entity and provides evidence of a tax-exempt certificate prior to executing this Agreement, then Section 3.1 of the General Terms regarding Customer's responsibility to pay taxes shall be inapplicable.
4. **No Indemnification by Customer.** Section 8 (Indemnification) and the second to last sentence of Section 12.6 (Export Control) of the General Terms shall be inapplicable.
5. **Public Records Law.** Customer's confidentiality obligations in Section 9 (Confidentiality) of the General Terms may be subject to applicable public records law.
6. **Limited Publicity.** Provision (b) in Section 12.11 (Publicity) of the General Terms shall be inapplicable.
7. **Termination for Convenience.** Customer may terminate this Agreement for convenience on not less than sixty (60) days' written notice to Trimble. If Customer terminates this Agreement under this paragraph, all fees for the Term shall immediately become due and payable. All previously paid fees (both used and unused) shall be non-refundable and forfeited. Furthermore, all earned, but unpaid, fees for professional services, if any, must be paid in full before the termination becomes effective.
8. **Non-Appropriation of Funds.** The Customer's funds for future and ongoing purchases are contingent on the availability of future appropriations of funds. If funds are not appropriated for any payments due under this Agreement, the Customer will promptly notify Trimble in writing and the applicable Order will terminate as of the date of the notice in accordance with Section 7 (Termination for Convenience) above and the Customer will have no further obligation to make any payments with respect to the affected Order, provided however that the Customer shall pay for any goods or services ordered prior to the date of the Customer's notice.
9. **Piggyback.** Trimble does business with many government entities whose applicable laws permit them to join an existing contract between another governmental agency and vendor to acquire goods and services thereunder. In such circumstances and if allowable by applicable law and contract, Customer expressly agrees to allow the other governmental agencies to acquire goods and services using this Agreement ("Piggyback"), subject to applicable pricing of the Trimble offerings at the time of the piggyback purchase.
10. **Governing Law.** Notwithstanding Section 12.9 (Governing Law and Venue) of the General Terms, the Laws of the jurisdiction required by applicable law shall exclusively govern this Agreement.

**Addendum #8**  
**Service Level Agreement; Data Security and Restoration**  
*Version 1.0*

## **1. Availability Service Level Agreement**

For any Offering that is either (i) Software-as-a-Service or (ii) Licensed Software hosted by Trimble, the following will apply.

1.1. **Target Availability.** Trimble will use commercially reasonable efforts to make the Offering available with an uptime availability (time periods during which Customer has general connectivity to the Offering) (the “**Target Availability**”) as follows:

Offering	Target Availability*
Cityworks	99.9%*
AgileAssets / Pavement Express	99%
e-Builder	99.95%
Trimble Water - Trimble Unity Work Management/ Trimble Unity Remote Monitoring	99.5%

*\*Target Availability is generally for a calendar month; provided that Cityworks target availability will be calculated on a quarterly basis.*

1.2. **Exclusions.** The calculation of uptime will not include unavailability to the extent due to: (a) Customer’s use of the Offering in a manner not authorized in the Agreement or Documentation, (b) general Internet problems, force majeure events or other factors outside of Trimble’s reasonable control, including without limitation interruption or failure of telecommunications or digital transmission links, hostile network attacks, network congestion, denial of service attack, (c) Customer’s equipment, software, network connections or other infrastructure, (d) any acts or omissions of Customer or any third-party that is not a service provider of Trimble, (e) failure by Customer to pay any applicable fees under the Agreement, or (f) Scheduled Maintenance or emergency maintenance.

1.3. **Scheduled Maintenance.** “**Scheduled Maintenance**” means Trimble’s scheduled, routine, or other maintenance which (1) occurs at such times as may be listed on Trimble’s websites or Support Portal, or (2) Trimble notifies Customer with at least two (2) days advance notice, which can be via the Support Portal, e-mail, or in the Offering. Trimble reserves the right to schedule other maintenance periods on an as needed basis and will notify Customer in advance. Trimble will use commercially reasonable efforts to perform Scheduled Maintenance during low usage times.

1.4. **Service Credits.** If there is a verified failure of the Offering to meet Target Availability in a particular month and Customer makes a request for service credit within thirty (30) days after the end of such month, Customer will be entitled to a credit based on the monthly fees due for the affected Offering in such month (“**Service Credit**”). The Service Credit will be calculated as follows:

*Service Credit = Pro Rata Fee \* percentage of time that the Offering did not meet the Target Availability*

The “**Pro Rata Fee**” means (1) for Target Availability measured monthly, one-twelfth of the total annual fee for the Offering (excluding taxes, etc.), and (2) for Target Availability measured quarterly, one-fourth of the total annual fee for the Offering (excluding taxes, etc). The Service Credit will be calculated to the nearest 30-minute interval. The total Service Credits in a month may not exceed 20% of the Monthly Fee.

Trimble will apply each Service Credit to Customer’s next invoice, provided that Customer’s account is fully paid up, without any outstanding payment issues or disputes. Customer will not receive any refunds for any unused Service Credits.

1.5. **Sole Remedy.** Service Credits constitute liquidated damages and are not a penalty. The Service Credits set forth in this Section are Customer’s sole and exclusive remedy for any failure to meet the Target Availability.

## **2. Data Security and Restoration**

2.1. **Software-as-a-Service and Hosted License Software.**

a) Trimble or its third-party hosting provider(s) shall use commercially reasonable efforts to establish and maintain reasonable administrative, physical, and technical safeguards designed to (a) protect the security, confidentiality, and integrity of Customer Data, (b) protect against anticipated threats or hazards to the security, confidentiality, and integrity of Customer Data; (c) protect against unauthorized access to or use of Customer Data; and (d) protect against unlawful processing, accidental destruction, or loss of

Customer Data.

- b) Trimble will use reasonable efforts to restore lost or damaged Customer Data for Offerings deployed through Trimble hosting services or as Software-as-a-Service, as described in this paragraph, if the loss or damage was caused by Trimble. Trimble will consult with Customer and provide information to Customer regarding the availability of backups and the potential limitations of data restoration. Customer understands that some data loss may result upon restoration based on the frequency and availability of backups. If Customer Data loss or damage is not caused by Trimble, Trimble will provide support and technical assistance for data restoration subject to Trimble's availability and payment of applicable fees at Trimble's then-current hourly rates.

- 2.2. On Premises Licensed Software. Trimble does not provide regular support or technical assistance for the repair or restoration of lost or damaged Customer Data as part of support for Licensed Software not hosted by Trimble, regardless of the cause. Assistance for restoration may be available subject to Trimble's availability and payment of applicable fees at Trimble's then-current hourly rates.



## GENERAL SERVICES ADMINISTRATION

### Federal Acquisition Service

### Authorized Federal Supply Schedule FSS Price List

On-line access to contract ordering information, terms and conditions, up-to-date pricing, and the option to create an electronic delivery order are available through GSA *Advantage!*®, a menu-driven database system. The INTERNET address GSA *Advantage!*® is: GSAAdvantage.gov.

### Multiple Award Schedule

FSC Group: Large Category F – Information Technology

Contract number: GS-35F-408AA

Contract period: May 31, 2023 through May 30, 2028

**e-Builder, Inc.**  
13450 W. Sunrise Blvd, Suite 600  
Sunrise, FL 33323  
(P) 754-755-8727  
(F) 954-792-5949

<http://www.e-Builder.net>

Contract administration source [Carlos\\_Abaunza@trimble.com](mailto:Carlos_Abaunza@trimble.com)

Business size: Other than Small

For more information on ordering go to the following website: <https://www.gsa.gov/schedules>.

Price list current as of Modification #PA-0045 effective July 28, 2023

Prices Shown Herein are Net (discount deducted)

## OVERVIEW

### **Company Background**

e-Builder is the leading provider of fully integrated, cloud-based construction program management software for top facility owners and organizations that act on their behalf. The company's flagship product, e-Builder Enterprise, improves capital project execution resulting in increased productivity and quality, reduced cost, and faster project delivery. Since 1995, e-Builder's technology leadership and construction industry focus has provided thousands of global companies, government agencies, and healthcare and educational institutions managing billions of dollars in capital programs with solutions to improve the plan, build and operate lifecycle. The company is privately held and headquartered in Fort Lauderdale, Florida.

### **Earned Prestige and Trust**

e-Builder is trusted by many of the largest facility Owners and Program Managers managing capital construction project portfolios in excess of \$100 billion to provide a reliable, cost effective and flexible platform for strategically managing cost, schedule and scope information from planning to occupancy. e-Builder provides these organizations with an auditable control mechanism to meet today's regulatory requirements.

### **Accessible and Responsive Team**

e-Builder prides itself in being accessible to our clients and responding to their needs as part of our product roadmap definition. More than 75% of our enhancement requests come from clients. e-Builder's leadership team is available to address issues or concerns quickly.

### **Experience in the Construction Industry**

Our team consists of seasoned experts with vast experience implementing our software throughout the world. The e-Builder team is experienced in the development, implementation, deployment, training and support of complex construction program management systems. We do not subcontract these functions. Our direct experience affords us a unique understanding of what it takes to deliver a successful implementation and results in our clients achieving their stated goals. e-Builder's focus and experience has always been on the construction industry, as opposed to generic project management systems. We have not ventured, nor do we plan to venture, outside of this space.

### **e-Builder Enterprise™ Product Overview**

e-Builder Enterprise is a fully integrated cloud-based construction program management software system for owners managing capital projects. The system is designed to address the specific needs of these owners from planning stages through occupancy or operation. e-Builder Enterprise connects all of the internal and external stakeholders to efficiently manage documents, schedule, and communications across all of the projects in the organization. Developed and continuously refined since 1995 with input from thousands of users, e-Builder Enterprise is the most innovative, functionally-rich and easiest-to-use construction program management software system of its kind. Whether you are managing a single project, multiple projects, or multiple programs each with several projects, e-Builder Enterprise provides one integrated system to manage the cost, schedule and scope of each project as it moves from planning to occupancy. The system is modular, and entirely accessible and configurable via the Internet making it the fastest system to deploy. More than 5,000 companies and government agencies involved in capital construction planning, design, construction and operations leverage e-Builder to improve capital project execution. The results are increased productivity, accountability, and much tighter control over costs and schedule, which ultimately reduces costs and speeds time to market.

## CUSTOMER INFORMATION

1a. Table of awarded special item number(s) with appropriate cross-reference to item descriptions and awarded price(s).

SINs	SIN Title
54151S	Information Technology (IT) Professional Services
54151ECOM	Electronic Commerce and Subscription Services
OLM	Order-Level Materials (OLM's)

1b. Identification of the lowest priced model number and lowest unit price for that model for each special item number awarded in the contract. This price is the Government price based on a unit of one, exclusive of any quantity/dollar volume, prompt payment, or any other concession affecting price. Those contracts that have unit prices based on the geographic location of the customer, should show the range of the lowest price, and cite the areas to which the prices apply. *See attached GSA Pricelist*

1c. If the Contractor is proposing hourly rates, a description of all corresponding commercial job titles, experience, functional responsibility and education for those types of employees or subcontractors who will perform services shall be provided. If hourly rates are not applicable, indicate "Not applicable" for this item. *See attached GSA Pricelist*

2. Maximum order:

SINs	Maximum Order
54151S	\$500,000
54151ECOM	\$500,000
OLM	\$250,000

3. Minimum order: \$100

4. Geographic coverage (delivery area). Domestic Delivery

5. Point(s) of production (city, county, and State or foreign country).  
13450 W. Sunrise Blvd, Suite 600, Sunrise, FL 33323

6. Discount from list prices or statement of net price. Government Net Prices (discounts deducted.)

7. Quantity discounts. Additional 1% discount on single task orders over \$250,000

8. Prompt payment terms. 0%, Net 30 Days. Information for Ordering Offices: Prompt payment terms cannot be negotiated out of the contractual agreement in exchange for other concessions.

9. Foreign items (list items by country of origin). Not Applicable

10a. Time of delivery. (Contractor insert number of days.) To Be Determined at the Task Order level

10b. Expedited Delivery. Items available for expedited delivery are noted in this price list.  
To Be Determined at the Task Order level

10c. Overnight and 2-day delivery. To Be Determined at the Task Order level

10d. Urgent Requirements. Customers are encouraged to contact the contractor for the purpose of requesting accelerated delivery

11. F.O.B. point(s). Destination

12a. Ordering address(es).  
e-Builder, Inc.  
13450 W. Sunrise Blvd, Suite 600  
Sunrise, FL 33323  
(P) 754-755-8727  
(F) 954-792-5949

12b. Ordering procedures: See Federal Acquisition Regulation (FAR) 8.405-3.

13. Payment address(es).  
e-Builder, Inc.  
13450 W. Sunrise Blvd, Suite 600  
Sunrise, FL 33323  
(P) 754-755-8727  
(F) 954-792-5949

14. Warranty provision. Refer to e-Builder, Inc.'s Service Agreement as attached

15. Export packing charges, if applicable. Not Applicable

16. Terms and conditions of rental, maintenance, and repair (if applicable). Not Applicable

17. Terms and conditions of installation (if applicable). Not Applicable

18a. Terms and conditions of repair parts indicating date of parts price lists and any discounts from list prices (if applicable). Not Applicable

18b. Terms and conditions for any other services (if applicable). Not Applicable

19. List of service and distribution points (if applicable). Not Applicable

20. List of participating dealers (if applicable). Not Applicable

21. Preventive maintenance (if applicable). Not Applicable

22a. Special attributes such as environmental attributes (e.g., recycled content, energy efficiency, and/or reduced pollutants). Not Applicable

22b. If applicable, indicate that Section 508 compliance information is available for the information and communications technology (ICT) products and services and show where full details can be found (e.g. contractor's website or other location.) ICT accessibility standards can be found at:  
<https://www.Section508.gov/>. *As Applicable*

23. Unique Entity Identifier (UEI) number. XLRUKJJEFMD1

24. Notification regarding registration in System for Award Management (SAM) database. Contractor registered and active in SAM, Cage Code 1XMU0

**Service Contract Labor Standards:** The Service Contract Labor Standards (SCLS), formerly known as the Service Contract Act (SCA), is applicable to this contract as it applies to the entire Multiple Award Schedule (MAS) and all services provided. While no specific labor categories have been identified as being subject to SCLS/SCA due to exemptions for professional employees (FAR 22.1101, 22.1102 and 29 CFR 541.300), this contract still maintains the provisions and protections for SCLS/SCA eligible labor categories. If and / or when the contractor adds SCLS/SCA labor categories to the contract through the modification process, the contractor must inform the Contracting Officer and establish a SCLS/SCA matrix identifying the GSA labor category titles, the occupational code, SCLS/SCA labor category titles and the applicable WD number. Failure to do so may result in cancellation of the contract.

Attachments to follow:

e-Builder, Inc.'s Service Agreement, as referred to in line 14, pg. 6-7

GSA Awarded Pricelist, as referred to in 1b. and 1c., pg. 8-13

## **E-BUILDER SERVICE AGREEMENT**

e-Builder, Inc. whose address is 1800 NW 69<sup>th</sup> Avenue, Suite 201, Plantation, FL 33313 ("e-Builder") and Ordering Activity, as defined in GSA Order ADM4800.2G and as revised from time to time ("Customer"), enter into this e-Builder Service Agreement (the "Service Agreement"). In the event of a conflict between any terms and conditions in this Service Agreement and the terms and conditions of the GSA Schedule 70 contract, the terms and conditions of the MAS contract shall control. The work to be performed for an "Ordering Activity" may be contained in one or more "Task Orders."

1. TERM. This Agreement shall continue for the period purchased by the Ordering Activity as set forth in the relevant task order.

2. SERVICES.

21. Services. e-Builder agrees to provide the services described in the relevant Task Order (the "Services") to Customer subject to the terms and conditions of this Agreement, in consideration for the payments set out therein. Customer acknowledges that e-Builder Enterprise<sup>tm</sup> software may be modified or upgraded from time to time, and that "Services" and "Customer Support" provided to Customer shall only include the use of the most recent version of e-Builder Enterprise<sup>tm</sup>.

22. License of Software. Customer's right to use the Services (including, without limitation, the limited license to use e-Builder Enterprise<sup>tm</sup> software), is limited to the restrictions contained herein, including those related to the number of users, projects, annual capital program expenditures and/or period of use. The Customer acknowledges that title to and copyright in the software applications supplied by e-Builder (including e-Builder Enterprise<sup>tm</sup>) are reserved by e-Builder. Customer acquires no right in any software, copyrights, patents or any other intellectual property belonging to or licensed by e-Builder, other than the specific limited rights to the Services. e-Builder is and shall remain the sole owner of all copyrights, trademarks, patents and other proprietary rights in and to all aspects of the Services (including, without limitation, all software, code and designs used in providing the Services).

3.

4. WARRANTIES

41. Representations. Customer represents, warrants and covenants the following to e-Builder: (i) Customer currently possesses all necessary licenses, permits, insurance and approvals required validly to execute, deliver and perform its duties under this Agreement and is qualified to do business in all jurisdictions where such qualification is required for Customer's performance of its duties under this Agreement, (ii) To the best of its knowledge and ability, Customer will comply with, and will use its best efforts to cause each subcontractor it may engage to comply with all applicable federal and state laws and regulations in performing its and their respective responsibilities under this Agreement and any subcontracts, and (iii) No information provided to e-Builder or disseminated through its software or systems shall infringe on or violate any trademark, copyright, trade secret, right of publicity or privacy (including but not limited to defamation), patent or other proprietary right of any third party.

42. Disclaimer of Warranty and Limitations of Liability. E-BUILDER DOES NOT AND CANNOT CONTROL THE FLOW OF DATA TO OR FROM E-BUILDER'S NETWORK AND OTHER PORTIONS OF THE INTERNET. SUCH FLOW DEPENDS IN LARGE PART ON THE PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. AT TIMES, ACTIONS OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR DISRUPT CUSTOMER'S CONNECTIONS TO THE INTERNET (OR PORTIONS THEREOF). ALTHOUGH E-BUILDER WILL USE COMMERCIALY REASONABLE EFFORTS TO TAKE ALL ACTIONS IT DEEMS APPROPRIATE TO REMEDY AND AVOID SUCH EVENTS, E-BUILDER CANNOT GUARANTEE THAT SUCH EVENTS WILL NOT OCCUR. ACCORDINGLY, E-BUILDER DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS.

EXCEPT FOR THE WARRANTIES SPECIFICALLY AND EXPRESSLY MADE HEREIN AND ANY WARRANTIES SPECIFICALLY PROVIDED IN THE GSA SCHEDULE 70 CONTRACT, E-BUILDER MAKES NO WARRANTIES EITHER EXPRESS OR IMPLIED, AND ALL SUCH WARRANTIES ARE DISCLAIMED.

FOR ANY ONE OR MORE BREACH OF THIS AGREEMENT OR DEFAULT HEREUNDER, THE ENTIRE LIABILITY OF THE PARTY IN BREACH OR DEFAULT, AND THE EXCLUSIVE REMEDY OF THE OTHER PARTY, SHALL BE PAYMENT OF THE ACTUAL DAMAGES PROXIMATELY CAUSED BY SUCH BREACH OR DEFAULT, WHICH SHALL NOT EXCEED THE AMOUNT OF ONE (1) MONTH'S FEES PAID BY CUSTOMER HEREUNDER. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, LOSSES, OR EXPENSES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, FAILURE TO REALIZE EXPECTED SAVINGS OR ANY OTHER COMMERCIAL OR ECONOMIC LOSS OF ANY KIND ARISING OUT OF OR RELATED TO THIS AGREEMENT. THESE LIMITATIONS ON THE LIABILITY OF EITHER PARTY SHALL APPLY TO ANY AND ALL CAUSES OF ACTION THAT EITHER PARTY MAY HAVE AGAINST THE OTHER, IRRESPECTIVE OF THE NATURE OF THE CAUSE OF ACTION UNDERLYING A CLAIM, DEMAND OR

ACTION, INCLUDING, WITHOUT LIMITATION, WHETHER IT SOUNDS IN CONTRACT OR TORT, BUT SHALL NOT APPLY TO OR LIMIT SUMS DUE HEREUNDER TO E-BUILDER FOR SERVICES. This clause shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to this Contract under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733. Furthermore, this clause shall not impair nor prejudice the U.S. Government's right to express remedies provided in the GSA Schedule 70 contract (e.g., clause 552.238-75 – Price Reductions, clause 52.212-4(h) – Patent Indemnification, and GSAR 552.215-72 – Price Adjustment – Failure to Provide Accurate Information).

43. **Indemnity.** e-Builder agrees to indemnify and hold harmless the Customer (for services rendered under a Task Order, as applicable), , its officers, directors, employees or agents from and against any claims made upon it by any third party, arising out of information or software provided by it or actions of its employees, agents or invitees.

5. **AUDIT RIGHTS.** e-Builder will have the right, during normal business hours and upon at least five (5) days prior written notice, to have an independent audit firm selected by e-Builder audit Customer's records relating to Customer's activities pursuant to this Service Agreement in order to verify that Customer has complied with the terms of this Agreement. Such audits will be conducted no more than once in any period of twelve (12) consecutive months, and e-Builder will adhere to any security measures required by the Ordering Activity.

6. **CONFIDENTIALITY.** Confidential Information refers to all nonpublic information provided by one party to the other, but it does not include this Service Agreement. The Parties agree that, except to the extent necessary to implement the terms and conditions of this Agreement, when authorized in writing by the other Party or when otherwise required by law: (i) each Party will preserve and protect the confidentiality of the other Party's Confidential Information; (ii) neither Party will disclose to any third party the existence, source, content or substance of the other Party's Confidential Information, or make copies of such Confidential Information except as required by this Agreement; (iii) neither Party will deliver the other Party's Confidential Information to any third party, or permit such information to be removed from the premises of the Party receiving such information; and (iv) each Party shall advise any of its employees or agents working on or having access to the other Party's Confidential Information of the confidentiality of such information.

7. **MISCELLANEOUS**

7.1. **Governing Law and Venue.** This Agreement shall be governed by and interpreted in all respects in accordance with the laws of the United States.

7.2. **Notices.** All notices required or permitted to be sent pursuant to this Agreement shall, unless otherwise specifically provided, be in writing and shall be deemed given when delivered personally or by facsimile, overnight air courier or certified mail (postage prepaid, return receipt requested), to the addresses shown above or such other substitute address designated in writing.

73. **Force Majeure.** Notwithstanding any other provision of this Agreement, if by reason of Force Majeure, any Party is unable to perform certain of its obligations under this Agreement it shall be automatically relieved of those obligations to the extent, and for the period of time, that such Party is prevented from meeting them by Force Majeure.

E-BUILDER, INC.

“Customer”

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

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

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

## e-Builder, Inc.

## Awarded GSA Pricelist

SIN	Labor Category / Service Title	Functional Responsibility	Minimum Experience	Minimum Education	UOI	GSA PRICE	WARRANTY	COO
54151S	Project Manager II	Coordinate day-to-day activities of a project implementation team of business analysts. Manages scope, schedule, and financials for each project. Responsible for measuring and reporting key implementation related KPIs to internal and customer stakeholders.	6	Bachelors	Hour	\$ 160.81	Standard Warranty	US
54151S	Business Analyst	Responsible for requirements gathering, documentation, and configuration of e-Builder Enterprise. Works with stakeholders to develop and execute UAT strategies. Creates and distributes meeting minutes, status reports, and required documentation to project stakeholders.	2	Bachelors	Hour	\$ 145.49	Standard Warranty	US
54151S	Software Engineer	Participates in all aspects of product and client specific custom software development from requirements analysis through product release. Assists with testing strategies and evaluation of expected results. Communicates status, risks, and other issues on software development projects.	2	Bachelors	Hour	\$ 168.46	Standard Warranty	US
54151S	Managed Services - 25% FTE - Tier 1	Design, configuration, documentation, and training of e-Builder Enterprise. Work with stakeholders to develop and execute UAT strategies. 520 hours of service per year included in price. Work will be done remotely.	2	Bachelors	Annual	\$ 69,823.68	Standard Warranty	US
54151S	Managed Services - 50% FTE - Tier 1	Design, configuration, documentation, and training of e-Builder Enterprise. Work with stakeholders to develop and execute UAT strategies. 1040 hours of service per year included in price. Work will be done remotely.	2	Bachelors	Annual	\$ 129,672.54	Standard Warranty	US
54151S	Managed Services - 75% FTE - Tier 1	Design, configuration, documentation, and training of e-Builder Enterprise. Work with stakeholders to develop and execute UAT strategies. 1560 hours of service per year included in price. Work will be done remotely.	2	Bachelors	Annual	\$ 179,546.60	Standard Warranty	US
54151S	Managed Services - 100% FTE - Tier 1	Design, configuration, documentation, and training of e-Builder Enterprise. Work with stakeholders to develop and execute UAT strategies. 2080 hours of service per year included in price. Work will be done remotely.	2	Bachelors	Annual	\$ 219,445.84	Standard Warranty	US

## e-Builder, Inc.

## Awarded GSA Pricelist

SIN	MFR	MFR PART NO	PRODUCT NAME	PRODUCT DESCRIPTION	UOI	GSA PRICE	WARRANTY	COO
54151ECOM	e-Builder	eB-Ent-GSA-15-Named	eB-Ent-GSA-15-Named	e-Builder Enterprise GSA Bundle which includes core platform and up to 15 named users. One year subscription license with auto renewal. Includes e-Builder Enterprise 15 named, Business Intelligence Add-on, and Data Warehouse	Platform with up to 15 users / year	\$ 28,581.86	Standard Warranty	US
54151ECOM	e-Builder	eB-Ent-GSA-15-Named (on AWS GovCloud)	eB-Ent-GSA-15-Named (on AWS GovCloud)	e-Builder Enterprise GSA Bundle hosted on AWS GovCloud (ITAR & FedRAMP compliant) which includes core platform and up to 15 named users. One year subscription license with auto renewal. Includes e-Builder Enterprise 15 named, AWS GovCloud Hosting, Business Intelligence Add-on, and Data Warehouse	Platform with up to 15 users / year	\$ 35,431.99	Standard Warranty	US
54151ECOM	e-Builder	eB-Ent-GSA-50-Named	eB-Ent-GSA-50-Named	e-Builder Enterprise GSA Bundle which includes core platform and up to 50 named users. One year subscription license with auto renewal. Includes e-Builder Enterprise 50 named, Business Intelligence Add-on, and Data Warehouse	Platform with up to 50 users / year	\$ 59,032.75	Standard Warranty	US
54151ECOM	e-Builder	eB-Ent-GSA-50-Named (on AWS GovCloud)	eB-Ent-GSA-50-Named (on AWS GovCloud)	e-Builder Enterprise GSA Bundle hosted on AWS GovCloud (ITAR & FedRAMP compliant) which includes core platform and up to 50 named users. One year subscription license with auto renewal. Includes e-Builder Enterprise 50 named, AWS GovCloud Hosting, Business Intelligence Add-on, and Data Warehouse	Platform with up to 50 users / year	\$ 75,571.79	Standard Warranty	US
54151ECOM	e-Builder	eB-Ent-GSA-20M-Capital_Program	eB-Ent-GSA-20M-Capital_Program	e-Builder Enterprise GSA Bundle which includes core platform and unlimited users for capital programs up to \$20 million USD. One year subscription license with auto renewal. Includes e-Builder Enterprise 20M Capital Program, Business Intelligence Add-on, and Data Warehouse	Platform with unlimited users for up to \$20 million in capital program	\$ 45,843.83	Standard Warranty	US
54151ECOM	e-Builder	eB-Ent-GSA-20M-Capital_Program (on AWS GovCloud)	eB-Ent-GSA-20M-Capital_Program (on AWS GovCloud)	e-Builder Enterprise GSA Bundle hosted on AWS GovCloud (ITAR & FedRAMP compliant) which includes core platform and unlimited users for capital programs up to \$20 million USD. One year subscription license with auto renewal. Includes e-Builder Enterprise 20M Capital Program, AWS GovCloud Hosting, Business Intelligence Add-on, and Data Warehouse	Platform with unlimited users for up to \$20 million in capital program	\$ 58,186.40	Standard Warranty	US

SIN	MFR	MFR PART NO	PRODUCT NAME	PRODUCT DESCRIPTION	UOI	GSA PRICE	WARRANTY	COO
54151ECOM	e-Builder	eB-Ent-GSA-50M-Capital_Program	eB-Ent-GSA-50M-Capital_Program	e-Builder Enterprise GSA Bundle which includes core platform and unlimited users for capital programs up to \$50 million USD. One year subscription license with auto renewal. Includes e-Builder Enterprise 50M Capital Program, Business Intelligence Add-on, and Data Warehouse	Platform with unlimited users for up to \$50 million in capital program	\$ 84,634.76	Standard Warranty	US
54151ECOM	e-Builder	eB-Ent-GSA-50M-Capital_Program (on AWS GovCloud)	eB-Ent-GSA-50M-Capital_Program (on AWS GovCloud)	e-Builder Enterprise GSA Bundle hosted on AWS GovCloud (ITAR & FedRAMP compliant) which includes core platform and unlimited users for capital programs up to \$50 million USD. One year subscription license with auto renewal. Includes e-Builder Enterprise 50M Capital Program, AWS GovCloud Hosting, Business Intelligence Add-on, and Data Warehouse	Platform with unlimited users for up to \$50 million in capital program	\$ 109,319.90	Standard Warranty	US
54151ECOM	e-Builder	eB-Ent-GSA-300M-Capital_Program	eB-Ent-GSA-300M-Capital_Program	e-Builder Enterprise GSA Bundle which includes core platform and unlimited users for capital programs up to \$300 million USD. One year subscription license with auto renewal. Includes e-Builder Enterprise 300M Capital Program, Business Intelligence Add-on, Sandbox, and Data Warehouse	Platform with unlimited users for up to \$300 million in capital program	\$ 217,440.81	Standard Warranty	US
54151ECOM	e-Builder	eB-Ent-GSA-300M-Capital_Program (on AWS GovCloud)	eB-Ent-GSA-300M-Capital_Program (on AWS GovCloud)	e-Builder Enterprise GSA Bundle hosted on AWS GovCloud (ITAR & FedRAMP compliant) which includes core platform and unlimited users for capital programs up to \$300 million USD. One year subscription license with auto renewal. Includes e-Builder Enterprise 300M Capital Program, AWS GovCloud Hosting, Business Intelligence Add-on, Shared Testing Environment, and Data Warehouse	Platform with unlimited users for up to \$300 million in capital program	\$ 277,425.69	Standard Warranty	US
54151ECOM	e-Builder	eB-Ent-GSA-500M-Capital_Program	eB-Ent-GSA-500M-Capital_Program	e-Builder Enterprise GSA Bundle which includes core platform and unlimited users for capital programs up to \$500 million USD. One year subscription license with auto renewal. Includes e-Builder Enterprise 500M Capital Program, Business Intelligence Add-on, Shared Testing Environment, and Data Warehouse	Platform with unlimited users for up to \$500 million in capital program	\$ 281,057.93	Standard Warranty	US
54151ECOM	e-Builder	eB-Ent-GSA-500M-Capital_Program (on AWS GovCloud)	eB-Ent-GSA-500M-Capital_Program (on AWS GovCloud)	e-Builder Enterprise GSA Bundle hosted on AWS GovCloud (ITAR & FedRAMP compliant) which includes core platform and unlimited users for capital programs up to \$500 million USD. One year subscription license with auto renewal. Includes e-Builder Enterprise 500M Capital Program, AWS GovCloud Hosting, Business Intelligence Add-on, Shared Testing Environment, and Data Warehouse	Platform with unlimited users for up to \$500 million in capital program	\$ 361,284.63	Standard Warranty	US

SIN	MFR	MFR PART NO	PRODUCT NAME	PRODUCT DESCRIPTION	UOI	GSA PRICE	WARRANTY	COO
54151ECOM	e-Builder	eB-Ent-GSA-1000M-Capital_Program	eB-Ent-GSA-1000M-Capital_Program	e-Builder Enterprise GSA Bundle which includes core platform and unlimited users for capital programs up to \$1000 million USD. One year subscription license with auto renewal. Includes e-Builder Enterprise 1000M Capital Program, Business Intelligence Add-on, Shared Testing Environment, and Data Warehouse	Platform with unlimited users for up to \$1000 million in capital program	\$ 370,277.08	Standard Warranty	US
54151ECOM	e-Builder	eB-Ent-GSA-1000M-Capital_Program (on AWS GovCloud)	eB-Ent-GSA-1000M-Capital_Program (on AWS GovCloud)	e-Builder Enterprise GSA Bundle hosted on AWS GovCloud (ITAR & FedRAMP compliant) which includes core platform and unlimited users for capital programs up to \$1000 million USD. One year subscription license with auto renewal. Includes e-Builder Enterprise 1000M Capital Program, AWS GovCloud Hosting, Business Intelligence Add-on, Shared Testing Environment, and Data Warehouse	Platform with unlimited users for up to \$1000 million in capital program	\$ 478,891.69	Standard Warranty	US
54151ECOM	e-Builder	eB-Ent-GSA-2000M-Capital_Program	eB-Ent-GSA-2000M-Capital_Program	e-Builder Enterprise GSA Bundle which includes core platform and unlimited users for capital programs up to \$2000 million USD. One year subscription license with auto renewal. Includes e-Builder Enterprise 2000M Capital Program, Business Intelligence Add-on, Shared Testing Environment, and Data Warehouse	Platform with unlimited users for up to \$2000 million in capital program	\$ 478,891.69	Standard Warranty	US
54151ECOM	e-Builder	eB-Ent-GSA-2000M-Capital_Program (on AWS GovCloud)	eB-Ent-GSA-2000M-Capital_Program (on AWS GovCloud)	e-Builder Enterprise GSA Bundle hosted on AWS GovCloud (ITAR & FedRAMP compliant) which includes core platform and unlimited users for capital programs up to \$2000 million USD. One year subscription license with auto renewal. Includes e-Builder Enterprise 2000M Capital Program, AWS GovCloud Hosting, Business Intelligence Add-on, Shared Testing Environment, and Data Warehouse	Platform with unlimited users for up to \$2000 million in capital program	\$ 622,065.49	Standard Warranty	US
54151ECOM	e-Builder	eB-Ent-GSA-3000M-Capital_Program	eB-Ent-GSA-3000M-Capital_Program	e-Builder Enterprise GSA Bundle which includes core platform and unlimited users for capital programs up to \$3000 million USD. One year subscription license with auto renewal. Includes e-Builder Enterprise 3000M Capital Program, Business Intelligence Add-on, Shared Testing Environment, and Data Warehouse	Platform with unlimited users for up to \$3000 million in capital program	\$ 575,869.02	Standard Warranty	US
54151ECOM	e-Builder	eB-Ent-GSA-3000M-Capital_Program (on AWS GovCloud)	eB-Ent-GSA-3000M-Capital_Program (on AWS GovCloud)	e-Builder Enterprise GSA Bundle hosted on AWS GovCloud (ITAR & FedRAMP compliant) which includes core platform and unlimited users for capital programs up to \$3000 million USD. One year subscription license with auto renewal. Includes e-Builder Enterprise 3000M Capital Program, AWS GovCloud Hosting, Business Intelligence Add-on, Sandbox, and Data Warehouse	Platform with unlimited users for up to \$3000 million in capital program	\$ 749,899.24	Standard Warranty	US

SIN	MFR	MFR PART NO	PRODUCT NAME	PRODUCT DESCRIPTION	UOI	GSA PRICE	WARRANTY	COO
54151ECOM	e-Builder	EB-APPX-SUB-Platform	EB-APPX-SUB-Platform	e-Builder AppXchange platform subscription which includes up to 5 integration points. One year subscription license. Requires EB-APPX-SVC-1IP	e-Builder AppXchange Platform with up to 5 Integration Points	\$ 9,571.79	Standard Warranty	US
54151ECOM	e-Builder	EB-APPX-SUB-1IP	EB-APPX-SUB-1IP	Additional e-Builder AppXchange subscription for 1 additional points. Requires EB-APPX-SVC-1IP	Additional 1 Integration Point	\$ 957.18	Standard Warranty	US
54151ECOM	e-Builder	EB-APPX-SVC-1IP	EB-APPX-SVC-1IP	One-Time Fee For Implementation of for all AppXchange Integration Points	EA	\$ 2,010.08	Standard Warranty	US
54151ECOM	e-Builder	eB-FedRAMP-15-Named	eB-FedRAMP-15-Named	e-Builder FedRAMP which access up to 15 named users. One year subscription license with auto renewal. Includes e-Builder FedRAMP 15 named, and Business Intelligence Add-on.	Platform with up to 15 users / year	\$ 46,214.11	Standard Warranty	US
54151ECOM	e-Builder	eB-FedRAMP-50-Named	eB-FedRAMP-50-Named	e-Builder FedRAMP which access up to 50 named users. One year subscription license with auto renewal. Includes e-Builder FedRAMP 50 named, and Business Intelligence Add-on.	Platform with up to 50 users / year	\$ 82,659.95	Standard Warranty	US
54151ECOM	e-Builder	eB-FedRAMP-20M-Capital_Program	eB-FedRAMP-20M-Capital_Program	e-Builder FedRAMP which access for unlimited named users for capital programs up to \$20 Million. One year subscription license with auto renewal. Includes e-Builder FedRAMP 20M Capital Program, and Business Intelligence Add-on.	Platform with unlimited users for up to \$20 million in capital program	\$ 63,476.07	Standard Warranty	US
54151ECOM	e-Builder	eB-FedRAMP-50M-Capital_Program	eB-FedRAMP-50M-Capital_Program	e-Builder FedRAMP which access for unlimited named users for capital programs up to \$50 Million. One year subscription license with auto renewal. Includes e-Builder FedRAMP 50M Capital Program, and Business Intelligence Add-on.	Platform with unlimited users for up to \$50 million in capital program	\$ 119,899.24	Standard Warranty	US

SIN	MFR	MFR PART NO	PRODUCT NAME	PRODUCT DESCRIPTION	UOI	GSA PRICE	WARRANTY	COO
54151ECOM	e-Builder	eB-FedRAMP-300M-Capital_Program	eB-FedRAMP-300M-Capital_Program	e-Builder FedRAMP which access for unliimted named users for capital programs up to \$300 Million.  One year subscription license with auto renewal.  Includes e-Builder FedRAMP 300M Capital Program, Business Intelligence Add-on, and Shared Test Environment.	Platform with unlimited users for up to \$300 million in capital program	\$ 314,065.49	Standard Warranty	US
54151ECOM	e-Builder	eB-FedRAMP-500M-Capital_Program	eB-FedRAMP-500M-Capital_Program	e-Builder FedRAMP which access for unliimted named users for capital programs up to \$500 Million.  One year subscription license with auto renewal.  Includes e-Builder FedRAMP 500M Capital Program, Business Intelligence Add-on, and Shared Test Environment.	Platform with unlimited users for up to \$500 million in capital program	\$ 406,599.50	Standard Warranty	US
54151ECOM	e-Builder	eB-FedRAMP-1000M-Capital_Program	eB-FedRAMP-1000M-Capital_Program	e-Builder FedRAMP which access for unliimted named users for capital programs up to \$1000 Million.  One year subscription license with auto renewal.  Includes e-Builder FedRAMP 1000M Capital Program, Business Intelligence Add-on, and Shared Test Environment.	Platform with unlimited users for up to \$1000 million in capital program	\$ 536,372.80	Standard Warranty	US
54151ECOM	e-Builder	eB-FedRAMP-2000M-Capital_Program	eB-FedRAMP-2000M-Capital_Program	e-Builder FedRAMP which access for unliimted named users for capital programs up to \$2000 Million.  One year subscription license with auto renewal.  Includes e-Builder FedRAMP 2000M Capital Program, Business Intelligence Add-on, and Shared Test Environment.	Platform with unlimited users for up to \$2000 million in capital program	\$ 694,357.68	Standard Warranty	US
54151ECOM	e-Builder	eB-FedRAMP-3000M-Capital_Program	eB-FedRAMP-3000M-Capital_Program	e-Builder FedRAMP which access for unliimted named users for capital programs up to \$3000 Million.  One year subscription license with auto renewal.  Includes e-Builder FedRAMP 3000M Capital Program, Business Intelligence Add-on, and Shared Test Environment.	Platform with unlimited users for up to \$3000 million in capital program	\$ 835,415.62	Standard Warranty	US

# Contract Clause Document

for

Solicitation Number : **47QSMD20R0001**

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**52.203-3 GRATUITIES (APR 1984)**

(a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative—

- (1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Government; and
- (2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

(b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

(c) If this contract is terminated under paragraph (a) above, the Government is entitled—

- (1) To pursue the same remedies as in a breach of the contract; and
- (2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the agency head or a designee. (This subparagraph (c)(2) is applicable only if this contract uses money appropriated to the Department of Defense.)

(d) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

**52.222-1 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997)**

If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice, including all relevant information, to the Contracting Officer.

**52.222-3 CONVICT LABOR (JUN 2003)**

(a) Except as provided in paragraph (b) of this clause, the Contractor shall not employ in the performance of this contract any person undergoing a sentence of imprisonment imposed by any court of a State, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands.

(b) The Contractor is not prohibited from employing persons—

- (1) On parole or probation to work at paid employment during the term of their sentence;
- (2) Who have been pardoned or who have served their terms; or

(3) Confined for violation of the laws of any of the States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if—

- (i) The worker is paid or is in an approved work training program on a voluntary basis;
- (ii) Representatives of local union central bodies or similar labor union organizations have been consulted;
- (iii) Such paid employment will not result in the displacement of employed workers, or be

applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services;

(iv) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and

(v) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

#### **52.224-1 PRIVACY ACT NOTIFICATION (APR 1984)**

The Contractor will be required to design, develop, or operate a system of records on individuals, to accomplish an agency function subject to the Privacy Act of 1974, Public Law 93-579, December 31, 1974 (5 U.S.C. 552a) and applicable agency regulations. Violation of the Act may involve the imposition of criminal penalties.

#### **52.224-2 PRIVACY ACT (APR 1984)**

(a) The Contractor agrees to—

(1) Comply with the Privacy Act of 1974 (the Act) and the agency rules and regulations issued under the Act in the design, development, or operation of any system of records on individuals to accomplish an agency function when the contract specifically identifies—

(i) The systems of records; and

(ii) The design, development, or operation work that the Contractor is to perform;

(2) Include the Privacy Act notification contained in this contract in every solicitation and resulting subcontract and in every subcontract awarded without a solicitation, when the work statement in the proposed subcontract requires the redesign, development, or operation of a system of records on individuals that is subject to the Act; and

(3) Include this clause, including this subparagraph (3), in all subcontracts awarded under this contract which requires the design, development, or operation of such a system of records.

(b) In the event of violations of the Act, a civil action may be brought against the agency involved when the violation concerns the design, development, or operation of a system of records on individuals to accomplish an agency function, and criminal penalties may be imposed upon the officers or employees of the agency when the violation concerns the operation of a system of records on individuals to accomplish an agency function. For purposes of the Act, when the contract is for the operation of a system of records on individuals to accomplish an agency function, the Contractor is considered to be an employee of the agency.

(c) (1) *"Operation of a system of records,"* as used in this clause, means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.

(2) *"Record,"* as used in this clause, means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the person's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.

(3) "System of records on individuals," as used in this clause, means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

### **52.228-5 INSURANCE—WORK ON A GOVERNMENT INSTALLATION (JAN 1997)**

(a) The Contractor shall, at its own expense, provide and maintain during the entire performance of this contract, at least the kinds and minimum amounts of insurance required in the Schedule or elsewhere in the contract.

(b) Before commencing work under this contract, the Contractor shall notify the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the Government's interest shall not be effective—

- (1) For such period as the laws of the State in which this contract is to be performed prescribe; or
- (2) Until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer, whichever period is longer.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in subcontracts under this contract that require work on a Government installation and shall require subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the contract. The Contractor shall maintain a copy of all subcontractors' proofs of required insurance, and shall make copies available to the Contracting Officer upon request.

### **52.229-1 STATE AND LOCAL TAXES (APR 1984)**

Notwithstanding the terms of the Federal, State, and Local Taxes clause, the contract price excludes all State and local taxes levied on or measured by the contract or sales price of the services or completed supplies furnished under this contract. The Contractor shall state separately on its invoices taxes excluded from the contract price, and the Government agrees either to pay the amount of the taxes to the Contractor or provide evidence necessary to sustain an exemption.

### **52.232-37 MULTIPLE PAYMENT ARRANGEMENTS (MAY 1999)**

This contract or agreement provides for payments to the Contractor through several alternative methods. The applicability of specific methods of payment and the designation of the payment office(s) are either stated—

- (a) Elsewhere in this contract or agreement; or
- (b) In individual orders placed under this contract or agreement.

### **52.233-3 PROTEST AFTER AWARD (AUG 1996)**

(a) Upon receipt of a notice of protest (as defined in FAR 33.101) or a determination that a protest is likely (see FAR 33.102(d)), the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. 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. Upon receipt of the final decision in the protest, 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 this contract.

(b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Contractor shall resume work. The Contracting 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 an 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 request 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.

(e) The Government's rights to terminate this contract at anytime are not affected by action taken under this clause.

(f) If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, as provided in FAR 33.102(b)(2), or 33.104(h)(1), the Government may require the Contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the Contractor under any contract between the Contractor and the Government.

#### **52.233-4 APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM (OCT 2004)**

United States law will apply to resolve any claim of breach of this contract.

#### **52.237-2 PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION (APR 1984)**

The Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation on the Government installation. If the Contractor's failure to use reasonable care causes damage to any of this property, the Contractor shall replace or repair the damage at no expense to the Government as the Contracting Officer directs. If the Contractor fails or refuses to make such repair or replacement, the Contractor shall be liable for the cost, which may be deducted from the contract price.

#### **52.237-3 CONTINUITY OF SERVICES (JAN 1991)**

(a) The Contractor recognizes that the services under this contract are vital to the Government and must be continued without interruption and that, upon contract expiration, a successor, either the Government or another contractor, may continue them. The Contractor agrees to—

(1) Furnish phase-in training; and

(2) Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

(b) The Contractor shall, upon the Contracting Officer's written notice, (1) furnish phase-in, phase-out services for up to 90 days after this contract expires and (2) negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the Contracting Officer's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.

(c) The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

(d) The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (*i.e.*, costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract.

#### **52.239-1 PRIVACY OR SECURITY SAFEGUARDS (AUG 1996)**

(a) The Contractor shall not publish or disclose in any manner, without the Contracting Officer's written consent, the details of any safeguards either designed or developed by the Contractor under this contract or otherwise provided by the Government.

(b) To the extent required to carry out a program of inspection to safeguard against threats and hazards to the security, integrity, and confidentiality of Government data, the Contractor shall afford the Government access to the Contractor's facilities, installations, technical capabilities, operations, documentation, records, and databases.

(c) If new or unanticipated threats or hazards are discovered by either the Government or the Contractor, or if existing safeguards have ceased to function, the discoverer shall immediately bring the situation to the attention of the other party.

#### **52.242-13 BANKRUPTCY (JUL 1995)**

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting offices for all Government contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

#### **52.242-15 STOP-WORK ORDER (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 by this contract 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 this 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 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.

#### **52.247-32 F.O.B. ORIGIN, FREIGHT PREPAID (FEB 2006)**

(a) The term "f.o.b. origin, freight prepaid," as used in this clause, means—

- (1) Free of expense to the Government delivered—
  - (i) On board the indicated type of conveyance of the carrier (or of the Government, if specified) at a designated point in the city, county, and State from which the shipments will be made and from which line-haul transportation service (as distinguished from switching, local drayage, or other terminal service) will begin;
  - (ii) To, and placed on, the carrier's wharf (at ship-side, within reach of the ship's loading tackle, when the shipping point is within a port area having water transportation service) or the carrier's freight station;
  - (iii) To a U.S. Postal Service facility; or
  - (iv) If stated in the solicitation, to any Government-designated point located within the same city or commercial zone as the f.o.b. origin point specified in the contract (the Federal Motor Carrier Safety Administration prescribes commercial zones at Subpart B of 49 CFR part 372); and
- (2) The cost of transportation, ultimately the Government's obligation, is prepaid by the Contractor to the point specified in the contract.

(b) The Contractor shall—

- (1) (i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment in conformance with carrier requirements to protect the goods and to ensure assessment of the lowest applicable transportation charge;

(2) (i) Order specified carrier equipment when requested by the Government; or

(ii) If not specified, order appropriate carrier equipment not in excess of capacity to accommodate shipment;

(3) Deliver the shipment in good order and condition to the carrier, and load, stow, trim, block, and/or brace carload or truckload shipment (when loaded by the Contractor) on or in the carrier's conveyance as required by carrier rules and regulations;

(4) Be responsible for any loss of and/or damage to the goods—

(i) Occurring before delivery to the carrier;

(ii) Resulting from improper packing or marking; or

(iii) Resulting from improper loading, stowing, trimming, blocking, and/or bracing of the shipment, if loaded by the Contractor on or in the carrier's conveyance;

(5) Prepare a bill of lading or other transportation receipt. The bill of lading shall show—

(i) A description of the shipment in terms of the governing freight classification or tariff (or Government rate tender) under which lowest freight rates are applicable;

(ii) The seals affixed to the conveyance with their serial numbers or other identification;

(iii) Lengths and capacities of cars or trucks ordered and furnished;

(iv) Other pertinent information required to effect prompt delivery to the consignee, including name, delivery address, postal address and ZIP code of consignee, routing, etc.;

(v) Special instructions or annotations requested by the ordering agency for bills of lading; e.g., "This shipment is the property of, and the freight charges paid to the carrier(s) will be reimbursed by, the Government"; and

(vi) The signature of the carrier's agent and the date the shipment is received by the carrier;

(6) Distribute the copies of the bill of lading, or other transportation receipts, as directed by the ordering agency; and

(7) Prepay all freight charges to the extent specified in the contract.

(c) These Contractor responsibilities are specified for performance at the plant or plants at which these supplies are to be finally inspected and accepted, unless the facilities for shipment by carrier's equipment are not available at the Contractor's plant, in which case the responsibilities shall be performed f.o.b. the point or points in the same or nearest city where the specified carrier's facilities are available; subject, however, to the following qualifications:

(1) If the Contractor's shipping plant is located in the State of Alaska or Hawaii, the Contractor shall deliver the supplies listed for shipment outside Alaska or Hawaii to the port of loading in Alaska or Hawaii, respectively, as specified in the contract, at Contractor's expense, and to that extent the contract shall be "f.o.b. destination."

(2) Notwithstanding subparagraph (c)(1) of this clause, if the Contractor's shipping plant is located in the State of Hawaii, and the contract requires delivery to be made by container service, the Contractor shall deliver the supplies, at the Contractor's expense to the container yard in the same or nearest city where seavan container service is available.

#### **52.247-34 F.O.B. DESTINATION (NOV 1991)**

(a) The term "f.o.b. destination," as used in this clause, means—

(1) Free of expense to the Government, on board the carrier's conveyance, at a specified delivery point where the consignee's facility (plant, warehouse, store, lot, or other location to which shipment can be made) is located; and

(2) Supplies shall be delivered to the destination consignee's wharf (if destination is a port city and supplies are for export), warehouse unloading platform, or receiving dock, at the expense of the Contractor. The Government shall not be liable for any delivery, storage, demurrage, accessorial, or other charges involved before the actual delivery (or "constructive placement" as defined in carrier tariffs) of the supplies to the destination, unless such charges are caused by an act or order of the Government acting in its contractual capacity. If rail carrier is used, supplies shall be delivered to the specified unloading platform of the consignee. If motor carrier (including "piggyback") is used, supplies shall be delivered to truck tailgate at the unloading platform of the consignee, except when the supplies delivered meet the requirements of Item 568 of the National Motor Freight Classification for "heavy or bulky freight." When supplies meeting the requirements of the referenced Item 568 are delivered, unloading (including movement to the tailgate) shall be performed by the consignee, with assistance from the truck driver, if requested. If the Contractor uses rail carrier or freight forwarder for less than carload shipments, the Contractor shall ensure that the carrier will furnish tailgate delivery, when required, if transfer to truck is required to complete delivery to consignee.

(b) The Contractor shall—

(1) (i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment in conformance with carrier requirements;

(2) Prepare and distribute commercial bills of lading;

(3) Deliver the shipment in good order and condition to the point of delivery specified in the contract;

(4) Be responsible for any loss of and/or damage to the goods occurring before receipt of the shipment by the consignee at the delivery point specified in the contract;

(5) Furnish a delivery schedule and designate the mode of delivering carrier; and

(6) Pay and bear all charges to the specified point of delivery.

#### **52.247-38 F.O.B. INLAND CARRIER, POINT OF EXPORTATION (FEB 2006)**

(a) The term "f.o.b. inland carrier, point of exportation," as used in this clause, means free of expense to the Government, on board the conveyance of the inland carrier, delivered to the specified point of exportation.

(b) The Contractor shall—

- (1) (i) Pack and mark the shipment to comply with contract specifications; or
- (ii) In the absence of specifications, prepare the shipment for ocean transportation in conformance with carrier requirements to protect the goods and to ensure assessment of the lowest applicable transportation charge;
- (2) Prepare and distribute commercial bills of lading or other transportation receipt;
- (3) (i) Deliver the shipment in good order and condition in or on the conveyance of the carrier on the date or within the period specified; and
- (ii) Pay and bear all applicable charges, including transportation costs, to the point of delivery specified in the contract;
- (4) Be responsible for any loss of and/or damage to the goods occurring before delivery of the shipment to the point of delivery in the contract; and
- (5) At the Government's request and expense, assist in obtaining the documents required for (i) exportation or (ii) importation at destination.

**52.247-39 F.O.B. INLAND POINT, COUNTRY OF IMPORTATION  
(APR 1984)**

- (a) The term "f.o.b. inland point, country of importation," as used in this clause, means free of expense to the Government, on board the indicated type of conveyance of the carrier, delivered to the specified inland point where the consignee's facility is located.
- (b) The Contractor shall—
  - (1) (i) Pack and mark the shipment to comply with contract specifications; or
  - (ii) In the absence of specifications, prepare the shipment for ocean transportation in conformance with carrier requirements to protect the goods;
  - (2) (i) Deliver, in or on the inland carrier's conveyance, the shipment in good order and condition to the specified inland point where the consignee's facility is located; and
  - (ii) Pay and bear all applicable charges incurred up to the point of delivery, including transportation costs; export, import, or other fees or taxes; costs of landing; wharfage costs; customs duties and costs of certificates of origin; consular invoices; and other documents that may be required for importation; and
  - (3) Be responsible for any loss of and/or damage to the goods until their arrival on or in the carrier's conveyance at the specified inland point.

**52.247-65 F.O.B. ORIGIN, PREPAID FREIGHT—SMALL  
PACKAGE SHIPMENTS (JAN 1991)**

- (a) When authorized by the Contracting Officer, f.o.b. origin freight shipments which do not have a security classification shall move on prepaid commercial bills of lading or other shipping documents to domestic destinations, including air and water terminals. Weight of individual shipments shall be governed by carrier restrictions but shall not exceed 150 pounds by any form of commercial air or 1,000 pounds by other commercial carriers. The Government will reimburse the Contractor for reasonable freight charges.
- (b) The Contractor shall annotate the commercial bill of lading as required by the clause of this contract

entitled "Commercial Bill of Lading Notations."

(c) The Contractor shall consolidate prepaid shipments in accordance with procedures established by the cognizant transportation office. The Contractor is authorized to combine Government prepaid shipments with the Contractor's commercial shipments for delivery to one or more consignees and the Government will reimburse its pro rata share of the total freight costs. The Contractor shall provide a copy of the commercial bill of lading promptly to each consignee. Quantities shall not be divided into mailable lots for the purpose of avoiding movement by other modes of transportation.

(d) Transportation charges will be billed as a separate item on the invoice for each shipment made. A copy of the pertinent bill of lading, shipment receipt, or freight bill shall accompany the invoice unless otherwise specified in the contract.

(e) Loss and damage claims will be processed by the Government.

#### **52.247-68 REPORT OF SHIPMENT (REPSHIP) (FEB 2006)**

(a) Definition. Domestic destination, as used in this clause, means—

(1) A destination within the contiguous United States; or

(2) If shipment originates in Alaska or Hawaii, a destination in Alaska or Hawaii, respectively.

(b) Unless otherwise directed by the Contracting Officer, the Contractor shall—

(1) Send a prepaid notice of shipment to the consignee transportation officer—

(i) For all shipments of—

(A) Classified material, protected sensitive, and protected controlled material;

(B) Explosives and poisons, class 1, division 1.1, 1.2 and 1.3; class 2, division 2.3 and class 6, division 6.1;

(C) Radioactive materials requiring the use of a III bar label; or

(ii) When a truckload/carload shipment of supplies weighing 20,000 pounds or more, or a shipment of less weight that occupies the full visible capacity of a railway car or motor vehicle, is given to any carrier (common, contract, or private) for transportation to a domestic destination (other than a port for export);

(2) Transmits the notice by rapid means to be received by the consignee transportation officer at least 24 hours before the arrival of the shipment; and

(3) Send, to the receiving transportation officer, the bill of lading or letter or other document containing the following information and prominently identified as a "Report of Shipment" or "REPSHIP FOR T.O."

RESHIP FOR T.O. 81 JUN 01

TRANSPORTATION OFFICER, DEFENSE DEPOT, MEMPHIS, TN.

SHIPPED YOUR DEPOT 1981 JUN 1

540 CTNS MENS COTTON TROUSERS, 30,240 LB, 1782 CUBE, VIA XX-YY\*

IN CAR NO. XX 123456\*\*-BL\*\*-C98000031\*\*\*\*CONTRACT DLA\_\_\_\_\_

ETA\*\*\*\*\*JUNE 5 JONES & CO., JERSEY CITY N.J.

#### **552.203-71 RESTRICTION ON ADVERTISING (SEP 1999)**

The Contractor shall not refer to this contract in commercial advertising or similar promotions in such a manner as to state or imply that the product or service provided is endorsed or preferred by the White House, the Executive Office of the President, or any other element of the Federal Government, or is considered by these entities to be superior to other products or services. Any advertisement by the Contractor, including price-off coupons, that refers to a military resale activity shall contain the following statement: "This advertisement is neither paid for nor sponsored, in whole or in part, by any element of the United States Government."

### **552.211-73 MARKING (FEB 1996)**

(a) *General requirements.* Interior packages, if any, and exterior shipping containers shall be marked as specified elsewhere in the contract. Additional marking requirements may be specified on delivery orders issued under the contract. If not otherwise specified, interior packages and exterior shipping containers shall be marked in accordance with the following standards.

(1) *Deliveries to civilian activities.* Supplies shall be marked in accordance with Federal Standard 123, edition in effect on the date of issuance of the solicitation.

(2) *Deliveries to military activities.* Supplies shall be marked in accordance with Military Standard 129, edition in effect on the date of issuance of the solicitation.

(b) *Improperly marked material.* When Government inspection and acceptance are at destination, and delivered supplies are not marked in accordance with contract requirements, the Government has the right, without prior notice to the Contractor to perform the required marking, by contract or otherwise, and charge the Contractor, therefor at the rate specified elsewhere in this contract. This right is not exclusive, and is in addition to other rights or remedies provided for in this contract.

### **552.211-75 PRESERVATION, PACKAGING, AND PACKING (FEB 1996) (ALTERNATE I - MAY 2003)**

Unless otherwise specified, all items shall be preserved, packaged, and packed in accordance with normal commercial practices, as defined in the applicable commodity specification. Packaging and packing shall comply with the requirements of the Uniform Freight Classification and the National Motor Freight Classification (issue in effect at time of shipment) and each shipping container of each item in a shipment shall be of uniform size and content, except for residual quantities. Where special or unusual packing is specified in an order, but not specifically provided for by the contract, such packing details must be the subject of an agreement independently arrived at between the ordering activity and the Contractor.

### **552.211-77 PACKING LIST (FEB 1996) (ALTERNATE I – MAY 2003)**

(a) A packing list or other suitable shipping document shall accompany each shipment and shall indicate: (1) Name and address of consignor; (2) Name and complete address of consignee; (3) Ordering activity order or requisition number; (4) Government bill of lading number covering the shipment (if any); and (5) Description of the material shipped, including item number, quantity, number of containers, and package number (if any).

(b) When payment will be made by Ordering activity commercial credit card, in addition to the information in (a) above, the packing list or shipping document shall include: (1) Cardholder name and telephone number; and (2) the term "Credit Card."

### **552.223-70 HAZARDOUS SUBSTANCES (MAY 1989)**

(a) If the packaged items to be delivered under this contract are of a hazardous substance and ordinarily are intended or considered to be for use as a household item, this contract is subject to the Federal

Hazardous Substances Act, as amended (15 U.S.C. 1261-1276), implementing regulations thereof (16 CFR Chapter II(c)), and Federal Standard No. 123, Marking for Shipment (Civil Agencies), issue in effect on the date of this solicitation.

(b) The packaged items to be delivered under this contract are subject to the preparation of shipping documents, the preparation of items for transportation, shipping container construction, package making, package labeling, when required, shipper's certification of compliance, and transport vehicle placarding in accordance with Parts 171 through 178 of 49 CFR and the Hazardous Materials Transportation Act.

(c) The minimum packaging acceptable for packaging Department of Transportation regulated hazardous materials shall be those in 49 CFR 173.

#### **552.223-71 NONCONFORMING HAZARDOUS MATERIALS (SEP 1999)**

(a) Nonconforming supplies that contain hazardous material or that may expose persons who handle or transport the supplies to hazardous material and which require replacement under the inspection and/or warranty clauses of this contract shall be reshipped to the Contractor at the Contractor's expense. The Contractor agrees to accept return of these nonconforming supplies and to pay all costs occasioned by their return.

(b) "Hazardous materials," as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract).

(c) If the Contractor fails to provide acceptable disposition instructions for the nonconforming supplies within 10 days from the date of the Government's request (or such longer period as may be agreed to between the Contracting Officer and the Contractor), or fails to accept return of the reshipped nonconforming supplies, such failure: (1) may be interpreted as a willful failure to perform, (2) may result in termination of the contract for default and (3) shall be considered by the Contracting Officer in determining the responsibility of the Contractor for any future award (see FAR 9.104-3(b) and 9.406-2).

(d) Pending final resolution of any dispute, the Contractor shall promptly comply with the decision of the Contracting Officer.

#### **552.229-70 FEDERAL, STATE, AND LOCAL TAXES (APR 1984)**

The contract price includes all applicable Federal, State, and local taxes. No adjustment will be made to cover taxes which may subsequently be imposed on this transaction or changes in the rates of currently applicable taxes. However, the Government will, upon the request of the Contractor, furnish evidence appropriate to establish exemption from any tax from which the Government is exempt and which was not included in the contract price.

#### **552.229-71 FEDERAL EXCISE TAX—DC GOVERNMENT (SEP 1999)**

If the District of Columbia cites an Internal Revenue Tax Exempt Certificate Number on orders placed under this contract, the Contractor shall bill shipments to the District of Columbia at prices exclusive of Federal excise tax and show the amount of such tax on the invoice.

#### **552.232-23 ASSIGNMENT OF CLAIMS (SEP 1999)**

Because this is a requirements or indefinite quantity contract under which more than one agency may place orders, paragraph (a) of the Assignment of Claims clause (FAR 52.232-23) is inapplicable and the following is substituted therefor:

In order to prevent confusion and delay in making payment, the Contractor shall not assign any claim(s) for amounts due or to become due under this contract. However, the Contractor is permitted to assign separately to a bank, trust company, or other financial institution, including any Federal lending agency, under the provisions of the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15 (hereinafter referred to as "the Act"), all amounts due or to become due under any order amounting to \$1,000 or more issued by any Government agency under this contract. Any such assignment takes effect only if and when the assignee files written notice of the assignment together with a true copy of the instrument of assignment with the contracting officer issuing the order and the finance office designated in the order to make payment. Unless otherwise stated in the order, payments to an assignee of any amounts due or to become due under any order assigned may, to the extent specified in the Act, be subject to reduction or set-off.

### **52.223-7 NOTICE OF RADIOACTIVE MATERIALS (JAN 1997)**

(a) The Contractor shall notify the Contracting Officer or designee, in writing, To be determined at the task order level days prior to the delivery of, or prior to completion of any servicing required by this contract of, items containing either (1) radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954, as amended, as set forth in Title 10 of the Code of Federal Regulations, in effect on the date of this contract, or (2) other radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcuries per gram or the activity per item equals or exceeds 0.01 microcuries. Such notice shall specify the part or parts of the items which contain radioactive materials, a description of the materials, the name and activity of the isotope, the manufacturer of the materials, and any other information known to the Contractor which will put users of the items on notice as to the hazards involved (OMB No. 9000-0107).

(b) If there has been no change affecting the quantity of activity, or the characteristics and composition of the radioactive material from deliveries under this contract or prior contracts, the Contractor may request that the Contracting Officer or designee waive the notice requirement in paragraph (a) of this clause. Any such request shall—

- (1) Be submitted in writing;
- (2) State that the quantity of activity, characteristics, and composition of the radioactive material have not changed; and
- (3) Cite the contract number on which the prior notification was submitted and the contracting office to which it was submitted.

(c) All items, parts, or subassemblies which contain radioactive materials in which the specific activity is greater than 0.002 microcuries per gram or activity per item equals or exceeds 0.01 microcuries, and all containers in which such items, parts or subassemblies are delivered to the Government shall be clearly marked and labeled as required by the latest revision of MIL-STD 129 in effect on the date of the contract.

(d) This clause, including this paragraph (d), shall be inserted in all subcontracts for radioactive materials meeting the criteria in paragraph (a) of this clause.

### **52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)**

This contract incorporates one or more clauses by reference, with the same force and effect as if they were 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 this/these address(es):

For contract clauses which are contained in the Federal Acquisition Regulation (FAR) the address is <http://acquisition.gov/far/>.

Number	Title	Clause/Provision
52.202-1	DEFINITIONS (JUN 2020)	Clause
52.203-17	CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (NOV 2023)	Clause
52.203-3	GRATUITIES (APR 1984)	Clause
52.204-13	SYSTEM FOR AWARD MANAGEMENT MAINTENANCE (OCT 2018)	Clause
52.204-19	INCORPORATION BY REFERENCE OF REPRESENTATIONS AND CERTIFICATIONS (DEC 2014)	Clause
52.204-4	PRINTED OR COPIED DOUBLE-SIDED ON POSTCONSUMER FIBER CONTENT PAPER (MAY 2011)	Clause
52.204-7	SYSTEM FOR AWARD MANAGEMENT (OCT 2018)	Clause
52.204-9	PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (JAN 2011)	Clause
52.208-9	CONTRACTOR USE OF MANDATORY SOURCES OF SUPPLY OR SERVICES (MAY 2014)	Clause
52.209-10	PROHIBITION ON CONTRACTING WITH INVERTED DOMESTIC CORPORATIONS (NOV 2015)	Clause
52.215-21	REQUIREMENTS FOR CERTIFIED COST OR PRICING DATA AND DATA OTHER THAN CERTIFIED COST OR PRICING DATA - MODIFICATIONS (NOV 2021) (ALTERNATE IV - OCT 2010)	Clause
52.216-18	ORDERING (AUG 2020)	Clause
52.216-19	ORDER LIMITATIONS (OCT 1995)	Clause
52.216-22	INDEFINITE QUANTITY (OCT 1995)	Clause
52.217-8	OPTION TO EXTEND SERVICES (NOV 1999)	Clause
52.222-1	NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997)	Clause
52.222-29	NOTIFICATION OF VISA DENIAL (APR 2015)	Clause
52.222-49	SERVICE CONTRACT LABOR STANDARDS - PLACE OF PERFORMANCE UNKNOWN (MAY 2014)	Clause
52.223-10	WASTE REDUCTION PROGRAM (MAY 2011)	Clause

52.223-17	AFFIRMATIVE PROCUREMENT OF EPA-DESIGNATED ITEMS IN SERVICE AND CONSTRUCTION CONTRACTS (MAY 2008)	Clause
52.223-2	AFFIRMATIVE PROCUREMENT OF BIOBASED PRODUCTS UNDER SERVICE AND CONSTRUCTION CONTRACTS (SEP 2013)	Clause
52.223-5	POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (MAY 2011)	Clause
52.224-1	PRIVACY ACT NOTIFICATION (APR 1984)	Clause
52.224-2	PRIVACY ACT (APR 1984)	Clause
52.224-3	PRIVACY TRAINING (JAN 2017)	Clause
52.227-14	RIGHTS IN DATA - GENERAL (MAY 2014)	Clause
52.232-17	INTEREST (MAY 2014) (DEVIATION I - MAY 2003)	Clause
52.232-36	PAYMENT BY THIRD PARTY (MAY 2014)	Clause
52.232-37	MULTIPLE PAYMENT ARRANGEMENTS (MAY 1999)	Clause
52.233-1	DISPUTES (MAY 2014)	Clause
52.237-2	PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION (APR 1984)	Clause
52.237-3	CONTINUITY OF SERVICES (JAN 1991)	Clause
52.242-13	BANKRUPTCY (JUL 1995)	Clause
52.242-15	STOP-WORK ORDER (AUG 1989)	Clause
52.242-5	PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (JAN 2017)	Clause
52.245-1	GOVERNMENT PROPERTY (SEP 2021)	Clause
52.245-9	USE AND CHARGES (APR 2012)	Clause
52.246-4	INSPECTION OF SERVICES - FIXED-PRICE (AUG 1996) (DEVIATION I - MAY 2003)	Clause
52.247-32	F.O.B. ORIGIN, FREIGHT PREPAID (FEB 2006)	Clause
52.247-34	F.O.B. DESTINATION (NOV 1991)	Clause
52.247-38	F.O.B. INLAND CARRIER, POINT OF EXPORTATION (FEB 2006)	Clause
52.247-38	F.O.B. INLAND CARRIER, POINT OF EXPORTATION (FEB 2006) (DEVIATION I - FEB 2007)	Clause
52.247-39	F.O.B. INLAND POINT, COUNTRY OF	Clause

	IMPORTATION (APR 1984)	
52.247-65	F.O.B. ORIGIN, PREPAID FREIGHT -	Clause
	SMALL PACKAGE SHIPMENTS (JAN 1991)	
52.251-1	GOVERNMENT SUPPLY SOURCES (APR 2012)	Clause
552.211-73	MARKING (FEB 1996)	Clause
552.211-75	PRESERVATION, PACKAGING, AND PACKING (FEB 1996) (ALTERNATE I - MAY 2003)	Clause
552.211-77	PACKING LIST (FEB 1996) (ALTERNATE I - MAY 2003)	Clause
552.211-89	NON-MANUFACTURED WOOD PACKAGING MATERIAL FOR EXPORT (JUL 2016)	Clause
552.229-71	FEDERAL EXCISE TAX - C GOVERNMENT (SEP 1999)	Clause
552.252-6	AUTHORIZED DEVIATIONS IN CLAUSES (NOV 2021) (DEVIATION FAR 52.252-6)	Clause

### **52.217-8 OPTION TO EXTEND SERVICES (NOV 1999)**

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within 30 calendar days before the contract expiration date..

### **52.247-38 F.o.b. Inland Carrier, Point of Exportation (FEB 2006) (DEVIATION – FEB 2007)**

- (a) The term "f.o.b. inland carrier, point of exportation," as used in this clause, means free of expense to the ordering activity, on board the conveyance of the inland carrier, delivered to the specified point of exportation.
- (b) The Contractor shall—
  - (1) (i) Pack and mark the shipment to comply with contract specifications; or
    - (ii) In the absence of specifications, prepare the shipment for ocean transportation in conformance with carrier requirements to protect the goods and to ensure assessment of the lowest applicable transportation charge;
  - (2) Prepare and distribute commercial bills of lading or other transportation receipt;
  - (3) (i) Deliver the shipment in good order and condition in or on the conveyance of the carrier on the date or within the period specified; and
    - (ii) Pay and bear all applicable charges, including transportation costs, to the point of delivery specified in the contract;

- (4) Be responsible for any loss of and/or damage to the goods occurring before delivery of the shipment to the point of delivery in the contract; and
- (5) At the ordering activity's request and expense, assist in obtaining the documents required for—
  - (i) Exportation; or
  - (ii) Importation at destination.

**52.246-4 INSPECTION OF SERVICES—FIXED-PRICE (AUG 1996)  
(DEVIATION - MAY 2003)**

- (a) Definition: "Services," as used in this clause, includes services performed, workmanship, and material furnished or utilized in the performance of services.
- (b) The Contractor shall provide and maintain an inspection system acceptable to the ordering activity covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the ordering activity during contract performance and for as long afterwards as the contract requires.
- (c) The ordering activity has the right to inspect and test all services called for by the contract, to the extent practicable at all times and places during the term of the contract. The ordering activity shall perform inspections and tests in a manner that will not unduly delay the work.
- (d) If the ordering activity performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties.
- (e) If any of the services do not conform with contract requirements, the ordering activity may require the Contractor to perform the services again in conformity with contract requirements, at no increase in contract amount. When the defects in services cannot be corrected by reperformance, the ordering activity may—
  - (1) Require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and
  - (2) Reduce the contract price to reflect the reduced value of the services performed.
- (f) If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, the ordering activity may—
  - (1) By contract or otherwise, perform the services and charge to the Contractor any cost incurred by the ordering activity that is directly related to the performance of such service; or
  - (2) Terminate the contract for default.

**552.216-70 ECONOMIC PRICE ADJUSTMENT – FSS MULTIPLE  
AWARD SCHEDULE CONTRACTS (SEP 1999) (ALTERNATE I –  
SEP 1999)**

Price adjustments include price increases and price decreases. Adjustments will be considered as follows:

- (a) Contractors shall submit price decreases anytime during the contract period in which they occur.

Price decreases will be handled in accordance with the provisions of the Price Reductions clause.

(b) Contractors may request price increases to be effective on or after the first 12 months of the contract period providing all of the following conditions are met:

- (1) Increases resulting from a reissue or other modification of the Contractor's commercial catalog/price list that was used as the basis for the contract award.
- (2) No more than three increases will be considered during each succeeding 12-month period of the contract. (For succeeding contract periods of less than 12 months, up to three increases will be considered subject to the other conditions of this subparagraph (b)).
- (3) Increases are requested before the last 60 days of the contract period.
- (4) At least 30 days elapse between requested increases.

(c) In any contract period during which price increases will be considered, the aggregate of the increases during any 12-month period shall not exceed SEE CLAUSE NOTE percent of the contract unit price in effect at the end of the preceding 12-month period. The Government reserves the right to raise the ceiling when market conditions during the contract period support such a change.

(d) The following material shall be submitted with the request for a price increase:

- (1) A copy of the commercial catalog/price list showing the price increase and the effective date for commercial customers.
- (2) Commercial Sales Practices Format regarding the Contractor's commercial pricing practice relating to the reissued or modified catalog/price list, or a certification that no change has occurred in the data since completion of the initial negotiation or a subsequent submission.
- (3) Documentation supporting the reasonableness of the price increase.

(e) The Government reserves the right to exercise one of the following options:

- (1) Accept the Contractor's price increases as requested when all conditions of (b), (c), and (d) of this clause are satisfied;
- (2) Negotiate more favorable discounts from the new commercial prices when the total increase requested is not supported; or,
- (3) Remove the product(s) from contract involved pursuant to the Cancellation clause of this contract, when the increase requested is not supported.

(f) The increased contract prices shall apply to delivery orders issued to the Contractor on or after the effective date of the contract modification.

Note: Regulation 552.216-70

The EPA Ceiling Limit for this clause is hereby established as 4% for the Human Capital Category, 5% for the Professional Services Category, 5% for the Travel Category and 10% for all other Large Categories.

NOTE: This clause does not apply to contracts participating in the Transactional Data Reporting (TDR) Pilot. Please refer to clause 552.216-70 Deviation II.

**52.223-9 ESTIMATE OF PERCENTAGE OF RECOVERED MATERIAL CONTENT FOR EPA-DESIGNATED ITEMS (MAY 2008)**

(a) Definitions. As used in this clause#

Postconsumer material means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of “recovered material.”

Recovered material means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

(b) The Contractor, on completion of this contract, shall#

(1) Estimate the percentage of the total recovered material content for EPA-designated item(s) delivered and/or used in contract performance, including, if applicable, the percentage of post-consumer material content; and

(2) Submit this estimate to X.

**552.246-78 INSPECTION AT DESTINATION (JUL 2009)**

Inspection of all purchases under this contract will be made at destination by an authorized Government representative.

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

(a) The Government may extend the term of this contract by written notice to the Contractor within To be determined at the task order level; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least To be determined at the task order level 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 To be determined at the task order level (months) (years).

**52.222-40 NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT (DEC 2010)**

(a) During the term of this contract, the Contractor shall post an employee notice, of such size and in such form, and containing such content as prescribed by the Secretary of Labor, in conspicuous places in and about its plants and offices where employees covered by the National Labor Relations Act engage in activities relating to the performance of the contract, including all places where notices to employees are customarily posted both physically and electronically, in the languages employees speak, in accordance with 29 CFR 471.2(d) and (f).

(1) Physical posting of the employee notice shall be in conspicuous places in and about the Contractor's plants and offices so that the notice is prominent and readily seen by employees who are covered by the National Labor Relations Act and engage in activities related to the performance of the contract.

(2) If the Contractor customarily posts notices to employees electronically, then the Contractor shall also post the required notice electronically by displaying prominently, on any Web site that is maintained by the Contractor and is customarily used for notices to employees about terms and conditions of employment, a link to the Department of Labor's Web site that contains the full text of the poster. The link to the Department's Web site, as referenced in (b)(3) of this section, must read, "Important Notice about Employee Rights to Organize and Bargain Collectively with Their Employers."

(b) This required employee notice, printed by the Department of Labor, may be —

(1) Obtained from the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-5609, Washington, DC 20210, (202) 693-0123, or from any field office of the Office of Labor-Management Standards or Office of Federal Contract Compliance Programs;

(2) Provided by the Federal contracting agency if requested;

(3) Downloaded from the Office of Labor- Management Standards Web site at <http://www.dol.gov/olms/regs/compliance/EO13496.htm>; or

(4) Reproduced and used as exact duplicate copies of the Department of Labor's official poster.

(c) The required text of the employee notice referred to in this clause is located at Appendix A, Subpart A, 29 CFR Part 471.

(d) The Contractor shall comply with all provisions of the employee notice and related rules, regulations, and orders of the Secretary of Labor.

(e) In the event that the Contractor does not comply with the requirements set forth in paragraphs (a) through (d) of this clause, this contract may be terminated or suspended in whole or in part, and the Contractor may be suspended or debarred in accordance with 29 CFR 471.14 and subpart [9.4](#). Such other sanctions or remedies may be imposed as are provided by 29 CFR part 471, which implements Executive Order 13496 or as otherwise provided by law.

(f) *Subcontracts.*

(1) The Contractor shall include the substance of this clause, including this paragraph (f), in every subcontract that exceeds \$10,000 and will be performed wholly or partially in the United States, unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 3 of Executive Order 13496 of January 30, 2009, so that such provisions will be binding upon each subcontractor.

(2) The Contractor shall not procure supplies or services in a way designed to avoid the applicability of Executive Order 13496 or this clause.

(3) The Contractor shall take such action with respect to any such subcontract as may be directed by the Secretary of Labor as a means of enforcing such provisions, including the imposition of sanctions for noncompliance.

(4) However, if the Contractor becomes involved in litigation with a subcontractor, or is threatened with such involvement, as a result of such direction, the Contractor may request the United States, through the Secretary of Labor, to enter into such litigation to protect the interests of the United States.

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#### **52.204-9 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (JAN 2011)**

(a) The Contractor shall comply with agency personal identity verification procedures identified in the contract that implement Homeland Security Presidential Directive-12 (HSPD-12), Office of Management and Budget (OMB) guidance M-05-24, and Federal Information Processing Standards Publication (FIPS PUB) Number 201.

(b) The Contractor shall account for all forms of Government-provided identification issued to the Contractor employees in connection with performance under this contract. The Contractor shall return such identification to the issuing agency at the earliest of any of the following, unless otherwise determined by the Government:

(1) When no longer needed for contract performance.

(2) Upon completion of the Contractor employee's employment.

(3) Upon contract completion or termination.

(c) The Contracting Officer may delay final payment under a contract if the Contractor fails to comply with these requirements.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts when the subcontractor's employees are required to have routine physical access to a Federally controlled facility and/or routine access to a Federally-controlled information system. It shall be the responsibility of the prime Contractor to return such identification to the issuing agency in accordance with the terms set forth in paragraph (b) of this section, unless otherwise approved in writing by the Contracting Officer.

#### **52.204-4 PRINTED OR COPIED DOUBLE-SIDED ON POSTCONSUMER FIBER CONTENT PAPER (MAY 2011)**

(a) *Definitions.* As used in this clause—

*Postconsumer fiber* means—

(1) Paper, paperboard, and fibrous materials from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; or

(2) All paper, paperboard, and fibrous materials that enter and are collected from municipal solid waste; but not

(3) Fiber derived from printers' over-runs, converters' scrap, and over-issue publications.

(b) The Contractor is required to submit paper documents, such as offers, letters, or reports that are printed or copied double-sided on paper containing at least 30 percent postconsumer fiber, whenever practicable, when not using electronic commerce methods to submit information or data to the Government.

#### **52.223-5 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (MAY 2011)**

(a) *Definitions.* As used in this clause—

*Toxic chemical* means a chemical or chemical category listed in 40 CFR 372.65.

(b) Federal facilities are required to comply with the provisions of the Emergency Planning and

Community Right-to-Know Act of 1986 (EPCRA) ([42 U.S.C. 11001-11050](#)), and the Pollution Prevention Act of 1990 (PPA) ([42 U.S.C. 13101-13109](#)).

(c) The Contractor shall provide all information needed by the Federal facility to comply with the following:

- (1) The emergency planning reporting requirements of Section 302 of EPCRA.
- (2) The emergency notice requirements of Section 304 of EPCRA.
- (3) The list of Material Safety Data Sheets, required by Section 311 of EPCRA.
- (4) The emergency and hazardous chemical inventory forms of Section 312 of EPCRA.
- (5) The toxic chemical release inventory of Section 313 of EPCRA, which includes the reduction and recycling information required by Section 6607 of PPA.
- (6) The toxic chemical and hazardous substance release and use reduction goals of section 2(e) of Executive Order 13423 and of Executive Order 13514.

#### **52.223-10 WASTE REDUCTION PROGRAM (MAY 2011)**

(a) *Definitions.* As used in this clause —

*Recycling* means the series of activities, including collection, separation, and processing, by which products or other materials are recovered from the solid waste stream for use in the form of raw materials in the manufacture of products other than fuel for producing heat or power by combustion.

*Waste prevention* means any change in the design, manufacturing, purchase, or use of materials or products (including packaging) to reduce their amount or toxicity before they are discarded. Waste prevention also refers to the reuse of products or materials.

*Waste reduction* means preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

(b) Consistent with the requirements of section 3(e) of Executive Order 13423, the Contractor shall establish a program to promote cost-effective waste reduction in all operations and facilities covered by this contract. The Contractor's programs shall comply with applicable Federal, State, and local requirements, specifically including Section 6002 of the Resource Conservation and Recovery Act ([42 U.S.C. 6962](#), et seq.) and implementing regulations (40 CFR part 247).

#### **52.223-19 COMPLIANCE WITH ENVIRONMENTAL MANAGEMENT SYSTEMS (MAY 2011)**

The Contractor's work under this contract shall conform with all operational controls identified in the applicable agency or facility Environmental Management Systems and provide monitoring and measurement information necessary for the Government to address environmental performance relative to the goals of the Environmental Management Systems.

#### **52.223-18 ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING (AUG 2011)**

(a) *Definitions.* As used in this clause —

“Driving” —

- (1) Means operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise.
- (2) Does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary.

“Text messaging” means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to park.

(b) This clause implements Executive Order 13513, Federal Leadership on Reducing Text Messaging while Driving, dated October 1, 2009.

(c) The Contractor should –

- (1) Adopt and enforce policies that ban text messaging while driving –
  - (i) Company-owned or -rented vehicles or Government-owned vehicles; or
  - (ii) Privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government.
- (2) Conduct initiatives in a manner commensurate with the size of the business, such as –
  - (i) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and
  - (ii) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

(d) *Subcontracts*. The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts that exceed the micro-purchase threshold.

## **52.251-1 GOVERNMENT SUPPLY SOURCES (APR 2012)**

The Contracting Officer may issue the Contractor an authorization to use Government supply sources in the performance of this contract. Title to all property acquired by the Contractor under such an authorization shall vest in the Government unless otherwise specified in the contract. The provisions of the clause at FAR [52.245-1](#), Government Property, apply to all property acquired under such authorization.

## **52.245-9 USE AND CHARGES (APR 2012)**

(a) *Definitions*. Definitions applicable to this contract are provided in the clause at 52.245-1, Government Property. Additional definitions as used in this clause include:

“Rental period” means the calendar period during which Government property is made available for nongovernmental purposes.

“Rental time” means the number of hours, to the nearest whole hour, rented property is actually used for nongovernmental purposes. It includes time to set up the property for such purposes, perform required maintenance, and restore the property to its condition prior to rental (less normal wear and

tear).

(b) *Use of Government property.* The Contractor may use the Government property without charge in the performance of —

- (1) Contracts with the Government that specifically authorize such use without charge;
- (2) Subcontracts of any tier under Government prime contracts if the Contracting Officer having cognizance of the prime contract —
  - (i) Approves a subcontract specifically authorizing such use; or
  - (ii) Otherwise authorizes such use in writing; and
- (3) Other work, if the Contracting Officer specifically authorizes in writing use without charge for such work.

(c) *Rental.* If granted written permission by the Contracting Officer, or if it is specifically provided for in the Schedule, the Contractor may use the Government property (except material) for a rental fee for work other than that provided in paragraph (b) of this clause. Authorizing such use of the Government property does not waive any rights of the Government to terminate the Contractor's right to use the Government property. The rental fee shall be determined in accordance with the following paragraphs.

(d) *General.*

- (1) Rental requests shall be submitted to the Administrative Contracting Officer (ACO), identify the property for which rental is requested, propose a rental period, and compute an estimated rental charge by using the Contractor's best estimate of rental time in the formulae described in paragraph (e) of this clause.
- (2) The Contractor shall not use Government property for nongovernmental purposes, including Independent Research and Development, until a rental charge for real property, or estimated rental charge for other property, is agreed upon. Rented property shall be used only on a non-interference basis.

(e) *Rental charge.*—

(1) *Real property and associated fixtures.*

- (i) The Contractor shall obtain, at its expense, a property appraisal from an independent licensed, accredited, or certified appraiser that computes a monthly, daily, or hourly rental rate for comparable commercial property. The appraisal may be used to compute rentals under this clause throughout its effective period or, if an effective period is not stated in the appraisal, for one year following the date the appraisal was performed. The Contractor shall submit the appraisal to the ACO at least 30 days prior to the date the property is needed for nongovernmental use. Except as provided in paragraph (e)(1)(iii) of this clause, the ACO shall use the appraisal rental rate to determine a reasonable rental charge.
- (ii) Rental charges shall be determined by multiplying the rental time by the appraisal rental rate expressed as a rate per hour. Monthly or daily appraisal rental rates shall be divided by 720 or 24, respectively, to determine an hourly rental rate.
- (iii) When the ACO believes the appraisal rental rate is unreasonable, the ACO shall promptly notify the Contractor. The parties may agree on an alternative means for computing a reasonable rental charge.

(iv) The Contractor shall obtain, at its expense, additional property appraisals in the same manner as provided in paragraph (e)(1)(i) if the effective period has expired and the Contractor desires the continued use of property for nongovernmental use. The Contractor may obtain additional appraisals within the effective period of the current appraisal if the market prices decrease substantially.

(2) *Other Government property.* The Contractor may elect to compute the rental charge using the appraisal method described in paragraph (e)(1) of this clause subject to the constraints therein or the following formula in which rental time shall be expressed in increments of not less than one hour with portions of hours rounded to the next higher hour: The hourly rental charge is calculated by multiplying 2 percent of the acquisition cost by the hours of rental time, and dividing by 720.

(3) *Alternative methodology.* The Contractor may request consideration of an alternative basis for computing the rental charge if it considers the monthly rental rate or a time-based rental unreasonable or impractical.

(f) Rental payments.

(1) Rent is due 60 days following completion of the rental period or as otherwise specified in the contract. The Contractor shall compute the rental due, and furnish records or other supporting data in sufficient detail to permit the ACO to verify the rental time and computation. Payment shall be made by check payable to the Treasurer of the United States and sent to the contract administration office identified in this contract, unless otherwise specified by the Contracting Officer.

(2) Interest will be charged if payment is not made by the date specified in paragraph (f)(1) of this clause. Interest will accrue at the "Renegotiation Board Interest Rate" (published in the Federal Register semiannually on or about January 1st and July 1st) for the period in which the rent is due.

(3) The Government's acceptance of any rental payment under this clause, in whole or in part, shall not be construed as a waiver or relinquishment of any rights it may have against the Contractor stemming from the Contractor's unauthorized use of Government property or any other failure to perform this contract according to its terms.

(g) *Use revocation.* At any time during the rental period, the Government may revoke nongovernmental use authorization and require the Contractor, at the Contractor's expense, to return the property to the Government, restore the property to its pre-rental condition (less normal wear and tear), or both.

(h) *Unauthorized use.* The unauthorized use of Government property can subject a person to fines, imprisonment, or both, under 18 U.S.C. 641.

## **52.223-2 AFFIRMATIVE PROCUREMENT OF BIOBASED PRODUCTS UNDER SERVICE AND CONSTRUCTION CONTRACTS (SEP 2013)**

(a) In the performance of this contract, the contractor shall make maximum use of biobased products that are United States Department of Agriculture (USDA)-designated items unless –

(1) The product cannot be acquired –

(i) Competitively within a time frame providing for compliance with the contract performance schedule;

(ii) Meeting contract performance requirements; or

(iii) At a reasonable price.

(2) The product is to be used in an application covered by a USDA categorical exemption (see 7 CFR 3201.3(e)). For example, all USDA-designated items are exempt from the preferred procurement requirement for the following:

(i) Spacecraft system and launch support equipment.

(ii) Military equipment, *i.e.*, a product or system designed or procured for combat or combat-related missions.

(b) Information about this requirement and these products is available at <http://www.biopreferred.gov>.

(c) In the performance of this contract, the Contractor shall —

(1) Report to the environmental point of contact identified in paragraph (d) of this clause, with a copy to the Contracting Officer, on the product types and dollar value of any USDA-designated biobased products purchased by the Contractor during the previous Government fiscal year, between October 1 and September 30;

(2) Submit this report no later than —

(i) October 31 of each year during contract performance; and

(ii) At the end of contract performance.

### **52.216-19 ORDER LIMITATIONS (OCT 1995)**

(a) *Minimum order.* When the Government requires supplies or services covered by this contract in an amount of less than TBD [*insert dollar figure or quantity*], the Government is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract.

(b) *Maximum order.* The Contractor is not obligated to honor —

(1) Any order for a single item in excess of See SIN Specific Information [*insert dollar figure or quantity*];

(2) Any order for a combination of items in excess of See SIN Specific Information [*insert dollar figure or quantity*]; or

(3) A series of orders from the same ordering office within TBD days that together call for quantities exceeding the limitation in paragraph (b)(1) or (2) of this section.

(c) If this is a requirements contract (*i.e.*, includes the Requirements clause at subsection [52.216-21](#) of the Federal Acquisition Regulation (FAR)), the Government is not required to order a part of any one requirement from the Contractor if that requirement exceeds the maximum-order limitations in paragraph (b) of this section.

(d) Notwithstanding paragraphs (b) and (c) of this section, the Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within TBD days after issuance, with written notice stating the Contractor's intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the Government may acquire the supplies or services from another source.

Note: Regulation 52.216-19

"Due to a system limitation, a Maximum Order value of \$250,000 has been identified for the Order-Level Materials SIN. However, as Order-Level Materials are only acquired in direct support of an individual task or delivery order, the contractor's right to decline an order as outlined in FAR 52.216-19 Order Limitations paragraph (b) Maximum Order shall be based on the SINs that are the primary basis or purpose of the order, not the Maximum Order value associated with the Order-Level Materials SIN.

Additionally, Ordering agencies are reminded that the Maximum Order value identified for a Schedule SIN does not limit the value of an individual task or delivery order. Ordering limitations and procedures applicable to task or delivery orders inclusive of Order-Level Materials are outlined in GSAR 552.238-115, Special Ordering Procedures for the Acquisition of Order-Level Materials."

### **52.208-9 CONTRACTOR USE OF MANDATORY SOURCES OF SUPPLY OR SERVICES (MAY 2014)**

(a) Certain supplies or services to be provided under this contract for use by the Government are required by law to be obtained from the Committee for Purchase from People Who Are Blind or Severely Disabled (the Committee) under the [41 U.S.C. 8504](#). Additionally, certain of these supplies are available from the Defense Logistics Agency (DLA), the General Services Administration (GSA), or the Department of Veterans Affairs (VA). The Contractor shall obtain mandatory supplies or services to be provided for Government use under this contract from the specific sources indicated in the contract schedule.

(b) The Contractor shall immediately notify the Contracting Officer if a mandatory source is unable to provide the supplies or services by the time required, or if the quality of supplies or services provided by the mandatory source is unsatisfactory. The Contractor shall not purchase the supplies or services from other sources until the Contracting Officer has notified the Contractor that the Committee or an AbilityOne central nonprofit agency has authorized purchase from other sources.

(c) Price and delivery information for the mandatory supplies is available from the Contracting Officer for the supplies obtained through the DLA/GSA/VA distribution facilities. For mandatory supplies or services that are not available from DLA/GSA/VA, price and delivery information is available from the appropriate central nonprofit agency. Payments shall be made directly to the source making delivery. Points of contact for AbilityOne central nonprofit agencies are:

(1) National Industries for the Blind  
1310 Braddock Place  
Alexandria, VA 22314-1691  
(703) 310-0500

(2) NISH  
8401 Old Courthouse Road  
Vienna, VA 22182  
(571) 226-4660

### **52.222-42 STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES (MAY 2014)**

In compliance with the Service Contract Labor Standards statute and the regulations of the Secretary of Labor (29 CFR part 4), this clause identifies the classes of service employees expected to be employed under the contract and states the wages and fringe benefits payable to each if they were employed by the contracting agency subject to the provisions of [5 U.S.C. 5341](#) or [5332](#).

This Statement is for Information Only: It Is Not a Wage Determination

Employee Class	Monetary Wage – Fringe Benefits
To be determined at the task order level	To be determined at the task order level
To be determined at the task order level	To be determined at the task order level
To be determined at the task order level	To be determined at the task order level

**52.222-49 SERVICE CONTRACT LABOR STANDARDS — PLACE OF PERFORMANCE UNKNOWN (MAY 2014)**

(a) This contract is subject to the Service Contract Labor Standards statute, and the place of performance was unknown when the solicitation was issued. In addition to places or areas identified in wage determinations, if any, attached to the solicitation, wage determinations have also been requested for the following: To be determined at the task order level (*insert places or areas*). The Contracting Officer will request wage determinations for additional places or areas of performance if asked to do so in writing by To be determined at the task order level (*insert time and date*).

(b) Offerors who intend to perform in a place or area of performance for which a wage determination has not been attached or requested may nevertheless submit bids or proposals. However, a wage determination shall be requested and incorporated in the resultant contract retroactive to the date of contract award, and there shall be no adjustment in the contract price.

**52.222-51 EXEMPTION FROM APPLICATION OF THE SERVICE CONTRACT LABOR STANDARDS TO CONTRACTS FOR MAINTENANCE, CALIBRATION, OR REPAIR OF CERTAIN EQUIPMENT--REQUIREMENTS (MAY 2014)**

(a) The items of equipment to be serviced under this contract are used regularly for other than Government purposes, and are sold or traded by the Contractor in substantial quantities to the general public in the course of normal business operations.

(b) The services shall be furnished at prices which are, or are based on, established catalog or market prices for the maintenance, calibration, or repair of equipment.

(1) An "established catalog price" is a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or the Contractor, is either published or otherwise available for inspection by customers, and states prices at which sales currently, or were last, made to a significant number of buyers constituting the general public.

(2) An "established market price" is a current price, established in the usual course of trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or Contractor.

(c) The compensation (wage and fringe benefits) plan for all service employees performing work under the contract shall be the same as that used for these employees and for equivalent employees servicing the same equipment of commercial customers.

(d) The Contractor is responsible for compliance with all the conditions of this exemption by its subcontractors. The Contractor shall determine the applicability of this exemption to any subcontract on or before subcontract award. In making a judgment that the exemption applies, the Contractor shall

consider all factors and make an affirmative determination that all of the conditions in paragraphs (a) through (c) of this clause will be met.

(e) If the Department of Labor determines that any conditions for exemption in paragraphs (a) through (c) of this clause have not been met, the exemption shall be deemed inapplicable, and the contract shall become subject to the Service Contract Labor Standards statute. In such case, the procedures at 29 CFR 4.123(e)(1)(iv) and 29 CFR 4.5(c) will be followed

(f) The Contractor shall include the substance of this clause, including this paragraph (f), in subcontracts for exempt services under this contract.

**52.222-53 EXEMPTION FROM APPLICATION OF THE SERVICE CONTRACT LABOR STANDARDS TO CONTRACTS FOR CERTAIN SERVICES--REQUIREMENTS (MAY 2014)**

(a) The services under this contract are offered and sold regularly to non-Governmental customers, and are provided by the Contractor to the general public in substantial quantities in the course of normal business operations.

(b) The contract services are furnished at prices that are, or are based on, established catalog or market prices. An "established catalog price" is a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or the Contractor, is either published or otherwise available for inspection by customers, and states prices at which sales currently, or were last, made to a significant number of buyers constituting the general public. An "established market price" is a current price, established in the usual course of ordinary and usual trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or Contractor.

(c) Each service employee who will perform the services under the contract will spend only a small portion of his or her time (a monthly average of less than 20 percent of the available hours on an annualized basis, or less than 20 percent of available hours during the contract period if the contract period is less than a month) servicing the Government contract.

(d) The Contractor uses the same compensation (wage and fringe benefits) plan for all service employees performing work under the contract as the Contractor uses for these employees and for equivalent employees servicing commercial customers.

(e) (1) Except for services identified in FAR 22.1003-4(d)(1)(iv), the subcontractor for exempt services shall be selected for award based on other factors in addition to price or cost with the combination of other factors at least as important as price or cost; or  
(2) A subcontract for exempt services shall be awarded on a sole source basis.

(f) The Contractor is responsible for compliance with all the conditions of this exemption by its subcontractors. The Contractor shall determine in advance, based on the nature of the subcontract requirements and knowledge of the practices of likely subcontractors, that all or nearly all likely subcontractors will meet the conditions in paragraphs (a) through (d) of this clause. If the services are currently being performed under a subcontract, the Contractor shall consider the practices of the existing subcontractor in making a determination regarding the conditions in paragraphs (a) through (d) of this clause. If the Contractor has reason to doubt the validity of the certification, the requirements of the Service Contract Labor Standards statute shall be included in the subcontract.

(g) If the Department of Labor determines that any conditions for exemption in paragraphs (a) through (e) of this clause have not been met, the exemption shall be deemed inapplicable, and the contract shall become subject to the Service Contract Labor Standards statute. In such case, the procedures in 29 CFR 4.123(e)(2)(iii) and 29 CFR 4.5(c) will be followed.

(h) The Contractor shall include the substance of this clause, including this paragraph (h), in

subcontracts for exempt services under this contract.

## **52.227-14 RIGHTS IN DATA--GENERAL (MAY 2014)**

(a) *Definitions.* As used in this clause –

“Computer database” or “database” means a collection of recorded information in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

“Computer software” –

(1) Means

- (i) Computer programs that comprise a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and
- (ii) Recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created, or compiled.

(2) Does not include computer databases or computer software documentation.

“Computer software documentation” means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

“Data” means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

“Form, fit, and function data” means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, and data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements. For computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithms, processes, formulas, and flow charts of the software.

“Limited rights” means the rights of the Government in limited rights data as set forth in the Limited Rights Notice of paragraph (g)(3) if included in this clause.

“Limited rights data” means data, other than computer software, that embody trade secrets or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at private expense, including minor modifications.

“Restricted computer software” means computer software developed at private expense and that is a trade secret, is commercial or financial and confidential or privileged, or is copyrighted computer software, including minor modifications of the computer software.

“Restricted rights” as used in this clause, means the rights of the Government in restricted computer software, as set forth in a Restricted Rights Notice of paragraph (g) if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract, including minor modifications of such computer software.

“Technical data” means recorded information (regardless of the form or method of the recording) of a

scientific or technical nature (including computer databases and computer software documentation). This term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration. The term includes recorded information of a scientific or technical nature that is included in computer databases (See [41 U.S.C. 116](#)).

“Unlimited rights” means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) Allocation of rights.

(1) Except as provided in paragraph (c) of this clause, the Government shall have unlimited rights in--

- (i) Data first produced in the performance of this contract;
- (ii) Form, fit, and function data delivered under this contract;
- (iii) Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and
- (iv) All other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.

(2) The Contractor shall have the right to--

- (i) Assert copyright in data first produced in the performance of this contract to the extent provided in paragraph (c)(1) of this clause;
- (ii) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, unless provided otherwise in paragraph (d) of this clause;
- (iii) Substantiate the use of, add, or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and
- (iv) Protect from unauthorized disclosure and use those data that are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause.

(c) Copyright--

(1) Data first produced in the performance of this contract.

- (i) Unless provided otherwise in paragraph (d) of this clause, the Contractor may, without prior approval of the Contracting Officer, assert copyright in scientific and technical articles based on or containing data first produced in the performance of this contract and published in academic, technical or professional journals, symposia proceedings, or similar works. The prior, express written permission of the Contracting Officer is required to assert copyright in all other data first produced in the performance of this contract.

(ii) When authorized to assert copyright to the data, the Contractor shall affix the

applicable copyright notices of [17 U.S.C. 401 or 402](#), and an acknowledgment of Government sponsorship (including contract number).

(iii) For data other than computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly by or on behalf of the Government. For computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly (but not to distribute copies to the public) by or on behalf of the Government.

(2) *Data not first produced in the performance of this contract.* The Contractor shall not, without the prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract unless the Contractor--

(i) Identifies the data; and

(ii) Grants to the Government, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause or, if such data are restricted computer software, the Government shall acquire a copyright license as set forth in paragraph (g)(4) of this clause (if included in this contract) or as otherwise provided in a collateral agreement incorporated in or made part of this contract.

(3) *Removal of copyright notices.* The Government will not remove any authorized copyright notices placed on data pursuant to this paragraph (c), and will include such notices on all reproductions of the data.

(d) *Release, publication, and use of data.* The Contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, except--

(1) As prohibited by Federal law or regulation (e.g., export control or national security laws or regulations);

(2) As expressly set forth in this contract; or

(3) If the Contractor receives or is given access to data necessary for the performance of this contract that contain restrictive markings, the Contractor shall treat the data in accordance with such markings unless specifically authorized otherwise in writing by the Contracting Officer.

(e) Unauthorized marking of data.

(1) Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract are marked with the notices specified in paragraph (g) (3) or (g) (4) if included in this clause, and use of the notices is not authorized by this clause, or if the data bears any other restrictive or limiting markings not authorized by this contract, the Contracting Officer may at any time either return the data to the Contractor, or cancel or ignore the markings. However, pursuant to [41 U.S.C. 4703](#), the following procedures shall apply prior to canceling or ignoring the markings.

(i) The Contracting Officer will make written inquiry to the Contractor affording the Contractor 60 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(ii) If the Contractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 60-day period (or a longer time approved in

writing by the Contracting Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.

(iii) If the Contractor provides written justification to substantiate the propriety of the markings within the period set in paragraph (e)(1)(i) of this clause, the Contracting Officer will consider such written justification and determine whether or not the markings are to be cancelled or ignored. If the Contracting Officer determines that the markings are authorized, the Contractor will be so notified in writing. If the Contracting Officer determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the Contracting Officer will furnish the Contractor a written determination, which determination will become the final agency decision regarding the appropriateness of the markings unless the Contractor files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government will continue to abide by the markings under this paragraph (e)(1)(iii) until final resolution of the matter either by the Contracting Officer's determination becoming final (in which instance the Government will thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

(2) The time limits in the procedures set forth in paragraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.

(3) Except to the extent the Government's action occurs as the result of final disposition of the matter by a court of competent jurisdiction, the Contractor is not precluded by paragraph (e) of the clause from bringing a claim, in accordance with the Disputes clause of this contract, that may arise as the result of the Government removing or ignoring authorized markings on data delivered under this contract.

(f) Omitted or incorrect markings.

(1) Data delivered to the Government without any restrictive markings shall be deemed to have been furnished with unlimited rights. The Government is not liable for the disclosure, use, or reproduction of such data.

(2) If the unmarked data has not been disclosed without restriction outside the Government, the Contractor may request, within 6 months (or a longer time approved by the Contracting Officer in writing for good cause shown) after delivery of the data, permission to have authorized notices placed on the data at the Contractor's expense. The Contracting Officer may agree to do so if the Contractor--

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability for the disclosure, use, or reproduction of any data made prior to the addition of the notice or resulting from the omission of the notice.

(3) If data has been marked with an incorrect notice, the Contracting Officer may--

(i) Permit correction of the notice at the Contractor's expense if the Contractor identifies the data and demonstrates that the correct notice is authorized; or

(ii) Correct any incorrect notices.

(g) Protection of limited rights data and restricted computer software.

(1) The Contractor may withhold from delivery qualifying limited rights data or restricted computer software that are not data identified in paragraphs (b)(1)(i), (ii), and (iii) of this clause. As a condition to this withholding, the Contractor shall--

(i) Identify the data being withheld; and

(ii) Furnish form, fit, and function data instead.

(2) Limited rights data that are formatted as a computer database for delivery to the Government shall be treated as limited rights data and not restricted computer software.

(3) [Reserved]

(h) *Subcontracting*. The Contractor shall obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to the Government under this contract. If a subcontractor refuses to accept terms affording the Government those rights, the Contractor shall promptly notify the Contracting Officer of the refusal and shall not proceed with the subcontract award without authorization in writing from the Contracting Officer.

(i) *Relationship to patents or other rights*. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

#### **52.232-17 INTEREST (MAY 2014) (DEVIATION – MAY 2003)**

(a) Except as otherwise provided in this contract under a Price Reduction for Defective Certified Cost or Pricing Data clause or a Cost Accounting Standards clause, all amounts that become payable by the Contractor to the ordering activity under this contract (net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481)) shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in [41 U.S.C. 7109](#), which is applicable to the period in which the amount becomes due, as provided in paragraph (b) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

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

(1) The date fixed under this contract.

(2) The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination.

(3) The date the ordering activity transmits to the Contractor a proposed supplemental agreement to confirm completed negotiations establishing the amount of debt.

(4) If this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by contract modification.

(c) The interest charge made under this clause may be reduced under the procedures prescribed in 32.614-2 of the Federal Acquisition Regulation in effect on the date of this contract.

#### **52.232-36 PAYMENT BY THIRD PARTY (MAY 2014)**

(a) *General*.

(1) Except as provided in paragraph (a)(2) of this clause, the Contractor agrees to accept payments due under this contract, through payment by a third party in lieu of payment directly from the Government, in accordance with the terms of this clause. The third party and, if applicable, the particular Governmentwide commercial purchase card to be used are identified elsewhere in this contract.

(2) The Governmentwide commercial purchase card is not authorized as a method of payment during any period the System for Award Management (SAM) indicates that the Contractor has delinquent debt that is subject to collection under the Treasury Offset Program (TOP). Information on TOP is available at <http://fms.treas.gov/debt/index.html>. If the SAM subsequently indicates that the Contractor no longer has delinquent debt, the Contractor may request the Contracting Officer to authorize payment by Governmentwide commercial purchase card.

(b) *Contractor payment request.*

(1) Except as provided in paragraph (b)(2) of this clause, the Contractor shall make payment requests through a charge to the Government account with the third party, at the time and for the amount due in accordance with those clauses of this contract that authorize the Contractor to submit invoices, contract financing requests, other payment requests, or as provided in other clauses providing for payment to the Contractor.

(2) When the Contracting Officer has notified the Contractor that the Governmentwide commercial purchase card is no longer an authorized method of payment, the Contractor shall make such payment requests in accordance with instructions provided by the Contracting Officer during the period when the purchase card is not authorized.

(c) *Payment.* The Contractor and the third party shall agree that payments due under this contract shall be made upon submittal of payment requests to the third party in accordance with the terms and conditions of an agreement between the Contractor, the Contractor's financial agent (if any), and the third party and its agents (if any). No payment shall be due the Contractor until such agreement is made. Payments made or due by the third party under this clause are not payments made by the Government and are not subject to the Prompt Payment Act or any implementation thereof in this contract.

(d) *Documentation.* Documentation of each charge against the Government's account shall be provided to the Contracting Officer upon request.

(e) *Assignment of claims.* Notwithstanding any other provision of this contract, if any payment is made under this clause, then no payment under this contract shall be assigned under the provisions of the assignment of claims terms of this contract or the Assignment of Claims Act of 1940 ([31 U.S.C. 3727](#), [41 U.S.C. 6305](#)).

(f) *Other payment terms.* The other payment terms of this contract shall govern the content and submission of payment requests. If any clause requires information or documents in or with the payment request, that is not provided in the third party agreement referenced in paragraph (c) of this clause, the Contractor shall obtain instructions from the Contracting Officer before submitting such a payment request.

## 52.233-1 DISPUTES (MAY 2014)

(a) This contract is subject to [41 U.S.C chapter 71](#), Contract Disputes.

(b) Except as provided in [41 U.S.C chapter 71](#), all disputes arising under or relating to this contract shall be resolved under this clause.

(c) "Claim as used in this clause, means a written demand or written assertion by one of the contracting

parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under [41 U.S.C chapter 71](#) until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under [41 U.S.C chapter 71](#). The submission may be converted to a claim under [41 U.S.C chapter 71](#), by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d) (1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2) (i) The Contractor shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding \$100,000.

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am authorized to certify the claim on behalf of the Contractor."

(3) The certification may be executed by any person authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of \$50,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$50,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in [41 U.S.C chapter 71](#).

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.

(h) The Government shall pay interest on the amount found due and unpaid from (1) the date that the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in FAR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

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**52.223-13 ACQUISITION OF EPEAT®-REGISTERED IMAGING EQUIPMENT (JUN 2014)**

(a) *Definitions*. As used in this clause –

*Imaging equipment* means the following products:

(1) *Copier* — A commercially available imaging product with a sole function of the production of hard copy duplicates from graphic hard-copy originals. The unit is capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as copiers or upgradeable digital copiers (UDCs).

(2) *Digital duplicator* — A commercially available imaging product that is sold in the market as a fully automated duplicator system through the method of stencil duplicating with digital reproduction functionality. The unit is capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as digital duplicators.

(3) *Facsimile machine (fax machine)* — A commercially available imaging product whose primary functions are scanning hard-copy originals for electronic transmission to remote units and receiving similar electronic transmissions to produce hard-copy output. Electronic transmission is primarily over a public telephone system but also may be via computer network or the Internet. The product also may be capable of producing hard copy duplicates. The unit is capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as fax machines.

(4) *Mailing machine* — A commercially available imaging product that serves to print postage onto mail pieces. The unit is capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as mailing machines.

(5) *Multifunction device (MFD)* — A commercially available imaging product, which is a physically integrated device or a combination of functionally integrated components, that performs two or more of the core functions of copying, printing, scanning, or faxing. The copy functionality as addressed in this definition is considered to be distinct from singlesheet convenience copying offered by fax machines. The unit is capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as MFDs or multifunction products.

(6) *Printer* — A commercially available imaging product that serves as a hardcopy output device and is capable of receiving information from single-user or networked computers, or other input devices (e.g., digital cameras). The unit is capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as printers, including printers that can be upgraded into MFDs in the field.

(7) *Scanner* — A commercially available imaging product that functions as an electro-optical device for converting information into electronic images that can be stored, edited, converted, or transmitted, primarily in a personal computing environment. The unit is capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as scanners.

(b) Under this contract, the Contractor shall deliver, furnish for Government use, or furnish for Contractor use at a Federally controlled facility, only imaging equipment that, at the time of submission of proposals and at the time of award, was EPEAT® bronze-registered or higher.

(c) For information about EPEAT®, see [www.epa.gov/epeat](http://www.epa.gov/epeat).

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**52.223-14 ACQUISITION OF EPEAT®-REGISTERED  
TELEVISIONS (JUN 2014)**

(a) *Definitions.* As used in this clause –

*Television or TV* means a commercially available electronic product designed primarily for the reception and display of audiovisual signals received from terrestrial, cable, satellite, Internet Protocol TV (IPTV), or other digital or analog sources. A TV consists of a tuner/receiver and a display encased in a single enclosure. The product usually relies upon a cathode-ray tube (CRT), liquid crystal display (LCD), plasma display, or other display technology. Televisions with computer capability (e.g., computer input port) may be considered to be a TV as long as they are marketed and sold to consumers primarily as televisions.

(b) Under this contract, the Contractor shall deliver, furnish for Government use, or furnish for Contractor use at a Federally controlled facility, only televisions that, at the time of submission of proposals and at the time of award, were EPEAT® bronze-registered or higher.

(c) For information about EPEAT®, see [www.epa.gov/epat](http://www.epa.gov/epat).

**I-FSS-969 ECONOMIC PRICE ADJUSTMENT—FSS MULTIPLE AWARD SCHEDULE (OCT 2014)**

Price adjustments include price increases and price decreases. Adjustments will be considered as follows:

(a) Contractors shall submit price decreases anytime during the contract period in which they occur. Price decreases will be handled in accordance with the provisions of the Price Reduction Clause.

(b) There are two types of economic price adjustments (EPAs) possible under the Multiple Award Schedules (MAS) program for contracts not based on commercial catalogs or price lists as described below. Price adjustments may be effective on or after the first 12 months of the contract period on the following basis:

(1) Adjustments based on escalation rates negotiated prior to contract award. Normally, when escalation rates are negotiated, they result in a fixed price for the term of the contract. No separate contract modification will be provided when increases are based on negotiated escalation rates. Price increases will be effective on the 12-month anniversary date of the contract effective date, subject to paragraph (f), below.

(2) Adjustments based on an agreed-upon market indicator prior to award. The market indicator, as used in this clause, means the originally released public index, public survey or other public, based market indicator. The market indicator shall be the originally released index, survey or market indicator, not seasonally adjusted, published by the [to be negotiated], and made available at [to be identified]. Any price adjustment shall be based on the percentage change in the designated (i.e. indicator identification and date) market indicator from the initial award to the latest available as of the anniversary date of the contract effective date, subject to paragraph (e), below. If the market indicator is discontinued or deemed no longer available or reliable by the Government, the Government and the Contractor will mutually agree to a substitute. The contract modification reflecting the price adjustment will be effective upon approval by the Contracting Officer, subject to paragraph (g), below. The adjusted prices shall apply to orders issued to the Contractor on or after the effective date of the contract modification.

(c) Notwithstanding the two economic price adjustments discussed above, the Government recognizes the potential impact of unforeseeable major changes in market conditions. For those cases where such changes do occur, the contracting officer will review requests to make adjustments, subject to the Government's examination of industry-wide market conditions and the conditions in paragraph (d) and (e), below. If adjustments are accepted, the contract will be modified accordingly. The determination of whether or not extra-ordinary circumstances exist rests with the contracting officer. The determination of an appropriate mechanism of adjustment will be subject to negotiations.

(d) Conditions of Price change requests under paragraphs b(2) and c above.:

(1) No more than three increases will be considered during each succeeding 12-month period of the contract. (For succeeding contract periods of less than 12 months, up to three increases will be considered subject to the other conditions of subparagraph (b)).

(2) Increases are requested before the last 60 days of the contract period, including options.

(3) At least 30 days elapse between requested increases.

(4) In any contract period during which price increases will be considered, the aggregate of the increases during any 12-month period shall not exceed SEE CLAUSE NOTE percent (SEE CLAUSE NOTE%) of the contract unit price in effect at the end of the preceding 12-month period. The Government reserves the right to raise the ceiling when market conditions during the contract period support such a change.

(e) The following material shall be submitted with request for a price increase under paragraphs b(2) and c above:

(1) A copy of the index, survey or pricing indicator showing the price increase and the effective date.

(2) Commercial Sales Practice format, per contract clause 52.215-21 Alternate IV, demonstrating the relationship of the Contractor's commercial pricing practice to the adjusted pricing proposed or a certification that no change has occurred in the data since completion of the initial negotiation or a subsequent submission.

(3) Any other documentation requested by the Contracting Officer to support the reasonableness of the price increase.

(f) The Government reserves the right to exercise one of the following options:

(1) Accept the Contractor's price increases as requested when all conditions of (b), (c), (d), and (e) of this clause are satisfied;

(2) Negotiate more favorable prices when the total increase requested is not supported; or,

(3) Decline the price increase when the request is not supported. The Contractor may remove the item(s) from contract involved pursuant to the Cancellation Clause of this contract.

(g) Effective Date of Increases: No price increase shall be effective until the Government receives the electronic file updates pursuant to GSAR 552.238-81, Modifications (Federal Supply Schedule).

(h) All MAS contracts remain subject to contract clauses GSAR 552.238-75, "Price Reductions"; and 552.215-72, "Price Adjustment -- Failure to Provide Accurate Information." In the event the application of an economic price adjustment results in a price less favorable to the Government than the price relationship established during negotiation between the MAS price and the price to the designated customer, the Government will maintain the price relationship to the designated customer.

Note: Regulation I-FSS-969

The EPA Ceiling Limit for this clause is hereby established as 4% for the Human Capital Category, 5% for the Professional Services Category, 5% for the Travel Category and 10% for all other Large Categories.

NOTE: This clause does not apply to contracts participating in the Transactional Data

Reporting (TDR) Pilot. Please refer to clause I-FSS-969 Alternate II.

### **52.204-19 INCORPORATION BY REFERENCE OF REPRESENTATIONS AND CERTIFICATIONS (DEC 2014)**

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

### **52.222-21 PROHIBITION OF SEGREGATED FACILITIES (APR 2015)**

(a) *Definitions.* As used in this clause —

*Gender identity* has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at [www.dol.gov/ofccp/LGBT/LGBT\\_FAQs.html](http://www.dol.gov/ofccp/LGBT/LGBT_FAQs.html).

*Segregated facilities* means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

*Sexual orientation* has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at [www.dol.gov/ofccp/LGBT/LGBT\\_FAQs.html](http://www.dol.gov/ofccp/LGBT/LGBT_FAQs.html).

(b) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.

(c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

### **52.222-29 NOTIFICATION OF VISA DENIAL (APR 2015)**

(a) *Definitions.* As used in this clause —

*Gender identity* has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at [www.dol.gov/ofccp/LGBT/LGBT\\_FAQs.html](http://www.dol.gov/ofccp/LGBT/LGBT_FAQs.html).

*Sexual orientation* has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at [www.dol.gov/ofccp/LGBT/LGBT\\_FAQs.html](http://www.dol.gov/ofccp/LGBT/LGBT_FAQs.html).

(b) *Requirement to notify.*

(1) It is a violation of Executive Order 11246 for a Contractor to refuse to employ any applicant or not to assign any person hired in the United States, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, or Wake Island, on the basis that the individual's race, color, religion, sex, sexual orientation, gender identity, or national origin is not compatible with the policies of the country where or for whom the work will be performed (41 CFR 60-1.10).

(2) The Contractor shall notify the U.S. Department of State, Assistant Secretary, Bureau of Political-Military Affairs (PM), 2201 C Street NW., Room 6212, Washington, DC 20520, and the U.S. Department of Labor, Deputy Assistant Secretary for Federal Contract Compliance, when it has knowledge of any employee or potential employee being denied an entry visa to a country where this contract will be performed, and it believes the denial is attributable to the race, color, religion, sex, sexual orientation, gender identity, or national origin of the employee or potential employee.

**552.223-73 PRESERVATION, PACKAGING, PACKING, MARKING AND LABELING OF HAZARDOUS MATERIALS (HAZMAT) FOR SHIPMENTS (JUN 2015)**

(a) *Definition.* *United States*, as used in this clause, means the 48 adjoining U.S. States, Alaska, Hawaii, and U.S. territories and possessions, such as Puerto Rico.

(b) Preservation, packaging, packing, marking and labeling of hazardous materials for export shipment outside the United States in all transport modes shall comply with the following, as applicable:

(1) International Maritime Dangerous Goods (IMDG) Code as established by the International Maritime Organization (IMO).

(2) U.S. Department of Transportation (DOT) Hazardous Material Regulation (HMR) 49 CFR parts 171 through 180. (Note: Classifications permitted by the HMR, but not permitted by the IMDG code, such as Consumer Commodities classed as ORM-D, shall be packaged in accordance with the IMDG Code and dual-marked with both Consumer Commodity and IMDG marking and labeling.)

(3) Occupational Safety and Health Administration (OSHA) Regulation 29 CFR part 1910.1200.

(4) International Air Transport Association (IATA), Dangerous Goods Regulation and/or International Civil Aviation Organization (ICAO), Technical Instructions.

(5) AFMAN 24-204, Air Force Inter- Service Manual, Preparing Hazardous Materials For Military Air Shipments.

(6) Any preservation, packaging, packing, marking and labeling requirements contained elsewhere in this solicitation and contract.

(c) Preservation, packaging, packing, marking and labeling of hazardous materials for domestic shipments within the United States in all transport modes shall comply with the following; as applicable:

(1) U.S. Department of Transportation (DOT) Hazardous Material Regulation (HMR) 49 CFR parts 171 through 180.

(2) Occupational Safety and Health Administration (OSHA) Regulation 29 CFR part 1910.1200.

(3) Any preservation, packaging, packing, marking and labeling requirements contained elsewhere in this solicitation and contract.

(d) Hazardous Material Packages designated for outside the United States destinations through Forwarding Points, Distribution Centers, or Container Consolidation Points (CCPs) shall comply with the IMDG, IATA, ICAO or AFMAN 24-204 codes, as applicable.

(e) The test certification data showing compliance with performance-oriented packaging or UN-approved packaging requirements shall be made available to GSA contract administration/management representatives or regulatory inspectors upon request.

**52.209-10 PROHIBITION ON CONTRACTING WITH INVERTED DOMESTIC CORPORATIONS (NOV 2014)**

(a) *Definitions*. As used in this clause –

*Inverted domestic corporation* means a foreign incorporated entity that meets the definition of an inverted domestic corporation under [6 U.S.C. 395\(b\)](#), applied in accordance with the rules and definitions of 6 U.S.C. 395(c).

*Subsidiary* means an entity in which more than 50 percent of the entity is owned –

- (1) Directly by a parent corporation; or
- (2) Through another subsidiary of a parent corporation.

(b) If the contractor reorganizes as an inverted domestic corporation or becomes a subsidiary of an inverted domestic corporation at any time during the period of performance of this contract, the Government may be prohibited from paying for Contractor activities performed after the date when it becomes an inverted domestic corporation or subsidiary. The Government may seek any available remedies in the event the Contractor fails to perform in accordance with the terms and conditions of the contract as a result of Government action under this clause.

(c) Exceptions to this prohibition are located at [9.108-2](#).

(d) In the event the Contractor becomes either an inverted domestic corporation, or a subsidiary of an inverted domestic corporation during contract performance, the Contractor shall give written notice to the Contracting Officer within five business days from the date of the inversion event.

**52.223-16 ACQUISITION OF EPEAT®-REGISTERED PERSONAL COMPUTER PRODUCTS (OCT 2015)**

(a) *Definitions*. As used in this clause –

*Computer* means a device that performs logical operations and processes data. Computers are composed of, at a minimum:

- (1) A central processing unit (CPU) to perform operations;
- (2) User input devices such as a keyboard, mouse, digitizer, or game controller; and
- (3) A computer display screen to output information. Computers include both stationary and portable units, including desktop computers, integrated desktop computers, notebook computers, thin clients, and workstations. Although computers must be capable of using input devices and computer displays, as noted in (2) and (3) above, computer systems do not need to include these devices on shipment to meet this definition. This definition does not include server computers, gaming consoles, mobile telephones, portable hand-held calculators, portable digital assistants (PDAs), MP3 players, or any other mobile computing device with displays less than 4 inches, measured diagonally.

*Computer display* means a display screen and its associated electronics encased in a single housing or within the computer housing (e.g., notebook or integrated desktop computer) that is capable of displaying output information from a computer via one or more inputs such as a VGA, DVI, USB, DisplayPort, and/or IEEE 1394-2008TM, Standard for High Performance Serial Bus. Examples of computer display technologies are the cathode-ray tube (CRT) and liquid crystal display (LCD).

*Desktop computer* means a computer where the main unit is intended to be located in a permanent location, often on a desk or on the floor. Desktops are not designed for portability and utilize an

external computer display, keyboard, and mouse. Desktops are designed for a broad range of home and office applications.

*Integrated desktop computer* means a desktop system in which the computer and computer display function as a single unit that receives its AC power through a single cable. Integrated desktop computers come in one of two possible forms:

- (1) A system where the computer display and computer are physically combined into a single unit; or
- (2) A system packaged as a single system where the computer display is separate but is connected to the main chassis by a DC power cord and both the computer and computer display are powered from a single power supply. As a subset of desktop computers, integrated desktop computers are typically designed to provide similar functionality as desktop systems.

*Notebook computer* means a computer designed specifically for portability and to be operated for extended periods of time either with or without a direct connection to an AC power source. Notebooks must utilize an integrated computer display and be capable of operation off of an integrated battery or other portable power source. In addition, most notebooks use an external power supply and have an integrated keyboard and pointing device. Notebook computers are typically designed to provide similar functionality to desktops, including operation of software similar in functionality to that used in desktops. Docking stations are considered accessories for notebook computers, not notebook computers. Tablet PCs, which may use touch-sensitive screens along with, or instead of, other input devices, are considered notebook computers.

*Personal computer product* means a computer, computer display, desktop computer, integrated desktop computer, or notebook computer.

- (b) Under this contract, the Contractor shall deliver, furnish for Government use, or furnish for Contractor use at a Federally controlled facility, only personal computer products that, at the time of submission of proposals and at the time of award, were EPEAT® bronze-registered or higher.
- (c) For information about EPEAT®, see [www.epa.gov/epeat](http://www.epa.gov/epeat).

#### **552.228-5 GOVERNMENT AS ADDITIONAL INSURED (JAN 2016)**

- (a) This clause supplements the requirements set forth in FAR clause 52.228-5, Insurance—Work on a Government Installation.
- (b) Each insurance policy required under this contract, other than workers' compensation insurance, shall contain an endorsement naming the United States as an additional insured with respect to operations performed under this contract. The insurance carrier is required to waive all subrogation rights against any of the named insured.

#### **52.223-11 OZONE-DEPLETING SUBSTANCES AND HIGH GLOBAL WARMING POTENTIAL HYDROFLUOROCARBONS (JUN 2016)**

- (a) *Definition.* As used in this clause —

“*Global warming potential*” means how much a given mass of a chemical contributes to global warming over a given time period compared to the same mass of carbon dioxide. Carbon dioxide’s global warming potential is defined as 1.0.

“*High global warming potential hydrofluorocarbons*” means any hydrofluorocarbons in a particular end use for which EPA’s Significant New Alternatives Policy (SNAP) program has identified other

acceptable alternatives that have lower global warming potential. The SNAP list of alternatives is found at 40 CFR Part 82 subpart G with supplemental tables of alternatives available at (<http://www.epa.gov/snap/>).

“*Hydrofluorocarbons*” means compounds that only contain hydrogen, fluorine, and carbon.

“*Ozone-depleting substance*,” means any substance the Environmental Protection Agency designates in 40 CFR Part 82 as —

- (1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or
- (2) Class II, including, but not limited to, hydrochlorofluorocarbons.

(b) The Contractor shall label products that contain or are manufactured with ozone-depleting substances in the manner and to the extent required by 42 U.S.C. 7671j (b), (c), (d), and (e) and 40 CFR part 82, subpart E, as follows:

Warning

Contains (or manufactured with, if applicable) \*\_\_\_\_\_, a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere.

\* The Contractor shall insert the name of the substance(s).

(c) Reporting. For equipment and appliances that normally each contain 50 or more pounds of hydrofluorocarbons or refrigerant blends containing hydrofluorocarbons, the Contractor shall —

- (1) Track on an annual basis, between October 1 and September 30, the amount in pounds of hydrofluorocarbons or refrigerant blends containing hydrofluorocarbons contained in the equipment and appliances delivered to the Government under this contract by —

- (i) Type of hydrofluorocarbon (e.g., HFC-134a, HFC-125, R-410A, R-404A, etc.);
  - (ii) Contract number; and
  - (iii) Equipment/appliance;

- (2) Report that information to the Contracting Officer for FY16 and to [www.sam.gov](http://www.sam.gov), for FY17 and after —

- (i) Annually by November 30 of each year during contract performance; and
    - (ii) At the end of contract performance.

(d) The Contractor shall refer to EPA's SNAP program (available at <http://www.epa.gov/snap>) to identify alternatives. The SNAP list of alternatives is found at 40 CFR part 82 subpart G with supplemental tables available at <http://www.epa.gov/snap>.

(Note: This is an FSS reproduction using word processing software) **STANDARD FORM 1449 (10-95) (BACK)**

**I-FSS-969 ECONOMIC PRICE ADJUSTMENT – FSS MULTIPLE  
AWARD SCHEDULE (OCT 2014) (ALTERNATE II – JUL 2016)**

Price adjustments include price increases and price decreases. Adjustments will be considered as follows:

(a) Contractors shall submit price decreases anytime during the contract period in which they occur. Price decreases will be handled in accordance with the provisions of the Price Reductions clause.

(b) There are two types of economic price adjustments (EPAs) possible under the Multiple Award Schedules (MAS) program for contracts not based on commercial catalogs or price lists as described below. Price adjustments may be effective on or after the first 12 months of the contract period on the following basis:

(1) **Adjustments based on escalation rates negotiated prior to contract award.** Normally, when escalation rates are negotiated, they result in a fixed price for the term of the contract. No separate contract modification will be provided when increases are based on negotiated escalation rates. Price increases will be effective on the 12-month anniversary date of the contract effective date, subject to paragraph (f), below.

(2) **Adjustments based on an agreed-upon market indicator prior to award.** The market indicator, as used in this clause, means the originally released public index, public survey or other public-based market indicator. The market indicator shall be the originally released index, survey or market indicator, not seasonally adjusted, published by the [to be negotiated], and made available at [to be identified]. Any price adjustment shall be based on the percentage change in the designated (i.e. indicator identification and date) market indicator from the initial award to the latest available as of the anniversary date of the contract effective date, subject to paragraph (e), below. If the market indicator is discontinued or deemed no longer available or reliable by the Government, the Government and the Contractor will mutually agree to a substitute. The contract modification reflecting the price adjustment will be effective upon approval by the Contracting Officer, subject to paragraph (g), below.

(c) Notwithstanding the two economic price adjustments discussed above, the Government recognizes the potential impact of unforeseeable major changes in market conditions. For those cases where such changes do occur, the contracting officer will review requests to make adjustments, subject to the Government's examination of industry-wide market conditions and the conditions in paragraph (d) and (e), below. If adjustments are accepted, the contract will be modified accordingly. The determination of whether or not extra-ordinary circumstances exist rests with the contracting officer. The determination of an appropriate mechanism of adjustment will be subject to negotiations.

(d) Conditions of Price change requests under paragraphs b(2) and c above:

(1) No more than three increases will be considered during each succeeding 12-month period of the contract. (For succeeding contract periods of less than 12 months, up to three increases will be considered subject to the other conditions of subparagraph (b)).

(2) Increases are requested before the last 60 days of the contract period, including options.

(3) At least 30 days elapse between requested increases.

(4) In any contract period during which price increases will be considered, the aggregate of the increases during any 12-month period shall not exceed SEE CLAUSE NOTE percent (SEE CLAUSE NOTE%) of the contract unit price in effect at the end of the preceding 12-month period. The Government reserves the right to raise the ceiling when market conditions during the contract period support such a change.

(e) The following material shall be submitted with request for a price increase under paragraphs b(2) and c above:

(1) A copy of the index, survey or pricing indicator showing the price increase and the effective date.

(2) Any other documentation requested by the Contracting Officer to support the reasonableness of the price increase.

(f) The Government reserves the right to exercise one of the following options:

(1) Accept the Contractor's price increases as requested when all conditions of (b), (c), (d), and (e) of this clause are satisfied;

(2) Negotiate more favorable prices when the total increase requested is not supported; or,

(3) Decline the price increase when the request is not supported. The Contractor may remove the item(s) from contract involved pursuant to the Cancellation Clause of this contract.

(g) Effective Date of Increases: The increased contract prices shall apply to orders issued to the Contractor on or after the effective date of the contract modification.

Note: Regulation I-FSS-969

The EPA Ceiling Limit for this clause is hereby established as 4% for the Human Capital Category, 5% for the Professional Services Category, 5% for the Travel Category and 10% for all other Large Categories.

NOTE: This clause applies to contracts participating in the Transactional Data Reporting (TDR) Pilot.

**552.216-70 ECONOMIC PRICE ADJUSTMENT – FSS MULTIPLE AWARD SCHEDULE CONTRACTS (SEP 1999) (DEVIATION II – JUL 2016)**

Price adjustments include price increases and price decreases. Adjustments will be considered as follows:

(a) Contractors may submit price decreases anytime during the contract period in which they occur. Price decreases will be handled in accordance with the provisions of the Price Reduction Clause.

(b) Contractors may request price increases to be effective on or after the first 12 months of the contract period providing all of the following conditions are met:

(1) No more than three increases will be considered during each succeeding 12-month period of the contract. For succeeding contract periods of less than 12 months, up to three increases will be considered subject to the other conditions of this subparagraph (b).

(2) Increases are requested before the last 60 days of the contract period.

(3) At least 30 days elapse between requested increases.

(c) In any contract period during which price increases will be considered, the aggregate of the increases during any 12-month period shall not exceed SEE CLAUSE NOTE percent of the contract unit price in effect at the end of the preceding 12-month period. The Government reserves the right to raise the ceiling when market conditions during the contract period support such a change.

(d) Documentation supporting the reasonableness of the price increase shall be submitted with the request for a price increase.

(e) The Government reserves the right to exercise one of the following options:

- (1) Accept the Contractor's price increases as requested when all conditions of (b), (c), and (d) of this clause are satisfied;
- (2) Negotiate smaller increases when the total increase requested is not supported; or,
- (3) Remove the product(s) from contract involved pursuant to the Cancellation Clause of this contract, when the increase requested is not supported.
- (f) The increased contract prices shall apply to delivery orders issued to the Contractor on or after the effective date of the contract modification.

Note: Regulation 552.216-70

The EPA Ceiling Limit for this clause is hereby established as 4% for the Human Capital Category, 5% for the Professional Services Category, 5% for the Travel Category and 10% for all other Large Categories.

NOTE: This clause applies to contracts participating in the Transactional Data Reporting (TDR) Pilot.

### **552.211-89 NON-MANUFACTURED WOOD PACKAGING MATERIAL FOR EXPORT (JUL 2016)**

(a) *Definitions:*

*IPPC Country:* Countries of the European Union (EU) or any other country endorsing the International Plant Protection Convention (IPPC) "Guidelines for Regulating Wood Packaging Material in International Trade," approved March 15, 2002. A listing of countries participating in the IPPC is found at [http://www.aphis.usda.gov/import\\_export/plants/plants\\_exports/wpm/country/index.shtml](http://www.aphis.usda.gov/import_export/plants/plants_exports/wpm/country/index.shtml)

*Non-Manufactured wood*, is also called solid wood and defined as wood packing other than that comprised wholly of wood-based products such as plywood, particle board, oriented strand board, veneer, wood wool, and similar materials, which has been created using glue, heat and pressure or a combination thereof.

*Packaged material, and Solid Wood Packing Material (SWPM)*, for purposes of this clause, is defined as each separate and distinct material that by itself or in combination with other materials forms the container providing a means of protecting and handling a product. This includes, but is not limited to, pallets, dunnage, crating, packing blocks, drums, load boards, pallet collars, and skids.

(b) Non-manufactured wood pallets and other non-manufactured wood packaging material used to pack items for delivery to or through IPPC countries must be marked and properly treated in accordance with IPPC guidelines.

(c) This requirement applies whether the shipment is direct to the end user or through a Government designated consolidation point. Packaging that does not conform to IPPC guidelines will be refused entry, destroyed or treated prior to entry.

(d) For Department of Defense distribution facilities or freight consolidation points, all non-manufactured wood pallets or packaging material with a probability of entering countries endorsing the IPPC Guidelines must be treated and marked in accordance with DLA 47.305-1 (available at <http://farsite.hill.af.mil/archive/Dla/Rev5/PART47.htm>), and MIL-STD-2073-1, Standard Practice for Military Packaging (and any future revision).

(e) Pallets and packing material shipped to FAS distribution facilities designated for possible delivery

to the countries endorsing the IPPC Guidelines will comply with DLAD 47.305-1, and MIL-STD-2073-1.

(f) Delays in delivery caused by non-complying pallets or wood package material will not be considered as beyond the control of the Contractor. Any applicable Government expense incurred as a result of the Contractor's failure to provide appropriate pallets or package material shall be reimbursed by the Contractor. Expenses may include the applicable cost for repackaging, handling and return shipping, or the destruction of solid wood packaging material.

### **52.224-3 PRIVACY TRAINING (JAN 2017)**

(a) *Definition.* As used in this clause, "personally identifiable information" means information that can be used to distinguish or trace an individual's identity, either alone or when combined with other information that is linked or linkable to a specific individual. (See *Office of Management and Budget (OMB) Circular A-130, Managing Federal Information as a Strategic Resource*).

(b) The Contractor shall ensure that initial privacy training, and annual privacy training thereafter, is completed by contractor employees who—

(1) Have access to a system of records;

(2) Create, collect, use, process, store, maintain, disseminate, disclose, dispose, or otherwise handle personally identifiable information on behalf of an agency; or

(3) Design, develop, maintain, or operate a system of records (see also FAR subpart 24.1 and 39.105).

(c) (1) Privacy training shall address the key elements necessary for ensuring the safeguarding of personally identifiable information or a system of records. The training shall be role-based, provide foundational as well as more advanced levels of training, and have measures in place to test the knowledge level of users. At a minimum, the privacy training shall cover —

(i) The provisions of the Privacy Act of 1974 (5 U.S.C. 552a), including penalties for violations of the Act;

(ii) The appropriate handling and safeguarding of personally identifiable information;

(iii) The authorized and official use of a system of records or any other personally identifiable information;

(iv) The restriction on the use of unauthorized equipment to create, collect, use, process, store, maintain, disseminate, disclose, dispose or otherwise access personally identifiable information;

(v) The prohibition against the unauthorized use of a system of records or unauthorized disclosure, access, handling, or use of personally identifiable information; and

(vi) The procedures to be followed in the event of a suspected or confirmed breach of a system of records or the unauthorized disclosure, access, handling, or use of personally identifiable information (see OMB guidance for Preparing for and Responding to a Breach of Personally Identifiable Information).

(2) Completion of an agency-developed or agency-conducted training course shall be deemed to satisfy these elements.

(d) The Contractor shall maintain and, upon request, provide documentation of completion of privacy training to the Contracting Officer.

(e) The Contractor shall not allow any employee access to a system of records, or permit any employee to create, collect, use, process, store, maintain, disseminate, disclose, dispose or otherwise handle personally identifiable information, or to design, develop, maintain, or operate a system of records unless the employee has completed privacy training, as required by this clause.

(f) The substance of this clause, including this paragraph (f), shall be included in all subcontracts under this contract, when subcontractor employees will—

- (1) Have access to a system of records;
- (2) Create, collect, use, process, store, maintain, disseminate, disclose, dispose, or otherwise handle personally identifiable information; or
- (3) Design, develop, maintain, or operate a system of records.

#### **52.242-5 PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (JAN 2017)**

(a) *Definitions.* As used in this clause —

*Reduced payment* means a payment that is for less than the amount agreed upon in a subcontract in accordance with its terms and conditions, for supplies and services for which the Government has paid the prime contractor.

*Untimely payment* means a payment that is more than 90 days past due under the terms and conditions of a subcontract, for supplies and services for which the Government has paid the prime contractor.

(b) *Notice.* The Contractor shall notify the Contracting Officer, in writing, not later than 14 days after —

- (1) A small business subcontractor was entitled to payment under the terms and conditions of the subcontract; and
- (2) The Contractor —
  - (i) Made a reduced or untimely payment to the small business subcontractor; or
  - (ii) Failed to make a payment, which is now untimely.

(c) *Content of notice.* The Contractor shall include the reason(s) for making the reduced or untimely payment in any notice required under paragraph (b) of this clause.

#### **52.222-26 EQUAL OPPORTUNITY (SEP 2016)**

(a) *Definition.* As used in this clause.

“*Compensation*” means any payments made to, or on behalf of, an employee or offered to an applicant as remuneration for employment, including but not limited to salary, wages, overtime pay, shift differentials, bonuses, commissions, vacation and holiday pay, allowances, insurance and other benefits, stock options and awards, profit sharing, and retirement.

“*Compensation information*” means the amount and type of compensation provided to employees or offered to applicants, including, but not limited to, the desire of the Contractor to attract and retain a particular employee for the value the employee is perceived to add to the Contractor’s profit or productivity; the availability of employees with like skills in the marketplace; market research about the

worth of similar jobs in the relevant marketplace; job analysis, descriptions, and evaluations; salary and pay structures; salary surveys; labor union agreements; and Contractor decisions, statements and policies related to setting or altering employee compensation.

*“Essential job functions”* means the fundamental job duties of the employment position an individual holds. A job function may be considered essential if —

- (1) The access to compensation information is necessary in order to perform that function or another routinely assigned business task; or
- (2) The function or duties of the position include protecting and maintaining the privacy of employee personnel records, including compensation information.

*“Gender identity”* has the meaning given by the Department of Labor’s Office of Federal Contract Compliance Programs, and is found at [www.dol.gov/ofccp/LGBT/LGBT\\_FAQs.html](http://www.dol.gov/ofccp/LGBT/LGBT_FAQs.html).

*“Sexual orientation”* has the meaning given by the Department of Labor’s Office of Federal Contract Compliance Programs, and is found at [www.dol.gov/ofccp/LGBT/LGBT\\_FAQs.html](http://www.dol.gov/ofccp/LGBT/LGBT_FAQs.html).

*“United States,”* means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

- (b) (1) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with this clause, except for work performed outside the United States by employees who were not recruited within the United States. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.
  - (2) If the Contractor is a religious corporation, association, educational institution, or society, the requirements of this clause do not apply with respect to the employment of individuals of a particular religion to perform work connected with the carrying on of the Contractor’s activities (41 CFR 60-1.5).- (c) (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.
  - (2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to —
    - (i) Employment;
    - (ii) Upgrading;
    - (iii) Demotion;
    - (iv) Transfer;
    - (v) Recruitment or recruitment advertising;
    - (vi) Layoff or termination;
    - (vii) Rates of pay or other forms of compensation; and
    - (viii) Selection for training, including apprenticeship.

- (3) The Contractor shall post in conspicuous places available to employees and applicants for

employment the notices to be provided by the Contracting Officer that explain this clause.

- (4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (5)
  - (i) The Contractor shall not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This prohibition against discrimination does not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.
  - (ii) The Contractor shall disseminate the prohibition on discrimination in paragraph (c)(5)(i) of this clause, using language prescribed by the Director of the Office of Federal Contract Compliance Programs (OFCCP), to employees and applicants by —
    - (A) Incorporation into existing employee manuals or handbooks; and
    - (B) Electronic posting or by posting a copy of the provision in conspicuous places available to employees and applicants for employment.
- (6) The Contractor shall send, to each labor union or representative of workers with which it has a collective bar-gaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
- (7) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- (8) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR Part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.
- (9) The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.
- (10) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.

(11) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(12) The Contractor shall take such action with respect to any subcontract or purchase order as the Director of OFCCP may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance, provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(d) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

#### **52.204-15 SERVICE CONTRACT REPORTING REQUIREMENTS FOR INDEFINITE-DELIVERY CONTRACTS (OCT 2016)**

(a) Definition.

First-tier subcontract means a subcontract awarded directly by the Contractor for the purpose of acquiring supplies or services (including construction) for performance of a prime contract. It does not include the Contractor's supplier agreements with vendors, such as long-term arrangements for materials or supplies that benefit multiple contracts and/or the costs of which are normally applied to a Contractor's general and administrative expenses or indirect costs.

(b) The Contractor shall report, in accordance with paragraphs (c) and (d) of this clause, annually by October 31, for services performed during the preceding Government fiscal year (October 1–September 30) under this contract for orders that exceed the thresholds established in 4.1703(a)(2).

(c) The Contractor shall report the following information:

(1) Contract number and order number.

(2) The total dollar amount invoiced for services performed during the previous Government fiscal year under the order.

(3) The number of Contractor direct labor hours expended on the services performed during the previous Government fiscal year.

(4) Data reported by subcontractors under paragraph (f) of this clause.

(d) The information required in paragraph (c) of this clause shall be submitted via the internet at [www.sam.gov](http://www.sam.gov). (See SAM User Guide). If the Contractor fails to submit the report in a timely manner, the Contracting Officer will exercise appropriate contractual remedies. In addition, the Contracting Officer will make the Contractor's failure to comply with the reporting requirements a part of the Contractor's performance information under FAR subpart 42.15.

(e) Agencies will review Contractor reported information for reasonableness and consistency with available contract information. In the event the agency believes that revisions to the Contractor reported information are warranted, the agency will notify the Contractor no later than November 15. By November 30, the Contractor shall revise the report, or document its rationale for the agency.

(f) (1) The Contractor shall require each first-tier subcontractor providing services under this contract, with subcontract(s) each valued at or above the thresholds set forth in 4.1703(a)(2), to provide the following detailed information to the Contractor in sufficient time to submit the report:

- (i) Subcontract number (including subcontractor name and unique entity identifier), and
- (ii) The number of first-tier subcontractor direct-labor hours expended on the services performed during the previous Government fiscal year.

(2) The Contractor shall advise the subcontractor that the information will be made available to the public as required by section 743 of Division C of the Consolidated Appropriations Act, 2010.

## **52.222-41 SERVICE CONTRACT LABOR STANDARDS (AUG 2018)**

(a) *Definitions.* As used in this clause –

*Contractor* when this clause is used in any subcontract, shall be deemed to refer to the subcontractor, except in the term "Government Prime Contractor."

*Service employee* means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as these terms are defined in Part 541 of Title 29, Code of Federal Regulations, as revised. It includes all such persons regardless of any contractual relationship that may be alleged to exist between a Contractor or subcontractor.

(b) *Applicability.* This contract is subject to the following provisions and to all other applicable provisions of 41 U.S.C. chapter 67, Service Contract Labor Standards, and regulations of the Secretary of Labor (29 CFR Part 4). This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by [41 U.S.C. 6702](#), as interpreted in Subpart C of 29 CFR Part 4.

(c) *Compensation.* (1) Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or authorized representative, as specified in any wage determination attached to this contract.

(2) (i) If a wage determination is attached to this contract, the Contractor shall classify any class of service employee which is not listed herein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination), so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph (c).

(ii) This conforming procedure shall be initiated by the Contractor prior to the performance of contract work by the unlisted class of employee. The Contractor shall submit [Standard Form \(SF\) 1444](#), Request for Authorization of Additional Classification and Rate, to the Contracting Officer no later than 30 days after the unlisted class of employee performs any contract work. The Contracting Officer shall review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employees' authorized representatives or the employees themselves together with the agency recommendation), and all pertinent information to the Wage and Hour Division, U.S. Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Contracting Officer within 30 days of receipt that additional time is necessary.

(iii) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Contracting Officer who shall promptly notify the Contractor of the action taken. Each affected employee shall be furnished by the Contractor with a written copy of such determination or it shall be posted as a part of the wage

determination.

(iv) (A) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

(B) In the case of a contract modification, an exercise of an option or extension of an existing contract, or in any other case where a Contractor succeeds a contract under which the classification in question was previously conformed pursuant to paragraph (c) of this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the Contractor shall advise the Contracting Officer of the action taken but the other procedures in subdivision (c)(2)(ii) of this clause need not be followed.

(C) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(v) The wage rate and fringe benefits finally determined under this paragraph (c)(2) of this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Service Contract Labor Standards statute and this contract.

(vi) Upon discovery of failure to comply with subparagraphs (b)(2) of this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class or classes of employees commenced contract work.

(3) Adjustment of Compensation. If the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees under the contract shall be subject to adjustment after 1 year and not less often than once every 2 years, under wage determinations issued by the Wage and Hour Division.

(d) *Obligation to Furnish Fringe Benefits.* The Contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined under subparagraph (c)(2) of this clause by furnishing equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments, only in accordance with Subpart D of 29 CFR Part 4.

(e) *Minimum Wage.* In the absence of a minimum wage attachment for this contract, neither the

Contractor nor any subcontractor under this contract shall pay any person performing work under this contract (regardless of whether the person is a service employee) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this clause shall relieve the Contractor or any subcontractor of any other obligation under law or contract for payment of a higher wage to any employee.

(f) *Successor Contracts.* If this contract succeeds a contract subject to the Service Contract Labor Standards statute under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the Contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreement, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No Contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 29 CFR 4.1b(b) apply or unless the Secretary of Labor or the Secretary's authorized representative finds, after a hearing as provided in 29 CFR 4.10 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Administrative Review Board, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

(g) *Notification to employees.* The Contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of [41 U.S.C. 6703](#) and of this contract.

(h) *Safe and Sanitary Working Conditions.* The Contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor or subcontractor which are unsanitary or hazardous or dangerous to the health or safety of the service employee. The Contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.

(i) *Records.* (1) The Contractor and each subcontractor performing work subject to the Service Contract Labor Standards statute shall make and maintain for 3 years from the completion of the work, and make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, a record of the following:

- (i) For each employee subject to the Service Contract Labor Standards statute —
  - (A) Name and address and social security number;
  - (B) Correct work classification or classifications, rate or rates of monetary wages

paid and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;

(C) Daily and weekly hours worked by each employee; and

(D) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

(ii) For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by the Administrator or authorized representative under the terms of paragraph (c) of this clause. A copy of the report required by subdivision (c)(2)(ii) of this clause will fulfill this requirement.

(iii) Any list of the predecessor Contractor's employees which had been furnished to the Contractor as prescribed by paragraph (n) of this clause.

(2) The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce these records, the Contracting Officer, upon direction of the Department of Labor and notification to the Contractor, shall take action to cause suspension of any further payment or advance of funds until the violation ceases.

(4) The Contractor will permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(j) *Pay Periods.* The Contractor shall unconditionally pay to each employee subject to the Service Contract Labor Standards statute all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 CFR Part 4), rebate, or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this statute may not be of any duration longer than semi-monthly.

(k) *Withholding of Payments and Termination of Contract.* The Contracting Officer shall withhold or cause to be withheld from the Government Prime Contractor under this or any other Government contract with the Prime Contractor such sums as an appropriate official of the Department of Labor requests or such sums as the Contracting Officer decides may be necessary to pay underpaid employees employed by the Contractor or subcontractor. In the event of failure to pay any employees subject to the Service Contract Labor Standards statute all or part of the wages or fringe benefits due under the Service Contract Labor Standards statute, the Contracting Officer may, after authorization or by direction of the Department of Labor and written notification to the Contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.

(l) *Subcontracts.* The Contractor agrees to insert this clause in all subcontracts subject to the Service Contract Labor Standards statute.

(m) *Collective Bargaining Agreements Applicable to Service Employees.* If wages to be paid or fringe benefits to be furnished any service employees employed by the Government prime Contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government prime Contractor shall report such fact to the Contracting Officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to

service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance such agreements shall be reported promptly after negotiation thereof.

(n) *Seniority List.* Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a Contractor (predecessor) or successor (29 CFR 4.173), the incumbent prime Contractor shall furnish to the Contracting Officer a certified list of the names of all service employees on the Contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor Contractors of each such service employee. The Contracting Officer shall turn over such list to the successor Contractor at the commencement of the succeeding contract.

(o) *Ruling and Interpretations.* Rulings and interpretations of the Service Contract Labor Standards statute are contained in Regulations, 29 CFR Part 4.

(p) *Contractor's Certification.* (1) By entering into this contract, the Contractor (and officials thereof) certifies that neither it nor any person or firm who has a substantial interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed under [41 U.S.C. 6706](#).

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract under [41 U.S.C. 6706](#).

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(q) *Variations, Tolerances, and Exemptions Involving Employment.* Notwithstanding any of the provisions in paragraphs (b) through (o) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to [41 U.S.C. 6707](#) prior to its amendment by Pub. L. 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical or mental deficiency, or injury may be employed at wages lower than the minimum wages otherwise required by [41 U.S.C. 6703\(1\)](#) without diminishing any fringe benefits or cash payments in lieu thereof required under [41 U.S.C. 6703\(2\)](#), in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, persons with disabilities, and disabled clients of work centers under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR parts 520, 521, 524, and 525).

(2) The Administrator will issue certificates under the statute for the employment of apprentices, student-learners, persons with disabilities, or disabled clients of work centers not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two statutes, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR parts 520, 521, 524, and 525).

(3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in 29 CFR Parts 525 and 528.

(r) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or

if no such recognized agency exists in a State, under a program registered with the Office of Apprenticeship Training, Employer, and Labor Services (OATELS), U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the Contractor as to his entire work force under the registered program.

(s) *Tips.* An employee engaged in an occupation in which the employee customarily and regularly receives more than \$30 a month in tips may have the amount of these tips credited by the employer against the minimum wage required by [41 U.S.C. 6703\(1\)](#), in accordance with section 3(m) of the Fair Labor Standards Act and Regulations, 29 CFR Part 531. However, the amount of credit shall not exceed \$1.34 per hour beginning January 1, 1981. To use this provision —

- (1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;
- (2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);
- (3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Labor Standards minimum wage through the combination of direct wages and tip credit;
- (4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of [41 U.S.C. 6707\(c\)](#).

(t) *Disputes Concerning Labor Standards.* The U.S. Department of Labor has set forth in 29 CFR Parts 4, 6, and 8 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

Note: Regulation 52.222-41

NOTE: This clause does not apply to the following 5 subcategories under Large Category C - Furniture and Furnishings: Office Furniture; Healthcare Furniture; Household, Dormitory & Quarters Furniture; Packaged Furniture; Miscellaneous Furniture.

#### **52.222-43 FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT LABOR STANDARDS—PRICE ADJUSTMENT (MULTIPLE YEAR AND OPTION CONTRACTS) (AUG 2018)**

- (a) This clause applies to both contracts subject to area prevailing wage determinations and contracts subject to collective bargaining agreements.
- (b) The Contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.
- (c) The wage determination, issued under the Service Contract Labor Standards statute, ([41 U.S.C. chapter 67](#)), by the Administrator, Wage and Hour Division, U.S. Department of Labor, current on the anniversary date of a multiple year contract or the beginning of each renewal option period, shall apply

to this contract. If no such determination has been made applicable to this contract, then the Federal minimum wage as established by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, ([29 U.S.C. 206](#)) current on the anniversary date of a multiple year contract or the beginning of each renewal option period, shall apply to this contract.

(d) The contract price, contract unit price labor rates, or fixed hourly labor rates will be adjusted to reflect the Contractor's actual increase or decrease in applicable wages and fringe benefits to the extent that the increase is made to comply with or the decrease is voluntarily made by the Contractor as a result of:

- (1) The Department of Labor wage determination applicable on the anniversary date of the multiple year contract, or at the beginning of the renewal option period. For example, the prior year wage determination required a minimum wage rate of \$4.00 per hour. The Contractor chose to pay \$4.10. The new wage determination increases the minimum rate to \$4.50 per hour. Even if the Contractor voluntarily increases the rate to \$4.75 per hour, the allowable price adjustment is \$.40 per hour;
- (2) An increase or decrease wage determination otherwise applied to the contract by operation of law; or
- (3) An amendment to the Fair Labor Standards Act of 1938 that is enacted after award of this contract, affects the minimum wage, and becomes applicable to this contract under law.

(e) Any adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph (d) of this clause, and the accompanying increases or decreases in social security and unemployment taxes and workers' compensation insurance, but shall not otherwise include any amount for general and administrative costs, overhead, or profit.

(f) The Contractor shall notify the Contracting Officer of any increase claimed under this clause within 30 days after receiving a new wage determination unless this notification period is extended in writing by the Contracting Officer. The Contractor shall promptly notify the Contracting Officer of any decrease under this clause, but nothing in the clause shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and the change in fixed hourly rates (if this is a time-and-materials or labor-hour contract), and any relevant supporting data, including payroll records, that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price, contract unit price labor rates, or fixed hourly rates shall be modified in writing. The Contractor shall continue performance pending agreement on or determination of any such adjustment in its effective date.

(g) The Contracting Officer or an authorized representative shall have access to and the right to examine any directly pertinent books, documents, papers and records of the Contractor until the expiration of 3 years after final payment under the contract.

#### **52.223-17 AFFIRMATIVE PROCUREMENT OF EPA-DESIGNATED ITEMS IN SERVICE AND CONSTRUCTION CONTRACTS (AUG 2018)**

(a) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired#

- (1) Competitively within a timeframe providing for compliance with the contract performance schedule;
- (2) Meeting contract performance requirements; or
- (3) At a reasonable price.

(b) Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>. The list of EPA-designated items is available at <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

(Note: This is an FSS reproduction using word processing software) **STANDARD FORM 1449 (10-95) (BACK)**

## **52.204-7 SYSTEM FOR AWARD MANAGEMENT (OCT 2018)**

(a) Definitions. As used in this provision —

“*Electronic Funds Transfer (EFT) indicator*” means a four-character suffix to the unique entity identifier. The suffix is assigned at the discretion of the commercial, nonprofit, or Government entity to establish additional System for Award Management records for identifying alternative EFT accounts (see [subpart 32.11](#)) for the same entity.

“*Registered in the System for Award Management (SAM)*” means that —

- (1) The Offeror has entered all mandatory information, including the unique entity identifier and the EFT indicator, if applicable, the Commercial and Government Entity (CAGE) code, as well as data required by the Federal Funding Accountability and Transparency Act of 2006 (see [subpart 4.14](#)) into SAM;
- (2) The offeror has completed the Core, Assertions, and Representations and Certifications, and Points of Contact sections of the registration in the SAM;
- (3) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS). The offeror will be required to provide consent for TIN validation to the Government as a part of the SAM registration process; and
- (4) The Government has marked the record “Active”.

“*Unique entity identifier*” means a number or other identifier used to identify a specific commercial, nonprofit, or Government entity. See [www.sam.gov](http://www.sam.gov) for the designated entity for establishing unique entity identifiers.

- (b) (1) An Offeror is required to be registered in SAM when submitting an offer or quotation, and shall continue to be registered until time of award, during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.
- (2) The Offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation “Unique Entity Identifier” followed by the unique entity identifier that identifies the Offeror’s name and address exactly as stated in the offer. The Offeror also shall enter its EFT indicator, if applicable. The unique entity identifier will be used by the Contracting Officer to verify that the Offeror is registered in SAM.
- (c) If the Offeror does not have a unique entity identifier, it should contact the entity designated at [www.sam.gov](http://www.sam.gov) for establishment of the unique entity identifier directly to obtain one. The Offeror should be prepared to provide the following information:
  - (1) Company legal business name.
  - (2) Tradestyle, doing business, or other name by which your entity is commonly recognized.

- (3) Company Physical Street Address, City, State, and Zip Code.
- (4) Company Mailing Address, City, State and Zip Code (if separate from physical).
- (5) Company telephone number.
- (6) Date the company was started.
- (7) Number of employees at your location.
- (8) Chief executive officer/key manager.
- (9) Line of business (industry).
- (10) Company Headquarters name and address (reporting relationship within your entity).

(d) Processing time should be taken into consideration when registering. Offerors who are not registered in SAM should consider applying for registration immediately upon receipt of this solicitation. See <https://www.sam.gov> for information on registration.

## **52.204-13 SYSTEM FOR AWARD MANAGEMENT MAINTENANCE (OCT 2018)**

(a) *Definitions*. As used in this clause —

“*Electronic Funds Transfer (EFT) indicator*” means a four-character suffix to the unique entity identifier. The suffix is assigned at the discretion of the commercial, nonprofit, or Government entity to establish additional System for Award Management (SAM) records for identifying alternative EFT accounts (see subpart [32.11](#)) for the same entity.

“*Registered in the System for Award Management (SAM)*” means that —

- (1) The Contractor has entered all mandatory information, including the unique entity identifier and the EFT indicator (if applicable), the Commercial and Government Entity (CAGE) code, as well as data required by the Federal Funding Accountability and Transparency Act of 2006 (see [subpart 4.14](#)), into SAM;
- (2) The Contractor has completed the Core, Assertions, Representations and Certifications, and Points of Contact sections of the registration in SAM;
- (3) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS). The Contractor will be required to provide consent for TIN validation to the Government as a part of the SAM registration process; and
- (4) The Government has marked the record “Active”.

“*System for Award Management (SAM)*” means the primary Government repository for prospective Federal awardee and Federal awardee information and the centralized Government system for certain contracting, grants, and other assistance-related processes. It includes—

- (1) Data collected from prospective Federal awardees required for the conduct of business with the Government;
- (2) Prospective contractor-submitted annual representations and certifications in accordance with FAR [subpart 4.12](#); and

(3) Identification of those parties excluded from receiving Federal contracts, certain subcontracts, and certain types of Federal financial and non-financial assistance and benefits.

*“Unique entity identifier”* means a number or other identifier used to identify a specific commercial, nonprofit, or Government entity. See [www.sam.gov](http://www.sam.gov) for the designated entity for establishing unique entity identifiers.

(b) If the solicitation for this contract contained the provision 52.204-7 with its Alternate I, and the Contractor was unable to register prior to award, the Contractor shall be registered in SAM within 30 days after award or before three days prior to submission of the first invoice, whichever occurs first.

(c) The Contractor shall maintain registration in SAM during contract performance and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement. The Contractor is responsible for the currency, accuracy and completeness of the data within SAM, and for any liability resulting from the Government’s reliance on inaccurate or incomplete data. To remain registered in SAM after the initial registration, the Contractor is required to review and update on an annual basis, from the date of initial registration or subsequent updates, its information in SAM to ensure it is current, accurate and complete. Updating information in SAM does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(d) (1) (i) If a Contractor has legally changed its business name or *doing business as* name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in subpart [42.12](#), the Contractor shall provide the responsible Contracting Officer a minimum of one business day’s written notification of its intention to —

(A) Change the name in SAM;

(B) Comply with the requirements of subpart [42.12](#) of the FAR; and

(C) Agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor shall provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (d)(1)(i) of this clause, or fails to perform the agreement at paragraph (d)(1)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the SAM information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the “Suspension of Payment” paragraph of the electronic funds transfer (EFT) clause of this contract.

(2) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in SAM record to reflect an assignee for the purpose of assignment of claims (see FAR subpart [32.8](#), Assignment of Claims). Assignees shall be separately registered in the SAM. Information provided to the Contractor’s SAM record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the “Suspension of Payment” paragraph of the EFT clause of this contract.

(3) The Contractor shall ensure that the unique entity identifier is maintained with the entity designated at [www.sam.gov](http://www.sam.gov), for establishment of the unique entity identifier throughout the life of the contract. The Contractor shall communicate any change to the unique entity identifier to the Contracting Officer within 30 days after the change, so an appropriate modification can be issued to update the data on the contract. A change in the unique entity identifier does not necessarily require a novation be accomplished.

(e) Contractors may obtain additional information on registration and annual confirmation requirements at <https://www.sam.gov>.

### **52.209-9 UPDATES OF PUBLICLY AVAILABLE INFORMATION REGARDING RESPONSIBILITY MATTERS (OCT 2018)**

(a) The Contractor shall update the information in the Federal Awardee Performance and Integrity Information System (FAPIIS) on a semi-annual basis, throughout the life of the contract, by posting the required information in the System for Award Management via <https://www.sam.gov>.

(b) As required by section 3010 of the Supplemental Appropriations Act, 2010 (Pub. L. 111-212), all information posted in FAPIIS on or after April 15, 2011, except past performance reviews, will be publicly available. FAPIIS consists of two segments —

(1) The non-public segment, into which Government officials and the Contractor post information, which can only be viewed by —

(i) Government personnel and authorized users performing business on behalf of the Government; or

(ii) The Contractor, when viewing data on itself; and

(2) The publicly-available segment, to which all data in the non-public segment of FAPIIS is automatically transferred after a waiting period of 14 calendar days, except for —

(i) Past performance reviews required by subpart 42.15;

(ii) Information that was entered prior to April 15, 2011; or

(iii) Information that is withdrawn during the 14-calendar-day waiting period by the Government official who posted it in accordance with paragraph (c)(1) of this clause.

(c) The Contractor will receive notification when the Government posts new information to the Contractor's record.

(1) If the Contractor asserts in writing within 7 calendar days, to the Government official who posted the information, that some of the information posted to the nonpublic segment of FAPIIS is covered by a disclosure exemption under the Freedom of Information Act, the Government official who posted the information must within 7 calendar days remove the posting from FAPIIS and resolve the issue in accordance with agency Freedom of Information procedures, prior to reposting the releasable information. The contractor must cite 52.209-9 and request removal within 7 calendar days of the posting to FAPIIS.

(2) The Contractor will also have an opportunity to post comments regarding information that has been posted by the Government. The comments will be retained as long as the associated information is retained, i.e., for a total period of 6 years. Contractor comments will remain a part of the record unless the Contractor revises them.

(3) As required by section 3010 of Pub. L. 111-212, all information posted in FAPIIS on or after April 15, 2011, except past performance reviews, will be publicly available.

(d) Public requests for system information posted prior to April 15, 2011, will be handled under Freedom of Information Act procedures, including, where appropriate, procedures promulgated under E.O. 12600.

### **52.232-33 PAYMENT BY ELECTRONIC FUNDS**

**TRANSFER-SYSTEM FOR AWARD MANAGEMENT (OCT 2018)**

## (a) Method of payment.

(1) All payments by the Government under this contract shall be made by electronic funds transfer (EFT), except as provided in paragraph (a)(2) of this clause. As used in this clause, the term "EFT" refers to the funds transfer and may also include the payment information transfer.

(2) In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either—

(i) Accept payment by check or some other mutually agreeable method of payment; or

(ii) Request the Government to extend the payment due date until such time as the Government can make payment by EFT (but see paragraph (d) of this clause).

(b) *Contractor's EFT information.* The Government shall make payment to the Contractor using the EFT information contained in the System for Award Management (SAM). In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to SAM.

(c) *Mechanisms for EFT payment.* The Government may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR Part 210.

(d) *Suspension of payment.* If the Contractor's EFT information in SAM is incorrect, then the Government need not make payment to the Contractor under this contract until correct EFT information is entered into SAM; and any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

## (e) Liability for uncompleted or erroneous transfers.

(1) If an uncompleted or erroneous transfer occurs because the Government used the Contractor's EFT information incorrectly, the Government remains responsible for—

(i) Making a correct payment;

(ii) Paying any prompt payment penalty due; and

(iii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and—

(i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or

(ii) If the funds remain under the control of the payment office, the Government shall not make payment, and the provisions of paragraph (d) of this clause shall apply.

(f) *EFT and prompt payment.* A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the

rules of the Federal Reserve System.

(g) *EFT and assignment of claims.* If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall register separately in SAM and shall be paid by EFT in accordance with the terms of this clause. Notwithstanding any other requirement of this contract, payment to an ultimate recipient other than the Contractor, or a financial institution properly recognized under an assignment of claims pursuant to [Subpart 32.8](#), is not permitted. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.

(h) *Liability for change of EFT information by financial agent.* The Government is not liable for errors resulting from changes to EFT information made by the Contractor's financial agent.

(i) *Payment information.* The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. The Government may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address contained in SAM.

#### **552.238-105 DELIVERIES BEYOND THE CONTRACTUAL PERIOD - PLACING OF ORDERS (MAY 2019)**

In accordance with Clause [552.238-113](#), Scope of Contract (Eligible Ordering Activities), this contract covers all requirements that may be ordered, as distinguished from delivered during the contract term. This is for the purpose of providing continuity of supply or operations by permitting ordering activities to place orders as requirements arise in the normal course of operations. Accordingly, any order mailed (or received, if forwarded by other 7 means than through the mail) to the Contractor on or before the expiration date of the contract, and providing for delivery within the number of days specified in the contract, shall constitute a valid order.

#### **552.238-107 TRAFFIC RELEASE (SUPPLIES) (MAY 2019)**

Supplies ordered by GSA for export will not be shipped by the Contractor until shipping instructions are received from GSA. To obtain shipping instructions, the Contractor shall forward completed copies of GSA Form 1611, Application for Shipping Instructions and Notice of Availability, to the GSA office designated on the purchase order at least 15 days prior to the anticipated shipping date. Copies of GSA Form 1611 will be furnished to the Contractor with the purchase order. Failure to comply with this requirement could result in nonacceptance of the material by authorities at the port of exportation. When supplies for export are ordered by other Government agencies the Contractor should obtain shipping instructions from the ordering agency.

#### **552.238-86 DELIVERY SCHEDULE (MAY 2019)**

(a) *Time of delivery.* The Contractor shall deliver to destination within the number of calendar days after receipt of order (ARO) in the case of F.O.B. Destination prices; or to place of shipment in transit in the case of F.O.B. Origin prices, as set forth below. Offerors shall insert in the "Time of Delivery (days ARO)" column in the schedule of Items a definite number of calendar days within which delivery will be made. In no case shall the offered delivery time exceed the Contractor's normal business practice. The Government requires the Contractor's normal delivery time, as long as it is less than the

"stated" delivery time(s) shown below. If the Offeror does not insert a delivery time in the schedule of items, the Offeror will be deemed to offer delivery in accordance with the Government's stated delivery time, as stated below [*The contracting officer shall insert the solicited items or Special Item Numbers (SIN) as well as a reasonable delivery time that corresponds with each item or SIN, if known*]:

Items or group of items (special item no. or nomenclature)

---

Government's stated delivery time (days ARO)

---

Contractor's delivery time

---

(b) *Expedited delivery times.* For those items that can be delivered quicker than the delivery times in paragraph (a) of this clause, the Offeror is requested to insert below, a time (hours/days ARO) that delivery can be made when expedited delivery is requested.

Items or group of items (special item no. or nomenclature)

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Expedited delivery time (hours/days ARO)

---

(c) Overnight and 2-Day delivery times. Ordering activities may require overnight or 2-day delivery. The Offeror is requested to annotate its price list or by separate attachment identify the items that can be delivered overnight or within 2 days. Contractors offering such delivery services will be required to state in the cover sheet to its FSS price list details concerning this service.

#### **552.238-89 DELIVERIES TO THE U.S. POSTAL SERVICE (MAY 2019)**

(a) *Applicability.* This clause applies to orders placed for the U.S. Postal Service (USPS) and accepted by the Contractor for the delivery of supplies to a USPS facility (consignee).

(b) *Mode/method of transportation.* Unless the Contracting Officer grants a waiver of this requirement, any shipment that meets the USPS requirements for mailability (i.e., 70 pounds or less, combined length and girth not more than 108 inches, etc.) delivery shall be accomplished via the use of the USPS. Other commercial services shall not be used, but this does not preclude the Contractor from making delivery by the use of the Contractor's own vehicles.

(c) *Time of delivery.* Notwithstanding the required time for delivery to destination as may be specified elsewhere in this contract, if shipments under this clause are mailed not later than five (5) calendar days before the required delivery date, delivery shall be deemed to have been made timely.

#### **552.238-90 CHARACTERISTICS OF ELECTRIC CURRENT (MAY 2019)**

Contractors supplying equipment which uses electrical current are required to supply equipment suitable for the electrical system at the location at which the equipment is to be used as specified on the order.

#### **552.238-91 MARKING AND DOCUMENTATION REQUIREMENTS FOR SHIPPING (MAY 2019)**

(a) *Responsibility*. It shall be the responsibility of the ordering activity to determine the full marking and documentation requirements necessary under the various methods of shipment authorized by the contract.

(b) *Documentation*. In the event the ordering activity fails to provide the essential information and documentation, the Contractor shall, within three days after receipt of order, contact the ordering activity and advise them accordingly. The Contractor shall not proceed with any shipment requiring transshipment via U.S. Government facilities without the prerequisites stated in paragraph (c) of this section.

(c) *Direct shipments*. The Contractor shall mark all items ordered against this contract with indelible ink, paint or fluid, as follows:

(1) Traffic Management or Transportation Officer at FINAL destination.

(2) Ordering Supply Account Number.

(3) Account number.

(4) Delivery Order or Purchase Order Number.

(5) National Stock Number, if applicable; or Contractor's item number.

(6) Box \_\_\_\_\_ of \_\_\_\_\_ Boxes.

(7) Nomenclature (brief description of items).

### **552.238-92 VENDOR MANAGED INVENTORY (VMI) PROGRAM (MAY 2019)**

(a) The term "Vendor Managed Inventory" describes a system in which the Contractor monitors and maintains specified inventory levels for selected items at designated stocking points. VMI enables the Contractor to plan production and shipping more efficiently. Stocking points benefit from reduced inventory but steady stock levels.

(b) Contractors that commercially provide a VMI-type system may enter into similar partnerships with ordering agencies under a Blanket Purchase Agreement.

### **552.238-93 ORDER ACKNOWLEDGMENT (MAY 2019)**

Contractors shall acknowledge only those orders which state "Order Acknowledgment Required." These orders shall be acknowledged within 10 calendar days after receipt. Such acknowledgment shall be sent to the ordering activity placing the order and contain information pertinent to the order, including the anticipated delivery date.

### **552.238-94 ACCELERATED DELIVERY REQUIREMENTS (MAY 2019)**

When the Federal Supply Schedule contract delivery period does not meet the bona fide urgent delivery requirements of an ordering activity, the ordering activity is encouraged, if time permits, to contact the Contractor for the purpose of obtaining accelerated delivery. The Contractor shall reply to the inquiry within three (3) business days after receipt. (Telephonic replies shall be confirmed by the Contractor in writing.) If the Contractor offers an accelerated delivery time acceptable to the ordering activity, any order(s) placed pursuant to the agreed upon accelerated delivery time frame shall be delivered within this shorter delivery time and in accordance with all other terms and conditions of the contract.

**552.238-95 SEPARATE CHARGE FOR PERFORMANCE  
ORIENTED PACKAGING (POP) (MAY 2019)**

(a) Offerors are requested to list the hazardous material item to which the separate charge applies in the spaces provided in this paragraph or on a separate attachment. The final price shall be quoted separately at the order level and, if considered reasonable, will be accepted as part of the order.

ITEMS	
SINS or Descriptive Name of Articles (as appropriate)	Charge for Performance Oriented

(b) Ordering activities will not be obligated to utilize the Contractor's services for Performance Oriented Packaging, and they may obtain such services elsewhere if desired. However, the Contractor shall provide items in Performance Oriented Packaging when such packing is specified on the delivery order. The Contractor's contract price and the charge for Performance Oriented Packaging will be shown as separate entries on the delivery order.

**552.238-96 SEPARATE CHARGE FOR DELIVERY WITHIN  
CONSIGNEE'S PREMISES (MAY 2019) 538.273(d)(20)**

(a) Offerors are requested to insert, in the spaces provided below or by attachment hereto, a separate charge for "Delivery Within Consignee's Premises" applicable to each shipping container to be shipped. (Articles which are comparable in size and weight, and for which the same charge is applicable, should be grouped under an appropriate item description.) These additional charges will be accepted as part of the award, if considered reasonable, and shall be included in the Contractor's published catalog and/or price list.

(b) Ordering activities are not obligated to issue orders on the basis of "Delivery Within Consignee's Premises," and Contractors may refuse delivery on that basis provided such refusal is communicated in writing to the ordering activity issuing such orders within 5 days of the receipt of such order by the Contractor and provided further, that delivery is made in accordance with the other delivery requirements of the contract. Failure of the Contractor to submit this notification within the time specified shall constitute acceptance to furnish "Delivery Within Consignee's Premises" at the additional charge awarded. When an ordering activity issues an order on the basis of "Delivery Within Consignee's Premises" at the accepted additional charge awarded and the Contractor accepts such orders on that basis, the Contractor will be obligated to provide delivery "F.o.b. Destination, Within Consignee's Premises" in accordance with FAR 52.247-35, which is then incorporated by reference, with the exception that an additional charge as provided herein is allowed for such services. Unless otherwise stipulated by the Offeror, the additional charges awarded hereunder may be applied to any delivery within the 48 contiguous States and the District of Columbia.

(c) When exercising their option to issue orders on the basis of delivery service as provided herein, ordering activities will specify "Delivery Within Consignee's Premises" on the order, and will indicate the exact location to which delivery is to be made. The Contractor's delivery price and the additional charge(s) for "Delivery Within Consignee's Premises" will be shown as separate entries on the order..

ITEMS	
(NSNs or Special Item Numbers or Descriptive Name of Articles)	Additional Charge (Per shipping container) FOR "DELIVERY WITHIN CONSIGNEE'S PREMISES"

**552.238-100 TRANSSHIPMENTS (MAY 2019)**

(a) The Contractor shall complete two (2) DD Forms 1387, Military Shipment Labels and, if applicable, four copies of DD Form 1387-2, Special Handling/Data Certification-used when shipping chemicals, dangerous cargo, etc.

(1) Two copies of the DD Form 1387 will be attached to each shipping container delivered to the port Transportation Officer for subsequent transshipment by the Government as otherwise provided for under the terms of this contract.

(2) These forms will be attached to one end and one side, not on the top or bottom, of the container.

(3) The Contractor will complete the bottom line of these forms, which pertains to the number of pieces, weight and cube of each piece, using U.S. weight and cubic measures. Weights will be rounded off to the nearest pound. (One kg = 2.2 U.S. pounds; one cubic meter = 35.3156 cubic feet.)

(b) In addition, if the cargo consists of chemicals, or is dangerous, one copy of the DD Form 1387-2 will be attached to the container, and three copies will be furnished to the Transportation Officer with the Bill of Lading.

(c) Dangerous cargo will not be intermingled with non-dangerous cargo in the same container.

(d) Copies of the above forms and preparation instructions will be obtained from the ordering activity issuing the Delivery Order. Reproduced copies of the forms are acceptable.

(e) Failure to include DD Form 1387, and DD Form 1387-2, if applicable, on each shipping container will result in rejection of shipment by the port Transportation Officer.

**552.238-101 FOREIGN TAXES AND DUTIES (MAY 2019)**

Prices offered must be net, delivered, f.o.b. to the destinations accepted by the Government.

(a) The Contractor warrants that such prices do not include any tax, duty, customs fees, or other foreign Governmental costs, assessments, or similar charges from which the U.S. Government is exempt.

(b) Standard commercial export packaging, including containerization, if necessary, packaging, preservation, and/or marking are included in the pricing offered and accepted by the Government.

**552.238-102 ENGLISH LANGUAGE AND U.S. DOLLAR REQUIREMENTS (MAY 2019)**

(a) All documents produced by the Contractor to fulfill requirements of this contract including, but not limited to, Federal Supply Schedule catalogs and price lists, must reflect all terms and conditions in the English language.

(b) U.S. dollar equivalency, if applicable, will be based on the rates published in the "Treasury Reporting Rates of Exchange" in effect as of the date of the agency's purchase order or in effect during the time period specified elsewhere in this contract.

**552.238-103 ELECTRONIC COMMERCE (MAY 2019)**

(a) General background. The Federal Acquisition Streamlining Act (FASA) of 1994 requires the Government to evolve its acquisition process from one driven by paper to an expedited process based on electronic commerce/electronic data interchange (EC/EDI). EC/EDI encompasses more than merely automating manual processes and eliminating paper transactions. EC/EDI improves business processes (e.g. procurement, finance, logistics) into a fully electronic environment and fundamentally changes the way organizations operate.

(b) Trading partners and Value-Added Networks (VAN's).

(1) Within the electronic commerce architecture, electronic documents (e.g., orders, invoices, etc.) are carried between the Federal Government's procuring office and Contractors (now known as "trading partners"). These transactions are carried by commercial telecommunications companies called Value-Added Networks (VAN's).

(2) EDI can be performed using commercially available hardware, software, and telecommunications. The selection of a VAN is a business decision Contractors must make. There are many different VAN's which provide a variety of electronic services and different pricing strategies. If the VAN only provides communications services, you may also need a software translation package.

(c) Registration instructions. To perform EDI with the Government, Contractors shall register as a trading partner. Contractors will provide regular business information, banking information, and EDI capabilities to all agencies in this single registration. A central repository of all trading partners is the Systems for Award Management (SAM) <http://www.sam.gov>. Contractors shall follow the instructions on the SAM website regarding how to register for EDI.

(d) Implementation conventions. All EDI transactions must comply with the Federal Implementation Conventions (ICs). The ICs are available on a registry maintained by the National Institute of Standards and Technology (NIST). It is accessible via the INTERNET at <http://www.nist.gov/itl>. ICs are available for common business documents such as Purchase Order, Price Sales Catalog, Invoice, Request for Quotes, etc.

(e) Additional information. GSA has additional information available for Contractors who are interested in using EC/EDI on its website, <http://www.gsa.gov>.

(f) GSA Advantage!®.

(1) GSA Advantage!® uses electronic commerce to receive catalogs, invoices and text messages; and to send purchase orders, application advice, and functional acknowledgments. GSA Advantage!® enables customers to:

(i) Perform database searches across all contracts by manufacturer; manufacturer's model/part number; Contractor; and generic supply categories.

(ii) Generate EDI delivery orders to Contractors, generate EDI delivery orders from the Federal Supply Service to Contractors, or download files to create their own delivery orders.

(iii) Use the credit card.

(2) GSA Advantage!® may be accessed via the GSA Home Page. The Internet address is: <http://www.gsa.gov>.

#### **552.238-104 DISSEMINATION OF INFORMATION BY CONTRACTOR (MAY 2019)**

The Government will provide the Contractor with a single copy of the resulting Federal Supply Schedule

contract award documents. However, it is the responsibility of the Contractor to furnish all sales outlets authorized to participate in the performance of the contract with the terms, conditions, pricing schedule, and other appropriate information.

### **552.238-106 INTERPRETATION OF CONTRACT REQUIREMENTS (MAY 2019)**

No interpretation of any provision of this contract, including applicable specifications, shall be binding on the Government unless furnished or agreed to in writing by the Contracting Officer or his designated representative.

### **552.238-112 DEFINITION (FEDERAL SUPPLY SCHEDULES) - NON-FEDERAL ENTITY (MAY 2019)**

Ordering activity (also called "ordering agency" and "ordering office") means an eligible ordering activity (see [552.238-113](#)), authorized to place orders under Federal Supply Schedule contracts.

### **552.238-70 COVER PAGE FOR WORLDWIDE FEDERAL SUPPLY SCHEDULES (MAY 2019) FOR ALL GEOGRAPHIC AREAS**

Solicitation No. 47QSMD20R0001 Refresh 0019

Federal Supply Schedule Contract for All Geographic Areas.

(a) Federal Supply Classification (FSC) GROUP: Various  
PART: Various  
SECTION: Various  
SUPPLY: Various  
FSC CLASS(ES)/PRODUCT CODE(S)/NAICS: Various

(b) STANDARD INDUSTRY GROUP: Various  
SERVICE: Various  
SERVICE CODE(S)/NAICS: Various

### **552.238-79 CANCELLATION (MAY 2019)**

Either party may cancel this contract in whole or in part by providing written notice. The cancellation will take effect 30 calendar days after the other party receives the notice of cancellation. If the Contractor elects to cancel this contract, the Government will not reimburse the minimum guarantee.

### **552.238-81 PRICE REDUCTIONS (MAY 2019)**

(a) Before award of a contract, the Contracting Officer and the Offeror will agree upon (1) the customer (or category of customers) which will be the basis of award, and (2) the Government's price or discount relationship to the identified customer (or category of customers). This relationship shall be maintained throughout the contract period. Any change in the Contractor's commercial pricing or discount arrangement applicable to the identified customer (or category of customers) which disturbs this relationship shall constitute a price reduction.

(b) During the contract period, the Contractor shall report to the Contracting Officer all price reductions to the customer (or category of customers) that was the basis of award. The Contractor's report shall include an explanation of the conditions under which the reductions were made.

(c) (1) A price reduction shall apply to purchases under this contract if, after the date negotiations conclude, the Contractor

- (i) Revises the commercial catalog, pricelist, schedule or other document upon which contract award was predicated to reduce prices;
- (ii) Grants more favorable discounts or terms and conditions than those contained in the commercial catalog, pricelist, schedule or other documents upon which contract award was predicated; or
- (iii) Grants special discounts to the customer (or category of customers) that formed the basis of award, and the change disturbs the price/discount relationship of the Government to the customer (or category of customers) that was the basis of award.

(2) The Contractor shall offer the price reduction to the eligible ordering activity with the same effective date, and for the same time period, as extended to the commercial customer (or category of customers).

(d) There shall be no price reduction for sales —

- (1) To commercial customers under firm, fixed-price definite quantity contracts with specified delivery in excess of the maximum order threshold specified in this contract;
- (2) To Federal agencies;
- (3) Made to Eligible Ordering Activities identified in GSAR Clause 552.238-113 when the order is placed under this contract (and the Eligible Ordering Activities identified in GSAR Clause 552.238-113 is the agreed upon customer or category of customer that is the basis of award); or
- (4) Caused by an error in quotation or billing, provided adequate documentation is furnished by the Contractor to the Contracting Officer.

(e) The Contractor may offer the Contracting Officer a voluntary Governmentwide price reduction at any time during the contract period.

(f) The Contractor shall notify the Contracting Officer of any price reduction subject to this clause as soon as possible, but not later than 15 calendar days after its effective date.

(g) The contract will be modified to reflect any price reduction which becomes applicable in accordance with this clause.

Note: Regulation 552.238-81

This clause does not apply to contracts participating in the Transactional Data Reporting (TDR) Pilot. Please refer to clause 552.238-81 Alternate I.

#### **552.238-81 PRICE REDUCTIONS (MAY 2019) (ALTERNATE I - APR 2014)**

- (a) The Government may request from the Contractor, and the Contractor may provide to the Government, a temporary or permanent price reduction at any time during the contract period.
- (b) The Contractor may offer the Contracting Officer a voluntary price reduction at any time during the contract period.

Note: Regulation 552.238-81

This clause applies to contracts participating in the Transactional Data Reporting (TDR)

Pilot.

### **552.238-83 EXAMINATION OF RECORDS BY GSA (FEDERAL SUPPLY SCHEDULES) (MAY 2019)**

The Contractor agrees that the Administrator of General Services or any duly authorized representative shall have access to and the right to examine any books, documents, papers and records of the contractor involving transactions related to this contract for overbillings, billing errors, compliance with contract clauses 552.238-81, Price Reductions and 552.238-80, Industrial Funding Fee and Sales Reporting. This authority shall expire 3 years after final payment. The basic contract and each option shall be treated as separate contracts for purposes of applying this clause.

### **552.238-84 DISCOUNTS FOR PROMPT PAYMENT (MAY 2019)**

(a) Discounts for early payment (hereinafter referred to as "discounts" or "the discount") will be considered in evaluating the relationship of the Offeror's concessions to the Government vis-a-vis the Offeror's concessions to its commercial and Federal non-schedule customers, but only to the extent indicated in this clause.

(b) Discounts will not be considered to determine the low Offeror in the situation described in the "Offers on Identical Products" provision of this solicitation.

(c) Uneconomical discounts will not be considered as meeting the criteria for award established by the Government. In this connection, a discount will be considered uneconomical if the annualized rate of return for earning the discount is lower than the "value of funds" rate established by the Department of the Treasury and published quarterly in the Federal Register. The "value of funds" rate applied will be the rate in effect on the date specified for the receipt of offers.

(d) Discounts for early payment may be offered either in the original offer or on individual invoices submitted under the resulting contract. Discounts offered will be taken by the ordering activity if payment is made within the discount period specified.

(e) Discounts that are included in offers become a part of the resulting contracts and are binding on the Contractor for all orders placed under the contract. Discounts offered only on individual invoices will be binding on the Contractor only for the particular invoice on which the discount is offered.

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

### **552.238-85 CONTRACTOR'S BILLING RESPONSIBILITIES (MAY 2019)**

(a) The Contractor is required to perform all billings made pursuant to this contract. However, if the Contractor has dealers that participate on the contract and the billing/payment process by the Contractor for sales made by the dealer is a significant administrative burden, the following alternative procedures may be used. Where dealers are allowed by the Contractor to bill ordering activities and accept payment in the Contractor's name, the Contractor agrees to obtain from all dealers participating in the performance of the contract a written agreement, which will require dealers to

(1) Comply with the same terms and conditions as the Contractor for sales made under the contract;

(2) Maintain a system of reporting sales under the contract to the manufacturer, which includes

- (i) The date of sale;
- (ii) The ordering activity to which the sale was made;
- (iii) The service or supply/model sold;
- (iv) The quantity of each service or supply/model sold;
- (v) The price at which it was sold, including discounts; and
- (vi) All other significant sales data.

(3) Be subject to audit by the Government, with respect to sales made under the contract; and

(4) Place orders and accept payments in the name of the Contractor in care of the dealer.

(b) An agreement between a Contractor and its dealers pursuant to this procedure will not establish privity of contract between dealers and the Government.

### **552.238-87 DELIVERY PRICES (MAY 2019)**

- (a) Prices offered must cover delivery as provided below to destinations located within the 48 contiguous States and the District of Columbia.
  - (1) Delivery to the door of the specified Government activity by freight or express common carriers on articles for which store-door delivery is provided, free or subject to a charge, pursuant to regularly published tariffs duly filed with the Federal and/or State regulatory bodies governing such carrier; or, at the option of the Contractor, by parcel post on mailable articles, or by the Contractor's vehicle. Where store-door delivery is subject to a charge, the Contractor shall place the notation "Delivery Service Requested" on bills of lading covering such shipments, and pay such charge and add the actual cost thereof as a separate item to his invoice.
  - (2) Delivery to siding at destinations when specified by the ordering office, if delivery is not covered under paragraph (a)(1) of this section.
  - (3) Delivery to the freight station nearest destination when delivery is not covered under paragraph (a)(1) or (2) of this section.
- (b) The Offeror shall indicate in the offer whether or not prices submitted cover delivery f.o.b. destination in Alaska, Hawaii, and the Commonwealth of Puerto Rico.
- (c) When deliveries are made to destinations outside the contiguous 48 States; i.e., Alaska, Hawaii, and the Commonwealth of Puerto Rico, and are not covered by paragraph (b), above, the following conditions will apply:
  - (1) Delivery will be f.o.b. inland carrier, point of exportation (FAR 52.247-38), with the transportation charges to be paid by the Government from point of exportation to destination in Alaska, Hawaii, or the Commonwealth of Puerto Rico, as designated by the ordering office. The Contractor shall add the actual cost of transportation to destination from the point of exportation in the 48 contiguous States nearest to the designated destination. Such costs will, in all cases, be based upon the lowest regularly established rates on file with the Interstate Commerce Commission, the U.S. Maritime Commission (if shipped by water), or any State regulatory body, or those published by the U.S. Postal Service; and must be supported by paid freight or express receipt or by a statement of parcel post charges including weight of shipment.
  - (2) The right is reserved to ordering agencies to furnish Government bills of lading.

**552.238-88 GSA ADVANTAGE!®. (MAY 2019)**

(a) The Contractor shall participate in the GSA Advantage!® online shopping service. Information and instructions regarding Contractor participation are contained in clause 552.238-103, *Electronic Commerce*.

(b) The Contractor shall refer to contract clauses 552.238-77, *Submission and Distribution of Authorized FSS Price Lists* (which provides for submission of price lists on a common-use electronic medium), and 552.238-82, *Modifications* (which addresses electronic file updates).

**552.238-97 PARTS AND SERVICE (MAY 2019)**

(a) For equipment under items listed in the schedule of items or services on which offers are submitted, the Contractor represents by submission of this offer that parts and services (including the performing of warranty or guarantee service) are now available from dealers or distributors serving the areas of ultimate overseas destination or that such facilities will be established and will be maintained throughout the contract period. If a new servicing facility is to be established, the facility shall be established no later than the beginning of the contract period.

(b) Each Contractor shall be fully responsible for the services to be performed by the named servicing facilities, or by such facilities to be established, and fully guarantees performance of such services if the original service proves unsatisfactory.

(c) Contractors are requested to provide the Ordering Activity, the names and addresses of all supply and service points maintained in the geographic area in which the Contractor will perform. Please indicate opposite each point whether or not a complete stock of repair parts for items offered is carried at that point, and whether or not mechanical service is available.

**552.238-98 CLAUSES FOR OVERSEAS COVERAGE (MAY 2019)**

(a) 52.214-34 Submission of Offers in the English Language

(b) 52.214-35 Submission of Offers in U.S. Currency

(c) [552.238-90](#) Characteristics of Electric Current

(d) [552.238-91](#) Marking and Documentation Requirements Per Shipment

(e) [552.238-97](#) Parts and Service

(f) [552.238-99](#) Delivery Prices Overseas

(g) [552.238-100](#) Transshipments

(h) [552.238-101](#) Foreign Taxes and Duties

(i) 52.247-34 FOB Destination

(j) 52.247-38 FOB Inland Carrier, Point of Exportation

(k) 52.247-39 FOB Inland Point, Country of Importation

**552.238-99 DELIVERY PRICES OVERSEAS (MAY 2019)**

(a) Prices offered must cover delivery to destinations as provided as follows:

(1) Direct delivery to consignee. F.O.B. Inland Point, Country of Importation (FAR 52.247-39). (Offeror should indicate countries where direct delivery will be provided.)

(2) Delivery to overseas assembly point for transshipment when specified by the ordering activity, if delivery is not covered under paragraph (1), above.

(3) Delivery to the overseas port of entry when delivery is not covered under paragraph (a)(1) or (2) of this section.

(b) Geographic area(s)/countries/zones which are intended to be covered must be identified in the offer.

**52.216-32 TASK-ORDER AND DELIVERY-ORDER OMBUDSMAN (SEP 2019) (ALT I SEP 2019)**

(a) In accordance with [41 U.S.C. 4106](#)(g), the Agency has designated the following task-order and delivery-order Ombudsman for this contract. The Ombudsman must review complaints from the Contractor concerning all task-order and delivery-order actions for this contract and ensure the Contractor is afforded a fair opportunity for consideration in the award of orders, consistent with the procedures in the contract.

[Contracting Officer to insert name, address, telephone number, and email address for the Agency Ombudsman or provide the URL address where this information may be found.]

(b) Consulting an ombudsman does not alter or postpone the timeline for any other process (e.g., protests).

(c) Before consulting with the Ombudsman, the Contractor is encouraged to first address complaints with the Contracting Officer for resolution. When requested by the Contractor, the Ombudsman may keep the identity of the concerned party or entity confidential, unless prohibited by law or agency procedure.

(d) Contracts used by multiple agencies.

(1) This is a contract that is used by multiple agencies. Complaints from Contractors concerning orders placed under contracts used by multiple agencies are primarily reviewed by the task-order and delivery-order Ombudsman for the ordering activity.

(2) The ordering activity has designated the following task-order and delivery-order Ombudsman for this order:

[The ordering activity's contracting officer to insert the name, address, telephone number, and email address for the ordering activity's Ombudsman or provide the URL address where this information may be found.]

(3) Before consulting with the task-order and delivery-order Ombudsman for the ordering activity, the Contractor is encouraged to first address complaints with the ordering activity's Contracting Officer for resolution. When requested by the

Contractor, the task-order and delivery-order Ombudsman for the ordering activity may keep the identity of the concerned party or entity confidential, unless prohibited by law or agency procedure.

End of clause

### **52.219-13 NOTICE OF SET-ASIDE OF ORDERS (MAR 2020)**

(a) The Contracting Officer may set aside orders for the small business concerns identified in 19.000(a)(3).

(b) The Contracting Officer will give notice of the order or orders, if any, to be set aside for small business concerns identified in [19.000\(a\)\(3\)](#) and the applicable small business program. This notice, and its restrictions, will apply only to the specific orders that have been set aside for any of the small business concerns identified in [19.000\(a\)\(3\)](#).

End of clause

### **52.219-6 NOTICE OF TOTAL SMALL BUSINESS SET-ASIDE (MAR 2020)**

(a) *Definition.*

*"Small business concern,"* as used in this clause, means a concern, including its affiliates that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the size standards in this solicitation.

(b) *Applicability.* This clause applies only to —

(1) Contracts that have been totally set aside for small business concerns; and

(2) Orders set aside for small business concerns under multiple-award contracts as described in 8.405-5 and 16.505(b)(2)(i)(F).

(c) *General.*

(1) Offers are solicited only from small business concerns. Offers received from concerns that are not small business concerns shall be considered nonresponsive and will be rejected.

(2) Any award resulting from this solicitation will be made to a small business concern.

End of clause

### **552.238-77 SUBMISSION AND DISTRIBUTION OF AUTHORIZED FEDERAL SUPPLY SCHEDULE PRICE LISTS (MAR 2020)**

(a) The Contractor shall submit its Authorized Federal Supply Schedule Price List on a common-use electronic medium as prescribed by GSA. Some structured data entry in a prescribed format may be required.

(b) Eligible ordering activities will utilize GSA's online shopping and ordering system to review a Contractors' price lists.

End of clause

Note: Regulation 552.238-77

Contractors must follow the detailed guidance and requirements provided in the Contract Requirements and Modification Guidance page ([www.gsa.gov/mascontractrequirements](http://www.gsa.gov/mascontractrequirements)) when submitting electronic data for inclusion on the GSA Advantage! website.

## 52.202-1 DEFINITIONS (JUN 2020)

When a solicitation provision or contract clause uses a word or term that is defined in the Federal Acquisition Regulation (FAR), the word or term has the same meaning as the definition in FAR 2.101 in effect at the time the solicitation was issued, unless-

- (a) The solicitation, or amended solicitation, provides a different definition;
- (b) The contracting parties agree to a different definition;
- (c) The part, subpart, or section of the FAR where the provision or clause is prescribed provides a different meaning;
- (d) The word or term is defined in FAR part 31, for use in the cost principles and procedures; or
- (e) The word or term defines an acquisition-related threshold, and if the threshold is adjusted for inflation as set forth in FAR 1.109(a), then the changed threshold applies throughout the remaining term of the contract, unless there is a subsequent threshold adjustment; see FAR 1.109(d).

## 52.204-10 REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS (JUN 2020)

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

“Executive” means officers, managing partners, or any other employees in management positions.

“First-tier subcontract” means a subcontract awarded directly by the Contractor for the purpose of acquiring supplies or services (including construction) for performance of a prime contract. It does not include the Contractor’s supplier agreements with vendors, such as long-term arrangements for materials or supplies that benefit multiple contracts and/or the costs of which are normally applied to a Contractor’s general and administrative expenses or indirect costs.

“Month of award” means the month in which a contract is signed by the Contracting Officer or the month in which a first-tier subcontract is signed by the Contractor.

“Total compensation” means the cash and noncash dollar value earned by the executive during the Contractor’s preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

(1) *Salary and bonus*.

(2) *Awards of stock, stock options, and stock appreciation rights*. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Financial Accounting Standards Board’s Accounting Standards Codification (FASB ASC) 718, Compensation-Stock Compensation.

(3) *Earnings for services under non-equity incentive plans*. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

(4) *Change in pension value*. This is the change in present value of defined benefit and actuarial

pension plans.

(5) *Above-market earnings on deferred compensation which is not tax-qualified.*

(6) Other compensation, if the aggregate value of all such other compensation (e.g., severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

(b) Section 2(d)(2) of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282), as amended by section 6202 of the Government Funding Transparency Act of 2008 (Pub. L. 110-252), requires the Contractor to report information on subcontract awards. The law requires all reported information be made public, therefore, the Contractor is responsible for notifying its subcontractors that the required information will be made public.

(c) Nothing in this clause requires the disclosure of classified information.

(d) (1) Executive compensation of the prime contractor. As a part of its annual registration requirement in the System for Award Management (SAM) database (Federal Acquisition Regulation (FAR) provision 52.204-7), the Contractor shall report the names and total compensation of each of the five most highly compensated executives for its preceding completed fiscal year, if –

(i) In the Contractor's preceding fiscal year, the Contractor received –

(A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and

(B) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and

(ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 ([15 U.S.C. 78m\(a\), 78o\(d\)](#)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>).

(2) *First-tier subcontract information.* Unless otherwise directed by the Contracting Officer, or as provided in paragraph (g) of this clause, by the end of the month following the month of award of a first-tier subcontract valued at or above the threshold specified in FAR 4.1403(a) on the date of subcontract award, the Contractor shall report the following information at <http://www.frsr.gov> for that first-tier subcontract. (The Contractor shall follow the instructions at <http://www.frsr.gov> to report the data.)

(i) Unique entity identifier for the subcontractor receiving the award and for the subcontractor's parent company, if the subcontractor has a parent company.

(ii) Name of the subcontractor.

(iii) Amount of the subcontract award.

(iv) Date of the subcontract award.

(v) A description of the products or services (including construction) being provided under the subcontract, including the overall purpose and expected outcomes or results of the subcontract.

(vi) Subcontract number (the subcontract number assigned by the Contractor).

- (vii) Subcontractor's physical address including street address, city, state, and country. Also include the nine-digit zip code and congressional district.
- (viii) Subcontractor's primary performance location including street address, city, state, and country. Also include the nine-digit zip code and congressional district.
- (ix) The prime contract number, and order number if applicable.
- (x) Awarding agency name and code.
- (xi) Funding agency name and code.
- (xii) Government contracting office code.
- (xiii) Treasury account symbol (TAS) as reported in FPDS.
- (xiv) The applicable North American Industry Classification System code (NAICS).

(3) *Executive compensation of the first-tier subcontractor.* Unless otherwise directed by the Contracting Officer, by the end of the month following the month of award of a first-tier subcontract valued at or above the threshold specified in FAR 4.1403(a) on the date of subcontract award, and annually thereafter (calculated from the prime contract award date), the Contractor shall report the names and total compensation of each of the five most highly compensated executives for that first-tier subcontractor for the first-tier subcontractor's preceding completed fiscal year at <http://www.fsrs.gov>, if -

- (i) In the subcontractor's preceding fiscal year, the subcontractor received –
  - (A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and
  - (B) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and
- (ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)
- (e) The Contractor shall not split or break down first-tier subcontract awards to a value below the threshold specified in FAR 4.1403(a), on the date of subcontract award to avoid the reporting requirements in paragraph (d) of this clause.
- (f) The Contractor is required to report information on a first-tier subcontract covered by paragraph (d) when the subcontract is awarded. Continued reporting on the same subcontract is not required unless one of the reported data elements changes during the performance of the subcontract. The Contractor is not required to make further reports after the first-tier subcontract expires.
- (g) (1) If the Contractor in the previous tax year had gross income, from all sources, under \$300,000, the Contractor is exempt from the requirement to report subcontractor awards.
  - (2) If a subcontractor in the previous tax year had gross income from all sources under \$300,000, the Contractor does not need to report awards for that subcontractor.
- (h) The FSRS database at <http://www.fsrs.gov> will be prepopulated with some information from SAM and FPDS databases. If FPDS information is incorrect, the contractor should notify the contracting officer. If the SAM database information is incorrect, the contractor is responsible for correcting this

information.

## **52.204-18 COMMERCIAL AND GOVERNMENT ENTITY CODE MAINTENANCE (AUG 2020)**

(a) *Definition.* As used in this clause-

*Commercial and Government Entity (CAGE) code* means-

(1) An identifier assigned to entities located in the United States or its outlying areas by the Defense Logistics Agency (DLA) Commercial and Government Entity (CAGE) Branch to identify a commercial or government entity by unique location; or

(2) An identifier assigned by a member of the North Atlantic Treaty Organization (NATO) or by the NATO Support and Procurement Agency (NSPA) to entities located outside the United States and its outlying areas that the DLA Commercial and Government Entity (CAGE) Branch records and maintains in the CAGE master file. This type of code is known as a NATO CAGE (NCAGE) code.

(b) Contractors shall ensure that the CAGE code is maintained throughout the life of the contract for each location of contract, including subcontract, performance. For contractors registered in the System for Award Management (SAM), the DLA Commercial and Government Entity (CAGE) Branch shall only modify data received from SAM in the CAGE master file if the contractor initiates those changes via update of its SAM registration. Contractors undergoing a novation or change-of-name agreement shall notify the contracting officer in accordance with [subpart 42.12](#). The contractor shall communicate any change to the CAGE code to the contracting officer within 30 days after the change, so that a modification can be issued to update the CAGE code on the contract.

(c) Contractors located in the United States or its outlying areas that are not registered in SAM shall submit written change requests to the DLA Commercial and Government Entity (CAGE) Branch. Requests for changes shall be provided at <https://cage.dla.mil>. Change requests to the CAGE master file are accepted from the entity identified by the code.

(d) Contractors located outside the United States and its outlying areas that are not registered in SAM shall contact the appropriate National Codification Bureau (points of contact available at <http://www.nato.int/structur/AC/135/main/links/contacts.htm>) or NSPA at <https://eportal.nspa.nato.int/AC135Public/scage/CageList.aspx> to request CAGE changes.

(e) Additional guidance for maintaining CAGE codes is available at <https://cage.dla.mil>.

(f) If the contract includes Federal Acquisition Regulation clause 52.204-2, Security Requirements, the contractor shall ensure that subcontractors maintain their CAGE code(s) throughout the life of the contract.

## **52.222-36 EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES (JUN 2020)**

(a) *Equal opportunity clause.* The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60-741.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by the Contractor to employ and advance in employment qualified individuals with disabilities.

(b) *Subcontracts.* The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of the threshold specified in Federal Acquisition Regulation (FAR) 22.1408(a) on the date of subcontract award, unless exempted by rules, regulations, or orders of the Secretary, so that such provisions will be binding upon each subcontractor or vendor. The Contractor shall act as

specified by the Director, Office of Federal Contract Compliance Programs of the U.S. Department of Labor, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

### **52.222-35 EQUAL OPPORTUNITY FOR VETERANS (JUN 2020)**

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

“Active duty wartime or campaign badge veteran,” “Armed Forces service medal veteran,” “disabled veteran,” “protected veteran,” “qualified disabled veteran,” and “recently separated veteran” have the meanings given at Federal Acquisition Regulation (FAR) 22.1301.

(b) *Equal opportunity clause.* The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60-300.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified protected veterans, and requires affirmative action by the Contractor to employ and advance in employment qualified protected veterans.

(c) *Subcontracts.* The Contractor shall insert the terms of this clause in subcontracts valued at or above the threshold specified in FAR 22.1303(a) on the date of subcontract award, unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

### **52.222-37 EMPLOYMENT REPORTS ON VETERANS (JUN 2020)**

(a) *Definitions.* As used in this clause, “active duty wartime or campaign badge veteran,” “Armed Forces service medal veteran,” “disabled veteran,” “protected veteran,” and “recently separated veteran,” have the meanings given in Federal Acquisition Regulation (FAR) 22.1301.

(b) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on-

(1) The total number of employees in the contractor’s workforce, by job category and hiring location, who are protected veterans (*i.e.*, active duty wartime or campaign badge veterans, Armed Forces service medal veterans, disabled veterans, and recently separated veterans);

(2) The total number of new employees hired during the period covered by the report, and of the total, the number of protected veterans (*i.e.*, active duty wartime or campaign badge veterans, Armed Forces service medal veterans, disabled veterans, and recently separated veterans); and

(3) The maximum number and minimum number of employees of the Contractor or subcontractor at each hiring location during the period covered by the report.

(c) The Contractor shall report the above items by filing the VETS-4212 “Federal Contractor Veterans’ Employment Report” (see “VETS-4212 Federal Contractor Reporting” and “Filing Your VETS-4212 Report” at <http://www.dol.gov/vets/vets4212.htm>).

(d) The Contractor shall file VETS-4212 Reports no later than September 30 of each year.

(e) The employment activity report required by paragraphs (b)(2) and (b)(3) of this clause shall reflect total new hires, and maximum and minimum number of employees, during the most recent 12-month period preceding the ending date selected for the report. Contractors may select an ending date-

(1) As of the end of any pay period between July 1 and August 31 of the year the report is due; or

(2) As of December 31, if the Contractor has prior written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(f) The number of veterans reported must be based on data known to the contractor when completing the VETS-4212. The contractor's knowledge of veterans status may be obtained in a variety of ways, including an invitation to applicants to self-identify (in accordance with 41 CFR 60-300.42), voluntary self-disclosure by employees, or actual knowledge of veteran status by the contractor. This paragraph does not relieve an employer of liability for discrimination under 38 U.S.C. 4212.

(g) The Contractor shall insert the terms of this clause in subcontracts valued at or above the threshold specified in FAR 22.1303(a) on the date of subcontract award, unless exempted by rules, regulations, or orders of the Secretary of Labor.

### **52.223-15 Energy Efficiency in Energy-Consuming Products (MAY 2020)**

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

Energy-efficient product--

(1) Means a product that--

(i) Meets Department of Energy and Environmental Protection Agency criteria for use of the Energy Star trademark label; or

(ii) Is in the upper 25 percent of efficiency for all similar products as designated by the Department of Energy's Federal Energy Management Program.

(2) The term "product" does not include any energy-consuming product or system designed or procured for combat or combat-related missions (42 U.S.C. 8259b).

(b) The Contractor shall ensure that energy-consuming products are energy efficient products (i.e., ENERGY STAR® products or FEMP-designated products) at the time of contract award, for products that are--

(1) Delivered;

(2) Acquired by the Contractor for use in performing services at a Federally-controlled facility;

(3) Furnished by the Contractor for use by the Government; or

(4) Specified in the design of a building or work, or incorporated during its construction, renovation, or maintenance.

(c) The requirements of paragraph (b) apply to the Contractor (including any subcontractor) unless--

(1) The energy-consuming product is not listed in the ENERGY STAR® Program or FEMP; or

(2) Otherwise approved in writing by the Contracting Officer.

(d) Information about these products is available for--

(1) ENERGY STAR® at <http://www.energystar.gov/products>; and

(2) FEMP at

<https://www.energy.gov/eere/femp/energy-efficient-products-and-energy-saving-technologies>

**52.225-19 Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission Outside the United States (MaY 2020)**

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

*Chief of mission* means the principal officer in charge of a diplomatic mission of the United States or of a United States office abroad which is designated by the Secretary of State as diplomatic in nature, including any individual assigned under section 502(c) of the Foreign Service Act of 1980 (Pub. L. 96-465) to be temporarily in charge of such a mission or office.

*Combatant commander* means the commander of a unified or specified combatant command established in accordance with 10 U.S.C. 161. Designated operational area means a geographic area designated by the combatant commander or subordinate joint force commander for the conduct or support of specified military operations.

*Supporting a diplomatic or consular mission* means performing outside the United States under a contract administered by Federal agency personnel who are subject to the direction of a chief of mission.

(b) *General.*

(1) This clause applies when Contractor personnel are required to perform outside the United States--

(i) In a designated operational area during--

(A) Contingency operations;

(B) Humanitarian or peacekeeping operations; or

(C) Other military operations; or military exercises, when designated by the Combatant Commander; or

(ii) When supporting a diplomatic or consular mission--

(A) That has been designated by the Department of State as a danger pay post (see <https://aoprls.state.gov/>); or

(B) That the Contracting Officer has indicated is subject to this clause.

(2) Contract performance may require work in dangerous or austere conditions. Except as otherwise provided in the contract, the Contractor accepts the risks associated with required contract performance in such operations.

(3) Contractor personnel are civilians.

(i) Except as provided in paragraph (b)(3)(ii) of this clause, and in accordance with paragraph (i)(3) of this clause, Contractor personnel are only authorized to use deadly force in self-defense.

(ii) Contractor personnel performing security functions are also authorized to use deadly force when use of such force reasonably appears necessary to execute their security mission to protect assets/persons, consistent with the terms and conditions contained in the contract or with their job description and terms of employment.

(4) Service performed by Contractor personnel subject to this clause is not active duty or service under 38 U.S.C. 106 note.

(c) *Support.* Unless specified elsewhere in the contract, the Contractor is responsible for all logistical and security support required for Contractor personnel engaged in this contract.

(d) *Compliance with laws and regulations.* The Contractor shall comply with, and shall ensure that its personnel in the designated operational area or supporting the diplomatic or consular mission are familiar with and comply with, all applicable--

(1) United States, host country, and third country national laws;

(2) Treaties and international agreements;

(3) United States regulations, directives, instructions, policies, and procedures; and

(4) Force protection, security, health, or safety orders, directives, and instructions issued by the Chief of Mission or the Combatant Commander; however, only the Contracting Officer is authorized to modify the terms and conditions of the contract.

(e) *Preliminary personnel requirements.*

(1) Specific requirements for paragraphs (e)(2)(i) through (e)(2)(vi) of this clause will be set forth in the statement of work, or elsewhere in the contract.

(2) Before Contractor personnel depart from the United States or a third country, and before Contractor personnel residing in the host country begin contract performance in the designated operational area or supporting the diplomatic or consular mission, the Contractor shall ensure the following:

(i) All required security and background checks are complete and acceptable.

(ii) All personnel are medically and physically fit and have received all required vaccinations.

(iii) All personnel have all necessary passports, visas, entry permits, and other documents required for Contractor personnel to enter and exit the foreign country, including those required for in-transit countries.

(iv) All personnel have received--

(A) A country clearance or special area clearance, if required by the chief of mission; and

(B) Theater clearance, if required by the Combatant Commander.

(v) All personnel have received personal security training. The training must at a minimum--

(A) Cover safety and security issues facing employees overseas;

(B) Identify safety and security contingency planning activities; and

(C) Identify ways to utilize safety and security personnel and other resources appropriately.

(vi) All personnel have received isolated personnel training, if specified in the contract.

Isolated personnel are military or civilian personnel separated from their unit or organization in an environment requiring them to survive, evade, or escape while awaiting rescue or recovery.

(vii) All personnel who are U.S. citizens are registered with the U.S. Embassy or Consulate with jurisdiction over the area of operations on-line at <http://www.travel.state.gov>.

(3) The Contractor shall notify all personnel who are not a host country national or ordinarily resident in the host country that--

(i) If this contract is with the Department of Defense, or the contract relates to supporting the mission of the Department of Defense outside the United States, such employees, and dependents residing with such employees, who engage in conduct outside the United States that would constitute an offense punishable by imprisonment for more than one year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States, may potentially be subject to the criminal jurisdiction of the United States (see the Military Extraterritorial Jurisdiction Act of 2000 (18 U.S.C. 3261 et seq.);

(ii) Pursuant to the War Crimes Act, 18 U.S.C. 2441, Federal criminal jurisdiction also extends to conduct that is determined to constitute a war crime when committed by a civilian national of the United States; and

(iii) Other laws may provide for prosecution of U.S. nationals who commit offenses on the premises of United States diplomatic, consular, military or other United States Government missions outside the United States (18 U.S.C. 7(9)).

(f) *Processing and departure points.* The Contractor shall require its personnel who are arriving from outside the area of performance to perform in the designated operational area or supporting the diplomatic or consular mission to--

(1) Process through the departure center designated in the contract or complete another process as directed by the Contracting Officer;

(2) Use a specific point of departure and transportation mode as directed by the Contracting Officer; and

(3) Process through a reception center as designated by the Contracting Officer upon arrival at the place of performance.

(g) *Personnel data.*

(1) Unless personnel data requirements are otherwise specified in the contract, the Contractor shall establish and maintain with the designated Government official a current list of all Contractor personnel in the areas of performance. The Contracting Officer will inform the Contractor of the Government official designated to receive this data and the appropriate system to use for this effort.

(2) The Contractor shall ensure that all employees on this list have a current record of emergency data, for notification of next of kin, on file with both the Contractor and the designated Government official.

(h) *Contractor personnel.* The Contracting Officer may direct the Contractor, at its own expense, to remove and replace any Contractor personnel who fail to comply with or violate applicable requirements of this contract. Such action may be taken at the Government's discretion without prejudice to its rights under any other provision of this contract, including termination for default or cause.

(i) *Weapons.*

(1) If the Contracting Officer, subject to the approval of the Combatant Commander or the Chief of Mission, authorizes the carrying of weapons--

(i) The Contracting Officer may authorize an approved Contractor to issue Contractor-owned weapons and ammunition to specified employees; or

(ii) The To be determined at the task order level [*Contracting Officer to specify individual, e.g., Contracting Officer Representative, Regional Security Officer, etc.*] may issue Government-furnished weapons and ammunition to the Contractor for issuance to specified Contractor employees.

(2) The Contractor shall provide to the Contracting Officer a specific list of personnel for whom authorization to carry a weapon is requested.

(3) The Contractor shall ensure that its personnel who are authorized to carry weapons--

(i) Are adequately trained to carry and use them--

(A) Safely;

(B) With full understanding of, and adherence to, the rules of the use of force issued by the Combatant Commander or the Chief of Mission; and

(C) In compliance with applicable agency policies, agreements, rules, regulations, and other applicable law;

(ii) Are not barred from possession of a firearm by 18 U.S.C. 922; and

(iii) Adhere to all guidance and orders issued by the Combatant Commander or the Chief of Mission regarding possession, use, safety, and accountability of weapons and ammunition.

(4) Upon revocation by the Contracting Officer of the Contractor's authorization to possess weapons, the Contractor shall ensure that all Government-furnished weapons and unexpended ammunition are returned as directed by the Contracting Officer.

(5) Whether or not weapons are Government-furnished, all liability for the use of any weapon by Contractor personnel rests solely with the Contractor and the Contractor employee using such weapon.

(j) *Vehicle or equipment licenses.* Contractor personnel shall possess the required licenses to operate all vehicles or equipment necessary to perform the contract in the area of performance.

(k) *Military clothing and protective equipment.*

(1) Contractor personnel are prohibited from wearing military clothing unless specifically authorized by the Combatant Commander. If authorized to wear military clothing, Contractor personnel must wear distinctive patches, armbands, nametags, or headgear, in order to be distinguishable from military personnel, consistent with force protection measures.

(2) Contractor personnel may wear specific items required for safety and security, such as ballistic, nuclear, biological, or chemical protective equipment.

(l) *Evacuation.*

(1) If the Chief of Mission or Combatant Commander orders a mandatory evacuation of some or all personnel, the Government will provide to United States and third country national Contractor personnel the level of assistance provided to private United States citizens.

(2) In the event of a non-mandatory evacuation order, the Contractor shall maintain personnel on location sufficient to meet contractual obligations unless instructed to evacuate by the Contracting Officer.

(m) *Personnel recovery.*

(1) In the case of isolated, missing, detained, captured or abducted Contractor personnel, the Government will assist in personnel recovery actions.

(2) Personnel recovery may occur through military action, action by non-governmental organizations, other Government-approved action, diplomatic initiatives, or through any combination of these options.

(3) The Department of Defense has primary responsibility for recovering DoD contract service employees and, when requested, will provide personnel recovery support to other agencies in accordance with DoD Directive 2310.2, Personnel Recovery.

(n) *Notification and return of personal effects.*

(1) The Contractor shall be responsible for notification of the employee-designated next of kin, and notification as soon as possible to the U.S. Consul responsible for the area in which the event occurred, if the employee--

(i) Dies;

(ii) Requires evacuation due to an injury; or

(iii) Is isolated, missing, detained, captured, or abducted.

(2) The Contractor shall also be responsible for the return of all personal effects of deceased or missing Contractor personnel, if appropriate, to next of kin.

(o) *Mortuary affairs.* Mortuary affairs for Contractor personnel who die in the area of performance will be handled as follows:

(1) If this contract was awarded by DoD, the remains of Contractor personnel will be handled in accordance with DoD Directive 1300.22, Mortuary Affairs Policy.

(2) (i) If this contract was awarded by an agency other than DoD, the Contractor is responsible for the return of the remains of Contractor personnel from the point of identification of the remains to the location specified by the employee or next of kin, as applicable, except as provided in paragraph (o)(2)(ii) of this clause.

(ii) In accordance with 10 U.S.C. 1486, the Department of Defense may provide, on a reimbursable basis, mortuary support for the disposition of remains and personal effects of all U.S. citizens upon the request of the Department of State.

(p) *Changes.* In addition to the changes otherwise authorized by the Changes clause of this contract, the Contracting Officer may, at any time, by written order identified as a change order, make changes in place of performance or Government-furnished facilities, equipment, material, services, or site. Any change order issued in accordance with this paragraph shall be subject to the provisions of the Changes clause of this contract.

(q) *Subcontracts*. The Contractor shall incorporate the substance of this clause, including this paragraph (q), in all subcontracts that require subcontractor personnel to perform outside the United States--

- (1) In a designated operational area during--
  - (i) Contingency operations;
  - (ii) Humanitarian or peacekeeping operations; or
  - (iii) Other military operations; or military exercises, when designated by the Combatant Commander; or
- (2) When supporting a diplomatic or consular mission--
  - (i) That has been designated by the Department of State as a danger pay post (see <https://aoprls.state.gov/>); or
  - (ii) That the Contracting Officer has indicated is subject to this clause.

#### **52.216-18 ORDERING (AUG 2020)**

- (a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule. Such orders may be issued from TBD through TBD.
- (b) All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, the contract shall control.
- (c) A delivery order or task order is considered "issued" when--
  - (1) If sent by mail (includes transmittal by U.S. mail or private delivery service), the Government deposits the order in the mail;
  - (2) If sent by fax, the Government transmits the order to the Contractor's fax number; or
  - (3) If sent electronically, the Government either--
    - (i) Posts a copy of the delivery order or task order to a Government document access system, and notice is sent to the Contractor; or
    - (ii) Distributes the delivery order or task order via email to the Contractor's email address.
- (d) Orders may be issued by methods other than those enumerated in this clause only if authorized in the contract.

#### **52.228-3 WORKER'S COMPENSATION INSURANCE (DEFENSE BASE ACT) (JUL 2014)**

- (a) The Contractor shall
  - (1) Before commencing performance under this contract, establish provisions to provide for the payment of disability compensation and medical benefits to covered employees and death benefits to their eligible survivors, by purchasing workers' compensation insurance or qualifying as a self-insurer under the Longshore and Harbor Workers' Compensation Act ([33 U.S.C. 932](#)) as extended by the Defense Base Act ([42 U.S.C. 1651, et seq.](#)), and continue to maintain provisions to provide such Defense Base Act benefits until contract performance is completed;

- (2) Within ten days of an employee's injury or death or from the date the Contractor has knowledge of the injury or death, submit Form LS-202 (Employee's First Report of Injury or Occupational Illness) to the Department of Labor in accordance with the Longshore and Harbor Workers' Compensation Act ([33 U.S.C. 930](#)(a), 20 CFR 702.201 to 702.203);
- (3) Pay all compensation due for disability or death within the time frames required by the Longshore and Harbor Workers' Compensation Act ([33 U.S.C. 914](#), 20 CFR 702.231 and 703.232);
- (4) Provide for medical care as required by the Longshore and Harbor Workers' Compensation Act ([33 U.S.C. 907](#), 20 CFR 702.402 and 702.419);
- (5) If controverting the right to compensation, submit Form LS-207 (Notice of Controversy of Right to Compensation) to the Department of Labor in accordance with the Longshore and Harbor Workers' Compensation Act ([33 U.S.C. 914](#)(d), 20 CFR 702.251);
- (6) Immediately upon making the first payment of compensation in any case, submit Form LS-206 (Payment Of Compensation Without Award) to the Department of Labor in accordance with the Longshore and Harbor Workers' Compensation Act ([33 U.S.C. 914](#)(c), 20 CFR 702.234);
- (7) When payments are suspended or when making the final payment, submit Form LS-208 (Notice of Final Payment or Suspension of Compensation Payments) to the Department of Labor in accordance with the Longshore and Harbor Workers' Compensation Act ([33 U.S.C. 914](#)(c) and (g), 20 CFR 702.234 and 702.235); and
- (8) Adhere to all other provisions of the Longshore and Harbor Workers' Compensation Act as extended by the Defense Base Act, and Department of Labor regulations at 20 CFR Parts 701 to 704.

(b) For additional information on the Longshore and Harbor Workers' Compensation Act requirements see <http://www.dol.gov/owcp/dlhwcl/lsda.htm>.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts to which the Defense Base Act applies.

(End of clause)

(Note: This is an FSS reproduction using word processing software) **STANDARD FORM 1449 (10-95) (BACK)**

#### **52.204-2 SECURITY REQUIREMENTS (MAR 2021)**

- (a) This clause applies to the extent that this contract involves access to information classified "Confidential," "Secret," or "Top Secret."
- (b) The Contractor shall comply with –
  - (1) The Security Agreement ([DD Form 441](#)), including the National Industrial Security Program Operating Manual (32 CFR part 117); and
  - (2) Any revisions to that manual, notice of which has been furnished to the Contractor.
- (c) If, subsequent to the date of this contract, the security classification or security requirements under this contract are changed by the Government and if the changes cause an increase or decrease in security costs or otherwise affect any other term or condition of this contract, the contract shall be subject to an equitable adjustment as if the changes were directed under the Changes clause of this contract.
- (d) The Contractor agrees to insert terms that conform substantially to the language of this clause, including this paragraph (d) but excluding any reference to the Changes clause of this contract, in all subcontracts under this contract that involve access to classified information.

**52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES  
(FEB 2021)**

(a) Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.

(b) Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from Burma or North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at <https://home.treasury.gov/policy-issues/financial-sanctions/specially-designated-nationals-and-blocked-persons-list-sdn-human-readable-lists>. More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 CFR chapter V and/or on OFAC's Web site at <https://home.treasury.gov/policy-issues/office-of-foreign-assets-control-sanctions-programs-and-information>.

(c) The Contractor shall insert this clause, including this paragraph (c), in all subcontracts.

**552.238-80 INDUSTRIAL FUNDING FEE AND SALES REPORTING (JUL 2020)**

(a) *Reporting of Federal Supply Schedule Sales.* The Contractor shall report all contract sales under this contract as follows:

(1) The Contractor shall accurately report the dollar value, in U.S. dollars and rounded to the nearest whole dollar, of all sales under this contract by calendar quarter (January 1-March 31, April 1- June 30, July 1-September 30, and October 1-December 31). The dollar value of a sale is the price paid by the Schedule user for products and services on a Schedule task or delivery order. The reported contract sales value shall include the Industrial Funding Fee (IFF). The Contractor shall maintain a consistent accounting method of sales reporting, based on the Contractor's established commercial accounting practice. The acceptable points at which sales may be reported include-

(i) Receipt of order;

(ii) Shipment or delivery, as applicable;

(iii) Issuance of an invoice; or

(iv) Payment.

(2) Contract sales shall be reported to Federal Acquisition Services (FAS) within 30 calendar days following the completion of each reporting quarter. The Contractor shall continue to furnish quarterly reports, including "zero" sales, through physical completion of the last outstanding task order or delivery order of the contract.

(3) Reportable sales under the contract are those resulting from sales of contract items to authorized users unless the purchase was conducted pursuant to a separate contracting authority such as a Governmentwide Acquisition Contract (GWAC); a separately awarded FAR Part 12, FAR Part 13, FAR Part 14, or FAR Part 15 procurement; or a non-FAR contract. Sales made to state and local governments under Cooperative Purchasing authority shall be counted as reportable sales for IFF purposes.

(4) The Contractor shall electronically report the quarterly dollar value of sales, including "zero" sales, by utilizing the automated reporting system at an Internet website designated by the

General Services Administration (GSA)'s Federal Acquisition Service (FAS). Prior to using this automated system, the Contractor shall complete contract registration with the FAS Vendor Support Center (VSC). The website address, as well as registration instructions and reporting procedures, will be provided at the time of award. The Contractor shall report sales separately for each National Stock Number (NSN), Special Item Number (SIN), or sub-item.

(5) The Contractor shall convert the total value of sales made in foreign currency to U.S. dollars using the "Treasury Reporting Rates of Exchange" issued by the U.S. Department of Treasury, Financial Management Service. The Contractor shall use the issue of the Treasury report in effect on the last day of the calendar quarter. The report is available from Financial Management Service, International Funds Branch, Telephone: (202) 874-7994, Internet: [http://www.fiscal.treasury.gov/fsreports/rpt/treasRptRateExch/treasRptRateExch\\_home.htm](http://www.fiscal.treasury.gov/fsreports/rpt/treasRptRateExch/treasRptRateExch_home.htm).

(b) The Contractor shall remit the IFF at the rate set by GSA's FAS.

(1) The Contractor shall remit the IFF to FAS in U.S. dollars within 30 calendar days after the end of the reporting quarter; final payment shall be remitted within 30 days after physical completion of the last outstanding task order or delivery order of the contract.

(2) The IFF represents a percentage of the total quarterly sales reported. This percentage is set at the discretion of GSA's FAS. GSA's FAS has the unilateral right to change the percentage at any time, but not more than once per year. FAS will provide reasonable notice prior to the effective date of the change. The IFF reimburses FAS for the costs of operating the Federal Supply Schedules Program. FAS recoups its operating costs from ordering activities as set forth in 40 U.S.C. 321: Acquisition Services Fund. Net operating revenues generated by the IFF are also applied to fund initiatives benefitting other authorized FAS programs, in accordance with 40 U.S.C. 321. Offerors must include the IFF in their prices. The fee is included in the award price(s) and reflected in the total amount charged to ordering activities. FAS will post notice of the current IFF at <https://srp.fas.gsa.gov/> or successor website as appropriate.

(c) Within 60 days of award, an FAS representative will provide the Contractor with specific written procedural instructions on remitting the IFF. FAS reserves the unilateral right to change such instructions from time to time, following notification to the Contractor.

(d) Failure to remit the full amount of the IFF within 30 calendar days after the end of the applicable reporting period constitutes a contract debt to the United States Government under the terms of FAR Subpart 32.6. The Government may exercise all rights under the Debt Collection Improvement Act of 1996, including withholding or setting off payments and interest on the debt (see FAR clause 52.232-17, Interest). Should the Contractor fail to submit the required sales reports, falsify them, or fail to timely pay the IFF, this is sufficient cause for the Government to terminate the contract for cause.

End of Clause

Note: Regulation 552.238-80

FSS contractors are required to report sales and remit IFF for Schedule items sold via FedMall, just as they would for any other Schedule sale. FedMall sales of Schedule items are treated no differently than sales earned via GSA Advantage! or from orders directly placed by an ordering activity.

This clause does not apply to contracts participating in the Transactional Data Reporting (TDR) Pilot. Please refer to clause 552.238-80 Alternate I.

### 52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND

## MATERIAL SAFETY DATA (FEB 2021) (ALTERNATE I - JUL 1995)

(a) Hazardous material, as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract).

(b) The offeror must list any hazardous material, as defined in paragraph (a) of this clause, to be delivered under this contract. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number. This information shall also be included on the Material Safety Data Sheet submitted under this contract.

Material (if none insert <i>None</i> )	Identification No.

(c) This list must be updated during performance of the contract whenever the Contractor determines that any other material to be delivered under this contract is hazardous.

(d) The apparently successful offeror agrees to submit, for each item as required prior to award, a Material Safety Data Sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous material identified in paragraph (b) of this clause. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently successful offeror is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful offeror being considered nonresponsible and ineligible for award.

(e) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (d) of this clause, the Contractor shall promptly notify the Contracting Officer and resubmit the data.

(f) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.

(g) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.

(h) The Government's rights in data furnished under this contract with respect to hazardous material are as follows:

(1) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to—

(i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;

(ii) Obtain medical treatment for those affected by the material; and

(iii) Have others use, duplicate, and disclose the data for the Government for these purposes.

(2) To use, duplicate, and disclose data furnished under this clause, in accordance with subparagraph (h)(1) of this clause, in precedence over any other clause of this contract providing for rights in data.

(3) The Government is not precluded from using similar or identical data acquired from other sources.

(i) Except as provided in paragraph (i)(2) the Contractor shall prepare and submit a sufficient number of Material Safety Data Sheets (MSDS's), meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous materials identified in paragraph (b) of this clause.

(1) For items shipped to consignees, the Contractor shall include a copy of the MSDS with the packing list or other suitable shipping document which accompanies each shipment. Alternatively, the Contractor is permitted to transmit MSDS's to consignees in advance of receipt of shipments by consignees, if authorized in writing by the Contracting Officer.

(2) For items shipped to consignees identified by mailing address as agency depots, distribution centers or customer supply centers, the Contractor shall provide one copy of the MSDS's in or on each shipping container. If affixed to the outside of each container, the MSDS must be placed in a weather resistant envelope.

Note: Regulation 52.223-3

Safety Data Sheets, hazardous material labels and other relevant data should not be submitted to the MAS Contracting Officer. This information should be provided directly to the ordering activity in accordance with this clause.

#### **552.252-6 AUTHORIZED DEVIATIONS IN CLAUSES (NOV 2021) (DEVIATION FAR 52.252-6)**

(a) Deviations to FAR clauses. This solicitation or contract identifies any authorized deviation to a Federal Acquisition Regulation (FAR) (48 CFR chapter 1) clause by the addition of "(DEVIATION FAR (clause number))" after the date of the clause.

(b) Deviations to GSAR clauses. This solicitation or contract identifies any authorized deviation to a General Services Administration Acquisition Regulation (GSAR) (48 CFR chapter 5) clause by the addition of "(DEVIATION)" after the date of the clause.

(c) "Substantially the same as" clauses. Changes in wording of clauses prescribed for use on a "substantially the same as" basis are not considered deviations.

(End of Clause)

#### **52.245-1 GOVERNMENT PROPERTY (SEP 2021)**

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

*Cannibalize* means to remove parts from Government property for use or for installation on other Government property.

*Contractor-acquired property* means property acquired, fabricated, or otherwise provided by the Contractor for performing a contract, and to which the Government has title.

*Contractor inventory* means-

(1) Any property acquired by and in the possession of a Contractor or subcontractor under a

contract for which title is vested in the Government and which exceeds the amounts needed to complete full performance under the entire contract;

(2) Any property that the Government is obligated or has the option to take over under any type of contract, e.g., as a result either of any changes in the specifications or plans thereunder or of the termination of the contract (or subcontract thereunder), before completion of the work, for the convenience or at the option of the Government; and

(3) Government-furnished property that exceeds the amounts needed to complete full performance under the entire contract.

*Contractor's managerial personnel* means the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of-

- (1) All or substantially all of the Contractor's business;
- (2) All or substantially all of the Contractor's operation at any one plant or separate location; or
- (3) A separate and complete major industrial operation.

*Demilitarization* means rendering a product unusable for, and not restorable to, the purpose for which it was designed or is customarily used.

*Discrepancies incident to shipment* means any differences (e.g., count or condition) between the items documented to have been shipped and items actually received.

*Equipment* means a tangible item that is functionally complete for its intended purpose, durable, nonexpendable, and needed for the performance of a contract. Equipment is not intended for sale, and does not ordinarily lose its identity or become a component part of another article when put into use. Equipment does not include material, real property, special test equipment or special tooling.

*Government-furnished property* means property in the possession of, or directly acquired by, the Government and subsequently furnished to the Contractor for performance of a contract. Government-furnished property includes, but is not limited to, spares and property furnished for repair, maintenance, overhaul, or modification. Government-furnished property also includes contractor-acquired property if the contractor-acquired property is a deliverable under a cost contract when accepted by the Government for continued use under the contract.

*Government property* means all property owned or leased by the Government. Government property includes both Government-furnished and Contractor-acquired property. Government property includes material, equipment, special tooling, special test equipment, and real property. Government property does not include intellectual property and software.

*Loss of Government property* means unintended, unforeseen or accidental loss, damage or destruction to Government property that reduces the Government's expected economic benefits of the property. Loss of Government property does not include purposeful destructive testing, obsolescence, normal wear and tear or manufacturing defects. Loss of Government property includes, but is not limited to-

- (1) Items that cannot be found after a reasonable search;
- (2) Theft;
- (3) Damage resulting in unexpected harm to property requiring repair to restore the item to usable condition; or
- (4) Destruction resulting from incidents that render the item useless for its intended purpose or

beyond economical repair.

*Material* means property that may be consumed or expended during the performance of a contract, component parts of a higher assembly, or items that lose their individual identity through incorporation into an end item. Material does not include equipment, special tooling, special test equipment or real property.

*Nonseverable* means property that cannot be removed after construction or installation without substantial loss of value or damage to the installed property or to the premises where installed.

*Precious metals* means silver, gold, platinum, palladium, iridium, osmium, rhodium, and ruthenium.

*Production scrap* means unusable material resulting from production, engineering, operations and maintenance, repair, and research and development contract activities. Production scrap may have value when re-melted or reprocessed, e.g., textile and metal clippings, borings, and faulty castings and forgings.

*Property* means all tangible property, both real and personal.

*Property Administrator* means an authorized representative of the Contracting Officer appointed in accordance with agency procedures, responsible for administering the contract requirements and obligations relating to Government property in the possession of a Contractor.

*Property records* means the records created and maintained by the contractor in support of its stewardship responsibilities for the management of Government property.

*Provide* means to furnish, as in Government-furnished property, or to acquire, as in contractor-acquired property.

*Real property* See Federal Management Regulation 102-71.20 (41 CFR 102-71.20).

*Sensitive property* means property potentially dangerous to the public safety or security if stolen, lost, or misplaced, or that shall be subject to exceptional physical security, protection, control, and accountability. Examples include weapons, ammunition, explosives, controlled substances, radioactive materials, hazardous materials or wastes, or precious metals.

*Unit acquisition cost* means-

(1) For Government-furnished property, the dollar value assigned by the Government and identified in the contract; and

(2) For contractor-acquired property, the cost derived from the Contractor's records that reflect consistently applied generally accepted accounting principles.

(b) *Property management.*

(1) The Contractor shall have a system of internal controls to manage (control, use, preserve, protect, repair, and maintain) Government property in its possession. The system shall be adequate to satisfy the requirements of this clause. In doing so, the Contractor shall initiate and maintain the processes, systems, procedures, records, and methodologies necessary for effective and efficient control of Government property. The Contractor shall disclose any significant changes to its property management system to the Property Administrator prior to implementation of the changes. The Contractor may employ customary commercial practices, voluntary consensus standards, or industry-leading practices and standards that provide effective and efficient Government property management that are necessary and appropriate for the performance of this contract (except where inconsistent with law or regulation).

(2) The Contractor's responsibility extends from the initial acquisition and receipt of property, through stewardship, custody, and use until formally relieved of responsibility by authorized means, including delivery, consumption, expending, sale (as surplus property), or other disposition, or via a completed investigation, evaluation, and final determination for lost property. This requirement applies to all Government property under the Contractor's accountability, stewardship, possession or control, including its vendors or subcontractors (see paragraph (f)(1)(v) of this clause).

(3) The Contractor shall include the requirements of this clause in all subcontracts under which Government property is acquired or furnished for subcontract performance.

(4) The Contractor shall establish and maintain procedures necessary to assess its property management system effectiveness and shall perform periodic internal reviews, surveillances, self assessments, or audits. Significant findings or results of such reviews and audits pertaining to Government property shall be made available to the Property Administrator.

*(c) Use of Government property.*

(1) The Contractor shall use Government property, either furnished or acquired under this contract, only for performing this contract, unless otherwise provided for in this contract or approved by the Contracting Officer.

(2) Modifications or alterations of Government property are prohibited, unless they are-

- (i) Reasonable and necessary due to the scope of work under this contract or its terms and conditions;
- (ii) Required for normal maintenance; or
- (iii) Otherwise authorized by the Contracting Officer.

(3) The Contractor shall not cannibalize Government property unless otherwise provided for in this contract or approved by the Contracting Officer.

*(d) Government-furnished property.*

(1) The Government shall deliver to the Contractor the Government-furnished property described in this contract. The Government shall furnish related data and information needed for the intended use of the property. The warranties of suitability of use and timely delivery of Government-furnished property do not apply to property acquired or fabricated by the Contractor as contractor-acquired property and subsequently transferred to another contract with this Contractor.

(2) The delivery and/or performance dates specified in this contract are based upon the expectation that the Government-furnished property will be suitable for contract performance and will be delivered to the Contractor by the dates stated in the contract.

(i) If the property is not delivered to the Contractor by the dates stated in the contract, the Contracting Officer shall, upon the Contractor's timely written request, consider an equitable adjustment to the contract.

(ii) In the event property is received by the Contractor, or for Government-furnished property after receipt and installation, in a condition not suitable for its intended use, the Contracting Officer shall, upon the Contractor's timely written request, advise the Contractor on a course of action to remedy the problem. Such action may include repairing, replacing, modifying, returning, or otherwise disposing of the property at the Government's expense. Upon completion of the required action(s), the Contracting Officer shall consider an equitable adjustment to the contract (see also paragraph (f)(1)(ii)(A) of this clause).

(iii) The Government may, at its option, furnish property in an "as-is" condition. The

Contractor will be given the opportunity to inspect such property prior to the property being provided. In such cases, the Government makes no warranty with respect to the serviceability and/or suitability of the property for contract performance. Any repairs, replacement, and/or refurbishment shall be at the Contractor's expense.

(3)

(i) The Contracting Officer may by written notice, at any time-

- (A) Increase or decrease the amount of Government-furnished property under this contract;
- (B) Substitute other Government-furnished property for the property previously furnished, to be furnished, or to be acquired by the Contractor for the Government under this contract; or
- (C) Withdraw authority to use property.

(ii) Upon completion of any action(s) under paragraph (d)(3)(i) of this clause, and the Contractor's timely written request, the Contracting Officer shall consider an equitable adjustment to the contract.

(e) *Title to Government property.*

(1) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), is subject to the provisions of this clause. The Government shall retain title to all Government-furnished property. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

(2) Title vests in the Government for all property acquired or fabricated by the Contractor in accordance with the financing provisions or other specific requirements for passage of title in the contract. Under fixed price type contracts, in the absence of financing provisions or other specific requirements for passage of title in the contract, the Contractor retains title to all property acquired by the Contractor for use on the contract, except for property identified as a deliverable end item. If a deliverable item is to be retained by the Contractor for use after inspection and acceptance by the Government, it shall be made accountable to the contract through a contract modification listing the item as Government-furnished property.

(3) *Title under Cost-Reimbursement or Time-and-Material Contracts or Cost-Reimbursable line items under Fixed-Price contracts.*

(i) Title to all property purchased by the Contractor for which the Contractor is entitled to be reimbursed as a direct item of cost under this contract shall pass to and vest in the Government upon the vendor's delivery of such property.

(ii) Title to all other property, the cost of which is reimbursable to the Contractor, shall pass to and vest in the Government upon-

- (A) Issuance of the property for use in contract performance;
- (B) Commencement of processing of the property for use in contract performance; or
- (C) Reimbursement of the cost of the property by the Government, whichever occurs first.

(f) *Contractor plans and systems.*

(1) Contractors shall establish and implement property management plans, systems, and procedures at the contract, program, site or entity level to enable the following outcomes:

(i) *Acquisition of Property.* The Contractor shall document that all property was acquired consistent with its engineering, production planning, and property control operations.

(ii) *Receipt of Government Property.* The Contractor shall receive Government property and document the receipt, record the information necessary to meet the record requirements of paragraph (f)(1)(iii)(A)(I) through (5) of this clause, identify as Government owned in a manner appropriate to the type of property (e.g., stamp, tag, mark, or other identification), and manage any discrepancies incident to shipment.

(A) *Government-furnished property.* The Contractor shall furnish a written statement to the Property Administrator containing all relevant facts, such as cause or condition and a recommended course(s) of action, if overages, shortages, or damages and/or other discrepancies are discovered upon receipt of Government-furnished property.

(B) *Contractor-acquired property.* The Contractor shall take all actions necessary to adjust for overages, shortages, damage and/or other discrepancies discovered upon receipt, in shipment of Contractor-acquired property from a vendor or supplier, so as to ensure the proper allocability and allowability of associated costs.

(iii) *Records of Government property.* The Contractor shall create and maintain records of all Government property accountable to the contract, including Government-furnished and Contractor-acquired property.

(A) Property records shall enable a complete, current, auditable record of all transactions and shall, unless otherwise approved by the Property Administrator, contain the following:

(1) The name, part number and description, National Stock Number (if needed for additional item identification tracking and/or disposition), and other data elements as necessary and required in accordance with the terms and conditions of the contract.

(2) Quantity received (or fabricated), issued, and balance-on-hand.

(3) Unit acquisition cost.

(4) Unique-item identifier or equivalent (if available and necessary for individual item tracking).

(5) Unit of measure.

(6) Accountable contract number or equivalent code designation.

(7) Location.

(8) Disposition.

(9) Posting reference and date of transaction.

(10) Date placed in service (if required in accordance with the terms and conditions of the contract).

(B) *Use of a Receipt and Issue System for Government Material.* When approved by the Property Administrator, the Contractor may maintain, in lieu of formal property records, a file of appropriately cross-referenced documents evidencing receipt, issue, and use of material that is issued for immediate consumption.

(iv) *Physical inventory.* The Contractor shall periodically perform, record, and disclose physical inventory results. A final physical inventory shall be performed upon contract completion or termination. The Property Administrator may waive this final inventory requirement, depending on the circumstances (e.g., overall reliability of the Contractor's system or the property is to be transferred to a follow-on contract).

(v) *Subcontractor control.*

(A) The Contractor shall award subcontracts that clearly identify items to be provided and the extent of any restrictions or limitations on their use. The Contractor shall ensure appropriate flow down of contract terms and conditions (e.g., extent of liability for loss of Government property).

(B) The Contractor shall assure its subcontracts are properly administered and reviews are periodically performed to determine the adequacy of the subcontractor's property management system.

(vi) *Reports.* The Contractor shall have a process to create and provide reports of discrepancies, loss of Government property, physical inventory results, audits and self-assessments, corrective actions, and other property-related reports as directed by the Contracting Officer.

(vii) *Relief of stewardship responsibility and liability.* The Contractor shall have a process to enable the prompt recognition, investigation, disclosure and reporting of loss of Government property, including losses that occur at subcontractor or alternate site locations.

(A) This process shall include the corrective actions necessary to prevent recurrence.

(B) Unless otherwise directed by the Property Administrator, the Contractor shall investigate and report to the Government all incidents of property loss as soon as the facts become known. Such reports shall, at a minimum, contain the following information:

(1) Date of incident (if known).

(2) The data elements required under (f)(1)(iii)(A).

(3) Quantity.

(4) Accountable contract number.

(5) A statement indicating current or future need.

(6) Unit acquisition cost, or if applicable, estimated sales proceeds, estimated repair or replacement costs.

(7) All known interests in commingled material of which includes Government material.

(8) Cause and corrective action taken or to be taken to prevent recurrence.

(9) A statement that the Government will receive compensation covering the loss of Government property, in the event the Contractor was or will be reimbursed or compensated.

(10) Copies of all supporting documentation.

(11) Last known location.

(12) A statement that the property did or did not contain sensitive, export controlled, hazardous, or toxic material, and that the appropriate agencies and authorities were notified.

(C) Unless the contract provides otherwise, the Contractor shall be relieved of stewardship responsibility and liability for property when-

(1) Such property is consumed or expended, reasonably and properly, or otherwise accounted for, in the performance of the contract, including reasonable inventory adjustments of material as determined by the Property Administrator;

(2) Property Administrator grants relief of responsibility and liability for loss of Government property;

(3) Property is delivered or shipped from the Contractor's plant, under Government instructions, except when shipment is to a subcontractor or other location of the Contractor; or

(4) Property is disposed of in accordance with paragraphs (j) and (k) of this clause.

(viii) *Utilizing Government property.*

(A) The Contractor shall utilize, consume, move, and store Government Property only as authorized under this contract. The Contractor shall promptly disclose and report Government property in its possession that is excess to contract performance.

(B) Unless otherwise authorized in this contract or by the Property Administrator the Contractor shall not commingle Government material with material not owned by the Government.

(ix) *Maintenance.* The Contractor shall properly maintain Government property. The Contractor's maintenance program shall enable the identification, disclosure, and performance of normal and routine preventative maintenance and repair. The Contractor shall disclose and report to the Property Administrator the need for replacement and/or capital rehabilitation.

(x) *Property closeout.* The Contractor shall promptly perform and report to the Property Administrator contract property closeout, to include reporting, investigating and securing closure of all loss of Government property cases; physically inventorying all property upon termination or completion of this contract; and disposing of items at the time they are determined to be excess to contractual needs.

(2) The Contractor shall establish and maintain Government accounting source data, as may be required by this contract, particularly in the areas of recognition of acquisitions, loss of Government property, and disposition of material and equipment.

(g) *Systems analysis.*

(1) The Government shall have access to the Contractor's premises and all Government property, at reasonable times, for the purposes of reviewing, inspecting and evaluating the Contractor's property management plan(s), systems, procedures, records, and supporting documentation that pertains to Government property. This access includes all site locations and, with the Contractor's consent, all subcontractor premises.

(2) Records of Government property shall be readily available to authorized Government personnel and shall be appropriately safeguarded.

(3) Should it be determined by the Government that the Contractor's (or subcontractor's) property management practices are inadequate or not acceptable for the effective management and control of Government property under this contract, or present an undue risk to the Government, the Contractor shall prepare a corrective action plan when requested by the Property Administrator and take all necessary corrective actions as specified by the schedule within the corrective action plan.

(h) *Contractor Liability for Government Property.*

(1) Unless otherwise provided for in the contract, the Contractor shall not be liable for loss of Government property furnished or acquired under this contract, except when any one of the following applies-

(i) The risk is covered by insurance or the Contractor is otherwise reimbursed (to the extent of such insurance or reimbursement). The allowability of insurance costs shall be determined in accordance with [31.205-19](#).

(ii) Loss of Government property that is the result of willful misconduct or lack of good faith on the part of the Contractor's managerial personnel.

(iii) The Contracting Officer has, in writing, revoked the Government's assumption of risk for loss of Government property due to a determination under paragraph (g) of this clause that the Contractor's property management practices are inadequate, and/or present an undue risk to the Government, and the Contractor failed to take timely corrective action. If the Contractor can establish by clear and convincing evidence that the loss of Government property occurred while the Contractor had adequate property management practices or the loss did not result from the Contractor's failure to maintain adequate property management practices, the Contractor shall not be held liable.

(2) The Contractor shall take all reasonable actions necessary to protect the property from further loss. The Contractor shall separate the damaged and undamaged property, place all the affected property in the best possible order, and take such other action as the Property Administrator directs.

(3) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss of Government property.

(4) The Contractor shall reimburse the Government for loss of Government property, to the extent that the Contractor is financially liable for such loss, as directed by the Contracting Officer.

(5) Upon the request of the Contracting Officer, the Contractor shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation, including the prosecution of suit and the execution of instruments of assignment in favor of the Government in obtaining recovery.

(i) *Equitable adjustment.* Equitable adjustments under this clause shall be made in accordance with the procedures of the Changes clause. However, the Government shall not be liable for breach of contract for the following:

(1) Any delay in delivery of Government-furnished property.

(2) Delivery of Government-furnished property in a condition not suitable for its intended use.

(3) An increase, decrease, or substitution of Government-furnished property.

(4) Failure to repair or replace Government property for which the Government is responsible.

(j) *Contractor inventory disposal.* Except as otherwise provided for in this contract, the Contractor shall not dispose of Contractor inventory until authorized to do so by the Plant Clearance Officer or authorizing official.

(1) Predisposal requirements.

(i) If the Contractor determines that the property has the potential to fulfill requirements under other contracts, the Contractor, in consultation with the Property Administrator, shall request that the Contracting Officer transfer the property to the contract in question, or provide authorization for use, as appropriate. In lieu of transferring the property, the Contracting Officer may authorize the Contractor to credit the costs of Contractor-acquired property (material only) to the losing contract, and debit the gaining contract with the corresponding cost, when such material is needed for use on another contract.

Property no longer needed shall be considered contractor inventory.

(ii) For any remaining Contractor-acquired property, the Contractor may purchase the property at the unit acquisition cost if desired or make reasonable efforts to return unused property to the appropriate supplier at fair market value (less, if applicable, a reasonable restocking fee that is consistent with the supplier's customary practices.)

(2) *Inventory disposal schedules.*

(i) Absent separate contract terms and conditions for property disposition, and provided the property was not reutilized, transferred, or otherwise disposed of, the Contractor, as directed by the Plant Clearance Officer or authorizing official, shall use [Standard Form 1428](#), Inventory Disposal Schedule or electronic equivalent, to identify and report-

(A) Government-furnished property that is no longer required for performance of this contract;

(B) Contractor-acquired property, to which the Government has obtained title under paragraph (e) of this clause, which is no longer required for performance of that contract; and

(C) Termination inventory.

(ii) The Contractor may annotate inventory disposal schedules to identify property the Contractor wishes to purchase from the Government, in the event that the property is offered for sale.

(iii) Separate inventory disposal schedules are required for aircraft in any condition, flight safety critical aircraft parts, and other items as directed by the Plant Clearance Officer.

(iv) The Contractor shall provide the information required by FAR [52.245-1](#)(f)(1)(iii) along with the following:

(A) Any additional information that may facilitate understanding of the property's intended use.

(B) For work-in-progress, the estimated percentage of completion.

(C) For precious metals in raw or bulk form, the type of metal and estimated weight.

(D) For hazardous material or property contaminated with hazardous material, the type of hazardous material.

(E) For metals in mill product form, the form, shape, treatment, hardness, temper, specification (commercial or Government) and dimensions (thickness, width and length).

(v) Property with the same description, condition code, and reporting location may be grouped in a single line item.

(vi) Scrap should be reported by "lot" along with metal content, estimated weight and estimated value.

(3) *Submission requirements.*

(i) The Contractor shall submit inventory disposal schedules to the Plant Clearance Officer no later than-

(A) 30 days following the Contractor's determination that a property item is no longer required for performance of this contract;

(B) 60 days, or such longer period as may be approved by the Plant Clearance Officer, following completion of contract deliveries or performance; or

(C) 120 days, or such longer period as may be approved by the Termination Contracting Officer, following contract termination in whole or in part.

(ii) Unless the Plant Clearance Officer determines otherwise, the Contractor need not identify or report production scrap on inventory disposal schedules, and may process and dispose of production scrap in accordance with its own internal scrap procedures. The processing and disposal of other types of Government-owned scrap will be conducted in accordance with the terms and conditions of the contract or Plant Clearance Officer direction, as appropriate.

(4) *Corrections.* The Plant Clearance Officer may-

(i) Reject a schedule for cause (e.g., contains errors, determined to be inaccurate); and

(ii) Require the Contractor to correct an inventory disposal schedule.

(5) *Post submission adjustments.* The Contractor shall notify the Plant Clearance Officer at least 10 working days in advance of its intent to remove an item from an approved inventory disposal schedule. Upon approval of the Plant Clearance Officer, or upon expiration of the notice period, the Contractor may make the necessary adjustments to the inventory schedule.

(6) *Storage.*

(i) The Contractor shall store the property identified on an inventory disposal schedule pending receipt of disposal instructions. The Government's failure to furnish disposal instructions within 120 days following acceptance of an inventory disposal schedule may entitle the Contractor to an equitable adjustment for costs incurred to store such property on or after the 121<sup>st</sup> day.

(ii) The Contractor shall obtain the Plant Clearance Officer's approval to remove property from the premises where the property is currently located prior to receipt of final disposition instructions. If approval is granted, any costs incurred by the Contractor to transport or store the property shall not increase the price or fee of any Government contract. The storage area shall be appropriate for assuring the property's physical safety and suitability for use. Approval does not relieve the Contractor of any liability for such property under this contract.

(7) *Disposition instructions.*

(i) The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of Contractor inventory as directed by the Plant Clearance Officer. Unless otherwise directed by the Contracting Officer or by the Plant Clearance Officer, the Contractor shall remove and destroy any markings identifying the property as U.S. Government-owned property prior to its disposal.

(ii) The Contracting Officer may require the Contractor to demilitarize the property prior to shipment or disposal. In such cases, the Contractor may be entitled to an equitable adjustment under paragraph (i) of this clause.

(8) *Disposal proceeds.* As directed by the Contracting Officer, the Contractor shall credit the net proceeds from the disposal of Contractor inventory to the contract, or to the Treasury of the United States as miscellaneous receipts.

(9) *Subcontractor inventory disposal schedules.* The Contractor shall require its Subcontractors to submit inventory disposal schedules to the Contractor in accordance with the requirements of paragraph (j)(3) of this clause.

(k) *Abandonment of Government property.*

(1) The Government shall not abandon sensitive property or termination inventory without the Contractor's written consent.

(2) The Government, upon notice to the Contractor, may abandon any nonsensitive property in place, at which time all obligations of the Government regarding such property shall cease.

(3) Absent contract terms and conditions to the contrary, the Government may abandon parts removed and replaced from property as a result of normal maintenance actions, or removed from property as a result of the repair, maintenance, overhaul, or modification process.

(4) The Government has no obligation to restore or rehabilitate the Contractor's premises under any circumstances; however, if Government-furnished property is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (i) of this clause may properly include restoration or rehabilitation costs.

(l) *Communication.* All communications under this clause shall be in writing.

(m) *Contracts outside the United States.* If this contract is to be performed outside of the United States and its outlying areas, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

(End of clause)

## 52.219-33 NONMANUFACTURER RULE (SEP 2021)

(a) **Definitions.** As used in this clause—

Manufacturer means the concern that transforms raw materials, miscellaneous parts, or components into the end item. Concerns that only minimally alter the item being procured do not qualify as manufacturers of the end item. Concerns that add substances, parts, or components to an existing end item to modify its performance will not be considered the end item manufacturer, where those modifications can be performed by and are available from the manufacturer of the existing end item.

Nonmanufacturer means a concern, including a supplier, that provides an end item it did not manufacture, process, or produce.

(b) **Applicability.**

(1) This clause does not apply to contracts awarded pursuant to the unrestricted portion of a partial set-aside or to a contractor that is the manufacturer of the product or end item.

(2) This clause applies to—

(i) Contracts that have been awarded pursuant to a set-aside, in total or in part, for any of the small business concerns identified in 19.000(a)(3);  
(ii) Contracts that have been awarded on a sole-source basis in accordance with subparts 19.8, 19.13, 19.14, and 19.15;  
(iii) Orders expected to exceed the simplified acquisition threshold and that are—

(A) Set aside for small business under multiple-award contracts, as described in 8.405-5 and 16.505(b)(2)(i)(F); or  
(B) Issued directly to a small business concern under multiple-award contracts as

described in 19.504(c)(1)(ii);

(iv) Orders, regardless of dollar value, that are—

(A) Set aside in accordance with subparts 19.8, 19.13, 19.14, and 19.15 under multiple award contracts as described in 8.405-5 and 16.505(b)(2)(i)(F); or

(B) Issued directly to concerns that qualify for the programs described in subparts 19.8, 19.13, 19.14, and 19.15 under multiple-award contracts as described in 19.504(c)(1)(ii); and

(v) Contracts using the HUBZone price evaluation preference to award to a HUBZone concern

unless the Contractor waived the evaluation preference.

(c) Requirements.

(1) The Contractor shall—

(i) Provide an end item that a small business has manufactured, processed, or produced in the United States or its outlying areas; for kit assemblers who are nonmanufacturers, see paragraph (c)(2) of this clause instead;

(ii) Be primarily engaged in the retail or wholesale trade and normally sell the type of item being supplied; and

(iii) Take ownership or possession of the item(s) with its personnel, equipment, or facilities in a manner consistent with industry practice; for example, providing storage, transportation, or delivery.

(2) When the end item being acquired is a kit of supplies, at least 50 percent of the total cost of the components of the kit shall be manufactured, processed, or produced in the United States or its outlying areas by small business concerns.

(End of clause)

## **52.219-16 LIQUIDATED DAMAGES—SUBCONTRACTING PLAN (SEP 2021)**

(a) "Failure to make a good faith effort to comply with the subcontracting plan," as used in this clause, means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under the clause in this contract entitled "Small Business Subcontracting Plan," or willful or intentional action to frustrate the plan.

(b) Performance shall be measured by applying the percentage goals to the total actual subcontracting dollars or, if a commercial plan is involved, to the pro rata share of actual subcontracting dollars attributable to Government contracts covered by the commercial plan. If, at contract completion or, in the case of a commercial plan, at the close of the fiscal year for which the plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this clause that the Contractor failed to make a good faith effort to comply with its subcontracting plan (see 19.705-7), established in accordance with the clause in this contract entitled "Small Business Subcontracting Plan," the Contractor shall pay the Government liquidated damages in an amount stated. The amount of probable damages attributable to the Contractor's failure to comply shall be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal.

(c) Before the Contracting Officer makes a final decision that the Contractor has failed to make such good faith effort, the Contracting Officer shall give the Contractor written notice specifying the failure and permitting the Contractor to demonstrate what good faith efforts have been made and to discuss the matter. Failure to respond to the notice may be taken as an admission that no valid explanation exists. If, after consideration of all the pertinent data, the Contracting Officer finds that the Contractor failed to

make a good faith effort to comply with the subcontracting plan, the Contracting Officer shall issue a final decision to that effect and require that the Contractor pay the Government liquidated damages as provided in paragraph (b) of this clause.

(d) With respect to commercial plans, the Contracting Officer who approved the plan will perform the functions of the Contracting Officer under this clause on behalf of all agencies with contracts covered by the commercial plan.

(e) The Contractor shall have the right of appeal, under the clause in this contract entitled, Disputes, from any final decision of the Contracting Officer.

(f) Liquidated damages shall be in addition to any other remedies that the Government may have.

End of Clause

### **52.203-13 Contractor Code of Business Ethics and Conduct (NOV 2021)**

(a) Definitions. As used in this clause –

*Agent* means any individual, including a director, an officer, an employee, or an independent Contractor, authorized to act on behalf of the organization.

*Full cooperation* -

(1) Means disclosure to the Government of the information sufficient for law enforcement to identify the nature and extent of the offense and the individuals responsible for the conduct. It includes providing timely and complete response to Government auditors' and investigators' request for documents and access to employees with information;

(2) Does not foreclose any Contractor rights arising in law, the FAR, or the terms of the contract. It does not require –

(i) A Contractor to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine; or

(ii) Any officer, director, owner, or employee of the Contractor, including a sole proprietor, to waive his or her attorney client privilege or Fifth Amendment rights; and

(3) Does not restrict a Contractor from -

(i) Conducting an internal investigation; or

(ii) Defending a proceeding or dispute arising under the contract or related to a potential or disclosed violation.

*Principal* means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a division or business segment; and similar positions).

*Subcontract* means any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract.

*Subcontractor* means any supplier, distributor, vendor, or firm that furnished supplies or services to or for a prime contractor or another subcontractor.

*United States* means the 50 States, the District of Columbia, and outlying areas.

(b) Code of business ethics and conduct.

(1) Within 30 days after contract award, unless the Contracting Officer establishes a longer time period, the Contractor shall -

(i) Have a written code of business ethics and conduct;

(ii) Make a copy of the code available to each employee engaged in performance of the contract.

(2) The Contractor shall -

(i) Exercise due diligence to prevent and detect criminal conduct; and

(ii) Otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.

(3) (i) The Contractor shall timely disclose, in writing, to the agency Office of the Inspector General (OIG), with a copy to the Contracting Officer, whenever, in connection with the award, performance, or closeout of this contract or any subcontract thereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed -

(A) A violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code; or

(B) A violation of the civil False Claims Act (31 U.S.C. 3729-3733).

(ii) The Government, to the extent permitted by law and regulation, will safeguard and treat information obtained pursuant to the Contractor's disclosure as confidential where the information has been marked "confidential" or "proprietary" by the company. To the extent permitted by law and regulation, such information will not be released by the Government to the public pursuant to a Freedom of Information Act request, 5 U.S.C. Section 552, without prior notification to the Contractor. The Government may transfer documents provided by the Contractor to any department or agency within the Executive Branch if the information relates to matters within the organization's jurisdiction.

(iii) If the violation relates to an order against a Governmentwide acquisition contract, a multi-agency contract, a multiple-award schedule contract such as the Federal Supply Schedule, or any other procurement instrument intended for use by multiple agencies, the Contractor shall notify the OIG of the ordering agency and the IG of the agency responsible for the basic contract.

(c) Business ethics awareness and compliance program and internal control system. This paragraph (c) does not apply if the Contractor has represented itself as a small business concern pursuant to the award of this contract or if this contract is for the acquisition of a commercial product or commercial service as defined at FAR 2.101. The Contractor shall establish the following within 90 days after contract award, unless the Contracting Officer establishes a longer time period:

(1) An ongoing business ethics awareness and compliance program.

(i) This program shall include reasonable steps to communicate periodically and in a practical manner the Contractor's standards and procedures and other aspects of the Contractor's business ethics awareness and compliance program and internal control system, by conducting effective training programs and otherwise disseminating information appropriate to an individual's respective roles and responsibilities.

(ii) The training conducted under this program shall be provided to the Contractor's principals and employees, and as appropriate, the Contractor's agents and subcontractors.

(2) An internal control system.

(i) The Contractor's internal control system shall –

(A) Establish standards and procedures to facilitate timely discovery of improper conduct in connection with Government contracts; and

(B) Ensure corrective measures are promptly instituted and carried out.

(ii) At a minimum, the Contractor's internal control system shall provide for the following:

(A) Assignment of responsibility at a sufficiently high level and adequate resources to ensure effectiveness of the business ethics awareness and compliance program and internal control system.

(B) Reasonable efforts not to include an individual as a principal, whom due diligence would have exposed as having engaged in conduct that is in conflict with the Contractor's code of business ethics and conduct.

(C) Periodic reviews of company business practices, procedures, policies, and internal controls for compliance with the Contractor's code of business ethics and conduct and the special requirements of Government contracting, including -

(1) Monitoring and auditing to detect criminal conduct;

(2) Periodic evaluation of the effectiveness of the business ethics awareness and compliance program and internal control system, especially if criminal conduct has been detected; and

(3) Periodic assessment of the risk of criminal conduct, with appropriate steps to design, implement, or modify the business ethics awareness and compliance program and the internal control system as necessary to reduce the risk of criminal conduct identified through this process.

(D) An internal reporting mechanism, such as a hotline, which allows for anonymity or confidentiality, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports.

(E) Disciplinary action for improper conduct or for failing to take reasonable steps to prevent or detect improper conduct.

(F) Timely disclosure, in writing, to the agency OIG, with a copy to the Contracting Officer, whenever, in connection with the award, performance, or closeout of any Government contract performed by the Contractor or a subcontractor thereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 U.S.C. or a violation of the civil False Claims Act (31 U.S.C. 3729-3733).

(1) If a violation relates to more than one Government contract, the Contractor may make the disclosure to the agency OIG and Contracting Officer responsible for the largest dollar value contract impacted by the

violation.

(2) If the violation relates to an order against a Governmentwide acquisition contract, a multi-agency contract, a multiple-award schedule contract such as the Federal Supply Schedule, or any other procurement instrument intended for use by multiple agencies, the contractor shall notify the OIG of the ordering agency and the IG of the agency responsible for the basic contract, and the respective agencies' contracting officers.

(3) The disclosure requirement for an individual contract continues until at least 3 years after final payment on the contract.

(4) The Government will safeguard such disclosures in accordance with paragraph (b)(3)(ii) of this clause.

(G) Full cooperation with any Government agencies responsible for audits, investigations, or corrective actions.

(d) *Subcontracts.*

(1) The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts that exceed the threshold specified in FAR 3.1004(a) on the date of subcontract award and have a performance period of more than 120 days.

(2) In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.

## **52.204-21 BASIC SAFEGUARDING OF COVERED CONTRACTOR INFORMATION SYSTEMS (NOV 2021)**

(a) *Definitions.* As used in this clause —

*Covered contractor information system* means an information system that is owned or operated by a contractor that processes, stores, or transmits Federal contract information.

*Federal contract information* means information, not intended for public release, that is provided by or generated for the Government under a contract to develop or deliver a product or service to the Government, but not including information provided by the Government to the public (such as on public Web sites) or simple transactional information, such as necessary to process payments.

*Information* means any communication or representation of knowledge such as facts, data, or opinions, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual (Committee on National Security Systems Instruction (CNSSI) 4009).

*Information system* means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information ([44 U.S.C. 3502](#)).

*Safeguarding* means measures or controls that are prescribed to protect information systems.

(b) *Safeguarding requirements and procedures.*

(1) The Contractor shall apply the following basic safeguarding requirements and procedures to protect covered contractor information systems. Requirements and procedures for basic safeguarding of covered contractor information systems shall include, at a minimum, the following security controls:

- (i) Limit information system access to authorized users, processes acting on behalf of authorized users, or devices (including other information systems).
- (ii) Limit information system access to the types of transactions and functions that authorized users are permitted to execute.
- (iii) Verify and control/limit connections to and use of external information systems.
- (iv) Control information posted or processed on publicly accessible information systems.
- (v) Identify information system users, processes acting on behalf of users, or devices.
- (vi) Authenticate (or verify) the identities of those users, processes, or devices, as a prerequisite to allowing access to organizational information systems.
- (vii) Sanitize or destroy information system media containing Federal Contract Information before disposal or release for reuse.
- (viii) Limit physical access to organizational information systems, equipment, and the respective operating environments to authorized individuals.
- (ix) Escort visitors and monitor visitor activity; maintain audit logs of physical access; and control and manage physical access devices.
- (x) Monitor, control, and protect organizational communications (*i.e.*, information transmitted or received by organizational information systems) at the external boundaries and key internal boundaries of the information systems.
- (xi) Implement subnetworks for publicly accessible system components that are physically or logically separated from internal networks.
- (xii) Identify, report, and correct information and information system flaws in a timely manner.
- (xiii) Provide protection from malicious code at appropriate locations within organizational information systems.
- (xiv) Update malicious code protection mechanisms when new releases are available.
- (xv) Perform periodic scans of the information system and real-time scans of files from external sources as files are downloaded, opened, or executed.

(2) *Other requirements.* This clause does not relieve the Contractor of any other specific safeguarding requirements specified by Federal agencies and departments relating to covered contractor information systems generally or other Federal safeguarding requirements for controlled unclassified information (CUI) as established by Executive Order 13556.

(c) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (c), in subcontracts under this contract (including subcontracts for the acquisition of commercial products or commercial services, other than commercially available off-the-shelf items), in which the subcontractor may have Federal contract information residing in or transiting through its information system.

#### **52.204-25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (NOV 2021)**

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

*Backhaul* means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).

*Covered foreign country* means The People's Republic of China.

*Covered telecommunications equipment or services* means -

- (1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);
- (2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
- (3) Telecommunications or video surveillance services provided by such entities or using such equipment; or
- (4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

*Critical technology* means -

- (1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;
- (2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled -
  - (i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or
  - (ii) For reasons relating to regional stability or surreptitious listening;
- (3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);
- (4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);
- (5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or
- (6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

*Interconnection arrangements* means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

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*Reasonable inquiry* means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.

*Roaming* means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

*Substantial or essential component* means any component necessary for the proper function or performance of a piece of equipment, system, or service.

(b) *Prohibition.*

(1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Contractor is prohibited from providing to the Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104.

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a contract, or extending or renewing a contract, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract.

(c) *Exceptions.* This clause does not prohibit contractors from providing -

- (1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
- (2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(d) *Reporting requirement.*

(1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (d)(2) of this clause to the Contracting Officer, unless elsewhere in this contract are established procedures for reporting the information; in the case of the Department of Defense, the Contractor shall report to the website at <https://dibnet.dod.mil>. For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at <https://dibnet.dod.mil>.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:

(i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) *Subcontracts.* The Contractor shall insert the substance of this clause, including this paragraph (e) and excluding paragraph (b)(2), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial products or commercial services.

**52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (NOV 2021)**

(a) *Definition.* “Commercially available off-the-shelf (COTS)” *item*, as used in this clause-

(1) Means any item of supply (including construction material) that is-

- (i) A commercial product (as defined in paragraph (1) of the definition of “commercial product in Federal Acquisition Regulation (FAR) [2.101](#));
- (ii) Sold in substantial quantities in the commercial marketplace; and
- (iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in [46 U.S.C. 40102\(4\)](#), such as agricultural products and petroleum products.

(b) The Government suspends or debars Contractors to protect the Government's interests. Other than a subcontract for a commercially available off-the-shelf item, the Contractor shall not enter into any subcontract, in excess of the threshold specified in FAR 9.405-2(b) on the date of subcontract award with a Contractor that is debarred, suspended, or proposed for debarment by any executive agency unless there is a compelling reason to do so.

(c) The Contractor shall require each proposed subcontractor whose subcontract will exceed the threshold specified in FAR 9.405-2(b) on the date of subcontract award, other than a subcontractor providing a commercially available off-the-shelf item, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(d) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party (other than a subcontractor providing a commercially available off-the-shelf item) that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the System for Award Management (SAM) Exclusions). The notice must include the

following:

- (1) The name of the subcontractor.
- (2) The Contractor's knowledge of the reasons for the subcontractor being listed with an exclusion in SAM.
- (3) The compelling reason(s) for doing business with the subcontractor notwithstanding its being listed with an exclusion in SAM.
- (4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.
- (e) *Subcontracts.* Unless this is a contract for the acquisition of commercial products or commercial services, the Contractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for the identification of the parties), in each subcontract that–
  - (1) Exceeds the threshold specified in FAR 9.405-2(b) on the date of subcontract award; and
  - (2) Is not a subcontract for commercially available off-the-shelf items.

**552.238-111 ENVIRONMENTAL PROTECTION AGENCY  
REGISTRATION REQUIREMENT (JAN 2022)**

- (a) With respect to the products described in this solicitation which require registration with the Environmental Protection Agency (EPA), as required by the Federal Insecticide, Fungicide, and Rodenticide Act, Section 3, Registration of Pesticides, awards will be made only for such products that have been assigned an EPA registration number, prior to the time of bid opening.
- (b) The offeror shall insert in the spaces provided in this section, the manufacturer's and/or distributor's name and the "EPA Registration Number" for each item offered. Any offer which does not specify a current "EPA Registration Number" in effect for the duration of the contract period, and including the manufacturer's and/or distributor's name will be rejected.

Items			
Item Numbers	Name of Manufacturer / Distributor	EPA Registration Number	Date of Expiration

- (c) If, during the performance of a contract awarded as a result of this solicitation, the EPA Registration Number for products being furnished is terminated, withdrawn, canceled, or suspended, and such action does not arise out of causes beyond the control, and with the fault or negligence of the Contractor or subcontractor, the Government may terminate the contract pursuant to either the Default Clause or Termination for Cause Paragraph (contained in the clause 52.212-4, Contract Terms and Conditions-Commercial Products and Commercial Services), whichever is applicable to the resultant contract.

**552.238-114 USE OF FEDERAL SUPPLY SCHEDULE CONTRACTS  
BY NON-FEDERAL ENTITIES (JAN 2022)**

- (a) If an entity identified in paragraph (d) of the clause at 552.238-113, *Scope of Contract (Eligible Ordering Activities)*, elects to place an order under this contract, the entity agrees that the order shall be subject to the following conditions:

(1) When the Contractor accepts an order from such an entity, a separate contract is formed which incorporates by reference all the terms and conditions of the Schedule contract except the Disputes clause, the patent indemnity clause, and the portion of the Commercial Product and Commercial Service Contract Terms and Conditions that specifies "Compliance with laws unique to Government contracts" (which applies only to contracts with entities of the Executive branch of the U.S. Government). The parties to this new contract which incorporates the terms and conditions of the Schedule contract are the individual ordering activity and the Contractor. The U.S. Government shall not be liable for the performance or nonperformance of the new contract. Disputes which cannot be resolved by the parties to the new contract may be litigated in any State or Federal court with jurisdiction over the parties, applying Federal procurement law, including statutes, regulations and case law, and, if pertinent, the Uniform Commercial Code. To the extent authorized by law, parties to this new contract are encouraged to resolve disputes through Alternative Dispute Resolution. Likewise, a Blanket Purchase Agreement (BPA), although not a contract, is an agreement that may be entered into by the Contractor with such an entity and the Federal Government is not a party.

(2) Where contract clauses refer to action by a Contracting Officer or a Contracting Officer of GSA, that shall mean the individual responsible for placing the order for the ordering activity (e.g., FAR 52.212-4 at paragraph (f) and FSS clause I-FSS-249 B.)

(3) As a condition of using this contract, eligible ordering activities agree to abide by all terms and conditions of the Schedule contract, except for those deleted clauses or portions of clauses mentioned in paragraph (a)(1) of this clause. Ordering activities may include terms and conditions required by statute, ordinance, regulation, order, or as otherwise allowed by State and local government entities as a part of a statement of work (SOW) or statement of objective (SOO) to the extent that these terms and conditions do not conflict with the terms and conditions of the Schedule contract. The ordering activity and the Contractor expressly acknowledge that, in entering into an agreement for the ordering activity to purchase goods or services from the Contractor, neither the ordering activity nor the Contractor will look to, primarily or in any secondary capacity, or file any claim against the United States or any of its agencies with respect to any failure of performance by the other party.

(4) The ordering activity is responsible for all payments due the Contractor under the contract formed by acceptance of the ordering activity's order, without recourse to the agency of the U.S. Government, which awarded the Schedule contract.

(5) The Contractor is encouraged, but not obligated, to accept orders from such entities. The Contractor may, within 5 days of receipt of the order, decline to accept any order, for any reason. The Contractor shall fulfill orders placed by such entities, which are not declined within the 5-day period.

(6) The supplies or services purchased will be used for governmental purposes only and will not be resold for personal use. Disposal of property acquired will be in accordance with the established procedures of the ordering activity for the disposal of personal property.

(b) If the Schedule Contractor accepts an order from an entity identified in paragraph (d) of the clause at [552.238-113, Scope of Contract \(Eligible Ordering Activities\)](#), the Contractor agrees to the following conditions:

(1) The ordering activity is responsible for all payments due the Contractor for the contract formed by acceptance of the order, without recourse to the agency of the U.S. Government, which awarded the Schedule contract.

(2) The Contractor is encouraged, but not obligated, to accept orders from such entities. The Contractor may, within 5 days of receipt of the order, decline to accept any order, for any reason. The Contractor shall decline the order using the same means as those used to place the order. The Contractor shall fulfill orders placed by such entities, which are not declined within the 5-day period.

(c) In accordance with clause [552.238-80](#), Industrial Funding Fee and Sales Reporting, the Contractor must report the quarterly dollar value of all sales under this contract. When submitting sales reports, the Contractor must report two dollar values for each Special Item Number:

(1) The dollar value for sales to entities identified in paragraph (a) of the clause at [552.238-113](#), *Scope of Contract (Eligible Ordering Activities)*, and

(2) The dollar value for sales to entities identified in paragraph (d) of clause [552.238-113](#) *Scope of Contract (Eligible Ordering Activities)*.

**552.238-82 MODIFICATIONS (FEDERAL SUPPLY SCHEDULE)  
(JAN 2022) (ALTERNATE I - MAR 2020)**

(a) *General*. The Contractor may request a contract modification by transmitting a request to the Contracting Officer for approval, except as noted in paragraph (d) of this clause. At a minimum, every request shall describe the proposed change(s) and provide the rationale for the requested change(s).

(b) *Types of Modifications*.

(1) Additional items/additional SINs. When requesting additions, the following information must be transmitted:

(i) *Information requested in paragraphs (1) and (2) of the Commercial Sales Practice Format to add SINs*.

(ii) Discount information for the new item(s) or new SIN(s). Specifically, transmit the information requested in paragraphs 3 through 5 of the Commercial Sales Practice Format. If this information is the same as the initial award, a statement to that effect may be transmitted instead.

(iii) Information about the new item(s) or the item(s) under the new SIN(s) must be transmitted in accordance with the request for proposal.

(iv) Delivery time(s) for the new item(s) or the item(s) under the new SIN(s) must be transmitted in accordance with the request for proposal.

(v) Production point(s) for the new item(s) or the item(s) under the new SIN(s) must be transmitted if required by 52.215- 6, *Place of Performance*.

(vi) Hazardous Material information (if applicable) must be transmitted as required by FAR 52.223-3 (Alternate I), Hazardous Material Identification and Material Safety Data.

(vii) Any information requested by 52.212-3(f), *Offeror Representations and Certifications—Commercial Products and Commercial Services*, that may be necessary to assure compliance with FAR 52.225-1, *Buy American Act—Balance of Payments Programs—Supplies*.

(2) Deletions. The Contractors shall provide an explanation for the deletion. The Government reserves the right to reject any subsequent offer of the same item or a substantially equal item at a higher price during the same contract period, if the contracting officer finds the higher price to be unreasonable when compared with the deleted item.

(3) Price Reduction. The Contractor shall indicate whether the price reduction falls under the item (i), (ii), or (iii) of paragraph (c)(1) of the Price Reductions clause at 552.238-81. If the Price reduction falls under item (i), the Contractor shall transmit a copy of the dated commercial price list. If the price reduction falls under item (ii) or (iii), the Contractor shall transmit a copy of the applicable price list(s), bulletins or letters or customer agreements which outline the effective

date, duration, terms and conditions of the price reduction.

(c) *Effective dates.* The effective date of any modification is the date specified in the modification, except as otherwise provided in the Price Reductions clause at 552.238-81.

(d) *Electronic File Updates.* The Contractor shall update electronic file transmissions to reflect all modifications. For additional items or SINs, the Contractor shall obtain the Contracting Officer's approval before transmitting changes. Contract modifications will not be made effective until the Government receives the electronic file updates. The Contractor may transmit price reductions, item deletions, and corrections without prior approval. However, the Contractor shall notify the Contracting Officer as set forth in the Price Reductions clause at 552.238-81.

(e) Electronic transmission of modification requests is mandatory via eMod (<http://eOffer.gsa.gov>), unless otherwise stated in the electronic transmission standards and requirements at the Vendor Support Center website (<http://vsc.gsa.gov>). If the electronic transmission standards and requirements information is updated at the Vendor Support Center website, Contractors will be notified prior to the effective date of the change.

End of clause

Note: Regulation 552.238-82

This clause does not apply to contracts participating in the Transactional Data Reporting (TDR) Pilot. Please refer to clause 552.238-82 Alternate II.

#### **552.238-82 MODIFICATIONS (FEDERAL SUPPLY SCHEDULE) (JAN 2022) (ALTERNATE II MAY 2019)**

(a) *General.* The Contractor may request a contract modification by transmitting a request to the Contracting Officer for approval, except as noted in paragraph (d) of this clause. At a minimum, every request shall describe the proposed change(s) and provide the rationale for the requested change(s).

(b) *Types of Modifications.*

(1) Additional items/additional SINs. When requesting additions, the Contractor must transmit the following information:

(i) Information about the new item(s) or the item(s) under the new SIN(s) must be submitted in accordance with the instructions in the solicitation.

(ii) Delivery time(s) for the new item(s) or the item(s) under the new SIN(s) must be submitted in accordance with the request for proposal.

(iii) Production point(s) for the new item(s) or the item(s) under the new SIN(s) must be submitted if required by FAR 52.215-6, Place of Performance.

(iv) Hazardous Material information (if applicable) must be submitted as required by FAR 52.223-3 (Alternate I), Hazardous Material Identification and Material Safety Data.

(v) Any information requested by FAR 52.212-3(f), Offeror Representations and Certifications-Commercial Products and Commercial Services, that may be necessary to assure compliance with FAR 52.225-1, Buy American Act-Balance of Payments Programs-Supplies.

(2) Deletions. The Contractor must provide an explanation for the deletion. The Government reserves the right to reject any subsequent offer of the same item or a substantially equal item at a

higher price during the same contract period, if the Contracting Officer determines that the higher price is unreasonable compared to the price of the deleted item.

(c) *Effective dates.* The effective date of any modification is the date specified in the modification, except as otherwise provided in the Price Reductions clause at 552.238-81.

(d) *Electronic File Updates.* The Contractor shall update electronic file transmissions to reflect all modifications. For additional items or SINs, the Contractor shall obtain the Contracting Officer's approval before transmitting changes. Contract modifications will not be made effective until the Government receives the electronic file updates. The Contractor may transmit price reductions, item deletions, and corrections without prior approval. However, the Contractor shall notify the Contracting Officer as set forth in the Price Reductions clause at 552.238-81.

End of clause

Note: Regulation 552.238-82

This clause applies to contracts participating in the Transactional Data Reporting (TDR) Pilot.

### **552.238-78 IDENTIFICATION OF PRODUCTS THAT HAVE ENVIRONMENTAL ATTRIBUTES (JAN 2022)**

(a) Several laws, Executive orders, and Agency directives require Federal buyers to purchase products that are less harmful to the environment, when they are life cycle cost-effective (see FAR Subpart 23.7). The U.S. General Services Administration (GSA) requires contractors to highlight environmental products under Federal Supply Service schedule contracts in various communications media (e.g., publications and electronic formats).

(b) *Definitions.* As used in this clause —

“Energy-efficient product” means a product that—

(1) Meets Department of Energy and Environmental Protection Agency criteria for use of the ENERGY STAR® trademark label; or

(2) Is in the upper 25 percent of efficiency for all similar products as designated by the Department of Energy's Federal Energy Management Program.

“GSA Advantage!” is an on-line shopping mall and ordering system that provides customers with access to products and services under GSA contracts.

“Other environmental attributes” refers to product characteristics that provide environmental benefits, excluding recovered materials and energy and water efficiency. Several examples of these characteristics are biodegradable, recyclable, reduced pollutants, ozone safe, and low volatile organic compounds (VOCs).

“Post-consumer material” means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is part of the broader category of “recycled material.” The Environmental Protection Agency (EPA) has developed a list of EPA-designated products in their Comprehensive Procurement Guidelines (CPGs) to provide Federal agencies with purchasing recommendations on specific products in a Recovered Materials Advisory Notice (RMAN). The RMAN contains recommended recovered and post-consumer material content levels for the specific products designated by EPA (40 CFR part 247 and <http://www.epa.gov/cpg/>).

“Recovered materials” means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process (Executive Order 13101 and 42 U.S.C. 6903(19) and <http://www.epa.gov/cpg/>). For paper and paper products, see the definition at FAR 11.301 (42 U.S.C. 6962(h)).

“Remanufactured” means factory rebuilt to original specifications.

“Renewable energy” means energy produced by solar, wind, geothermal, and biomass power

“Renewable energy technology” means –

- (1) Technologies that use renewable energy to provide light, heat, cooling, or mechanical or electrical energy for use in facilities or other activities; or
- (2) The use of integrated whole-building designs that rely upon renewable energy resources, including passive solar design.

(c) Identification Requirements.

(1) The offeror must identify products that —

- (i) Are compliant with the recovered and post-consumer material content levels recommended in the Recovered Materials Advisory Notices (RMANs) for EPA-designated products in the CPG program (<http://www.epa.gov/cpg/>);
- (ii) Contain recovered materials that either do not meet the recommended levels in the RMANs or are not EPA-designated products in the CPG program (see FAR 23.401 and <http://www.epa.gov/cpg/>);
- (iii) Are energy-efficient, as defined by either ENERGY STAR® and/or FEMP's designated top 25th percentile levels (see ENERGY STAR® at <http://www.energystar.gov/> and FEMP at <http://www.eere.energy.gov/femp/procurement/>);
- (iv) Are water-efficient
- (v) Use renewable energy technology;
- (vi) Are remanufactured; and
- (vii) Have other environmental attributes.

(2) These identifications must be made in each of the offeror's following mediums:

- (i) The offer itself.
- (ii) Printed commercial catalogs, brochures, and pricelists.
- (iii) Online product website.
- (iv) Electronic data submission for GSA Advantage! submitted via GSA's Schedules Input Program (SIP) software or the Electronic Data Inter-change (EDI). Offerors can use the SIP or EDI methods to indicate environmental and other attributes for each product that are translated into respective icons in GSA Advantage!.

(d) An offeror, in identifying an item with an environmental attribute, must possess

evidence or rely on a reasonable basis to substantiate the claim (see 16 CFR part 260, Guides for the Use of Environmental Marketing Claims). The Government will accept an offeror's claim of a product's environmental attribute on the basis of—

(1) Participation in a Federal agency sponsored program (e.g., the EPA and DOE ENERGY STAR® product labeling program);

(2) Verification by an independent organization that specializes in certifying such claims; or

(3) Possession of competent and reliable evidence. For any test, analysis, research, study, or other evidence to be "competent and reliable," it must have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

## **52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUN 2020) (ALTERNATE I-NOV 2021)**

(a) Except as provided in (b) below, the Contractor shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the Government of any item or process (including computer software) made or furnished by the subcontractor under this contract or under any follow-on production contract.

(b) The prohibition in paragraph (a) of this clause does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation. For acquisitions of commercial products or commercial services), the prohibition in paragraph (a) applies only to the extent that any agreement restricting sales by subcontractors results in the Federal Government being treated differently from any other prospective purchaser for the sale of the commercial product(s) and commercial service(s).

(c) The Contractor agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts under this contract which exceed the simplified acquisition threshold, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award.

## **52.222-50 COMBATING TRAFFICKING IN PERSONS (NOV 2021)**

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

*Agent* means any individual, including a director, an officer, an employee, or an independent contractor, authorized to act on behalf of the organization.

*Coercion* means -

(1) Threats of serious harm to or physical restraint against any person;

(2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

(3) The abuse or threatened abuse of the legal process.

*Commercially available off-the-shelf (COTS) item* -

(1) Means any item of supply (including construction material) that is -

- (i) A commercial product (as defined in paragraph (1) of the definition of "commercial product" at Federal Acquisition Regulation (FAR) [2.101](#));
- (ii) Sold in substantial quantities in the commercial marketplace; and
- (iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

*Commercial sex act* means any sex act on account of which anything of value is given to or received by any person.

*Debt bondage* means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

*Employee* means an employee of the Contractor directly engaged in the performance of work under the contract who has other than a minimal impact or involvement in contract performance.

*Forced Labor* means knowingly providing or obtaining the labor or services of a person -

- (1) By threats of serious harm to, or physical restraint against, that person or another person;
- (2) By means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or
- (3) By means of the abuse or threatened abuse of law or the legal process.

*Involuntary servitude* includes a condition of servitude induced by means of -

- (1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or
- (2) The abuse or threatened abuse of the legal process.

*Recruitment fees* means fees of any type, including charges, costs, assessments, or other financial obligations, that are associated with the recruiting process, regardless of the time, manner, or location of imposition or collection of the fee.

(1) Recruitment fees include, but are not limited to, the following fees (when they are associated with the recruiting process) for -

- (i) Soliciting, identifying, considering, interviewing, referring, retaining, transferring, selecting, training, providing orientation to, skills testing, recommending, or placing employees or potential employees;

- (ii) Advertising;
- (iii) Obtaining permanent or temporary labor certification, including any associated fees;
- (iv) Processing applications and petitions;
- (v) Acquiring visas, including any associated fees;
- (vi) Acquiring photographs and identity or immigration documents, such as passports, including any associated fees;
- (vii) Accessing the job opportunity, including required medical examinations and immunizations; background, reference, and security clearance checks and examinations; and additional certifications;
- (viii) An employer's recruiters, agents or attorneys, or other notary or legal fees;
- (ix) Language interpretation or translation, arranging for or accompanying on travel, or providing other advice to employees or potential employees;
- (x) Government-mandated fees, such as border crossing fees, levies, or worker welfare funds;
- (xi) Transportation and subsistence costs —
  - (A) While in transit, including, but not limited to, airfare or costs of other modes of transportation, terminal fees, and travel taxes associated with travel from the country of origin to the country of performance and the return journey upon the end of employment; and
  - (B) From the airport or disembarkation point to the worksite;
- (xii) Security deposits, bonds, and insurance; and
- (xiii) Equipment charges.

- (2) A recruitment fee, as described in the introductory text of this definition, is a recruitment fee, regardless of whether the payment is —
  - (i) Paid in property or money;
  - (ii) Deducted from wages;
  - (iii) Paid back in wage or benefit concessions;
  - (iv) Paid back as a kickback, bribe, in-kind payment, free labor, tip, or tribute; or
  - (v) Collected by an employer or a third party, whether licensed or unlicensed, including, but not limited to —
    - (A) Agents;
    - (B) Labor brokers;
    - (C) Recruiters;
    - (D) Staffing firms (including private employment and placement firms);

- (E) Subsidiaries/affiliates of the employer;
- (F) Any agent or employee of such entities; and
- (G) Subcontractors at all tiers.

*Severe forms of trafficking in persons* means —

- (1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- (2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

*Sex trafficking* means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

*Subcontract* means any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract.

*Subcontractor* means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor.

*United States* means the 50 States, the District of Columbia, and outlying areas.

(b) *Policy.* The United States Government has adopted a policy prohibiting trafficking in persons including the trafficking-related activities of this clause. Contractors, contractor employees, and their agents shall not —

- (1) Engage in severe forms of trafficking in persons during the period of performance of the contract;
- (2) Procure commercial sex acts during the period of performance of the contract;
- (3) Use forced labor in the performance of the contract;
- (4) Destroy, conceal, confiscate, or otherwise deny access by an employee to the employee's identity or immigration documents, such as passports or drivers' licenses, regardless of issuing authority;
- (5)
  - (i) Use misleading or fraudulent practices during the recruitment of employees or offering of employment, such as failing to disclose, in a format and language understood by the employee or potential employee, basic information or making material misrepresentations during the recruitment of employees regarding the key terms and conditions of employment, including wages and fringe benefits, the location of work, the living conditions, housing and associated costs (if employer or agent provided or arranged), any significant costs to be charged to the employee or potential employee, and, if applicable, the hazardous nature of the work;
  - (ii) Use recruiters that do not comply with local labor laws of the country in which the recruiting takes place;
- (6) Charge employees or potential employees recruitment fees;
- (7)
  - (i) Fail to provide return transportation or pay for the cost of return transportation upon the end of employment —

(A) For an employee who is not a national of the country in which the work is taking place and who was brought into that country for the purpose of working on a U.S. Government contract or subcontract (for portions of contracts performed outside the United States); or

(B) For an employee who is not a United States national and who was brought into the United States for the purpose of working on a U.S. Government contract or subcontract, if the payment of such costs is required under existing temporary worker programs or pursuant to a written agreement with the employee (for portions of contracts performed inside the United States); except that —

(ii) The requirements of paragraphs (b)(7)(i) of this clause shall not apply to an employee who is —

(A) Legally permitted to remain in the country of employment and who chooses to do so; or

(B) Exempted by an authorized official of the contracting agency from the requirement to provide return transportation or pay for the cost of return transportation;

(iii) The requirements of paragraph (b)(7)(i) of this clause are modified for a victim of trafficking in persons who is seeking victim services or legal redress in the country of employment, or for a witness in an enforcement action related to trafficking in persons. The contractor shall provide the return transportation or pay the cost of return transportation in a way that does not obstruct the victim services, legal redress, or witness activity. For example, the contractor shall not only offer return transportation to a witness at a time when the witness is still needed to testify. This paragraph does not apply when the exemptions at paragraph (b)(7)(ii) of this clause apply.

(8) Provide or arrange housing that fails to meet the host country housing and safety standards; or

(9) If required by law or contract, fail to provide an employment contract, recruitment agreement, or other required work document in writing. Such written work document shall be in a language the employee understands. If the employee must relocate to perform the work, the work document shall be provided to the employee at least five days prior to the employee relocating. The employee's work document shall include, but is not limited to, details about work description, wages, prohibition on charging recruitment fees, work location(s), living accommodations and associated costs, time off, roundtrip transportation arrangements, grievance process, and the content of applicable laws and regulations that prohibit trafficking in persons.

(c) *Contractor requirements.* The Contractor shall —

(1) Notify its employees and agents of —

(i) The United States Government's policy prohibiting trafficking in persons, described in paragraph (b) of this clause; and

(ii) The actions that will be taken against employees or agents for violations of this policy. Such actions for employees may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment; and

(2) Take appropriate action, up to and including termination, against employees, agents, or subcontractors that violate the policy in paragraph (b) of this clause.

(d) *Notification.*

(1) The Contractor shall inform the Contracting Officer and the agency Inspector General

immediately of —

- (i) Any credible information it receives from any source (including host country law enforcement) that alleges a Contractor employee, subcontractor, subcontractor employee, or their agent has engaged in conduct that violates the policy in paragraph (b) of this clause (see also 18 U.S.C. 1351, Fraud in Foreign Labor Contracting, and 52.203-13(b)(3)(i)(A), if that clause is included in the solicitation or contract, which requires disclosure to the agency Office of the Inspector General when the Contractor has credible evidence of fraud); and
- (ii) Any actions taken against a Contractor employee, subcontractor, subcontractor employee, or their agent pursuant to this clause.

(2) If the allegation may be associated with more than one contract, the Contractor shall inform the contracting officer for the contract with the highest dollar value.

(e) *Remedies.* In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraphs (c), (d), (g), (h), or (i) of this clause may result in —

- (1) Requiring the Contractor to remove a Contractor employee or employees from the performance of the contract;
- (2) Requiring the Contractor to terminate a subcontract;
- (3) Suspension of contract payments until the Contractor has taken appropriate remedial action;
- (4) Loss of award fee, consistent with the award fee plan, for the performance period in which the Government determined Contractor non-compliance;
- (5) Declining to exercise available options under the contract;
- (6) Termination of the contract for default or cause, in accordance with the termination clause of this contract; or
- (7) Suspension or debarment.

(f) *Mitigating and aggravating factors.* When determining remedies, the Contracting Officer may consider the following:

- (1) *Mitigating factors.* The Contractor had a Trafficking in Persons compliance plan or an awareness program at the time of the violation, was in compliance with the plan, and has taken appropriate remedial actions for the violation, that may include reparation to victims for such violations.
- (2) *Aggravating factors.* The Contractor failed to abate an alleged violation or enforce the requirements of a compliance plan, when directed by the Contracting Officer to do so.

(g) *Full cooperation.*

(1) The Contractor shall, at a minimum -

- (i) Disclose to the agency Inspector General information sufficient to identify the nature and extent of an offense and the individuals responsible for the conduct;
- (ii) Provide timely and complete responses to Government auditors' and investigators' requests for documents;

(iii) Cooperate fully in providing reasonable access to its facilities and staff (both inside and outside the U.S.) to allow contracting agencies and other responsible Federal agencies to conduct audits, investigations, or other actions to ascertain compliance with the Trafficking Victims Protection Act of 2000 (22 U.S.C. chapter 78), E.O. 13627, or any other applicable law or regulation establishing restrictions on trafficking in persons, the procurement of commercial sex acts, or the use of forced labor; and

(iv) Protect all employees suspected of being victims of or witnesses to prohibited activities, prior to returning to the country from which the employee was recruited, and shall not prevent or hinder the ability of these employees from cooperating fully with Government authorities.

(2) The requirement for full cooperation does not foreclose any Contractor rights arising in law, the FAR, or the terms of the contract. It does not -

(i) Require the Contractor to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine;

(ii) Require any officer, director, owner, employee, or agent of the Contractor, including a sole proprietor, to waive his or her attorney client privilege or Fifth Amendment rights; or

(iii) Restrict the Contractor from -

(A) Conducting an internal investigation;

or

(B) Defending a proceeding or dispute arising under the contract or related to a potential or disclosed violation.

(h) *Compliance plan.*

(1) This paragraph (h) applies to any portion of the contract that -

(i) Is for supplies, other than commercially available off-the-shelf items, acquired outside the United States, or services to be performed outside the United States; and

(ii) Has an estimated value that exceeds \$550,000.

(2) The Contractor shall maintain a compliance plan during the performance of the contract that is appropriate —

(i) To the size and complexity of the contract; and

(ii) To the nature and scope of the activities to be performed for the Government, including the number of non-United States citizens expected to be employed and the risk that the contract or subcontract will involve services or supplies susceptible to trafficking in persons.

(3) *Minimum requirements.* The compliance plan must include, at a minimum, the following:

(i) An awareness program to inform contractor employees about the Government's policy prohibiting trafficking-related activities described in paragraph (b) of this clause, the activities prohibited, and the actions that will be taken against the employee for violations. Additional information about Trafficking in Persons and examples of awareness programs can be found at the Web site for the Department of State's Office to Monitor and Combat Trafficking in Persons at <http://www.state.gov/j/tip/>.

(ii) A process for employees to report, without fear of retaliation, activity inconsistent with the policy prohibiting trafficking in persons, including a means to make available to all employees the hotline phone number of the Global Human Trafficking Hotline at 1-844-888-FREE and its email address at [help@bfree.org](mailto:help@bfree.org).

(iii) A recruitment and wage plan that only permits the use of recruitment companies with trained employees, prohibits charging recruitment fees to the employee or potential employee, and ensures that wages meet applicable host-country legal requirements or explains any variance.

(iv) A housing plan, if the Contractor or subcontractor intends to provide or arrange housing, that ensures that the housing meets host-country housing and safety standards.

(v) Procedures to prevent agents and subcontractors at any tier and at any dollar value from engaging in trafficking in persons (including activities in paragraph (b) of this clause) and to monitor, detect, and terminate any agents, subcontracts, or subcontractor employees that have engaged in such activities.

(4) *Posting.*

(i) The Contractor shall post the relevant contents of the compliance plan, no later than the initiation of contract performance, at the workplace (unless the work is to be performed in the field or not in a fixed location) and on the Contractor's Web site (if one is maintained). If posting at the workplace or on the Web site is impracticable, the Contractor shall provide the relevant contents of the compliance plan to each worker in writing.

(ii) The Contractor shall provide the compliance plan to the Contracting Officer upon request.

(5) *Certification.* Annually after receiving an award, the Contractor shall submit a certification to the Contracting Officer that -

(i) It has implemented a compliance plan to prevent any prohibited activities identified at paragraph (b) of this clause and to monitor, detect, and terminate any agent, subcontract or subcontractor employee engaging in prohibited activities; and

(ii) After having conducted due diligence, either -

(A) To the best of the Contractor's knowledge and belief, neither it nor any of its agents, subcontractors, or their agents is engaged in any such activities; or

(B) If abuses relating to any of the prohibited activities identified in paragraph (b) of this clause have been found, the Contractor or subcontractor has taken the appropriate remedial and referral actions.

(i) *Subcontracts.*

(1) The Contractor shall include the substance of this clause, including this paragraph (i), in all subcontracts and in all contracts with agents. The requirements in paragraph (h) of this clause apply only to any portion of the subcontract that -

(i) Is for supplies, other than commercially available off-the-shelf items, acquired outside the United States, or services to be performed outside the United States; and

(ii) Has an estimated value that exceeds \$550,000.

(2) If any subcontractor is required by this clause to submit a certification, the Contractor shall require submission prior to the award of the subcontract and annually thereafter. The certification shall cover the items in paragraph (h)(5) of this clause.

**52.222-55 MINIMUM WAGES FOR CONTRACTOR WORKERS  
UNDER EXECUTIVE ORDER 14026 (JAN 2022)**

(a) Definitions. As used in this clause—

United States means the 50 states, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, and the outer Continental Shelf as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331, et seq.).

Worker –

(1) (i) Means any person engaged in performing work on, or in connection with, a contract covered by Executive Order 14026, and—

(A) Whose wages under such contract are governed by the Fair Labor Standards Act (29 U.S.C. chapter 8), the Service Contract Labor Standards statute (41 U.S.C. chapter 67), or the Wage Rate Requirements (Construction) statute (40 U.S.C. chapter 31, subchapter IV);

(B) Other than individuals employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 CFR part 541; and

(C) Regardless of the contractual relationship alleged to exist between the individual and the employer.

(ii) Includes workers performing on, or in connection with, the contract whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c).

(iii) Also includes any person working on, or in connection with, the contract and individually registered in a bona fide apprenticeship or training program registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship.

(2) (i) A worker performs on a contract if the worker directly performs the specific services called for by the contract; and

(ii) A worker performs in connection with a contract if the worker's work activities are necessary to the performance of a contract but are not the specific services called for by the contract.

(b) Executive Order Minimum wage rate.

(1) The Contractor shall pay to workers, while performing in the United States, and performing on, or in connection with, this contract, a minimum hourly wage rate of \$15.00 per hour beginning January 30, 2022.

(2) The Contractor shall adjust the minimum wage paid, if necessary, beginning January 1, 2023, and annually thereafter, to meet the applicable annual E.O. minimum wage. The Administrator of the Department of Labor's Wage and Hour Division (the Administrator) will publish annual determinations in the Federal Register no later than 90 days before the effective date of the new E.O. minimum wage rate. The Administrator will also publish the applicable E.O. minimum wage on <https://www.sam.gov> (or any successor website), and a general notice on all wage determinations issued under the Service Contract Labor Standards

statute or the Wage Rate Requirements (Construction) statute, that will provide information on the E.O. minimum wage and how to obtain annual updates. The applicable published E.O. minimum wage is incorporated by reference into this contract.

(3) (i) The Contractor may request a price adjustment only after the effective date of the new annual E.O. minimum wage determination. Prices will be adjusted only for increased labor costs (including subcontractor labor costs) as a result of an increase in the annual E.O. minimum wage, and for associated labor costs (including those for subcontractors).

Associated labor costs shall include increases or decreases that result from changes in social security and unemployment taxes and workers' compensation insurance, but will not otherwise include any amount for general and administrative costs, overhead, or profit.

(ii) Subcontractors may be entitled to adjustments due to the new minimum wage, pursuant to paragraph (b)(2). Contractors shall consider any subcontractor requests for such price adjustment.

(iii) The Contracting Officer will not adjust the contract price under this clause for any costs other than those identified in paragraph (b)(3)(i) of this clause, and will not provide duplicate price adjustments with any price adjustment under clauses implementing the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute.

(4) The Contractor warrants that the prices in this contract do not include allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(5) A pay period under this clause may not be longer than semi-monthly, but may be shorter to comply with any applicable law or other requirement under this contract establishing a shorter pay period. Workers shall be paid no later than one pay period following the end of the regular pay period in which such wages were earned or accrued.

(6) The Contractor shall pay, unconditionally to each worker, all wages due free and clear without subsequent rebate or kickback. The Contractor may make deductions that reduce a worker's wages below the E.O. minimum wage rate only if done in accordance with 29 CFR 23.230, Deductions.

(7) The Contractor shall not discharge any part of its minimum wage obligation under this clause by furnishing fringe benefits or, with respect to workers whose wages are governed by the Service Contract Labor Standards statute, the cash equivalent thereof.

(8) Nothing in this clause shall excuse the Contractor from compliance with any applicable Federal or State prevailing wage law or any applicable law or municipal ordinance or any applicable contract establishing a minimum wage higher than the E.O. 14026 minimum wage. However, wage increases under such other laws or municipal ordinances are not subject to price adjustment under this subpart.

(9) The Contractor shall pay the E.O. minimum wage rate whenever it is higher than any applicable collective bargaining agreement(s) wage rate.

(10) The Contractor shall follow the policies and procedures in 29 CFR 23.240(b) and 23.280 for treatment of workers engaged in an occupation in which they customarily and regularly receive more than \$30 a month in tips.

(c)

(1) This clause applies to workers as defined in paragraph (a). As provided in that definition-

(i) Workers are covered regardless of the contractual relationship alleged to exist between the contractor or subcontractor and the worker;

- (ii) Workers with disabilities whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c) are covered; and
- (iii) Workers who are registered in a bona fide apprenticeship program or training program registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship, are covered.

(2) This clause does not apply to—

- (i) Fair Labor Standards Act (FLSA)-covered individuals performing in connection with contracts covered by the E.O., i.e. those individuals who perform duties necessary to the performance of the contract, but who are not directly engaged in performing the specific work called for by the contract, and who spend less than 20 percent of their hours worked in a particular workweek performing in connection with such contracts;
- (ii) Individuals exempted from the minimum wage requirements of the FLSA under 29 U.S.C. 213(a) and 214(a) and (b), unless otherwise covered by the Service Contract Labor Standards statute, or the Wage Rate Requirements (Construction) statute. These individuals include but are not limited to—
  - (A) Learners, apprentices, or messengers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(a) ;
  - (B) Students whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(b) ; and
  - (C) Those employed in a bona fide executive, administrative, or professional capacity (29 U.S.C. 213(a)(1) and 29 CFR part 541).

(d) Notice. The Contractor shall notify all workers performing work on, or in connection with, this contract of the applicable E.O. minimum wage rate under this clause. With respect to workers covered by the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, the Contractor may meet this requirement by posting, in a prominent and accessible place at the worksite, the applicable wage determination under those statutes. With respect to workers whose wages are governed by the FLSA, the Contractor shall post notice, utilizing the poster provided by the Administrator, which can be obtained at [www.dol.gov/agencies/whd/government-contracts](http://www.dol.gov/agencies/whd/government-contracts), in a prominent and accessible place at the worksite. Contractors that customarily post notices to workers electronically may post the notice electronically provided the electronic posting is displayed prominently on any Web site that is maintained by the contractor, whether external or internal, and customarily used for notices to workers about terms and conditions of employment.

(e) Payroll Records.

- (1) The Contractor shall make and maintain records, for three years after completion of the work, containing the following information for each worker:
  - (i) Name, address, and social security number;
  - (ii) The worker's occupation(s) or classification(s);
  - (iii) The rate or rates of wages paid;
  - (iv) The number of daily and weekly hours worked by each worker;
  - (v) Any deductions made; and

(vi) Total wages paid.

(2) The Contractor shall make records pursuant to paragraph (e)(1) of this clause available for inspection and transcription by authorized representatives of the Administrator. The Contractor shall also make such records available upon request of the Contracting Officer.

(3) The Contractor shall make a copy of the contract available, as applicable, for inspection or transcription by authorized representatives of the Administrator.

(4) Failure to comply with this paragraph (e) shall be a violation of 29 CFR 23.260 and this contract. Upon direction of the Administrator or upon the Contracting Officer's own action, payment shall be withheld until such time as the noncompliance is corrected.

(5) Nothing in this clause limits or otherwise modifies the Contractor's payroll and recordkeeping obligations, if any, under the Service Contract Labor Standards statute, the Wage Rate Requirements (Construction) statute, the Fair Labor Standards Act, or any other applicable law.

(f) Access. The Contractor shall permit authorized representatives of the Administrator to conduct investigations, including interviewing workers at the worksite during normal working hours.

(g) Withholding. The Contracting Officer, upon his or her own action or upon written request of the Administrator, will withhold funds or cause funds to be withheld, from the Contractor under this or any other Federal contract with the same Contractor, sufficient to pay workers the full amount of wages required by this clause.

(h) Disputes. Department of Labor has set forth in 29 CFR 23.510, Disputes concerning contractor compliance, the procedures for resolving disputes concerning a contractor's compliance with Department of Labor regulations at 29 CFR part 23. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. These disputes include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the Department of Labor, or the workers or their representatives.

(i) Antiretaliation. The Contractor shall not discharge or in any other manner discriminate against any worker because such worker has filed any complaint or instituted or caused to be instituted any proceeding under or related to compliance with the E.O. or this clause, or has testified or is about to testify in any such proceeding.

(j) Subcontractor compliance. The Contractor is responsible for subcontractor compliance with the requirements of this clause and may be held liable for unpaid wages due subcontractor workers.

(k) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (k) in all subcontracts, regardless of dollar value, that are subject to the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, and are to be performed in whole or in part in the United States.

(End of clause)

**52.222-62 PAID SICK LEAVE UNDER EXECUTIVE ORDER 13706  
(JAN 2022)**

(a) *Definitions.* As used in this clause (in accordance with 29 CFR 13.2) —

“Child”, “domestic partner”, and “domestic violence” have the meaning given in 29 CFR 13.2.

“Employee” —

- (1) (i) Means any person engaged in performing work on or in connection with a contract covered by Executive Order (E.O.) 13706, and
  - (A) Whose wages under such contract are governed by the Service Contract Labor Standards statute ([41 U.S.C. chapter 67](#)), the Wage Rate Requirements (Construction) statute ([40 U.S.C. chapter 31](#), subchapter IV), or the Fair Labor Standards Act ([29 U.S.C. chapter 8](#)),
  - (B) Including employees who qualify for an exemption from the Fair Labor Standards Act's minimum wage and overtime provisions,
  - (C) Regardless of the contractual relationship alleged to exist between the individual and the employer; and
- (ii) Includes any person performing work on or in connection with the contract and individually registered in a bona fide apprenticeship or training program registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship.
- (2) (i) An employee performs “on” a contract if the employee directly performs the specific services called for by the contract; and
- (ii) An employee performs “in connection with” a contract if the employee's work activities are necessary to the performance of a contract but are not the specific services called for by the contract.

“Individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship” has the meaning given in 29 CFR 13.2.

“Multiemployer” plan means a plan to which more than one employer is required to contribute and which is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer.

“Paid sick leave” means compensated absence from employment that is required by E.O. 13706 and 29 CFR part 13.

“Parent”, “sexual assault”, “spouse”, and “stalking” have the meaning given in 29 CFR 13.2.

“United States” means the 50 States and the District of Columbia.

(b) *Executive Order 13706.*

- (1) This contract is subject to E.O. 13706 and the regulations issued by the Secretary of Labor in 29 CFR part 13 pursuant to the E.O.
- (2) If this contract is not performed wholly within the United States, this clause only applies with respect to that part of the contract that is performed within the United States.

(c) *Paid sick leave.* The Contractor shall —

- (1) Permit each employee engaged in performing work on or in connection with this contract to earn not less than 1 hour of paid sick leave for every 30 hours worked;
- (2) Allow accrual and use of paid sick leave as required by E.O. 13706 and 29 CFR part 13;

(3) Comply with the accrual, use, and other requirements set forth in 29 CFR 13.5 and 13.6, which are incorporated by reference in this contract;

(4) Provide paid sick leave to all employees when due free and clear and without subsequent deduction (except as otherwise provided by 29 CFR 13.24), rebate, or kickback on any account;

(5) Provide pay and benefits for paid sick leave used no later than one pay period following the end of the regular pay period in which the paid sick leave was taken; and

(6) Be responsible for the compliance by any subcontractor with the requirements of E.O. 13706, 29 CFR part 13, and this clause.

(d) Contractors may fulfill their obligations under E.O. 13706 and 29 CFR part 13 jointly with other contractors through a multiemployer plan, or may fulfill their obligations through an individual fund, plan, or program (see 29 CFR 13.8).

(e) *Withholding*. The Contracting Officer will, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this or any other Federal contract with the same Contractor, so much of the accrued payments or advances as may be considered necessary to pay employees the full amount owed to compensate for any violation of the requirements of E.O. 13706, 29 CFR part 13, or this clause, including—

(1) Any pay and/or benefits denied or lost by reason of the violation;

(2) Other actual monetary losses sustained as a direct result of the violation; and

(3) Liquidated damages.

(f) Payment suspension/contract termination/contractor debarment.

(1) In the event of a failure to comply with E.O. 13706, 29 CFR part 13, or this clause, the contracting agency may, on its own action or after authorization or by direction of the Department of Labor and written notification to the Contractor take action to cause suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(2) Any failure to comply with the requirements of this clause may be grounds for termination for default or cause.

(3) A breach of the contract clause may be grounds for debarment as a contractor and subcontractor as provided in 29 CFR 13.52.

(g) The paid sick leave required by E.O. 13706, 29 CFR part 13, and this clause is in addition to the Contractor's obligations under the Service Contract Labor Standards statute and Wage Rate Requirements (Construction) statute, and the Contractor may not receive credit toward its prevailing wage or fringe benefit obligations under those Acts for any paid sick leave provided in satisfaction of the requirements of E.O. 13706 and 29 CFR part 13.

(h) Nothing in E.O. 13706 or 29 CFR part 13 shall excuse noncompliance with or supersede any applicable Federal or State law, any applicable law or municipal ordinance, or a collective bargaining agreement requiring greater paid sick leave or leave rights than those established under E.O. 13706 and 29 CFR part 13.

(i) *Recordkeeping*

(1) The Contractor shall make and maintain, for no less than three (3) years from the completion of the work on the contract, records containing the following information for each employee,

which the Contractor shall make available upon request for inspection, copying, and transcription by authorized representatives of the Administrator of the Wage and Hour Division of the Department of Labor:

- (i) Name, address, and social security number of each employee.
- (ii) The employee's occupation(s) or classification(s).
- (iii) The rate or rates of wages paid (including all pay and benefits provided).
- (iv) The number of daily and weekly hours worked.
- (v) Any deductions made.
- (vi) The total wages paid (including all pay and benefits provided) each pay period.
- (vii) A copy of notifications to employees of the amount of paid sick leave the employee has accrued, as required under 29 CFR 13.5(a)(2).
- (viii) A copy of employees' requests to use paid sick leave, if in writing, or, if not in writing, any other records reflecting such employee requests.
- (ix) Dates and amounts of paid sick leave taken by employees (unless the Contractor's paid time off policy satisfies the requirements of E.O. 13706 and 29 CFR part 13 as described in 29 CFR 13.5(f)(5), leave shall be designated in records as paid sick leave pursuant to E.O. 13706).
- (x) A copy of any written responses to employees' requests to use paid sick leave, including explanations for any denials of such requests, as required under 29 CFR 13.5(d)(3).
- (xi) Any records reflecting the certification and documentation the Contractor may require an employee to provide under 29 CFR 13.5(e), including copies of any certification or documentation provided by an employee.
- (xii) Any other records showing any tracking of or calculations related to an employee's accrual or use of paid sick leave.
- (xiii) The relevant contract.
- (xiv) The regular pay and benefits provided to an employee for each use of paid sick leave.
- (xv) Any financial payment made for unused paid sick leave upon a separation from employment intended, pursuant to 29 CFR 13.5(b)(5), to relieve the Contractor from the obligation to reinstate such paid sick leave as otherwise required by 29 CFR 13.5(b)(4).

(2) (i) If the Contractor wishes to distinguish between an employee's covered and noncovered work, the Contractor shall keep records or other proof reflecting such distinctions. Only if the Contractor adequately segregates the employee's time will time spent on noncovered work be excluded from hours worked counted toward the accrual of paid sick leave. Similarly, only if the Contractor adequately segregates the employee's time may the Contractor properly refuse an employee's request to use paid sick leave on the ground that the employee was scheduled to perform noncovered work during the time he or she asked to use paid sick leave.

(ii) If the Contractor estimates covered hours worked by an employee who performs work

in connection with contracts covered by the E.O. pursuant to 29 CFR 13.5(a)(i) or (iii), the Contractor shall keep records or other proof of the verifiable information on which such estimates are reasonably based. Only if the Contractor relies on an estimate that is reasonable and based on verifiable information will an employee's time spent in connection with noncovered work be excluded from hours worked counted toward the accrual of paid sick leave. If the Contractor estimates the amount of time an employee spends performing in connection with contracts covered by the E.O., the Contractor shall permit the employee to use his or her paid sick leave during any work time for the Contractor.

(3) In the event the Contractor is not obligated by the Service Contract Labor Standards statute, the Wage Rate Requirements (Construction) statute, or the Fair Labor Standards Act to keep records of an employee's hours worked, such as because the employee is exempt from the Fair Labor Standards Act's minimum wage and overtime requirements, and the Contractor chooses to use the assumption permitted by 29 CFR 13.5(a)(1)(iii), the Contractor is excused from the requirement in paragraph (i)(1)(iv) of this clause and 29 CFR 13.25(a)(4) to keep records of the employee's number of daily and weekly hours worked.

(4) (i) Records relating to medical histories or domestic violence, sexual assault, or stalking, created for purposes of E.O. 13706, whether of an employee or an employee's child, parent, spouse, domestic partner, or other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship, shall be maintained as confidential records in separate files/records from the usual personnel files.

(ii) If the confidentiality requirements of the Genetic Information Nondiscrimination Act of 2008 (GINA), section 503 of the Rehabilitation Act of 1973, and/or the Americans with Disabilities Act (ADA) apply to records or documents created to comply with the recordkeeping requirements in this contract clause, the records and documents shall also be maintained in compliance with the confidentiality requirements of the GINA, section 503 of the Rehabilitation Act of 1973, and/or ADA as described in 29 CFR 1635.9, 41 CFR 60-741.23(d), and 29 CFR 1630.14(c)(1), respectively.

(iii) The Contractor shall not disclose any documentation used to verify the need to use 3 or more consecutive days of paid sick leave for the purposes listed in 29 CFR 13.5(c)(1)(iv) (as described in 29 CFR 13.5(e)(1)(ii)) and shall maintain confidentiality about any domestic abuse, sexual assault, or stalking, unless the employee consents or when disclosure is required by law.

(5) The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(6) Nothing in this contract clause limits or otherwise modifies the Contractor's recordkeeping obligations, if any, under the Service Contract Labor Standards statute, the Wage Rate Requirements (Construction) statute, the Fair Labor Standards Act, the Family and Medical Leave Act, E.O. 14026, their respective implementing regulations, or any other applicable law.

(j) *Interference/discrimination.*

(1) The Contractor shall not in any manner interfere with an employee's accrual or use of paid sick leave as required by E.O. 13706 or 29 CFR part 13. Interference includes, but is not limited to —

(i) Miscalculating the amount of paid sick leave an employee has accrued;

(ii) Denying or unreasonably delaying a response to a proper request to use paid sick leave;

(iii) Discouraging an employee from using paid sick leave;

- (iv) Reducing an employee's accrued paid sick leave by more than the amount of such leave used;
- (v) Transferring an employee to work on contracts not covered by the E.O. to prevent the accrual or use of paid sick leave;
- (vi) Disclosing confidential information contained in certification or other documentation provided to verify the need to use paid sick leave; or
- (vii) Making the use of paid sick leave contingent on the employee's finding a replacement worker or the fulfillment of the Contractor's operational needs.

(2) The Contractor shall not discharge or in any other manner discriminate against any employee for —

- (i) Using, or attempting to use, paid sick leave as provided for under E.O. 13706 and 29 CFR part 13;
- (ii) Filing any complaint, initiating any proceeding, or otherwise asserting any right or claim under E.O. 13706 and 29 CFR part 13;
- (iii) Cooperating in any investigation or testifying in any proceeding under E.O. 13706 and 29 CFR part 13; or
- (iv) Informing any other person about his or her rights under E.O. 13706 and 29 CFR part 13.

(k) *Notice.* The Contractor shall notify all employees performing work on or in connection with a contract covered by the E.O. of the paid sick leave requirements of E.O. 13706, 29 CFR part 13, and this clause by posting a notice provided by the Department of Labor in a prominent and accessible place at the worksite so it may be readily seen by employees. Contractors that customarily post notices to employees electronically may post the notice electronically, provided such electronic posting is displayed prominently on any website that is maintained by the Contractor, whether external or internal, and customarily used for notices to employees about terms and conditions of employment.

(l) *Disputes concerning labor standards.* Disputes related to the application of E.O. 13706 to this contract shall not be subject to the general disputes clause of the contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR part 13. Disputes within the meaning of this contract clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the Department of Labor, or the employees or their representatives.

(m) *Subcontracts.* The Contractor shall insert the substance of this clause, including this paragraph (m), in all subcontracts, regardless of dollar value, that are subject to the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, and are to be performed in whole or in part in the United States.

#### **52.247-64 PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS (NOV 2021)**

(a) Except as provided in paragraph (e) of this clause, the Cargo Preference Act of 1954 (46 U.S.C. Appx 1241(b)) requires that Federal departments and agencies shall transport in privately owned U.S.-flag commercial vessels at least 50 percent of the gross tonnage of equipment, materials, or commodities that may be transported in ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers). Such transportation shall be accomplished when any equipment, materials, or commodities, located within or outside the United States, that may be transported by ocean vessel are —

- (1) Acquired for a U.S. Government agency account;
- (2) Furnished to, or for the account of, any foreign nation without provision for reimbursement;
- (3) Furnished for the account of a foreign nation in connection with which the United States advances funds or credits, or guarantees the convertibility of foreign currencies; or
- (4) Acquired with advance of funds, loans, or guaranties made by or on behalf of the United States.

(b) The Contractor shall use privately owned U.S.-flag commercial vessels to ship at least 50 percent of the gross tonnage involved under this contract (computed separately for dry bulk carriers, dry cargo liners, and tankers) whenever shipping any equipment, materials, or commodities under the conditions set forth in paragraph (a) above, to the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.

- (c) (1) The Contractor shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to both (i) the Contracting Officer and (ii) the Office of Cargo Preference, Maritime Administration (MAR-590), 400 Seventh Street, SW, Washington, DC 20590. Subcontractor bills of lading shall be submitted through the Prime Contractor.
  - (2) The Contractor shall furnish these bill of lading copies (i) within 20 working days of the date of loading for shipments originating in the United States, or (ii) within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:
    - (A) Sponsoring U.S. Government agency.
    - (B) Name of vessel.
    - (C) Vessel flag of registry.
    - (D) Date of loading.
    - (E) Port of loading.
    - (F) Port of final discharge.
    - (G) Description of commodity.
    - (H) Gross weight in pounds and cubic feet if available.
    - (I) Total ocean freight revenue in U.S. dollars.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts or purchase orders under this contract, except those described in paragraph (e)(4).

(e) The requirement in paragraph (a) does not apply to —

- (1) Cargoes carried in vessels as required or authorized by law or treaty;
- (2) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353);
- (3) Shipments of classified supplies when the classification prohibits the use of non-Government vessels; and
- (4) Subcontracts or purchase orders for the acquisition of commercial products or commercial services unless —
  - (i) This contract is —

- (A) A contract or agreement for ocean transportation services; or
- (B) A construction contract; or

(ii) The supplies being transported are —

- (A) Items the Contractor is reselling or distributing to the Government without adding value. (Generally, the Contractor does not add value to the items when it subcontracts items for f.o.b. destination shipment); or
- (B) Shipped in direct support of U.S. military —
  - (1) Contingency operations;
  - (2) Exercises; or
  - (3) Forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.

(f) Guidance regarding fair and reasonable rates for privately owned U.S.-flag commercial vessels may be obtained from the Office of Costs and Rates, Maritime Administration, 400 Seventh Street, SW, Washington, DC 20590, Phone: 202-366-4610.

**52.215-21 REQUIREMENTS FOR CERTIFIED COST OR PRICING DATA AND DATA OTHER THAN CERTIFIED COST OR PRICING DATA — MODIFICATIONS (NOV 2021) (ALTERNATE IV — OCT 2010)**

- (a) Submission of certified cost or pricing data is not required.
- (b) Provide data described below: *[Insert description of the data and the format that are required, including the access to records necessary to permit an adequate evaluation of the proposed price in accordance with 15.403-3.]*
  - (1) Information required by the clause at 552.238-82, Modifications (Multiple Award Schedule).
  - (2) Any additional supporting information requested by the Contracting Officer. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether the price(s) offered is fair and reasonable.
  - (3) By submitting a request for modification, the Contractor grants the Contracting Officer or an authorized representative the right to examine, at any time before agreeing to a modification, books, records, documents, papers, and other directly pertinent records to verify the pricing, sales and other data related to the supplies or services proposed in order to determine the reasonableness of price(s). Access does not extend to Contractor's cost or profit information or other data relevant solely to the Contractor's determination of the prices to be offered in the catalog or marketplace.

**552.238-116 OPTION TO EXTEND THE TERM OF THE FSS CONTRACT (MAR 2022)**

- (a) The Government may require continued performance of this contract for an additional 5 year period. This option may be exercised up to three times.
- (b) The Contracting Officer may exercise the option by providing written notice to the Contractor 30 days before the contract expires.

(End of Clause)

**552.238-115 SPECIAL ORDERING PROCEDURES FOR THE ACQUISITION OF ORDER-LEVEL MATERIALS (APR 2022)**

## (a) Definition.

“Order-level materials”, as used in this clause, means supplies and/or services acquired in direct support of an individual task or delivery order placed against a Federal Supply Schedule (FSS) contract or FSS blanket purchase agreement (BPA), when the supplies and/or services are not known at the time of Schedule contract or FSS BPA award. The prices of order-level materials are not established in the FSS contract or FSS BPA. Order-level materials acquired following the procedures in paragraph (d) of this clause are done so under the authority of the FSS program, pursuant to 41 U.S.C. 152(3), and are not open market items, which are discussed in FAR 8.402(f).

(b) FAR 8.403(b) provides that GSA may establish special ordering procedures for a particular FSS.

(c) The procedures in FAR subpart 8.4 apply to this contract, with the exceptions listed in this clause. If a requirement in this clause is inconsistent with FAR subpart 8.4, this clause takes precedence pursuant to FAR 8.403(b).

(d) Procedures for including order-level materials when placing an individual task or delivery order against an FSS contract or FSS BPA.

(1) The procedures discussed in FAR 8.402(f) do not apply when placing task and delivery orders that include order-level materials.

(2) Order-level materials are included in the definition of the term “material” in FAR clause 52.212-4 Alternate I, and, therefore, all provisions of FAR clause 52.212-4 Alternate I that apply to “materials” also apply to order-level materials.

(3) Order-level materials shall only be acquired in direct support of an individual task or delivery order and not as the primary basis or purpose of the order.

(4) The value of order-level materials in a task or delivery order, or the cumulative value of order-level materials in orders against an FSS BPA awarded under a FSS contract, shall not exceed 33.33%.

(5) All order-level materials shall be placed under the Order-Level Materials SIN.

(6) Prior to the placement of an order that includes order-level materials, the Ordering Activity shall follow the procedures in FAR 8.404(h).

(7) To support the price reasonableness of order-level materials—

(i) The Contractor proposing order-level materials as part of a solution shall obtain a minimum of three quotes for each order-level material above the simplified acquisition threshold.

(A) One of these three quotes may include materials furnished by the Contractor under paragraph (i)(1)(ii)(A) of FAR clause 52.212-4 Alternate I.

(B) If the Contractor cannot obtain three quotes, the Contractor shall maintain documentation of why three quotes could not be obtained to support their determination.

(C) A Contractor with an approved purchasing system, per FAR subpart 44.3, shall instead follow its purchasing system requirement and is exempt from the requirements in paragraphs (d)(7)(i)(A) through (B) of this clause.

(ii) The Ordering Activity Contracting Officer must make a determination that prices for

all order-level materials are fair and reasonable. The Ordering Activity Contracting Officer may base this determination on a comparison of the quotes received in response to the task or delivery order solicitation or other relevant pricing information available.

(iii) If indirect costs are approved per paragraph (i)(1)(ii)(D)(2) of FAR clause 52.212-4 Alternate I, the Ordering Activity Contracting Officer must make a determination that all indirect costs approved for payment are fair and reasonable. Supporting data shall be submitted in a form acceptable to the Ordering Activity Contracting Officer.

(8) Prior to an increase in the ceiling price of order-level materials, the Ordering Activity Contracting Officer shall follow the procedures at FAR 8.404(h)(3)(iv).

(9) In accordance with GSAR clause 552.238-83, *Examination of Records by GSA (Federal Supply Schedules)*, GSA has the authority to examine the Contractor's records for compliance with the pricing provisions in FAR clause 52.212-4 Alternate I, to include examination of any books, documents, papers, and records involving transactions related to the contract for overbillings, billing errors, and compliance with the Industrial Funding Fee (IFF) and the Sales Reporting clauses of the contract.

(10) Order-level materials are exempt from the following clauses:

(i) 552.216-70 *Economic Price Adjustment - FSS Multiple Award Schedule Contracts*.

(ii) 552.238-77 *Submission and Distribution of Authorized Federal Supply Schedule (FSS) Price Lists*.

(iii) 552.238-81 *Price Reductions*.

End of clause

### **552.238-73 IDENTIFICATION OF ELECTRONIC OFFICE EQUIPMENT PROVIDING ACCESSIBILITY FOR INDIVIDUALS WITH DISABILITIES (MAR 2022)**

(a) Definitions.

"Electronic office equipment accessibility" means the application/configuration of electronic office equipment (includes hardware, software and firmware) in a manner that accommodates the functional limitations of individuals with disabilities so as to promote productivity and provide access to work related and/or public information resources.

"Individuals with Disabilities" mean qualified individuals with impairments as cited in 29 U.S.C. 705(20) who can benefit from electronic office equipment accessibility.

"Special peripheral" means a special needs aid that provides access to electronic equipment that is otherwise inaccessible to individuals with disabilities.

(b) The offeror is encouraged to identify in its offer, and include in any commercial catalogs and pricelists accepted by the Contracting Officer, office equipment, including any special peripheral, that will facilitate electronic office equipment accessibility for individuals with disabilities. Identification should include the type of disability accommodated and how the users with that disability would be helped.

End of clause

**52.216-22 INDEFINITE QUANTITY (OCT 1995)**

(a) This is an indefinite-quantity contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. The Contractor shall furnish to the Government, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the "maximum." The Government shall order at least the quantity of supplies or services designated in the Schedule as the "minimum."

(c) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the Contractor shall not be required to make any deliveries under this contract after the completion of customer order, including options, 60 months following the expiration of the FSS contract ordering period.

End of clause

**52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION (MAY 2022)**

(a) *Definitions.* As used in this clause –

*Commercially available off-the-shelf* (COTS) item –

(1) Means any item of supply that is –

- (i) A commercial product (as defined in paragraph (1) of the definition of "commercial product" at Federal Acquisition Regulation (FAR) [2.101](#));
- (ii) Sold in substantial quantities in the commercial marketplace; and
- (iii) Offered to the Government, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in [46 U.S.C. 40102\(4\)](#), such as agricultural products and petroleum products. Per 46 CFR 525.1(c)(2), "bulk cargo" means cargo that is loaded and carried in bulk onboard ship without mark or count, in a loose unpackaged form, having homogenous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count and, therefore, ceases to be bulk cargo.

*Employee assigned to the contract* means an employee who was hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), who is directly performing work, in the United States, under a contract that is required to include the clause prescribed at [22.1803](#). An employee is not considered to be directly performing work under a contract if the employee –

- (1) Normally performs support work, such as indirect or overhead functions; and
- (2) Does not perform any substantial duties applicable to the contract.

*Subcontract* means any contract, as defined in [2.101](#), entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

*Subcontractor* means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime Contractor or another subcontractor.

*United States*, as defined in [8 U.S.C. 1101\(a\)\(38\)](#), means the 50 States, the District of Columbia, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands.

(b) *Enrollment and verification requirements.*

(1) If the Contractor is not enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall –

(i) *Enroll.* Enroll as a Federal Contractor in the E-Verify program within 30 calendar days of contract award;

(ii) Verify all new employees. Within 90 calendar days of enrollment in the E-Verify program, begin to use E-Verify to initiate verification of employment eligibility of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); and

(iii) Verify employees assigned to the contract. For each employee assigned to the contract, initiate verification within 90 calendar days after date of enrollment or within 30 calendar days of the employee's assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section).

(2) If the Contractor is enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall use E-Verify to initiate verification of employment eligibility of –

(i) *All new employees.*

(A) Enrolled 90 calendar days or more. The Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or

(B) Enrolled less than 90 calendar days. Within 90 calendar days after enrollment as a Federal Contractor in E-Verify, the Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or

(ii) *Employees assigned to the contract.* For each employee assigned to the contract, the Contractor shall initiate verification within 90 calendar days after date of contract award or within 30 days after assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section).

(3) If the Contractor is an institution of higher education (as defined at [20 U.S.C. 1001\(a\)](#)); a State or local government or the government of a Federally recognized Indian tribe; or a surety performing under a takeover agreement entered into with a Federal agency pursuant to a performance bond, the Contractor may choose to verify only employees assigned to the contract, whether existing employees or new hires. The Contractor shall follow the applicable verification requirements at (b)(1) or (b)(2), respectively, except that any requirement for verification of new employees applies only to new employees assigned to the contract.

(4) *Option to verify employment eligibility of all employees.* The Contractor may elect to verify all existing employees hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), rather than just those employees assigned to the contract. The Contractor shall initiate verification for each existing employee working in the United States who was hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), within 180 calendar days of –

- (i) Enrollment in the E-Verify program; or
- (ii) Notification to E-Verify Operations of the Contractor's decision to exercise this option, using the contact information provided in the E-Verify program Memorandum of Understanding (MOU).

(5) The Contractor shall comply, for the period of performance of this contract, with the requirements of the E-Verify program MOU.

- (i) The Department of Homeland Security (DHS) or the Social Security Administration (SSA) may terminate the Contractor's MOU and deny access to the E-Verify system in accordance with the terms of the MOU. In such case, the Contractor will be referred to a suspension or debarment official.
- (ii) During the period between termination of the MOU and a decision by the suspension or debarment official whether to suspend or debar, the Contractor is excused from its obligations under paragraph (b) of this clause. If the suspension or debarment official determines not to suspend or debar the Contractor, then the Contractor must reenroll in E-Verify.

(c) *Web site.* Information on registration for and use of the E-Verify program can be obtained via the Internet at the Department of Homeland Security Web site: <https://www.e-verify.gov>.

(d) *Individuals previously verified.* The Contractor is not required by this clause to perform additional employment verification using E-Verify for any employee –

- (1) Whose employment eligibility was previously verified by the Contractor through the E-Verify program;
- (2) Who has been granted and holds an active U.S. Government security clearance for access to confidential, secret, or top secret information in accordance with the National Industrial Security Program Operating Manual; or
- (3) Who has undergone a completed background investigation and been issued credentials pursuant to Homeland Security Presidential Directive (HSPD)-12, Policy for a Common Identification Standard for Federal Employees and Contractors.

(e) *Subcontracts.* The Contractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for identification of the parties), in each subcontract that –

- (1) Is for –
  - (i) Services (except for commercial services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item); or
  - (ii) Construction;
- (2) Has a value of more than \$3,500; and
- (3) Includes work performed in the United States.

End of clause

## 52.219-14 LIMITATIONS ON SUBCONTRACTING (OCT 2022)

- (a) This clause does not apply to the unrestricted portion of a partial set-aside.
- (b) Definition. Similarly situated entity, as used in this clause, means a first-tier subcontractor, including an independent contractor, that—
  - (1) Has the same small business program status as that which qualified the prime contractor for the award (e.g., for a small business set-aside contract, any small business concern, without regard to its socioeconomic status); and
  - (2) Is considered small for the size standard under the North American Industry Classification System (NAICS) code the prime contractor assigned to the subcontract.
- (c) Applicability. This clause applies only to—
  - (1) Contracts that have been set aside for any of the small business concerns identified in 19.000(a)(3);
  - (2) Part or parts of a multiple-award contract that have been set aside for any of the small business concerns identified in 19.000(a)(3);
  - (3) Contracts that have been awarded on a sole-source basis in accordance with subparts 19.8, 19.13, 19.14, and 19.15;
  - (4) Orders expected to exceed the simplified acquisition threshold and that are—
    - (i) Set aside for small business concerns under multiple-award contracts, as described in 8.405-5 and 16.505(b)(2)(i)(F); or
    - (ii) Issued directly to small business concerns under multiple-award contracts as described in 19.504(c)(1)(ii);
  - (5) Orders, regardless of dollar value, that are—
    - (i) Set aside in accordance with subparts 19.8, 19.13, 19.14, or 19.15 under multiple-award contracts, as described in 8.405-5 and 16.505(b)(2)(i)(F); or
    - (ii) Issued directly to concerns that qualify for the programs described in subparts 19.8, 19.13, 19.14, or 19.15 under multiple-award contracts, as described in 19.504(c)(1)(ii); and
  - (6) Contracts using the HUBZone price evaluation preference to award to a HUBZone small business concern unless the concern waived the evaluation preference.
- (d) Independent contractors. An independent contractor shall be considered a subcontractor.
- (e) Limitations on subcontracting. By submission of an offer and execution of a contract, the Contractor agrees that in performance of a contract assigned a North American Industry Classification System (NAICS) code for—
  - (1) Services (except construction), it will not pay more than 50 percent of the amount paid by the Government for contract performance to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count towards the prime contractor's 50 percent subcontract amount that cannot be exceeded. When a contract includes both services and supplies, the 50 percent limitation shall apply only to the service portion of the contract;
  - (2) Supplies (other than procurement from a nonmanufacturer of such supplies), it will not pay more than 50 percent of the amount paid by the Government for contract performance, excluding the cost of materials, to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count towards the prime contractor's 50 percent subcontract amount that cannot be exceeded. When a contract includes both supplies and services, the 50 percent limitation shall apply only to the supply portion of the contract;
  - (3) General construction, it will not pay more than 85 percent of the amount paid by the Government for contract performance, excluding the cost of materials, to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count towards the prime contractor's 85 percent subcontract amount that cannot be exceeded; or
  - (4) Construction by special trade contractors, it will not pay more than 75 percent of the amount paid by the Government for contract performance, excluding the cost of materials, to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count towards the prime contractor's 75 percent subcontract amount that cannot be exceeded.
- (f) The Contractor shall comply with the limitations on subcontracting as follows:
  - (1) For contracts, in accordance with paragraphs (c)(1), (2), (3) and (6) of this clause—  
[Contracting Officer check as appropriate.]
  - # By the end of the base term of the contract and then by the end of each subsequent option

period; or

# By the end of the performance period for each order issued under the contract.

(2) For orders, in accordance with paragraphs (c)(4) and (5) of this clause, by the end of the performance period for the order.

(g) A joint venture agrees that, in the performance of the contract, the applicable percentage specified in paragraph (e) of this clause will be performed by the aggregate of the joint venture participants.

- (1) In a joint venture comprised of a small business protégé and its mentor approved by the Small Business Administration, the small business protégé shall perform at least 40 percent of the work performed by the joint venture. Work performed by the small business protégé in the joint venture must be more than administrative functions.
- (2) In an 8(a) joint venture, the 8(a) participant(s) shall perform at least 40 percent of the work performed by the joint venture. Work performed by the 8(a) participants in the joint venture must be more than administrative functions.

(End of clause)

### **52.219-27 NOTICE OF SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS SET- ASIDE (OCT 2022)**

(a) *Definition.* *Definition.* "Service-disabled veteran-owned small business concern"—

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) "Service-disabled veteran" means a veteran, as defined in [38 U.S.C.101\(2\)](#), with a disability that is service-connected, as defined in [38 U.S.C.101\(16\)](#).

(b) *Applicability.* This clause applies only to—

(1) Contracts that have been set aside for service-disabled veteran-owned small business concerns;

(2) Part or parts of a multiple-award contract that have been set aside for service-disabled veteran-owned small business concerns;

(3) Orders set aside for service-disabled veteran-owned small business concerns under multiple-award contracts as described in [8.405-5](#) and [16.505\(b\)\(2\)\(i\)\(F\)](#); and

(4) Orders issued directly to service-disabled veteran-owned small business concerns under multiple-award contracts as described in [19.504\(c\)\(1\)\(ii\)](#).

(c) General.

(1) Offers are solicited only from service-disabled veteran-owned small business concerns. Offers received from concerns that are not service-disabled veteran-owned small business concerns shall not be considered.

(2) Any award resulting from this solicitation will be made to a service-disabled veteran-owned small business concern.

(d) A joint venture may be considered a service-disabled veteran owned small business concern if—

- (1) At least one party to the joint venture complies with the criteria defined in paragraph (a) of this clause and [13 CFR 125.18\(b\)\(2\)](#); and
- (2) Each party to the joint venture is small under the size standard corresponding to the NAICS code assigned to the procurement, or the protégé is small under the size standard corresponding to the NAICS code assigned to the procurement in a joint venture comprised of a mentor and protégé with an approved mentor-protégé agreement under an SBA mentor-protégé program.
- (e) In a joint venture that complies with paragraph (f) of this clause, the service-disabled veteran-owned small business party or parties to the joint venture shall perform at least 40 percent of the work performed by the joint venture. Work performed by the service-disabled veteran-owned small business party or parties to the joint venture must be more than administrative functions.

(End of clause)

**52.219-29 NOTICE OF SET-ASIDE FOR, OR SOLE SOURCE  
AWARD TO, ECONOMICALLY DISADVANTAGED  
WOMEN-OWNED SMALL BUSINESS CONCERNS (OCT 2022)**

(a) Definitions.

*Economically disadvantaged women-owned small business (EDWOSB) concern*, as used in this clause, means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States and who are economically disadvantaged in accordance with [13 CFR part 127](#), and is certified pursuant to [13 CFR 127.300](#) as an EDWOSB. It automatically qualifies as a women-owned small business (WOSB) concern eligible under the WOSB Program.

*WOSB Program Repository* means a secure, Web-based application that collects, stores, and disseminates documents to the contracting community and SBA, which verify the eligibility of a business concern for a contract to be awarded under the WOSB Program.

(b) *Applicability*. This clause applies only to—

- (1) Contracts that have been set aside for, or awarded on a sole-source basis to, EDWOSB concerns;
- (2) Part or parts of a multiple-award contract that have been set aside for EDWOSB concerns;
- (3) Orders set aside for EDWOSB concerns under multiple-award contracts as described in [8.405-5](#) and [16.505\(b\)\(2\)\(i\)\(F\)](#); and
- (4) Orders issued directly to EDWOSB concerns under multiple-award contracts as described in [19.504\(c\)\(1\)\(ii\)](#).

(c) General.

- (1) For EDWOSB set-aside procurements, offers are solicited only from certified EDWOSB concerns or EDWOSB concerns with a pending application for certification in the Dynamic Small Business Search (DSBS).
- (2) For EDWOSB sole-source awards, offers are solicited only from certified EDWOSB concerns.
- (3) Offers received from other concerns will not be considered.
- (4) Any award resulting from this solicitation will be made to a certified EDWOSB concern.

(d) *Joint Venture*. A joint venture may be considered an EDWOSB concern if—

- (1) At least one party to the joint venture complies with the criteria defined in paragraph (a) and paragraph (c)(3) of this clause, and [13 CFR 127.506\(c\)](#); and
- (2) Each party to the joint venture qualifies as small under the size standard for the solicitation, or the protégé is small under the size standard for the solicitation in a joint venture comprised of a mentor and protégé with an approved mentor-protégé agreement under the SBA mentor-protégé program.
- (e) In a joint venture that complies with paragraph (d) of this clause, the EDWOSB party or parties to the joint venture shall perform at least 40 percent of the work performed by the joint venture. Work performed by the EDWOSB party or parties to the joint venture must be more than administrative functions.

(End of clause)

**52.219-30 NOTICE OF SET-ASIDE FOR, OR SOLE SOURCE AWARD TO, WOMEN-OWNED SMALL BUSINESS CONCERNs ELIGIBLE UNDER THE WOMEN-OWNED SMALL BUSINESS PROGRAM (OCT 2022)**

(a) *Definitions.* As used in this clause—

*Definition. Women-owned small business (WOSB) concern eligible under the WOSB Program (in accordance with [13 CFR part 127](#)), as used in this clause, means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States, and the concern is certified by SBA or an approved third-party certifier in accordance with [13 CFR 127.300](#) as a WOSB. A certified EDWOSB is automatically eligible as a certified WOSB.*

(b) *Applicability.* This clause applies only to—

- (1) Contracts that have been set aside for, or awarded on a sole-source basis to, WOSB concerns eligible under the WOSB Program;
- (2) Part or parts of a multiple-award contract that have been set aside for WOSB concerns eligible under the WOSB Program;
- (3) Orders set aside for WOSB concerns eligible under the WOSB Program, under multiple-award contracts as described in [8.405-5](#) and [16.505\(b\)\(2\)\(i\)\(F\)](#); and
- (4) Orders issued directly to WOSB concerns eligible under the WOSB Program under multiple-award contracts as described in [19.504\(c\)\(1\)\(ii\)](#).

(c) *General.*

(1) For WOSB set-aside procurements, offers are solicited only from certified WOSB concerns eligible under the WOSB Program or WOSB concerns with a pending application for certification status in the Dynamic Small Business Search (DSBS).

(2) For WOSB sole-source awards, offers are solicited only from certified WOSB concerns.

(3) Offers received from other concerns shall not be considered.

(4) Any award resulting from this solicitation will be made to a certified WOSB concern eligible under the WOSB Program.

(d) *Joint Venture.* A joint venture may be considered a WOSB concern eligible under the WOSB

Program if—

- (1) At least one party to the joint venture complies with the criteria defined in paragraph (a) and (c)(3) of this clause, and [13 CFR 127.506\(c\)](#); and
- (2) Each party to the joint venture qualifies as small under the size standard for the solicitation, or the protégé is small under the size standard for the solicitation in a joint venture comprised of a mentor and protégé with an approved mentor-protégé agreement under the SBA mentor-protégé program.
- (e) In a joint venture that complies with paragraph (d) of this clause, the WOSB party or parties to the joint venture shall perform at least 40 percent of the work performed by the joint venture. Work performed by the WOSB party or parties to the joint venture must be more than administrative functions.

(End of clause)

### **52.219-3 NOTICE OF HUBZONE SET-ASIDE OR SOLE SOURCE AWARD (OCT 2022)**

(a) *Definitions.* *HUBZone small business concern, as used in this clause, means a small business concern, certified by the Small Business Administration (SBA), that appears on the List of Qualified HUBZone Small Business Concerns maintained by the SBA (13 CFR 126.103).*

(b) *Applicability.* This clause applies only to—

- (1) Contracts that have been set aside or awarded on a sole-source basis to, HUBZone small business concerns;
- (2) Part or parts of a multiple-award contract that have been set aside for HUBZone small business concerns;
- (3) Orders set aside for HUBZone small business concerns under multiple-award contracts as described in 8.405-5 and 16.505(b)(2)(i)(F); and
- (4) Orders issued directly to HUBZone small business concerns under multiple-award contracts as described in 19.504(c)(1)(ii).

(c) *General.*

(1) Offers are solicited only from HUBZone small business concerns. Offers received from concerns that are not HUBZone small business concerns will not be considered.

(2) Any award resulting from this solicitation will be made to a HUBZone small business concern.

(d) *Joint Venture.* A joint venture may be considered a HUBZone concern if—

(1) At least one party to the joint venture is a HUBZone small business concern and complies with 13 CFR 126.616(c); and

(2) Each party to the joint venture qualifies as small under the size standard for the solicitation, or the protégé is small under the size standard for the solicitation in a joint venture comprised of a mentor and protégé with an approved mentor-protégé agreement under the SBA mentor-protégé program.

(e) A HUBZone joint venture agrees that, in the performance of the contract, at least 40 percent of the aggregate work performed by the joint venture shall be completed by the HUBZone small business parties to the joint venture. Work performed by the HUBZone small business party or parties to the

joint venture must be more than administrative functions.

(End of clause)

**C-FSS-370 CONTRACTOR TASKS / SPECIAL REQUIREMENTS  
(DEC 2022)**

(a) *Security clearances.* The Contractor may be required to obtain/possess varying levels of security clearances in the performance of orders issued under this contract. All costs associated with obtaining/possessing such security clearances should be factored into the price offered under the Multiple Award Schedule (MAS).

(b) *Travel.* The Contractor may be required to travel in performance of orders issued under this contract. Allowable travel and per diem charges are governed by FAR part 31, and are reimbursable by the ordering agency or can be priced as a fixed price item on orders placed under MAS. Travel in performance of a task order will only be reimbursable to the extent authorized by the ordering agency. The Industrial Funding Fee does not apply to travel and per diem charges.

(c) *Certifications, licenses and accreditations.* As a commercial practice, the Contractor may be required to obtain/possess any variety of certifications, licenses, and accreditations for specific Federal Supply Code (FSC)/Product Service Code (PSC) classifications offered. All costs associated with obtaining/ possessing such certifications, licenses, and accreditations should be factored into the price offered under MAS.

(d) *Insurance.* As a commercial practice, the Contractor may be required to obtain/possess insurance coverage for specific FSC/PSC classifications offered. All costs associated with obtaining/possessing such insurance should be factored into the price offered under MAS.

(e) *Personnel.* The Contractor may be required to provide key personnel, resumes or skill category descriptions in the performance of orders issued under this contract. Ordering agencies may require prior approval of additions or replacements to key personnel.

(f) *Organizational conflicts of interest.* Where there may be an organizational conflict of interest as determined by the ordering agency, the Contractor's participation in such an order may be restricted in accordance with FAR part 9.5.

(g) *Documentation/Standards.* The Contractor may be requested to provide products or services in accordance with rules, regulations, Office of Management and Budget orders, standards and documentation as specified by the order.

(h) *Data/Deliverable requirements.* Any required data/deliverables at the order level will be specified or negotiated by the ordering agency.

(i) *Government-furnished property.* As specified by the order, the Government may provide property, equipment, materials or resources as necessary.

(j) *Availability of funds.* Many ordering agencies operating funds are appropriated for a specific fiscal year. Funds may not be presently available for any orders placed under the contract or any option year. The Government's obligation on orders placed under this contract is contingent upon the availability of appropriated funds from which payment for ordering purposes can be made. No legal liability on the part of the Government for any payment may arise until funds are available to the ordering Contracting Officer.

(k) *Overtime.* For professional services, the labor rates in the Schedule should not vary by virtue of the Contractor having worked overtime. For services applicable to the Service Contract Act (as identified in the Schedule), the labor rates in the Schedule will vary as governed by labor laws (usually assessed a

time and a half of the labor rate).

(End of clause)

## **I-FSS-40 CONTRACTOR TEAM ARRANGEMENTS (DEC 2022)**

Contractors participating in contractor team arrangements must abide by all terms and conditions of their respective contracts. This includes compliance with GSAR clause 52.238-80, Industrial Funding Fee and Sales Reporting (i.e., each contractor participating in a contractor team arrangement must report sales and remit the Industrial Funding Fee for all products and services provided under its individual contract).

(End of clause)

## **I-FSS-600 CONTRACT PRICE LISTS (DEC 2022)**

(a) *Electronic Contract Data.*

(1) At the time of award, the Contractor will be provided instructions for submitting electronic contract data in a prescribed format as required by GSAR clause 552.238-77, Submission and Distribution of Authorized Federal Supply Schedule (FSS) Price Lists.

(2) The Contractor will have a choice to transmit its file submissions electronically through Electronic Data Interchange (EDI) in accordance with the Federal Implementation Convention (IC) or use the application made available at the time of award. The Contractor's electronic files must be complete, correct, readable, virus free, and contain only those supplies and services, prices, and terms and conditions that were accepted by the Government. They will be added to GSA's electronic ordering system known as GSA Advantage!®, a menu driven database system that provides online access to contract ordering information, terms and conditions, current pricing, and the option to create an electronic order. The Contractor's electronic files must be received no later than 30 days after award. Contractors should refer to the GSAR clause at 552.238-88, GSA Advantage!®, for further information.

(3) Further details on EDI, ICs, and GSA Advantage! ® can be found in GSAR clause 552.238-103, Electronic Commerce.

(4) The Contractor is encouraged to place the GSA logo on their website for those supplies or services covered by this contract. Contractors may link the GSA logo to their FSS price list. Only GSA Schedule holders may use the GSA logo, which is at <https://www.gsa.gov/logos>. All resultant "web price lists" shown on the Contractor's website must be in accordance with paragraph (b)(3)(ii) of this clause and nothing other than what was accepted/awarded by the Government may be included. If the Contractor elects to use contract identifiers on its website (either logos or contact number) the website must clearly distinguish between those items awarded on the contract and any other items offered by the Contractor on an open market basis.

(5) The Contractor is responsible for keeping all electronic catalogs data current, accurate, and complete; e.g., prices, product deletions and replacements, etc.

(b) *Federal Supply Schedule Price Lists.*

(1) The Contractor must prepare and distribute an FSS price list as required by GSAR clause 552.238-77, Submission and Distribution of Authorized Federal Supply Schedule (FSS) Price Lists.

(2) The Contractor must prepare an FSS price list by composing a price list in which only those items, terms, and conditions accepted by the Government are included, and which contain only net prices, based upon the commercial price list or commercial market prices less discounts accepted by the Government. The cover page of the FSS price list must include the following

statement: "Prices Shown Herein are Net (discount deducted)".

(3) The cover page of the FSS price list must include the following information prepared in the following format:

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Service Authorized Federal Supply Schedule FSS Price List

Online access to contract ordering information, terms and conditions, pricing, and the option to create an electronic delivery order are available through GSA Advantage!®. The website for GSA Advantage!® is: <https://www.GSAAdvantage.gov>.

Schedule title

FSC Group, Part, and Section or Standard Industrial Group (as applicable)

FSC Class(es)/Product Code(s) and/or Service Codes (as applicable).

Contract number

Contract period

Contractor's name, address, and phone number (include toll free WATS number and FAX number, if applicable)

Contractor's internet address/website where Schedule information can be found (as applicable)

Contract administration source (if different from preceding entry)

Business size

For more information on ordering go to the following website: <https://www.gsa.gov/schedules>.

**CUSTOMER INFORMATION:** The following information should be placed under this heading in consecutively numbered paragraphs in the sequence set forth below. If this information is placed in another part of the FSS price list, a table of contents must be shown on the cover page that refers to the exact location of the information.

- 1a. Table of awarded special item number(s) with appropriate cross reference to item descriptions and awarded price(s).
- 1b. Identification of the lowest priced model number and lowest unit price for that model for each special item number awarded in the contract. This price is the Government price based on a unit of one, exclusive of any quantity/dollar volume, prompt payment discounts, or any other concession affecting price. Contracts that have unit prices based on the geographic location of the customer, should show the range of the lowest price, and cite the areas to which the prices apply.
- 1c. If the Contractor is proposing hourly rates, a description of all corresponding commercial job titles, experience, functional responsibility, and education for those types of employees or subcontractors who will perform services shall be provided. If hourly rates are not applicable, the Contractor shall insert "Not applicable" for this item.
2. Maximum order.
3. Minimum order.
4. Geographic coverage (delivery area).
5. Point(s) of production (city, county, and State or foreign country).
6. Discount from list prices or statement of net price.
7. Quantity discounts.
8. Prompt payment terms. The Contractor must insert the following statement after identifying the prompt payment terms: "Information for Ordering Offices: Prompt payment terms cannot be negotiated out of the contractual agreement in exchange for other concessions."
9. Foreign items (list items by country of origin).
- 10a. Time of delivery. (Contractor insert number of days.)

10b. Expedited Delivery. The Contractor must insert the sentence "Items available for expedited delivery are noted in this price list." under this heading. The Contractor may use a symbol of its choosing to highlight items in its FSS price list that have expedited delivery.

10c. Overnight and 2-day delivery. The Contractor must indicate whether overnight and 2-day delivery are available. Also, the Contractor must indicate that the ordering activity may contact the Contractor for rates for overnight and 2-day delivery.

10d. Urgent Requirements. The Contractor must note in its FSS price list that ordering agencies can request accelerated delivery for urgent requirements.

11. F.O.B. point(s).

12a. Ordering address(es).

12b. Ordering procedures: See Federal Acquisition Regulation (FAR) 8.405-3.

13. Payment address(es).

14. Warranty provision.

15. Export packing charges, if applicable.

16. Terms and conditions of rental, maintenance, and repair (if applicable).

17. Terms and conditions of installation (if applicable).

18a. Terms and conditions of repair parts indicating date of parts price lists and any discounts from list prices (if applicable).

18b. Terms and conditions for any other services (if applicable).

19. List of service and distribution points (if applicable).

20. List of participating dealers (if applicable).

21. Preventive maintenance (if applicable).

22a. Special attributes such as environmental attributes (e.g., recycled content, energy efficiency, and/or reduced pollutants).

22b. If applicable, indicate that Section 508 compliance information is available for the information and communications technology (ICT) products and services offered and show where full details can be found (e.g., Contractor's website or other location). ICT accessibility standards can be found at <https://www.section508.gov/>.

23. Unique Entity Identifier (UEI) number.

24. Notification regarding registration in the System for Award Management (SAM) database.

(4) Amendments to the FSS price lists must include on the cover page the same information as the current FSS price list plus the title "Supplement No. (sequentially numbered)" and the effective date(s) of such supplements.

(5) Accuracy of information and computation of prices is the responsibility of the Contractor.

(6) Inclusion of incorrect information in the FSS price list will cause the Contractor to resubmit/correct the FSS price list, and may constitute sufficient cause for termination, pursuant to GSA clause 552.212-4, Contract Terms and Conditions—Commercial Products and Commercial Services, and application of any other remedies as provided by law—including monetary recovery.

(End of clause)

#### **I-FSS-644 PRODUCTS OFFERED AND SOLD BY VENDORS OTHER THAN THE MANUFACTURER (DEC 2022)**

- (a) Applicability. This clause applies to offerings and sales of products made by Contractors other than the manufacturer of such products. This clause applies specifically to, but is not limited to, Contractors who are resellers and distributors. This clause does not apply to Contractors who are also the manufacturer of the product(s) being offered and sold under this contract.
- (b) Terms of Offering and Sales. Contractors shall not offer or sell products under this contract for which they do not have authorization, as applicable, and they lack an uninterrupted source of supply sufficient to satisfy the Government's requirements.

*(1) Manufacturer Authorization Program.*

- (i) For products that manufacturers manage through any "authorized supplier", "controlled distribution", or other similar program, the Contractor shall be included in such a program to sell products to the Government. The Government will rely on information provided by the manufacturer to identify such authority, to the extent provided by the manufacturer.
- (ii) If the Contractor is not included in any authorization program, then sales of those products under this contract are not permitted.
- (iii) For products that manufacturers do not manage through any authorization

program, the Contractor need only provide the uninterrupted source of supply as required by paragraph (b)(2) of this clause.

(2) *Uninterrupted Source of Supply.* The Contractor shall provide evidence of, and shall maintain, an uninterrupted source of supply sufficient to satisfy the Government's requirements for all products on its contract.

(3) *Manufacturer Prohibitions.* The Contractor shall not offer or sell any product under this contract that the manufacturer of the product has prohibited the Contractor from selling.

(c) *Discrepancies.* In the event that the Government becomes aware of any discrepancy regarding a Contractor's authorization program status, uninterrupted source of supply, or manufacturer prohibition, the Contracting Officer will give written notice of such discrepancy to the Contractor. The Contractor shall have 30 days to respond to the discrepancy. Failure to respond to or resolve (as applicable) a notice of discrepancy may result in cancellation of this contract, in whole or in part, in accordance with GSAR clause 552.238-79, Cancellation.

(End of clause)

### **I-FSS-973 PAYMENTS BY NON-FEDERAL ORDERING ACTIVITIES (DEC 2022)**

If eligible non-federal ordering activities are subject to a State prompt payment law, the terms and conditions of the applicable State law apply to the orders placed under this contract by such activities. If eligible non-federal ordering activities are not subject to a State prompt payment law, the terms and conditions of the Federal Prompt Payment Act as reflected in GSAR clause 552.212-4, Contract Terms and Conditions—Commercial Products and Commercial Services, apply to such activities in the same manner as to Federal ordering activities.

### **G-FSS-900-C CONTACT FOR CONTRACT ADMINISTRATION (DEC 2022)**

Offerors should complete paragraphs (a) and (b) of this clause if providing both domestic and overseas delivery. Complete paragraph (a) of this clause if providing domestic delivery only. Complete paragraph (b) of this clause if providing overseas delivery only.

The Contractor shall designate a person to serve as the contract administrator for the contract both domestically and overseas. The contract administrator is responsible for overall compliance with contract terms and conditions. The contract administrator is also the responsible official for issues concerning GSAR clause 552.238-80, Industrial Funding Fee and Sales Reporting, including reviews of Contractor records. The Contractor's designation of representatives to handle certain functions under this contract does not relieve the contract administrator of responsibility for contract compliance. Any changes to the designated individual must be provided to the Contracting Officer in writing, with the proposed effective date of the change.

(a) *Domestic.*

NAME \_\_\_\_\_

TITLE \_\_\_\_\_

ADDRESS \_\_\_\_\_

ZIP CODE \_\_\_\_\_

TELEPHONE NO. (\_\_\_\_\_) \_\_\_\_\_ FAX NO. \_\_\_\_\_

E-MAIL ADDRESS \_\_\_\_\_

(b) *Overseas.* Overseas contact points are mandatory for local assistance with the resolution of any delivery, performance, or quality complaint from ordering agencies. (Also, see the requirement in

GSAR clause 552.238-97, Parts and Service) At a minimum, a contact point must be furnished for each area in which deliveries are contemplated, e.g., Europe, South America, Far East, etc.

NAME \_\_\_\_\_

TITLE \_\_\_\_\_

ADDRESS \_\_\_\_\_

ZIP CODE \_\_\_\_\_

TELEPHONE NO. (\_\_\_\_\_) \_\_\_\_\_ FAX NO. \_\_\_\_\_

E-MAIL ADDRESS \_\_\_\_\_

(End of provision)

#### **I-FSS-106 GUARANTEED MINIMUM (DEC 2022)**

(a) The guaranteed minimum that the Government agrees to order during the period of this contract is \$2,500. If the Contractor receives total orders for less than \$2,500 during the term of the contract, the Government will pay the difference between the amount ordered and \$2,500.

(b) Payment of any amount due under this clause shall be contingent upon the Contractor's timely submission of reportable sales and fees and receipt of the close-out sales report pursuant to GSAR clause 552.238-80, Industrial Funding Fee and Sales Reporting.

(c) The guaranteed minimum applies only if the contract expires or contract cancellation is initiated by the Government. The guaranteed minimum does not apply if the contract is terminated for cause or if the contract is canceled at the request of the Contractor.

#### **52.232-40 PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (MAR 2023)**

(a)

(1) In accordance with 31 U.S.C. 3903 and 10 U.S.C. 3801, within 15 days after receipt of accelerated payments from the Government, the Contractor shall make accelerated payments to its small business subcontractors under this contract, to the maximum extent practicable and prior to when such payment is otherwise required under the applicable contract or subcontract, after receipt of a proper invoice and all other required documentation from the small business subcontractor.

(2) The Contractor agrees to make such payments to its small business subcontractors without any further consideration from or fees charged to the subcontractor.

(b) The acceleration of payments under this clause does not provide any new rights under the Prompt Payment Act.

(c) Include the substance of this clause, including this paragraph (c), in all subcontracts with small business concerns, including subcontracts with small business concerns for the acquisition of

commercial products or commercial services.  
(End of clause)

**52.204-27 PROHIBITION ON A BYTEDANCE COVERED APPLICATION (JUN 2023)**

(a) Definitions. As used in this clause—

Covered application means the social networking service TikTok or any successor application or service developed or provided by ByteDance Limited or an entity owned by ByteDance Limited.

Information technology, as defined in 40 U.S.C. 11101(6)—

(1) Means any equipment or interconnected system or subsystem of equipment, used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the executive agency, if the equipment is used by the executive agency directly or is used by a contractor under a contract with the executive agency that requires the use—

(i) Of that equipment; or  
(ii) Of that equipment to a significant extent in the performance of a service or the furnishing of a product;

(2) Includes computers, ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, services (including support services), and related resources; but

(3) Does not include any equipment acquired by a Federal contractor incidental to a Federal contract.

(b) Prohibition. Section 102 of Division R of the Consolidated Appropriations Act, 2023 (Pub. L. 117-328), the No TikTok on Government Devices Act, and its implementing guidance under Office of Management and Budget (OMB) Memorandum M-23-13, dated February 27, 2023, “No TikTok on Government Devices” Implementation Guidance, collectively prohibit the presence or use of a covered application on executive agency information technology, including certain equipment used by Federal contractors. The Contractor is prohibited from having or using a covered application on any information technology owned or managed by the Government, or on any information technology used or provided by the Contractor under this contract, including equipment provided by the Contractor’s employees; however, this prohibition does not apply if the Contracting Officer provides written notification to the Contractor that an exception has been granted in accordance with OMB Memorandum M-23-13.

(c) Subcontracts. The Contractor shall insert the substance of this clause, including this

paragraph

(c), in all subcontracts, including subcontracts for the acquisition of commercial products or commercial services.

(End of clause)

#### **552.219-74 SECTION 8(a) DIRECT AWARD (SEP 1999)**

(a) This contract is issued as a direct award between the contracting activity and the 8(a)Contractor pursuant to the Memorandum of Understanding between the Small Business Administration (SBA) and the General Services Administration. SBA retains the responsibility for 8(a)certifications, 8(a)eligibility determinations, and related issues, and will provide counseling and assistance to the 8(a)contractor under the 8(a)program. The cognizant SBA district office is:

[Complete at time of award]

(b) The contracting activity is responsible for administering the contract and taking any action on behalf of the Government under the terms and conditions of the contract. However, the contracting activity shall give advance notice to SBA before it issues a final notice terminating performance, either in whole or in part, under the contract. The contracting activity shall also coordinate with SBA prior to processing any advance payments or novation agreements. The contracting activity may assign contract administration functions to a contract administration office.

(c) The Contractor agrees:

(1)To notify the Contracting Officer, simultaneous with its notification to SBA (as required by SBA's 8(a)regulations), when the owner or owners upon whom 8(a)eligibility is based plan to relinquish ownership or control of the concern. Consistent with 15 U.S.C. 637(a)(21), transfer of ownership or control shall result in termination of the contract for convenience, unless SBA waives the requirement for termination prior to the actual relinquishing of ownership and control.

(2)To the requirements of 52.219-14, Limitations on Subcontracting.

(End of clause)

#### **52.219-18 NOTIFICATION OF COMPETITION LIMITED TO ELIGIBLE 8(a) PARTICIPANTS (OCT 2022) (DEVIATION)**

(a) Offers are solicited only from—

(1) Small business concerns expressly certified by the Small Business Administration (SBA) for

participation in SBA's 8(a) program and which meet the following criteria at the time of submission of offer—

(i) The Offeror is in conformance with the 8(a) support limitation set forth in its approved business plan; and

(ii)The Offeror is in conformance with the Business Activity Targets set forth in its approved business plan or any remedial action directed by SBA;

(2) A joint venture, in which at least one of the 8(a) program participants that is a party to the joint venture complies with the criteria set forth in paragraph (a)(1) of this clause, that complies with 13 CFR 124.513(c); or

(3) A joint venture—

(i) That is comprised of a mentor and an 8(a) protégé with an approved

mentor-protégé agreement under the 8(a) program;

(ii) In which at least one of the 8(a) program participants that is a party to the joint venture complies with the criteria set forth in paragraph (a)(1) of this clause; and

(iii) That complies with 13 CFR 124.513(c).

(b) By submission of its offer, the Offeror represents that it meets the applicable criteria set forth in paragraph (a) of this clause.

(c) Any award resulting from this solicitation will be made directly by the Contracting Officer to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.

(d) The \_\_\_\_\_ [insert name of SBA's contractor] will notify the \_\_\_\_\_ [insert name of contracting agency] Contracting Officer in writing immediately upon entering an agreement (either oral or written) to transfer all or part of its stock.

(End of clause)

**552.238-80 INDUSTRIAL FUNDING FEE AND SALES REPORTING (JUL 2020) (ALTERNATE I MAY 2023)**

(a) Definition. "Transactional data" encompasses the historical details of the products or services delivered by the Contractor during the performance of task or delivery orders issued against this contract.

(b) Reporting of Transactional Data. The Contractor must report all transactional data under this contract as follows:

(1) The Contractor must electronically report transactional data by utilizing the automated reporting system at an Internet website designated by the General Services Administration (GSA) or by uploading the data according to GSA instructions. GSA will post registration instructions and reporting procedures on the Vendor Support Center website, <https://vsc.gsa.gov>. The reporting system website address, as well as registration instructions and reporting procedures, will be provided at the time of award or inclusion of this clause in the contract.

(2) The Contractor must provide, at no additional cost to the Government, the following transactional data elements, as applicable:

(i) Contract or Blanket Purchase Agreement (BPA) Number.

(ii) Delivery/Task Order Number/Procurement Instrument Identifier (PIID).

(iii) Non Federal Entity.

(iv) Description of Deliverable.

(v) Manufacturer Name.

(vi) Manufacturer Part Number.

(vii) Unit Measure (each, hour, case, lot).

(viii) Quantity of Item Sold.

(ix) Universal Product Code.

(x) Price Paid per Unit.

(xi) Total Price.

**Note to paragraph (b)(2):** The Contracting Officer may add data elements to the standard elements listed in paragraph (b)(2) of this section with the approvals listed in GSAM 507.105(b)(3).

(3) The contractor must report transactional data within 30 calendar days from the last calendar day of the month. If there was no contract activity during the month, the Contractor must submit a confirmation of no reportable transactional data within 30 calendar days of the last calendar day of the month.

(4) The Contractor must report the price paid per unit, total price, or any other data elements with an associated monetary value listed in (b)(2) of this section, in U.S. dollars.

(5) The reported price paid per unit and total price must include the Industrial Funding Fee (IFF).

(6) The Contractor must maintain a consistent accounting method of transactional data reporting, based on the Contractor's established commercial accounting practice.

(7) Reporting Points.

(i) The acceptable points at which transactional data may be reported include-

(A) Issuance of an invoice; or

(B) Receipt of payment.

(ii) The Contractor must determine whether to report transactional data on the basis of invoices issued or payments received.

(8) The Contractor must continue to furnish reports, including confirmation of no transactional data, through physical completion of the last outstanding task or delivery order of the contract.

(9) Unless otherwise expressly stated by the ordering activity, orders that contain classified information or other information that would compromise national security are exempt from this reporting requirement.

(10) This clause does not exempt the Contractor from fulfilling existing reporting requirements contained elsewhere in the contract.

(11) GSA reserves the unilateral right to change reporting instructions following 60 calendar days' advance notification to the Contractor.

(c) Industrial Funding Fee (IFF).

(1) This contract includes an IFF charged on orders placed against this contract. The IFF is paid

by the authorized ordering activity but remitted to GSA by the Contractor. The IFF reimburses GSA for the costs of operating the Federal Supply Schedule program, as set forth in 40 U.S.C. 321: Acquisition Services Fund. Net operating revenues generated by the IFF are also applied to fund initiatives benefiting other authorized GSA programs, in accordance with 40 U.S.C. 321.

(2) GSA has the unilateral right to change the fee amount at any time, but not more than once per year; GSA will provide reasonable notice prior to the effective date of any change. GSA will post notice of the current IFF on the Vendor Support Center website at <https://vsc.gsa.gov>.

(3) Offerors must include the IFF in their prices. The fee is included in the awarded price(s) and reflected in the total amount charged to ordering activities. The fee will not be included in the price of non-contract items purchased pursuant to a separate contracting authority, such as a Governmentwide Acquisition Contract (GWAC); a separately awarded Federal Acquisition Regulation (FAR) Part 12, FAR Part 13, FAR Part 14, or FAR Part 15 procurement; or a non-FAR contract.

(4) The Contractor must remit the IFF to GSA in U.S. dollars within 30 calendar days after the last calendar day of the reporting quarter; final payment must be remitted within 30 calendar days after physical completion of the last outstanding task order or delivery order issued against the contract.

(5) GSA reserves the unilateral right to change remittance instructions following 60 calendar days' advance notification to the Contractor.

(d) The Contractor's failure to remit the full amount of the IFF within 30 calendar days after the end of the applicable reporting period constitutes a contract debt to the United States Government under the terms of FAR Subpart 32.6. The Government may exercise all rights under the Debt Collection Improvement Act of 1996, including withholding or offsetting payments and interest on the debt (see FAR clause 52.232-17, Interest). If the Contractor fails to submit the required transactional data reports, falsifies them, or fails to timely pay the IFF, these reasons constitute sufficient cause for the Government to terminate the contract for cause.

Note: Regulation 552.238-80

FSS contractors are required to report sales and remit IFF for Schedule items sold via FedMall, just as they would for any other Schedule sale. FedMall sales of Schedule items are treated no differently than sales earned via GSA Advantage! or from orders directly placed by an ordering activity.

This clause applies to contracts participating in the Transactional Data Reporting (TDR) Pilot.

### **552.238-113 SCOPE OF CONTRACT (ELIGIBLE ORDERING ACTIVITIES) (MAY 2023)**

(a) This solicitation is issued to establish contracts which may be used on a nonmandatory basis by the agencies and activities named below, as a source of supply for the supplies or services described herein, for domestic and/or overseas delivery. For the Wireless Mobility Services Special Item Number ONLY, limited geographic coverage (consistent with the Offeror's commercial practice) may be proposed.

- (1) Executive agencies (as defined in FAR Subpart 2.1) including nonappropriated fund activities as prescribed in 41 CFR 101-26.000;
- (2) Government contractors authorized in writing by a Federal agency pursuant to FAR 51.1;

- (3) Mixed ownership Government corporations (as defined in the Government Corporation Control Act);
- (4) Federal Agencies, including establishments in the legislative or judicial branch of government (except the Senate, the House of Representatives and the Architect of the Capitol and any activities under the direction of the Architect of the Capitol).
- (5) The District of Columbia;
- (6) Tribal governments when authorized under 25 USC 450j(k);
- (7) Tribes or tribally designated housing entities pursuant to 25 U.S.C. 4111(j);
- (8) Qualified Nonprofit Agencies as authorized under 40 USC 502(b); and
- (9) Organizations, other than those identified in paragraph (d) of this clause, authorized by GSA pursuant to statute or regulation to use GSA as a source of supply.

(b) *Definitions.*

“Domestic delivery” is delivery within the 48 contiguous states, Alaska, Hawaii, Puerto Rico, Washington, DC, and U.S. territories. Domestic delivery also includes a port or consolidation point, within the aforementioned areas, for orders received from overseas activities.

“Overseas delivery” is delivery to points outside of the 48 contiguous states, Washington, DC, Alaska, Hawaii, Puerto Rico, and U.S. territories

(c) Offerors are requested to check one of the following boxes:

- Contractor will provide domestic and overseas delivery.
- Contractor will provide overseas delivery only.
- Contractor will provide domestic delivery only.

(d) The following activities may place orders against Schedule contracts:

- (1) State and local government may place orders against Consolidated Schedule contracts containing information technology or security and protection Special Item Numbers, on an optional basis; provided, the Contractor accepts order(s) from such activities;
- (2) The American National Red Cross may place orders against Federal Supply Schedules for products and services in furtherance of the purposes set forth in its Federal charter (36 U.S.C. 300102); provided, the Contractor accepts order(s) from the American National Red Cross; and
- (3) Other qualified organizations, as defined in section 309 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5152), may place orders against Federal Supply Schedules for products and services determined to be appropriate to facilitate emergency preparedness and disaster relief and set forth in guidance by the Administrator of General Services, in consultation with the Administrator of the Federal Emergency Management Agency; provided, the Contractor accepts order(s) from such activities.
- (4) State and local governments may place orders against Federal Supply Schedules for good or services determined by the Secretary of Homeland Security to facilitate recovery from a major disaster declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121, et seq.) to facilitate disaster preparedness or response, or to facilitate recovery from terrorism or nuclear, biological, chemical, or radiological attack;

provided, the Contractor accepts order(s) from such activities.

(e) Articles or services may be ordered from time to time in such quantities as may be needed to fill any requirement, subject to the Order Limitations thresholds which will be specified in resultant contracts. Overseas activities may place orders directly with schedule contractors for delivery to CONUS port or consolidation point.

(f) (1) The Contractor is obligated to accept orders received from activities within the Executive branch of the Federal Government.

(2) The Contractor is not obligated to accept orders received from activities outside the Executive branch; however, the Contractor is encouraged to accept such orders. If the Contractor elects to accept such orders, all provisions of the contract shall apply, including clause 52.232-36 *Payment by Third Party*. If the Contractor is unwilling to accept such orders, and the proposed method of payment is not through the Credit Card, the Contractor shall return the order by mail or other means of delivery within 5 workdays from receipt. If the Contractor is unwilling to accept such orders, and the proposed method of payment is through the Credit Card, the Contractor must so advise the ordering activity within 24 hours of receipt of order. (Reference clause 52.232-36 *Payment by Third Party*.) Failure to return an order or advise the ordering activity within the time frames of this paragraph shall constitute acceptance whereupon all provisions of the contract shall apply.

(g) The Government is obligated to purchase under each resultant contract a guaranteed minimum of \$2,500 (two thousand, five hundred dollars) during the contract term.

(h) All users of GSA's Federal Supply Schedules, including non-Federal users, shall use the schedules in accordance with the ordering guidance provided by the Administrator of General Services. GSA encourages non-Federal users to follow the Schedule Ordering Procedures set forth in the Federal Acquisition Regulation (FAR) 8.4, but they may use different established competitive ordering procedures if such procedures are needed to satisfy their state and local acquisition regulations and/or organizational policies.

#### **552.238-117 PRICE ADJUSTMENT—FAILURE TO PROVIDE ACCURATE INFORMATION (OCT 2023)**

(a) The Government, at its election, may reduce the price of this contract or contract modification if the Contracting Officer determines after award of this contract or contract modification that the price negotiated was increased by a significant amount because the Contractor failed to:

(1) provide information required by this solicitation/contract or otherwise requested by the Government; or

(2) submit information that was current, accurate, and complete; or

(3) disclose changes in the Contractor's commercial pricelist(s), discounts or discounting policies which occurred after the original submission and prior to the completion of negotiations.

(b) The Government will consider information submitted to be current, accurate and complete if the data is current, accurate and complete as of 14 calendar days prior to the date it is submitted.

(c) If any reduction in the contract price under this clause reduces the price for items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States—

(1) The amount of the overpayment; and

(2) Simple interest on the amount of such overpayment to be computed from the date(s) of

overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective each quarter prescribed by the Secretary of Treasury under 26 U.S.C.6621(a)(2).

- (d) Failure to agree on the amount of the decrease shall be resolved as a dispute.
- (e) In addition to the remedy in paragraph (a) of this clause, the Government may terminate this contract for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

#### **I-FSS-639 CONTRACT SALES CRITERIA (SEP 2023)**

The Federal Supply Schedule (FSS) Contracting Officer may decide not to exercise the first option to extend the term of the contract if the Contractor's reported sales are not expected to exceed \$100,000 within the first 60 months following contract award. The FSS Contracting Officer may decide not to exercise subsequent options to extend the term of the contract if the Contractor's reported sales did not exceed \$125,000 each 60 month period thereafter.

(End of clause)

#### **552.212-71 CONTRACT TERMS AND CONDITIONS APPLICABLE TO GSA ACQUISITIONS OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES (OCT 2023)**

(a) The Contractor agrees to comply with any clause that is incorporated herein by reference to implement agency policy applicable to acquisition of commercial products, including commercial components, and commercial services. The clause in effect based on the applicable regulation cited on the date the solicitation is issued applies unless otherwise stated herein. The Contracting Officer should check the clauses in paragraph (b) that apply or delete the clauses that do not apply from the list. The Contracting Officer may add the date of the clause if desired for clarity. The GSAR clauses[ ] in paragraph (b) of this section are incorporated by reference.

(b) Clauses.

X [552.203-71](#) Restriction on Advertising

Varies by Category, Subcategory and SIN [552.211-73](#) Marking

Varies by Category, Subcategory and SIN [552.219-70](#) Allocation of Orders—Partially Set-Aside Items

X [552.229-70](#) Federal, State, and Local Taxes

Varies by Category, Subcategory and SIN [552.232-72](#) Final Payment Under Building Services Contracts

Varies by Category, Subcategory and SIN [552.237-71](#) Qualifications of Employees

N/A [552.242-70](#) Status Report of Orders and Shipments

(End of Clause)

**552.212-72 CONTRACT TERMS AND CONDITIONS REQUIRED  
TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS  
APPLICABLE TO GSA ACQUISITION OF COMMERCIAL  
PRODUCTS AND COMMERCIAL SERVICES (OCT 2023)**

The Contractor agrees to comply with any provision or clause that is incorporated herein by reference to implement provisions of law or Executive Orders applicable to acquisition of commercial items or components. The provision or clause in effect based on the applicable regulation cited on the date the solicitation is issued applies unless otherwise stated herein. The contracting officer should either check the provisions and clauses that apply or delete the provisions and clauses that do not apply from the lists in paragraphs (a) and (b). The contracting officer may add the date of the provision or clause if desired for clarity. The GSAR following provisions in paragraph (a) and GSAR clauses [in paragraph (b)] are incorporated by reference.

(a) Provisions.

Varies by Category, Subcategory and SIN 552.223-72 Hazardous Material Information

(b) Clauses.

\* \_\_\_\_\_ \* 552.215-70 Examination of Records by GSA

Varies by Category, Subcategory and SIN 552.223-70 Hazardous Substances.

Varies by Category, Subcategory and SIN 552.223-71 Nonconforming Hazardous Material.

X 552.223-73 Preservation, Packaging, Packing, Marking and Labeling of Hazardous Materials (HAZMAT) for Shipments.

X 552.232-23 Assignment of Claims

(End of Clause)

**52.225-5 TRADE AGREEMENTS (NOV 2023)**

(a) Definitions. As used in this clause-

“Caribbean Basin country end product”—

(1) Means an article that-

(i) (A) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(B) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed; and

(ii) Is not excluded from duty-free treatment for Caribbean countries under 19 U.S.C.2703 (b).

(A) For this reason, the following articles are not Caribbean Basin country end products:

- (1) Tuna prepared or preserved in any manner in airtight containers;
- (2) Petroleum, or any product derived from petroleum;
- (3) Watches and watch parts (including cases, bracelets, and straps) of whatever type including, but not limited to, mechanical, quartz digital, or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the Harmonized Tariff Schedule of the United States (HTSUS) column2 rates of duty apply (i.e., Afghanistan, Cuba, Laos, North Korea, and Vietnam); and
- (4) Certain of the following: textiles and apparel articles; footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel; or handloomed, handmade, and folklore articles;

(B) Access to the HTSUS to determine duty-free status of articles of these types is available at <https://usitc.gov/tata/hts/index.htm>. In particular, see the following:

- (1) General Note3(c), Products Eligible for Special Tariff treatment.
- (2) General Note17, Products of Countries Designated as Beneficiary Countries under the United States-Caribbean Basin Trade Partnership Act of 2000.
- (3) Section XXII, Chapter 98, Subchapter II, Articles Exported and Returned, Advanced or Improved Abroad, U.S. Note7(b).
- (4) Section XXII, Chapter 98, Subchapter XX, Goods Eligible for Special Tariff Benefits under the United States-Caribbean Basin Trade Partnership Act; and

(2) Refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the acquisition, includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

“Designated country” means any of the following countries:

- (1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, New Zealand, North Macedonia, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan (known in the World Trade Organization as “the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei)”), Ukraine, or United Kingdom);
- (2) A Free Trade Agreement (FTA) country (Australia, Bahrain, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Oman, Panama, Peru, or Singapore);

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo,

Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

“Designated country end product” means a WTO GPA country end product, an FTA country end product, a least developed country end product, or a Caribbean Basin country end product.

“End product” means those articles, materials, and supplies to be acquired under the contract for public use.

“Free Trade Agreement country end product” means an article that-

- (1) Is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) country; or
- (2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an FTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

“Least developed country end product” means an article that-

- (1) Is wholly the growth, product, or manufacture of a least developed country; or
- (2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product, includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

“United States” means the 50 States, the District of Columbia, and outlying areas.

“U.S.-made end product” means an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

“WTO GPA country end product” means an article that-

- (1) Is wholly the growth, product, or manufacture of a WTO GPA country; or
- (2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a

product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services, (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

(b) Delivery of end products. The Contracting Officer has determined that the WTO GPA and FTAs apply to this acquisition. Unless otherwise specified, these trade agreements apply to all items in the Schedule. The Contractor shall deliver under this contract only U.S.-made or designated country end products except to the extent that, in its offer, it specified delivery of other end products in the provision entitled "Trade Agreements Certificate."

End of clause

**552.212-4 CONTRACT TERMS AND CONDITIONS –  
COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES  
(NOV 2023) (DEVIATION – FEB 2007) (FAR DEVIATION - JAN  
2023)**

(a) *Inspection/Acceptance.* The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. If repair/replacement or reperformance will not correct the defects or is not possible, the Government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its post-acceptance rights —

- (1) Within a reasonable time after the defect was discovered or should have been discovered; and
- (2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

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

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

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

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

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

(g) *Invoice.*

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

- (i) Name and address of the Contractor;
- (ii) Invoice date and number;
- (iii) Contract number, line item number and, if applicable, the order number;
- (iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;
- (v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on an Government bill of lading;
- (vi) Terms of any discount for prompt payment offered;
- (vii) Name and address of official to whom payment is to be sent;
- (viii) Name, title, and phone number of person to notify in event of defective invoice; and
- (ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

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

- (A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.
- (B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (e.g., [52.232-33, Payment by Electronic Funds Transfer — System for Award Management](#), or [52.232-34, Payment by Electronic Funds Transfer—Other Than System for Award Management](#)), or applicable agency procedures.
- (C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(2) The due date for making invoice payments by the designated payment office is the later of the following two events:

- (i) The 10th day after the designated billing office receives a proper invoice from the Contractor. If the designated billing office fails to annotate the invoice with the date of receipt at the time of receipt, the invoice payment due date shall be the 10th day after the date of the Contractor's invoice; provided the Contractor submitted a proper invoice and no disagreement exists over quantity, quality, or Contractor compliance with contract requirements.
- (ii) The 10th day after Government acceptance of supplies delivered or services-performed by the Contractor.

(h) *Patent indemnity.* The Contractor shall indemnify the Government and its officers, employees and

agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(i) *Payment.*

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

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

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

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

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

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

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

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

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

(D) Contractor point of contact.

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

(6) *Interest.*

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

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

(iii) Final decisions. The Contracting Officer will issue a final decision as required by [33.211](#) if —

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

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

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

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

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

(A) The date fixed under this contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(r) *Compliance with laws unique to Government contracts.* The Contractor agrees to comply with [31 U.S.C. 1352](#) relating to limitations on the use of appropriated funds to influence certain Federal contracts; [18 U.S.C. 431](#) relating to officials not to benefit; [40 U.S.C. chapter 37](#), Contract Work Hours and Safety Standards; [41 U.S.C. chapter 87](#), Kickbacks; “[10 U.S.C. 4701](#)” relating to whistleblower protections; [49 U.S.C. 40118](#), Fly American; and [41 U.S.C. chapter 21](#) relating to procurement integrity.

(s) *Order of precedence.* Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

(1) The schedule of supplies/services.

(2) The Assignments, Disputes, Payments, Invoice, Other Compliances, Compliance with Laws Unique to Government Contracts, Unauthorized Obligations, and Commercial Supplier Agreements – Unenforceable Clauses paragraphs of this clause.

(3) The clause at 52.212-5.

(4) Addenda to this solicitation or contract, including any commercial supplier agreements as amended by the Commercial Supplier Agreements – Unenforceable Clauses provision.

(5) Solicitation provisions if this is a solicitation.

(6) Other paragraphs of this clause.

(7) The Standard Form 1449.

(8) Other documents, exhibits, and attachments.

(9) The specification.

(t) [Reserved]

(u) *Unauthorized Obligations.*

(1) Except as stated in paragraph (u)(2) of this clause, when any supply or service acquired under this contract is subject to any commercial supplier agreement (as defined in 502.101) that includes any language, provision, or clause requiring the Government to pay any future fees, penalties, interest, legal costs or to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:

(i) Any such language, provision, or clause is unenforceable against the Government.

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

(iii) Any such language, provision, or clause is deemed to be stricken from the commercial supplier agreement.

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

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

(w) *Commercial supplier agreements – unenforceable clauses.* When any supply or service acquired under this contract is subject to a commercial supplier agreement (as defined in 502.101), the following language shall be deemed incorporated into the commercial supplier agreement. As used herein, "this agreement" means the commercial supplier agreement:

(1) Notwithstanding any other provision of this agreement, when the end user is an agency or instrumentality of the Government, the following shall apply:

(i) *Applicability.* This agreement is a part of a contract between the commercial supplier and the Government for the acquisition of the supply or service that necessitates a license (including all contracts, task orders, and delivery orders under FAR Part 12).

(ii) *End user.* This agreement shall bind the Government as end user but shall not operate to bind an Government employee or person acting on behalf of the Government in his or her personal capacity.

(iii) *Law and disputes.* This agreement is governed by Federal law.

(A) Any language purporting to subject the U.S. Government to the laws of a U.S. state, U.S. territory, district, or municipality, or a foreign nation, except where Federal law expressly provides for the application of such laws, is hereby deleted.

(B) Any language requiring dispute resolution in a specific forum or venue that is different from that prescribed by applicable Federal law is hereby deleted.

(C) Any language prescribing a different time period for bringing an action than that prescribed by applicable Federal law in relation to a dispute is hereby deleted.

(iv) *Continued performance.* The supplier or licensor shall not unilaterally revoke, terminate or suspend any rights granted to the Government except as allowed by this contract. If the supplier or licensor believes the Government to be in breach of the

agreement, it shall pursue its rights under the Contract Disputes Act or other applicable Federal statute while continuing performance as set forth in subparagraph (d) (Disputes).

(v) *Arbitration; equitable or injunctive relief.* In the event of a claim or dispute arising under or relating to this agreement, a binding arbitration shall not be used unless specifically authorized by agency guidance, and equitable or injunctive relief, including the award of attorney fees, costs or interest, may be awarded against the U.S. Government only when explicitly provided by statute (e.g., Prompt Payment Act or Equal Access to Justice Act).

(vi) *Updating terms.*

(A) After award, the contractor may unilaterally revise commercial supplier agreement terms if they are not material. A material change is defined as:

- (1) Terms that change the Government's rights or obligations;
- (2) Terms that increase Government prices;
- (3) Terms that decrease overall level of service; or
- (4) Terms that limit any other Government right addressed elsewhere in this contract.

(B) For revisions that will materially change the terms of the contract, the revised commercial supplier agreement must be incorporated into the contract using a bilateral modification.

(C) Any agreement terms or conditions unilaterally revised subsequent to award that are inconsistent with any material term or provision of this contract shall not be enforceable against the Government, and the Government shall not be deemed to have consented to them.

(vii) *No automatic renewals.* If any license or service tied to periodic payment is provided under this agreement (e.g., annual software maintenance or annual lease term), such license or service shall not renew automatically upon expiration of its current term without prior express consent by an authorized Government representative.

(viii) *Indemnification.* Any clause of this agreement requiring the commercial supplier or licensor to defend or indemnify the end user is hereby amended to provide that the U.S. Department of Justice has the sole right to represent the United States in any such action, in accordance with 28 U.S.C. 516.

(ix) *Audits.* Any clause of this agreement permitting the commercial supplier or licensor to audit the end user's compliance with this agreement is hereby amended as follows:

(A) Discrepancies found in an audit may result in a charge by the commercial supplier or licensor to the Government. Any resulting invoice must comply with the proper invoicing requirements specified in the underlying Government contract or order.

(B) This charge, if disputed by the Government, will be resolved in accordance with subparagraph (d) (Disputes); no payment obligation shall arise on the part of the Government until the conclusion of the dispute process.

(C) Any audit requested by the contractor will be performed at the contractor's expense, without reimbursement by the Government.

(x) *Taxes or surcharges.* Any taxes or surcharges which the commercial supplier or licensor seeks to pass along to the Government as end user will be governed by the terms

of the underlying contract or order and, in any event, must be submitted to the Contracting Officer for a determination of applicability prior to invoicing unless specifically agreed to otherwise in the Government contract.

(xi) *Non-assignment.* This agreement may not be assigned, nor may any rights or obligations thereunder be delegated, without the Government's prior approval, except as expressly permitted under subparagraph (b) of this clause.

(xii) *Confidential information.* If this agreement includes a confidentiality clause, such clause is hereby amended to state that neither the agreement nor the contract price list, as applicable, shall be deemed "confidential information." Issues regarding release of "unit pricing" will be resolved consistent with the Freedom of Information Act.

Notwithstanding anything in this agreement to the contrary, the Government may retain any confidential information as required by law, regulation or its internal document retention procedures for legal, regulatory or compliance purposes; provided, however, that all such retained confidential information will continue to be subject to the confidentiality obligations of this agreement.

(2) If any language, provision, or clause of this agreement conflicts or is inconsistent with the preceding paragraph (w)(1), the language, provisions, or clause of paragraph (w)(1) shall prevail to the extent of such inconsistency.

Note: Regulation 552.212-4

This clause applies to fixed price orders.

**552.212-4 CONTRACT TERMS AND CONDITIONS -  
COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES  
(NOV 2023) (FAR DEVIATION - JAN 2023) (ALTERNATE I - NOV  
2021) (DEVIATION - FEB 2007)**

(a) *Inspection/Acceptance.*

(1) The Government has the right to inspect and test all materials furnished and services performed under this contract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. The Government may also inspect the plant or plants of the Contractor or any subcontractor engaged in contract performance. The Government will perform inspections and tests in a manner that will not unduly delay the work.

(2) If the Government performs inspection or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

(3) Unless otherwise specified in the contract, the Government will accept or reject services and materials at the place of delivery as promptly as practicable after delivery, and they will be presumed accepted 60 days after the date of delivery, unless accepted earlier.

(4) At any time during contract performance, but not later than 6 months (or such other time as may be specified in the contract) after acceptance of the services or materials last delivered under this contract, the Government may require the Contractor to replace or correct services or materials that at time of delivery failed to meet contract requirements. Except as otherwise specified in paragraph (a)(6) of this clause, the cost of replacement or correction shall be determined under paragraph (i) of this clause, but the "hourly rate" for labor hours incurred in the replacement or correction shall be reduced to exclude that portion of the rate attributable to profit. Unless otherwise specified below, the portion of the "hourly rate" attributable to profit shall be 10 percent. The Contractor shall not tender for acceptance materials and services required to be

replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken. [Insert portion of labor rate attributable to profit.]

(5) (i) If the Contractor fails to proceed with reasonable promptness to perform required replacement or correction, and if the replacement or correction can be performed within the ceiling price (or the ceiling price as increased by the Government), the Government may —

(A) By contract or otherwise, perform the replacement or correction, charge to the Contractor any increased cost, or deduct such increased cost from any amounts paid or due under this contract; or

(B) Terminate this contract for cause.

(ii) Failure to agree to the amount of increased cost to be charged to the Contractor shall be a dispute under the Disputes clause of the contract.

(6) Notwithstanding paragraphs (a)(4) and (5) above, the Government may at any time require the Contractor to remedy by correction or replacement, without cost to the Government, any failure by the Contractor to comply with the requirements of this contract, if the failure is due to —

(i) Fraud, lack of good faith, or willful misconduct on the part of the Contractor's managerial personnel; or

(ii) The conduct of one or more of the Contractor's employees selected or retained by the Contractor after any of the Contractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.

(7) This clause applies in the same manner and to the same extent to corrected or replacement materials or services as to materials and services originally delivered under this contract.

(8) The Contractor has no obligation or liability under this contract to correct or replace materials and services that at time of delivery do not meet contract requirements, except as provided in this clause or as may be otherwise specified in the contract.

(9) Unless otherwise specified in the contract, the Contractor's obligation to correct or replace Government-furnished property shall be governed by the clause pertaining to Government property.

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

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

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

(e) *Definitions.*

(1) The clause at FAR [52.202-1](#), Definitions, is incorporated herein by reference. As used in this clause —

(i) Direct materials means those materials that enter directly into the end product, or that are used or consumed directly in connection with the furnishing of the end product or service.

(ii) Hourly rate means the rate(s) prescribed in the contract for payment for labor that meets the labor category qualifications of a labor category specified in the contract that are —

(A) Performed by the contractor;

(B) Performed by the subcontractors; or

(C) Transferred between divisions, subsidiaries, or affiliates of the contractor under a common control.

(iii) *Materials* means —

(A) Direct materials, including supplies transferred between divisions, subsidiaries, or affiliates of the contractor under a common control;

(B) Subcontracts for supplies and incidental services for which there is not a labor category specified in the contract;

(C) Other direct costs (e.g., incidental services for which there is not a labor category specified in the contract, travel, computer usage charges, etc.);

(D) The following subcontracts for services which are specifically excluded from the hourly rate: Each order must list separately subcontracts for services excluded from the FSS Hourly Rates; and

(E) Indirect costs specifically provided for in this clause.

(iv) *Subcontract* means any contract, as defined in FAR [subpart 2.1](#), entered into with a subcontractor to furnish supplies or services for performance of the prime contract or a subcontract including transfers between divisions, subsidiaries, or affiliates of a contractor or subcontractor. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

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

(g) *Invoice*.

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

(i) Name and address of the Contractor;

- (ii) Invoice date and number;
- (iii) Contract number, line item number and, if applicable, the order number;
- (iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;
- (v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;
- (vi) Terms of any discount for prompt payment offered;
- (vii) Name and address of official to whom payment is to be sent;
- (viii) Name, title, and phone number of person to notify in event of defective invoice; and
- (ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.
- (x) Electronic funds transfer (EFT) banking information.
  - (A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.
  - (B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (e.g., [52.232-33, Payment by Electronic Funds Transfer—System for Award Management](#), or [52.232-34, Payment by Electronic Funds Transfer—Other Than System for Award Management](#)), or applicable agency procedures.
  - (C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(2) The due date for making invoice payments by the designated payment office is the later of the following two events:

- (i) The 10th day after the designated billing office receives a proper invoice from the Contractor. If the designated billing office fails to annotate the invoice with the date of receipt at the time of receipt, the invoice payment due date shall be the 10th day after the date of the Contractor's invoice; provided the Contractor submitted a proper invoice and no disagreement exists over quantity, quality, or Contractor compliance with contract requirements.
- (ii) The 10th day after Government acceptance of supplies delivered or services performed by the Contractor.

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

(i) *Payments*.

(1) Work performed. The Government will pay the Contractor as follows upon the submission of

commercial invoices approved by the Contracting Officer:

(i) Hourly rate.

(A) The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the contract by the number of direct labor hours performed. Fractional parts of an hour shall be payable on a prorated basis.

(B) The rates shall be paid for all labor performed on the contract that meets the labor qualifications specified in the contract. Labor hours incurred to perform tasks for which labor qualifications were specified in the contract will not be paid to the extent the work is performed by individuals that do not meet the qualifications specified in the contract, unless specifically authorized by the Contracting Officer.

(C) Invoices may be submitted once each month (or at more frequent intervals, if approved by the Contracting Officer) to the Contracting Officer or the authorized representative.

(D) When requested by the Contracting Officer or the authorized representative, the Contractor shall substantiate invoices (including any subcontractor hours reimbursed at the hourly rate in the schedule) by evidence of actual payment, individual daily job timecards, records that verify the employees meet the qualifications for the labor categories specified in the contract, or other substantiation specified in the contract.

(E) Unless the Schedule prescribes otherwise, the hourly rates in the Schedule shall not be varied by virtue of the Contractor having performed work on an overtime basis.

(1) If no overtime rates are provided in the Schedule and the Contracting Officer approves overtime work in advance, overtime rates shall be negotiated.

(2) Failure to agree upon these overtime rates shall be treated as a dispute under the Disputes clause of this contract.

(3) If the Schedule provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the Contracting Officer.

(ii) Materials.

(A) If the Contractor furnishes materials that meet the definition of a commercial product at FAR [2.101](#), the price to be paid for such materials shall not exceed the Contractor's established catalog or market price, adjusted to reflect the —

(1) Quantities being acquired; and

(2) Any modifications necessary because of contract requirements.

(B) Except as provided for in paragraph (i)(1)(ii)(A) and (D)(2) of this clause, the Government will reimburse the Contractor the actual cost of materials (less any rebates, refunds, or discounts received by the contractor that are identifiable to the contract) provided the Contractor —

(1) Has made payments for materials in accordance with the terms and conditions of the agreement or invoice; or

(2) Makes these payments within 30 days of the submission of the Contractor's payment request to the Government and such payment is in

accordance with the terms and conditions of the agreement or invoice.

(C) To the extent able, the Contractor shall —

(1) Obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and

(2) Give credit to the Government for cash and trade discounts, rebates, scrap, commissions, and other amounts that are identifiable to the contract.

(D) Other Costs. Unless listed below, other direct and indirect costs will not be reimbursed.

(1) Other Direct Costs. The Government will reimburse the Contractor on the basis of actual cost for the following, provided such costs comply with the requirements in paragraph (i)(1)(ii)(B) of this clause: **Each order must list separately the elements of other direct costs for that order.**

(2) Indirect Costs (Material Handling, Subcontract Administration, etc.). The Government will reimburse the Contractor for indirect costs on a pro-rata basis over the period of contract performance at the following fixed price: **Each order must list separately the fixed amount for the indirect costs and payment schedule; if no indirect costs are approved, insert "None."**

(2) *Total cost.* It is estimated that the total cost to the Government for the performance of this contract shall not exceed the ceiling price set forth in the Schedule and the Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within such ceiling price. If at any time the Contractor has reason to believe that the hourly rate payments and material costs that will accrue in performing this contract in the next succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 85 percent of the ceiling price in the Schedule, the Contractor shall notify the Contracting Officer giving a revised estimate of the total price to the Government for performing this contract with supporting reasons and documentation. If at any time during the performance of this contract, the Contractor has reason to believe that the total price to the Government for performing this contract will be substantially greater or less than the then stated ceiling price, the Contractor shall so notify the Contracting Officer, giving a revised estimate of the total price for performing this contract, with supporting reasons and documentation. If at any time during performance of this contract, the Government has reason to believe that the work to be required in performing this contract will be substantially greater or less than the stated ceiling price, the Contracting Officer will so advise the Contractor, giving the then revised estimate of the total amount of effort to be required under the contract.

(3) *Ceiling price.* The Government will not be obligated to pay the Contractor any amount in excess of the ceiling price in the Schedule, and the Contractor shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the Schedule, unless and until the Contracting Officer notifies the Contractor in writing that the ceiling price has been increased and specifies in the notice a revised ceiling that shall constitute the ceiling price for performance under this contract. When and to the extent that the ceiling price set forth in the Schedule has been increased, any hours expended and material costs incurred by the Contractor in excess of the ceiling price before the increase shall be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the ceiling price.

(4) *Access to records.* At any time before final payment under this contract, the Contracting Officer (or authorized representative) will have access to the following (access shall be limited to the listing below unless otherwise agreed to by the Contractor and the Contracting Officer):

(i) Records that verify that the employees whose time has been included in any invoice meet the qualifications for the labor categories specified in the contract;

(ii) For labor hours (including any subcontractor hours reimbursed at the hourly rate in the schedule), when timecards are required as substantiation for payment —

- (A) The original timecards (paper-based or electronic);
- (B) The Contractor's timekeeping procedures;
- (C) Contractor records that show the distribution of labor between jobs or contracts; and
- (D) Employees whose time has been included in any invoice for the purpose of verifying that these employees have worked the hours shown on the invoices.

(iii) For material and subcontract costs that are reimbursed on the basis of actual cost —

- (A) Any invoices or subcontract agreements substantiating material costs; and
- (B) Any documents supporting payment of those invoices.

(5) *Overpayments/Underpayments.* Each payment previously made shall be subject to reduction to the extent of amounts, on preceding invoices, that are found by the Contracting Officer not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. The Contractor shall promptly pay any such reduction within 30 days unless the parties agree otherwise. The Government within 30 days will pay any such increases, unless the parties agree otherwise. The Contractor's payment will be made by check. If the Contractor becomes aware of a duplicate invoice payment or that the Government has otherwise overpaid on an invoice payment, the Contractor shall —

- (i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the —
  - (A) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);
  - (B) Affected contract number and delivery order number, if applicable;
  - (C) Affected line item or subline item, if applicable; and
  - (D) Contractor point of contact.
- (ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

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

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

(iii) Final Decisions. The Contracting Officer will issue a final decision as required by [33.211](#) if —

- (A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt in a timely manner;
- (B) The Contractor fails to liquidate a debt previously demanded by the

Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

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

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

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

(A) The date fixed under this contract.

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

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

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

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

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

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

(viii) Upon receipt and approval of the invoice designated by the Contractor as the “completion invoice” and supporting documentation, and upon compliance by the Contractor with all terms of this contract, any outstanding balances will be paid within 30 days unless the parties agree otherwise. The completion invoice, and supporting documentation, shall be submitted by the Contractor as promptly as practicable following completion of the work under this contract, but in no event later than 1 year (or such longer period as the Contracting Officer may approve in writing) from the date of completion.

(7) *Release of claims.* The Contractor, and each assignee under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, a release discharging the Government, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions.

(i) Specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible to exact statement by the Contractor.

(ii) Claims, together with reasonable incidental expenses, based upon the liabilities of the Contractor to third parties arising out of performing this contract, that are not known to the Contractor on the date of the execution of the release, and of which the Contractor gives notice in writing to the Contracting Officer not more than 6 years after the date of the release or the date of any notice to the Contractor that the Government is prepared to

make final payment, whichever is earlier.

(iii) Claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Government against patent liability), including reasonable incidental expenses, incurred by the Contractor under the terms of this contract relating to patents.

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

(9) *Electronic Funds Transfer (EFT).* If the Government makes payment by EFT, see [52.212-5\(b\)](#) for the appropriate EFT clause.

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

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

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

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

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

(l) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid an amount for direct labor hours (as defined in the Schedule of the contract) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the contract, less any hourly rate payments already made to the Contractor plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system that have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

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

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

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

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

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

(r) *Compliance with laws unique to Government contracts.* The Contractor agrees to comply with [31 U.S.C. 1352](#) relating to limitations on the use of appropriated funds to influence certain Federal contracts; [18 U.S.C. 431](#) relating to officials not to benefit; [40 U.S.C. chapter 37](#), Contract Work Hours and Safety Standards; [41 U.S.C. chapter 87](#), Kickbacks; [10 U.S.C. 4701](#) relating to whistleblower protections; [49 U.S.C. 40118](#), Fly American; and [41 U.S.C. chapter 21](#) relating to procurement integrity.

(s) *Order of precedence.* Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

(1) The schedule of supplies/services.

(2) The Assignments, Disputes, Payments, Invoice, Other Compliances, Compliance with Laws Unique to Government Contracts, Unauthorized Obligations, and Commercial Supplier Agreements - Unenforceable Clauses paragraphs of this clause.

(3) The clause at 52.212-5.

(4) Addenda to this solicitation or contract, including any commercial supplier agreements as amended by the Commercial Supplier Agreements - Unenforceable Clauses provision.

(5) Solicitation provisions if this is a solicitation.

(6) Other paragraphs of this clause.

(7) The Standard Form 1449.

(8) Other documents, exhibits, and attachments.

(9) The specification.

(t) *[Reserved].*

(u) *Unauthorized Obligations.*

(1) Except as stated in paragraph (u)(2) of this clause, when any supply or service acquired under this contract is subject to any commercial supplier agreement (as defined in [502.101](#)) that includes any language, provision, or clause requiring the Government to pay any future fees, penalties, interest, legal costs or to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation ([31 U.S.C. 1341](#)), the following shall govern:

(i) Any such language, provision, or clause is unenforceable against the Government.

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

(iii) Any such language, provision, or clause is deemed to be stricken from the commercial supplier agreement.

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

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

(w) *Commercial supplier agreements—unenforceable clauses.* When any supply or service acquired under this contract is subject to a commercial supplier agreement (as defined in [502.101](#)), the following language shall be deemed incorporated into the commercial supplier agreement. As used herein, "this agreement" means the commercial supplier agreement:

(1) Notwithstanding any other provision of this agreement, when the end user is an agency or instrumentality of the U.S. Government, the following shall apply:

(i) *Applicability.* This agreement is a part of a contract between the commercial supplier and the U.S. Government for the acquisition of the supply or service that necessitates a license or other similar legal instrument (*including all contracts, task orders, and delivery orders under FAR Part 12*).

(ii) *End user.* This agreement shall bind the Government as end user but shall not operate to bind an Government employee or person acting on behalf of the Government in his or her personal capacity.

(iii) *Law and disputes.* This agreement is governed by Federal law.

(A) Any language purporting to subject the U.S. Government to the laws of a U.S. state, U.S. territory, district, or municipality, or a foreign nation, except where Federal law expressly provides for the application of such laws, is hereby deleted.

(B) Any language requiring dispute resolution in a specific forum or venue that is different from that prescribed by applicable Federal law is hereby deleted.

(C) Any language prescribing a different time period for bringing an action than that prescribed by applicable Federal law in relation to a dispute is hereby deleted.

(iv) *Continued performance.* The supplier or licensor shall not unilaterally revoke, terminate or suspend any rights granted to the Government except as allowed by this contract. If the supplier or licensor believes the Government to be in breach of the agreement, it shall pursue its rights under the Contract Disputes Act or other applicable Federal statute while continuing performance as set forth in subparagraph (d) (Disputes).

(v) *Arbitration; equitable or injunctive relief.* In the event of a claim or dispute arising under or relating to this agreement, a binding arbitration shall not be used unless specifically authorized by agency guidance, and equitable or injunctive relief, including the award of attorney fees, costs or interest, may be awarded against the Government only when explicitly provided by statute (e.g., Prompt Payment Act or Equal Access to Justice Act).

(vi) *Updating terms.*

(A) After award, the contractor may unilaterally revise commercial supplier agreement terms if they are not material. A material change is defined as:

- (1) Terms that change Government rights or obligations;
- (2) Terms that increase Government prices;
- (3) Terms that decrease overall level of service; or
- (4) Terms that limit any other Government right addressed elsewhere in this contract.

(B) For revisions that will materially change the terms of the contract, the revised commercial supplier agreement must be incorporated into the contract using a bilateral modification.

(C) Any agreement terms or conditions unilaterally revised subsequent to award that are inconsistent with any material term or provision of this contract shall not be enforceable against the Government, and the Government shall not be deemed to have consented to them.

(vii) No automatic renewals. If any license or service tied to periodic payment is provided under this agreement (e.g., annual software maintenance or annual lease term), such license or service shall not renew automatically upon expiration of its current term without prior express consent by an authorized Government representative.

(viii) Indemnification. Any clause of this agreement requiring the commercial supplier or licensor to defend or indemnify the end user is hereby amended to provide that the U.S. Department of Justice has the sole right to represent the United States in any such action, in accordance with [28 U.S.C. 516](#).

(ix) Audits. Any clause of this agreement permitting the commercial supplier or licensor to audit the end user's compliance with this agreement is hereby amended as follows:

- (A) Discrepancies found in an audit may result in a charge by the commercial supplier or licensor to the Government. Any resulting invoice must comply with the proper invoicing requirements specified in the underlying Government contract or order.
- (B) This charge, if disputed by the Government, will be resolved in accordance with subparagraph (d) (Disputes); no payment obligation shall arise on the part of the Government until the conclusion of the dispute process.
- (C) Any audit requested by the contractor will be performed at the contractor's expense, without reimbursement by the Government.

(x) Taxes or surcharges. Any taxes or surcharges which the commercial supplier or licensor seeks to pass along to the Government as end user will be governed by the terms of the underlying Government contract or order and, in any event, must be submitted to the Contracting Officer for a determination of applicability prior to invoicing unless specifically agreed to otherwise in the Government contract.

(xi) Non-assignment. This agreement may not be assigned, nor may any rights or obligations thereunder be delegated, without the Government's prior approval, except as expressly permitted under subparagraph (b) of this clause.

(xii) Confidential information. If this agreement includes a confidentiality clause, such clause is hereby amended to state that neither the agreement nor the contract price list, as applicable, shall be deemed "confidential information." Issues regarding release of "unit pricing" will be resolved consistent with the Freedom of Information Act. Notwithstanding anything in this agreement to the contrary, the Government may retain any confidential information as required by law, regulation or its internal document retention procedures for legal, regulatory or compliance purposes; provided, however,

that all such retained confidential information will continue to be subject to the confidentiality obligations of this agreement.

(2) If any language, provision, or clause of this agreement conflicts or is inconsistent with the preceding paragraph (w)(1), the language, provisions, or clause of paragraph (w)(1) shall prevail to the extent of such inconsistency.

Note: Regulation 552.212-4

This clause applies to Time-and-Materials or Labor Hour orders.

**52.204-23 PROHIBITION ON CONTRACTING FOR HARDWARE, SOFTWARE, AND SERVICES DEVELOPED OR PROVIDED BY KASPERSKY LAB COVERED ENTITIES (DEC 2023)**

(a) *Definitions.* As used in this clause —

Kaspersky Lab covered article means any hardware, software, or service that —

- (1) Is developed or provided by a Kaspersky Lab covered entity;
- (2) Includes any hardware, software, or service developed or provided in whole or in part by a Kaspersky Lab covered entity; or
- (3) Contains components using any hardware or software developed in whole or in part by a Kaspersky Lab covered entity.

Kaspersky Lab covered entity means —

- (1) Kaspersky Lab;
- (2) Any successor entity to Kaspersky Lab, including any change in name, *e.g.*, “Kaspersky”
- (3) Any entity that controls, is controlled by, or is under common control with Kaspersky Lab; or
- (4) Any entity of which Kaspersky Lab has a majority ownership.

(b) *Prohibition.* Section 1634 of Division A of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115-91) prohibits Government use of any Kaspersky Lab covered article. The Contractor is prohibited from —

- (1) Providing any Kaspersky Lab covered article that the Government will use on or after October 1, 2018; and
- (2) Using any Kaspersky Lab covered article on or after October 1, 2018, in the development of data or deliverables first produced in the performance of the contract.

(c) *Reporting requirement.*

(1) In the event the Contractor identifies a Kaspersky Lab covered article provided to the Government during contract performance, or the Contractor is notified of such by a subcontractor at any tier or any other source, the Contractor shall report, in writing, to the Contracting Officer or, in the case of the Department of Defense, to the website at <https://dibnet.dod.mil>. For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order or, in the case of

the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at <https://dibnet.dod.mil>.

(2) The Contractor shall report the following information pursuant to paragraph (c)(1) of this clause:

(i) Within 3 business days from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; brand; model number (Original Equipment Manufacturer (OEM) number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the report pursuant to paragraph (c)(1) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of a Kaspersky Lab covered article, any reasons that led to the use or submission of the Kaspersky Lab covered article, and any additional efforts that will be incorporated to prevent future use or submission of Kaspersky Lab covered articles.

(d) *Subcontracts*. The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts, including subcontracts for the acquisition of commercial products or commercial services.

#### **52.203-17 CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (NOV 2023)**

(a) This contract and employees working on this contract will be subject to the whistleblower rights and remedies established at [41 U.S.C. 4712](#) and Federal Acquisition Regulation (FAR) 3.900 through 3.905.

(b) The Contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under [41 U.S.C. 4712](#), as described in FAR 3.900 through 3.905.

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

(End of clause)

#### **52.222-19 CHILD LABOR-COOPERATION WITH AUTHORITIES AND REMEDIES (NOV 2023)**

(a) *Applicability*. This clause does not apply to the extent that the Contractor is supplying end products mined, produced, or manufactured in-

(1) Israel, and the anticipated value of the acquisition is \$50,000 or more;

(2) Mexico, and the anticipated value of the acquisition is \$92,319 or more; or

(3) Armenia, Aruba, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Italy, Japan, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, New Zealand, North Macedonia, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, Ukraine, or the United Kingdom and the anticipated value of the acquisition is \$183,000 or more.

(b) *Cooperation with Authorities.* To enforce the laws prohibiting the manufacture or importation of products mined, produced, or manufactured by forced or indentured child labor, authorized officials may need to conduct investigations to determine whether forced or indentured child labor was used to mine, produce, or manufacture any product furnished under this contract. If the solicitation includes the provision 52.222-18, Certification Regarding Knowledge of Child Labor for Listed End Products, or the equivalent at 52.212-3(i), the Contractor agrees to cooperate fully with authorized officials of the contracting agency, the Department of the Treasury, or the Department of Justice by providing reasonable access to records, documents, persons, or premises upon reasonable request by the authorized officials.

(c) *Violations.* The Government may impose remedies set forth in paragraph (d) for the following violations:

- (1) The Contractor has submitted a false certification regarding knowledge of the use of forced or indentured child labor for listed end products.
- (2) The Contractor has failed to cooperate, if required, in accordance with paragraph (b) of this clause, with an investigation of the use of forced or indentured child labor by an Inspector General, Attorney General, or the Secretary of the Treasury.
- (3) The Contractor uses forced or indentured child labor in its mining, production, or manufacturing processes.
- (4) The Contractor has furnished under the contract end products or components that have been mined, produced, or manufactured wholly or in part by forced or indentured child labor. (The Government will not pursue remedies at paragraph (d)(2) or paragraph (d)(3) of this clause unless sufficient evidence indicates that the Contractor knew of the violation.)

(d) *Remedies.*

- (1) The Contracting Officer may terminate the contract.
- (2) The suspending official may suspend the Contractor in accordance with procedures in FAR subpart 9.4.
- (3) The debarring official may debar the Contractor for a period not to exceed 3 years in accordance with the procedures in FAR subpart 9.4.

End of clause

## **52.219-8 UTILIZATION OF SMALL BUSINESS CONCERN (SEP 2023)**

(a) *Definitions.* As used in this contract —

HUBZone small business concern means a small business concern that meets the requirements described in 13 CFR 126.200, certified by the Small Business Administration (SBA) and designated by SBA as a HUBZone small business concern in the Dynamic Small Business Search (DSBS) and SAM.

“Service-disabled veteran-owned small business concern” —

- (1) Means a small business concern —
  - (i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and
  - (ii) The management and daily business operations of which are controlled by

one or more service disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C.101(2), with a disability that is service-connected, as defined in 38 U.S.C.101(16).

Small business concern means a concern, including its affiliates, that is independently owned and operated, not dominant in its field of operation and qualified as a small business under the criteria and size standards in 13 CFR part 121, including the size standard that corresponds to the NAICS code assigned to the contract or subcontract

Small disadvantaged business concern, consistent with 13 CFR 124.1001, means a small business concern under the size standard applicable to the acquisition, that-

(1) Is at least 51 percent unconditionally and directly owned (as defined at 13 CFR 124.105) by-

(i) One or more socially disadvantaged (as defined at 13 CFR 124.103) and economically disadvantaged (as defined at 13 CFR 124.104) individuals who are citizens of the United States; and

(ii) Each individual claiming economic disadvantage has a net worth not exceeding the threshold at 13 CFR 124.104(c)(2) after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(2) The management and daily business operations of which are controlled (as defined at 13 CFR 124.106) by individuals, who meet the criteria in paragraphs (1)(i) and (ii) of this definition.

“Veteran-owned small business concern” means a small business concern —

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C.101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

“Women-owned small business concern” means a small business concern —

(1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(b) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business

concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

(c) (1) A joint venture qualifies as a small business concern if—

- (i) Each party to the joint venture qualifies as small under the size standard for the solicitation; or
  - (ii) The protégé is small under the size standard for the solicitation in a joint venture comprised of a mentor and protégé with an approved mentor-protégé agreement under a SBA mentor-protégé program.

(2) A joint venture qualifies as—

- (i) A service-disabled veteran-owned small business concern if it complies with the requirements in 13 CFR part 125; or
- (ii) A HUBZone small business concern if it complies with the requirements in 13 CFR 126.616(a) through (c).

(d) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

(e) (1) The Contractor may accept a subcontractor's written representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business if the subcontractor represents that the size and socioeconomic status representations with its offer are current, accurate, and complete as of the date of the offer for the subcontract.

(2) The Contractor may accept a subcontractor's representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business in the System for Award Management (SAM) if—

(i) The subcontractor is registered in SAM; and

(ii) The subcontractor represents that the size and socioeconomic status representations made in SAM are current, accurate and complete as of the date of the offer for the subcontract.

(3) The Contractor may not require the use of SAM for the purposes of representing size or socioeconomic status in connection with a subcontract.

(4) In accordance with 13 CFR 121.411, 126.900, 127.700, and 128.600, a contractor acting in good faith is not liable for misrepresentations made by its subcontractors regarding the subcontractor's size or socioeconomic status.

(5) The Contractor shall confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing SAM or by accessing DSBS at [https://web.sba.gov/pro-net/search/dsp\\_dsbs.cfm](https://web.sba.gov/pro-net/search/dsp_dsbs.cfm). If the subcontractor is a joint venture, the Contractor shall confirm that at least one party to the joint venture is certified by SBA as a HUBZone small business concern. The Contractor may confirm the representation by accessing SAM.

(End of clause)

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#### **52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (SEP 2023) (ALT II NOV 2016)**

(a) This clause does not apply to small business concerns.

(b) *Definitions.* As used in this clause—

*Alaska Native Corporation (ANC) means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended ( [43 U.S.C. 1601, et seq.](#)) and which is considered a minority and economically disadvantaged concern under the criteria at [43 U.S.C. 1626\(e\)\(1\)](#). This definition also includes ANC direct and indirect subsidiary corporations, joint ventures, and partnerships that meet the requirements of [43 U.S.C. 1626\(e\)\(2\)](#).*

*Commercial plan means a subcontracting plan (including goals) that covers the offeror's fiscal year and that applies to the entire production of commercial products and commercial services sold by either the entire company or a portion thereof (e.g., division, plant, or product line).*

*Commercial product means a product that satisfies the definition of "commercial product" in Federal Acquisition Regulation (FAR) [2.101](#).*

*Commercial service means a service that satisfies the definition of "commercial service" in FAR [2.101](#).*

*Electronic Subcontracting Reporting System (eSRS) means the Governmentwide, electronic, web-based system for small business subcontracting program reporting. The eSRS is located at <http://www.esrs.gov>*

*Indian tribe means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act ( [43 U.S.C. 1601 et seq.](#)), that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs in accordance with [25 U.S.C. 1452\(c\)](#). This definition also includes Indian-owned economic enterprises that meet the requirements of [25 U.S.C. 1452\(e\)](#)*

*Individual subcontracting plan means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror's planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.*

*Master subcontracting plan means a subcontracting plan that contains all the required elements of an individual subcontracting plan, except goals, and may be incorporated into individual subcontracting plans, provided the master subcontracting plan has been approved.*

*Reduced payment means a payment that is for less than the amount agreed upon in a subcontract in accordance with its terms and conditions, for supplies and services for which the Government has paid the prime contractor.*

*Subcontract means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.*

*Total contract dollars means the final anticipated dollar value, including the dollar value of all options.*

*Untimely payment means a payment to a subcontractor that is more than 90 days past due under the terms and conditions of a subcontract for supplies and services for which the Government has paid the prime contractor.*

(c)

(1) Proposals submitted in response to this solicitation shall include a subcontracting plan that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If the Offeror is submitting an individual subcontracting plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate a subcontracting plan shall make the Offeror ineligible for award of a contract.

(2)

(i) The Contractor may accept a subcontractor's written representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business if the subcontractor represents that the size and socioeconomic status representations with its offer are current, accurate, and complete as of the date of the offer for the subcontract.

(ii) The Contractor may accept a subcontractor's representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business in the System for Award Management (SAM) if-

(A) The subcontractor is registered in SAM; and

(B) The subcontractor represents that the size and socioeconomic status representations made in SAM are current, accurate and complete as of the date of the offer for the subcontract.

(iii) The Contractor may not require the use of SAM for the purposes of representing size or socioeconomic status in connection with a subcontract.

(iv) In accordance with 13 CFR 121.411, 126.900, 127.700, and 128.600, a contractor acting in good faith is not liable for misrepresentations made by its subcontractors regarding the subcontractor's size or socioeconomic status.

(d) The Offeror's subcontracting plan shall include the following:

(1) Separate goals, expressed in terms of total dollars subcontracted, and as a percentage of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. For individual subcontracting plans, and if required by the Contracting Officer, goals shall also be expressed in terms of percentage of total contract dollars, in addition to the goals expressed as a percentage of total subcontract dollars. The Offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs. In accordance with [43 U.S.C. 1626](#):

- (i) Subcontracts awarded to an ANC or Indian tribe shall be counted towards the subcontracting goals for small business and small disadvantaged business concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe; and
- (ii) Where one or more subcontractors are in the subcontract tier between the prime Contractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate Contractor(s) to count the subcontract towards its small business and small disadvantaged business subcontracting goals.
  - (A) In most cases, the appropriate Contractor is the Contractor that awarded the subcontract to the ANC or Indian tribe.
  - (B) If the ANC or Indian tribe designates more than one Contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each Contractor. The sum of the amounts designated to various Contractors cannot exceed the total value of the subcontract.
  - (C) The ANC or Indian tribe shall give a copy of the written designation to the Contracting Officer, the prime Contractor, and the subcontractors in between the prime Contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.
  - (D) If the Contracting Officer does not receive a copy of the ANC's or the Indian tribe's written designation within 30 days of the subcontract award, the Contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated Contractor

(2) A statement of—

- (i) Total dollars planned to be subcontracted for an individual subcontracting plan; or the Offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts, including all indirect costs except as described in paragraph (g) of this clause, to support the sales for a commercial plan;
- (ii) Total dollars planned to be subcontracted to small business concerns (including ANC and Indian tribes);
- (iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;
- (iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business;
- (v) Total dollars planned to be subcontracted to HUBZone small business concerns;
- (vi) Total dollars planned to be subcontracted to small disadvantaged business concerns (including ANCs and Indian tribes); and
- (vii) Total dollars planned to be subcontracted to women-owned small business concerns.

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to—

- (i) Small business concerns;
- (ii) Veteran-owned small business concerns;
- (iii) Service-disabled veteran-owned small business concerns;
- (iv) HUBZone small business concerns;
- (v) Small disadvantaged business concerns; and
- (vi) Women-owned small business concerns.

(4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

(5) A description of the method used to identify potential sources for solicitation purposes (*e.g.*, existing company source lists, SAM, veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in SAM as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of SAM as its source list does not relieve a firm of its responsibilities (*e.g.*, outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the Offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with—

- (i) Small business concerns (including ANC and Indian tribes);
- (ii) Veteran-owned small business concerns;
- (iii) Service-disabled veteran-owned small business concerns;
- (iv) HUBZone small business concerns;
- (v) Small disadvantaged business concerns (including ANC and Indian tribes); and
- (vi) Women-owned small business concerns.

(7) The name of the individual employed by the Offeror who will administer the Offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the Offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the Offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the Offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of the applicable threshold specified in FAR [19.702\(a\)](#) on the date of subcontract award, with further subcontracting possibilities to adopt a subcontracting plan that complies with the requirements of this clause.

(10) Assurances that the Offeror will-

(i) Cooperate in any studies or surveys as may be required;

(ii) Submit periodic reports so that the Government can determine the extent of compliance by the Offeror with the subcontracting plan;

(iii) After November 30, 2017, include subcontracting data for each order when reporting subcontracting achievements for indefinite-delivery, indefinite-quantity contracts with individual subcontracting plans where the contract is intended for use by multiple agencies;

(iv) Submit the Individual Subcontract Report (ISR) and/or the Summary Subcontract Report (SSR), in accordance with paragraph (l) of this clause using the Electronic Subcontracting Reporting System (eSRS) at <http://www.esrs.gov>. The reports shall provide information on subcontract awards to small business concerns (including ANCs and Indian tribes that are not small businesses), veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns (including ANCs and Indian tribes that have not been certified by the Small Business Administration as small disadvantaged businesses), women-owned small business concerns, and for NASA only, Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with this clause, or as provided in agency regulations;

(v) Ensure that its subcontractors with subcontracting plans agree to submit the ISR and/or the SSR using eSRS;

(vi) Provide its prime contract number, its unique entity identifier, and the e-mail address of the Offeror's official responsible for acknowledging receipt of or rejecting the ISRs, to all first-tier subcontractors with subcontracting plans so they can enter this information into the eSRS when submitting their ISRs; and

(vii) Require that each subcontractor with a subcontracting plan provide the prime contract number, its own unique entity identifier, and the e-mail address of the subcontractor's official responsible for acknowledging receipt of or rejecting the ISRs, to its subcontractors with subcontracting plans.

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists (e.g., SAM), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than the simplified acquisition threshold, as defined in FAR [2.101](#) on the date of subcontract award, indicating-

- (A) Whether small business concerns were solicited and, if not, why not;
- (B) Whether veteran-owned small business concerns were solicited and, if not, why not;
- (C) Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;
- (D) Whether HUBZone small business concerns were solicited and, if not, why not;
- (E) Whether small disadvantaged business concerns were solicited and, if not, why not;
- (F) Whether women-owned small business concerns were solicited and, if not, why not; and
- (G) If applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact-

- (A) Trade associations;
- (B) Business development organizations;
- (C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, service-disabled veteran-owned, and women-owned small business sources; and
- (D) Veterans service organizations.

(v) Records of internal guidance and encouragement provided to buyers through-

- (A) Workshops, seminars, training, etc.; and
- (B) Monitoring performance to evaluate compliance with the program's requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.

(12) Assurances that the Offeror will make a good faith effort to acquire articles, equipment, supplies, services, or materials, or obtain the performance of construction work from the small business concerns that it used in preparing the bid or proposal, in the same or greater scope, amount, and quality used in preparing and submitting the bid or proposal. Responding to a request for a quote does not constitute use in preparing a bid or proposal. The Offeror used a small business concern in preparing the bid or proposal if-

- (i) The Offeror identifies the small business concern as a subcontractor in the bid or proposal or associated small business subcontracting plan, to furnish certain supplies or perform a portion of the subcontract; or

(ii) The Offeror used the small business concern's pricing or cost information or technical expertise in preparing the bid or proposal, where there is written evidence of an intent or understanding that the small business concern will be awarded a subcontract for the related work if the Offeror is awarded the contract.

(13) Assurances that the Contractor will provide the Contracting Officer with a written explanation if the Contractor fails to acquire articles, equipment, supplies, services or materials or obtain the performance of construction work as described in (d)(12) of this clause. This written explanation must be submitted to the Contracting Officer within 30 days of contract completion.

(14) Assurances that the Contractor will not prohibit a subcontractor from discussing with the Contracting Officer any material matter pertaining to payment to or utilization of a subcontractor.

(15) Assurances that the offeror will pay its small business subcontractors on time and in accordance with the terms and conditions of the underlying subcontract, and notify the contracting officer when the prime contractor makes either a reduced or an untimely payment to a small business subcontractor (see [52.242-5](#)).

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

(1) Assist small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all "make-or-buy" decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.

(4) Confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing SAM or by accessing the Dynamic Small Business Search (DSBS) at <https://web.sba.gov/pro-net/search/dsp.dsbs.cfm>

(5) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.

(6) For all competitive subcontracts over the simplified acquisition threshold, as defined in FAR [2.101](#) on the date of subcontract award, in which a small business concern received a small business preference, upon determination of the successful subcontract offeror, prior to

award of the subcontract the Contractor must inform each unsuccessful small business subcontract offeror in writing of the name and location of the apparent successful offeror and if the successful subcontract offeror is a small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concern.

(7) Assign each subcontract the NAICS code and corresponding size standard that best describes the principal purpose of the subcontract.

(f) A master subcontracting plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the Offeror by this clause; provided-

(1) The master subcontracting plan has been approved;

(2) The Offeror ensures that the master subcontracting plan is updated as necessary and provides copies of the approved master subcontracting plan, including evidence of its approval, to the Contracting Officer; and

(3) Goals and any deviations from the master subcontracting plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial products and commercial services. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Once the Contractor's commercial plan has been approved, the Government will not require another subcontracting plan from the same Contractor while the plan remains in effect, as long as the product or service being provided by the Contractor continues to meet the definition of a commercial product or commercial service. A Contractor with a commercial plan shall comply with the reporting requirements stated in paragraph (d)(10) of this clause by submitting one SSR in eSRS for all contracts covered by its commercial plan. A Contractor authorized to use a commercial subcontracting plan shall include in its subcontracting goals and in its SSR all indirect costs, with the exception of those such as the following: Employee salaries and benefits; payments for petty cash; depreciation; interest; income taxes; property taxes; lease payments; bank fees; fines, claims, and dues; original equipment manufacturer relationships during warranty periods (negotiated up front with the product); utilities and other services purchased from a municipality or an entity solely authorized by the municipality to provide those services in a particular geographical region; and philanthropic contributions. This report shall be acknowledged or rejected in eSRS by the Contracting Officer who approved the plan. This report shall be submitted within 30 days after the end of the Government's fiscal year.

(h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(i) A contract may have no more than one subcontracting plan. When a contract modification exceeds the subcontracting plan threshold in FAR [19.702\(a\)](#), or an option is exercised, the goals of the existing subcontracting plan shall be amended to reflect any new subcontracting opportunities. When the goals in a subcontracting plan are amended, these goal changes do not apply retroactively.

(j) Subcontracting plans are not required from subcontractors when the prime contract contains the clause at FAR [52.212-5](#), Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Products and Commercial Services, or when the subcontractor provides a commercial product or commercial service subject to the clause at

FAR [52.244-6](#), Subcontracts for Commercial Products and Commercial Services, under a prime contract.

(k) The failure of the Contractor or subcontractor to comply in good faith with (1) the clause of this contract entitled "Utilization Of Small Business Concerns;" or (2) an approved plan required by this clause, shall be a material breach of the contract and may be considered in any past performance evaluation of the Contractor.

(l) The Contractor shall submit ISRs and SSRs using the web-based eSRS at <http://www.esrs.gov>. Purchases from a corporation, company, or subdivision that is an affiliate of the Contractor or subcontractor are not included in these reports. Subcontract awards by affiliates shall be treated as subcontract awards by the Contractor. Subcontract award data reported by the Contractor and subcontractors shall be limited to awards made to their immediate next-tier subcontractors. Credit cannot be taken for awards made to lower tier subcontractors, unless the Contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from an ANC or Indian tribe. Only subcontracts involving performance in the United States or its outlying areas should be included in these reports with the exception of subcontracts under a contract awarded by the State Department or any other agency that has statutory or regulatory authority to require subcontracting plans for subcontracts performed outside the United States and its outlying areas.

(1) *ISR. This report is not required for commercial plans. The report is required for each contract containing an individual subcontracting plan.*

(i) The report shall be submitted semi-annually during contract performance for the periods ending March 31 and September 30. A report is also required for each contract within 30 days of contract completion. Reports are due 30 days after the close of each reporting period, unless otherwise directed by the Contracting Officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or the previous reporting period. When the Contracting Officer rejects an ISR, the Contractor shall submit a corrected report within 30 days of receiving the notice of ISR rejection.

(ii)

(A) When a subcontracting plan contains separate goals for the basic contract and each option, as prescribed by FAR [19.704\(c\)](#), the dollar goal inserted on this report shall be the sum of the base period through the current option; for example, for a report submitted after the second option is exercised, the dollar goal would be the sum of the goals for the basic contract, the first option, and the second option.

(B) If a subcontracting plan has been added to the contract pursuant to [19.702](#) a)(1)(iii) or [19.301-2](#)(e), the Contractor's achievements must be reported in the ISR on a cumulative basis from the date of incorporation of the subcontracting plan into the contract.

(iii) When a subcontracting plan includes indirect costs in the goals, these costs must be included in this report.

(iv) The authority to acknowledge receipt or reject the ISR resides—

(A) In the case of the prime Contractor, with the Contracting Officer; and

(B) In the case of a subcontract with a subcontracting plan, with the entity that awarded the subcontract.

(2) *SSR.*

(i) Reports submitted under individual contract plans--

(A) This report encompasses all subcontracting under prime contracts and subcontracts with an executive agency, regardless of the dollar value of the subcontracts. This report also includes indirect costs on a prorated basis when the indirect costs are excluded from the subcontracting goals.

(B) The report may be submitted on a corporate, company or subdivision (*e.g.* plant or division operating as a separate profit center) basis, unless otherwise directed by the agency.

(C) If the Contractor or a subcontractor is performing work for more than one executive agency, a separate report shall be submitted to each executive agency covering only that agency's contracts, provided at least one of that agency's contracts is over the applicable threshold specified in FAR [19.702\(a\)](#), and the contract and contains a subcontracting plan. For DoD, a consolidated report shall be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DoD prime contractors.

(D) The report shall be submitted annually by October 30 for the twelve month period ending September 30. When a Contracting Officer rejects an SSR, the Contractor shall submit a revised report within 30 days of receiving the notice of SSR rejection.

(E) Subcontract awards that are related to work for more than one executive agency shall be appropriately allocated.

(F) The authority to acknowledge or reject SSRs in eSRS, including SSRs submitted by subcontractors with subcontracting plans, resides with the Government agency awarding the prime contracts unless stated otherwise in the contract.

(ii) *Reports submitted under a commercial plan-*

(A) The report shall include all subcontract awards under the commercial plan in effect during the Government's fiscal year and all indirect costs.

(B) The report shall be submitted annually, within thirty days after the end of the Government's fiscal year.

(C) If a Contractor has a commercial plan and is performing work for more than one executive agency, the Contractor shall specify the percentage of dollars attributable to each agency.

(D) The authority to acknowledge or reject SSRs for commercial plans resides with the Contracting Officer who approved the commercial plan.

(End of clause)

**52.219-28 POST-AWARD SMALL BUSINESS PROGRAM  
REPRESENTATION (SEP 2023)**

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

Long-term contract means a contract of more than five years in duration, including options. However, the term does not include contracts that exceed five years in duration because the period of performance has been extended for a cumulative period not to exceed six months under the clause at [52.217-8](#), Option to Extend Services, or other appropriate authority.

*Small business concern-*

(1) Means a concern, including its affiliates, that is independently owned and operated, not dominant in its field of operation, and qualified as a small business under the criteria in [13 CFR part 121](#) and the size standard in paragraph (d) of this clause.

(2) *Affiliates*, as used in this definition, means business concerns, one of whom directly or indirectly controls or has the power to control the others, or a third party or parties control or have the power to control the others. In determining whether affiliation exists, consideration is given to all appropriate factors including common ownership, common management, and contractual relationships. SBA determines affiliation based on the factors set forth at [13 CFR 121.103](#).

(b) If the Contractor represented that it was any of the small business concerns identified in [19.000\(a\)\(3\)](#) prior to award of this contract, the Contractor shall rerepresent its size and socioeconomic status according to paragraph (f) of this clause or, if applicable, paragraph (h) of this clause, upon occurrence of any of the following:

(1) Within 30 days after execution of a novation agreement or within 30 days after modification of the contract to include this clause, if the novation agreement was executed prior to inclusion of this clause in the contract.

(2) Within 30 days after a merger or acquisition that does not require a novation or within 30 days after modification of the contract to include this clause, if the merger or acquisition occurred prior to inclusion of this clause in the contract.

(3) For long-term contracts-

(i) Within 60 to 120 days prior to the end of the fifth year of the contract; and

(ii) Within 60 to 120 days prior to the date specified in the contract for exercising any option thereafter.

(c) If the Contractor represented that it was any of the small business concerns identified in [19.000\(a\)\(3\)](#) prior to award of this contract, the Contractor shall rerepresent its size and socioeconomic status according to paragraph (f) of this clause or, if applicable, paragraph (h) of this clause, when the Contracting Officer explicitly requires it for an order issued under a multiple-award contract.

(d) The Contractor shall rerepresent its size status in accordance with the size standard in effect at the time of this rerepresentation that corresponds to the North American Industry Classification System (NAICS) code(s) assigned to this contract. The small business size standard corresponding to this NAICS code(s) can be found at <https://www.sba.gov/document/support--table-size-standards>.

(e) The small business size standard for a Contractor providing an end item that it does not

manufacture, process, or produce itself, for a contract other than a construction or service contract, is 500 employees, or 150 employees for information technology value-added resellers under NAICS code 541519, if the acquisition—

(1) Was set aside for small business and has a value above the simplified acquisition threshold;

(2) Used the HUBZone price evaluation preference regardless of dollar value, unless the Contractor waived the price evaluation preference; or

(3) Was an 8(a), HUBZone, service-disabled veteran-owned, economically disadvantaged women-owned, or women-owned small business set-aside or sole-source award regardless of dollar value.

(f) Except as provided in paragraph (h) of this clause, the Contractor shall make the representation(s) required by paragraph (b) and (c) of this clause by validating or updating all its representations in the Representations and Certifications section of the System for Award Management (SAM) and its other data in SAM, as necessary, to ensure that they reflect the Contractor's current status. The Contractor shall notify the contracting office in writing within the timeframes specified in paragraph (b) of this clause, or with its offer for an order (see paragraph (c) of this clause), that the data have been validated or updated, and provide the date of the validation or update.

(g) If the Contractor represented that it was other than a small business concern prior to award of this contract, the Contractor may, but is not required to, take the actions required by paragraphs (f) or (h) of this clause

(h) If the Contractor does not have representations and certifications in SAM, or does not have a representation in SAM for the NAICS code applicable to this contract, the Contractor is required to complete the following rerepresentation and submit it to the contracting office, along with the contract number and the date on which the rerepresentation was completed:

(1) The Contractor represents that it # is, # is not a small business concern under NAICS Code \_\_\_\_\_ assigned to contract number \_\_\_\_\_.

(2) [Complete only if the Contractor represented itself as a small business concern in paragraph (h)(1) of this clause.] The Contractor represents that it # is, # is not, a small disadvantaged business concern as defined in [13 CFR 124.1001](#).

(3) [Complete only if the Contractor represented itself as a small business concern in paragraph (h)(1) of this clause.] The Contractor represents that it # is, # is not a women-owned small business concern.

(4) Women-owned small business (WOSB) joint venture eligible under the WOSB Program. The Contractor represents that it # is, # is not a joint venture that complies with the requirements of [13 CFR 127.506\(a\)](#) through [\(c\)](#). *[The Contractor shall enter the name and unique entity identifier of each party to the joint venture: \_\_\_\_.]*

(5) Economically disadvantaged women-owned small business (EDWOSB) joint venture. The Contractor represents that it # is, # is not a joint venture that complies with the requirements of [13 CFR 127.506\(a\)](#) through [\(c\)](#). *[The Contractor shall enter the name and unique entity identifier of each party to the joint venture: \_\_\_\_.]*

(6) [Complete only if the Contractor represented itself as a small business concern in paragraph (h)(1) of this clause.] The Contractor represents that it # is, # is not a veteran-owned small business concern.

(7) [Complete only if the Contractor represented itself as a veteran-owned small business concern in paragraph (h)(6) of this clause.] The Contractor represents that it # is, # is not a service-disabled veteran-owned small business concern.

(8) [ *Complete only if the Contractor represented itself as a small business concern in paragraph (h)(1) of this clause.* ] The Contractor represents that—

(i) It # is, # is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material changes in ownership and control, principal office, or HUBZone employee percentage have occurred since it was certified in accordance with 13 CFR part 126; and

(ii) It # is, # is not a HUBZone joint venture that complies with the requirements of 13 CFR part 126, and the representation in paragraph (h)(8)(i) of this clause is accurate for each HUBZone small business concern participating in the HUBZone joint venture. [The Contractor shall enter the names of each of the HUBZone small business concerns participating in the HUBZone joint venture: \_\_\_\_\_.] Each HUBZone small business concern participating in the HUBZone joint venture shall submit a separate signed copy of the HUBZone representation.

[Contractor to sign and date and insert authorized signer's name and title.]

End of clause

**52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES (DEC 2023)**

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

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

(2) [52.204-23](#), Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab Covered Entities (DEC 2023) (Section 1634 of Pub. L. 115-91).

(3) [52.204-25](#), Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (NOV 2021) (Section 889(a)(1)(A) of Pub. L. 115-232).

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

(5) [52.232-40](#), Providing Accelerated Payments to Small Business Subcontractors (MAR 2023) ([31 U.S.C. 3903](#) and [10 U.S.C. 3801](#)).

(6) [52.233-3](#), Protest After Award (AUG 1996) ([31 U.S.C. 3553](#)).

(7) [52.233-4](#), Applicable Law for Breach of Contract Claim (OCT 2004) (Public Laws 108-77 and 108-78 ([19 U.S.C. 3805 note](#))).

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

\*[Contracting Officer check as appropriate.]\*

X (1) [52.203-6](#), Restrictions on Subcontractor Sales to the Government (JUN 2020), with Alternate I (NOV 2021) ([41 U.S.C. 4704](#) and [10 U.S.C. 4655](#)).

X (2) [52.203-13](#), Contractor Code of Business Ethics and Conduct (NOV 2021) ([41 U.S.C. 3509](#)).

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

X (4) [52.203-17](#), Contractor Employee Whistleblower Rights (NOV 2023) ([41 U.S.C. 4712](#)); this clause does not apply to contracts of DoD, NASA, the Coast Guard, or applicable elements of the intelligence community—see FAR [3.900\(a\)](#).

X (5) [52.204-10](#), Reporting Executive Compensation and First-Tier Subcontract Awards (JUN 2020) (Pub. L. 109-282) ([31 U.S.C. 6101 note](#)).

N/A (6) [Reserved].

X (7) [52.204-14](#), Service Contract Reporting Requirements (OCT 2016) (Pub. L. 111-117, section 743 of Div. C).

X (8) [52.204-15](#), Service Contract Reporting Requirements for Indefinite-Delivery Contracts (OCT 2016) (Pub. L. 111-117, section 743 of Div. C).

X (9) 52.204-28, Federal Acquisition Supply Chain Security Act Orders—Federal Supply Schedules, Governmentwide Acquisition Contracts, and Multi-Agency Contracts. (**DEC 2023**) ([Pub. L. 115-390](#), title II).

X (10) (i) 52.204-30, Federal Acquisition Supply Chain Security Act Orders—Prohibition. (**DEC 2023**) ([Pub. L. 115-390](#), title II).

(ii) Alternate I (**DEC 2023**) of 52.204-30.

X (11) [52.204-27](#), Prohibition on a ByteDance Covered Application (June 2023) (Section 102 of Division R of Pub. L. 117-328).

X (12) [52.209-6](#), Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment. (NOV 2021) ([31 U.S.C. 6101 note](#)).

X (13) [52.209-9](#), Updates of Publicly Available Information Regarding Responsibility Matters (OCT 2018) ([41 U.S.C. 2313](#)).

N/A (14) [Reserved]

X (15) [52.219-3](#), Notice of HUBZone Set-Aside or Sole-Source Award (OCT 2022) ([15 U.S.C. 657a](#)).

N/A (16) [52.219-4](#), Notice of Price Evaluation Preference for HUBZone Small Business Concerns (OCT 2022) (if the offeror elects to waive the preference, it shall so indicate in its offer) ([15 U.S.C. 657a](#)).

N/A (17) [Reserved]

X (18) (i) [52.219-6](#), Notice of Total Small Business Set-Aside (Nov 2020) ([15 U.S.C. 644](#)).

Required as Applicable (ii) Alternate I (MAR 2020) of [52.219-6](#).

N/A (19) (i) [52.219-7](#), Notice of Partial Small Business Set-Aside (Nov 2020) ([15 U.S.C. 644](#)).

N/A (ii) Alternate I (MAR 2020) of [52.219-7](#).

X (20) [52.219-8](#), Utilization of Small Business Concerns ((SEP 2023) ([15 U.S.C. 637\(d\)\(2\)](#) and (3))).

N/A (21) (i) [52.219-9](#), Small Business Subcontracting Plan ((SEP 2023) ([15 U.S.C. 637\(d\)\(4\)](#))).

N/A (ii) Alternate I (Nov 2016) of [52.219-9](#).

X (iii) Alternate II (Nov 2016) of [52.219-9](#).

N/A (iv) Alternate III (JUN 2020) of [52.219-9](#).

N/A (v) Alternate IV ((SEP 2023) of [52.219-9](#)).

X (22) (i) [52.219-13](#), Notice of Set-Aside of Orders (MAR 2020) ([15 U.S.C. 644\(r\)](#)).

N/A (ii) Alternate I (MAR 2020) of [52.219-13](#).

X (23) [52.219-14](#), Limitations on Subcontracting (OCT 2022) ([15 U.S.C. 637s](#)).

X (24) [52.219-16](#), Liquidated Damages—Subcontracting Plan (SEP 2021) ([15 U.S.C. 637\(d\)\(4\)\(F\)\(i\)](#)).

X (25) [52.219-27](#), Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (OCT 2022) ([15 U.S.C. 657f](#)).

X (26) (i) [52.219-28](#), Post Award Small Business Program Rerepresentation ((SEP 2023) ([15 U.S.C. 632\(a\)\(2\)](#))).

N/A (ii) Alternate I (MAR 2020) of [52.219-28](#).

X (27) [52.219-29](#), Notice of Set-Aside for, or Sole-Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns (OCT 2022) ([15 U.S.C. 637\(m\)](#)).

X (28) [52.219-30](#), Notice of Set-Aside for, or Sole-Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program (OCT 2022) ([15 U.S.C. 637\(m\)](#)).

N/A (29) [52.219-32](#), Orders Issued Directly Under Small Business Reserves (MAR 2020) ([15 U.S.C. 644\(r\)](#)).

X (30) [52.219-33](#), Nonmanufacturer Rule (SEP 2021) ([15 U.S.C. 637\(a\)\(17\)](#)).

X (31) [52.222-3](#), Convict Labor (JUN 2003) (E.O.11755).

X (32) [52.222-19](#), Child Labor-Cooperation with Authorities and Remedies (NOV 2023) (E.O.13126).

X (33) [52.222-21](#), Prohibition of Segregated Facilities (APR 2015).

X (34) (i) [52.222-26](#), Equal Opportunity (SEP 2016) (E.O.11246).

N/A (ii) Alternate I (FEB 1999) of [52.222-26](#).

X (35) (i) [52.222-35](#), Equal Opportunity for Veterans (JUN 2020) ([38 U.S.C. 4212](#)).

N/A (ii) Alternate I (JUL 2014) of [52.222-35](#).

X (36) (i) [52.222-36](#), Equal Opportunity for Workers with Disabilities (JUN 2020) ([29 U.S.C. 793](#)).

N/A (ii) Alternate I (JUL 2014) of [52.222-36](#).

X (37) [52.222-37](#), Employment Reports on Veterans (JUN 2020) ([38 U.S.C. 4212](#)).

X (38) [52.222-40](#), Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496).

X (39) (i) [52.222-50](#), Combating Trafficking in Persons (NOV 2021) ([22 U.S.C. chapter 78](#) and E.O. 13627).

N/A (ii) Alternate I (MAR 2015) of [52.222-50](#) ([22 U.S.C. chapter 78](#) and E.O. 13627).

X (40) [52.222-54](#), Employment Eligibility Verification (MAY 2022). (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial products or commercial services as prescribed in FAR [22.1803](#).)

X (41) (i) [52.223-9](#), Estimate of Percentage of Recovered Material Content for EPA-Designated Items (May 2008) ([42 U.S.C. 6962\(c\)\(3\)\(A\)\(ii\)](#)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

N/A (ii) Alternate I (MAY 2008) of [52.223-9](#) ([42 U.S.C. 6962\(i\)\(2\)\(C\)](#)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

Required as Applicable (42) [52.223-11](#), Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (Jun 2016) (E.O. 13693).

Required as Applicable (43) [52.223-12](#), Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners (JUN 2016) (E.O. 13693).

Required as Applicable (44) (i) [52.223-13](#), Acquisition of EPEAT®-Registered Imaging Equipment (JUN 2014) (E.O.s 13423 and 13514).

N/A (ii) Alternate I (OCT 2015) of [52.223-13](#).

Required as Applicable (45) (i) [52.223-14](#), Acquisition of EPEAT®-Registered Televisions (JUN 2014) (E.O.s 13423 and 13514).

N/A (ii) Alternate I (Jun2014) of [52.223-14](#).

X (46) [52.223-15](#), Energy Efficiency in Energy-Consuming Products (MAY 2020) ([42 U.S.C. 8259b](#)).

Required as Applicable (47) (i) [52.223-16](#), Acquisition of EPEAT®-Registered Personal Computer Products (OCT 2015) (E.O.s 13423 and 13514).

N/A (ii) Alternate I (JUN 2014) of [52.223-16](#).

X (48) [52.223-18](#), Encouraging Contractor Policies to Ban Text Messaging While Driving (JUN 2020) (E.O. 13513).

Required as Applicable (49) [52.223-20](#), Aerosols (JUN 2016) (E.O. 13693).

Required as Applicable (50) [52.223-21](#), Foams (Jun2016) (E.O. 13693).

X (51) (i) [52.224-3](#) Privacy Training (JAN 2017) (5 U.S.C. 552 a).

N/A (ii) Alternate I (JAN 2017) of [52.224-3](#).

Required as Applicable (52) (i) [52.225-1](#), Buy American-Supplies (OCT 2022) ([41 U.S.C. chapter 83](#)).

N/A (ii) Alternate I (OCT 2022) of [52.225-1](#).

N/A (53) (i) [52.225-3](#), 52.225-3, Buy American—Free Trade Agreements—Israeli Trade Act (NOV 2023) ([19 U.S.C. 3301 note](#), [19 U.S.C. 2112 note](#), [19 U.S.C. 3805 note](#), [19 U.S.C. 4001 note](#),

19 U.S.C. chapter 29 (sections 4501-4732), Public Law 103-182, 108-77, 108-78, 108-286, 108-302, 109-53, 109-169, 109-283, 110-138, 112-41, 112-42, and 112-43

N/A (ii) Alternate I [RESERVED].

N/A (iii) Alternate II (DEC 2022) of [52.225-3](#).

N/A (iv) Alternate III (NOV 2023) of [52.225-3](#).

N/A (v) Alternate IV (OCT 2022) of [52.225-3](#).

X (54) [52.225-5](#), Trade Agreements (NOV 2023) ([19 U.S.C. 2501](#), *et seq.*, [19 U.S.C. 3301](#) note).

X (55) [52.225-13](#), Restrictions on Certain Foreign Purchases (FEB 2021) (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

N/A (56) [52.225-26](#), Contractors Performing Private Security Functions Outside the United States (Oct 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. Subtitle A, Part V, Subpart G Note).

N/A (57) [52.226-4](#), Notice of Disaster or Emergency Area Set-Aside (Nov2007) ([42 U.S.C. 5150](#)).

N/A (58) [52.226-5](#), Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov2007) ([42 U.S.C. 5150](#)).

N/A (59) [52.229-12](#), Tax on Certain Foreign Procurements (FEB 2021) .

N/A (60) [52.232-29](#), Terms for Financing of Purchases of Commercial Products and Commercial Services (NOV 2021) (41 U.S.C. 4505, “[10 U.S.C. 3805](#)”).

N/A (61) [52.232-30](#), Installment Payments for Commercial Products and Commercial Services (NOV 2021) ([41 U.S.C. 4505](#), [10 U.S.C. 3805](#)).

X (62) [52.232-33](#), Payment by Electronic Funds Transfer-System for Award Management (OCT2018) ([31 U.S.C. 332](#)).

N/A (63) [52.232-34](#), Payment by Electronic Funds Transfer-Other than System for Award Management (Jul 2013) ([31 U.S.C. 332](#)).

X (64) [52.232-36](#), Payment by Third Party (MAY 2014) ([31 U.S.C. 332](#)).

X (65) [52.239-1](#), Privacy or Security Safeguards (AUG 1996) ([5 U.S.C. 552a](#)).

X (66) [52.242-5](#), Payments to Small Business Subcontractors (JAN 2017) ([15 U.S.C. 637\(d\)\(13\)](#)).

X (67) (i) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (NOV 2021) ([46 U.S.C. 55305](#) and [10 U.S.C. 2631](#)).

N/A (ii) Alternate I (APR 2003) of [52.247-64](#).

N/A (iii) Alternate II (NOV 2021) of [52.247-64](#).

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

[Contracting Officer check as appropriate.]

- X (1) [52.222-41](#), Service Contract Labor Standards (AUG 2018) ([41 U.S.C. chapter 67](#)).
- X (2) [52.222-42](#), Statement of Equivalent Rates for Federal Hires (MAY 2014) ([29 U.S.C. 206](#) and [41 U.S.C. chapter 67](#)).
- X (3) [52.222-43](#), Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (Multiple Year and Option Contracts) (AUG 2018) ([29 U.S.C. 206](#) and [41 U.S.C. chapter 67](#)).
- N/A (4) [52.222-44](#), Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (May 2014) ([29 U.S.C. 206](#) and [41 U.S.C. chapter 67](#)).
- X (5) [52.222-51](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (May 2014) ([41 U.S.C. chapter 67](#)).
- X (6) [52.222-53](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Requirements (MAY 2014) ([41 U.S.C. chapter 67](#)).
- X (7) [52.222-55](#), Minimum Wages Under Executive Order 13658 (JAN 2022).

Required as Applicable (8) [52.222-62](#), Paid Sick Leave Under Executive Order 13706 (JAN 2022) (E.O. 13706).

Required as Applicable (9) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations (Jun 2020) ([42 U.S.C. 1792](#)).

(d) *Comptroller General Examination of Record.* The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, as defined in FAR [2.101](#), on the date of award of this contract, and does not contain the clause at [52.215-2](#), Audit and Records-Negotiation.

- (1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.
- (2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR subpart [4.7](#), Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.
- (3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e)

- (1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in this paragraph (e)(1) in a subcontract for commercial products or commercial services. Unless

otherwise indicated below, the extent of the flow down shall be as required by the clause-

- (i) [52.203-13](#), Contractor Code of Business Ethics and Conduct (NOV 2021) ([41 U.S.C. 3509](#)).
- (ii) 52.203-17, Contractor Employee Whistleblower Rights (NOV 2023) ([41 U.S.C. 4712](#)).
- (iii) [52.203-19](#), Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).
- (iv) [52.204-23](#), Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab Covered Entities (DEC 2023) (Section 1634 of Pub. L. 115-91).
- (v) [52.204-25](#), Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (NOV 2021) (Section 889(a)(1)(A) of Pub. L. 115-232).
- (vi) 52.204-27, Prohibition on a ByteDance Covered Application (June 2023) (Section 102 of Division R of Pub. L. 117-328).
- (vii) (A) 52.204-30, Federal Acquisition Supply Chain Security Act Orders—Prohibition. (DEC 2023) ([Pub. L. 115-390](#), title II).
- (viii) [52.219-8](#), Utilization of Small Business Concerns ((SEP 2023) ([15 U.S.C. 637\(d\)\(2\)](#) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds the applicable threshold specified in FAR [19.702](#)(a) on the date of subcontract award, the subcontractor must include [52.219-8](#) in lower tier subcontracts that offer subcontracting opportunities.
- (ix) [52.222-21](#), Prohibition of Segregated Facilities (APR 2015).
- (x) [52.222-26](#), Equal Opportunity (SEP 2015) (E.O.11246).
- (xi) [52.222-35](#), Equal Opportunity for Veterans (JUN 2020) ([38 U.S.C. 4212](#)).
- (xii) [52.222-36](#), Equal Opportunity for Workers with Disabilities (JUN 2020) ([29 U.S.C. 793](#)).
- (xiii) [52.222-37](#), Employment Reports on Veterans (JUN 2020) ([38 U.S.C. 4212](#)).
- (xiv) [52.222-40](#), Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause [52.222-40](#).
- (xv) [52.222-41](#), Service Contract Labor Standards (AUG 2018) ([41 U.S.C. chapter 67](#)).
- (xvi)

(A) [52.222-50](#), Combating Trafficking in Persons (NOV 2021) ([22 U.S.C. chapter 78](#) and E.O 13627).

(B) Alternate I (MAR 2015) of [52.222-50 \(22 U.S.C. chapter 78 and E.O. 13627\)](#).

(xvii) [52.222-51](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (May2014) ([41 U.S.C. chapter 67](#)).

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

(xix) [52.222-54](#), Employment Eligibility Verification (MAY 2022) (E.O. 12989).

(xx) [52.222-55](#), Minimum Wages Under Executive Order 13658 (JAN 2022).

(xxi) [52.222-62](#), Paid Sick Leave Under Executive Order 13706 (JAN 2022) (E.O. 13706).

(xxii)

(A) [52.224-3](#), Privacy Training (Jan 2017) ([5 U.S.C. 552a](#)).

(B) Alternate I (JAN 2017) of [52.224-3](#).

(xxiii) [52.225-26](#), Contractors Performing Private Security Functions Outside the United States (OCT 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. Subtitle A, Part V, Subpart G Note.

(xxiv) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations (JUN 2020) ([42 U.S.C. 1792](#)). Flow down required in accordance with paragraph (e) of FAR clause 52.226-6.

(xxv) [52.232-40](#), Providing Accelerated Payments to Small Business Subcontractors (MAR 2023) ([31 U.S.C. 3903](#) and [10 U.S.C. 3801](#)). Flow down required in accordance with paragraph (c) of 52.232-40

(xxvi) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (NOV 2021) ([46 U.S.C. 55305](#) and [10 U.S.C. 2631](#)). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.

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

(End of clause)

#### **52.204-30 FEDERAL ACQUISITION SUPPLY CHAIN SECURITY ACT ORDERS—PROHIBITION (DEC 2023) (ALT I DEC 2023)**

(a) *Definitions.* As used in this clause—

*Covered article*, as defined in [41 U.S.C. 4713\(k\)](#), means—

- (1) Information technology, as defined in [40 U.S.C. 11101](#), including cloud computing services of all types;
- (2) Telecommunications equipment or telecommunications service, as those terms are defined in section 3 of the Communications Act of 1934 ([47 U.S.C. 153](#));
- (3) The processing of information on a Federal or non-Federal information system, subject to the requirements of the Controlled Unclassified Information program (see [32 CFR part 2002](#)); or
- (4) Hardware, systems, devices, software, or services that include embedded or incidental information technology.

*FASCSA order* means any of the following orders issued under the Federal Acquisition Supply Chain Security Act (FASCSA) requiring the removal of covered articles from executive agency information systems or the exclusion of one or more named sources or named covered articles from executive agency procurement actions, as described in [41 CFR 201-1.303\(d\)](#) and [\(e\)](#):

- (1) The Secretary of Homeland Security may issue FASCSA orders applicable to civilian agencies, to the extent not covered by paragraph (2) or (3) of this definition. This type of FASCSA order may be referred to as a Department of Homeland Security (DHS) FASCSA order.
- (2) The Secretary of Defense may issue FASCSA orders applicable to the Department of Defense (DoD) and national security systems other than sensitive compartmented information systems. This type of FASCSA order may be referred to as a DoD FASCSA order.
- (3) The Director of National Intelligence (DNI) may issue FASCSA orders applicable to the intelligence community and sensitive compartmented information systems, to the extent not covered by paragraph (2) of this definition. This type of FASCSA order may be referred to as a DNI FASCSA order.

*Intelligence community*, as defined by [50 U.S.C. 3003\(4\)](#), means the following—

- (1) The Office of the Director of National Intelligence;
- (2) The Central Intelligence Agency;
- (3) The National Security Agency;
- (4) The Defense Intelligence Agency;
- (5) The National Geospatial-Intelligence Agency;
- (6) The National Reconnaissance Office;
- (7) Other offices within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs;
- (8) The intelligence elements of the Army, the Navy, the Air Force, the Marine Corps, the Coast Guard, the Federal Bureau of Investigation, the Drug Enforcement Administration, and the Department of Energy;

- (9) The Bureau of Intelligence and Research of the Department of State;
- (10) The Office of Intelligence and Analysis of the Department of the Treasury;
- (11) The Office of Intelligence and Analysis of the Department of Homeland Security; or
- (12) Such other elements of any department or agency as may be designated by the President, or designated jointly by the Director of National Intelligence and the head of the department or agency concerned, as an element of the intelligence community.

*National security system*, as defined in [44 U.S.C. 3552](#), means any information system (including any telecommunications system) used or operated by an agency or by a contractor of an agency, or other organization on behalf of an agency—

- (1) The function, operation, or use of which involves intelligence activities; involves cryptologic activities related to national security; involves command and control of military forces; involves equipment that is an integral part of a weapon or weapons system; or is critical to the direct fulfillment of military or intelligence missions, but does not include a system that is to be used for routine administrative and business applications (including payroll, finance, logistics, and personnel management applications); or
- (2) Is protected at all times by procedures established for information that have been specifically authorized under criteria established by an Executive order or an Act of Congress to be kept classified in the interest of national defense or foreign policy.

*Reasonable inquiry* means an inquiry designed to uncover any information in the entity's possession about the identity of any covered articles, or any products or services produced or provided by a source. This applies when the covered article or the source is subject to an applicable FASCSA order. A reasonable inquiry excludes the need to include an internal or third-party audit.

*Sensitive compartmented information* means classified information concerning or derived from intelligence sources, methods, or analytical processes, which is required to be handled within formal access control systems established by the Director of National Intelligence.

*Sensitive compartmented information system* means a national security system authorized to process or store sensitive compartmented information.

*Source* means a non-Federal supplier, or potential supplier, of products or services, at any tier.

(b) *Prohibition.* (1) Contractors are prohibited from providing or using as part of the performance of the contract any covered article, or any products or services produced or provided by a source, if the covered article or the source is prohibited by any applicable FASCSA orders identified by the checkbox(es) in this paragraph (b)(1).

[ *Contracting Officer must select either "yes" or "no" for each of the following types of FASCSA orders:* ]

- Yes      DHS FASCSA Order
- Yes      DoD FASCSA Order
- Yes      DNI FASCSA Order

(2) The Contractor shall search for the phrase "FASCSA order" in the System for Award Management (SAM) at <https://www.sam.gov> to locate applicable FASCSA orders identified in paragraph (b)(1).

(3) The Government may identify in the solicitation additional FASCSA orders that are not in SAM, which are effective and apply to the solicitation and resultant contract.

(4) A FASCSA order issued after the date of solicitation applies to this contract only if added by an amendment to the solicitation or modification to the contract (see FAR 4.2304(c)). However, see paragraph (c) of this clause.

(5)(i) If the contractor wishes to ask for a waiver of the requirements of a new FASCSA order being applied through modification, then the Contractor shall disclose the following:

(A) Name of the product or service provided to the Government;

(B) Name of the covered article or source subject to a FASCSA order;

(C) If applicable, name of the vendor, including the Commercial and Government Entity code and unique entity identifier (if known), that supplied or supplies the covered article or the product or service to the Offeror;

(D) Brand;

(E) Model number (original equipment manufacturer number, manufacturer part number, or wholesaler number);

(F) Item description;

(G) Reason why the applicable covered article or the product or service is being provided or used;

(ii) *Executive agency review of disclosures.* The contracting officer will review disclosures provided in paragraph (b)(5)(i) to determine if any waiver is warranted. A contracting officer may choose not to pursue a waiver for covered articles or sources otherwise covered by a FASCSA order and to instead pursue other appropriate action.

(c) *Notice and reporting requirement.* (1) During contract performance, the Contractor shall review SAM.gov at least once every three months, or as advised by the Contracting Officer, to check for covered articles subject to FASCSA order(s), or for products or services produced by a source subject to FASCSA order(s) not currently identified under paragraph (b) of this clause.

(2) If the Contractor identifies a new FASCSA order(s) that could impact their supply chain, then the Contractor shall conduct a reasonable inquiry to identify whether a covered article or product or service produced or provided by a source subject to the FASCSA order(s) was provided to the Government or used during contract performance.

(3)(i) The Contractor shall submit a report to the contracting office as identified in paragraph (c)(3)(ii) of this clause, if the Contractor identifies, including through any notification by a subcontractor at any tier, that a covered article or product or service produced or provided by a source was provided to the Government or used during contract performance and is subject to a FASCSA order(s) identified in paragraph (b) of this clause, or a new FASCSA order identified in paragraph (c)(2) of this clause. For indefinite delivery contracts, the Contractor shall report to both the contracting office for the indefinite delivery contract and the contracting office for any affected order.

(ii) If a report is required to be submitted to a contracting office under (c)(3)(i) of this clause, the Contractor shall submit the report as follows:

(A) If a Department of Defense contracting office, the Contractor shall report to the website at <https://dibnet.dod.mil>.

(B) For all other contracting offices, the Contractor shall report to the Contracting

Officer.

(4) The Contractor shall report the following information for each covered article or each product or service produced or provided by a source, where the covered article or source is subject to a FASCSA order, pursuant to paragraph (c)(3)(i) of this clause:

(i) Within 3 business days from the date of such identification or notification:

(A) Contract number;

(B) Order number(s), if applicable;

(C) Name of the product or service provided to the Government or used during performance of the contract;

(D) Name of the covered article or source subject to a FASCSA order;

(E) If applicable, name of the vendor, including the Commercial and Government Entity code and unique entity identifier (if known), that supplied the covered article or the product or service to the Contractor;

(F) Brand;

(G) Model number (original equipment manufacturer number, manufacturer part number, or wholesaler number);

(H) Item description; and

(I) Any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (c)(4)(i) of this clause:

(A) Any further available information about mitigation actions undertaken or recommended.

(B) In addition, the Contractor shall describe the efforts it undertook to prevent submission or use of the covered article or the product or service produced or provided by a source subject to an applicable FASCSA order, and any additional efforts that will be incorporated to prevent future submission or use of the covered article or the product or service produced or provided by a source that is subject to an applicable FASCSA order.

(d) *Removal.* For Federal Supply Schedules, Governmentwide acquisition contracts, multi-agency contracts or any other procurement instrument intended for use by multiple agencies, upon notification from the Contracting Officer, during the performance of the contract, the Contractor shall promptly make any necessary changes or modifications to remove any product or service produced or provided by a source that is subject to an applicable FASCSA order.

(e) *Subcontracts.* (1) The Contractor shall insert the substance of this clause, including this paragraph (e) and excluding paragraph (c)(1) of this clause, in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial products and commercial services.

(2) The Government may identify in the solicitation additional FASCSA orders that are not in SAM, which are effective and apply to the contract and any subcontracts and other contractual instruments under the contract. The Contractor or higher-tier subcontractor shall notify their subcontractors, and suppliers under other contractual instruments, that the FASCSA orders in the solicitation that are not in SAM apply to the contract and all subcontracts.

Title: DGS Capital Programs eBuilder Annual Renewal - resubmission

TIPR

Date Submitted: 05/06/2024

Date Approved: 05/13/2024

Submitted By: Janice Duncan

Agency/Delivery Group: General Government

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Review Summary

Independent Agency Decision: Comments:

Delivery Group Decision: Approve Comments: na

Conditional Approval:

OA/OIT Decision: Approve Comments:

Conditional Approval:

Date of Final Review: 05/13/2024

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IT Investment Summary

Request Type: Software

Title: DGS Capital Programs eBuilder Annual Renewal - resubmission

Business Proposal Name/ID: N/A

Project Name/ID: N/A, N/A

Estimated initial cost range: \$100,000.00 - \$499,999.99

Acquisition Request Type: Expedited



## **WORKER PROTECTION AND INVESTMENT CERTIFICATION FORM**

A. Pursuant to Executive Order 2021-06, *Worker Protection and Investment* (October 21, 2021), the Commonwealth is responsible for ensuring that every worker in Pennsylvania has a safe and healthy work environment and the protections afforded them through labor laws. To that end, contractors and grantees of the Commonwealth must certify that they are in compliance with Pennsylvania's Unemployment Compensation Law, Workers' Compensation Law, and all applicable Pennsylvania state labor and workforce safety laws including, but not limited to:

1. Construction Workplace Misclassification Act
2. Employment of Minors Child Labor Act
3. Minimum Wage Act
4. Prevailing Wage Act
5. Equal Pay Law
6. Employer to Pay Employment Medical Examination Fee Act
7. Seasonal Farm Labor Act
8. Wage Payment and Collection Law
9. Industrial Homework Law
10. Construction Industry Employee Verification Act
11. Act 102: Prohibition on Excessive Overtime in Healthcare
12. Apprenticeship and Training Act
13. Inspection of Employment Records Law

B. Pennsylvania law establishes penalties for providing false certifications, including contract termination; and three-year ineligibility to bid on contracts under 62 Pa. C.S. § 531 (Debarment or suspension).

### **CERTIFICATION**

I, the official named below, certify I am duly authorized to execute this certification on behalf of the contractor/grantee identified below, and certify that the contractor/grantee identified below is compliant with applicable Pennsylvania state labor and workplace safety laws, including, but not limited to, those listed in Paragraph A, above. I understand that I must report any change in the contractor/grantee's compliance status to the Purchasing Agency immediately. I further confirm and understand that this Certification is subject to the provisions and penalties of 18 Pa. C.S. § 4904 (Unsworn falsification to authorities).

DocuSigned by:	5/1/2024
 Signature	Date
Carlos Abaunza	
<b>Name (Printed)</b>	
Lead Counsel	
<b>Title of Certifying Official (Printed)</b>	
e-Builder, Inc. a Trimble Company	
<b>Contractor/Grantee Name (Printed)</b>	

### **IRAN FREE PROCUREMENT CERTIFICATION FORM**

#### **(Pennsylvania's Procurement Code Sections 3501-3506, 62 Pa.C.S. §§ 3501-3506)**

To be eligible for an award of a contract with a Commonwealth entity for goods or services worth at least \$1,000,000 or more, a vendor must either: a) certify it is not on the current list of persons engaged in investment activities in Iran created by the Pennsylvania Department of General Services (“DGS”) pursuant to Section 3503 of the Procurement Code and is eligible to contract with the Commonwealth under Sections 3501-3506 of the Procurement Code; or b) demonstrate it has received an exception from the certification requirement for that solicitation or contract pursuant to Section 3503(e).

To comply with this requirement, please insert your vendor or financial institution name and complete one of the options below. Please note: Pennsylvania law establishes penalties for providing false certifications, including civil penalties equal to the greater of \$250,000 or twice the amount of the contract for which the false certification was made; contract termination; and three-year ineligibility to bid on contracts. (Section 3503 of the Procurement Code.)

#### **OPTION #1 - CERTIFICATION**

I, the official named below, certify I am duly authorized to execute this certification on behalf of the vendor/financial institution identified below, and the vendor/financial institution identified below is not on the current list of persons engaged in investment activities in Iran created by DGS and is eligible to contract with the Commonwealth of Pennsylvania Sections 3501-3506 of the Procurement Code.

<i>Vendor Name/Financial Institution (Printed)</i> <b>e-Builder, Inc. a Trimble Company</b>	
<i>By (Authorized Signature)</i>	DocuSigned by: 
<i>Printed Name and Title of Person Signing</i> Carlos Abaunza, Lead Counsel	<i>Date Executed</i> 5/1/2024

#### **OPTION #2 – EXEMPTION**

Pursuant to Procurement Code Section 3503(e), DGS may permit a vendor/financial institution engaged in investment activities in Iran, on a case-by-case basis, to enter into a contract for goods and services.

If you have obtained a written exemption from the certification requirement, please fill out the information below, and attach the written documentation demonstrating the exemption approval.

<i>Vendor Name/Financial Institution (Printed)</i>	
<i>By (Authorized Signature)</i>	
<i>Printed Name and Title of Person Signing</i>	<i>Date Executed</i>