
POLIMASTER® U.S. GOVERNMENT SUBCONTRACT TERMS AND CONDITIONS

(Last modified on August 22, 2022)

PLEASE READ THE BELOW U.S. GOVERNMENT SUBCONTRACT TERMS AND CONDITIONS (THE “**TERMS**”) CAREFULLY BEFORE ACCEPTING PURCHASE AND/OR WORK ORDER (“**ORDER**”) PLACED BY POLIMASTER INC. (“**POLIMASTER**”). BY ACKNOWLEDGMENT OF POLIMASTER’S ORDER, ACCEPTANCE OF PAYMENT UNDER SUCH ORDER AND/OR COMMENCEMENT OF PERFORMANCE UNDER SUCH ORDER YOU AGREE TO ACCEPT AND BE BOUND BY THE BELOW STATED TERMS. POLIMASTER’S ORDER IS CONDITIONED ON YOUR ACCEPTANCE OF THE TERMS.

1. **Definitions.** For the purpose of these Terms:

(a) “**Contractor**” shall mean Polimaster;

(b) “**Subcontractor**” shall mean the person or entity signing the Order to supply the Goods or perform the Work required by Contractor;

(c) “**Goods**” shall mean the materials, components, and equipment to be manufactured and supplied by Subcontractor to Contractor, as specified in the Order;

(d) “**Work**” shall mean work and services to be provided by Subcontractor to Contractor, as specified in the Order;

(e) “**Customer**” shall mean the U.S. government agency acting as a customer for the purpose of prime or higher-tier contract entered with such agency, and/or all and any end users under the prime contract.

2. **Acceptance of Subcontract.** The attached Order, which constitutes the first official offer issued by Contractor to Subcontractor, and these Terms and any supplemental terms hereto (collectively, this “**Subcontract**”) comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. This Subcontract prevails over any of Subcontractor’s general terms and conditions of sale regardless whether or when Subcontractor has submitted its sales confirmation or such terms. This Subcontract expressly limits Subcontractor’s acceptance to the terms of this Subcontract. Subcontractor’s acknowledgment of the Order, acceptance of payment under the Order, or commencement of performance under the Order constitutes Subcontractor’s unconditional acceptance of this Subcontract. Unless expressly accepted in writing and signed by Contractor’s authorized representative, any additional or different terms or conditions proposed by Subcontractor or included in Subcontractor’s acknowledgment are objected to by Contractor and have no effect.

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3. **Communication with Customer.** Contractor is solely responsible for all liaison and coordination with the Customer as it affects the applicable prime or higher-tier contract, including the work performed under this Subcontract. Subcontractor acknowledges it has no privity of contract with the Customer.

4. **Key Personnel.** If any Subcontractor key personnel are specified in the Subcontract Schedule, such personnel are considered to be essential to the Work being performed hereunder. Subcontractor shall not remove any key personnel without the written consent of Contractor. Subcontractor shall notify Contractor reasonably in advance of any proposed removal of key personnel, describing in sufficient detail to permit evaluation of the impact on the work the justification for removal and the proposed substitute staff.

5. **Contract Direction.** Only a Contractor's authorized subcontracts representative has the authority on behalf of the Contractor to make changes to this Subcontract. Any changes must be made in writing and signed by both parties. Contractor's technical or business staff may from time to time render assistance, give technical advice, or exchange information with Subcontractor's personnel. No action by Contractor's technical or business staff constitutes a change under the 'changes' clause of this Subcontract, and is not a basis for an equitable adjustment. Any Subcontractor effort pursuant to instructions other than written instructions from a Contractor's authorized subcontracts representative is at Subcontractor's sole risk.

6. **Changes.** Contractor may, by written notice, direct changes within the general scope of this Subcontract in any of the following: (a) technical requirements and descriptions, specifications, statement of work, drawings, or designs; (b) shipment or packing methods; (c) time and place of performance, delivery, inspection, or acceptance; (d) reasonable adjustments in quantities and delivery schedules; and (e) amount of Furnished Property. If a change increases or decreases Subcontractor's cost or time to perform this Subcontract, the parties shall negotiate an equitable adjustment in price or schedule or both, and Contractor shall modify this Subcontract in writing accordingly. Failure of the parties to agree upon an adjustment does not excuse Subcontractor from performing previously agreed upon work. Subcontractor must assert any claim for adjustment within 30 days of receipt of notice of the change. Contractor may examine Subcontractor's books and records to verify the amount of the claimed adjustment. Nothing in the foregoing obligates Subcontractor to continue performance or incur costs beyond the point established, if applicable, in any Limitation of Cost or Limitation of Funds articles in this Subcontract.

7. **Timely Performance.** Subcontractor's timely performance is a critical element of this Subcontract. If Subcontractor becomes aware of any difficulty in performing its work hereunder, Subcontractor shall promptly notify Contractor in writing giving pertinent details of the reason for the delay and the actions being taken to overcome or minimize the delay. Such notification does not constitute a change to any delivery schedule or other due dates.

8. **Intellectual Property.** Subcontractor warrants that the Work performed hereunder shall be Subcontractor's original Work and that all Work performed or Goods delivered under this Subcontract will not infringe or otherwise violate the intellectual property rights of any third party. Except to the extent that the U.S. Government assumes liability therefor, Subcontractor agrees to defend, indemnify, and hold harmless Contractor and its customers from and against any claims, damages, losses, costs, and expenses, including reasonable attorney fees, arising out of any action

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by a third party that is based on a claim that the work performed or delivered under this Subcontract infringes or otherwise violates the intellectual property rights of any person or entity. Subcontractor represents and warrants that it has obtained a present assignment of rights in inventions from its employees performing work under this Subcontract, and that there are no conflicting assignments of inventions and other intellectual property to third parties that would prevent Subcontractor granting rights to the U.S. Government if required by the Prime Contract Flow Down clauses incorporated herein in Appendix 1.

9. **Limited License to Contractor.** Solely to the extent required for Contractor to perform its obligations under the prime or higher-tier contract, Subcontractor hereby grants to Contractor a nonexclusive, royalty-free, paid-up, right and license to make, have made, sell, offer for sale, use, execute, reproduce, display, perform, distribute (internally or externally) copies of, and prepare derivative works of, and authorize others to do any, some, or all of the foregoing, with respect to any and all inventions, discoveries, improvements, maskworks, and patents, as well as any and all data, copyrights, software, reports, and works of authorship that were conceived, developed, generated or delivered in performance of this Subcontract. For clarity, no license is granted to Contractor for any purpose other than performance of the prime or higher-tier contract.

10. **Proprietary Information.** Subcontractor shall keep confidential and otherwise protect from disclosure all information and property obtained from Contractor in connection with this Subcontract that is identified as confidential or proprietary. Unless expressly authorized in writing by Contractor, Subcontractor shall use such information and property only for performance of this Subcontract and shall not disclose such information and property to any third party. However, such obligation shall not apply to information that Subcontractor can demonstrate by its written records was: (a) previously known to Subcontractor; (b) acquired by Subcontractor from a third party having the right to disclose such information; or (c) known to the public, through no fault of Subcontractor. Subcontractor shall maintain data protection processes and systems sufficient to protect Contractor provided information and property. Subcontractor shall promptly report to Contractor any discovered unauthorized access to or use of information. The provisions of this Article are superseded by any nondisclosure agreement between the parties that is attached to this Subcontract.

11. **Third Party Materials.** Subcontractor shall obtain Contractor's written consent before incorporating any third party copyrighted material, including but not limited to so-called 'free or open source software' into any deliverables under this Subcontract. Subcontractor warrants that it has sufficient rights in such third party content to permit use by Contractor and Contractor's customer.

12. **Warranty (Fixed-Price Subcontracts).** If this is a fixed-price Subcontract, Subcontractor warrants that all work furnished pursuant to this Subcontract will conform to applicable specifications, drawings, samples, descriptions, and other requirements of this Subcontract and shall be free from defects in design, material, and workmanship. This warranty shall begin upon final acceptance and extend for a period of two years. If any nonconforming work is identified within the warranty period, Subcontractor, at Contractor's option, shall promptly repair, replace, or reperform the work. Unless otherwise specified, transportation of replacement work, return of nonconforming work, and reperformance of work shall be at Subcontractor's expense. If repair, replacement, or reperformance of work is not timely, Contractor may elect to return, reperform,

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replace, or repro cure the nonconforming work at Subcontractor’s expense. Either Contractor or its customer may make claims against this warranty.

13. **Furnished Property.** Contractor may provide to Subcontractor property owned by either Contractor or its customer (“*Furnished Property*”). Furnished Property may only be used for the performance of this Subcontract. Title to Furnished Property remains vested in Contractor or its customer. Subcontractor shall clearly mark all Furnished Property to show its ownership. Subcontractor is responsible for all loss of or damage to Furnished Property, other than reasonable wear and tear. Subcontractor shall manage, maintain, and preserve Furnished Property in accordance with good commercial practice. At Contractor’s request, and upon closeout of this Subcontract, Subcontractor shall submit an inventory of Furnished Property to Contractor, and shall deliver or otherwise dispose of Furnished Property as directed by Contractor. Any U.S. Government Property clause incorporated herein takes precedence over this clause with respect to U.S. Government-furnished property or property to which the U.S. Government will obtain title under this Subcontract.

14. **Counterfeit Parts.** Subcontractor shall not deliver any part to Contractor that is mislabeled or otherwise misrepresented as being of a different class, quality, or source than is actually the case, including (for example) refurbished parts that are represented as new parts and any parts designated as ‘suspect’ by the U.S. Government, such as parts listed in Defense Contract Management Agency alerts under the U.S. Government-Industry Data Exchange Program. If Contractor determines that Subcontractor has supplied parts in violation of the foregoing, or if Subcontractor becomes aware of or suspects that it has furnished such parts, Subcontractor shall immediately replace the suspect or counterfeit part with a genuine version conforming to the requirements of this Subcontract. Notwithstanding any other provision of this Subcontract, Subcontractor is liable to Contractor for Contractor’s costs in removing Subcontractor-supplied suspect or counterfeit parts, reinserting replacement parts, and any testing made necessary by the substitution.

15. **Final Payment.** Final payment under this subcontract is conditioned upon Contractor’s receipt and acceptance of all services, supplies, Work, and Goods called for hereunder, final accounting for and disposition of property, the assignment to Contractor of any refunds, rebates, and credits, the release discharging Contractor and the U.S. Government from liabilities, as called for by the clause entitled “Allowable Cost and Payment,” and completion of all close-out documentation.

16. **Travel Costs.** If travel is authorized under this Subcontract, then Subcontractor’s actual allowable travel expenses (in accordance with the applicable cost principles for travel) will be reimbursed as part of the Subcontractor’s costs. Subcontractor must maintain receipts for all expenses over \$50.00 for which reimbursement is claimed. Lodging receipts must be from establishments serving the general public. Subcontractor shall include a detailed summary of all travel costs by category of expense on each invoice.

17. **Defective Cost or Pricing Data.** If submission of cost or pricing data is required or requested at any time before or during performance of this Subcontract, if Subcontractor or its lower-tier subcontractors: (a) submit or certify cost or pricing data that are defective; (b) claim an exemption to a requirement to submit cost or pricing data, and such exception is invalid; (c) furnish data of

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any description that is invalid; or if (d) the U.S. Government alleges any of the foregoing; and, as a result, (i) Contractor's contract price or fee is reduced; (ii) Contractor's costs are determined to be unallowable; (iii) any fines, penalties, withholdings, or interest are assessed on Contractor; or (iv) Contractor incurs any other costs or damages; then Contractor may make a reduction of corresponding amounts (in whole or in part) in the price of this Subcontract or any other contract with Subcontractor, may also demand payment (in whole or in part) of the corresponding amounts, or both. Subcontractor agrees to promptly pay all amounts so demanded.

18. **Stop Work**. If Contractor initiates a 'stop work' order, Subcontractor shall immediately stop performance of this Subcontract in accordance with the stop work order and shall take all reasonable steps to minimize costs allocable to the Subcontract during the period of work stoppage, including immediately issuing stop work orders to all lower-tier subcontractors. Once the stop work order is no longer necessary, Contractor shall either: (a) terminate the Subcontract in accordance with the Termination Article of this Subcontract; or (b) lift the stop work order, and negotiate an equitable adjustment to the price and delivery schedule, if Subcontractor requests such an adjustment in accordance with the Changes Article of this Subcontract.

19. **Termination**. Contractor may terminate this Subcontract, in whole or in part, by sending written notice to Subcontractor: (a) if the U.S. Government or higher-tier contractor terminates Contractor's contract covering the subcontracted work; (b) if Subcontractor materially breaches any of its obligations under this Subcontract and fails to cure such breach within ten days after receipt of Contractor's written notice of the breach; or (c) for convenience, upon receipt of Contractor's written notice. Upon termination, Contractor's liability for Subcontractor's costs and Subcontractor's liability for procuring goods or services from alternative sources shall be as set forth in FAR Part 49.

20. **Shipment**. Unless otherwise specified, all deliverables are to be packed in accordance with good commercial practice. A complete packing list shall be enclosed with all shipments. Subcontractor shall mark containers or packages with necessary lifting, loading, and shipping information, including the Subcontract number, item number, date of shipment, and the name and address of consignor and consignee. Bills of lading shall also include this Subcontract number. Unless otherwise specified, delivery shall be Free On Board at Subcontractor's facility (Incoterms 2010). Any tangible media storing reports, memoranda, or other materials in written form including machine readable form prepared by Subcontractor and delivered to Contractor hereunder shall become the sole property of Contractor.

21. **Gratuities and Kickbacks**. Subcontractor shall not offer or give a kickback or gratuity (including in the form of entertainment or gifts) for the purpose of obtaining or rewarding favorable treatment as a Contractor's supplier. By accepting this Subcontract, Subcontractor certifies and represents that it has not made or solicited and will not make or solicit kickbacks in violation of FAR 52.203-7 or the Anti-Kickback Act of 1986 (41 U.S.C. § 52-58), both of which are incorporated herein by this reference, except that paragraph (c)(1) of FAR 52.203-7 does not apply.

22. **Insurance**. Subcontractor, and any permitted lower-tier subcontractors, shall each maintain at its own expense during the entire period of performance of this Subcontract: (a) workers compensation insurance in amounts required by applicable law; (b) commercial liability insurance and automobile liability insurance, each covering both bodily injury and property damage with a

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minimum of US\$2,000,000 per occurrence limit. If requested, Subcontractor shall provide Contractor with certificates of insurance showing compliance with these requirements.

23. **Third Party Harms**. Subcontractor assumes full responsibility for any harm it may cause in performance of this Subcontract. Subcontractor shall defend, indemnify, and hold harmless Contractor, its officers, employees, and agents from any losses, costs, claims, causes of action, damages, liabilities, and expenses, including reasonable attorneys' fees, all expenses of litigation and settlement, and court costs, by reason of property damage or loss, environmental harm, or personal injury to any person, caused in whole or in part by the acts or omissions of Subcontractor, its officers, employees, agents, suppliers, consultants, or lower-tier subcontractors.

24. **Records and Retention**. Subcontractor shall maintain adequate records indicating the effort expended in direct performance of this Subcontract. Unless a longer period is specified elsewhere in this Subcontract, or by law or regulation, Subcontractor shall retain all records related to this Subcontract for a period of three years from the date of final payment received by Subcontractor. Records related to this Subcontract include, but are not limited to, financial, proposal, procurement, specifications, production, inspection, test, quality, shipping, export, and certification records. At no additional cost, Subcontractor shall timely provide access to such records to the U.S. Government or Contractor upon request for audit.

25. **Waiver, Approvals, and Remedies**. Failure by either party to enforce any of the provisions of this Subcontract or applicable law shall not constitute a waiver of the requirements of such provision or law, or as a waiver of a party thereafter to enforce such provision or law. Contractor's approval of documents does not relieve Subcontractor of its obligations to comply with the requirements of this Subcontract. The rights and remedies of either party to this Subcontract are cumulative and in addition to any other rights and remedies provided at law or in equity.

26. **Export Control**. Each party shall control the disclosure of and access to technical data, information, and other items received under this Subcontract in accordance with all applicable export control laws and regulations. Subcontractor shall indemnify, defend, and hold Contractor harmless for all liabilities, penalties, losses, damages, costs (including attorney's fees) or expenses that may be imposed on or incurred by Contractor in connection with any violations of such laws and regulations by Subcontractor, its lower-tiered manufacturers, subcontractors, and vendors. Subcontractor shall immediately notify Contractor if it is or becomes listed on any Excluded or Denied Party List of an agency of the U.S. Government or its export privileges are denied, suspended, or revoked. Subcontractor will give immediate written notification to Contractor if the items to be delivered or sold to Contractor under this Subcontract are restricted by export control laws or regulations prior to the delivery of the items.

27. **Anti-Dumping**. Subcontractor warrants that all items sold to Contractor are for no less than fair value, with respect to U.S. anti-dumping laws.

28. **General Compliance with Laws**. Subcontractor agrees to comply with all applicable local, state, and federal laws, orders, rules, regulations, and ordinances. Subcontractor shall procure all necessary licenses, permits, and pay all fees and other required charges and shall comply with all applicable guidelines and directives of any local, state, or federal governmental authority.

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Subcontractor shall comply with all applicable taxes, including payroll taxes and income taxes, and shall pay its employees, vendors, and contractors in compliance with applicable law.

29. **Compliance with the Product Safety Laws.** Subcontractor represents and warrants that all Goods supplied under Orders comply with all applicable federal, state, and local laws, codes, statutes, ordinances, rules, regulations, and requirements of any applicable jurisdiction, and orders of any governmental or regulatory authority, including but not limited to the California Safe Drinking Water and Toxic Enforcement Act of 1986 ("***Proposition 65***"); the Consumer Product Safety Act of 1972 (as amended by the Consumer Product Safety Improvement Act of 2008); the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act; the Fair Packaging and Labeling Act; the Federal Hazardous Substances Act; the Federal Energy Policy and Conservation Act and any amendments thereto; and all applicable product safety rules and regulations of any other federal, state, or local agency (collectively, the "***Product Safety Laws***"), and that any changes to Goods hereafter made by Subcontractor shall comply with all applicable Product Safety Laws. Subcontractor shall indemnify, defend, and hold Contractor harmless for all liabilities, penalties, losses, damages, costs (including attorney's fees) or expenses that may be imposed on or incurred by Contractor in connection with any violations of Product Safety Laws by Subcontractor, its lower-tiered manufacturers, subcontractors, and vendors.

30. **Compliance with the Economic Sanctions Laws.** For purposes of this Subcontract, the following term "Affiliated Person" shall mean any owner (including any principal, shareholder, member or other person or entity having direct or indirect financial interest), officer, director, partner, principal, employee, or any other natural person or legal entity, directly or indirectly, controlling, controlled by, under common control with Subcontractor. Neither Subcontractor nor any of its Affiliated Persons or agents is a person who (i) is the target of any laws administered by the United States Department of the Treasury's Office of Foreign Assets Control ("OFAC"), U.S. Commerce Department, U.S. State Department, European Union, competent European Union Member State authorities, United Nations or any other Government Entity (as further defined in Section 16.4(e)(2) of the Terms) imposing economic sanctions and trade embargoes ("***Economic Sanctions Laws***"), or (ii) is located, organized, or resident in a country or territory that is, or whose government is, the target of sanctions imposed by OFAC or any other Government Entity. Subcontractor shall promptly upon becoming aware thereof notify Contractor if it or any of its Affiliated Persons or agents becomes the target of any Economic Sanctions Laws, or the country or territory where any of them is located, organized, or resident becomes the target of sanctions imposed by OFAC or any other Government Entity. Subcontractor shall comply with all Economic Sanctions Laws. Without limiting the generality of the foregoing, Subcontractor shall not (i) directly or indirectly import, export, re-export, transship, or otherwise deliver Goods, Work and services, and respective technology or any portion thereof from and/or to a person and/or country subject to economic sanctions and trade embargoes; or (ii) broker, finance, or otherwise facilitate any transaction in violation of any Economic Sanctions Law. Neither Subcontractor nor any of its Affiliated Persons or agents is a person who (i) is currently the subject of any investigation by the OFAC or any other Governmental Entity imposing economic sanctions and trade embargoes ("***Sanctions Investigation(s)***"), or (ii) is directly or indirectly owned or controlled by any person

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who is currently the subject of a Sanctions Investigation. Subcontractor shall promptly upon becoming aware thereof notify Contractor when (i) it or any of its Affiliated Persons or agents becomes the subject of any Sanctions Investigation, or (b) any person who directly or indirectly owns or controls Subcontractor becomes the subject of any Sanctions Investigation.

Subcontractor shall indemnify, defend, and hold Contractor harmless for all liabilities, penalties, losses, damages, costs (including attorney's fees) or expenses that may be imposed on or incurred by Contractor in connection with any violations of Economic Sanctions Laws by Subcontractor, its lower-tiered manufacturers, subcontractors, and vendors.

31. **Compliance with Anti-Corruption and Anti-Money Laundering Laws.** Subcontractor represents and warrants to Contractor that:

(a) Subcontractor and its Affiliated Persons or agents, and anyone acting on their behalf (collectively, the "**Representatives**") are in compliance with all applicable anti-bribery and anti-corruption laws, including the US Foreign Corrupt Practices Act of 1977 (as amended) and local anti-corruption legislation applicable to Subcontractor and/or its Representatives (collectively, the "**Anti-Corruption Laws**") and also in compliance with any laws, rules, or regulations applicable to Contractor, Subcontractor and its Affiliated Persons, that prohibit engaging in or facilitating financial transactions that promote or conceal unlawful activity in any jurisdiction (the "**Anti-Money Laundering Laws**");

(b) Neither Subcontractor nor any of its Representatives has, directly or indirectly, offered, paid, promised, or authorized the giving of money or anything of value to any:

(i) Government Official;

(ii) person or entity; or

(iii) other person or entity while knowing or having reason to believe that some portion or all of the payment or thing of value will be offered, given, or promised, directly or indirectly, to a Government Official or another person or entity;

for the purpose of:

(iv) influencing any act or decision of such Government Official or such person or entity in his/her or its official capacity, including a decision to do or omit to do any act in violation of his/her or its lawful duties or proper performance of functions; or

(v) inducing such Government Official or such person or entity to use his/her or its influence or position with any Government Entity or other person or entity to influence any act or decision;

in order to obtain or retain business for, direct business to, or secure an improper advantage for Contractor or Subcontractor and its Affiliated Persons.

(c) Neither Subcontractor nor any of its Representatives:

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(i) is a Government Official or employs any Government Official or Close Family Member of any Government Official; or

(ii) has a personal, business, or other relationship or association with any Government Official or Close Family Member of any Government Official who may have responsibility for or oversight of any business activities of Contractor and Subcontractor, other than any relationships or associations that have been disclosed in writing to Contractor.

(d) Neither Subcontractor nor any of its Representatives is or has been the subject of any investigation, inquiry, or enforcement proceeding by any court, governmental, administrative, or regulatory body, or customer regarding any violation or alleged violation of any Anti-Corruption Laws and/or Anti-Money Laundering Laws.

(e) For purposes of this Subcontract:

(e)(1) **"Close Family Member"** means (i) the individual's spouse; (ii) the individual's and the spouse's grandparents, parents, siblings, children, nieces, nephews, aunts, uncles, and first cousins; (iii) the spouse of any persons listed in subcategory (ii); and (iv) any other person who shares the same household with the individual.

(e)(2) **"Government Entity"** means (i) any national, state, regional, or local government (including, in each case, any agency, department, or subdivision of such government); (ii) any political party; (iii) any entity or business that is owned or controlled by any of those bodies listed in subcategory (i) or (ii); or (iv) any international organization, such as the United Nations or the World Bank.

(e)(3) **"Government Official"** means (i) any director, officer, employee, agent, or representative (including anyone elected, nominated, or appointed to be a director, officer, employee, agent, or representative) of any Government Entity, or anyone otherwise acting in an official capacity on behalf of a Government Entity; (ii) any political party, political party official, or political party employee; (iii) any candidate for public or political office; (iv) any royal or ruling family member; or (v) any agent or representative of any of those persons listed in subcategories (i) through (iv) of this Subsection 16.4(e)(3).

(f) Subcontractor has adopted and maintains adequate policies, procedures, and controls to ensure that Subcontractor has complied and is in compliance with all Anti-Corruption Laws and Anti-Money Laundering Laws, including at a minimum policies and procedures relating to prevention of bribery, accounting for financial transactions, due diligence on third parties, and training of personnel.

(g) Subcontractor shall indemnify, defend, and hold Contractor harmless for all liabilities, penalties, losses, damages, costs (including attorney's fees) or expenses that may be imposed on or incurred by Contractor in connection with any violations of Anti-Corruption Laws and Anti-Money Laundering Laws" by Subcontractor, its lower-tiered manufacturers, subcontractors, and vendors.

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32. **Independent Contractors.** The parties intend to create an independent contractor relationship. Nothing herein creates a partnership, joint venture, agency, employment, or other business relationship between the parties. Subcontractor will not represent itself as an agent of Contractor nor indicate that Subcontractor has the right to obligate Contractor in any way. Subcontractor is solely responsible for providing all resources, materials, and facilities needed to accomplish the work required; Contractor's facilities may not be used for the performance of the efforts required except as expressly identified herein.

33. **Applicable Law.** The laws of the Commonwealth of Virginia govern this Subcontract, without regard to its conflict of laws provisions, except that any clause in this Subcontract that is incorporated in full text or by reference from the Federal Acquisition Regulation (FAR) or agency supplements thereto, or is substantially based upon any such FAR or agency supplement regulation, shall be interpreted according to the U.S. federal common law of Government contracts. The provisions of the "United Nations Convention on Contracts for the International Sale of Goods" do not apply.

34. **Severability.** If any provision of this Subcontract or application thereof is found invalid, illegal, or unenforceable by law, the remainder of this Subcontract will remain valid, enforceable, and in full force and effect, and the parties will negotiate in good faith to substitute a provision of like economic intent and effect.

35. **Electronic Signatures.** The parties agree that if this Subcontract is transmitted electronically, neither party shall contest the validity of this Subcontract, or any acknowledgment thereof, on the basis that this Subcontract or acknowledgment contains only an electronic signature.

36. **Entire Agreement.** This Subcontract integrates, merges, and supersedes any prior offers, negotiations, and agreements (including any letter subcontract or letter of authorization) concerning the subject matter hereof, and constitutes the entire agreement between the parties.

37. **Choice of Forum.** Each Party irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind whatsoever against the other Party in any way arising from or relating to this Subcontract, including all exhibits, schedules, attachments and appendices attached to this Subcontract, and all contemplated transactions, including contract, equity, tort, fraud and statutory claims, in any forum other than the United States District Court for Eastern District of Virginia or, if such court does not have subject matter jurisdiction, the courts of the Commonwealth of Virginia sitting in Loudoun County, and any appellate court from any thereof. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and agrees to bring any such action, litigation or proceeding only in the United States District Court for Eastern District of Virginia, or, if such court does not have subject matter jurisdiction, the courts of the Commonwealth of Virginia sitting in Loudoun County. Each Party agrees that a final judgment in any such action, litigation or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

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38. **Waiver of Jury Trial.** EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS SUBCONTRACT, INCLUDING EXHIBITS, SCHEDULES, ATTACHMENTS, AND APPENDICES ATTACHED TO THIS SUBCONTRACT, IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS SUBCONTRACT, INCLUDING ANY EXHIBITS, SCHEDULES, ATTACHMENTS, OR APPENDICES ATTACHED TO THIS SUBCONTRACT, OR THE TRANSACTIONS CONTEMPLATED HEREBY.

39. **Notice of Disputes.** Subcontractor shall promptly notify Contractor of any litigation or labor dispute relating to this Subcontract or that has the potential to impair Subcontractor's ability to comply with this Subcontract.

40. **Assignment.** Subcontractor may not assign or novate this Subcontract, or delegate its responsibilities hereunder, without the prior written consent of Contractor, and any purported assignment is void.

41. **Survival.** Upon expiration or termination of this Subcontract, any clauses (including incorporated clauses of the FAR or agency supplements thereto) which by their nature extend beyond such expiration or termination shall survive.

42. **Currency.** Unless expressly stated elsewhere in this Subcontract, all amounts of money specified in this Subcontract are in U.S. Dollars.

43. **U.S. Government Contract Flow Downs.** This Subcontract is being issued in support of a U.S. Government contract. Therefore, certain terms from the prime contract are listed on the "**Prime Contract Flow Downs**" Appendix 1 to the Subcontract and any additional mandatory terms, which may be listed in the Order ("**Additional Flow Downs**"), which are hereby incorporated by reference including any notes or modifications following each clause citation. The full text of all Federal Acquisition Regulation (FAR) and agency supplement clauses may be found on the Internet at <http://farsite.hill.af.mil/>, and copies may also be requested from your Contractor's authorized Subcontract Administrator. Any reference in an incorporated clause to a disputes clause shall be interpreted as the Dispute Resolution clause of this Subcontract.

Subcontractor is required to flow down to its lower-tiered manufacturers, subcontractors, and vendors the Prime Contract Flow Downs and Additional Flow Downs contained in this Subcontract. By accepting the Order, Subcontractor confirms and acknowledges that lower-tiered agreements will include the Prime Flow Down and Additional Flow Down clauses contained in this Subcontract.

44. **Contractor Status.** Subcontractor certifies that neither Subcontractor nor any of its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this type of transaction by any Federal department or agency.

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Subcontractor will promptly notify Contractor of any change to its status during the term of this Subcontract.

45. **Conflict of Interest**. Subcontractor certifies that to the best of its knowledge there are no relevant facts or circumstances which would give rise to an organizational conflict of interest with respect to this Subcontract.

APPENDIX 1

PRIME CONTRACT FLOWDOWNS

The following clauses are incorporated herein by reference with the same force and effect as if they were set forth herein in full text, including any notes or modifications following each clause citation:

- 1) FAR 52.203-3 Gratuities (Apr 1984)
- 2) FAR 52.203-7 Anti-Kickback Procedures (May 2014) (excluding subparagraph (c)(1)) (Applies if this Order exceeds \$150,000)
- 3) FAR 52.203-12 Limitation on Payments to Influence Certain Federal Transactions (Oct 2010) (Applies if this Order exceeds \$150,000)
- 4) FAR 52.203-13 Contractor Code of Business Ethics and Conduct (Oct 2015) (Applies if this Order exceeds \$5,500,000 and has a period of performance of more than 120 days; all disclosures of violations of the civil False Claims Act or of Federal criminal law shall be directed to the funding agency's Office of the Inspector General with a copy to the agency's contracting officer)
- 5) FAR 52.203-15 Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (Applies if this Order is funded by the Recovery Act)
- 6) FAR 52.203-19 Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017)
- 7) FAR 52.204-2 Security Requirements (Aug 1996) (Applies if Subcontractor requires access to classified information)
- 8) FAR 52.204-9 Personal Identity Verification of Contractor Personnel (Jan 2011) (Applies if Subcontractor will have physical access to a federally-controlled facility or access to a federal information system)
- 9) FAR 52.204-10 Reporting Executive Compensation and First-Tier Subcontract Awards (Oct 2018)
- 10) FAR 52.204-21 Basic Safeguarding of Covered Contractor Information Systems (Jun 2016) (Applies unless this Order is solely for the purchase of commercially available off-the-shelf items)
- 11) FAR 52.204-23 Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Jul 2018)
- 12) FAR 52.204-25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (Aug 2020)

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- 13) FAR 52.209-6 Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended or Proposed for Debarment (Oct 2015) (Applies if this Order exceeds \$35,000 except those for commercial off-the-shelf items)
- 14) FAR 52.219-8 Utilization of Small Business Concerns (Oct 2018) (Applies if this Order offers further subcontracting opportunities; a subcontracting plan compliant with FAR 52.219-9 Small Business Subcontracting Plan (Aug 2018) is required for Orders offering further subcontracting opportunities that are valued in excess of \$700,000 (\$1.5 million if for construction of any public facility))
- 15) FAR 52.222-17, Nondisplacement of Qualified Workers (May 2014) (E.O. 13495)
- 16) FAR 52.222-21 Prohibition of Segregated Facilities (Apr 2015)
- 17) FAR 52.222-26 Equal Opportunity (Sep 2016) (Applies unless exempted by the rules, regulations, or orders of the Secretary of Labor under Executive Order 11246, as amended)
- 18) FAR 52.222-35 Equal Opportunity for Veterans (Oct 2015) (Applies if this Order exceeds \$150,000)
- 19) FAR 52.222-36 Equal Opportunity for Workers with Disabilities (Jul 2014) (Applies if this Order exceeds \$15,000)
- 20) FAR 52.222-37 Employments Reports on Veterans (Feb 2016) (Applies if this Order exceeds \$150,000 unless exempted by the rules, regulations, or orders of the Secretary of Labor)
- 21) FAR 52.222-40 Notification of Employee Rights under the National Labor Relations Act (Dec 2010) (Applies if this Order exceeds \$10,000 and will be performed wholly or partially in the United States unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 3 of Executive Order 13496 of January 30, 2009)
- 22) FAR 52.222-41 Service Contract Labor Standards (Aug 2018) (Applies if this Order is for services subject to Service Contract Labor Standards)
- 23) FAR 52.222-50 Combating Trafficking in Persons (Jan 2019) with Alt I (Mar 2015) (Requirements of paragraph (h) only apply to Orders over \$500,000 for supplies, other than commercially available off-the-shelf items, acquired outside the United States, or services to be performed outside the United States)
- 24) FAR 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)
- 25) FAR 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).
- 26) FAR 52.222-54 Employment Eligibility Verification (Oct 2015) (Applies if this Order: (1) is for either: (i) services, except for commercial services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications) performed by the COTS provider and are normally provided for that COTS item; or (ii) construction; and (2) exceeds \$3,500; and (3) includes work performed in the United States)

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- 27) FAR 52.222-55 Minimum Wages Under Executive Order 13658 (Dec 2015) (Applies if this Order is subject to Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, and are to be performed in whole or in part in the United States)
- 28) FAR 52.222-62 Paid Sick Leave Under Executive Order 13706 (Jan 2017) (Applies if this Order is subject to Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, and are to be performed in whole or in part in the United States)
- 29) FAR 52.223-3 Hazardous Material Identification and Material Safety Data (Jan 1997) (Applies if this Order involves hazardous material)
- 30) FAR 52.223-7 Notice of Radioactive Materials (Jan 1997) (Applies if this Order involves covered radioactive material. The blank in paragraph (a) is set at 5 days)
- 31) FAR 52.223-11 Ozone-Depleting Substances and High Global Warning Potential Hydrofluorocarbons (Jun 2016)
- 32) FAR 52.224-3 Privacy Training (Jan 2017) (Applies if in performance of this Order Subcontractor's employees will (1) have access to a system of records; (2) create, collect, use, process, store, maintain, disseminate, disclose, dispose, or otherwise handle personally identifiable information; or (3) design, develop, maintain, or operate a system of records.) (Alt I (Jan 2017) applies if flow down is required in accordance with 52.224-3(f) and the agency specifies that only its agency-provided training is acceptable)
- 33) FAR 52.225-1 Buy American – Supplies (May 2014), if specifically indicated in this Order
- 34) FAR 52.225-5 Trade Agreements (Aug 2018), if specifically indicated in this Order
- 35) FAR 52.225-13 Restrictions on Certain Foreign Purchases (Jun 2008)
- 36) FAR 52.225-26 Contractors Performing Private Security Functions Outside the United States (Oct 2016)
- 37) FAR 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations (May 2014) (42 U.S.C. 1792). Flow down required in accordance with paragraph (e) of FAR clause 52.226-6
- 38) FAR 52.227-14 Rights in Data – General (May 2014) Alt II (Dec 2007) and Alt V (Dec 2007)
- 39) FAR 52.227-16 Additional Data Requirements (June 1987)
- 40) FAR 52.227-19 Commercial Computer Software – Restricted Rights (Dec 2007)
- 41) FAR 52.232-40 Providing Accelerated Payments to Small Business Subcontractors (Dec 2013) (Applicable only if Subcontractor is a small business concern and Polimaster receives accelerated payments from its client)
- 42) FAR 52.244-6 Subcontracts for Commercial Items (Jun 2020)
- 43) FAR 52.245-1 Government Property (Jan 2017) ("Contracting Officer" means Contractor except in the definition of Property Administrator and in paragraphs (h)(1)(iii) where it is unchanged, and in paragraphs (c) and (h)(4) where it includes Contractor. "Government" is unchanged in the phrases "Government property" and "Government furnished property" and where elsewhere used except in paragraph (d)(1) where it means Contractor and except in paragraphs (d)(2) and (g) where the term includes Contractor. The following is added as paragraph (n) "Subcontractor shall provide to Contractor immediate notice if the Government or other customers

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(i) revokes its assumption of loss under any direct contracts with Subcontractor, or (ii) makes a determination that Subcontractor's property management practices are inadequate, and/or present an undue risk, or that Subcontractor has failed to take corrective action when required.")

44) FAR 52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006)

45) HSAR 3052.205-70 Advertisements, Publicizing Awards, and Releases (Sep 2012)

46) HSAR 3052.209-70 Prohibition on Contracts with Corporate Expatriates (Jun 2006)

DISCLOSURE: THE SUBCONTRACTOR UNDER THIS ORDER REPRESENTS THAT IT IS NOT A FOREIGN INCORPORATED ENTITY THAT SHOULD BE TREATED AS AN INVERTED DOMESTIC CORPORATION PURSUANT TO THE CRITERIA OF (HSAR) 48 CFR 3009.108-7001 THROUGH 3009.108-7003

47) HSAR 3052.209-72 Organizational Conflict of Interest (Jun 2006)

DISCLOSURE: THE SUBCONTRACTOR HEREBY REPRESENTS, TO THE BEST OF ITS KNOWLEDGE, THAT IT IS NOT AWARE OF ANY FACTS WHICH CREATE ANY ACTUAL OR POTENTIAL ORGANIZATIONAL CONFLICTS OF INTEREST RELATING TO THE AWARD OF THIS ORDER AND/OR PRIME CONTRACT

48) HSAR 3052.209-73 Limitation of Future Contracting (Jun 2006)

49) HSAR 3052.242-72 Contracting Officer's Technical Representative (Dec 2003)

50) HSAR CLASS DEVIATION 15-01 SAFEGUARDING OF SENSITIVE INFORMATION (MAR 2015) This clause applies to Subcontractors and their employees (hereafter referred to collectively as "Subcontractor").

(a) The Subcontractor shall insert the substance of this clause in all subcontracts.

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

"Personally Identifiable Information (PII)" means information that can be used to distinguish or trace an individual's identity, such as name, social security number, or biometric records, either alone, or when combined with other personal or identifying information that is linked or linkable to a specific individual, such as date and place of birth, or mother's maiden name. The definition of PII is not anchored to any single category of information or technology. Rather, it requires a case-by-case assessment of the specific risk that an individual can be identified. In performing this assessment, it is important for an agency to recognize that non-personally identifiable information can become personally identifiable information whenever additional information is made publicly available—in any medium and from any source that, combined with other available information, could be used to identify an individual. PII is a subset of sensitive information. Examples of PII include, but are not limited to: name, date of birth, mailing address, telephone number, Social Security number (SSN), email address, zip code, account numbers, certificate/license numbers, vehicle identifiers including license plates, uniform resource locators (URLs), static Internet protocol addresses, biometric identifiers such as fingerprint, voiceprint, iris scan, photographic facial images, or any other unique identifying number or characteristic, and any information where

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it is reasonably foreseeable that the information will be linked with other information to identify the individual.

“Sensitive Information” is defined in HSAR clause 3052.204-71, Contractor Employee Access, as any information, which if lost, misused, disclosed, or, without authorization is accessed, or modified, could adversely affect the national or homeland security interest, the conduct of Federal programs, or the privacy to which individuals are entitled under section 552a of Title 5, United States Code (the Privacy Act), but which has not been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept secret in the interest of national defense, homeland security or foreign policy. This definition includes the following categories of information: (1) Protected Critical Infrastructure Information (PCII) as set out in the Critical Infrastructure Information Act of 2002 (Title II, Subtitle B, of the Homeland Security Act, Public Law 107- 296, 196 Stat. 2135), as amended, the implementing regulations thereto (Title 6, Code of Federal Regulations, Part 29) as amended, the applicable PCII Procedures Manual, as amended, and any supplementary guidance officially communicated by an authorized official of the Department of Homeland Security (including the PCII Program Manager or his/her designee); (2) Sensitive Security Information (SSI), as defined in Title 49, Code of Federal Regulations, Part 1520, as amended, “Policies and Procedures of Safeguarding and Control of SSI,” as amended, and any supplementary guidance officially communicated by an authorized official of the Department of Homeland Security (including the Assistant Secretary for the Transportation Security Administration or his/her designee); (3) Information designated as “For Official Use Only,” which is unclassified information of a sensitive nature and the unauthorized disclosure of which could adversely impact a person’s privacy or welfare, the conduct of Federal programs, or other programs or operations essential to the national or homeland security interest; and (4) Any information that is designated “sensitive” or subject to other controls, safeguards or protections in accordance with subsequently adopted homeland security information handling procedures.

“Sensitive Information Incident” is an incident that includes the known, potential, or suspected exposure, loss of control, compromise, unauthorized disclosure, unauthorized acquisition, or unauthorized access or attempted access of any Government system, Subcontractor system, or sensitive information.

“Sensitive Personally Identifiable Information (SPII)” is a subset of PII, which if lost, compromised or disclosed without authorization, could result in substantial harm, embarrassment, inconvenience, or unfairness to an individual. Some forms of PII are sensitive as stand-alone elements. Examples of such PII include: Social Security numbers (SSN), driver’s license or state identification number, Alien Registration Numbers (A-number), financial account number, and biometric identifiers such as fingerprint, voiceprint, or iris scan. Additional examples include any groupings of information that contain an individual’s name or other unique identifier plus one or more of the following elements: (1) Truncated SSN (such as last 4 digits); (2) Date of birth (month, day, and year); (3) Citizenship or immigration status; (4) Ethnic or religious affiliation; (5) Sexual orientation; (6) Criminal History; (7) Medical Information; (8) System authentication information such as mother’s maiden name, account passwords or personal identification numbers (PIN). Other PII may be “sensitive” depending on its context, such as a list of employees and their performance ratings or an unlisted home address or phone number. In contrast, a business card or public telephone directory of agency employees contains PII but is not sensitive.

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(c) *Authorities.* The Subcontractor shall follow all current versions of Government policies and guidance accessible at <http://www.dhs.gov/dhs-security-and-training-requirements-contractors>, or available upon request from the Subcontractor, including but not limited to: (1) DHS Management Directive 11042.1 Safeguarding Sensitive But Unclassified (for Official Use Only) Information; (2) DHS Sensitive Systems Policy Directive 4300A; (3) DHS 4300A Sensitive Systems Handbook and Attachments; (4) DHS Security Authorization Process Guide; (5) DHS Handbook for Safeguarding Sensitive Personally Identifiable Information; (6) DHS Instruction Handbook 121-01-007 Department of Homeland Security Personnel Suitability and Security Program; (7) DHS Information Security Performance Plan (current fiscal year); (8) DHS Privacy Incident Handling Guidance; (9) Federal Information Processing Standard (FIPS) 140-2 Security Requirements for Cryptographic Modules accessible at <http://csrc.nist.gov/groups/STM/cmvp/standards.html>; (10) National Institute of Standards and Technology (NIST) Special Publication 800-53 Security and Privacy Controls for Federal Information Systems and Organizations accessible at <http://csrc.nist.gov/publications/PubsSPs.html>; (11) NIST Special Publication 800-88 Guidelines for Media Sanitization accessible at <http://csrc.nist.gov/publications/PubsSPs.html>

(d) *Handling of Sensitive Information.* Subcontractor compliance with this clause, as well as the policies and procedures described below, is required.

(1) Department of Homeland Security (DHS) policies and procedures on Contractor personnel security requirements are set forth in various Management Directives (MDs), Directives, and Instructions. *MD 11042.1, Safeguarding Sensitive But Unclassified (For Official Use Only) Information* describes how Subcontractors must handle sensitive but unclassified information. DHS uses the term “FOR OFFICIAL USE ONLY” to identify sensitive but unclassified information that is not otherwise categorized by statute or regulation. Examples of sensitive information that are categorized by statute or regulation are PCII, SSI, etc. The *DHS Sensitive Systems Policy Directive 4300A* and the *DHS 4300A Sensitive Systems Handbook* provide the policies and procedures on security for Information Technology (IT) resources. The *DHS Handbook for Safeguarding Sensitive Personally Identifiable Information* provides guidelines to help safeguard SPII in both paper and electronic form. *DHS Instruction Handbook 121-01-007 Department of Homeland Security Personnel Suitability and Security Program* establishes procedures, program responsibilities, minimum standards, and reporting protocols for the DHS Personnel Suitability and Security Program.

(2) The Subcontractor shall not use or redistribute any sensitive information processed, stored, and/or transmitted by the Subcontractor except as specified in the contract.

(3) All Subcontractor employees with access to sensitive information shall execute *DHS Form 11000-6, Department of Homeland Security Non-Disclosure Agreement (NDA)*, as a condition of access to such information. The Subcontractor shall maintain signed copies of the NDA for all employees as a record of compliance. The Subcontractor shall provide copies of the signed NDA to the Contractor no later than two (2) days after execution of the form.

(4) The Subcontractor’s invoicing, billing, and other recordkeeping systems maintained to support financial or other administrative functions shall not maintain SPII. It is acceptable to maintain in these systems the names, titles and contact information for the COR or other Government personnel associated with the administration of the contract, as needed.

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(e) *Authority to Operate*. The Subcontractor shall not input, store, process, output, and/or transmit sensitive information within a Subcontractor IT system without an Authority to Operate (ATO) signed by the Headquarters or Component CIO, or designee, in consultation with the Headquarters or Component Privacy Officer. Unless otherwise specified in the ATO letter, the ATO is valid for three (3) years. The Subcontractor shall adhere to current Government policies, procedures, and guidance for the Security Authorization (SA) process as defined below.

(1) Complete the Security Authorization process. The SA process shall proceed according to the *DHS Sensitive Systems Policy Directive 4300A* (Version 11.0, April 30, 2014), or any successor publication, *DHS 4300A Sensitive Systems Handbook* (Version 9.1, July 24, 2012), or any successor publication, and the *Security Authorization Process Guide* including templates.

(i) Security Authorization Process Documentation. SA documentation shall be developed using the Government provided Requirements Traceability Matrix and Government security documentation templates. SA documentation consists of the following: Security Plan, Contingency Plan, Contingency Plan Test Results, Configuration Management Plan, Security Assessment Plan, Security Assessment Report, and Authorization to Operate Letter. Additional documents that may be required include a Plan(s) of Action and Milestones and Interconnection Security Agreement(s). During the development of SA documentation, the Subcontractor shall submit a signed SA package, validated by an independent third party, to the COR for acceptance by the Headquarters or Component CIO, or designee, at least thirty (30) days prior to the date of operation of the IT system. The Government is the final authority on the compliance of the SA package and may limit the number of resubmissions of a modified SA package. Once the ATO has been accepted by the Headquarters or Component CIO, or designee, the Contracting Officer shall incorporate the ATO into the contract as a compliance document. The Government's acceptance of the ATO does not alleviate the Subcontractor's responsibility to ensure the IT system controls are implemented and operating effectively.

(ii) Independent Assessment. Subcontractors shall have an independent third party validate the security and privacy controls in place for the system(s). The independent third party shall review and analyze the SA package, and report on technical, operational, and management level deficiencies as outlined in *NIST Special Publication 800-53 Security and Privacy Controls for Federal Information Systems and Organizations*. The Subcontractor shall address all deficiencies before submitting the SA package to the Government for acceptance.

(iii) Support the completion of the Privacy Threshold Analysis (PTA) as needed. As part of the SA process, the Subcontractor may be required to support the Government in the completion of the PTA. The requirement to complete a PTA is triggered by the creation, use, modification, upgrade, or disposition of a Subcontractor IT system that will store, maintain and use PII, and must be renewed at least every three (3) years. Upon review of the PTA, the DHS Privacy Office determines whether a Privacy Impact Assessment (PIA) and/or Privacy Act System of Records Notice (SORN), or modifications thereto, are required. The Subcontractor shall provide all support necessary to assist the Department in completing the PIA in a timely manner and shall ensure that project management plans and schedules include time for the completion of the PTA, PIA, and SORN (to the extent required) as milestones. Support in this context includes responding timely to requests for information from the Government about the use, access, storage, and maintenance of PII on the Subcontractor's system, and providing timely review of relevant compliance

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documents for factual accuracy. Information on the DHS privacy compliance process, including PTAs, PIAs, and SORNs, is accessible at <http://www.dhs.gov/privacycompliance>.

(2) *Renewal of ATO.* Unless otherwise specified in the ATO letter, the ATO shall be renewed every three (3) years. The Subcontractor is required to update its SA package as part of the ATO renewal process. The Subcontractor shall update its SA package by one of the following methods: (1) Updating the SA documentation in the DHS automated information assurance tool for acceptance by the Headquarters or Component CIO, or designee, at least 90 days before the ATO expiration date for review and verification of security controls; or (2) Submitting an updated SA package directly to the COR for approval by the Headquarters or Component CIO, or designee, at least 90 days before the ATO expiration date for review and verification of security controls. The 90 day review process is independent of the system production date and therefore it is important that the Subcontractor build the review into project schedules. The reviews may include onsite visits that involve physical or logical inspection of the Subcontractor environment to ensure controls are in place.

(3) *Security Review.* The Government may elect to conduct random periodic reviews to ensure that the security requirements contained in this contract are being implemented and enforced. The Subcontractor shall afford DHS, the Office of the Inspector General, and other Government organizations access to the Subcontractor's facilities, installations, operations, documentation, databases and personnel used in the performance of this contract. The Subcontractor shall, through the Contracting Officer and COR, contact the Headquarters or Component CIO, or designee, to coordinate and participate in review and inspection activity by Government organizations external to the DHS. Access shall be provided, to the extent necessary as determined by the Government, for the Government to carry out a program of inspection, investigation, and audit to safeguard against threats and hazards to the integrity, availability and confidentiality of Government data or the function of computer systems used in performance of this contract and to preserve evidence of computer crime.

(4) *Continuous Monitoring.* All Subcontractor-operated systems that input, store, process, output, and/or transmit sensitive information shall meet or exceed the continuous monitoring requirements identified in the *Fiscal Year 2014 DHS Information Security Performance Plan*, or successor publication. The plan is updated on an annual basis. The Subcontractor shall also store monthly continuous monitoring data at its location for a period not less than one year from the date the data is created. The data shall be encrypted in accordance with *FIPS 140-2 Security Requirements for Cryptographic Modules* and shall not be stored on systems that are shared with other commercial or Government entities. The Government may elect to perform continuous monitoring and IT security scanning of Subcontractor systems from Government tools and infrastructure.

(5) *Revocation of ATO.* In the event of a sensitive information incident, the Government may suspend or revoke an existing ATO (either in part or in whole). If an ATO is suspended or revoked in accordance with this provision, the Contracting Officer may direct the Subcontractor to take additional security measures to secure sensitive information. These measures may include restricting access to sensitive information on the Subcontractor IT system under this contract. Restricting access may include disconnecting the system processing, storing, or transmitting the sensitive information from the Internet or other networks or applying additional security controls.

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(6) *Federal Reporting Requirements.* Subcontractors operating information systems on behalf of the Government or operating systems containing sensitive information shall comply with Federal reporting requirements. Annual and quarterly data collection will be coordinated by the Government. Subcontractors shall provide the COR with requested information within three (3) business days of receipt of the request. Reporting requirements are determined by the Government and are defined in the *Fiscal Year 2014 DHS Information Security Performance Plan*, or successor publication. The Subcontractor shall provide the Government with all information to fully satisfy Federal reporting requirements for Subcontractor systems.

(f) Sensitive Information Incident Reporting Requirements.

(1) All known or suspected sensitive information incidents shall be reported to the Headquarters or Component Security Operations Center (SOC) within one hour of discovery in accordance with *4300A Sensitive Systems Handbook Incident Response and Reporting* requirements. When notifying the Headquarters or Component SOC, the Subcontractor shall also notify the Contractor, Contracting Officer, COR, Headquarters or Component Privacy Officer, and US-CERT using the contact information identified in the contract. If the incident is reported by phone or the Contracting Officer's email address is not immediately available, the Subcontractor shall contact the Contractor, Contracting Officer immediately after reporting the incident to the Headquarters or Component SOC. The Subcontractor shall not include any sensitive information in the subject or body of any e-mail. To transmit sensitive information, the Subcontractor shall use *FIPS 140-2 Security Requirements for Cryptographic Modules* compliant encryption methods to protect sensitive information in attachments to email. Passwords shall not be communicated in the same email as the attachment. A sensitive information incident shall not, by itself, be interpreted as evidence that the Subcontractor has failed to provide adequate information security safeguards for sensitive information, or has otherwise failed to meet the requirements of the contract.

(2) If a sensitive information incident involves PII or SPII, in addition to the reporting requirements in *4300A Sensitive Systems Handbook Incident Response and Reporting*, Subcontractors shall also provide as many of the following data elements that are available at the time the incident is reported, with any remaining data elements provided within 24 hours of submission of the initial incident report: (i) Data Universal Numbering System (DUNS); (ii) Contract numbers affected unless all contracts by the company are affected; (iii) Facility CAGE code if the location of the event is different than the prime Contractor location; (iv) Point of contact (POC) if different than the POC recorded in the System for Award Management (address, position, telephone, email); (v) Contracting Officer POC (address, telephone, email); (vi) Contract clearance level; (vii) Name of subcontractor and CAGE code if this was an incident on a subcontractor network; (viii) Government programs, platforms or systems involved; (ix) Location(s) of incident; (x) Date and time the incident was discovered; (xi) Server names where sensitive information resided at the time of the incident, both at the Contractor and Subcontractor level; (xii) Description of the Government PII and/or SPII contained within the system; (xiii) Number of people potentially affected and the estimate or actual number of records exposed and/or contained within the system; and (xiv) Any additional information relevant to the incident.

(g) Sensitive Information Incident Response Requirements.

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(1) All determinations related to sensitive information incidents, including response activities, notifications to affected individuals and/or Federal agencies, and related services (e.g., credit monitoring) will be made in writing by the Contracting Officer in consultation with the Headquarters or Component CIO and Headquarters or Component Privacy Officer.

(2) The Subcontractor shall provide full access and cooperation for all activities determined by the Government to be required to ensure an effective incident response, including providing all requested images, log files, and event information to facilitate rapid resolution of sensitive information incidents.

(3) Incident response activities determined to be required by the Government may include, but are not limited to, the following: (i) Inspections, (ii) Investigations, (iii) Forensic reviews, and (iv) Data analyses and processing.

(4) The Government, at its sole discretion, may obtain the assistance from other Federal agencies and/or third-party firms to aid in incident response activities.

(h) Additional PII and/or SPII Notification Requirements.

(1) The Subcontractor shall have in place procedures and the capability to notify any individual whose PII resided in the Subcontractor IT system at the time of the sensitive information incident not later than 5 business days after being directed to notify individuals, unless otherwise approved by the Contracting Officer. The method and content of any notification by the Subcontractor shall be coordinated with, and subject to prior written approval by the Contracting Officer, in consultation with the Headquarters or Component Privacy Officer, utilizing the *DHS Privacy Incident Handling Guidance*. The Subcontractor shall not proceed with notification unless the Contracting Officer, in consultation with the Headquarters or Component Privacy Officer, has determined in writing that notification is appropriate.

(2) Subject to Government analysis of the incident and the terms of its instructions to the Subcontractor regarding any resulting notification, the notification method may consist of letters to affected individuals sent by first class mail, electronic means, or general public notice, as approved by the Government. Notification may require the Subcontractor's use of address verification and/or address location services. At a minimum, the notification shall include: (i) A brief description of the incident; (ii) A description of the types of PII and SPII involved; (iii) A statement as to whether the PII or SPII was encrypted or protected by other means; (iv) Steps individuals may take to protect themselves; (v) What the Subcontractor and/or the Government are doing to investigate the incident, to mitigate the incident, and to protect against any future incidents; and (vi) Information identifying who individuals may contact for additional information.

(i) *Credit Monitoring Requirements.* In the event that a sensitive information incident involves PII or SPII, the Subcontractor may be required to, as directed by the Contracting Officer: (1) Provide notification to affected individuals as described above; and/or (2) Provide credit monitoring services to individuals whose data was under the control of the Subcontractor or resided in the Subcontractor IT system at the time of the sensitive information incident for a period beginning the date of the incident and extending not less than 18 months from the date the individual is notified. Credit monitoring services shall be provided from a company with which the

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Subcontractor has no affiliation. At a minimum, credit monitoring services shall include: (i) Triple credit bureau monitoring; (ii) Daily customer service; (iii) Alerts provided to the individual for changes and fraud; and (iv) Assistance to the individual with enrollment in the services and the use of fraud alerts; and/or (3) Establish a dedicated call center. Call center services shall include: (i) A dedicated telephone number to contact customer service within a fixed period; (ii) Information necessary for registrants/enrollees to access credit reports and credit scores; (iii) Weekly reports on call center volume, issue escalation (i.e., those calls that cannot be handled by call center staff and must be resolved by call center management or DHS, as appropriate), and other key metrics; (iv) Escalation of calls that cannot be handled by call center staff to call center management or DHS, as appropriate; (v) Customized FAQs, approved in writing by the Contracting Officer in coordination with the Headquarters or Component Chief Privacy Officer; and (vi) Information for registrants to contact customer service representatives and fraud resolution representatives for credit monitoring assistance.

(j) *Certification of Sanitization of Government and Government-Activity-Related Files and Information.* As part of contract closeout, the Subcontractor shall submit the certification to the COR and the Contracting Officer following the template provided in *NIST Special Publication 800-88 Guidelines for Media Sanitization*.

51) HSAR CLASS DEVIATION 15-01 INFORMATION TECHNOLOGY SECURITY AND PRIVACY TRAINING (MAR 2015)

(a) *Applicability.* This clause applies to the Subcontractors and their employees (hereafter referred to collectively as “Subcontractor”). The Subcontractor shall insert the substance of this clause in all subcontracts.

(b) *Security Training Requirements.*

(1) All users of Federal information systems are required by Title 5, Code of Federal Regulations, Part 930.301, Subpart C, as amended, to be exposed to security awareness materials annually or whenever system security changes occur, or when the user’s responsibilities change. The Department of Homeland Security (DHS) requires that Contractor employees and Subcontractors take an annual Information Technology Security Awareness Training course before accessing sensitive information under the contract. Unless otherwise specified, the training shall be completed within thirty (30) days of contract award and be completed on an annual basis thereafter not later than October 31st of each year. Any new Subcontractor employees assigned to the contract shall complete the training before accessing sensitive information under the contract. The training is accessible at <http://www.dhs.gov/dhs-security-and-training-requirementscontractors>. The Subcontractor shall maintain copies of training certificates for all Subcontractor employees as a record of compliance. Unless otherwise specified, initial training certificates for each Subcontractor employee shall be provided to the Contracting Officer’s Representative (COR) not later than thirty (30) days after contract award. Subsequent training certificates to satisfy the annual training requirement shall be submitted to the COR via e-mail notification not later than October 31st of each year. The e-mail notification shall state the required training has been completed for all Subcontractor employees.

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(2) The DHS Rules of Behavior apply to every DHS employee, Contractor and Subcontractor that will have access to DHS systems and sensitive information. The DHS Rules of Behavior shall be signed before accessing DHS systems and sensitive information. The DHS Rules of Behavior is a document that informs users of their responsibilities when accessing DHS systems and holds users accountable for actions taken while accessing DHS systems and using DHS Information Technology resources capable of inputting, storing, processing, outputting, and/or transmitting sensitive information. The DHS Rules of Behavior is accessible at <http://www.dhs.gov/dhs-security-and-training-requirements-contractors>. Unless otherwise specified, the DHS Rules of Behavior shall be signed within thirty (30) days of contract award. Any new Subcontractor employees assigned to the contract shall also sign the DHS Rules of Behavior before accessing DHS systems and sensitive information. The Subcontractor shall maintain signed copies of the DHS Rules of Behavior for all Subcontractor employees as a record of compliance. Unless otherwise specified, the Subcontractor shall e-mail copies of the signed DHS Rules of Behavior to the COR not later than thirty (30) days after contract award for each employee. The DHS Rules of Behavior will be reviewed annually and the COR will provide notification when a review is required.

(c) *Privacy Training Requirements.* All Contractor and Subcontractor employees that will have access to Personally Identifiable Information (PII) and/or Sensitive PII (SPII) are required to take *Privacy at DHS: Protecting Personal Information* before accessing PII and/or SPII. The training is accessible at <http://www.dhs.gov/dhs-security-and-training-requirements-contractors>. Training shall be completed within thirty (30) days of contract award and be completed on an annual basis thereafter not later than October 31st of each year. Any new Subcontractor employees assigned to the contract shall also complete the training before accessing PII and/or SPII. The Subcontractor shall maintain copies of training certificates for all Subcontractor employees as a record of compliance. Initial training certificates for each Subcontractor employee shall be provided to the COR not later than thirty (30) days after contract award. Subsequent training certificates to satisfy the annual training requirement shall be submitted to the COR via e-mail notification not later than October 31st of each year. The email notification shall state the required training has been completed for all Subcontractor employees.

52) FAR 52.223-99 ENSURING ADEQUATE COVID-19 SAFETY PROTOCOLS FOR FEDERAL CONTRACTORS. (OCT 2021) (DEVIATION) (*Applies if this Order exceeds the simplified acquisition threshold, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award, and is for services, including construction, performed in whole or in part within the United States or its outlying areas*)

(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

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(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.

53) DFARS 252.223-7999, ENSURING ADEQUATE COVID-19 SAFETY PROTOCOLS FOR FEDERAL CONTRACTORS (DEVIATION 2021-O0009) (OCT 2021) (*Applies if this Order exceeds the simplified acquisition threshold, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award, and is for services, including construction, performed in whole or in part within the United States or its outlying areas*)

(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).

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(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 TERMS -----