

# Enterprise Infrastructure Solutions (EIS) Contract

## Section I Contract Clauses

Issued by:

General Services Administration  
Office of Information Technology Category  
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Washington, DC 20405

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## I.1 General

Orders under the contract may include additional clauses to those enumerated in this contract, such as: (1) optional FAR clauses; (2) agency supplemental clauses; (3) alternate FAR clauses; and (4) order-specific clauses. Such additional clauses are not limited to those associated only with Section I of the Uniform Contract Format in FAR 52.3.

The clauses relating to the Wage Rate Requirements (Construction), formerly known as the Davis-Bacon Act (52.222-13 and 52.222-30), shall be included in a task order by the ordering contracting officer (OCO) if it is deemed applicable to the order.

The clauses in Section I.2 apply at the at the contract and order levels, as applicable, depending upon the contract type of the order, or as specifically referenced in the applicable order.

## I.2 FAR 52.252-2 Clauses Incorporated By Reference (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the contracting officer will make their full text available. Also, the full text of a clause may be accessed electronically at these addresses:

**FEDERAL ACQUISITION REGULATION:**

<https://acquisition.gov/far/index.html>

**GENERAL SERVICES ADMINISTRATION ACQUISITION MANUAL:**

<https://acquisition.gov/gsam/gsam.html>

### I.2.1 FAR 52.252-2 Clauses Table

CLAUSE NO.	TITLE	DATE	FP	T&M
52.202-1	Definitions	NOV 2013	X	X
52.203-3	Gratuities	APR 1984	X	X
52.203-5	Covenant Against Contingent Fees	MAY 2014	X	X
52.203-6	Restrictions on Subcontractor Sales to the Government	SEP 2006	X	
52.203-7	Anti-Kickback Procedures	MAY 2014	X	X

CLAUSE NO.	TITLE	DATE	FP	T&M
52.203-8	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity	MAY 2014	X	X
52.203-10	Price or Fee Adjustment for Illegal or Improper Activity	MAY 2014	X	X
52.203-12	Limitation on Payments to Influence Certain Federal Transactions	OCT 2010	X	X
52.203-13	Contractor Code of Business Ethics and Conduct	OCT 2015	X	X
52.203-14	Display of Hotline Poster(s)	OCT 2015	X	X
52.203-16	Preventing Personal Conflicts of Interest	DEC 2011	X	X
52.203-17	Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights	APR 2014	X	X
52.204-2	Security Requirements	AUG 1996	X	X
52.204-4	Printed or Copied Double-Sided on Recycled Paper	MAY 2011	X	X
52.204-9	Personal Identity Verification of Contractor Personnel	JAN 2011	X	X
52.204-10	Reporting Executive Compensation and First-Tier Subcontract Awards	OCT 2015	X	X
52.201-12	Data Universal Numbering System Number Maintenance	DEC 2012	X	X
52.204-13	System for Award Management Maintenance.	OCT 2016	X	X
52.204-15	Service Contract Reporting Requirements for Indefinite-Delivery Contracts	JAN 2014	X	X
52.204-18	Commercial and Government Entity Code Maintenance	JUL 2015	X	X
52.204-23	Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Jul 2018).	JUL 2018	X	X
52.204-25	Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment	AUG 2020	X	X
52.207-3	Right of first refusal of employment	MAY 2006	X	X
52.207-5	Option to purchase equipment	FEB 1995	X	X
52.209-6	Protecting the government's interest when subcontracting with contractors debarred, suspended, or proposed for debarment	AUG 2013	X	X

CLAUSE NO.	TITLE	DATE	FP	T&M
52.209-9	Updates of Publicly Available Information Regarding Responsibility Matters	JUL 2013	X	X
52.209-10	Prohibition on Contracting with Inverted Domestic Corporations	DEC 2014	X	X
52.210-1	Market Research	APR 2011	X	X
52.211-5	Materials Requirements	AUG 2000	X	
52.211-15	Defense Priority and Allocation Requirements	APR 2008	X	X
52.215-2	Audit and Records – Negotiation	OCT 2010	X	X
52.215-2	Alternate II	APR 1998	X	X
52.215-2	Alternate III	JUN 1999	X	X
52.215-8	Order of Precedence – Uniform Contract Format	OCT 1997	X	X
52.215-10	Price Reduction for Defective Cost or Pricing Data	AUG 2011	X	X
52.215-11	Price Reduction for Defective Cost or Pricing Data – Modifications	AUG 2011	X	X
52.215-12	Subcontractor Cost or Pricing Data	OCT 2010	X	X
52.215-13	Subcontractor Cost or Pricing Data – Modifications	OCT 2010	X	X
52.215-14	Integrity of Unit Prices	OCT 2010	X	X
52.215-16	Facilities Capital Cost of Money	JUN 2003	X	X
52.215-19	Notification of Ownership Changes	OCT 1997	X	X
52.216-4	Economic Price Adjustment – Labor and Material	JAN 1997	X	X
52.217-6	Option for Increased Quantity	MAR 1989	X	
52.217-7	Option for Increased Quantity – Separately Priced Line Item	MAR 1989	X	
52.219-4	Notice of Price Evaluation Preference for HUBZone Small Business Concerns	OCT 2014	X	X
52.219-8	Utilization of Small Business Concerns	OCT 2014	X	X
52.219-9	Small Business Subcontracting Plan	JAN 2017	X	X
52.219-9	Alternate II	JAN 2017	X	X
52.219-16	Liquidated Damages – Subcontracting Plan	JAN 1999	X	X

CLAUSE NO.	TITLE	DATE	FP	T&M
52.222-1	Notice to the Government of Labor Disputes	FEB 1997	X	X
52.222-2*	Payment for Overtime Premiums	JUL 1990	X	X
52.222-3	Convict Labor	JUN 2003	X	X
52.222-4	Contract Work Hours and Safety Standards – Overtime Compensation	MAY 2014	X	X
52.222-6	Construction Wage Rate Requirements.	MAY 2014	X	X
52.222-7	Withholding of Funds	MAY 2014	X	X
52.222-8	Payrolls and Basic Records	MAY 2014	X	X
52.222-9	Apprentices and Trainees	JUL 2005	X	X
52.222-10	Compliance with Copeland Act Requirements	FEB 1988	X	X
52.222-11	Subcontracts (Labor Standards)	MAY 2014	X	X
52.222-12	Contract Termination – Debarment	MAY 2014	X	X
52.222-13*	Compliance with Construction Wage Rate Requirements and Related Regulations	MAY 2014	X	X
52.222-14	Disputes Concerning Labor Standards	FEB 1988	X	X
52.222-15	Certification of Eligibility	MAY 2014	X	X
52.222-17	Non-displacement of Qualified Workers	MAY 2014	X	X
52.222-19	Child Labor – Cooperation with Authorities and Remedies	FEB 2016	X	X
55.222-20	Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$15,000	MAY 2014	X	
52.222-21	Prohibition of Segregated Facilities	APR 2015	X	X
52.222-26	Equal Opportunity	APR 2015	X	X
52.222-27	Affirmative Action Compliance Requirements for Construction	APR 2015	X	X
52.222-29	Notification of Visa Denial	APR 2015	X	X
52.222-30*	Construction Wage Rate Requirements – Price Adjustment (None or Separately Specified Method)	MAY 2014	X	X
52.222-35	Equal Opportunity for Veterans	OCT 2015	X	X

CLAUSE NO.	TITLE	DATE	FP	T&M
52.222-36	Equal Opportunities for Workers with Disabilities	JUL 2014	X	X
52.222-36	Alternate I	JUL 2014	X	X
52.222-37	Employment Reports on Veterans	FEB 2016	X	X
52.222-40	Notification of Employee Rights Under the National Labor Relations Act	DEC 2010	X	X
52.222-41	Service Contract Labor Standards	MAY 2014	X	X
52.222-42	Statement of Equivalent Rates for Federal Hires	MAY 2014	X	X
52.222-43	Fair Labor Standards Act and Service Contract Labor Standards – Price Adjustment (Multiple Year and Option Contracts)	MAY 2014	X	X
52.222-50	Combating Trafficking in Persons	MAR 2015	X	X
52.222-50	Alternate I	MAY 2015	X	X
52.222-54	Employment Eligibility Verification	OCT 2015	X	X
52.222-55	Minimum Wages Under Executive Order 13658	DEC 2015	X	X
52.223-3*	Hazardous Material Identification and Material Safety Data	JAN 1997	X	X
52.223-3*	Alternate I	JUL 1995	X	X
52.223-2	Affirmative Procurement of Bio-based Products under Service and Construction Contracts	SEP 2013	X	
52.223-5	Pollution Prevention and Right-to-know Information	MAY 2011	X	X
52.223-5	Alternate I	MAY 2011	X	X
52.223-5	Alternate II	MAY 2011	X	X
52.223-6	Drug-free Workplace	MAY 2001	X	X
52.223-10	Waste Reduction Program	MAY 2011	X	X
52.223-12	Refrigeration Equipment and Air Conditioners	MAY 1995	X	X
52.223-13	Acquisition of EPEAT Registered Imaging Equipment	JUN 2014	X	X
52.223-13	Alternate I	JUN 2014	X	X
52.223-14	Acquisition of EPEAT Registered Televisions	JUN 2014	X	X

CLAUSE NO.	TITLE	DATE	FP	T&M
52.223-15	Energy Efficiency in Energy-Consuming Products	DEC 2007	X	X
52.223-16	Acquisition of EPEAT-Registered Personal Computer Products	OCT 2015	X	X
52.223-16	Alternate I	JUN 2014	X	X
52.223-17	Affirmative Procurement of EPA-designated Items in Service and Construction Contract	MAY 2008	X	X
52.223-18	Encouraging Contractor Policies to Ban Text Messaging While Driving	AUG 2011	X	X
52.224-1	Privacy Act Notification	APR 1984	X	X
52.224-2	Privacy Act	APR 1984	X	X
52.225-1	Buy American Act – Supplies	MAY 2014	X	
52.225-3	Buy American Act – Free Trade Agreements – Israeli Trade Act	MAY 2014	X	
52.225-5	Trade Agreements	FEB 2016	X	
52.225-8	Duty-free Entry	OCT 2010	X	X
52.225-10	Notice of Buy American Requirement – Construction Materials	MAY 2014	X	
52.225-11	Buy American – Construction Materials under Trade Agreements	FEB 2016	X	
52.225-13	Restrictions on Certain Foreign Purchases	JUN 2008	X	
52.225-14	Inconsistency between English Version and Translation of Contract	FEB 2000	X	X
52.227-1	Authorization and Consent	DEC 2007	X	
52,227-2	Notice and Assistance Regarding Patent and Copyright Infringement	DEC 2007	X	X
52.227-3	Patent Indemnity	APR 1984	X	
52.227-3*	Alternate I	APR 1984	X	
52.227-3*	Alternate II	APR 1984	X	
52.227-5*	Waiver of Indemnity	APR 1984	X	
52.227-9	Refund of Royalties	APR 1984	X	
52.227-14	Rights in Data – General	MAY 2014	X	X



CLAUSE NO.	TITLE	DATE	FP	T&M
52.227-14	Alternate I	DEC 2007	X	X
52.227-14*	Alternate II	DEC 2007	X	X
52.227-19	Commercial Computer Software License	DEC 2007	X	
52.228-3	Workers' Compensation Insurance (Defense Base Act)	JUL 2014	X	X
52.228-4	Workers' Compensation and War-hazard Insurance Overseas	APR 1984	X	X
52.228-5	Insurance – Work on a Government Installation	JAN 1997	X	
52.228-7	Insurance – Liability to Third Persons	MAR 1996	X	X
52.229-2	North Carolina State and Local Sales and Use Tax	APR 1984	X	X
52.229-4	Federal, State, and Local Taxes (State and Local Adjustments)	FEB 2013	X	X
52.229-6	Taxes – Foreign Fixed-Price Contracts	FEB 2013	X	X
52.229-10*	State of New Mexico Gross Receipts and Compensating Tax	APR 2003		X
52.232-1	Payments	APR 1984	X	
52.232-5	Payments under Fixed-Price Construction Contracts	MAY 2014	X	
52.232-6	Payment under Communication Service Contracts with Common Carriers	APR 1984	X	
52.232-7*	Payments under Time-and-materials and Labor-hour Contracts	AUG 2012		X
52.232-8	Discounts for Prompt Payment	FEB 2002	X	X
52.232-9	Limitation on withholding of payments	APR 1984	X	X
52.232-11	Extras	APR 1984	X	
52.232-18	Availability of Funds	APR 1984	X	X
52.232-23	Assignment of Claims	MAY 2014	X	X
52.232-23	Alternate I	APR 1984	X	X
52.232-25	Prompt Payment	JUL 2013	X	X
52.232-25	Alternate I	FEB 2002		X

CLAUSE NO.	TITLE	DATE	FP	T&M
52.232-33	Payment by Electronic Funds Transfer – System for Award Management	JUL 2013	X	X
52.232-34	Payment by Electronic Funds Transfer – Other than System for Award Management	JUL 2013	X	X
52.232-36	Payment by Third Party	MAY 2014	X	X
52.232-37	Multiple Payment Arrangements	MAY 1999	X	X
52.233-1	Disputes	MAY 2014	X	X
52.233-1	Alternate I	DEC 1991	X	X
52.233-3	Protest after Award	AUG 1996	X	X
52.233-3	Alternate I	JUN 1985	X	X
52.233-4	Applicable Law for Breach of Contract Claim	OCT 2004	X	X
52.236-2	Differing Site Conditions	APR 1984	X	X
52.236-3	Site Investigation and Conditions Affecting the Work	APR 1984	X	X
52.236-5	Material and Workmanship	APR 1984	X	X
52.236-6	Superintendence by the Contractor	APR 1984	X	X
52.236-7	Permits and Responsibilities	NOV 1991	X	X
52.236-8	Other Contracts	APR 1984	X	X
52.236-9	Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements	APR 1984	X	X
52.236-10	Operations and Storage Areas	APR 1984	X	X
52.236-12	Cleaning up	APR 1984	X	X
52.236-13	Accident Prevention	NOV 1991	X	X
52.236-13	Alternate I	NOV 1991	X	X
52.237-2	Protection of Government Buildings, Equipment, and Vegetation	APR 1984	X	X
52.237-3	Continuity of Services	JAN 1991	X	
52.237-9	Waiver of Limitation on Severance Payments to Foreign Nationals	MAY 2014		X
52.237-10	Identification of Uncompensated Overtime	MAR 2015	X	X

CLAUSE NO.	TITLE	DATE	FP	T&M
52.239-1	Privacy or Security Safeguards	AUG 1996	X	X
52.242-13	Bankruptcy	JUL 1995	X	X
52.242-14	Suspension of Work	APR 1984	X	X
52,242-15	Stop-work Order	AUG 1989	X	X
52.243-1	Changes – Fixed-price	AUG 1987	X	
52.243-1	Alternate I	APR 1984	X	
52.243-1	Alternate II	APR 1984	X	
52.243-1	Alternate III	APR 1984	X	
52.243-3	Changes – Time-and-materials or Labor-hours	SEP 2000		X
52.243-4	Changes	JUN 2007	X	
52.243-5	Changes and Changed Conditions	APR 1984	X	
52.243-7	Notification of Changes	APR 1984	X	X
52.244-2*	Subcontracts	OCT 2010		X
52.244-2	Alternate I	JUN 2007		X
52.244-5	Competition in Subcontracting	DEC 1996	X	
52.244-6	Subcontracts for Commercial Items	FEB 2016	X	X
52.245-1	Government Property	APR 2012	X	X
52.245-1	Alternate I	APR 2012	X	X
52.245-1	Alternate II	APR 2012	X	X
52.245-2	Government Property Installation Operation Services	APR 2012	X	X
52.245-9	Use and Charges	APR 2012	X	X
52.246-17	Warranty of Supplies of a Noncomplex Nature	JUN 2003	X	X
52.246-20*	Warranty of Services	MAY 2001	X	
52.246-21	Warranty of Construction	MAR 1994	X	X
52.246-21	Alternate I	APR 1984	X	X

CLAUSE NO.	TITLE	DATE	FP	T&M
52.246-23	Limitation of Liability	FEB 1997	X	
52.246-24	Limitation of Liability – High Value Items	FEB 1997	X	X
52.246-24	Alternate I	APR 1984	X	X
52.246-25	Limitation of Liability – Services	FEB 1997	X	X
52.247-1*	Commercial Bill of Lading Notations	FEB 2006	X	X
52.248-1*	Value Engineering	OCT 2010	X	
52.248-1	Alternate I	APR 1984	X	X
52.248-1	Alternate II	FEB 2000	X	X
52.248-1	Alternate III	APR 1984	X	X
52.248-3	Value Engineering – Construction	OCT 2015	X	X
52.248-3	Alternate I	APR 1984	X	X
52.249-1	Termination for Convenience of the Government (Fixed-Price) (Short Form)	APR 1984	X	
52.249-1	Alternate I	APR 1984	X	
52.249-2	Termination for Convenience of the Government (Fixed-Price)	APR 2012	X	
52.249-2	Alternate I	SEP 1996	X	
52.249-2	Alternate II	SEP 1996	X	
52.249-2	Alternate III	SEP 1996	X	
52.249-3	Termination for Convenience of the Government (Dismantling, Demolition, or Removal of Improvements)	APR 2012	X	X
52.249-3	Alternate I	SEP 1996	X	X
52.249-4	Termination for Convenience of the Government (Services) (Short Form)	APR 1984	X	
52.249-8	Default (Fixed-price Supply and Service)	APR 1984	X	
52.249-14	Excusable Delays	APR 1984		X
52.251-1	Government Supply Sources	APR 2012	X	X
52.253-1	Computer Generated Forms	JAN 1991	X	X



*(Note: Clause numbers followed by an asterisk (\*) require fill-ins by the OCO if determined applicable and incorporated into the Order.)*

(End of Clause)

### **I.3 General Services Administration Acquisition Manual (GSAM), Incorporated by Reference**

#### **I.3.1 GSAM Clauses Table**

<b>CLAUSE #</b>	<b>CLAUSE TITLE</b>	<b>DATE</b>
552.203-71	Restriction on Advertising	SEP 1999
552.204-9	Personal Identity Verification Requirements	OCT 2012
552.215-70	Examination of Records by GSA	FEB 1996
552.217-70	Evaluation of Options	AUG 1990
552.219-75	GSA Mentor/Protégé Program	SEP 2009
552.228-5	Government as Additional Insured	MAY 2009
552.229-71	Federal Excise Tax – DC Government	SEP 1999

#### **I.4 FAR 52.216-18 Ordering (OCT 1995)**

(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule. Such orders may be issued in accordance with Section G.3.

(b) All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, this contract shall control.

(c) If mailed, a delivery order or task order is considered “issued” when the government deposits the order in the mail. Orders may be issued orally, by facsimile, or by electronic commerce methods only if authorized by the Schedule.

## **I.5 FAR 52.216-19 Order Limitations (OCT 1995)**

(a) *Minimum order.* When the government requires supplies or services covered by this contract in an amount of less than \$1, the government is not obligated to purchase, nor is the contractor obligated to furnish, those supplies or services under the contract.

(b) *Maximum order.* The contractor is not obligated to honor:

- (1) Any order for a single item in excess of \$1 Billion;
- (2) Any order for a combination of items in excess of \$1 Billion;
- (3) A series of orders within 10 days from the same ordering office that exceeds the limitation in subparagraph (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) of this section.

(d) Notwithstanding paragraphs (b) and (c) of this section, the contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within three (3) work 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)

## **I.6 FAR 52.216-22 Indefinite Quantity (OCT 1995)**

(a) This is an indefinite-quantity contract for the supplies or services specified that is effective for the period stated in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. The contractor shall furnish to the government, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the "maximum." The government shall order at least the quantity of supplies or services designated in the Schedule as the "minimum."

(c) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the contractor within the time specified in the order. The contract shall govern the contractor's and government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the contractor shall not be required to make any deliveries under this contract fifteen (15) years and nine (9) months after the effective date of the contract.

(End of clause)

### **I.7 FAR 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 3 months of the end of the contract or order.

(End of clause)

### **I.8 FAR 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 of the expiration of the contract; provided that the government gives the contractor a preliminary written notice of its intent to extend at least 30 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 15 years and 9 months.

(End of clause)

### **I.9 FAR 52.223-99 Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors (OCT 2021)(DEVIATION).**

(a) Definition. As used in this clause -

United States or its outlying areas means—

(1) The fifty States;

- (2) The District of Columbia;
- (3) The commonwealths of Puerto Rico and the Northern Mariana Islands;
- (4) The territories of American Samoa, Guam, and the United States Virgin Islands; and
- (5) The minor outlying islands of Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Islands, Navassa Island, Palmyra Atoll, and Wake Atoll.

(b) Authority. This clause implements Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors, dated September 9, 2021 (published in the Federal Register on September 14, 2021, 86 FR 50985).

(c) Compliance. The Contractor shall comply with all guidance, including guidance conveyed through Frequently Asked Questions, as amended during the performance of this contract, for contractor or subcontractor workplace locations published by the Safer Federal Workforce Task Force (Task Force Guidance) at <https://www.saferfederalworkforce.gov/contractors/>.

(d) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts at any tier that exceed the simplified acquisition threshold, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award, and are for services, including construction, performed in whole or in part within the United States or its outlying areas.

(End of clause)]

### **I.10 FAR 52.252-6 Authorized Deviations in Clauses (APR 1984)**

(a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of “(DEVIATION)” after the date of the clause.

(b) The use in this solicitation or contract of any GSAM (48 CFR Chapter 5) clause with an authorized deviation is indicated by the addition of “(DEVIATION)” after the name of the regulation.

(End of clause)

### **I.11 GSAM 552.232-39 Unenforceability of Unauthorized Obligations. (FAR Deviation)(JULY 2015)**

(a) Except as stated in paragraph (b) of this clause, when any supply or service acquired under this contract is subject to any [commercial supplier agreement (as defined in 502.101)] that includes any [language, provision, or] clause requiring the





Government to 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:

(1) Any such [language, provision, or] clause is unenforceable against the Government.

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

(3) Any such [language, provision, or] clause is deemed to be stricken from the [commercial supplier agreement].

(b) Paragraph (a) 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.

(End of Clause)

## **I.12 GSAM 552.232-78 Commercial Supplier Agreements – Unenforceable Clauses (JULY 2015)**

(a) When any supply or service acquired under this contract is subject to a commercial supplier agreement, the following language shall be deemed incorporated into the commercial supplier agreement. As used herein, "this agreement" means the commercial supplier agreement:

(1) Notwithstanding any other provision of this agreement, when the end user is an agency or instrumentality of the U.S. Government, the following shall apply:

(i) Applicability. This agreement is part of a contract between the commercial supplier and the U.S. Government for the acquisition of the supply or service that necessitates a license (including all contracts, task orders, and delivery orders not using FAR Part 12).

(ii) End user. This agreement shall bind the ordering activity as end user but shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

(iii) Law and disputes. This agreement is governed by Federal law.

(A) Any language purporting to subject the U.S. Government to the laws of a U.S. state, U.S. territory, district, or municipality, or foreign nation, except where Federal law expressly provides for the application of such laws, is hereby deleted.



(B) Any language requiring dispute resolution in a specific forum or venue that is different from that prescribed by applicable Federal law is hereby deleted.

(C) Any language prescribing a different time period for bringing an action than that prescribed by applicable Federal law in relation to a dispute is hereby deleted.

(iv) Continued performance. If the supplier or licensor believes the ordering activity to be in breach of the agreement, it shall pursue its rights under the Contract Disputes Act or other applicable Federal statute while continuing performance as set forth in 52.233-1 Disputes.

(v) Arbitration; equitable or injunctive relief. In the event of a claim or dispute arising under or relating to this agreement, (A) binding arbitration shall not be used unless specifically authorized by agency guidance, and (B) equitable or injunctive relief, including the award of attorney fees, costs or interest, may be awarded against the U.S. Government only when explicitly provided by statute (e.g., Prompt Payment Act or Equal Access to Justice Act). 7

(vi) Additional terms. (A) This commercial supplier agreement may unilaterally incorporate additional terms by reference. Terms may be included by reference using electronic means (e.g., via web links, click and accept, etc). Such terms shall be enforceable only to the extent that:

(1) When included by reference using electronic means, the terms are readily available at referenced locations; and

(2) Terms do not materially change government obligations; and

(3) Terms do not increase government prices; and

(4) Terms do not decrease overall level of service; and

(5) Terms do not limit any other Government right addressed elsewhere in this contract.

(B) The order of precedence clause of this contract notwithstanding, any software license terms unilaterally revised subsequent to award that is inconsistent with any material term or provision of this contract is not enforceable against the government.

(vii) No automatic renewals. If any license or service tied to periodic payment is provided under this agreement (e.g., annual software maintenance or annual lease term}, such license or service shall not renew automatically upon expiration of its current term without prior express Government approval.

(viii) Indemnification. Any clause of this agreement requiring the commercial supplier or licensor to defend or indemnify the end user is hereby amended to provide that the U.S. Department of Justice has the sole right to represent the United States in any such action, in accordance with 28 U.S.C. 516.



(ix) Audits. Any clause of this agreement permitting the commercial supplier or licensor to audit the end user's compliance with this agreement is hereby amended as follows:

(A) Discrepancies found in an audit may result in a charge by the commercial supplier or licensor to the ordering activity. Any resulting invoice must comply with the proper invoicing requirements specified in the underlying Government contract or order.

(B) This charge, if disputed by the ordering activity, will be resolved through the Disputes clause at 52.233-1 ; no payment obligation shall arise on the part of the ordering activity until the conclusion of the dispute process.

(C) Any audit requested by the contractor will be performed at the contractor's expense, without reimbursement by the Government.

(x) Taxes or surcharges. Any taxes or surcharges which the commercial supplier or licensor seeks to pass along to the Government as end user will be governed by the terms of the underlying Government contract or order and, in any event, must be submitted to the Contracting Officer for a determination of applicability prior to invoicing unless specifically agreed to otherwise in the Government contract.

(xi) Non-assignment. This agreement may not be assigned, nor may any rights or obligations thereunder be delegated, without the Government's prior approval, except as expressly permitted under the clause at 52.232-23, Assignment of Claims.

(xii) Confidential information. If this agreement includes a confidentiality clause, such clause is hereby amended to state that neither the agreement nor the Federal Supply Schedule price list shall be deemed "confidential information." Issues regarding release of "unit pricing" will be resolved consistent with the Freedom of Information Act. Notwithstanding anything in this agreement to the contrary, the Government may retain any confidential information as required by law, regulation or its internal document retention procedures for legal, regulatory or compliance purposes; provided, however, that all such retained confidential information will continue to be subject to the confidentiality obligations of this agreement.

If any provision of this agreement conflicts or is inconsistent with the preceding subparagraph (a)(1) , the provisions of subparagraph (a)(1) shall prevail to the extent of such inconsistency.)

(End of Clause)



### **I.13 GSAM 552.239-71 Security Requirements for Unclassified Information Technology Resources (JAN 2012)**

(a) *General.* The contractor shall be responsible for information technology (IT) security, based on General Services Administration (GSA) risk assessments, for all systems connected to a GSA network or operated by the contractor for GSA, regardless of location. This clause is applicable to all or any part of the contract that includes information technology resources or services in which the contractor has physical or electronic access to GSA's information that directly supports the mission of GSA, as indicated by GSA. The term information technology, as used in this clause, means any equipment, including telecommunications equipment that is used in the automatic acquisition, storage, manipulation, management, control, display, switching, interchange, transmission, or reception of data or information. This includes major applications as defined by OMB Circular A-130. Examples of tasks that require security provisions include:

- (1) Hosting of GSA e-government sites or other IT operations;
- (2) Acquisition, transmission, or analysis of data owned by GSA with significant replacement cost should the contractor's copy be corrupted;
- (3) Access to GSA major applications at a level beyond that granted the general public; e.g., bypassing a firewall; and
- (4) Any new information technology systems acquired for operations within the GSA must comply with the requirements of HSPD-12 and OMB M-11-11. Usage of the credentials must be implemented in accordance with OMB policy and NIST guidelines (e.g., NIST SP 800-116). The system must operate within the GSA's access management environment. Exceptions must be requested in writing and can only be granted by the GSA Senior Agency Information Security Officer.

(b) *IT Security Plan.* The contractor shall develop, provide, implement, and maintain an IT Security Plan. This plan shall describe the processes and procedures that will be followed to ensure appropriate security of IT resources that are developed, processed, or used under this contract. The plan shall describe those parts of the contract to which this clause applies. The contractor's IT Security Plan shall comply with applicable Federal laws that include, but are not limited to, 40 U.S.C. 11331, the Federal Information Security Management Act (FISMA) of 2002, and the E-Government Act of 2002. The plan shall meet IT security requirements in accordance with Federal and GSA policies and procedures. GSA's Office of the Chief Information Officer issued "CIO IT Security Procedural Guide 09-48, Security Language for Information Technology Acquisitions Efforts," to provide IT security standards, policies and reporting requirements. This document is incorporated by reference in all solicitations and



contracts or task orders where an information system is contractor owned and operated on behalf of the Federal Government. The guide can be accessed at <http://www.gsa.gov/portal/category/25690>. Specific security requirements not specified in “CIO IT Security Procedural Guide 09–48, Security Language for Information Technology Acquisitions Efforts” shall be provided by the requiring activity.

(c) *Submittal of IT Security Plan.* Within 30 calendar days after contract award, the contractor shall submit the IT Security Plan to the contracting officer and contracting officer’s Representative (COR) for acceptance. This plan shall be consistent with and further detail the approach contained in the contractors proposal or sealed bid that resulted in the award of this contract and in compliance with the requirements stated in this clause. The plan, as accepted by the contracting officer and COR, shall be incorporated into the contract as a compliance document. The contractor shall comply with the accepted plan.

(d) *Submittal of a Continuous Monitoring Plan.* The contractor must develop a continuous monitoring strategy that includes:

(1) A configuration management process for the information system and its constituent components;

(2) A determination of the security impact of changes to the information system and environment of operation;

(3) Ongoing security control assessments in accordance with the organizational continuous monitoring strategy;

(4) Reporting the security state of the information system to appropriate GSA officials; and

(5) All GSA general support systems and applications must implement continuous monitoring activities in accordance with this guide and NIST SP 800-37 Revision 1, *Guide for Applying the Risk Management Framework to Federal Information Systems: A Security Life Cycle Approach*.

(e) *Security authorization.* Within six (6) months after contract award, the contractor shall submit written proof of IT security authorization for acceptance by the contracting officer. Such written proof may be furnished either by the contractor or by a third party. The security authorization must be in accordance with NIST Special Publication 800-37. This security authorization will include a final security plan, risk assessment, security test and evaluation, and disaster recovery plan/continuity of operations plan. This security authorization, when accepted by the contracting officer, shall be incorporated into the contract as a compliance document, and shall include a final security plan, a risk assessment, security test and evaluation, and disaster recovery/continuity of



operations plan. The contractor shall comply with the accepted security authorization documentation.

(f) *Annual verification.* On an annual basis, the contractor shall submit verification to the contracting officer that the IT Security plan remains valid.

(g) *Warning notices.* The contractor shall ensure that the following banners are displayed on all GSA systems (both public and private) operated by the contractor prior to allowing anyone access to the system:

### **Government Warning**

**\*\*WARNING\*\*WARNING\*\*WARNING\*\***

Unauthorized access is a violation of U.S. law and General Services Administration policy, and may result in criminal or administrative penalties. Users shall not access other users or system files without proper authority. Absence of access controls IS NOT authorization for access! GSA information systems and related equipment are intended for communication, transmission, processing and storage of U.S. Government information. These systems and equipment are subject to monitoring by law enforcement and authorized Department officials. Monitoring may result in the acquisition, recording, and analysis of all data being communicated, transmitted, processed or stored in this system by law enforcement and authorized Department officials. Use of this system constitutes consent to such monitoring.

**\*\*WARNING\*\*WARNING\*\*WARNING\*\***

(h) *Privacy Act notification.* The contractor shall ensure that the following banner is displayed on all GSA systems that contain Privacy Act information operated by the contractor prior to allowing anyone access to the system:

This system contains information protected under the provisions of the Privacy Act of 1974 (Pub. L. 93-579). Any privacy information displayed on the screen or printed shall be protected from unauthorized disclosure. Employees who violate privacy safeguards may be subject to disciplinary actions, a fine of up to \$5,000, or both.

(i) *Privileged or limited privileges access.* Contractor personnel requiring privileged access or limited privileges access to systems operated by the contractor for GSA or interconnected to a GSA network shall adhere to the specific contract security requirements contained within this contract and/or the Contract Security Classification Specification (DD Form 254).

(j) *Training.* The contractor shall ensure that its employees performing under this contract receive annual IT security training in accordance with OMB Circular A-130,





FISMA, and NIST requirements, as they may be amended from time to time during the term of this contract, with a specific emphasis on the rules of behavior.

(k) *GSA access.* The contractor shall afford GSA access to the contractor's and subcontractors' facilities, installations, operations, documentation, databases, IT systems and devices, and personnel used in performance of the contract, regardless of the location. Access shall be provided to the extent required, in GSA's judgment, to conduct an inspection, evaluation, investigation or audit, including vulnerability testing to safeguard against threats and hazards to the integrity, availability and confidentiality of GSA data or to the function of information technology systems operated on behalf of GSA, and to preserve evidence of computer crime. This information shall be available to GSA upon request.

(l) *Subcontracts.* The contractor shall incorporate the substance of this clause in all subcontracts that meet the conditions in paragraph (a) of this clause.

(m) *Notification regarding employees.* The contractor shall immediately notify the contracting officer when an employee either begins or terminates employment when that employee has access to GSA information systems or data. If an employee's employment is terminated, for any reason, access to GSA's information systems or data shall be immediately disabled and the credentials used to access the information systems or data shall be immediately confiscated.

(n) *Termination.* Failure on the part of the contractor to comply with the terms of this clause may result in termination of this contract.

(End of clause)

#### **I.14 GSAM 552.246-77 Additional Contract Warranty Provisions for Supplies of a Noncomplex Nature (June 2009)**

(a) *Definitions.* Correction, as used in this clause, means the elimination of a defect.

(b) *Contractor's obligations.* When return, correction, or replacement is required, the contractor shall be responsible for all costs attendant to the return, correction, or replacement of the nonconforming supplies. Any removal in connection with the above shall be done by the contractor at its expense.

(c) *Remedies available to the government.* When the nature of the defect in the nonconforming item is such that the defect affects an entire batch or lot of material, then the equitable price adjustment shall apply to the entire batch or lot of material from which the nonconforming item was taken.



(End of clause)

### **I.15 GSAM 552.252-6 Authorized Deviations in Clauses (SEP 1999)**

(a) *Deviations to FAR clauses.*

(1) This solicitation or contract indicates any authorized deviation to a Federal Acquisition Regulation (48 CFR Chapter 1) clause by the addition of “(DEVIATION)” after the date of the clause, if the clause is not published in the General Services Administration Acquisition Regulation (48 CFR Chapter 5).

(2) This solicitation indicates any authorized deviation to a Federal Acquisition Regulation (FAR) clause that is published in the General Services Administration Acquisition Regulation by the addition of “(DEVIATION (FAR clause no.))” after the date of the clause.

(b) *Deviations to GSAR clauses.* This solicitation indicates any authorized deviation to a General Services Administration Acquisition Regulation clause by the addition of “(DEVIATION)” after the date of the clause.

(c) *“Substantially the same as” clauses.* Changes in wording of clauses prescribed for use on a “substantially the same as” basis are not considered deviations.

(End of clause)

### **I.16 552.204-70 REPRESENTATION REGARDING CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (DEVIATION I) (AUG 2019)**

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

“Covered telecommunications equipment or services”, “Critical technology”, and “Substantial or essential component” have the meanings provided in FAR 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

(b) *Prohibition.* 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. Contractors are not prohibited from providing-

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

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

(c) *Representation.* [Contractor to complete and submit to the Contracting Officer] The Offeror or Contractor represents that it [ ] will or [ ] will not provide covered telecommunications equipment or services to the Government in the performance of any contract, subcontract, order, or other contractual instrument resulting from this contract. This representation shall be provided as part of the proposal and resubmitted on an annual basis from the date of award.

(d) *Disclosures.* If the Offeror or Contractor has responded affirmatively to the representation in paragraph (c) of this clause, the Offeror or Contractor shall provide the following additional information to the Contracting Officer--

(1) All covered telecommunications equipment and services offered or provided (include brand; model number, such as original equipment manufacturer (OEM) number, manufacturer part number, or wholesaler number; and item description, as applicable);

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

(3) For services, the entity providing the covered telecommunications services (include entity name, unique entity identifier, and Commercial and Government Entity (CAGE) code, if known); and



(4) For equipment, 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).

(End of clause)

(END OF SECTION I)