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I. CONTRACT TERMS AND CONDITIONS--COMMERCIAL ITEMS (52.212-4) (FEB 2007)

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

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

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

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

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

(d) Disputes. This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e*)* Definitions. The clause at FAR 52.202-1, Definitions, is incorporated herein by reference.

(f) Excusable delays. The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(g) Invoice.

(1) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include—

(i) Name and address of the Contractor;

(ii) Invoice date and number;

(iii) Contract number, contract line item number and, if applicable, the order number;

(iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;

(v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;

(vi) Terms of any discount for prompt payment offered;

(vii) Name and address of official to whom payment is to be sent;

(viii) Name, title, and phone number of person to notify in event of defective invoice; and

(ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(x) Electronic funds transfer (EFT) banking information.

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

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

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

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

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

(i) Payment.—

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

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

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

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

(5) Overpayments. If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall immediately notify the Contracting Officer and request instructions for disposition of the overpayment.

(j) Risk of loss. Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

(k) Taxes. The contract price includes all applicable Federal, State, and local taxes and duties.

(l) Termination for the Government's convenience. The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply

with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) Termination for cause. The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) Title. Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(o) Warranty. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(p) Limitation of liability. Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(q) Other compliances. The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

(r) Compliance with laws unique to Government contracts. The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 3701, *et seq*., Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.

(s) Order of precedence. Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

(1) The schedule of supplies/services.

(2) The Assignments, Disputes, Payments, Invoice, Other Compliances, and Compliance with Laws Unique to Government Contracts paragraphs of this clause.

(3) The clause at 52.212-5.

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

(5) Solicitation provisions if this is a solicitation.

(6) Other paragraphs of this clause.

(7) The Standard Form 1449.

(8) Other documents, exhibits, and attachments.

(9) The specification.

(t) Central Contractor Registration (CCR).

(1) Unless exempted by an addendum to this contract, the Contractor is responsible during performance and through final payment of any contract for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration

or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(2)(i) If a Contractor has legally changed its business name, “doing business as” name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in FAR Subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day’s written notification of its intention to (A) change the name in the CCR database; (B) comply with the requirements of Subpart 42.12; and (C) agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (t)(2)(i) of this clause, or fails to perform the agreement at paragraph (t)(2)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the “Suspension of Payment” paragraph of the electronic funds transfer (EFT) clause of this contract.

(3) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (see Subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the Contractor’s CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the “Suspension of payment” paragraph of the EFT clause of this contract.

(4) Offerors and Contractors may obtain information on registration and annual confirmation requirements via the internet at http://www.ccr.gov or by calling 1-888-227-2423 or 269-961-5757.

(End of clause)

ADDENDUM 1- SCHEDULE AND ADDITIONAL CLAUSES

DELIVERABLE REQUIREMENTS (GSFC 52.211-90) (OCT 1988)

Item	Description	Reference	Schedule	Shipping Classification
01	Annual Self-Certification	Clause A.1.32	Annually	IV
02	Information Technology (IT) Security Plan and Assessment Plans	Clause A.1.39	30 Days After Contract Award	IV
03	Certificate of Maintainability	Clause A.1.18	Within 20 days from request	IV
04	Post-Order Reports	Attachment D (D.4)	Weekly	IV
05	Administrative Handling Fee Report	Attachment D (D.6)	Quarterly	IV

(End of text)

A.1.2. SUPPLIES AND/OR SERVICES TO BE FURNISHED

The Contractor shall provide all supplies and services in accordance with Attachment C, Statement of Work, and as described in Addendum 2, Attachments A (Technical Specifications) & B (Mandatory Deliverables) and in accordance with the prices in Attachment F for Category B, Class 6.

(End of Text)

A.1.3. PROCEDURES FOR ORDERS

Supplies or services to be furnished under this contract shall be specified by the issuance of firm fixed price delivery orders from any Government agency priced in accordance with Clause A.1.7 and Attachment F, Pricing Exhibits. Such orders may be issued from the effective date of the contract through the ordering period. Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the Contractor shall not be required to make any deliveries under this contract after the last date of the last item to be delivered in the issued delivery order schedule**.**

The issuing Contracting Officer may negotiate additional terms and conditions for a specific order.
(e.g. The ordering Agency IT security policies, procedures and requirements or leasing of SEWP equipment may be included in individual orders.) This contract shall prevail in the event of conflict with any order.

Delivery orders will identify the exact destination for shipment and warranties, which is limited to the United States and its possessions. Shipments to United States Government installations located outside the U.S. and its possessions are per mutual agreement between the ordering Government Agency and Contractor.

The firm-fixed price for each delivery order may not be increased except when authorized by a modification to the delivery order. If the Contractor decreases the price of any item ordered, they shall notify the issuing Contracting Officer via e-mail within 2 business days.

The price of each item in a delivery order shall be no greater than the price in the SEWP database of record on the date the issuing Contracting Officer signs the order or the date of the order field if the signature date is not present.

All delivery orders shall be submitted directly to the SEWP Business Operations Workstation Laboratory (BOWL) whose functions are described in Addendum 2, Attachment C, prior to acceptance and processing of the delivery order by the contractor.

(End of text)

A.1.4. ORDERING (52.216-18) (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 from the award date of this contract through a seven (7) year period afterwards (the effective ordering period).

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

(c) 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 in the Schedule.

(End of clause)

A.1.5. INDEFINITE QUANTITY (52.216-22) (OCT 1995)

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

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

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

(d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the Contractor shall not be required to make any deliveries under this contract after the last date of the last item to be delivered in the issued delivery order schedule**.**

(End of clause)

A.1.6. MINIMUM AND MAXIMUM QUANTITIES

As referred to in the "Indefinite Quantity" clause of this contract, the minimum amount ordered shall be $2,500 per class.

The Government guarantees to issue one or more orders for a total amount not less than the minimum. There will be no further obligation on the part of the Government to issue additional orders thereafter.

The maximum ordering value of each contract shall not exceed $ 5,600,000,000.

(End of text)

A.1.7. DISCOUNTS FOR TECHNOLOGY EQUIPMENT

The Contractor shall offer a discount which will be applied against a commercial list price. The discount(s) proposed will be applied to all Technology Equipment purchases for the life of the contract(s). The Government requires that all items be available to order throughout the life of this contract, if available from the Original Equipment Manufacturer (OEM).

The price of all CLINs in Attachment F, Pricing Exhibits must be equal to or less than the price for the same offering on the Contractor's current GSA Schedule after discounting for any GSA or other Government fee such as the 0.75% GSA fee. If the product is not available on the Contractor's current GSA schedule, then the SEWP contract price must be equal to or less than the same offering on the Contractor's current commercial price list. The Contractor shall notify the SEWP Contracting Officer and the ordering Agency Contracting Officer, within seven working days, of changes to commercial prices and GSA prices below the offering price listed in this contract. If the Contractor's current GSA Schedule Contract price list after discounting any GSA or other Government fee or the Contractor's current commercial price list is lower than the above discounted price, the Government retains the right to order at the lesser amount.

CATEGORY B - PRODUCT CLASSIFICATIONS

All items offered under the contract, whether mandatory products, additional technology or available components shall be associated with a Product Classification Group and Classification Description Subgroup. The valid set of Product Classifications is pre-defined as listed in Attachment F, Pricing Exhibits and cannot be added to or deleted from or otherwise changed. One Classification Description Subgroup is predefined with an associated Classification Subgroup Discount of 0%. The Contractor may propose additional Classification Description Subgroups and an associated price discount. The discount for each item on contract will be automatically assigned based on the Product Classification Group and Classification Description Subgroup associated with that item.

These discounts shall remain constant over the life of the contract, and the applicable Classification Subgroup discount shall be used when adding new equipment to the contract.

Training and Documentation
Training and Documentation (both on-line and hardcopy) CLINS may be provided if the training and documentation directly relates to the product CLINs provided on the contract.

Service Restrictions
Agencies may utilize SEWP contracts to purchase integration and analyst services using the Service CLINs on the contract provided that the services are firm fixed price and directly support the site planning, installation and initial implementation of associated equipment/product purchased either on that delivery order or purchased previously and referenced on that delivery order. For site planning services, the delivery order for those services must include a clear Statement of Work describing the technology requirements to be acquired based on the site planning.

Labor services other than site planning, installation and initial implementation may be purchased using the Service CLINs on the contract provided that all such services are firm fixed price and directly support the associated equipment purchased on that delivery and provided that these additional services do not exceed 10% of the price of the associated equipment/products. This labor shall not be purchased separately from the related product purchase.

(End of text)

A.1.8. ACCEPTANCE--MULTIPLE LOCATIONS (GSFC 52.246-93) (MAY 1989)

The issuing Contracting Officer or authorized Government representative, as identified on the order, will accomplish acceptance as specified on each order.

The issuing Contracting Officer may designate other Government agents as authorized representatives. The Contractor will be notified by a written notice or by a copy of the delegation letter if other agents are authorized.

Acceptance shall be deemed to have occurred constructively--for the sole purpose of computing an interest penalty that might be due the Contractor under the Prompt Payment Act--on the 7th day after the Contractor has delivered the supplies or services in accordance with the terms and conditions of the contract. In the event that actual acceptance occurs within the constructive acceptance period, the determination of an interest penalty shall be based on the date of the actual acceptance.

(End of text)

A.1.9. MATERIAL INSPECTION AND RECEIVING REPORT (1852.246-72) (AUG 2003)

NOTE: This clause is applicable to GSFC and Wallops delivery orders only.

(a) At the time of each delivery to the Government under this contract, the Contractor shall furnish a Material Inspection and Receiving Report (DD Form 250 series) prepared in an original copy and sufficient other copies to accomplish the following distribution:

(1) Via mail and marked "Advance Copy", one copy each to the Contracting Officer, the Contracting Officer's Technical Representative (if designated in the contract), and to the cognizant Administrative Contracting Officer, if any.

(2) Via mail, the original and 1 copy (unfolded) to the shipment address (delivery point) specified in Section F of this contract. Mark the exterior of the envelope "CONTAINS DD FORM 250". This must arrive prior to the shipment.

(3) With shipment in waterproof envelope (one copy) for the consignee.

(4) If the shipment address is not directly to the Goddard Space Flight Center (Greenbelt) or Goddard Space Flight Center (Wallops) central receiving areas, then one copy of the DD Form 250 must be provided (via mail) to one on the following addresses depending upon whether this contract is with GSFC Greenbelt or GSFC Wallops:

Receiving and Inspection (Code 279), Goddard Space Flight Center, Greenbelt, MD 20771.

Receiving and Inspection (Bldg. F16), Wallops Flight Facility, Wallops Island VA 23337.

(b) The Contractor shall prepare the DD Form 250 in accordance with NASA FAR Supplement 18-46.6. The Contractor shall enclose the copies of the DD Form 250 in the package or seal them in a waterproof envelope, which shall be securely attached to the exterior of the package in the most protected location.

(c) When more than one package is involved in a shipment, the Contractor shall list on the DD Form 250, as additional information, the quantity of packages and the package numbers. The Contractor shall forward the DD Form 250 with the lowest numbered package of the shipment and print the words "CONTAINS DD FORM 250" on the package.

(End of clause)

A.1.10. TIME OF DELIVERY

The Government requires delivery to be made in accordance to the following schedule(s):

1. Standard Delivery: Items shall be delivered within 30 days of receipt and processing of the Delivery Order at the SEWP BOWL, for non-credit card orders, and within 30 days of placement of credit card orders unless otherwise noted and mutually agreed upon as described below for Expedited and Non-standard Delivery.

2. Expedited Delivery: An expedited delivery schedule of less than 30 days delivery, mutually agreed upon by the Ordering Agency and Contractor, may be added to Delivery Orders.

3. Non-standard Delivery: A delivery schedule other than the 30 day standard delivery time may be proposed on an individual CLIN (item) basis or at the time a quote is provided to the Government. Upon acceptance by the Government, the non-standard delivery schedule for that item shall be included in the Attachment F, Pricing Exhibits.

4. If an item cannot be delivered within the delivery time for that item, the Contractor shall notify the issuing Contracting Officer and the SEWP BOWL within two business days of receipt of order of the expected delivery date for the ordered item(s). Upon notification, the Ordering Agency may choose to cancel the order or request due consideration for the delay.

(End of text)

A.1.11. PARTIAL SHIPMENTS

A partial shipment is any shipment that does not include all items specified in the order.

Partial shipments will not be accepted unless authorized on the delivery order or by the issuing Contracting Officer prior to the time of delivery. The Government reserves the right to return partial shipments to the Contractor, transportation charges collect.

(End of text)

A.1.12. INDIVIDUALS AUTHORIZED TO ISSUE ORDERS

Any Government Contracting Officer or duly authorized representative is authorized to place delivery orders against the contract. Credit card orders may be issued by agency designated ordering officials.

(End of text)

A.1.13. APPROVAL OF CONTRACT (52.204-1) (DEC 1989)

This contract is subject to the written approval of the Associate Director for Acquisition and shall not be binding until so approved.

(End of clause)

A.1.14. EXTENDED WARRANTY

The Contractor shall provide an extended warranty, which can be purchased and begin at any time during the standard commercial warranty period up to and including the end of the commercial warranty period. Extended warranty packages may be invoiced and paid at the start of the warranty period. This extended warranty shall provide coverage based on the commercial warranty period. This warranty is in accordance with Addendum 2, Attachment C, Section C.1.5.

At the Government's discretion, the Government may order, at any time during a warranty period, monthly maintenance at the Discounted Monthly Extended Warranty amount in accordance with Addendum 2, Attachment F, Pricing Exhibit, in lieu of the extended warranty.

(End of text)

A.1.15. MISSION CRITICAL WARRANTY – NASA SITES

The Contractor shall make mission critical warranties available for NASA sites where such warranties are commercially available. Mission Critical warranties may be made available to other Federal Agencies upon mutual agreement between the Contractor and the issuing Contracting Officer.

In addition to both the standard commercial warranty and the extended warranty, the offeror shall provide a mission critical warranty, which provides coverage with a 2 hour response time. This mission critical warranty shall be ordered in no less than 1 month increments and may be orderable through the life of the contract. This mission critical warranty is in accordance with Addendum 2, Attachment C, Section C.1.5.

(End of text)

A.1.16. ELECTRONIC DATA AND REPORT INTERCHANGE

Electronic Data and Report Interchange shall apply in accordance with Attachment D (Contractor/Government Communication Requirements).

(End of text)

A.1.17. OTHER FEDERAL AGENCY UTILIZATION

Other Federal Agencies, and authorized Contractors, will be allowed to utilize this contract, on a non-mandatory basis, to satisfy Information Technology (IT) requirements. ***

(End of text)

*****NOTE!** Non-Federal Governments are not authorized to use this contract unless mandated by Congress.

A.1.18. CERTIFICATE OF MAINTAINABILITY

A "Certificate of Maintainability" is not required for equipment acquired and maintained under this contract unless it is specifically requested by the issuing Contracting Officer. If it is requested, the Contractor shall issue the certification within twenty working days of the request.

The certificate shall state that preventive maintenance in accordance with the specifications of the Original Equipment Manufacturer (OEM) has been performed and that the equipment is performing in accordance with the OEM's specifications such that the OEM (or the OEM's successor in interest, if such exists at the time of the commitment) commits that it would assume maintenance of the equipment (or the OEM certifies that the equipment is eligible for maintenance, including but not limited to repair or inspection charges) if such maintenance were assumed effective the date after the Contractor's performance ceases. The Certificate of Maintainability shall also state that the equipment is at the most current OEM's revision level. The Contractor is responsible for bearing all costs associated with obtaining such certification at no charge to the Government.

Should the Contractor fail to issue the required Certificate of Maintainability in accordance with this clause, or should any equipment fail to perform in accordance with the certification, the Contractor shall be liable to the Government for any reasonable costs incurred by the Government for the purpose of bringing the equipment up to the required maintainable level.

If equipment is acquired under this contract without maintenance, the Contractor shall issue a Certificate of Maintainability for such equipment if requested by the issuing Contracting Officer. The certificate shall list each item delivered by a component identification number (i.e. serial number) and state that the equipment is in such condition that the OEM commits that it would assume maintenance of the equipment (or the OEM certifies that the equipment is eligible for maintenance). All charges required to obtain the requisite performance of the equipment, shall be borne by the Contractor. The fact that the equipment may have been acquired with a warranty does not relieve the Contractor of its obligations under this subparagraph.

(End of text)

A.1.19. SUBSTITUTE/ENHANCEMENTS FOR SPECIALIZED EQUIPMENT/SOFTWARE TO ACCOMMODATE USERS WITH DISABILITIES

The Contractor is encouraged to offer equipment or software that becomes available after contract award and offers improvements in technology and that better suits the needs of users with disabilities. If the Government elects to do so, it may evaluate the equipment/software, and substitute the equipment for the equipment covered in the contract but not yet delivered. Any such proposal should contain the general information required by the “Technology Refreshment” clause A.1.20 in this Section.

When substitution of such specialized technology is made without charge to the Government, or as a planned part of the contract (e.g. planned upgrade), manuals and publications as required by the contract shall be provided to all addresses (in the stated quantities) affected by the change without charge to the Government (unless other payment arrangements are made by the ordering agency).

(End of text)

A.1.20. TECHNOLOGY REFRESHMENT

The Government shall have the right to require, at any time, that the Contractor offer under this contract hardware and software components available to the Contractor's commercial customers. In this way the Government seeks to ensure that it can obtain the benefits of new design enhancements and technological updates or advances for equipment currently on the contract. When requested or offered, the Contractor shall provide, within 30 calendar days of receipt of request, a refreshment proposal including the components so identified at the technology discount as indicated in Clause A.1.7.

In the event that the Contractor is no longer able to provide the products proposed (because they are no longer being manufactured, for example), the Contractor may, with the Government's approval, remove the products from the contract. For products in the mandatory deliverable lists, the Contractor shall provide substitute products which shall have the functional capabilities of the products originally provided and shall meet or exceed the original products' rated performance characteristics, at the appropriate discount as indicated in Clause A.1.7.

On an annual basis, the Contractor shall provide the Government either with a self-certification that the mandatory deliverable items currently on the Contract are state-of-the-art technology, or a technology refreshment proposal updating the mandatory deliverable items. The Government will review the Contractor self-certification and/or technology refreshment proposal for acceptability in terms of scope and the current state of technology.

Any new technology which will upgrade, extend or enhance the components shall be evaluated if the Contractor submits a proposal outlining the proposed technology. Included in this proposal shall be pricing data (i.e., current published commercial price list) and other technical information as listed below. With the receipt of a proposal from the Contractor, the Government shall have the right to approve any or all of the proposed CLINs and to unilaterally modify the contract to provide for ordering of the new technology. The criteria for acceptance of the new technology proposal are as follows:

1) For mandatory deliverable items, each item must satisfy all original mandatory requirements in the technical specifications of this contract.

2) Each item must correspond with an appropriate existing contract product class code and its corresponding price discount.

At a minimum, the technology proposal shall include the following header information:

- TR Number (unique tracking number)
- Description of the proposed TR
- Contract Number
- Contact Name
- Contact Phone Number
- Contact E-mail address

At a minimum, the technology proposal shall include the following information for each product proposed:

- Contract Line Item Number (CLIN) (unique for this contract)
- Name of Original Equipment Manufacturer
- Business size of Original Equipment Manufacturer
- Original Equipment Manufacturer’s Model Number
- Class Code
- Base/Mandatory/Available Component Flag
- Full Item Description
- List Price
- SEWP Price

A.1.20.1. SPECIALIZED CONTRACT LINE ITEM NUMBERS

The following CLINs and their descriptions will be added to the Contract to cover non-product line items which have a varying price associated with them:

1) OPEN-Z: Open Market CLIN to be used for items totaling under the micro-purchase threshold of $3,000 per order; within scope of SEWP contract but not available as a separately orderable item
2) TRAVEL-Z: Travel expenses based on the current Government rates for per diem and transportation. Any other travel cost related to an order fulfillment e.g. installation, shall be negotiated on a per order basis
3) SEWP-Z: SEWP IV Contract Administration Fee (Surcharge)
4) CREDIT-Z: Credit Discount
5) DELIVERY-Z: Delivery Fee

A.1.20.2. BUNDLED LINE ITEMS

The Contractor may propose a single line item which bundles together a number of separate products into one CLIN provided that:

1) each of the products are available as separate CLINs in the Contract
2) the description for the bundled line item include the list of separate CLINs included
3) the bundled CLIN is firm fixed price

(End of text)

A.1.21. ORDER LIMITATIONS (52.216-19) (OCT 1995)

a) Minimum order: When the Government requires supplies or services covered by this contract in an amount of less than $2,500, the Contractor is not 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 $2 million;
(2) Any order for a combination of items in excess of $10 million;
(3) A series of orders from the same ordering office within 30 days that together call for quantities exceeding 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) above.

(d) Notwithstanding paragraphs (b) and (c) above, 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 seven (7) 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)

A.1.22. FAIR OPPORTUNITY AND REQUESTS FOR QUOTES

Contractors will be provided fair opportunity at the individual order level through the WWW search capabilities and other appropriate market research procedures, including the SEWP Online Search and RFQ tools. No documentation for the order selection is required to be submitted with the order. All such documentation is to be maintained by the end user.

In support of the fair opportunity requirement, the SEWP BOWL will utilize Technology Refreshment and Contractor provided reports in accordance with Attachment D to provide the database record of all available CLINS, descriptions, product features and prices for all items available through all SEWP contracts, along with past performance data, and shall provide search and quote tools to query across contracts.

The Contractor shall not market, quote or otherwise offer for sale, under this contract, any products not listed in Attachment F, Pricing Exhibits until the said products are included in the SEWP database, and available to all Government end-users.

If the Government issues a Request For Information (RFI) as part of market research, the Contractor may provide items not yet listed on their SEWP contract as part of a market research quote if:

1. all such items are clearly marked as not yet available on their SEWP contract;
2. the contractor submits a technology refreshment request to add those products to their contract

If the Government issues a Formal / Final Request For Quote (RFQ), the Contractor may only respond with items available on their Contract. If the Contractor has insufficient items on their contract to fully respond to the Formal RFQ, the Contractor must respond with a No Bid.

When the Contractor markets, quotes or otherwise offers for sale a product under this contract, the price of each item shall be the no greater than the price in Attachment F, Pricing Exhibits at the time the quote is issued.

When submitting a quote to a Government end-user, the contractor must clearly state the length of time the quote is valid. The contractor shall honor any order submitted within the stated time period of a quote.

When responding to an RFI or RFQ issued from the NASA SEWP BOWL on-line quoting system, the Contractor must respond as outlined in Attachment D, Section D.1. On-line Quoting.

(End of text)

A.1.23. INVOICES – SUBMISSION OF

All invoices shall be submitted to the "Designated Billing Office" and/or "Designated Payment Office" address specified in each delivery order.

(End of text)

A.1.24. DD 250 USAGE

The Contractor may utilize a DD 250 in lieu of an invoice.

(End of text)

A.1.25. F.O.B. DESTINATION (52.247-34) (NOV 1991)

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

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

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

(b) The Contractor shall--

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

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

(2) Prepare and distribute commercial bills of lading;
(3) Deliver the shipment in good order and condition to the point of delivery specified in the contract;
(4) Be responsible for any loss of and/or damage to the goods occurring before receipt of the shipment by the consignee at the delivery point specified in the contract;
(5) Furnish a delivery schedule and designate the mode of delivering carrier; and
(6) Pay and bear all charges to the specified point of delivery.

(End of clause)

A.1.26. DELIVERY AND OTHER CHARGES

All deliverable line item prices shall be inclusive of all charges that are included in the line item's commercial list pricing. If the delivery price is not included in the commercial list price, then the Contractor may charge a delivery fee using the Contract's Delivery-Z CLIN, in Attachment F.

Items returned prior to the Government's acceptance are not subject to restocking fees or other charges.

(End of text)

A.1.27. EXPORT LICENSES (1852.225-70) (FEB 2000)

(a) The Contractor shall comply with all U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, and the Export Administration Regulations (EAR), 15 CFR Parts 730 through 799, in the performance of this contract. In the absence of available license exemptions/exceptions, the Contractor shall be responsible for obtaining the appropriate licenses or other approvals, if required, for exports of hardware, technical data, and software, or for the provision of technical assistance.

(b) The Contractor shall be responsible for obtaining export licenses, if required, before utilizing foreign persons in the performance of this contract, including instances where the work is to be performed on-site at any Government installation, where the foreign person will have access to export-controlled technical data or software.

(c) The Contractor shall be responsible for all regulatory record keeping requirements associated with the use of licenses and license exemptions/exceptions.

(d) The Contractor shall be responsible for ensuring that the provisions of this clause apply to its subcontractors.

(End of clause)

A.1.28. CONTRACTOR COLLECTION OF AGENCY ADMINISTRATIVE HANDLING FEE

An Agency Administrative Handling Fee, not to exceed 3/4 % of the total price of the delivery order, shall be applied to all orders under the SEWP IV contracts. The SEWP IV website will post the Agency Administrative Handling Fee percentage, and the Contractor shall be notified via email by the SEWP Business Operations Workstation Laboratory (BOWL). The handling fee's collection shall be done in accordance with the procedures outlined below.

Contractor Responsibilities:

(a) Each contract shall include a CLIN called SEWPZ which will be referenced by customers on all orders where the handling fee applies. This CLIN should be an editable CLIN.

(b) In providing quotations to agencies, the Contractor shall be responsible for referencing the CLIN with the applicable dollar amount. The CLIN may be rounded to the nearest whole dollar.

(c) The CLIN will apply to all such orders. These include, but are not limited to, original orders, modifications to orders, product orders, and service orders. On modifications that reduce the fixed price of orders, a credit for the handling fee may be expressed as a negative CLIN.

- if a fee cap exists, the cap applies to each order and each separate modification to the original order.

(d) Alternatively, the contractor can calculate the fee and then add the calculated amount to the price of product CLINs if:

- the quote identifies that the fee is included in the price of the CLINs
- the quote includes a comment indicating the amount of the fee in the quote
- the total order amount does not exceed the sum of the SEWP prices for each CLIN plus the applicable fee.

(d) The Contractor shall invoice the ordering agency for the entire amount of the order (including the handling fee). When invoicing for monthly services, Contractors should include the CLIN on the first invoice. It should reflect the handling fee for the entire period of service. The same is true for partial shipments. The Contractor should include the CLIN, reflecting the handling fee for the entire order, on the invoice coinciding with the first shipment.

(e) Quarterly, the Contractor shall be responsible for sending a payment to NASA/Goddard Space Flight Center, SEWP, Code 720, reflecting the total administrative handling fee collected during that period. The Contractor will be only responsible for forwarding payment on handling fees actually collected. The Contractor shall determine the timing of the quarterly payment. The payment is to be made by check payable to NASA/Goddard Space Flight Center, at the following address: NASA/Goddard Space Flight Center, Attention: SEWP/Code 720, Greenbelt, MD 20771.

(f) Coinciding with the payment, the Contractor must send an “Agency Administrative Handling Fees Collected” report to NASA GSFC, Code 720, Attn: Resource Analyst, Greenbelt, MD 20771. The report must list the SEWP Control Number and/or Agency Order number, the Total Order Amount, and the administrative handling fee collected for each order reflected in the total payment. The report must be sorted by SEWP Control Number or by Agency Order number. The report must have totals for the Total Order Amount and the Agency Administrative Handling Fee Collected. This report must be submitted on hard copy and electronically. Electronic reports should be submitted as described in Attachment D, Contractor /Government Communications Requirements, Section D.6.

(g) In the event that the Contractor has invoiced for the fee per paragraph d) above and an ordering agency does not pay the applicable handling fee to the Contractor, the Contractor shall not be held responsible for ensuring the agency pays the handling fee. If this occurs, the Contractor shall notify the Contracting Officer's Technical Representative immediately.

Ordering Agency Responsibilities:

(a) The ordering agency is responsible for correctly including the Agency Administrative Handling Fee. The Contractor may hold or reject an order because of an incorrectly calculated handling fee. In this case, the Contractor must inform the ordering agency that a modification to the order or a new order is required to correct the handling fee amount and process the order. If the Contractor accepts an order with an incorrectly calculated handling fee, the Contractor assumes responsibility for invoicing, retrieving and paying the correct fee amount.

(End of text)

A.1.29. OMBUDSMAN (1852.215-84) (OCT 2003)--ALTERNATE I (JUNE 2000)

(a) An ombudsman has been appointed to hear and facilitate the resolution of concerns from offerors, potential offerors, and contractors during the preaward and postaward phases of this acquisition. When requested, the ombudsman will maintain strict confidentiality as to the source of the concern. The existence of the ombudsman is not to diminish the authority of the contracting officer, the Source Evaluation Board, or the selection official. Further, the ombudsman does not participate in the evaluation of proposals, the source selection process, or the adjudication of formal contract disputes. Therefore, before consulting with an ombudsman, interested parties must first address their concerns, issues, disagreements, and/or recommendations to the contracting officer for resolution.

(b) If resolution cannot be made by the contracting officer, interested parties may contact the installation ombudsman, Dorothy C. Perkins at:

Goddard Space Flight Center
Mailstop 100
Greenbelt, MD 20771
Business Phone: 301 286-5066
Fax Number: 301 286-1714
E-mail address: Dorothy.C.Perkins@nasa.gov

Concerns, issues, disagreements, and recommendations, which cannot be resolved at the installation, may be referred to the NASA ombudsman, the Director of the Contract Management Division, at 202-358-0445, facsimile 202-358-3083, e-mail james.a.balinskas@nasa.gov. Please do not contact the ombudsman to request copies of the solicitation, verify offer due date, or clarify technical requirements. Such inquiries shall be directed to the Contracting Officer or as specified elsewhere in this document.

(c) If this is a task or delivery order contract, the ombudsman shall review complaints from contractors and ensure they are afforded a fair opportunity to be considered, consistent with the procedures of the contract.

(End of clause)

A.1.30. SAFETY AND HEALTH (SHORT FORM) (52.223-72) (APR 2002)

(a) Safety is the freedom from those conditions that can cause death, injury, occupational illness; damage to or loss of equipment or property, or damage to the environment. NASA's safety priority is to protect: (1) the public, (2) astronauts and pilots, (3) the NASA workforce (including contractor employees working on NASA contracts), and (4) high-value equipment and property.

(b) The Contractor shall take all reasonable safety and occupational health measures consistent with standard industry practice in performing this contract. The Contractor shall comply with all Federal, State, and local laws applicable to safety and occupational health and with the safety and occupational health standards, specifications, reporting requirements, and any other relevant requirements of this contract.

(c) The Contractor shall take, or cause to be taken, any other safety, and occupational health measures the Contracting Officer may reasonably direct. To the extent that the Contractor may be entitled to an equitable adjustment for those measures under the terms and conditions of this contract, the equitable adjustment shall be determined pursuant to the procedures of the Changes clause of this contract; provided, that no adjustment shall be made under this Safety and Health clause for any change for which an equitable adjustment is expressly provided under any other clause of the contract.

(d) The Contracting Officer may notify the Contractor in writing of any noncompliance with this clause and specify corrective actions to be taken. In situations where the Contracting Officer becomes aware of noncompliance that may pose a serious or imminent danger to safety and health of the public, astronauts and pilots, the NASA workforce (including Contractor employees working on NASA contracts), or high value mission critical equipment or property, the Contracting Officer shall notify the Contractor orally, with written confirmation. The Contractor shall promptly take and report any necessary corrective action. The Government may pursue appropriate remedies in the event the contractor fails to promptly take the necessary corrective action.

(e) The Contractor (or subcontractor or supplier) shall insert the substance of this clause, including this paragraph (e) and any applicable Schedule provisions, with appropriate changes of designations of the parties, in subcontracts of every tier that exceed the micro-purchase threshold.

(End of clause)

A.1.31. MAJOR BREACH OF SAFETY OR SECURITY (1852.223-75) (FEB 2002)

(a) Safety is the freedom from those conditions that can cause death, injury, occupational illness, damage to or loss of equipment or property, or damage to the environment. Safety is essential to NASA and is a material part of this contract. NASA's safety priority is to protect: (1) the public; (2) astronauts and pilots; (3) the NASA workforce (including contractor employees working on NASA contracts); and (4) high-value equipment and property. A major breach of safety may constitute a breach of contract that entitles the Government to exercise any of its rights and remedies applicable to material parts of this contract, including termination for default. A major breach of safety must be related directly to the work on the contract. A major breach of safety is an act or omission of the Contractor that consists of an accident, incident, or exposure resulting in a fatality or mission failure; or in damage to equipment or property equal to or greater than $1 million; or in any "willful" or "repeat" violation cited by the Occupational Safety and Health Administration (OSHA) or by a state agency operating under an OSHA approved plan.

(b) Security is the condition of safeguarding against espionage, sabotage, crime (including computer crime), or attack. A major breach of security may constitute a breach of contract that entitles the Government to exercise any of its rights and remedies applicable to material parts of this contract, including termination for default. A major breach of security may occur on or off Government installations, but must be related directly to the work on the contract. A major breach of security is an act or omission by the Contractor that results in compromise of classified information; illegal technology transfer; workplace violence resulting in criminal conviction; sabotage; compromise or denial of information technology services; equipment or property damage from vandalism greater than $250,000 or theft greater than $250,000.

(c) In the event of a major breach of safety or security, the Contractor shall report the breach to the Contracting Officer. If directed by the Contracting Officer, the Contractor shall conduct its own investigation and report the results to the Government. The Contractor shall cooperate with the Government investigation, if conducted.

(End of clause)

A.1.32. CONTRACTOR PERFORMANCE ASSESSMENT

The Contractor's performance under this contract shall be assessed annually in accordance with the requirements of FAR subpart 42.15, and the policy and procedures specified in the NFS subparts 1842.1502 and 1842.1503. End users of products and services shall be periodically contacted to provide input for this assessment.

(End of text)

A.1.33. RELEASE OF SENSITIVE INFORMATION (1852.237-73) (JUNE 2005)

(a) As used in this clause, “sensitive information” refers to information, not currently in the public domain, that the Contractor has developed at private expense, that may embody trade secrets or commercial or financial information, and that may be sensitive or privileged.

(b) In accomplishing management activities and administrative functions, NASA relies heavily on the support of various service providers. To support NASA activities and functions, these service providers, as well as their subcontractors and their individual employees, may need access to sensitive information submitted by the Contractor under this contract. By submitting this proposal or performing this contract, the Contractor agrees that NASA may release to its service providers, their subcontractors, and their individual employees, sensitive information submitted during the course of this procurement, subject to the enumerated protections mandated by the clause at 1852.237-72, Access to Sensitive Information.

(c)(1) The Contractor shall identify any sensitive information submitted in support of this proposal or in performing this contract. For purposes of identifying sensitive information, the Contractor may, in addition to any other notice or legend otherwise required, use a notice similar to the following:

Mark the title page with the following legend:

This proposal or document includes sensitive information that NASA shall not disclose outside the Agency and its service providers that support management activities and administrative functions. To gain access to this sensitive information, a service provider's contract must contain the clause at NFS 1852.237-72, Access to Sensitive Information. Consistent with this clause, the service provider shall not duplicate, use, or disclose the information in whole or in part for any purpose other than to perform the services specified in its contract. This restriction does not limit the Government's right to use this information if it is obtained from another source without restriction. The information subject to this restriction is contained in pages [insert page numbers or other identification of pages].

Mark each page of sensitive information the Contractor wishes to restrict with the following legend:

Use or disclosure of sensitive information contained on this page is subject to the restriction on the title page of this proposal or document.

(2) The Contracting Officer shall evaluate the facts supporting any claim that particular information is "sensitive." This evaluation shall evaluate the time and resources necessary to protect the information in accordance with the detailed safeguards mandated by the clause at 1852.237-72, Access to Sensitive Information. However, unless the Contracting Officer decides, with the advice of Center counsel, that reasonable grounds exist to challenge the Contractor's claim that particular information is sensitive, NASA and its service providers and their employees shall comply with all of the safeguards contained in paragraph (d) of this clause.

(d) To receive access to sensitive information needed to assist NASA in accomplishing management activities and administrative functions, the service provider must be operating under a contract that contains the clause at 1852.237-72, Access to Sensitive Information. This clause obligates the service provider to do the following:

(1) Comply with all specified procedures and obligations, including the Organizational Conflicts of Interest Avoidance Plan, which the contract has incorporated as a compliance document.

(2) Utilize any sensitive information coming into its possession only for the purpose of performing the services specified in its contract.

(3) Safeguard sensitive information coming into its possession from unauthorized use and disclosure.

(4) Allow access to sensitive information only to those employees that need it to perform services under its contract.

(5) Preclude access and disclosure of sensitive information to persons and entities outside of the service provider's organization.

(6) Train employees who may require access to sensitive information about their obligations to utilize it only to perform the services specified in its contract and to safeguard it from unauthorized use and disclosure.

(7) Obtain a written affirmation from each employee that he/she has received and will comply with training on the authorized uses and mandatory protections of sensitive information needed in performing this contract.

(8) Administer a monitoring process to ensure that employees comply with all reasonable security procedures, report any breaches to the Contracting Officer, and implement any necessary corrective actions.

(e) When the service provider will have primary responsibility for operating an information technology system for NASA that contains sensitive information, the service provider's contract shall include the clause at 1852.204-76, Security Requirements for Unclassified Information Technology Resources. The Security Requirements clause requires the service provider to implement an Information Technology Security Plan to protect information processed, stored, or transmitted from unauthorized access, alteration, disclosure, or use. Service provider personnel requiring privileged access or limited privileged access to these information technology systems are subject to screening using the standard National Agency Check (NAC) forms appropriate to the level of risk for adverse impact to NASA missions. The Contracting Officer may allow the service provider to conduct its own screening, provided the service provider employs substantially equivalent screening procedures.

(f) This clause does not affect NASA's responsibilities under the Freedom of Information Act.

(g) The Contractor shall insert this clause, including this paragraph (g), suitably modified to reflect the relationship of the parties, in all subcontracts that may require the furnishing of sensitive information.

(End of clause)

A.1.34. USE OF RURAL AREA SMALL BUSINESSES (1852.219-74) (SEP 1990)

(a) Definitions.

"Rural area" means any county with a population of fewer than twenty thousand individuals.

"Small business concern," as used in this clause, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding under this contract, and qualified as a small business under the criteria and size standards in 13 CFR 121.

(b) NASA prime and subcontractors are encouraged to use their best efforts to award subcontracts to small business concerns located in rural areas.

(c) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as small business concerns located in rural areas.

(d) The Contractor agrees to insert the provisions of this clause, including this paragraph (d), in all subcontracts hereunder that offer subcontracting possibilities.

(End of clause)

A.1.35. NASA 8 PERCENT GOAL (1852.219-76) (JUL 1997)

(a) Definitions.
"Historically Black Colleges or University", as used in this clause means an institution determined by the Secretary of Education to meet the requirements of 34 CFR Section 608.2. The term also includes any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.
"Minority institutions", as used in this clause, means an institution of higher education meeting the requirements of section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d-5(3)) which for the purposes of this clause includes a Hispanic-serving institution of higher education as defined in section 316(b)(1) of the Act (20 U.S.C. 1059c(b)(1)).
"Small disadvantaged business concern", as used in this clause, means a small business concern that (1) is at least 51 percent unconditionally owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one or more socially and economically disadvantaged individuals, and (2) has its management and daily business controlled by one or more such individuals. This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian Organization, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one or more of these entities, which has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian Organization, and which meets the requirements of 13 CFR 124.
"Women-owned small business concern", as used in this clause, means a small business concern (1) which is at least 51 percent owned by one or more women or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women, and (2) whose management and daily business operations are controlled by one or more women.
(b) The NASA Administrator is required by statute to establish annually a goal to make available to small disadvantaged business concerns, Historically Black Colleges and Universities, minority institutions, and women-owned small business concerns, at least 8 percent of NASA's procurement dollars under prime contracts or subcontracts awarded in support of authorized programs, including the space station by the time operational status is obtained.
(c) The contractor hereby agrees to assist NASA in achieving this goal by using its best efforts to award subcontracts to such entities to the fullest extent consistent with efficient contract performance.
(d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as small disadvantaged business concerns, Historically Black Colleges and Universities, minority institutions, and women-owned small business concerns.

(End of clause)

A.1.36. RESERVED

A.1.37. RESERVED

A.1.38. RESERVED

A.1.39. SECURITY REQUIREMENTS FOR UNCLASSIFIED INFORMATION TECHNOLOGY RESOURCES (1852.204-76) (NOV 2004) DEVIATION

(a) The Contractor shall be responsible for information and information technology (IT) security when the Contractor or its subcontractors must obtain physical or electronic (i.e., authentication level 2 and above as defined in National Institute of Standards and Technology (NIST) Special Publication (SP) 800-63, Electronic Authentication Guideline) access to NASA's computer systems, networks, or IT infrastructure, or where information categorized as low, moderate, or high by the Federal Information Processing Standards (FIPS) 199, Standards for Security Categorization of Federal Information and Information Systems, is stored, generated, or exchanged by NASA or on behalf of NASA by a contractor or subcontractor, regardless of whether the information resides on a NASA or a contractor/subcontractor's information system.

(b) IT Security Requirements.

(1) Within 30 days after contract award, a Contractor shall submit to the Contracting Officer for NASA approval an IT Security Plan, Risk Assessment, and FIPS 199, Standards for Security Categorization of Federal Information and Information Systems, Assessment. These plans and assessments, including annual updates shall be incorporated into the contract as compliance documents.

(i) The IT system security plan shall be prepared consistent, in form and content, with NIST SP 800-18, Guide for Developing Security Plans for Federal Information Systems, and any additions/augmentations described in NASA Procedural Requirements (NPR) 2810, Security of Information Technology. The security plan shall identify and document appropriate IT security controls consistent with the sensitivity of the information and the requirements of Federal Information Processing Standards (FIPS) 200, Recommended Security Controls for Federal Information Systems. The plan shall be reviewed and updated in accordance with NIST SP 800-26, Security Self-Assessment Guide for Information Technology Systems, and FIPS 200, on a yearly basis.

(ii) The risk assessment shall be prepared consistent, in form and content, with NIST SP 800-30, Risk Management Guide for Information Technology Systems, and any additions/augmentations described in NPR 2810. The risk assessment shall be updated on a yearly basis.

(iii) The FIPS 199 assessment shall identify all information types as well as the "high water mark," as defined in FIPS 199, of the processed, stored, or transmitted information necessary to fulfill the contractual requirements.

(2) The Contractor shall produce contingency plans consistent, in form and content, with NIST SP 800-34, Contingency Planning Guide for Information Technology Systems, and any additions/augmentations described in NPR 2810. The Contractor shall perform yearly "Classroom Exercises." "Functional Exercises," shall be coordinated with the Center CIOs and be conducted once every three years, with the first conducted within the first two years of contract award. These exercises are defined and described in NIST SP 800-34.

(3) The Contractor shall ensure coordination of its incident response team with the NASA Incident Response Center and the NASA Security Operations Center.

(4) The Contractor shall ensure that its employees, in performance of the contract, receive annual IT security training in NASA IT Security policies, procedures, computer ethics, and best practices in accordance with NPR 2810 requirements. The Contractor may use web-based training available from NASA to meet this requirement.

(5) The Contractor shall provide NASA, including the NASA Office of Inspector General, access to the Contractor's and subcontractors' facilities, installations, operations, documentation, databases, and personnel used in performance of the contract. Access shall be provided to the extent required to carry out IT security inspection, investigation, and/or audits to safeguard against threats and hazards to the integrity, availability, and confidentiality of NASA information or to the function of computer systems operated on behalf of NASA, and to preserve evidence of computer crime. To facilitate mandatory reviews, the Contractor shall ensure appropriate compartmentalization

of NASA information, stored and/or processed, either by information systems in direct support of the contract or that are incidental to the contract.

(6) The Contractor shall ensure that all individuals who perform tasks as a system administrator, or have authority to perform tasks normally performed by a system administrator, demonstrate knowledge appropriate to those tasks. Knowledge is demonstrated through the NASA System Administrator Security Certification Program. A system administrator is one who provides IT services, network services, files storage, and/or web services, to someone else other than themselves and takes or assumes the responsibility for the security and administrative controls of that service. Within 30 days after contract award, the Contractor shall provide to the Contracting Officer a list of all system administrator positions and personnel filling those positions, along with a schedule that ensures certification of all personnel within 90 days after contract award. Additionally, the Contractor should report all personnel changes which impact system administrator positions within 5 days of the personnel change and ensure these individuals obtain System Administrator certification within 90 days after the change.

(7) When the Contractor is located at a NASA Center or installation or is using NASA IP address space, the Contractor shall --

(i) Submit requests for non-NASA provided external Internet connections to the Contracting Officer for approval by the Network Security Configuration Control Board (NSCCB);

(ii) Comply with the NASA CIO metrics including patch management, operating systems and application configuration guidelines, vulnerability scanning, incident reporting, system administrator certification, and security training; and

(iii) Utilize the NASA Public Key Infrastructure (PKI) for all encrypted communication or non-repudiation requirements within NASA when secure email capability is required.

(c) Physical and Logical Access Requirements.

(1) Contractor personnel requiring access to IT systems operated by the Contractor for NASA or interconnected to a NASA network shall be screened at an appropriate level in accordance with NPR 2810 and Chapter 4, NPR 1600.1, NASA Security Program Procedural Requirements. NASA shall provide screening, appropriate to the highest risk level, of the IT systems and information accessed, using, as a minimum, National Agency Check with Inquiries (NACI). The Contractor shall submit the required forms to the NASA Center Chief of Security (CCS) within fourteen (14) days after contract award or assignment of an individual to a position requiring screening. The forms may be obtained from the CCS. At the option of NASA, interim access may be granted pending completion of the required investigation and final access determination. For Contractors who will reside on a NASA Center or installation, the security screening required for all required access (e.g., installation, facility, IT, information, etc.) is consolidated to ensure only one investigation is conducted based on the highest risk level. Contractors not residing on a NASA installation will be screened based on their IT access risk level determination only. See NPR 1600.1, Chapter 4.

(2) Guidance for selecting the appropriate level of screening is based on the risk of adverse impact to NASA missions. NASA defines three levels of risk for which screening is required (IT-1 has the highest level of risk).

(i) IT-1 -- Individuals having privileged access or limited privileged access to systems whose misuse can cause very serious adverse impact to NASA missions. These systems include, for example, those that can transmit commands directly modifying the behavior of spacecraft, satellites or aircraft.

(ii) IT-2 -- Individuals having privileged access or limited privileged access to systems whose misuse can cause serious adverse impact to NASA missions. These systems include, for example, those that can transmit commands directly modifying the behavior of payloads on spacecraft, satellites or aircraft; and those that contain the primary copy of “level 1” information whose cost to replace exceeds one million dollars.

(iii) IT-3 -- Individuals having privileged access or limited privileged access to systems whose misuse can cause significant adverse impact to NASA missions. These systems include, for example, those that interconnect with a NASA network in a way that exceeds access by the general public, such as bypassing firewalls; and systems operated by the Contractor for NASA whose function or information has substantial cost to replace, even if these systems are not interconnected with a NASA network.

(3) Screening for individuals shall employ forms appropriate for the level of risk as established in Chapter 4, NPR 1600.1.

(4) The Contractor may conduct its own screening of individuals requiring privileged access or limited privileged access provided the Contractor can demonstrate to the Contracting Officer that the procedures used by the Contractor are equivalent to NASA's personnel screening procedures for the risk level assigned for the IT position.

(5) Subject to approval of the Contracting Officer, the Contractor may forgo screening of Contractor personnel for those individuals who have proof of a --

(i) Current or recent national security clearances (within last three years);

(ii) Screening conducted by NASA within the last three years that meets or exceeds the screening requirements of the IT position; or

(iii) Screening conducted by the Contractor, within the last three years, that is equivalent to the NASA personnel screening procedures as approved by the Contracting Officer and concurred on by the CCS.

(d) The Contracting Officer may waive the requirements of paragraphs (b) and (c)(1) through (c)(3) upon request of the Contractor. The Contractor shall provide all relevant information requested by the Contracting Officer to support the waiver request.

(e) The Contractor shall contact the Contracting Officer for any documents, information, or forms necessary to comply with the requirements of this clause.

(f) The Contractor shall insert this clause, including this paragraph (f), in all subcontracts when the subcontractor is required to –

(1) Have physical or electronic access to NASA's computer systems, networks, or IT infrastructure; or

(2) Use information systems to generate, store, or exchange data with NASA or on behalf of NASA, regardless of whether the data resides on a NASA or a contractor's information system.

(End of clause)

[END OF ADDENDUM 1]

II. CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS--COMMERCIAL ITEMS (52.212-5) (NOV 2006)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

(1) 52.233-3, Protest After Award (AUG 1996) (31 U.S.C. 3553).

(2) 52.233-4, Applicable Law for Breach of Contract Claim (OCT 2004) (Pub. L. 108-77, 108-78)

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

_X_ (1) 52.203-6, Restrictions on Subcontractor Sales to the Government (Sept 2006), with Alternate I (Oct 1995) (41 U.S.C. 253g and 10 U.S.C. 2402).

__ (2) 52.219-3, Notice of Total HUBZone Set-Aside (Jan 1999) (15 U.S.C. 657a).

__ (3) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (JULY 2005) (if the offeror elects to waive the preference, it shall so indicate in its offer) (15 U.S.C. 657a).[

__ (4) Reserved]

_X_ (5)(i) 52.219-6, Notice of Total Small Business Set-Aside (June 2003) (15 U.S.C. 644).

__ (ii) Alternate I (Oct 1995) of 52.219-6.

__ (iii) Alternate II (Mar 2004) of 52.219-6.

__ (6)(i) 52.219-7, Notice of Partial Small Business Set-Aside (June 2003) (15 U.S.C. 644).

__ (ii) Alternate I (Oct 1995) of 52.219-7.

__ (iii) Alternate II (Mar 2004) of 52.219-7.

_X_ (7) 52.219-8, Utilization of Small Business Concerns (May 2004) (15 U.S.C. 637(d)(2) and (3)).

__ (8)(i) 52.219-9, Small Business Subcontracting Plan (Sept 2006) (15 U.S.C. 637(d)(4).

__ (ii) Alternate I (Oct 2001) of 52.219-9.

__ (iii) Alternate II (Oct 2001) of 52.219-9.

_X_ (9) 52.219-14, Limitations on Subcontracting (Dec 1996) (15 U.S.C. 637(a)(14)).

__ (10)(i) 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (SEPT 2005) (10 U.S.C. 2323) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).

__ (ii) Alternate I (June 2003) of 52.219-23.

__ (11) 52.219-25, Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting (Oct 1999) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).

__ (12) 52.219-26, Small Disadvantaged Business Participation Program—Incentive Subcontracting (Oct 2000) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).

__ (13) 52.219-27, Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside (May 2004).

__ (14) 52.222-3, Convict Labor (June 2003) (E.O. 11755).

__ (15) 52.222-19, Child Labor—Cooperation with Authorities and Remedies (Jan 2006) (E.O. 13126).

_X_ (16) 52.222-21, Prohibition of Segregated Facilities (Feb 1999).

_X_ (17) 52.222-26, Equal Opportunity (Apr 2002) (E.O. 11246).

_X_ (18) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006) (38 U.S.C. 4212).

_X_ (19) 52.222-36, Affirmative Action for Workers with Disabilities (Jun 1998) (29 U.S.C. 793).

_X_ (20) 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006) (38 U.S.C. 4212).

_X_ (21) 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004) (E.O. 13201).

__ (22)(i) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Products (Aug 2000) (42 U.S.C. 6962(c)(3)(A)(ii)).

__ (ii) Alternate I (Aug 2000) of 52.223-9 (42 U.S.C. 6962(i)(2)(C)).

__ (23) 52.225-1, Buy American Act—Supplies (June 2003) (41 U.S.C. 10a-10d).

(24)(i) 52.225-3, Buy American Act—Free Trade Agreements—Israeli Trade Act (Nov 2006) (41 U.S.C. 10a-10d, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note, Pub. L 108-77, 108-78, 108-286, 109-53 and 109-169).

__ (ii) Alternate I (Jan 2004) of 52.225-3.

__ (iii) Alternate II (Jan 2004) of 52.225-3.

_X_ (25) 52.225-5, Trade Agreements (Nov 2006) (19 U.S.C. 2501, *et seq*., 19 U.S.C. 3301 note).

_X_ (26) 52.225-13, Restrictions on Certain Foreign Purchases (Feb 2006) (E.o.s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

__ (27) 52.226-4, Notice of Disaster or Emergency Area Set-Aside (42 U.S.C. 5150).

__ (28) 52.226-5, Restrictions on Subcontracting Outside Disaster or Emergency Area (42 U.S.C. 5150).

__ (29) 52.232-29, Terms for Financing of Purchases of Commercial Items (Feb 2002) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).

__ (30) 52.232-30, Installment Payments for Commercial Items (Oct 1995) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).

__ (31) 52.232-33, Payment by Electronic Funds Transfer—Central Contractor Registration (Oct 2003) (31 U.S.C. 3332).

_X_ (32) 52.232-34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration (May 1999) (31 U.S.C. 3332).

__ (33) 52.232-36, Payment by Third Party (May 1999) (31 U.S.C. 3332).

__ (34) 52.239-1, Privacy or Security Safeguards (Aug 1996) (5 U.S.C. 552a).

__ (35)(i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx. 1241(b) and 10 U.S.C. 2631).

__ (ii) Alternate I (Apr 2003) of 52.247-64.

(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

__ (1) 52.222-41, Service Contract Act of 1965, as Amended (July 2005) (41 U.S.C. 351, *et seq*.).

__ (2) 52.222-42, Statement of Equivalent Rates for Federal Hires (May 1989) (29 U.S.C. 206 and 41 U.S.C. 351, *et seq*.).

__ (3) 52.222-43, Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts) (Nov 2006) (29 U.S.C. 206 and 41 U.S.C. 351, *et seq*.).

__ (4) 52.222-44, Fair Labor Standards Act and Service Contract Act—Price Adjustment (Feb 2002) (29 U.S.C. 206 and 41 U.S.C. 351, *et seq*.).

(d) *Comptroller General Examination of Record*. The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at 52.215-2, Audit and Records—Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any

resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e)(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in paragraphs (i) through (vii) of this paragraph in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—

(i) 52.219-8, Utilization of Small Business Concerns (May 2004) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds $550,000 ($1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(ii) 52.222-26, Equal Opportunity (Apr 2002) (E.O. 11246).

(iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006) (38 U.S.C. 4212).

(iv) 52.222-36, Affirmative Action for Workers with Disabilities (June 1998) (29 U.S.C. 793).

(v) 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004) (E.O. 13201).

(vi) 52.222-41, Service Contract Act of 1965, as Amended (July 2005), flow down required for all subcontracts subject to the Service Contract Act of 1965 (41 U.S.C. 351, *et seq*.).

(vii) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx. 1241(b) and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.

(2) While not required, the contractor may include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(End of clause)

ADDENDUM 2 - LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS

LIST OF ATTACHMENTS

The following attachments constitute part of this contract:

Attachment	Description
A	TECHNICAL SPECIFICATIONS
B	LIST OF DELIVERABLES
C	STATEMENT OF WORK
D	CONTRACTOR/GOVERNMENT COMMUNICATIONS REQUIREMENTS
E	RESERVED
F	PRICING EXHIBITS (CAN BE FOUND ON URL: www.sewp.nasa.gov/cgi-bin/socs.pl?ACTION=RFI)
G	IT SECURITY PLAN AND ASSESSMENT PLANS (To be provided)

(End of clause)

[END OF ADDENDUM 2]