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# **CHIEF INFORMATION OFFICER – COMMODITIES AND SOLUTIONS (CIO-CS)**

## **CONTRACT**



Contract was modified to:

1. Reduce NCAF percentage from .50 percent to .35 percent.
2. Revise Article I.1, FAR 52.212-4 date from 'December 2014' to 'May 2015'.
3. Replace Article I.2, FAR 52.212-5 in its entirety. See below.
4. Revise the following clause under Article I.3, paragraph a.2:
  - 52.212-4 May 2015 Contract Terms and Conditions- Commercial Items
5. Revise the following clause under Section K:
  - 52.212-3 NOV 2015 Representations and Certifications – Commercial Items
6. Add FAR 52.204-24 in full text. See below.
7. Add FAR 52.204-25 in its entirety. See below. (Removed as it is now in FAR 52.212-5)
8. Change contract Procuring Contracting Officer (PCO) to Mr. Keith Johnson and Contracting Officer's Representative (COR) to Ms. Bettie Williams.
9. Update section C.7 e. Internet Presence Reports
10. Update the government roles and address in G.3.1
11. Update G.7.2 Fair Opportunity
12. Update the following clauses:
  - 52.232-40 52.232-40 Providing Accelerated Payments to Small Business Subcontractors (Nov 2021)
13. Add the following clauses:
  - 52.204-4 Printed or Copied Double-Sided on Postconsumer Fiber Content Paper (May 2011)
  - 52.223-3 Hazardous Material Identification and Material Safety Data (Feb 2021)
  - 52.223-10 Waste Reduction Program (May 2011)
14. Updates the existing clauses:
  - 52.209-9 Updates of Publicly Available Information Regarding Responsibility Matters (Oct 2018)
  - 52.212-4 Contract Terms and Conditions—Commercial Products and Commercial Services (Dec 2022) and Alt I (Nov 2021)
  - 52.212-5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services (Dec 2022) and Alt II (Dec 2022)
  - 52.223-15 Energy Efficiency in Energy-Consuming Products (May 2020)
  - 52.223-16 Acquisition of EPEAT®-Registered Personal Computer Products (Oct 2015)
  - 52.232-40 Providing Accelerated Payments to Small Business Subcontractors (Nov 2021)
  - 52.245-1, Government Property (Sept 2021)
  - 352.203-70 Anti-Lobbying (DEC 2015)
  - 352.239-73 Electronic Information and Technology Accessibility Notice (DEC 2015)
15. Remove obsolete clauses:
  - 352.242-71, Tobacco-Free Facilities (January 2006).
  - 352.270-1, Accessibility of Meetings, Conferences and Seminars to Persons with Disabilities (January 2001)

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## **PART I – THE SCHEDULE**

### **SECTION A: SOLICITATION/CONTRACT FORM**

**See Standard Form (SF) 26 attached.**

## **SECTION B: SUPPLIES OR SERVICES AND PRICES/COSTS**

### **Article B.1 General**

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The Chief Information Officer – Commodities and Solutions (CIO-CS) Government-Wide Acquisition Contract (GWAC) is a five (5) year Indefinite Delivery/Indefinite Quantity (IDIQ) contract with a five (5) year optional period. The intent of this contract is to provide information technology (IT) commodities and solutions as defined in Federal Acquisition Regulation (FAR) 2.101(b) and further clarified in the Clinger-Cohen Act of 1996. These IT commodities and solutions include health and biomedical-related IT commodities to meet scientific, health, administrative, operational, managerial, and information management requirements. The contract also contains general IT commodities partly because medical systems are increasingly integrated within a broader IT architecture, requiring a systems approach to their implementation and a sound infrastructure for their operation.

### **Article B.2 Authority**

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The Office of Management and Budget (OMB) has designated the National Institutes of Health (NIH) as an Executive Agent for government-wide IT acquisitions pursuant to Section 5112(e) of the Clinger-Cohen Act, 40 U.S.C. Sec. 11302(e). The scope of this designation includes the award and administration of the GWAC. Federal Government agencies can award delivery orders to acquire IT commodities and solutions.

The authority of the Procuring Contracting Officer (PCO) and the agency Ordering Contracting Officer (OCO) are defined under Article G.3 Roles.

### **Article B.3 Delivery Orders Awarded against the GWAC**

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Pursuant to FAR 16.504(a)(4)(vi), any duly warranted federal government contracting officer (as that term is defined in FAR 2.1) in good standing with the appropriate contracting authority is authorized to issue delivery orders under this contract. For purposes of this contract, these individuals are referred to as OCOs. Delivery orders may be multi-year with options as described in FAR Subpart 17.2 or be multi-year as defined under FAR Subpart 17.1. OCOs must ensure that such delivery orders comply with agency specific FAR Part 17 supplements. Refer to Article F.2 Delivery Order Period of Performance.

### **Article B.4 Prices/Costs**

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This is an IDIQ contract as contemplated by FAR 16.504.

- a. The Government will issue delivery orders based on the statement of objectives described in Section C of this contract.
- b. The contractor's proposed Products List (Attachment J.8) is incorporated into the contract (see Article H.13 Technology Refreshment for pricing on items added after award). The prices contained in the contractor's Products List are ceiling prices and reflect the contractor's discount structure applied to this contract. Contractors are expected to maintain, as a minimum, the same discount structure in the contract for

performance on delivery orders as defined under Article H.13 Technology Refreshment, including delivery orders that extend beyond the performance period of the GWAC; however, contractors may propose greater discounts on individual delivery orders based on the specific requirements and quantities.

### **Article B.5 Maximum Contract Ceiling and Minimum Contract Guarantee**

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The Government shall reimburse the Contractor an amount not less than a total of \$250 (minimum) or more than a total of \$20 billion (maximum for the base period of performance and the option period – see Article F.1 GWAC Period of Performance) for successful performance of this contract. During the period between contract award and September 30, 2015, contractors that have not been awarded delivery orders may invoice the Government for the minimum guarantee.

The Government will compete and award delivery orders based on the work described in Section C of this contract. Article G.7 Delivery Order Procedures, describes procedures for delivery orders issued under this contract.

### **Article B.6 Work Outside of the Continental United States (OCONUS)**

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The Government anticipates that there may be delivery orders under this contract for work outside the United States. “OCONUS” is defined as other than the 48 contiguous states plus the District of Columbia. The Contractor will be compensated for work performed OCONUS based on the methodology proposed by the Contractor and accepted by the OCO for award of an individual delivery order.

The United States Department of State’s Bureau of Administration, Office of Allowances (at <http://aoprals.state.gov/>), publishes quarterly report indexes of living costs abroad, per-diem rate maximums, quarter’s allowances, hardship differentials, and danger pay allowances for contractors to follow when proposing on OCONUS efforts. The Government shall not allow any allowances, other than those listed by the United States Department of State, on delivery orders.

The Department of State's Standardized Regulations (DSSR) are the controlling regulations for allowances and benefits available to all the United States Government civilians assigned to foreign areas. For delivery orders issued under the GWAC, the contractor civilians assigned to foreign areas shall not exceed the allowances and benefits in the DSSR. For OCONUS delivery orders where costs are not specifically addressed in the DSSR, the Government will reimburse the Contractor for all reasonable, allowable, and allocable costs in accordance with FAR 31, Contract Cost Principles and Procedures.



## SECTION C: STATEMENT OF OBJECTIVES

### Article C.1 Background

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OMB has designated the NIH as an executive agent authorized to administer GWACs, pursuant to Section 5112(e) of the Clinger Cohen Act, 40 U.S.C. 1412(e). The NIH has authorized the NIH Information Technology Acquisition and Assessment Center (NITAAC), a division within the NIH, to administer these GWACs. The GWACs are 10-year, multiple award IDIQ GWACs specifically designed to streamline the procurement process for IT commodities products, services and solutions.

### Article C.2 Purpose

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The purpose of this CIO-CS GWAC is to provide a mechanism for the Federal Government to procure IT commodities and solutions as they relate to general IT initiatives along with health and life sciences IT capabilities. These IT commodities and associated commodity enabling services may include IT procurements aligned to information management, operational, administrative, and health and biomedical research requirements.

Federal agencies can use this GWAC for acquiring a wide range of IT commodities and associated commodity enabling services. The GWAC is an IDIQ contract against which federal agencies can issue delivery orders for their specific requirements. The focus of this contract is to provide government agencies with a mechanism for quick ordering of needed IT commodities and associated commodity enabling services at equitable and reasonable prices.

### Article C.3 Objectives

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This Statement of Objectives (SOO) outlines the overall performance objectives required of contractors under the contract. Specific details such as, delivery assignments, deliverables, documentation, training, applicable government/department/industry standards will be provided at the individual delivery order level. Unless otherwise specified at the delivery order level, contractors shall provide new commodities rather than used or refurbished commodities.

### Article C.4 Scope

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The scope of the GWAC includes the provisioning of IT commodities and solutions as defined in FAR 2.101(b) and further clarified in the Clinger-Cohen Act of 1996 within the Federal Government. It includes IT products, IT commodities, hardware, software, solutions, cloud services and future technologies as defined under the FAR.

Where applicable, the Contractor shall provide IT commodities that may be deployed using one or both of the models as listed below:

- a. **On-Premise Model**: In this model, the Contractor deploys commodities and products on-site either within the Government site or at another contractor site. In this model, additional “bundled” services may be required which include, but are not limited to, provisioning, deployment, installations, warranty and maintenance, engineering and assessment studies and training.

- b. **Managed Services Model (includes deployment on the Public Cloud)**: As demonstrated by market conditions and trends over the last 5 years, along with a number of federal policies such as FEDRamp, the Cloud First Initiative, the 25-point plan and data center consolidation initiatives, the Contractor deploys IT commodities via managed services and the Cloud. Note that Infrastructure as a Service (IaaS), Platform as a Service (PaaS), and Software as a Service (SaaS) capabilities are becoming more commonplace where the commodity service is managed through a Service Level Agreement (SLA) and is based on a subscription model.

In addition, under the scope of this contract, the Contractor may provide commodity enabling services that shall ensure the successful operation and sustenance of the IT commodities.

### **Article C.5 Standards and Regulations Considerations**

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The IT commodities and commodity enabling services that are to be included in each product category of the contract will need to adhere to regulations mandated within the Federal Health Architecture (FHA) and technology and business regulations mandated within the Federal Enterprise Architecture (FEA).

1. Where applicable and specified at the delivery order level, the Contractor shall ensure compliance with the following:
  - a. Trade Agreement Act (TAA)
  - b. Electronic Product Environmental Assessment Tool (EPEAT)
  - c. Energy Star
  - d. Federal Information Security Management Act (FISMA) compliance
  - e. Federal Risk and Authorization Management Program (FEDRAMP) compliance
  - f. Health Insurance Portability and Accountability Act (HIPAA) compliance
  - g. Section 508 of the Rehabilitation Act of 1974
2. In accordance with FAR 39.105, agencies shall ensure that contracts for the design, development, or operation of a system of records using commercial IT services or IT support services include the following:
  - a. Agency rules of conduct that the Contractor and the Contractor's employees shall be required to follow.
  - b. A list of the anticipated threats and hazards that the Contractor must guard against.
  - c. A description of the safeguards that the Contractor must specifically provide.
  - d. Requirements for a program of Government inspection during performance of the contract that will ensure the continued efficacy and efficiency of safeguards and the discovery and countering of new threats and hazards.

### **Article C.6 Value Added Services**

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Where applicable, the Contractor shall provide commodity-enabling services that are related to the operation and sustenance of the IT equipment, commodities and products provisioned within the contract. (Note that in certain cases, especially within the managed services deployment model, certain services shall be subsumed within the offering of the IT commodity.)

The Contractor shall provide site-specific services as required by the Government in all matters relating to the operation and sustenance of CIO-CS commodities and solutions. The services include, but are not limited to, the following:

- a. **Deployment and Installations**: The Contractor shall be responsible for the delivery, installation and relocation of commodities at designated facilities. The Government will coordinate start dates and access with the Contractor.
- b. **Warranty and Maintenance**: The Contractor shall provide commercial warranty and commodity maintenance services in conjunction with the provisioning of the specific CIO-CS commodity. All maintenance services shall be performed as requested by the customer on individual delivery orders.
- c. **Training**: The Contractor shall provide training to users at the time of the initial installation. Additional training shall be provided on an "as-needed" basis when requested by the customer.
- d. **Engineering, Design, Assessment Studies, and Other Associated Value Added Services**: When applicable, the Contractor shall conduct assessments and engineering studies that enable the provisioning and enhancements (e.g., technology refreshes) of IT commodities.

## **Article C.7 Reporting Requirements**

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The Contractor is responsible for the following reporting on delivery order activity under the GWAC. Reporting required under paragraphs a. through d. below shall be made through the Electronic Government Ordering System (e-GOS). (See G.7.1 Electronic Government Ordering System for further information.)

All reports required herein shall be submitted in electronic format. All reports submitted in electronic format shall be compliant with Section 508 of the Rehabilitation Act of 1973. Additional information about testing documents for Section 508 compliance, including specific checklists, by application, can be found at: <http://www.hhs.gov/web/508/index.html> under "Helpful Resources."

a. **Award and Modification Report**

All delivery order awards and modifications issued by the Government shall be reported in e-GOS within five (5) calendar days of receipt by the Contractor. The reporting of modifications pertains to both funded modifications and administrative modifications.

b. **Quarterly Activity Report**

The Quarterly Activity Report is a summary of the award and modification activity reported by the Contractor in e-GOS during the previous quarter. The Contractor is responsible for correcting any errors in the information prior to quarterly certification of the information through e-GOS.

c. **NIH Contract Access Fee Payment Report**

The NIH Contract Access Fee (NCAF) Payment Report is a summary of payment activity by the Contractor. The Contractor shall certify NCAF payments through e-GOS on a quarterly basis. During the process of certification, the Contractor shall provide the status on any balances that are due and identify and explain any discrepancies found.

**d. Contractor Profile Report**

The Contractor shall be responsible for maintaining the contractor company profile in e-GOS. On a quarterly basis, the Contractor shall certify the accuracy of the information in e-GOS.

**e. Internet Presence Report**

The Contractor shall submit an Internet Presence Report certifying that the Contractor is in full compliance with Article G.5 Contractor Internet Presence requirements. The report shall be submitted to the NITAAC Customer Support Center at [nitaac-cd@od.nih.gov](mailto:nitaac-cd@od.nih.gov) providing compliance status on all requirements under Article G.5 for the previous quarter.

**f. Reporting Schedule**

The certifications required by paragraphs b. through e. should be submitted in accordance with the following schedule:

**Table 1 – Reporting Schedule**

Quarter	Period	Due Date
Quarter 1	October 1 – December 31	by January 15
Quarter 2	January 1 – March 31	by April 15
Quarter 3	April 1 – June 30	by July 15
Quarter 4	July 1 – September 30	by October 15

**g. Information Security and Physical Access Security Reporting Requirements**

*(The following reporting requirements do not apply to this contract; however, these requirements apply to applicable HHS delivery orders. For non-HHS delivery orders, the Information and Physical Access Security clause may be appropriately tailored by the customer agency as applicable.)*

The Contractor shall submit the following reports as required by the Information and Physical Access Security clause in Article H.7 of Section H of this contract.

**1. Roster of Employees Requiring Suitability Investigations**

The contractor shall submit a roster, by name, position, e-mail address, phone number and responsibility, of all staff (including subcontractor staff) working under the contract who will develop, have the ability to access, or host and/or maintain a Federal information system(s). The roster shall be submitted to the Contracting Officer's Representative (COR), with a copy to the Contracting Officer, within 14 calendar days of the effective date of the contract. (Reference subparagraph A.e of the Information and Physical Access Security clause in Article H.7 of Section H of this contract.)

**2. Reporting of New and Departing Employees**

The Contractor shall notify the Contracting Officer's Representative (COR) and contracting Officer within five working days of staffing changes for positions that require suitability determinations as follows:

- a. New Employees who have or will have access to HHS Information systems or data: Provide the name, position title, e-mail address, and phone number of the new employee. Provide the name, position title and suitability level held by the former incumbent. If the employee is filling a new position, provide a description of the position and the Government will determine the appropriate security level.
- b. Departing Employees: 1) Provide the name, position title, and security clearance level held by or pending for the individual; and 2) Perform and document the actions identified in the "Employee Separation Checklist", attached in Section J, List of Attachments of this contract, when a Contractor/Subcontractor employee terminates work under this contract. All documentation shall be made available to the COR and/or Contracting Officer upon request. (Reference subparagraph E.2.a through E.2.c of the Information and Physical Access Security clause in Article H.7 of Section H of this contract.)
- c. Contractor - Employee Non-Disclosure Agreement(s): The contractor shall complete and submit a signed and witnessed "Commitment to Protect Non-Public Information - Contractor Agreement" form for each contractor and subcontractor employee who may have access to non-public Department information under this contract. This form is located at: <http://ocio.nih.gov/docs/public/Nondisclosure.pdf>. (Reference subparagraph E.3.d. of the Information and Physical Access Security clause in Article H.7 of Section H of this contract.)

*(The following reporting requirement does not apply to this contract, but will apply to any HHS delivery order that involves contractor access to federal information or federal information systems.)*

### 3. IT Security Plan (IT-SP)

In accordance with HHSAR Clause 352.239-72, Security Requirements For Federal Information Technology Resources, the contractor shall submit the IT-SP within thirty (30) days after contract award. The IT-SP shall be consistent with, and further detail the approach to, IT security contained in the Contractor's bid or proposal that resulted in the award of this contract. The IT-SP shall describe the processes and procedures that the Contractor will follow to ensure appropriate security of IT resources that are developed, processed, or used under this contract. If the IT-SP only applies to a portion of the contract, the Contractor shall specify those parts of the contract to which the IT-SP applies.

The Contractor shall review and update the IT-SP in accordance with NIST SP 800-53A, Guide for Assessing the Security Controls in Federal Information Systems and Organizations, on an annual basis.

(Reference subparagraph D.c.1 of the Information and Physical Access Security clause in Article H.7 of Section H of this contract.)

*(The following reporting requirement does not apply to this contract, but will apply to any HHS delivery order that involves contractor access to federal information or federal information systems.)*

### 4. IT Risk Assessment (IT-RA)

In accordance with HHSAR Clause 352.239-72, Security Requirements for Federal Information Technology Resources, the contractor shall submit the IT-RA within thirty (30) days after contract award. The IT-RA shall be consistent, in form and content, with NIST SP

800-30, Risk Management Guide for Information Technology Systems, and any additions or augmentations described in the HHS-OCIO Information Systems Security and Privacy Policy.

The Contractor shall update the IT-RA on an annual basis.

(Reference subparagraph D.c.2 of the Information and Physical Access Security clause in Article H.7 of Section H of this contract.)

*(The following reporting requirement does not apply to this contract, but will apply to any HHS delivery order that involves contractor access to federal information or federal information systems.)*

#### 5. FIPS 199 Assessment

In accordance with HHSAR Clause 352.239-72, Security Requirements For Federal Information Technology Resources, the Contractor shall submit a FIPS 199 Assessment within thirty (30) days after contract award. The FIPS 199 Assessment shall be consistent with the cited NIST standard. (Reference subparagraph D.c.3 of the Information and Physical Access Security clause in Article H.7 of Section H of this contract.)

*(The following reporting requirement does not apply to this contract, but will apply to any HHS delivery order that involves contractor development, maintenance, and access to federal information systems.)*

#### 6. IT Security Certification and Accreditation (IT-SC&A)

In accordance with HHSAR Clause 352.239-72, Security Requirements for Federal Information Technology Resources, the Contractor shall submit written proof to the Contracting Officer that an IT-SC&A was performed within three (3) months after contract award.

The Contractor shall perform an annual security control assessment and provide to the Contracting Officer verification that the IT-SC&A remains valid.

(Reference subparagraph D.c.4 of the Information and Physical Access Security clause in Article H.7 of Section H of this contract.)

## **SECTION D: PACKAGING, MARKING, AND SHIPPING**

All deliverables required under this contract shall be preserved, packaged, marked and shipped in accordance with normal commercial practices and in a manner that will afford protection against corrosion, deterioration, and physical damage during shipment. The items shall be packed in a manner conforming to the requirements of Uniform Freight Classification for rail shipment; National Motor Freight Classification for truck shipment; Parcel Post Regulations, and the regulations of other carriers as applicable to the mode of transportation employed.

The Contractor shall guarantee all required materials shall be delivered in immediate usable and acceptable condition. Any other specific requirements will be specified in the applicable delivery order.

## **SECTION E: INSPECTION AND ACCEPTANCE**

In addition to the general inspection and acceptance provisions of FAR 52.212-4 (see Section I), this contract incorporates the following clauses by reference; with the same force and effect as if they were given in full text. Upon request, the PCO will make its full text available:

- a. FAR Clause 52.246-2, Inspection of Supplies – Fixed Price (August 1996).
- b. FAR Clause 52.246-16, Responsibility for Supplies (April 1984).

Additional inspection and acceptance requirements may be specified by the OCO in each individual delivery order.



## SECTION F: DELIVERIES OR PERFORMANCE

### Article F.1 GWAC Period of Performance

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The period of performance for this contract shall be from 05/01/2015 through 04/30/2020 with a five (5) year option period (see Article I.3, Additional Contract Clauses included in Full Text).

### Article F.2 Delivery Order Period of Performance

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The period of performance for each delivery order placed under the contract will be specified in the individual delivery order. Delivery orders may include options; however, delivery orders may not exceed 120 months, inclusive of options, from the date that the delivery order is awarded.

Delivery order options, if included at initial issuance of the delivery order, may be exercised after the expiration date of the GWAC; however, no delivery order (including delivery order options) may extend more than 60 months beyond the expiration of the GWAC.

Notwithstanding anything to the contrary above, a multi-year delivery order placed under the GWAC must be consistent with FAR Subpart 17.1, Multi-year Contracting, and any applicable funding restrictions.

### Article F.3 Clauses Incorporated by Reference, FAR 52.252-2 (FEB 1998)

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This contract incorporates the following clause(s) by reference, with the same force and effect as if it were given in full text. Upon request, the PCO will make its full text available. The full text of a clause may also be accessed electronically at: <http://www.acquisition.gov/far/>.

FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1) CLAUSE:

#### **52.242-15, Stop Work Order (August 1989)**

**Alternate I** (April 1984) is not applicable to this contract.

### Article F.4 Time of Delivery

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#### **F.4.1 Delivery Schedule**

A delivery schedule must be specified with each quotation and should be reflected in any resulting delivery order. The place of performance and/or delivery for all items will be specified in the individual delivery order issued under this contract. Prices proposed under the contract shall be proposed assuming a 30 day delivery period from receipt of the delivery order unless otherwise specified in the Products List, Attachment J.8. Delivery orders may require contractors to propose an expedited delivery of less than 30 days, and specific items may require a longer delivery time, which should be specified on the Products List, Attachment J.8. The contractor is required to notify the OCO of any delays in delivery. Upon notification, the OCO may choose to cancel the order or request due consideration for the delay.

#### **F.4.2 Partial Shipment**

Partial shipments will not be accepted unless authorized on the delivery order or by the OCO prior to the time of delivery order award. A partial shipment is any shipment that does not include all items specified in the order.

### **Article F.5 Transportation**

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#### **F.5.1 Transportation and Shipping Charges**

Unless otherwise specified in the delivery order, all arrangements for transportation and shipping shall be made by the Contractor, and all transportation and shipping charges for deliveries to CONUS locations shall be included in the item prices. Transportation and shipping charges for deliveries OCONUS will be negotiated on each individual delivery order.

#### **F.5.2 Equipment Shipped for Replacement**

The Contractor shall bear the transportation and shipping charges whenever equipment is shipped for replacement purposes, unless the replacement was due to a cause specified as a government responsibility in accordance with FAR 52.246-16, Responsibility for Supplies.

## SECTION G: CONTRACT ADMINISTRATION DATA

### Article G.1 General

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This section provides guidance regarding contract administration requirements for this contract, and where applicable, guidance regarding delivery orders placed under the contract.

### Article G.2 Authorized Users

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This contract is for use by all Federal Government agencies. A listing of Federal Government agencies can be found at <http://www.usa.gov> under <http://www.usa.gov/Agencies/federal.shtml>.

### Article G.3 Roles

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Notwithstanding the contractor's responsibility for total management of this contract and delivery orders issued there under, the administration of this contract will require effective coordination between the Government and the Contractor. This Article describes the roles and responsibilities of individuals and/or authorized users who will be the primary points of contact for the Government and Contractor on matters regarding contract administration. The Government may modify the roles and responsibilities at any time during the period of performance of the contract.

#### G.3.1 Government Personnel

##### a. Procuring Contracting Officer

The Procuring Contracting Officer (PCO) is the only individual with authority to act as agent of the Government under this contract. Only the PCO has authority to:

- 1) direct or negotiate any changes in the statement of work;
- 2) modify or extend the period of performance;
- 3) change the delivery schedule;
- 4) authorize reimbursement to the Contractor for any costs incurred during the performance of this contract; and,
- 5) otherwise change any terms and conditions of this contract.

The PCO for this contract is:

Email: NITAACsupport@nih.gov

Address: 11545 Rockville Pike, Floor 10, Rockville, MD 20852

Phone: (888) 773-6542

##### b. NITAAC Contracting Officer's Representative

The following Contracting Officer's Representative (COR) will represent the Government for the purpose of this contract:

Email: NITAACsupport@nih.gov

Address: 11545 Rockville Pike, Floor 10, Rockville, MD 20852

Phone: (888) 773-6542

The COR is responsible for:

- 1) monitoring the contractor's technical progress, including the surveillance and assessment of performance and recommending to the PCO changes in requirements;
- 2) interpreting the statement of work and any other technical performance requirements;
- 3) performing technical evaluation as required;
- 4) performing technical inspections and acceptances required by this contract; and,
- 5) assisting in the resolution of technical problems encountered during performance.

The Government may unilaterally change its COR designation.

**c. Program Manager**

The following Program Manager (PM) will represent the Government for the purpose of this contract:

Email: NITAACsupport@nih.gov

Address: 11545 Rockville Pike, Floor 10, Rockville, MD 20852

Phone: (888) 773-6542

**d. Agency Ordering Contracting Officer (OCO)**

The agency OCO for each delivery order is the sole and exclusive government official with authority to take actions which may bind the Government under delivery orders under the contract.

**e. Information Systems Security Officer (ISSO)**

The Information Systems Security Officer (ISSO) is responsible for the confidentiality, availability, and integrity of electronic information resources. The ISSO serves as the principal contact for coordination, implementation, and enforcement of Information Security (InfoSec) policies, and for implementing and maintaining federal InfoSec directives and policies. HHS Information Security and Privacy Program policy can be found on the HHS Office of the Chief Information Officer's (OCIO) website at <http://www.hhs.gov/ocio/securityprivacy/>.

**G.3.2 Contractor Personnel – Key Personnel, HHSAR 352.242-70 (January 2006)**

The key personnel specified in this contract are considered to be essential to work performance. At least 30 days prior to diverting any of the specified individuals to other programs or contracts (or as soon as possible, if an individual must be replaced, for example, as a result of leaving the employ of the Contractor), the Contractor shall notify the PCO and shall submit comprehensive justification for the diversion or replacement request (including proposed substitutions for key personnel) to permit evaluation by the Government of the impact on performance under this contract. The Contractor shall not divert or otherwise replace any key personnel without the written consent of the PCO. The Government may modify the contract to add or delete key personnel at the request of the contractor or Government.

(End of clause)

The Contractor Program Manager (PM) is considered key personnel and essential to the work being performed hereunder.

Any request for a change in key personnel must be submitted on official company letterhead, along with the resume inclusive of the full name, office phone number, and individually assigned company email address for the new individual proposed and directed to the NITAAC Customer Support Center: NITAACsupport@mail.nih.gov.

The contractor's corporate management structure shall guarantee senior, high-level, program management of the CIO-CS GWAC Program. The Contractor shall identify the individual selected to fill the role of the PM for the GWAC. The PM duties include, but are not limited to:

- a. Representing the contractor as point-of-contact for the PCO to help resolve issues and perform other functions that may arise relating to the contract and delivery orders under the contract;
- b. Promoting the CIO-CS contract to the Federal Government through participation in trade shows, conferences, and other meetings where federal government has a significant presence;
- c. Promoting contractor identity as NITAAC CIO-CS contract holder by using the NITAAC CIO-CS logo in advertising, placing these identifiers in printed and in on-line communications; displaying CIO-CS promotional placards; and, disseminating NITAAC CIO-CS marketing materials;  
(Appropriate use of the NITAAC CIO-CS logo in advertisements directed to federal government contract use is acceptable, provided that the advertisement does not state or imply that the product or service is endorsed or preferred by the Government);
- d. Educating and training contractor staff to ensure that they are able to effectively communicate with existing and potential customers regarding the technical scope, the value, and the benefits of the CIO-CS GWAC;
- e. Providing all reporting information required under the contract accurately and in a timely manner;
- f. Attending meetings and conferences, as required; and,
- g. Serving as the primary focal point within the contractor's organization on all matters pertaining to this contract. The Contractor Program Manager for this contract will be listed on the NITAAC website.

#### **Article G.4 Customer/Contractor Training Materials**

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NIH will make available, via the NITAAC website, training materials that will assist customers and contractors in using the contract. NITAAC personnel will also be available to provide specific training to customers and contractors on the use of the CIO-CS contract vehicle either at the customer's or contractor's facility, or at a mutually agreeable site.

#### **Article G.5 Contractor Internet Presence**

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Within 30 days after contract award, the Contractor shall have developed a publicly available webpage, accessible via the Internet. The Contractor shall provide the direct Uniform

Resource Locator (URL) for the webpage to be displayed on the NITAAC website, and shall maintain this webpage until administrative close-out of the contract and any delivery orders issued under the contract, ensuring that the information displayed remains current. The Contractor shall ensure the accuracy of its information as displayed on the NITAAC website Contract Holders page, and promptly notify NITAAC Customer Support of any changes.

The purpose of the webpage is for the contractor to communicate with potential customers regarding the contractor's ability to provide world-class commodities and commodity enabling services under the contract. At a minimum, this webpage must include the following items: the awarded Standard Form 26, latest contract (conformed), prompt payment terms, contact information for the contractor's PM (as listed on the NITAAC website), a hyperlink to the NITAAC CIO-CS website, and the NITAAC and NITAAC CIO-CS logos. This webpage must conform to the relevant accessibility standards referenced in Section 508 of the Rehabilitation Act (29 U.S.C. 794d), as amended by the Workforce Investment Act of 1998 (P.L. 105-220), August 7, 1998, Section 1194.22, Web-based Intranet and Internet Information and Applications. The contractor's website shall be available for use 24 hours per day, 7 days per week. The Contractor is responsible for promptly notifying NITAAC Customer Support of any changes to the contractor URL.

## **Article G.6 Electronic Communications**

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The contractor shall establish a CIO-CS electronic mailbox for receipt of communications from NITAAC. The electronic mailbox name must include "CIO-CS".

## **Article G.7 Delivery Order Procedures**

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### **G.7.1 Electronic Government Ordering System**

- a. NITAAC has developed the secure Electronic Government Ordering System (e-GOS), a web-based delivery order processing system, to allow customers to perform fair opportunity in accordance with FAR 16.5 and to integrate workflow management, electronic document management, and aspects of customer relationship management to enhance process efficiency, and improve data/information integrity. The Contractor and customers will be required to use the e-GOS in order to participate in the delivery order process by registering as an e-GOS user and agreeing to system usage rules of behavior. To accommodate delivery order set-asides as provided by Article G.7.2 (c), e-GOS will categorize contractors by business size status, socio-economic status, and distinguish whether the company had proposed as a Value Added Reseller (VAR) or as an Original Equipment Manufacturer (OEM).
- b. The contractor electronic mailbox address, a personal email address, or a general email address may not be used to register for an account in e-GOS. Individuals within the contractor's organization shall register individually in e-GOS using their individually assigned company email address for an e-GOS user account.
- c. The Contractor shall identify an e-GOS representative as the contractor's primary point of contact for providing training on e-GOS and resolution of related issues. This individual shall also be the primary interface point to NITAAC on e-GOS and shall attend mandatory e-GOS training as deemed necessary by NITAAC.
- d. Responses to solicitations issued under the contract shall be submitted in e-GOS. In the

event a government customer requests that the contractor submit their response through e-mail or in hardcopy format, the Contractor may do so; however, the Contractor shall also submit their response through e-GOS prior to the response deadline. If the Contractor decides not to submit a proposal in response to a solicitation, a “No Bid” response shall be submitted through e-GOS on or before the closing date and time established in the solicitation.

- e. The Contractor is authorized to initiate work only after receipt of an award document through e-GOS.
- f. Delivery tracking information for all shipments made shall be reported by the Contractor in e-GOS no later than five (5) calendar days after the shipment date. For each shipment reported, the Contractor shall provide the shipping provider, identify the shipment as partial or full, and provide total quantity of items shipped. Reporting of tracking information is required on all commodity delivery orders and is not applicable to service delivery orders.
- g. Future e-GOS enhancements may include the implementation of digital signatures, and once implemented, may entail a nominal cost to the contractor to purchase and maintain appropriate security certificates.

## **G.7.2 Delivery Orders Issuance**

### **a. General**

Only the OCO may issue delivery orders to the Contractor, providing specific authorization or direction to perform work within the scope of the contract as specified in Section C Statement of Objectives. Unless specifically authorized by the OCO, the Contractor shall not commence work until a fully executed delivery order has been awarded and submitted through e-GOS. The Contractor may incur costs under this contract in performance of delivery orders and delivery order modifications issued in accordance with this Article.

No other costs are authorized unless otherwise specified in the contract or expressly authorized by the OCO.

### **b. Requesting Delivery Order Quotations**

Utilizing e-GOS, the OCO or a designated individual may solicit responses to requirements from contractors within a technical area covered by the Scope of Work. Generally, the delivery order solicitation will include, but is not limited to the following:

- (1) Statement of Work;
- (2) Reporting Requirements and Deliverables;
- (3) Proposal Due Date and Location to Deliver Proposals;
- (4) Period of Performance of Delivery Order;
- (5) Anticipated type of Delivery Order;
- (6) Technical Proposal Instructions;
- (7) Business proposal Instructions;
- (8) Evaluation Factors for Award.

### **c. Fair Opportunity**

All contract holders will be given a fair opportunity to be considered for each delivery order exceeding the micro-purchase threshold in accordance with the FAR as follows:



1. For orders exceeding the simplified acquisition threshold up to \$6 Million, in accordance with 16.505(b)(1)(iii); and,
2. For orders exceeding \$6 Million, in accordance with FAR 16.505(b) (1) (IV). Unless one of the following statutory exceptions applies (see FAR 16.505(b)(2)(i)):
  - a. The agency need for the supplies or services is so urgent that providing a fair opportunity would result in unacceptable delays.
  - b. Only one contract holder is capable of providing the supplies or services required at the level of quality required because the supplies or services ordered are unique or highly specialized.
  - c. The order must be issued on a sole-source basis in the interest of economy and efficiency because it is a logical follow-on to an order already issued under the contract, provided that all awardees were given a fair opportunity to be considered for the original order.
  - d. It is necessary to place an order to satisfy a minimum guarantee.
3. For orders exceeding the simplified acquisition threshold, a statute expressly authorizes or requires that the purchase be made from a specified source.
4. In accordance with section 1331 of Public Law 111-240 (15 U.S.C. 644(r)), OCOs may, at their discretion, set aside orders for any of the small business concerns identified in FAR 19.000(a)(3). When setting aside orders for small business concerns, the specific small business program eligibility requirements identified in FAR part 19, Small Business Programs, apply.

The OCO has the discretion to compete a requirement for a delivery order only among contract holders that are designated as OEMs or only among those that are designated as VARs, or both.

To quickly fulfill anticipated repetitive requirements for commodities or solutions, the OCO may award consolidated delivery orders if it is in the best interest of the Government and meets the Government's needs. Such orders can serve to reduce administrative lead-time and afford the agency the ability to obtain better pricing through leveraged buying power and help achieve Strategic Sourcing goals delineated in Article H.14.

### **G.7.3 Service Contract Act**

The Service Contract Act does not apply to this contract.

## **Article G.8 NIH Contract Access Fee and Fee Remittance**

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- a. The NIH Contract Access Fee (NCAF) is a required NIH fee that is fixed at ½ percent (i.e., 0.005) to reimburse the cost of operating and administering the CIO-CS contract. This fee shall never be treated as a negotiable element between the contractor and ordering agency. The NCAF is charged against all delivery orders and applied to the total award value for contractor performance. Total award value is all inclusive of the commodities and commodity enabling services.

The formula is: Total NCAF = Total Award Value \* NCAF Percentage.



- b. The contractor shall include the NCAF as a separate Contract Line Item Number (CLIN) in all contractor proposals to the government, regardless of pricing arrangements used.
- c. The contractor shall be responsible for reimbursing NCAF to the NIH. It is ultimately the contractor responsibility to ensure that any delivery order award or modification issued contains the necessary NCAF, that the NCAF is properly calculated, and that NCAF is paid in full by the NCAF payment due date.
- d. Contractors shall invoice the Government for full NCAF amount based on obligated amounts, either by funded award or funded modification, on the first invoice after receipt of the funded award or modification document. NCAF is not subject to downward adjustment.
- e. NCAF payments will be due to NIH/NITAAC on or before the 10<sup>th</sup> calendar day of each month for all payments received from the government in the previous month.
- f. The contractor shall utilize the Department of Treasury's secure government-wide collection portal Pay.gov at <https://www.pay.gov/paygov/>, for payment of the NCAF to NIH/NITAAC. Contractors shall contact their financial institution/bank to establish an account authorizing Automated Clearing House (ACH) Direct Debit payments to Pay.gov.
- g. Failure to remit the NCAF in a timely manner will constitute a Basic Contract debt to the United States Government under FAR 32.6.
- h. NIH reserves the unilateral right to adjust the NCAF should it experience a major change in the cost of operating its GWAC Program.

### **Article G.9 Government Property**

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Any equipment, property, or facilities furnished by the government or any contractor-acquired property must be specified in the applicable delivery order. Agency OCOs are responsible for ensuring that the applicable delivery orders are consistent with the policies and procedures of FAR Part 45 for providing Government property to contractors, contractors' use and management of Government property, and reporting, redistributing, and disposing of contractor inventory. Contractors are responsible and liable for Government property in their possession pursuant to FAR 52.245-1 and 52.245-2, as applicable. In the event that the Government-Furnished Equipment (GFE) or Government-Furnished Information (GFI) are not provided to the contractor by the specified date, the contractor will immediately notify the OCO. Upon conclusion of the applicable delivery order, the contractor shall return the GFE or GFI to the Government as specified in the delivery order or as directed in writing by the OCO.

### **Article G.10 Invoice Submission**

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Individual delivery orders will specify requirements for the preparation of vouchers and invoices.

### **Article G.11 Correspondence**

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All data and correspondence submitted to the CIO-CS PCO/NITAAC or the OCO shall reference:

- a. CIO-CS PCO/NITAAC:

- (1) CIO-CS Contract Number
- (2) Order Tracking ID Number
- (3) Order Title

b. Customer's OCO:

- (1) CIO-CS Contract Number
- (2) Order Tracking ID Number
- (3) Order Number (as listed on the OCO order form)
- (4) Order Title
- (5) Point of contact at the Government End User Agency (preferably the OCO)

## **Article G.12 Meetings and Conferences**

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Contractors are required to participate in monthly Contract Holder Conference Calls designed for the exchange of information among contract holders and the NITAAC program. Participation in these conference calls will ensure that contractors are kept abreast of ongoing NITAAC Program and contractor community activities.

Contractors are encouraged to participate in community action groups to assist in the development of strategies around market outreach, communication, and other topics relevant to the CIO-CS GWAC Program.

NITAAC may conduct up to four Program Office meetings per year including an annual conference at a location to be determined by NITAAC. These meetings are intended to provide a platform for contractors, NITAAC staff and agency representatives to communicate current issues, resolve potential problems, discuss business and marketing opportunities, review future and ongoing NIH and government-wide initiatives, and address contract fundamentals. At a minimum, the contractor PM is required to attend these meetings.

## **Article G.13 Contractor Performance Assessment Reporting System (CPARS)**

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### **G.13.1 Contractor Performance Evaluations**

As detailed in FAR 42.1503, the Government will conduct past performance assessments on contractor performance. The PCO will conduct past performance assessment for this contract. The agency OCO is responsible for conducting past performance assessment at the delivery order.

### **G.13.2 Electronic Access to Contractor Performance Evaluations**

Contractors may access evaluations through a secure web site for review and comment at the following address: <http://www.cpars.gov>.

## **Article G.14 FAR 52.232-40, Providing Accelerated Payments to Small Business Subcontractors (Nov 2021)**

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- a. Upon 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.

- 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 items.

(End of clause)

## SECTION H: SPECIAL CONTRACT REQUIREMENTS

### Article H.1 Applicable Documents

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Typical standards used in delivery orders may be obtained from the applicable documents listed below. In the event of conflict between these documents and the contents of the rest of the respective delivery orders, the references in this section shall govern. The below listed documents are for contractors to ensure compliance with applicable standards.

- 1) OMB Circular A-130
  - a) <http://www.whitehouse.gov/omb/circulars/a130/a130trans4.html>
- 2) OMB Memorandum M-00-10
  - a) <http://www.whitehouse.gov/omb/memoranda/m00-10.html>
- 3) HHS-OCIO Policy for Information Systems Security and Privacy
  - a) Copies of HHS IT security and privacy policies
  - b) <http://www.hhs.gov/ocio/policy/index.html#Security>
- 4) Federal Risk and Authorization Management Program (FedRAMP)
  - a) Information concerning OMB-mandated FedRAMP security authorization for cloud services: <http://www.FedRAMP.gov>
- 5) NIST Definition of Cloud Computing (NIST Special Publication 800-145)
  - a) <http://csrc.nist.gov/publications/PubsSPs.html#800-145>
- 6) Defense Security Service Documents
  - a) Copies of security requirements may be obtained from the Defense Security Service:
  - b) <http://www.dss.mil>

### Article H.2 Organizational Conflict of Interest

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The guidelines and procedures of FAR 9.5 will be used in identifying and resolving any issues of organizational conflict of interest at either the GWAC level or the delivery order level.

In the event that a delivery order requires activity that would create an actual or potential conflict of interest, the Contractor shall:

- a. Immediately notify the OCO of the actual or potential conflict, submit a plan for mitigation, and not commence work on any delivery order that involves a potential or actual conflict of interest until specifically notified by the OCO to proceed; or,
- b. Identify the conflict and recommend to the OCO an alternate delivery approach which would avoid the conflict;

The OCO (or PCO as applicable at the GWAC level) will review the information provided by the Contractor and make a determination whether to proceed with the delivery order, notwithstanding a conflict of interest, and as applicable, process a request for waiver pursuant to FAR 9.503.

## Article H.3 Subcontracting Provisions

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### (Applicable to Other Than Small Business Only)

#### H.3.1 Small Business Subcontracting Plan

- a. The Contractor Small Business Subcontracting Plan is attached hereto and made a part of this contract.
- b. The failure of any contractor or subcontractor to comply in good faith with FAR Clause 52.219-8, entitled "Utilization of Small Business Concerns" incorporated in this contract and the attached Subcontracting Plan, will be a material breach of such contract or subcontract and subject to the remedies reserved to the Government under FAR Clause 52.219-16 entitled, "Liquidated Damages-Subcontracting Plan."

#### H.3.2 Subcontracting Reports

In accordance with FAR Clause 52.219-9, the Contractor shall submit the following Subcontracting Reports electronically via the Electronic Subcontracting Reporting System (eSRS) at <http://www.esrs.gov>.

- a. Individual Subcontract Reports (ISR)

Regardless of the effective date of this contract, the ISRs (formerly SF-294) shall be due on the following dates for the entire life of this contract:

April 30th  
October 30th  
Expiration Date of Contract

ISRs shall be submitted under Agency ID 7529 (NATIONAL INSTITUTES OF HEALTH).

**\*\*Note:** ISRs are not required for Commercial Plans.

- b. Summary Subcontract Report (SSR)

Regardless of the effective date of this contract, the SSR shall be submitted annually on the following date for the entire life of this contract:

October 30th

The SSR for Plan Type Individual is the former SF-295. For Individual or Master Plans, the SSRs shall be submitted under Agency ID 7500 (DEPARTMENT OF HEALTH AND HUMAN SERVICES) as the approving agency.

The SSR for Commercial Plan is filed by Prime Contractors with an approved Commercial Subcontracting Plan. Commercial plans shall be submitted under the Agency ID of the residing Contracting Officer who approved the Commercial Plan as well as Agency ID 7500 (DEPARTMENT OF HEALTH AND HUMAN SERVICES).

For both the Individual and Summary Subcontract Reports (ISRs & SSRs), the NITAAC Customer Support Center shall be included for notification purposes through the following e-mail address:

Email: [NITAACsupport@nih.gov](mailto:NITAACsupport@nih.gov)

## **Article H.4 Acknowledgement of Federal Funding**

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### **(Applicable to delivery orders funded by the NIH appropriated funds.)**

The Contractor shall clearly state, when issuing statements, press releases, requests for proposals, bid solicitations and other documents describing projects or programs funded in whole or in part with Federal money: (1) the percentage of the total costs of the program or project which will be financed with Federal money; (2) the dollar amount of Federal funds for the project or program; and (3) the percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

## **Article H.5 Needle Distribution**

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### **(Applicable to delivery orders funded by the NIH appropriated funds.)**

The Contractor shall not use contract funds to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

## **Article H.6 Certification of Filing and Payment of Taxes (Section 518)**

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### **(Applicable to delivery orders funded by the NIH appropriated funds.)**

The contractor must be in compliance with Section 518 of The Consolidated and Further Continuing Appropriations Act, 2015 Pub. L 113-235, Division E, Sections 744 and 745.

None of the funds appropriated or otherwise made available by this act may be used to enter into a contract in an amount greater than \$5,000,000 or to award a grant in excess of such amount unless the prospective contractor or grantee certifies in writing to the agency awarding the contract or grant that, to the best of its knowledge and belief, the contractor or grantee has filed all Federal tax returns required during the three years preceding the certification, has not been convicted of a criminal offense under the Internal Revenue Code of 1986, and has not, more than 90 days prior to certification, been notified of any unpaid Federal tax assessment for which the liability remains unsatisfied, unless the assessment is the subject of an installment agreement or offer in compromise that has been approved by the Internal Revenue Service and is not in default, or the assessment is the subject of a non-frivolous administrative or judicial proceeding.

## **Article H.7 Information and Physical Access Security**

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### **H.7.1 Security**

For systems used at the NIH, the Contractor shall agree to establish and follow any additional security precautions considered by the NIH to be necessary to ensure proper and confidential handling of data and information. For such systems, a written agreement between the NIH and the Contractor shall be reached before data and information otherwise exempt from public disclosure may be disclosed to the Contractor. The Contractor must include these requirements in any subcontract awarded under the prime contract.

### **H.7.2 Physical Security**

Individual delivery orders will specify contractor rights of entry to and exit from government facilities as required for performance of work under this contract. Contractor employees shall comply with all applicable directives and policies regarding conduct of personnel and operation of the facility. The Government reserves the right to require Contractor personnel to "sign-in" upon entry to and "sign-out" upon exit from any government facility.

The Contractor shall secure and protect all Contractor-owned and Contractor employee-owned personal property and equipment brought into government facilities during performance of work under this contract. The Government shall not be held liable for loss of or damage to Contractor-owned or Contractor employee-owned personal property or equipment brought into government facilities. The Contractor shall remove any Contractor-owned or Contractor employee-owned personal property deemed inappropriate by the Government, for any reason, from the government facility in which it is found.

Delivery orders will provide any restrictions regarding the need for contractor employees to be United States citizens, legal residents of the United States, or aliens authorized temporary employment in the United States before they can be employed under this contract. The delivery order will also provide instructions for any requirements for non-disclosure agreements such as the "Commitment to Protect Non-Public Information – Contractor Employee Agreement" form available at

<https://ocio.nih.gov/aboutus/publicinfosecurity/acquisition/Documents/Nondisclosure.pdf>

The Contractor will be held liable for any inappropriate disclosure of information/data by its employees or via any system used by the Contractor. Should the Contractor become aware of the need for additional safeguards, it must notify the COR immediately.

### **H.7.3 Additional Considerations for HHS Delivery Orders**

*(The following Paragraph A of this Article is not applicable to this contract, but is applicable to any HHS delivery order issued under this contract where it has been determined that: (a) contractor personnel may require access to HHS-controlled facilities and/or information systems, including sensitive data/information, in order to perform the contract/order SOW/PWS, and/or; (b) the Homeland Security Presidential Directive's (HSPD-12) more stringent access procedures are expected to apply, because access will be routine and of long-term duration, or is routine and of short-term duration, but greater access controls are deemed necessary.)*

#### **A. HHS-Controlled Facilities and Information Systems Security**

- a. To perform the work specified herein, Contractor personnel are expected to have routine (1) physical access to an HHS-controlled facility; (2) physical access to an HHS-controlled information system; (3) access to sensitive HHS data or information, whether in an HHS-controlled information system or in hard copy; or (4) any combination of circumstances (1) through (3).
- b. To gain routine physical access to an HHS-controlled information system, and/or access to sensitive data or information, the Contractor and its employees shall comply with Homeland Security Presidential Directive (HSPD)-12, Policy for a Common Identification Standard for Federal Employees and Contractors; Office of Management and Budget Memorandum (M-05– 24); and Federal Information Processing Standards Publication (FIPS PUB) Number 201; and with the personal identity verification and investigations procedures contained in the following documents:



1. HHS-OCIO Information Systems Security and Privacy Policy  
(<http://www.hhs.gov/ocio/policy/#Security>)
  2. HHS HSPD-12 Policy Document, v. 2.0  
(<http://www.whitehouse.gov/sites/default/files/omb/assets/omb/memoranda/fy2005/m05-24.pdf>)
  3. Information regarding background checks/badges  
(<http://www.ors.od.nih.gov/ser/dpsac/Pages/Home.aspx>)
- c. Position Sensitivity Levels:
- This contract will entail the following position sensitivity levels:
- [ ] **Level 6: Public Trust – High Risk.** Contractor/subcontractor employees assigned to Level 6 positions shall undergo a Suitability Determination and Background Investigation (MBI).
- [ ] **Level 5: Public Trust – Moderate Risk.** Contractor/subcontractor employees assigned to Level 5 positions with no previous investigation and approval shall undergo a Suitability Determination and a Minimum Background Investigation (MBI), or a Limited Background Investigation (LBI).
- [ ] **Level 1: Non-Sensitive.** Contractor/subcontractor employees assigned to Level 1 positions shall undergo a Suitability Determination and National Check and Inquiry Investigation (NACI).
- d. The personnel investigation procedures for Contractor personnel require that the Contractor prepare and submit background check/investigation forms based on the type of investigation required. The minimum Government investigation for a non-sensitive position is a National Agency Check and Inquiries (NACI) with fingerprinting. More restricted positions – i.e., those above non-sensitive, require more extensive documentation and investigation.

The Contractor shall submit a roster, by name, position, e-mail address, phone number and responsibility, of all staff (including subcontractor staff) working under the contract who will develop, have the ability to access and/or maintain a Federal Information System(s). The roster shall be submitted to the Contracting Officer's Representative (COR), with a copy to the Contracting Officer, within 14 calendar days after the effective date of the contract. The Contracting Officer shall notify the Contractor of the appropriate level of suitability investigations to be performed. An electronic template, "Roster of Employees Requiring Suitability Investigations," is available for contractor use at:

<https://ocio.nih.gov/aboutus/publicinfosecurity/acquisition/Documents/SuitabilityRoster10-15-12.xlsx>.

Upon receipt of the Government's notification of applicable Suitability Investigations required, the Contractor shall complete and submit the required forms within 30 days of the notification.

The Contractor shall notify the Contracting Officer in advance when any new personnel, who are subject to a background check/investigation, will work under the contract and if they have previously been the subject of national agency checks or background investigations.



All contractor and subcontractor employees shall comply with the conditions established for their designated position sensitivity level prior to performing any work under this contract.

Contractors may begin work after the fingerprint check has been completed.

- e. Investigations are expensive and may delay performance, regardless of the outcome of the investigation. Delays associated with rejections and consequent re-investigations may not be excusable in accordance with the FAR clause, Excusable Delays – see FAR 52.249-14. Accordingly, the Contractor shall ensure that any additional employees whose names it submits for work under this contract have a reasonable chance for approval.
- f. Typically, the Government investigates personnel at no cost to the Contractor. However, multiple investigations for the same position may, at the Contracting Officer's discretion, justify reduction(s) in the contract price of no more than the cost of the additional investigation(s).
- g. The Contractor shall include language similar to this "HHS Controlled Facilities and Information Systems Security" language in all subcontracts that require subcontractor personnel to have the same frequency and duration of (1) physical access to an HHS-controlled facility; (2) logical access to an HHS-controlled information system; (3) access to sensitive HHS data/information, whether in an HHS-controlled information system or in hard copy; or (4) any combination of circumstances (1) through (3).
- h. The Contractor shall direct inquiries, including requests for forms and assistance, to the Contracting Officer or designee.
- i. Within 7 calendar days after the Government's final acceptance of the work under this contract, or upon termination of the contract, the Contractor shall return all identification badges to the Contracting Officer or designee.

*(The following Paragraph B of this Article is not applicable to this contract, but is applicable to any HHS delivery order issued under this contract that involves the operation or acquisition of an information technology system)*

**B. Standard for Security Configurations, HHSAR 352.239-70, (January 2010)**

- a. The Contractor shall configure its computers that contain HHS data with the applicable Federal Desktop Core Configuration (FDCC) (see <http://nvd.nist.gov/fdcc/index.cfm>) and ensure that its computers have and maintain the latest operating system patch level and anti-virus software level.

**Note:** FDCC is applicable to all computing systems using Windows XP™ and Windows Vista™, including desktops and laptops – regardless of function – but not including servers.

- b. The Contractor shall apply approved security configurations to information technology (IT) that is used to process information on behalf of HHS. The following security configuration requirements apply: [Insert the IC/ISSO approved contract-specific configuration, or if there are no contract-specific configurations, insert: "FDCC"]
- c. The Contractor shall ensure IT applications operated on behalf of HHS are fully functional and operate correctly on systems configured in accordance with the above configuration requirements. The Contractor shall use Security Content Automation

Protocol (SCAP)-validated tools with FDCC Scanner capability to ensure its products operate correctly with FDCC configurations and do not alter FDCC settings – see <http://scap.nist.gov/validation>. The Contractor shall test applicable product versions with all relevant and current updates and patches installed. The Contractor shall ensure currently supported versions of information technology products met the latest FDCC major version and subsequent major versions.

- d. The Contractor shall ensure IT applications designed for end users run in the standard user context without requiring elevated administrative privileges.
- e. The Contractor shall ensure hardware and software installation, operation, maintenance, update, and patching will not alter the configuration settings or requirements specified above.
- f. The Contractor shall (1) include Federal Information Processing Standard (FIPS) 201-compliant (<http://csrc.nist.gov/publications/fips/fips201-1/FIPS-201-1-chng1.pdf>), Homeland Security Presidential Directive 12 (HSPD-12) card readers with the purchase of servers, desktops, and laptops; and (2) comply with FAR Subpart 4.13, Personal Identity Verification.
- g. The Contractor shall ensure that its subcontractors (at all tiers) which perform work under this contract comply with the requirements contained in this clause.

*(The following Paragraph C of this Article is not applicable to this contract, but is applicable to any HHS delivery order issued under this contract that involves the acquisition or lease of, or the requirement to use, desktop or laptop computers, mobile devices, or portable media to store or process HHS sensitive information that the COR categorizes as moderate or high under Federal Information Processing Standard (FIPS) 199, Standards for Security Categorization of Federal Information and Information Systems, dated February 2004.)*

**C. Standard for Encryption language, HHSAR 352.239-71, (January 2010)**

- a. The Contractor shall use Federal Information processing Standard (FIPS) 140-2-compliant encryption (Security) Requirements for Cryptographic Module, as amended) to protect all instances of HHS sensitive information during storage and transmission. (Note: The Government has determined that HHS information under this contract is considered "sensitive" in accordance with FIPS 199, Standards for Security Categorization of Federal Information and Information Systems, dated February 2004).
- b. The Contractor shall verify that the selected encryption product has been validated under the Cryptographic Module Validation Program (see <http://csrc.nist.gov/cryptval/>) to confirm compliance with FIPS 140-2 (as amended). The Contractor shall provide a written copy of the validation documentation to the Contracting Officer and the Contracting Officer's Technical Representative.
- c. The Contractor shall use the Key Management Key (see FIPS 201, Chapter 4, as amended) on the HHS personal identification verification (PIV) card; or alternatively, the Contractor shall establish and use a key recovery mechanism to ensure the ability for authorized personnel to decrypt and recover all encrypted information (see <http://csrc.nist.gov/drivers/documents/ombencryption-guidance.pdf>). The Contractor shall notify the Contracting Officer and the Contracting Officer's Technical Representative of personnel authorized to decrypt and recover all encrypted information.

- d. The Contractor shall securely generate and manage encryption keys to prevent unauthorized decryption of information in accordance with FIPS 140-2 (as amended).
- e. The Contractor shall securely generate and manage encryption keys to prevent unauthorized decryption of information in accordance with FIPS 140-2 (as amended). The Contractor shall ensure that this standard is incorporated into the Contractor's property management/control system or establish a separate procedure to account for all laptop computers, desktop computers, and other mobile devices and portable media that store or process sensitive HHS information.
- f. The Contractor shall ensure that its subcontractors (all tiers) which perform work under this contract comply with the requirements contained in this clause.

*(The following Paragraph D of this Article is not applicable to this contract, but is applicable to any HHS delivery order issued under this contract that involves contractor access to Federal Information or Federal Information Systems.)*

**D. Security Requirements For Federal Information Technology Resources, HHSAR 352.239-72, (January 2010)**

- a. **Applicability.** This clause applies whether the entire contract or order (hereafter "contract"), or portion thereof, includes information technology resources or services in which the Contractor has physical or logical (electronic) access to, or operates a Department of Health and Human Services (HHS) system containing, information that directly supports HHS' mission. The term "information technology (IT)", as used in this clause, 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. This clause does not apply to national security systems as defined in FISMA.
- b. **Contractor responsibilities.** The Contractor is responsible for the following:
  - 1. Protecting Federal information and Federal information systems in order to ensure their –
    - a. Integrity, which means guarding against improper information modification or destruction, and includes ensuring information non-repudiation and authenticity;
    - b. Confidentiality, which means preserving authorized restrictions on access and disclosure, including means for protecting personal privacy and proprietary information; and
    - c. Availability, which means ensuring timely and reliable access to and use of information.
  - 2. Providing security of any Contractor systems, and information contained therein, connected to an HHS network or operated by the Contractor, regardless of location, on behalf of HHS.
  - 3. Adopting, and implementing, at a minimum, the policies, procedures, controls and standards of the HHS Information Security Program to ensure the integrity, confidentiality, and availability of Federal information and Federal information

systems for which the Contractor is responsible under this contract or to which it may otherwise have access under this contract. The HHS Information Security Program is outlined in the HHS Information Security Program Policy, which is available on the HHS Office of the Chief Information Officer's (OCIO) Web site.

- c. **Contractor security deliverables.** In accordance with the timeframes specified, the Contractor shall prepare and submit the following security documents to the Contracting Officer for review, comment, and acceptance:
1. **IT Security Plan (IT-SP)** – due within 30 days after contract award. The IT-SP shall be consistent with, and further detail the approach to, IT security contained in the Contractor's bid or proposal that resulted in the award of this contract. The IT-SP shall describe the processes and procedures that the Contractor will follow to ensure appropriate security of IT resources that are developed, processed, or used under this contract. If the IT-SP only applies to a portion of the contract, the Contractor shall specify those parts of the contract to which the IT-SP applies.
    - a. The Contractor's IT-SP shall comply with applicable Federal laws that include, but are not limited to, the Federal Information Security Management Act (FISMA) of 2002 (Title III of the E-Government Act of 2002, Public Law 107-347), and the following Federal and HHS policies and procedures:
      - i. Office of Management and Budget (OMB) Circular A-130, Management of Federal Information Resources, Appendix III, Security of Federal Automation Information Resources.
      - ii. National Institutes of Standards and Technology (NIST) Special Publication (SP) 800-18, Guide for Developing Security Plans for Information Systems, in form and content, and with any pertinent contract Statement of Work/Performance Work Statement (SOW/PWS) requirements. The IT-SP shall identify and document appropriate IT security controls consistent with the sensitivity of the information and the requirements of Federal Information Processing Standard (FIPS) 200, Recommend Security Controls for Federal Information Systems. The Contractor shall review and update the IT-SP in accordance with NIST SP 800-26, Security Self-Assessment Guide for Information Technology Systems and FIPS 200, on an annual basis.
      - iii. HHS-OCIO Information Systems Security and Privacy Policy.
  2. **IT Risk Assessment (IT-RA)** – due within 30 days after contract award. The IT-RA shall be consistent, in form and content, with NIST SP 800-30, Risk Management Guide for Information Technology Systems, and any additions or augmentations described in the HHS-OCIO Information Systems Security and Privacy Policy. After resolution of any comments provided by the Government on the draft IT-RA, the Contracting Officer shall accept the IT-RA and incorporate the Contractor's final version into the contract for Contractor implementation and maintenance. The Contractor shall update the IT-RA on an annual basis.
  3. **FIPS 199 Standards for Security Categorization of Federal Information and Information Systems Assessment (FIPS 199 Assessment)** – due within 30

days after contract award. The FIPS 199 Assessment shall be consistent with the cited NIST standard. After resolution of any comments by the Government on the draft FIPS 199 Assessment, the Contracting Officer shall accept the FIPS 199 Assessment and incorporate the Contractor's final version into the contract.

4. **IT Security Certification and Accreditation (IT-SC&A)** – due within 3 months after contract award. The Contractor shall submit written proof to the Contracting Officer that an IT-SC&A was performed for applicable information systems – see paragraph (a) of this clause. The Contractor shall perform the IT-SC&A in accordance with the HHS Chief Information Security Officer's Certification and Accreditation Checklist; NIST SP 800-37, Guide for the Security, Certification and Accreditation of Federal Information Systems; and NIST 800-53, Recommended Security Controls for Federal Information Systems. An authorized senior management official shall sign the draft IT-SC&A and provided it to the Contracting Officer for review, comment, and acceptance.
  - a. After resolution of any comments provided by the Government on the draft IT SC&A, the Contracting Officer shall accept the IT-SC&A and incorporate the Contractor's final version into the contract as a compliance requirement.
  - b. The Contractor shall also perform an annual security control assessment and provide to the Contracting Officer verification that the IT-SC&A remains valid. Evidence of a valid system accreditation includes written results of:
    - i. Annual testing of the system contingency plan; and
    - ii. The performance of security control testing and evaluation.
- d. **Personal identity verification.** The Contractor shall identify its employees with access to systems operated by the Contractor for HHS or connected to HHS systems and networks. The Contracting Officer's Representative (COR) shall identify, for those identified employees, position sensitivity levels that are commensurate with the responsibilities and risks associated with their assigned positions. The Contractor shall comply with the HSPD-12 requirements contained in "HHS-Controlled Facilities and Information Systems Security" requirements specified in the SOW/PWS of this contract.
- e. **Contractor and subcontractor employee training.** The Contractor shall ensure that its employees, and those of its subcontractors, performing under this contract complete HHS-furnished initial and refresher security and privacy education and awareness training before being granted access to systems operated by the Contractor on behalf of HHS or access to HHS systems and networks. The Contractor shall provide documentation to the COR evidencing that Contractor employees have completed the required training.
- f. **Government access for IT inspection.** The Contractor shall afford the Government access to the Contractor's and subcontractors' facilities, installations, operations, documentation, databases, and personnel used in performance of this contract to the extent required to carry out a program of IT inspection (to include vulnerability testing), investigation, and audit to safeguard against threats and hazards to the integrity, confidentiality, and availability, of HHS data or to the protection of information systems operated on behalf of HHS.

- g. **Subcontracts.** The Contractor shall incorporate the substance of this clause in all subcontracts that require protection of Federal information and Federal information systems as described in paragraph (a) of this clause, including those subcontracts that –
- a. Have physical or electronic access to HHS' computer systems, networks, or IT infrastructure; or
  - b. Use information systems to generate, store, process, or exchange data with HHS or on behalf of HHS, regardless of whether the data resides on a HHS or the Contractor's information system.
- h. **Contractor employment notice.** The Contractor shall immediately notify the Contracting Officer when an employee either begins or terminates employment (or is no longer assigned to the HHS project under this contract), if that employee has, or had, access to HHS information systems or data.
- i. **Document information.** The Contractor shall contact the Contracting Officer for any documents, information, or forms necessary to comply with the requirements of this clause.
- j. **Contractor responsibilities upon physical completion of the contract.** The Contractor shall return all HHS information and IT resources provided to the Contractor during contract performance and certify that all HHS information has been purged from Contractor-owned systems used in contract performance.
- k. **Failure to comply.** Failure on the part of the Contractor or its subcontractors to comply with the terms of this clause shall be grounds for the Contracting Officer to terminate this contract.

(End of clause)

**Note:** The NIST Special Publication SP-800-26 cited in subparagraph c.1.a.(ii) of this clause has been superseded by NIST SP 800-53A, "Guide for Assessing the Security Controls in Federal Information Systems and Organizations" for use for the assessment of security control effectiveness. See <http://csrc.nist.gov/publications/PubsSPs.html> to access NIST Special Publications (800 Series).

*(The following Paragraph E is not applicable to this contract; however, it may be applicable to any HHS delivery order issued under this contract that includes the Clause at HHSAR 352.239-72, Security Requirements for Federal Information Technology Resources.)*

#### **E. Additional NIH Requirements**

*(Include subparagraph 1 below if the delivery order requires the contractor to: 1) develop; 2) have the ability to access; or 3) host and/or maintain a Federal Information System).*

##### **1. SECURITY CATEGORIZATION OF FEDERAL INFORMATION AND INFORMATION SYSTEMS (FIPS 199 Assessment)**

a. Information Type:

- ☐ Administrative, Management and Support Information:
- ☐ Mission Based Information:

b. Security Categories and Levels:

Confidentiality Level:      ☐ Low                      ☐ Moderate                      ☐ High

Integrity Level:            ☐ Low            ☐ Moderate            ☐ High  
Availability Level:        ☐ Low            ☐ Moderate            ☐ High

**Overall Level:**            ☐ Low                      ☐ Moderate            ☐ High

- c. In accordance with HHSAR Clause 352.239-72, the contractor shall submit a FIPS 199 Assessment within 30 days after contract award. Any differences between the contractor's assessment and the information contained herein will be resolved, and if required, the contract will be modified to incorporate the final FIPS 199 Assessment.

*(Include subparagraph 2 below if the delivery order issued under this contract includes the Clause at HHSAR 352.239-72, Security Requirements for Federal Information Technology Resources.)*

## 2. INFORMATION SECURITY TRAINING

In addition to any training covered under paragraph (e) of HHSAR 352.239-72, the contractor shall comply with the below training:

a. Mandatory Training

1. All Contractor employees having access to (1) Federal information or a Federal information system or (2) sensitive data/information as defined at HHSAR 304.1300(a)(4), shall complete the NIH Computer Security Awareness Training course at <http://irtsectraining.nih.gov/> before performing any work under this contract. Thereafter, Contractor employees having access to the information identified above shall complete an annual NIH-specified refresher course during the life of this contract. The Contractor shall also ensure subcontractor compliance with this training requirement.
2. The Contractor shall maintain a listing by name and title of each Contractor/Subcontractor employee working on this contract and having access of the kind in paragraph 1.a(1) above, who has completed the NIH required training. Any additional security training completed by the Contractor/Subcontractor staff shall be included on this listing. The list shall be provided to the COR and/or Contracting Officer upon request.

b. Role-based Training

HHS requires role-based training when responsibilities associated with a given role or position, could, upon execution, have the potential to adversely impact the security posture of one or more HHS systems. Read further guidance about "NIH Information Security Awareness and Training Policy," at:

<https://ocio.nih.gov/InfoSecurity/Policy/Documents/Final-InfoSecAwarenessTrainPol.doc>.

The Contractor shall maintain a list of all information security training completed by each contractor/subcontractor employee working under this contract. The list shall be provided to the COR and/or Contracting Officer upon request.

c. Rules of Behavior

The Contractor shall ensure that all employees, including subcontractor employees, comply with the NIH Information Technology General Rules of



Behavior (<https://ocio.nih.gov/InfoSecurity/training/Pages/nihitrob.aspx>), which are contained in the NIH Information Security Awareness Training Course <http://irtsectraining.nih.gov>.

*(Include subparagraph 3 below if the delivery order includes the Clause at HHSAR 352.239-72, Security Requirements for Federal Information Technology Resources.)*

### 3. INFORMATION SECURITY RESPONSIBILITIES

In addition to any personnel security responsibilities covered under HHSAR 352.239-72, the contractor shall comply with the below personnel security responsibilities:

- a. In accordance with Paragraph (h) of HHSAR 352.239-72, the Contractor shall notify the Contracting officer and the COR **within five working days** before a new employee assumes a position that requires access to HHS information systems or data, or when an employee with such access stops working on this contract. The Government will initiate a background investigation on new employees assuming a position that requires access to HHS information systems or data, and will stop pending background investigations for employees that no longer work under the contract or no longer have such access.
- b. **New contractor employees who have or will have access to HHS information systems or data:** The Contractor shall provide the COR with the name, position title, e-mail address, and phone number of all new contract employees working under the contract and provide the name, position title and position sensitivity level held by the former incumbent. If an employee is filling a new position, the Contractor shall provide a position description and the Government will determine the appropriate position sensitivity level.
- c. **Departing contractor employees:** The Contractor shall provide the COR with the name, position title, and position sensitivity level held by or pending for departing employees. The Contractor shall perform and document the actions identified in the Contractor Employee Separation Checklist (<https://ocio.nih.gov/aboutus/publicinfosecurity/acquisition/Documents/Emp-sep-checklist.pdf>) when a Contractor/subcontractor employee terminates work under this contract. All documentation shall be made available to the COR upon request.
- d. **Commitment to Protect Non-Public Departmental Information and Data**  
The Contractor, and any subcontractors performing under this contract, shall not release, publish, or disclose non-public Departmental information to unauthorized personnel, and shall protect such information in accordance with provisions of the following laws and any other pertinent laws and regulations governing the confidentiality of such information:
  - 18 U.S.C. 641 (Criminal Code: Public Money, Property or Records)
  - 18 U.S.C. 1905 (Criminal Code: Disclosure of Confidential Information)
  - Public Law 96-511 (Paperwork Reduction Act)

Each employee, including subcontractors, having access to non-public Department information under this acquisition shall complete the "Commitment to Protect Non-Public Information – Contractor Employee Agreement" located at:



<https://ocio.nih.gov/aboutus/publicinfosecurity/acquisition/Documents/Nondisclosure.pdf>. A copy of each signed and witnessed Non-Disclosure agreement shall be submitted to the Project Officer/COR prior to performing any work under this acquisition.

*(Include subparagraph 4 below in HHS delivery orders when contractor/subcontractor personnel will have access to, or use of personally identifiable information (PII), including instances of remote access to or physical removal of such information beyond agency premises or control.)*

#### **4. LOSS AND/OR DISCLOSURE OF PERSONALLY IDENTIFIABLE INFORMATION (PII) – NOTIFICATION OF DATA BREACH**

The Contractor shall report all suspected or confirmed incidents involving the loss and/or disclosure of PII in electronic or physical form. Notification shall be made to the NIH Incident Response Team (IRT) via email ([IRT@mail.nih.gov](mailto:IRT@mail.nih.gov)) within one hour of discovering the incident. The Contractor shall follow up with IRT by completing and submitting one of the applicable two forms below within three (3) work days of incident discovery:

NIH PII Spillage Report at:

[https://ocio.nih.gov/InfoSecurity/Policy/Documents/NIH\\_PII\\_Spillage\\_Proced.doc](https://ocio.nih.gov/InfoSecurity/Policy/Documents/NIH_PII_Spillage_Proced.doc)

NIH Lost or Stolen Assets Report at:

[https://ocio.nih.gov/InfoSecurity/Policy/Documents/ISSO\\_Stolen\\_Device-Media\\_Handling\\_Procedures.doc](https://ocio.nih.gov/InfoSecurity/Policy/Documents/ISSO_Stolen_Device-Media_Handling_Procedures.doc)

*(Include subparagraph 5 below in delivery orders when the contractor/subcontractor will host NIH web pages or databases.)*

#### **5. VULNERABILITY SCANNING REQUIREMENTS**

This acquisition requires the Contractor to host an NIH webpage or database. The Contractor shall conduct periodic and special vulnerability scans, and install software/hardware patches and upgrades to protect automated federal information assets. The minimum requirement shall be to protect against vulnerabilities identified on the SANS Top-20 Internet Security Attack Targets list (<http://www.sans.org/top20/?ref=3706#w1>). The Contractor shall report the results of these scans to the Project Officer/COR on a monthly basis, with reports due 10 calendar days following the end of each reporting period. The Contractor shall ensure that all of its subcontractors (at all tiers), where applicable, comply with the above requirements.

### **Article H.8 Electronic and Information Technology Accessibility**

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*(This Article is not applicable to this contract, however it is applicable to any HHS delivery order issued under the contract that involves the development, acquisition, maintenance, or use electronic and information technology (EIT) products and services subject to Section 508 of the Rehabilitation Act of 1973 as amended, including EIT deliverables such as electronic documents and reports. Non HHS ordering activities will add their specific Electronic and Information Technology Accessibility provisions to individual delivery orders as applicable.)*

**HHSAR 352.239-73 ( DEC 2015)**

- a. Pursuant to Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d), as amended by the Workforce Investment Act of 1998, all electronic and information technology (EIT) products and services developed, acquired, maintained, or used under this contract/order must comply with the “Electronic and Information Technology Accessibility Provisions” set forth by the Architectural and Transportation Barriers Compliance Board (also referred to as the “Access Board”) in 36 CFR Part 1194. Information about Section 508 is available at <http://www.section508.gov/>. The complete text of Section 508 Final Provisions can be accessed at <http://www.access-board.gov/guidelines-and-standards/communications-and-it/about-the-section-508-standards/section-508-standards>.
- b. The Section 508 accessibility standards applicable to this contract/order are identified in the Statement of Work/Specification/Performance Work Statement. The Contractor must provide a written Section 508 conformance certification due at the end of each contract/order exceeding \$150,000 when the contract/order duration is one year or less. If it is determined by the Government that EIT products and services provided by the Contractor do not conform to the described accessibility standards in the Product Assessment Template, remediation of the products or services to the level of conformance specified in the Contractor’s Product Assessment Template will be the responsibility of the Contractor at its own expense.
- c. In the event of a modification(s) to this contract/order, which adds new EIT products or services or revises the type of, or specifications for, products or services the Contractor is to provide, including EIT deliverables such as electronic documents and reports, the Contracting Officer may require that the contractor submit a completed HHS Section 508 Product Assessment Template to assist the Government in determining that the EIT products or services support Section 508 accessibility standards. Instructions for documenting accessibility via the HHS Section 508 Product Assessment Template may be found under Section 508 policy on the HHS Office on Disability website (<http://www.hhs.gov/od/>).
- d. As prescribed in 339.201–70(c), the Contracting Officer shall add the following paragraph to the end of clause 352.239-73(b):

Prior to the Contracting Officer exercising an option for a subsequent performance period/additional quantity or adding funding for a subsequent performance period under this contract, as applicable, the Contractor must provide a Section 508 Annual Report to the Contracting Officer and Project Officer. Unless otherwise directed by the Contracting Officer in writing, the Contractor shall provide the cited report in accordance with the following schedule. Instructions for completing the report are available in the Section 508 policy on the HHS Office on Disability website under the heading Vendor Information and Documents. The Contractor’s failure to submit a timely and properly completed report may jeopardize the Contracting Officer’s exercising an option or adding funding, as applicable.

Schedule for Contractor Submission of Section 508 Annual Report

(to be completed by the OCO at time of contract/order award)

## **Article H.9 Task Order/Delivery Order Contract Ombudsman**

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In accordance with FAR 16.505(b)(5), the following individual has been designated as the NIH Ombudsman for delivery order contracts:

Dr. Richard G. Wyatt  
NIH Competition Advocate for Non R&D Contracts  
1 Center Drive, 160, MSC 0151  
Bethesda, MD 20892-0151  
Phone: (301) 496-4920  
FAX: (301) 402-4273  
email: WyattRG@mail.nih.gov

### **Article H.10 Reporting Matters Involving Fraud, Waste and Abuse**

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Anyone who becomes aware of the existence or apparent existence of fraud, waste and abuse in the NIH funded programs is encouraged to report such matters to the HHS Inspector General's Office in writing or on the Inspector General's Hotline. The toll free number is 1-800-HHS-TIPS (1-800-447-8477). All telephone calls will be handled confidentially. The e-mail address is Htips@os.dhhs.gov and the mailing address is:

Office of Inspector General  
Department of Health and Human Services TIPS HOTLINE  
P.O. Box 23489  
Washington, D.C. 20026

### **Article H.11 General Requirements Applicable to Delivery Orders**

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#### **FAR Clause 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>.

(End of clause)

(End of clause)

#### **H.11.1 FAR Clause 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 1394-2008™, 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)

(End of clause)

### **H.11.2 Warranties**

The Contractor shall extend, at a minimum, all warranties to be identical to those offered to the general public in customary commercial practices when those terms exceed any warranty requirements as delineated in applicable delivery orders. The Contractor may at its discretion offer, as separately priced, extended warranties for warranty coverage beyond the minimum OEM warranty period, and may offer terms including decreased (faster) response times and on-call, on-site support.

### **H.11.3 Leasing**

Delivery orders may require equipment leases of the following types: lease to ownership;

lease with an option to purchase; and straight lease IT equipment. Leases may include integrated installation and warranty. If a delivery order contains a requirement for leased equipment, the Government will normally require the use of the equipment throughout the entire term of the lease identified (Lease Term). Specific requirements and acceptance criteria will be defined in applicable delivery orders.

## **Article H.12 Security Considerations**

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The work to be performed under specific delivery orders may require security clearances. In that event, the contractor will be advised of the requirements in the delivery order statement of work. The contractor shall follow the security requirements identified in the delivery order statement of work and other guidance that may be established by the OCO. Only those contractors that meet the required security clearance levels on individual delivery orders are eligible to compete for such delivery orders.

Clearances may require Special Background Investigations, Sensitive Compartmented Information access or Special Access Programs, or agency-specific access. In such cases, the contractor is responsible for providing personnel with appropriate security clearances to ensure compliance with government security regulations, as specified on the individual



delivery order. The Contractor shall fully cooperate on all security checks and investigations by furnishing requested information to verify the contractor employee's trustworthiness and suitability for the position. Delivery orders containing classified work will include a Contract Security Classification Specification, (DD Form 254 or agency equivalent). The DD Form 254 is available at the following site:

<http://www.smdc.army.mil/Contracts/SETAC10/ATTACHMENT%2003%20-%20DD%20254.pdf>.

## **Article H.13 Technology Refreshment**

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Technology Refreshment is the periodic replacement of commercial off-the-shelf IT commodities to avoid obsolescence and loss of OEM support; ensure reliability, availability, and improve capabilities; and remain current with government security requirements and industry IT standards.

Contractors are encouraged to introduce new IT commodities across applicable categories or update existing IT commodities in the contractor's Product List (Attachment J.8) through the technology refreshment process in e-GOS. New commodities can be offered at any time during contract performance and should be offered as soon as they become available commercially from an OEM.

The Contractor is responsible for keeping the Contractor Product List (Attachment J.8) current through Technology Refreshment, and shall ensure that new commodities offered are within scope of the CIO-CS contract.

Proposals for Technology Refreshment should contain the general pricing information required by Article B.4, Prices/Costs, and if replacing a currently offered commodity, include the technical documentation to substantiate that the replacement commodity provides equal to or greater functionality than the commodity it is replacing. For those items defined under the specific commodities groups listed below, the pricing proposed for the technology refreshment shall maintain, as a minimum, the same discount structure proposed initially in the Pricing Workbook for the respective category and commodity group. Contractors may also propose separate discounts for new technology and commodities defined under the respective category but not under any specific group.

The Government reserves the right to evaluate the new commodity and may require the contractor to demonstrate that the commodity offers a more economical and efficient means for the Government customer to meet its needs. The PCO and/or OCO have the sole discretion to determine whether to add the commodity to the contract.

<b>Category and Group</b>	<b>Discount Percentage (calculated from Pricing Workbook)</b>
Category 1, End User Hardware Commodities – Group A (Laptops)	See Attachment H.13
Category 1, End User Hardware Commodities – Group B (Desktops)	See Attachment H.13

<b>Category and Group</b>	<b>Discount Percentage (calculated from Pricing Workbook)</b>
Category 1, End User Hardware Commodities – Group C (Printers)	See Attachment H.13
Category 2, End User Software Commodities – Group A (Operating System)	See Attachment H.13
Category 2, End User Software Commodities – Group B (Desktop Collaboration Suite)	See Attachment H.13
Category 3, IT Security Software Commodities – Group A (Anti-Virus Software)	See Attachment H.13
Category 4, Enterprise Wide Software Commodities – Group A (Enterprise Database Management Systems)	See Attachment H.13
Category 4, Enterprise Wide Software Commodities – Group B (Enterprise Performance Management Tools)	See Attachment H.13
Category 5, Health and Biomedical Research IT Capabilities – Group A (Laboratory Information Systems)	See Attachment H.13
Category 6, On-Premise Infrastructure – Group A (Enterprise Servers)	See Attachment H.13
Category 7, Infrastructure and Platform as a Service – Group A (Computing)	See Attachment H.13
Category 7, Infrastructure and Platform as a Service – Group B (Enterprise Storage)	See Attachment H.13
Category 8, Telecommunications Plans – Group A (Carrier Plans)	See Attachment H.13

### **Article H.14 Strategic Sourcing**

OMB defines Strategic Sourcing as a collaborative and structured process of analyzing an organization's spend and using the information to make business decisions about acquiring commodities and services more efficiently and effectively. The Government may periodically conduct Strategic Sourcing competitions to secure tiered pricing based on volume purchases.



The Government strategy will be to implement an approach that will provide federal agencies a subset of IT commodities and solutions. The following is a sample of some of the commodities that could be included:

- 1) Computers (includes Desktops and Laptops)
- 2) Printers and Toner Cartridges
- 3) Servers (includes Blade, Print Web and Application Servers)
- 4) End-user Software

If the PCO identifies a commodity suitable for strategic sourcing, the PCO will follow procedures similar to those described in Article H.15, "Ramp-on Procedure", except that the strategic sourcing competition will be limited to contractors that are already on the GWAC.

Contractors selected to offer commodities under Strategic Sourcing will be given a finite period of time, typically one year, after which the PCO may decide to declare a new Strategic Sourcing open season.

The Contractor shall offer a cumulative discount for each commodity provided under the strategic sourcing group. The cumulative discount will be based on the total number of units sold during a contract year. Should an order carry the contractor to the next tier, the entire order will be based on the pricing for the latest tier. Tiered pricing shall be updated on the Government website on a daily basis should there be any changes to the tier level. The Government shall be provided a monthly report on the number of sales on each commodity.

Considering that the GWAC promotes continuous technology refreshment to ensure that federal government customers can obtain the most current hardware and software offerings available in the market, such technology refreshment under the strategic sourcing initiative must be equal or greater technical functionality at the same or lower price as the existing product that is being refreshed.

The Government will create a special portal to create pricing transparency and streamline the ordering of these commodities. Contractors who are selected for the strategic sourcing group will be required to post their commodity specifications and pricing on the NITAAC website. Contractors shall provide the Government with pricing data (such as prices paid and number of units sold) through the e-GOS website in Government specified formats. The pricing data format required will be specified at a later date. Contractors selected under an individual strategic sourcing open season will be required to submit proposals on at least 50% of all RFQs under the specific strategic sourcing requirement on a yearly basis. Failure to do this may result in being ramped off the strategic sourcing component of the contract.

### **Article H.15 Ramp-on Procedure**

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Pursuant to FAR 16.504, the PCO will periodically review the total number of contractors to ensure adequate competition for delivery orders throughout the period of performance. Over time, the total number of contractors may fluctuate due to various reasons including industry consolidation, significant changes in the marketplace or advances in technology, general economic conditions, or other reasons.

If the PCO determines that it is in the best interest of the Government to open the GWAC to new contractors, the PCO has the discretion to announce an open season at any time during the effective period of the GWAC but no earlier than three years from date of award. The PCO may consider the rerepresentation process (see Article I.2, for FAR Clause 52.219-28,

Post-Award Small Business Program Rerepresentation (Jul 2013)) in making this decision to ensure that the contract maintains a sufficient pool of small business contractors throughout the life of the GWAC.

The PCO will announce this open season by publishing a notice in Federal Business Opportunities. The open season will be subject to applicable federal procurement laws and guidance at the time the open season is announced. The Open Season announcement will provide an estimate of the number of new awards that the PCO intends to make. Under the open season, the PCO will issue a solicitation. Any offeror meeting the eligibility requirements identified in the new "ramp on" solicitation may submit a proposal in response to the solicitation. However, the PCO has the discretion to award more or fewer contracts than the number anticipated in the solicitation depending upon the quality of the offers received.

Any resulting contracts awarded under this provision will be co-terminus with the existing term for all other CIO-CS contractors, including the option period (if applicable). Any contractor receiving a contract under this open season will be eligible to compete on future delivery orders with the same rights and obligations of any other CIO-CS contractor. Contracts awarded under this open season provision will share in the ceiling of the CIO-CS program and the overall ceiling of the basic contract will not be increased.

### **Article H.16 Ramp-off Procedure**

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If at any point during the 10-year period of performance (including the optional period) the contractor decides that it no longer wishes to participate in the contract, then the contractor may submit the request to the PCO requesting termination of their contract. If the PCO accepts the contractor's request, the PCO will "ramp off" the contractor using the provision under FAR 52.249-2, Termination for the Convenience of the Government. This provision is independent of any other action permitted under the contract terms and conditions. If a "ramped off" contractor is currently under contract to perform under any delivery order, the contractor will be required to continue to perform under the terms of the specific delivery order. **Note:** Contractors are expected to perform on delivery orders totaling a minimum of \$150,000 during the first year of the contract and \$150,000 each year thereafter. Failure to obtain this minimum number of orders may serve as grounds for the PCO to ramp the contractor off the contract as described in this Article or, if applicable, permit the contract to expire instead of exercising the contract optional period.

### **Article H.17 Privacy Act, HHSAR 352.224-70 (January 2006)**

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***(Applicable to delivery orders in which the contractor will be required to perform one or more of the following: (a) Design; (b) develop; or (c) operate an HHS system of records to accomplish an agency function in accordance with the Privacy Act of 1974 (Act) (5 U.S.C. 552a(m)(1)) and applicable agency regulations.)***

The term "system of records" 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. Violations of the Act by the Contractor and/or its employees may result in the imposition of criminal penalties (5 U.S.C. 552a (i)). The Contractor shall ensure that each of its employees knows the prescribed rules of conduct and that each employee is aware that he/she is subject to criminal penalties for violation of the Act to the same extent as Department of Health and Human

Services employees. These provisions also apply to all subcontracts the Contractor awards under this contract which require the design, development or operation of the designated system(s) of records [5 U.S.C. 552a(m)(1)]. The contract work statement: (a) identifies the system(s) of records and the design, development, or operation work the Contractor is to perform; and (b) specifies the disposition to be made of such records upon completion of contract performance.

(End of clause)

45 CFR Part 5b contains additional information which includes the rules of conduct and other Privacy Act requirements and can be found at DHHS Privacy Act Regulations:  
<http://www.hhs.gov/foia/privacy/index.html>.

### **Article H.18 Gun Control (Section 218)**

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**(Applicable to delivery orders funded by the NIH appropriated funds.)**

None of the funds made available in this title may be used, in whole or in part, to advocate or promote gun control.

### **Article H.19 Restriction on Pornography on Computer Networks**

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The Contractor shall not use contract funds to maintain or establish a computer network unless such network blocks the viewing, downloading, and exchanging of pornography.

## PART II – CONTRACT CLAUSES

### SECTION I: CONTRACT CLAUSES

#### Article I.1 FAR 52.212-4, Contract Terms and Conditions – Commercial Products and Services (December 2022)

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a) *Inspection/Acceptance.* The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. If repair/replacement or reperformance will not correct the defects or is not possible, the Government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its post-acceptance rights-

(1) Within a reasonable time after the defect was discovered or should have been discovered; and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

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

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

(d) *Disputes.* This contract is subject to [41 U.S.C. chapter 71](#), Contract Disputes. 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 Government bill of lading;
- (vi) Terms of any discount for prompt payment offered;
- (vii) Name and address of official to whom payment is to be sent;
- (viii) Name, title, and phone number of person to notify in event of defective invoice; and
- (ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.
- (x) Electronic funds transfer (EFT) banking information.

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

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

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

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

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

(i) Payment.-

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

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

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

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

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

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

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

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

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

(D) Contractor point of contact.

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

(6) *Interest.*

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

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

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

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

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

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

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

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

(A) The date fixed under this contract.

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

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

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

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

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

(vii) The interest charge made under this clause may be reduced under the procedures prescribed in 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; [41 U.S.C. 4712](#) and [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, and Unauthorized Obligations paragraphs of this clause;

(3) The clause at [52.212-5](#).

(4) Addenda to this solicitation or contract, including any license agreements for computer software.

(5) Solicitation provisions if this is a solicitation.



(6) Other paragraphs of this clause.

(7) The [Standard Form 1449](#).

(8) Other documents, exhibits, and attachments.

(9) The specification.

(t) [Reserved]

(u) Unauthorized Obligations.

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

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

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

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

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

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

(End of clause)

*Alternate I* (Nov 2021). When a time-and-materials or labor-hour contract is contemplated, substitute the following paragraphs (a), (e), (i), (l), and (m) for those in the basic clause.

(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.

(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: [*Insert any subcontracts for services to be excluded from the hourly rates prescribed in the schedule.*]; 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.

(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:*[Insert each element of other direct costs (e.g., travel, computer usage charges, etc. Insert "None" if no reimbursement for other direct costs will be provided. If this is an indefinite delivery contract, the Contracting Officer may insert "Each order must list separately the elements of other direct charge(s) for that order or, if no reimbursement for other direct costs will be provided, insert 'None'."]*

(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:*[Insert a fixed amount for the indirect costs and payment schedule. Insert "\$0" if no fixed price reimbursement for indirect costs will be provided. (If this is an indefinite delivery contract, the Contracting Officer may insert "Each order must list separately the fixed amount for the indirect costs and payment schedule or, if no reimbursement for indirect costs, 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.

(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.

## **Article I.2 FAR 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders – Commercial Items and Commercial Services (Dec 2022)**

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(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 and Other Covered Entities (Nov 2021) (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) [52.233-3](#), Protest After Award (AUG 1996) ( [31 U.S.C. 3553](#)).

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

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial 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) [52.204-10](#), Reporting Executive Compensation and First-Tier Subcontract Awards (JUN 2020) (Pub. L. 109-282) ( [31 U.S.C. 6101 note](#)).

\_ (5) [Reserved].

\_ (6) [52.204-14](#), Service Contract Reporting Requirements (OCT 2016) (Pub. L. 111-117, section 743 of Div. C).

\_ (7) [52.204-15](#), Service Contract Reporting Requirements for Indefinite-Delivery Contracts (OCT 2016) (Pub. L. 111-117, section 743 of Div. C).

\_X\_ (8) [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\_ (9) [52.209-9](#), Updates of Publicly Available Information Regarding Responsibility Matters (OCT 2018) ( [41 U.S.C. 2313](#)).

\_ (10) [Reserved].

\_X\_ (11) [52.219-3](#), Notice of HUBZone Set-Aside or Sole-Source Award (OCT 2022) ( [15 U.S.C. 657a](#)).

\_X\_ (12) [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](#)).

\_ (13) [Reserved]

\_X\_ (14) (i) [52.219-6](#), Notice of Total Small Business Set-Aside (Nov 2020) ( [15 U.S.C. 644](#)).

\_ (ii) Alternate I (MAR 2020) of [52.219-6](#).

\_X\_ (15) (i) [52.219-7](#), Notice of Partial Small Business Set-Aside (Nov 2020) ( [15 U.S.C. 644](#)).

\_ (ii) Alternate I (MAR 2020) of [52.219-7](#).

\_X\_ (16) [52.219-8](#), Utilization of Small Business Concerns (OCT 2022) ( [15 U.S.C. 637\(d\)\(2\)](#) and (3)).

\_X\_ (17) (i) [52.219-9](#), Small Business Subcontracting Plan (OCT 2022) ( [15 U.S.C. 637\(d\)\(4\)](#)).

\_ (ii) Alternate I (Nov 2016) of [52.219-9](#).

\_X\_ (iii) Alternate II (Nov 2016) of [52.219-9](#).

\_ (iv) Alternate III (JUN 2020) of [52.219-9](#).

- \_\_ (v) Alternate IV (SEP 2021) of [52.219-9](#).
- \_\_ (18) (i) [52.219-13](#), Notice of Set-Aside of Orders (MAR 2020) ( [15 U.S.C. 644\(r\)](#)).
- \_\_ (ii) Alternate I (MAR 2020) of [52.219-13](#).
- \_\_ (19) [52.219-14](#), Limitations on Subcontracting (OCT 2022) ( [15 U.S.C. 637s](#)).
- \_X\_ (20) [52.219-16](#), Liquidated Damages—Subcontracting Plan (SEP 2021) ( [15 U.S.C. 637\(d\)\(4\)\(F\)\(i\)](#)).
- \_X\_ (21) [52.219-27](#), Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (OCT 2022) ( [15 U.S.C. 657f](#)).
- \_X\_ (22) (i) [52.219-28](#), Post Award Small Business Program Rerepresentation (OCT 2022) ( [15 U.S.C. 632\(a\)\(2\)](#)).
- \_\_ (ii) Alternate I (MAR 2020) of [52.219-28](#).
- \_X\_ (23) [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\_ (24) [52.219-30](#), Notice of Set-Aside for, or Sole-Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program (OCT 2022) ( [15 U.S.C. 637\(m\)](#)).
- \_\_ (25) [52.219-32](#), Orders Issued Directly Under Small Business Reserves (MAR 2020) ( [15 U.S.C. 644\(r\)](#)).
- \_\_ (26) [52.219-33](#), Nonmanufacturer Rule (SEP 2021) ( [15U.S.C. 637\(a\)\(17\)](#)).
- \_X\_ (27) [52.222-3](#), Convict Labor (JUN 2003) (E.O.11755).
- \_X\_ (28) [52.222-19](#), Child Labor-Cooperation with Authorities and Remedies (DEC 2022) (E.O.13126).
- \_X\_ (29) [52.222-21](#), Prohibition of Segregated Facilities (APR 2015).
- \_X\_ (30) (i) [52.222-26](#), Equal Opportunity (SEP 2016) (E.O.11246).
- \_\_ (ii) Alternate I (FEB 1999) of [52.222-26](#).
- \_X\_ (31) (i) [52.222-35](#), Equal Opportunity for Veterans (JUN 2020) ( [38 U.S.C. 4212](#)).
- \_\_ (ii) Alternate I (JUL 2014) of [52.222-35](#).
- \_X\_ (32) (i) [52.222-36](#), Equal Opportunity for Workers with Disabilities (JUN 2020) ( [29 U.S.C. 793](#)).

\_\_ (ii) Alternate I (JUL 2014) of [52.222-36](#).

\_X\_ (33) [52.222-37](#), Employment Reports on Veterans (JUN 2020) ( [38 U.S.C. 4212](#)).

\_X\_ (34) [52.222-40](#), Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496).

\_X\_ (35) (i) [52.222-50](#), Combating Trafficking in Persons (Nov 2021) ( [22 U.S.C. chapter 78](#) and E.O. 13627).

\_\_ (ii) Alternate I (MAR 2015) of [52.222-50](#) ( [22 U.S.C. chapter 78](#) and E.O. 13627).

\_\_ (36) [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](#).)

\_\_ (37) (i) [52.223-9](#), Estimate of Percentage of Recovered Material Content for EPA-Designated Items (May 2008) ( [42 U.S.C. 6962\(c\)\(3\)\(A\)\(ii\)](#)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

\_\_ (ii) Alternate I (MAY 2008) of [52.223-9](#) ( [42 U.S.C. 6962\(i\)\(2\)\(C\)](#)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

\_\_ (38) [52.223-11](#), Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (Jun 2016) (E.O. 13693).

\_\_ (39) [52.223-12](#), Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners (JUN 2016) (E.O. 13693).

\_X\_ (40) (i) [52.223-13](#), Acquisition of EPEAT®-Registered Imaging Equipment (JUN 2014) (E.O.s 13423 and 13514).

\_\_ (ii) Alternate I (OCT 2015) of [52.223-13](#).

\_X\_ (41) (i) [52.223-14](#), Acquisition of EPEAT®-Registered Televisions (JUN 2014) (E.O.s 13423 and 13514).

\_\_ (ii) Alternate I (Jun2014) of [52.223-14](#).

\_X\_ (42) [52.223-15](#), Energy Efficiency in Energy-Consuming Products (MAY 2020) ( [42 U.S.C. 8259b](#)).

\_X\_ (43) (i) [52.223-16](#), Acquisition of EPEAT®-Registered Personal Computer Products (OCT 2015) (E.O.s 13423 and 13514).

\_\_ (ii) Alternate I (JUN 2014) of [52.223-16](#).

\_X\_ (44) [52.223-18](#), Encouraging Contractor Policies to Ban Text Messaging While Driving (JUN 2020) (E.O. 13513).

— (45) [52.223-20](#), Aerosols (JUN 2016) (E.O. 13693).

— (46) [52.223-21](#), Foams (Jun2016) (E.O. 13693).

— (47) (i) [52.224-3](#) Privacy Training (JAN 2017) (5 U.S.C. 552 a).

— (ii) Alternate I (JAN 2017) of [52.224-3](#).

\_X\_ (48) (i) [52.225-1](#), Buy American-Supplies (OCT 2022) ( [41 U.S.C. chapter 83](#)).

— (ii) Alternate I (OCT 2022) of [52.225-1](#).

— (49) (i) [52.225-3](#), Buy American-Free Trade Agreements-Israeli Trade Act (DEC 2022) ( [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.

— (ii) Alternate I [Reserved].

— (iii) Alternate II (DEC 2022) of [52.225-3](#).

— (iv) Alternate III (JAN 2021) of [52.225-3](#).

— (v) Alternate IV (Oct 2022) of [52.225-3](#).

\_X\_ (50) [52.225-5](#), Trade Agreements (DEC 2022) ( [19 U.S.C. 2501](#), *et seq.*, [19 U.S.C. 3301](#) note).

\_X\_ (51) [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).

— (52) [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).

— (53) [52.226-4](#), Notice of Disaster or Emergency Area Set-Aside (Nov 2007) ( [42 U.S.C. 5150](#)).

— (54) [52.226-5](#), Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov2007) ( [42 U.S.C. 5150](#)).

— (55) [52.229-12](#), Tax on Certain Foreign Procurements (FEB 2021).

— (56) [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](#)).

— (57) [52.232-30](#), Installment Payments for Commercial Products and Commercial Services (Nov 2021) ( [41 U.S.C. 4505](#), [10 U.S.C. 3805](#)).

\_X\_ (58) [52.232-33](#), Payment by Electronic Funds Transfer-System for Award Management (OCT2018) ( [31 U.S.C. 3332](#)).

\_\_ (59) [52.232-34](#), Payment by Electronic Funds Transfer-Other than System for Award Management (Jul 2013) ( [31 U.S.C. 3332](#)).

\_X\_ (60) [52.232-36](#), Payment by Third Party (MAY 2014) ( [31 U.S.C. 3332](#)).

\_\_ (61) [52.239-1](#), Privacy or Security Safeguards (AUG 1996) ( [5 U.S.C. 552a](#)).

\_\_ (62) [52.242-5](#), Payments to Small Business Subcontractors (JAN 2017) ( [15 U.S.C. 637\(d\)\(13\)](#)).

\_X\_ (63) (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](#)).

\_\_ (ii) Alternate I (APR 2003) of [52.247-64](#).

\_\_ (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 services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial products and commercial services:

*[Contracting Officer check as appropriate.]*

\_\_ (1) [52.222-41](#), Service Contract Labor Standards (AUG 2018) ( [41 U.S.C. chapter 67](#)).

\_\_ (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](#)).

\_\_ (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](#)).

\_\_ (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](#)).

\_\_ (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](#)).

\_\_ (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](#)).

\_\_ (7) [52.222-55](#), Minimum Wages for Contractor Workers Under Executive Order 14026 (JAN 2022).

\_\_ (8) [52.222-62](#), Paid Sick Leave Under Executive Order 13706 (JAN 2022) (E.O. 13706).

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

(iii) [52.204-23](#), Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Nov 2021) (Section 1634 of Pub. L. 115-91).

(iv) [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).

(v) [52.219-8](#), Utilization of Small Business Concerns (Oct 2022) ( [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.



- (vi) [52.222-21](#), Prohibition of Segregated Facilities (APR 2015).
- (vii) [52.222-26](#), Equal Opportunity (SEP 2015) (E.O.11246).
- (viii) [52.222-35](#), Equal Opportunity for Veterans (JUN 2020) ( [38 U.S.C. 4212](#)).
- (ix) [52.222-36](#), Equal Opportunity for Workers with Disabilities (JUN 2020) ( [29 U.S.C. 793](#)).
- (x) [52.222-37](#), Employment Reports on Veterans (JUN 2020) ( [38 U.S.C. 4212](#)).
- (xi) [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](#).
- (xii) [52.222-41](#), Service Contract Labor Standards (AUG 2018) ( [41 U.S.C. chapter 67](#)).
- (xiii)
- (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](#)).
- (xiv) [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](#)).
- (xv) [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](#)).
- (xvi) [52.222-54](#), Employment Eligibility Verification (MAY 2022) (E.O. 12989).
- (xvii) [52.222-55](#), Minimum Wages for Contractor Workers Under Executive Order 14026 (JAN 2022).
- (xviii) [52.222-62](#), Paid Sick Leave Under Executive Order 13706 (JAN 2022) (E.O. 13706).
- (xix)
- (A) [52.224-3](#), Privacy Training (Jan 2017) ( [5 U.S.C. 552a](#)).
- (B) Alternate I (JAN 2017) of [52.224-3](#).
- (xx) [52.225-26](#), 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).
- (xxi) [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](#).



(xxii) [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)

#### **Alternate I (Feb 2000)**

As prescribed in 12.301(b)(4)(i), delete paragraph (d) from the basic clause, redesignate paragraph (e) as paragraph (d), and revise the reference to “paragraphs (a), (b), (c), or (d) of this clause” in the redesignated paragraph (d) to read “paragraphs (a), (b), and (c) of this clause.”

**\*\*\* (Note: If this acquisition will use funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009 (Pub.L. 111-5), the following Alternate II is required. Additionally, Alternate I of this clause may not be used when Alternate II is applicable.) \*\*\***

#### **Alternate II (Dec 2022)**

As prescribed in 12.301(b)(4)(ii), substitute the following paragraphs (d)(1) and (e)(1) for paragraphs (d)(1) and (e)(1) of the basic clause as follows:

(d)(1) The Comptroller General of the United States, an appropriate Inspector General appointed under section 3 or 8 G of the Inspector General Act of 1978 ( 5 U.S.C. App.), or an authorized representative of either of the foregoing officials shall have access to and right to—

(i) Examine any of the Contractor’s or any subcontractors’ records that pertain to, and involve transactions relating to, this contract; and

(ii) Interview any officer or employee regarding such transactions.

(e)(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), and (c), of this clause, the Contractor is not required to flow down any FAR clause in a subcontract for commercial products or commercial services, other than—

(i) Paragraph (d) of this clause. This paragraph flows down to all subcontracts, except the authority of the Inspector General under paragraph (d)(1)(ii) does not flow down; and

(ii) Those clauses listed in this paragraph (e)(1). Unless otherwise indicated below, the extent of the flow down shall be as required by the clause-

(A) 52.203-13, Contractor Code of Business Ethics and Conduct (Nov 2021) ( 41 U.S.C. 3509).

(B) 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (Section 1553 of Pub. L. 111-5).

(C) 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Nov 2021) (Section 1634 of Pub. L. 115-91).

(D) 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).

(E) 52.219-8, Utilization of Small Business Concerns (Oct 2022) ( 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.

(F) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).

(G) 52.222-26, Equal Opportunity (Sep 2016) (E.O. 11246).

(H) 52.222-35, Equal Opportunity for Veterans (Jun 2020) ( 38 U.S.C. 4212).

(I) 52.222-36, Equal Opportunity for Workers with Disabilities (Jun 2020) ( 29 U.S.C. 793).

(J) 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.

(K) 52.222-41, Service Contract Labor Standards (Aug 2018) ( 41 U.S.C. chapter 67).

(L) \_\_\_\_ (1) 52.222-50, Combating Trafficking in Persons (Nov 2021) ( 22 U.S.C. chapter 78 and E.O. 13627).

\_\_\_\_ (2) Alternate I (Mar 2015) of 52.222-50 ( 22 U.S.C. chapter 78 and E.O. 13627).

(M) 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).

(N) 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).

(O) 52.222-54, Employment Eligibility Verification (May 2022) (Executive Order 12989).

(P) 52.222-55, Minimum Wages for Contractor Workers Under Executive Order 14026 (Jan 2022).

(Q) 52.222-62, Paid Sick Leave Under Executive Order 13706 (Jan 2022) (E.O. 13706).

(R) (1) 52.224-3, Privacy Training (Jan 2017) ( 5 U.S.C. 552a).

(2) Alternate I (Jan 2017) of 52.224-3.

(S) 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).

(T) 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.

(U) 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.

### **Article I.3 Additional Contract Clauses**

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This contract incorporates the following clauses by reference, (unless otherwise noted), with the same force and effect as if they were given in full text. Upon request, the PCO will make their full text available.

#### **a. FEDERAL ACQUISITION REGULATION (FAR) (48 CFR CHAPTER 1) CLAUSES**

##### **(1) Applicable to the GWAC:**

- a) FAR Clause 52.216-18, Ordering (October 1995).

“(a) ... Such orders may be issued from date of award through 120 months thereafter.”

- b) FAR Clause 52.216-22, Indefinite Quantity (October 1995).

“(d) ... the Contractor shall not be required to make any deliveries under this contract after 60 months following expiration of the GWAC ordering period.”

- c) FAR Clause 52.232-18, Availability of Funds (April 1984).

- d) FAR Clause 52.232-37, Multiple Payment Arrangements (May 1999)

**(2) Applicable to individual delivery orders as required:**

- a) FAR Clause 52.204-9, Personal Identity Verification of Contractor Personnel (January 2011).

- b) FAR Clause 52.223-5, Pollution Prevention and Right-to-Know Information (May 2011).

- c) FAR Clause 52.227-14, Rights in Data – General (May 2014).

- d) Alternate III (December 2007), FAR Clause 52.227-14, Rights in Data--General (May 2014). – Any additions to or limitations on restricted rights in data will be specified in the individual delivery order.

- e) FAR Clause 52.237-2, Protection of Government Buildings, Equipment and Vegetation (April 1984).

- f) FAR Clause 52.245-1, Government Property (Sept 2021) as applicable under FAR Part 45.107.

- g) FAR Clause 52.245-9, Use and Charges (April 2012).

- h) FAR Clause 52.251-1, Government Supply Sources (April 2012).

(This clause may be used in delivery orders for commercial items)

- i) FAR Clause 52.212-4, Contract Terms and Conditions – Commercial Items (December 2022), and Alternative I (Nov 2021) if applicable

**b. DEPARTMENT OF HEALTH AND HUMAN SERVICES ACQUISITION REGULATION (HHSAR) (48 CFR CHAPTER 3) CLAUSES:**

HHSAR Clause 352.203-70, Anti-Lobbying (DEC 2015)

**c. ADDITIONAL DELIVERY ORDER CLAUSES:**

1. OCOs may include additional agency or FAR clauses to delivery orders as applicable to the specific requirements.

## **Article I.4 Additional FAR Contract Clauses Included in Full Text**

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This contract incorporates the following clauses in full text.

### **a. FEDERAL ACQUISITION REGULATION (FAR) (48 CFR CHAPTER 1) CLAUSES**

1. FAR Clause 52.209-9, Updates of Publically Available Information Regarding Responsibility Matters (Oct 2018)

***(Applicable to contractors that have reached \$500,000 or more in delivery orders under that contract and have checked the “has” block, Current Active Federal Contracts and Grants with a Total Value Greater than \$10,000,000, under paragraph “b” of the provision 52.209-7, Information Regarding Responsibility Matters)***

2. (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>.
3. (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-
4. (1) The non-public segment, into which Government officials and the Contractor post information, which can only be viewed by-
5. (i) Government personnel and authorized users performing business on behalf of the Government; or
6. (ii) The Contractor, when viewing data on itself; and
7. (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-
8. (i) Past performance reviews required by subpart [42.15](#);
9. (ii) Information that was entered prior to April 15, 2011; or
10. (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.
11. (c) The Contractor will receive notification when the Government posts new information to the Contractor's record.
12. (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 non-public 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.
13. (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.
14. (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.

15. (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.

16. (End of clause)

17. FAR Clause 52.216-19, Order Limitations (October 1995)

- (a) **Minimum Order.** When the government requires supplies or services covered by this contract in an amount of less than **\$250**, 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 delivery order for a single item in excess of **\$2 million**.
  - 2. Any delivery order for a combination of items in excess of **\$10 million**; or
  - 3. A series of delivery orders from the same ordering office within **10** days that together call for quantities exceeding the limitation in subparagraph (b)(1) or (2) above.
- (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) above.
- (d) Notwithstanding paragraphs (b) and (c) above, the Contractor shall honor any delivery order exceeding the maximum order limitations in paragraph (b), unless that delivery order (or orders) is returned to the ordering office within **5 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.

(End of clause)

18. FAR 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 days prior to the end of the contract period.

(End of clause)

19.FAR Clause 52.217-9 Option to Extend the Term of the Contract (Mar 2000)

- (a) The Government may extend the term of this contract by written notice to the Contractor within 30 days provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 60 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 120 months.

(End of clause)



## **PART III – LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS**

### **SECTION J: LIST OF ATTACHMENTS**

The following documents are incorporated by reference in this contract:

1. Attachment H.13 Category & Group Discount Percentages
2. Attachment J.5 Small Business Subcontracting Plan (if applicable)
3. Attachment J.8 Product List
4. Attachment J.9 Disclosure of Lobbying Activities, SF-LLL, dated 7/97, 2 pages (See Article I.1(r))

## Part IV – REPRESENTATIONS AND INSTRUCTIONS

### SECTION K: REPRESENTATIONS AND INSTRUCTIONS

The following documents are incorporated by reference in this contract:

- 1) Annual Representations and Certifications completed as located at the Systems for Award Management (SAM) website.
- 2) FAR 52.212-3, Representations and Certifications – Commercial Items (Aug 2013), submitted with the contractor's proposal.
- 3) FAR 52.219-1, Small Business Program Representations (Apr 2012), submitted with the contractor's proposal.
- 4) Provision (as prescribed in FAR 4.2105(a))

**52.204-24 Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment.**

Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment (AUG 2020)

The Offeror shall not complete the representation at paragraph (d)(1) of this provision if the Offeror has represented that it “does not provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument” in the provision at 52.204-26, Covered Telecommunications Equipment or Services—Representation, or in paragraph (v) of the provision at 52.212-3, Offeror Representations and Certifications-Commercial Items.

(a) *Definitions.* As used in this provision-

*Backhaul, covered telecommunications equipment or services, critical technology, interconnection arrangements, reasonable inquiry, roaming, and substantial or essential component* have the meanings provided in the clause 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

(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. Nothing in the prohibition shall be construed to—

(i) Prohibit the head of an executive agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(ii) Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(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. 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. Nothing in the prohibition shall be construed to—

(i) Prohibit the head of an executive agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(ii) Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(c) *Procedures.* The Offeror shall review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from receiving federal awards for “covered telecommunications equipment or services.”

(d) *Representations.* The Offeror represents that—

(1) It [ ] will, [ ] will not provide covered telecommunications equipment or services to the Government in the performance of any contract, subcontract or other contractual instrument resulting from this solicitation. The Offeror shall provide the additional disclosure information required at paragraph (e)(1) of this section if the Offeror responds “will” in paragraph (d)(1) of this section; and

(2) After conducting a reasonable inquiry, for purposes of this representation, the Offeror represents that—

It [ ] does, [ ] does not use covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services. The Offeror shall provide the additional disclosure information required at paragraph (e)(2) of this section if the Offeror responds “does” in paragraph (d)(2) of this section.

(e) *Disclosures.* (1) Disclosure for the representation in paragraph (d)(1) of this provision. If the Offeror has responded “will” in the representation in paragraph (d)(1) of this provision, the Offeror shall provide the following information as part of the offer:

(i) For covered equipment—

(A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the original equipment manufacturer (OEM) or a distributor, if known);

(B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

(ii) For covered services—

(A) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(B) If not associated with maintenance, the Product Service Code (PSC) of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

(2) Disclosure for the representation in paragraph (d)(2) of this provision. If the Offeror has responded “does” in the representation in paragraph (d)(2) of this provision, the Offeror shall provide the following information as part of the offer:

(i) For covered equipment—

(A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the OEM or a distributor, if known);

(B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

(ii) For covered services—

(A) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(B) If not associated with maintenance, the PSC of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

(End of provision)