

SUBCONTRACTOR AGREEMENT – FIXED PRICE SERVICES UNDER CPFF CONTRACT WITH USAID
("Agreement")

COVER SHEET

Company Name ("Company")	Palladium International LLC
Company Country	United States of America
Address	1331 Pennsylvania Ave NW, Suite 600, Washington DC 20004
Company Technical Representative Name and Title	Click here to enter text.
Company Representative Email	Click here to enter text.
Company Contracting Representative Name and Title	Olga Wall, Chief of Compliance and Contract Administration
Company Representative Email	Olga.Wall@thepalladiumgroup.com
Subcontractor Name ("Subcontractor")	Click here to enter text.
Subcontractor's DUNS Number	Click here to enter text.
Address	Click here to enter text.
Subcontractor's Technical Representative Name and Title	Click here to enter text.
Subcontractor's Representative Email	Click here to enter text.
Subcontractor's Contracting Representative Name and Title	Click here to enter text.
Subcontractor's Representative Email	Click here to enter text.
Project Name ("Project")	Click here to enter text.
Subcontractor Agreement Number (if applicable)	Click here to enter text.
Client ("Client")	U.S. Agency for International Development
Prime Contract date and parties ("Prime Contract")	Click here to enter text.
Prime Contract Currency	Click here to enter text.
Effective Date of this Agreement ("Effective Date")	Click here to enter a date.
Term ("Term")	Start: Click here to enter a date. End: Click here to enter a date.
Country of Performance ("Recipient Country")	Click or tap here to enter text.
Jurisdiction ("Jurisdiction")	District of Columbia, United States of America
Agreement Currency ("Agreement Currency")	USD
Records Retention Period ("Records Retention Period")	In accordance with FAR 4.7
Payment by	Choose an item.

This Agreement is governed by the laws of the Jurisdiction and the Parties submit to the jurisdiction of the courts of such place. This Agreement constitutes the entire agreement between the Parties. Any prior understanding, representation or warranty of any kind preceding the date of this Agreement is hereby superseded by this Agreement.

Signed for the Company:		Signed for the Subcontractor:	
Name:	Click here to enter text.	Name:	Click here to enter text.
Title/Role:	Click here to enter text.	Title/Role:	Click here to enter text.
Date:	Click here to enter a date.	Date:	Click here to enter a date.

TERMS AND CONDITIONS

This Subcontract is made between **Palladium International, LLC** (the “Company”), a limited liability company incorporated under the laws of the State of Delaware, U.S.A., and **Click or tap here to enter text.** (hereinafter called “the Subcontractor”) a **Click or tap here to enter text** institution, incorporated under the laws of **Click or tap here to enter text.**

The Agreement is in full force as of the first day of the Effective Date between the Company and the Subcontractor. The Company and the Subcontractor are collectively referred to as “the Parties”.

Now, therefore, in consideration of the promises and of the mutual covenants and agreements contained herein, and intending to be legally bound, the parties hereby agree to the following terms and conditions of this Agreement:

1. BACKGROUND: PERIOD OF PERFORMANCE/TERM OF ENGAGEMENT

- (a) The Company is an international project management and consultancy company that provides technical systems and project management.
- (b) The Subcontractor has represented that it has the necessary expertise and skills to assist the Company.
- (c) Based on the Subcontractor’s representations, the Company has decided to engage the Subcontractor to provide non-commercial goods/services to the Company, as described in Article 2, **Description of Deliverables** (“Deliverables”).
- (d) The Contractor has agreed to provide the Deliverables as defined in this Agreement for the consideration and on the terms and conditions contained in this Agreement.

2. DESCRIPTION OF DELIVERABLES

Refer to **ANNEX A** for complete details.

[Insert short description of the services to be provided or non-commercial goods to be purchased].

3. PRICES, INVOICING AND PAYMENT

Refer to **ANNEX B** for completed details.

[Insert short description of the pricing, invoicing, and payment terms for the subcontract.]

Subcontractor will submit invoices as provided in **Annex B** of the Agreement. Subject to the other terms and conditions of the Agreement, the Company will pay Subcontractor as provided in **Annex A** of the Agreement.

The Agreement Price(s) is/are all-inclusive and shall not be subject to adjustment based on Subcontractor's cost experience, or for any other reason (unless and only to the extent otherwise expressly provided in this Agreement). Unless otherwise expressly stated in any other provision of the Agreement (or as may be reasonably agreed on a case-by-case basis and effected by the parties in an amendment), all costs, fees, direct and indirect costs, wages, fringe and other benefits, social charges, allowances, differentials, inspections and tests, audits, insurances, taxes, and service, labor and other charges, as well as all effort and risks of whatever nature and amount relating to or resulting from performing the Agreement, whether by Subcontractor itself or third parties, shall be deemed to be included in the Agreement Price(s).

4. ACCEPTANCE OF AGREEMENT/TERMS AND CONDITIONS

- (a) This Agreement integrates, merges, and supersedes any prior offers, negotiations, and agreements concerning the subject matter hereof and constitutes the entire agreement between the parties.
- (b) Subcontractor's acknowledgment, acceptance of payment, or commencement of performance shall constitute Subcontractor's unqualified acceptance of this Agreement.
- (c) Unless expressly accepted in writing by Company, additional or differing terms or conditions proposed by Subcontractor or included in Subcontractor's acknowledgment are objected to by Company and have no effect.

- (d) The headings used in this Agreement are inserted for the convenience of the parties and shall not define, limit, or describe the scope or the intent of the provisions of this Agreement.

5. APPLICABLE LAWS

- (a) This Agreement and any matter arising out of or related to this Agreement shall be governed by the laws of the State and Country from which this Agreement is issued by Company, without regard to its conflicts of laws provisions, except that any provision in this Agreement that is (i) incorporated in full text or by reference from the Federal Acquisition Regulation (FAR); or (ii) incorporated in full text or by reference from any agency regulation that implements or supplements the FAR or; (iii) that is substantially based on any such agency regulation or FAR provision, shall be construed and interpreted according to the federal common law of government contracts as enunciated and applied by federal judicial bodies, boards of contracts appeals, and quasi-judicial agencies of the federal Government.
- (b) Subcontractor, in the performance of this Agreement, shall comply with all applicable local, state, and federal laws, orders, rules, regulations, and ordinances. Subcontractor shall procure all licenses/permits and pay all fees and other required charges and shall comply with all applicable guidelines and directives of any local, state, and/or federal governmental authority. Subcontractor, at its expense, shall provide reasonable cooperation to Company in conducting any investigation regarding the nature and scope of any failure by Subcontractor or its personnel to comply with applicable local, state, and federal laws, orders, rules, regulations, and ordinances that may affect the performance of Subcontractor's obligations under this Agreement.
- (c)
 - 1) If (i) Company's contract price or fee is reduced; (ii) Company's costs are determined to be unallowable; (iii) any fines, penalties or interest are assessed on Company; or (iv) Company incurs any other costs or damages; as a result of any violation of applicable laws, orders, rules, regulations, or ordinances by Subcontractor, its officers, employees, agents, suppliers, or subcontractors at any tier, Company may proceed as provided for in (3) below.
 - 2) Where submission of cost or pricing data is required or requested at any time prior to or during performance of this Subcontract, if Subcontractor or its lower-tier subcontractors: (i) submit and/or certify cost or pricing data that are defective; (ii) with notice of applicable cutoff dates and upon Company's request to provide cost or pricing data, submit cost or pricing data, whether certified or not certified at the time of submission, as a prospective subcontractor, and any such data are defective as of the applicable cutoff date on Company's Certificate of Current Cost or Pricing Data; (iii) claim an exception to a requirement to submit cost or pricing data and such exception is invalid; (iv) furnish data of any description that is inaccurate; or, if (v) the U.S. Government alleges any of the foregoing; and, as a result, (A) Company's contract price or fee is reduced; (B) Company's costs are determined to be unallowable; (C) any fines, penalties, or interest are assessed on Company; or (D) Company incurs any other costs or damages; Company may proceed as provided for in (3) below.
 - 3) **Upon the occurrence of any of the circumstances, other than withholdings, identified in paragraphs (1) and (2) above, Company may make a reduction of corresponding amounts (in whole or in part) in the price of this Agreement or any other contract with Subcontractor, and/or may demand payment (in whole or in part) of the corresponding amounts. Subcontractor shall promptly pay amounts so demanded. In the case of withholding(s), Company may withhold the same amount from Subcontractor under this Agreement.**
- (d) Subcontractor shall be responsible for compliance with all requirements and obligations relating to its employees under all local, state, and federal statutes, ordinances, rules and obligations including, but not limited to, employer's obligations under laws relating to: income tax withholding and reporting; civil rights; equal employment opportunity; discrimination on the basis of age, sex, race, color, religion, disability, national origin, or veteran status; overtime; minimum wage; social security contribution and withholding; unemployment insurance; employer's liability insurance; worker's compensation; veteran's rights; and all other employment, labor or benefits related laws.
- (e) Subcontractor shall notify Company promptly in writing if a charge of noncompliance with any law addressing occupational health and safety or protection of the environment has been filed against Subcontractor in connection with the performance of this Agreement.

6. ASSIGNMENT

Any assignment of Subcontractor's Agreement rights or delegation of Subcontractor's duties shall be void, unless prior written consent is given by Company. Nevertheless, Subcontractor may assign rights to be paid amounts due, or to become due, to a financing institution if Company is promptly furnished a signed copy of such assignment reasonably in advance of the due date for payment of any such amounts. Amounts assigned shall be subject to setoff or recoupment for any present or future claims of Company against Subcontractor. Company shall have the right to make settlements and/or adjustments in price without notice to any assignee financing institution.

7. CHANGE IN CONTROL OF SUBCONTRACTOR

Prior to a potential change of control of Subcontractor and at least ninety (90) days prior to the proposed effectiveness of such change of control, Subcontractor will promptly notify Company in writing thereof, and provide the identity of the potential new controlling party and information on such party and the transaction as Company may request, consistent with applicable law and confidentiality restrictions.

8. COMMUNICATION WITH COMPANY'S CUSTOMER

Subcontractor shall not communicate with Company's Client or higher tier Client in connection with this Agreement, except as expressly permitted by Company in writing. This clause does not prohibit Subcontractor from communicating with the U.S. Government with respect to (1) matters Subcontractor is required by law or regulation to communicate to the Government, (2) fraud, waste, or abuse communicated to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information, (3) any matter for which this Agreement, including a FAR or FAR Supplement clause included in this Agreement, provides for direct communication by Subcontractor to the Government, or (4) any material matter pertaining to payment or utilization.

9. CONTRACT DIRECTION

- (a) Only the Company Contracting Representative has authority on behalf of Company to make changes to this Agreement. All amendments must be identified as such in writing and executed by the parties where necessary.
- (b) Company's technical personnel may from time to time render assistance or give technical advice or discuss or effect an exchange of information with Subcontractor's personnel concerning the Work hereunder. No such action shall be deemed to be a change under the "Changes" clause of this Subcontract and shall not be the basis for equitable adjustment.
- (c) Except as otherwise provided herein, all notices to be furnished by Subcontractor shall be in writing and sent to the Company Contracting Representative.

10. COUNTERFEIT WORK

- (a) The following definitions apply to this clause:
"Counterfeit Work" means Work that is or contains unlawful or unauthorized reproductions, substitutions, or alterations that have been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified part from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used Work represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.
"Suspect Counterfeit Work" means Work for which credible evidence (including, but not limited to, visual inspection or testing) provides reasonable doubt that the Work part is authentic.
- (b) Subcontractor shall not deliver Counterfeit Work or Suspect Counterfeit Work to Company under this Agreement.
- (c) Subcontractor shall maintain counterfeit risk mitigation processes in accordance with applicable industry recognized standards and with any other specific requirements identified in this Agreement.
- (d) Subcontractor shall immediately notify Company with the pertinent facts if Subcontractor becomes aware that it has delivered Counterfeit Work or Suspect Counterfeit Work. Subcontractor, at its

expense, shall provide reasonable cooperation to Company in conducting any investigation regarding the delivery of Counterfeit Work or Suspect Counterfeit Work under this Agreement.

- (e) This clause applies in addition to and is not altered, changed, or superseded by any quality provision, specification, statement of work, regulatory flowdown, or other provision included in this Agreement addressing the authenticity of Work.
- (f) In the event that Work delivered under this Agreement constitutes or includes Counterfeit Work, Subcontractor shall, at its expense, promptly replace such Counterfeit Work with genuine Work conforming to the requirements of this Agreement. Notwithstanding any other provision in this Agreement, Subcontractor shall be liable for all costs relating to the removal and replacement of Counterfeit Work, including without limitation Company's costs of removing Counterfeit Work, of installing replacement Work and of any testing necessitated by the reinstallation of Work after Counterfeit Work has been exchanged. The remedies contained in this paragraph are in addition to any remedies Company may have at law, equity or under other provisions of this Agreement.
- (g) Subcontractor shall include paragraphs (a) through (f) and this paragraph (h) of this clause or equivalent provisions in lower tier subcontracts for the delivery of items that will be included in or furnished as Work to Company.

11. DEFINITIONS

- (a) The following terms shall have the meanings set forth below:

"Agreement" means the instrument of contracting, such as "Purchase Order", "PO", "Subcontract", or other such type designation, including these General Provisions, all referenced documents, exhibits and attachments. If these terms and conditions are incorporated into a "master" agreement that provides for releases, (in the form of a Purchase Order or other such document) the term "Agreement" shall also mean the Release document for the Work to be performed.

"FAR" means the Federal Acquisition Regulation, issued as Chapter 1 of Title 48, Code of Federal Regulations.

"Company" means Company CORPORATION, acting through its companies or business units as identified on the face of this Agreement. If a subsidiary or affiliate of Company CORPORATION is identified on the face of this Agreement, then "Company" means that subsidiary or affiliate.

"Company Procurement Representative" means a person authorized by Company's cognizant procurement organization to administer and/or execute this Agreement.

"Subcontractor" means the party identified on the Cover Page of this Agreement with whom Company is contracting.

"Work" means all required labor, articles, materials, supplies, goods, and services constituting the subject matter of this Agreement.

12. DISPUTES

- (a) Government-related disputes. In the event Subcontractor makes any claim involving any action or directive by, or on behalf of, the Government, or any question as to Subcontractor's compliance with the Prime Contract ("Government-related dispute"), Subcontractor shall submit its claim to Company, certified per the Contract Disputes Act and FAR 52.233-1, as a pass-through claim for presentation to the Government. In the case of a Government-related Dispute, Company's liability to Subcontractor shall be limited solely and exclusively to whatever monies are recovered in hand on behalf of Subcontractor from the Government. If Subcontractor submits a Government-related dispute to Company, and Company chooses at its sole discretion to present a pass-through claim against the Government, the following provisions will apply.
- (b) Claim presentation. Company, upon the written request by Subcontractor, shall present Subcontractor's Government-related dispute to the Government as a pass-through claim for resolution under the "Disputes" provisions of the prime contract and applicable law and regulation. Company agrees to present such claims for and on behalf of Subcontractor and to pass Subcontractor's Government-

related dispute through to the Government in good faith, subject to Subcontractor's providing sufficient justification, back-up and certification of said Government-related dispute.

- (c) Costs, fees, and expenses. Subcontractor shall bear all reasonable and documented costs, fees, and expenses associated with, and incurred by Company, as part of Company's presentation of Subcontractor's Government-related disputes to the Government, including attorney's and consultant's fees.
- (d) Exclusive remedy. The pass-through process described above shall be Subcontractor's only remedy for Government-related disputes. Subcontractor shall make no claims against the Company for Government-related disputes, and any such claims shall be dismissed.
- (e) Arbitration. All claims and disputes arising under, or relating to, this subcontract that are not Government-related disputes (e.g., are directly and exclusively between Company and Subcontractor) are to be settled by binding arbitration to be held in the District of Columbia, USA. The arbitration shall be conducted on a confidential basis pursuant to the the-existing commercial arbitration rules of the American Arbitration Association (AAA). Any such arbitration shall include a written record of the arbitration hearing. An award of arbitration may be confirmed in a court of competent jurisdiction.
- (f) Mediation: as a condition precedent to filing a demand for arbitration or otherwise initiating litigation, the parties hereto agree that they shall first attempt to resolve their dispute by mediation through the American Arbitration Association by filing a request for mediation with the AAA and the other party. That being said, a party can file a demand for arbitration simultaneously with the request for mediation, but AAA shall hold the demand for arbitration in abeyance until the mediator declares and impasse.
- (g) Applicable law. The laws of the District of Columbia shall govern the construction and interpretation of the rights and duties of the parties under this agreement.
- (h) Duty to perform. Pending final decision on any dispute under this article, Company and Subcontractor will proceed and continue with performance unabated. Until final resolution of any dispute hereunder, Subcontractor shall diligently proceed with the performance of this subcontract as directed by Company.

13. ELECTRONIC CONTRACTING

The parties agree that if this Agreement is transmitted electronically neither party shall contest the validity of this Agreement, or any acknowledgement thereof, on the basis that this Agreement or acknowledgement contains an electronic signature.

14. EXPORT CONTROL

- (a) Subcontractor shall comply with all applicable U.S. export control laws and economic sanctions laws and regulations, specifically including but not limited to the International Traffic in Arms Regulations (ITAR), 22 C.F.R. 120 et seq.; the Export Control Reform Act of 2018; the Export Administration Regulations, 15 C.F.R. 730-774; and the Foreign Assets Control Regulations, 31 C.F.R. 500-598 (collectively, "Trade Control Laws").
- (b) Subcontractor shall notify Company if any deliverable under this Agreement is restricted by applicable Trade Control Laws.
- (c) Subcontractor hereby represents that neither Subcontractor nor any parent, subsidiary or affiliate of Subcontractor is included on any of the restricted party lists maintained by the U.S. Government, including the Specially Designated Nationals List administered by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC"), Denied Parties List, Unverified List or Entity List maintained by the U.S. Commerce Department's Bureau of Industry and Security ("BIS"), or the List of Statutorily Debarred Parties maintained by the U.S. State Department's Directorate of Defense Trade Controls, or the consolidated list of asset freeze targets designated by the United Nations, European Union, and United Kingdom (collectively, "Restricted Party Lists"). Subcontractor shall immediately notify the Company Contracting Representative if Subcontractor, or any parent, subsidiary or affiliate of Subcontractor becomes listed on any Restricted Party List or if Subcontractor's export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. or non-U.S. government entity or agency.

- (d) Subcontractor shall be responsible for all losses, costs, claims, causes of action, damages, liabilities and expense, including attorney's fees, all expense of litigation and/or settlement, and court costs, arising from any act or omission of Subcontractor, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this clause.

15. EXTRAS

Work shall not be supplied in excess of quantities specified in this Agreement. Subcontractor shall be liable for handling charges and return shipment costs for any excess quantities.

16. FURNISHED PROPERTY

- (a) Company may, by written authorization, provide to Subcontractor property owned by either Company or its customer (Furnished Property). Furnished Property shall be used only for the performance of this Agreement.
- (b) Title to Furnished Property shall remain in Company or its customer. Subcontractor shall clearly mark (if not so marked) all Furnished Property to show its ownership.
- (c) Except for reasonable wear and tear, Subcontractor shall be responsible for, and shall promptly notify Company of, any loss or damage to Furnished Property. Without additional charge, Subcontractor shall manage, maintain, and preserve Furnished Property in accordance with applicable law, the requirements of this Agreement and good commercial practice.
- (d) At Company's request, and/or upon completion of this Agreement, Subcontractor shall submit, in an acceptable form, inventory lists of Furnished Property and shall deliver or make such other disposal as may be directed by Company.
- (e) The Government Property Clause contained in this Agreement shall apply in lieu of paragraphs (a) through (d) above with respect to Government-furnished property, or other property to which the Government has title

17. GRATUITIES/KICKBACKS

Subcontractor shall not offer or give a kickback or gratuity (in the form of entertainment, gifts, or otherwise) for the purpose of obtaining or rewarding favorable treatment as a Company supplier. By accepting this Agreement, 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 USC 51-58), both of which are incorporated herein by this specific reference, except that paragraph (c)(1) of FAR 52.203-7 shall not apply.

18. INDEMNITY

Subcontractor shall defend, indemnify, and hold harmless Company, its officers, directors, employees, consultants, agents, affiliates, successors, permitted assigns and customers from and against all losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorney's fees, all expenses of litigation and/or settlement, and court costs, arising from any act or omission of Subcontractor, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this Agreement.

19. INDEPENDENT CONTRACTOR RELATIONSHIP AND SUBCONTRACTOR PERSONNEL

- (a) Subcontractor's relationship to Company shall be that of an independent contractor and this Agreement does not create an agency, partnership, or joint venture relationship between Company and Subcontractor or Company and Subcontractor personnel. Personnel supplied by Subcontractor hereunder shall be deemed employees of Subcontractor and shall not for any purposes be considered employees or agents of Company. Subcontractor assumes full responsibility for the actions and supervision of such personnel while performing services under this Agreement. Company assumes no liability for Subcontractor personnel.
- (b) Nothing contained in this Agreement shall be construed as granting to Subcontractor or any personnel of Subcontractor rights under any Company benefit plan.

20. INFORMATION OF COMPANY

Prime Contract Number:
Subcontractor Name:
Subcontract Number:

- (a) Subcontractor shall not reproduce or disclose any information, knowledge, or data of Company that Subcontractor may receive from Company or have access to, including proprietary or confidential information of Company or of others when in possession of Company (hereinafter Company Information), without the prior written consent of Company. Company Information includes, but is not limited to, business plans, marketing information, cost estimates, forecasts, bid and proposal data, financial data, formulae, compositions, products, processes, procedures, inventions, systems, or designs. Subcontractor agrees not to use any Company Information for any purpose except to perform this Agreement. Subcontractor shall maintain data protection processes and systems sufficient to adequately protect Company information and comply with any law or regulation applicable to such information.
- (b) If Subcontractor becomes aware of any compromise of information used in the performance of this Agreement or provided by Company to Subcontractor, its officers, employees, agents, suppliers, or subcontractors (an "Incident"), Subcontractor shall take appropriate immediate actions to investigate and contain the Incident and any associated risks, including notification within seventy-two (72) hours to Company after learning of the Incident. As used in this clause, "compromise" means that information has been exposed to unauthorized access, inadvertent disclosure, known misuse, loss, destruction, or alteration other than as required to perform the Work. Subcontractor shall provide reasonable cooperation to Company in conducting any investigation regarding the nature and scope of any Incident. Any costs incurred in investigating or remedying Incidents shall be borne by Subcontractor.
- (c) Prior to commencement of Work, Subcontractor shall have a written agreement with each of its employees performing services hereunder sufficient to enable Subcontractor to comply with this Clause.
- (d) Company information provided to Subcontractor remains the property of Company. Within thirty (30) days of the expiration or termination of this Agreement or upon the request of Company, Subcontractor shall return or certify the destruction of all Company Information and any reproductions, and Subcontractor shall promptly surrender all information or proprietary data developed by Subcontractor in performance of this Agreement, unless its retention is authorized in writing by Company.
- (e) Any Company provided information identified as proprietary or subject to restrictions on public disclosure by law or regulation shall be encrypted (i) if transmitted via the Internet, or (ii) during electronic storage if potentially accessible by the Internet or otherwise by non-authorized users.
- (f) The provisions set forth above are in addition to and do not alter, change or supersede any obligations contained in a proprietary information agreement between the parties.

21. INFORMATION OF SUBCONTRACTOR

Subcontractor shall not provide any proprietary information to Company without prior execution of a proprietary information agreement by the parties.

22. INSURANCE

- (a) Subcontractor and its subcontractors shall maintain for the performance of this Agreement the following insurances at reasonable and sufficient levels as required by the Company:
 - i. Comprehensive general liability insurance;
 - ii. Bodily injury and property damage insurance;
 - iii. Workers' compensation insurance meeting the statutory requirements where Work will be performed;
 - iv. Defense Base Act Insurance;
 - v. Such other insurance as Company may require.
- (b) Subcontractor shall provide Company thirty (30) days advance written notice prior to the effective date of any cancellation or change in the term or coverage of any of Subcontractor's required insurance, provided however such notice shall not relieve Subcontractor of its obligations to maintain the required insurance. Subcontractor shall have its' insurers name Company as an additional insured on above referenced policies for the duration of this Agreement. If requested, Subcontractor shall provide a "Certificate of Insurance" evidencing Subcontractor's compliance with these requirements. Insurance maintained pursuant to this clause shall be considered primary as respects the interest of Company and is not contributory with any insurance which Company may carry.

- (c) "Subcontractor" as used in this clause shall include Subcontractor's subcontractors at any tier. Subcontractor's obligations herein for procuring and maintaining insurance coverage are freestanding and are not affected by any other language in this Agreement.

23. INTELLECTUAL PROPERTY

- (a) Subcontractor warrants that the Work performed or delivered under this Agreement will not infringe or otherwise violate the intellectual property rights of any third party in the United States or any foreign country. Except to the extent that the U.S. Government assumes liability therefor, Subcontractor shall defend, indemnify, and hold harmless Company, its officers, directors, employees, consultants, agents, affiliates, successors, permitted assigns and customers from and against all losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorney's fees, all expenses of litigation and/or settlement, and court costs, arising out of any action by a third party that is based upon a claim that the Work performed or delivered under this Agreement infringes or otherwise violates the intellectual property rights of any person or entity.
- (b) Subcontractor's obligations under paragraph (a) above shall not apply to the extent FAR 52.227-1 "Authorization and Consent" applies to Company's Prime Agreement for infringement of a U.S. patent and Company and its customers are not subject to any actions for claims, damages, losses, costs, and expenses, including reasonable attorney's fees by a third party.
- (c) In addition to the Government's rights in data and inventions, Subcontractor agrees that Company, in the performance of its prime or higher tier contract obligations (including obligations of follow-on contracts, contracts for subsequent phases of the same program, and sustainment contracts), shall have an unlimited, irrevocable, paid-up, royalty-free right to make, have made, sell, offer for sale, use, execute, reproduce, display, perform, distribute (internally or externally) copies of, transfer computer software to the US Government and the Government's end customer, and prepare derivative works, and authorize others to do any, some or all of the foregoing, any and all, inventions, discoveries, improvements and patents as well as any and all data, copyrights, reports, and works of authorship, conceived, developed, generated or delivered in performance of this Agreement.
- (d) The tangible medium storing copies of all reports, memoranda or other materials in written form including machine readable form, prepared by Subcontractor and furnished to Company pursuant to this Agreement shall become the sole property of Company.
- (e) No other provision in this Agreement, including but not limited to the Indemnity clause, shall be construed to limit the liabilities or remedies of the parties under this clause.

24. PAYMENT, TAXES AND DUTIES

- (1) Terms. Unless otherwise provided, terms of payment shall be net thirty (30) days from the latest of the following: (1) Company's receipt of Subcontractor's proper and accurate invoice; (2) scheduled completion of performance date of the Work; or (3) actual completion of performance of the Work.
- (2) Date of Payment. Payment shall be deemed to have been made as of the date of mailing Company's payment or electronic funds transfer.
- (3) Taxes. Unless otherwise specified, prices include all applicable federal, state, and local taxes, duties, tariffs, and similar fees imposed by any government, all of which shall be listed separately on the invoice.
- (4) Final Release. Upon payment of the final Subcontract invoice, both parties shall jointly sign a release mutually discharging the other, its officers, employees, and agents from all liabilities, obligations, and claims arising out of or related to this Subcontract, subject only to specified claims in stated amounts.
- (5) Setoff and deduction for monies owed. The Company shall have a right of setoff against payments due or at issue under this Subcontract or any other contract between the parties.
- a. Subcontractor hereby authorizes the Company to deduct from any moneys payable to Subcontractor (whether or not arising out of this Subcontract) all amounts which may be payable by Subcontractor to the Company, all amounts which are found by the Company or Subcontractor not to have been properly payable or overpaid, and also all amounts for which the Company may become liable to third parties by reason of Subcontractor's acts in performing or failing to perform Subcontractor's obligations under this Subcontract.

- b. In the event that any claim is made by a third party, the amount or validity of which is disputed by Subcontractor, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, the Company may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of the Company to exercise such right to deduct or to withhold shall not in any way affect the obligation of Subcontractor to protect the Company as elsewhere provided herein.
 - c. At any time, the Company may deduct from any payment(s) all or part of any amount due Subcontractor, whether in connection with this Subcontract or any other agreement(s) between the Company and Subcontractor, that the Company determines to be owed to it by the Subcontractor.
- (6) Extra Charges. Except as otherwise provided in this Subcontract, no payment for extras shall be made unless such extras have been authorized in writing.
- (7) Overpayment Notification. Should the Company make a payment which exceeds any elements (milestone billing amount) or ceiling amount of this Subcontract, Subcontractor shall notify the Company of that fact within fifteen (15) days of receiving the overpayment.

25. PLACE OF PERFORMANCE

[Insert place of performance from Cover sheet here.]

26. PRECEDENCE

The provisions of the Agreement shall be read together and applied in a manner consistent with the purpose of the Agreement to the maximum practicable extent. In the event of ambiguity of or apparent conflict or inconsistency between or among such provisions, Subcontractor shall have an affirmative duty to notify Company and obtain guidance before interpreting them. If it fails to do so, Subcontractor shall be bound by the interpretation deemed by Company, in its sole discretion, to be appropriate.

27. QUALITY CONTROL SYSTEM

Subcontractor shall provide and maintain a quality control system to its industry recognized Quality Standard and in compliance with any other specific quality requirements identified in this Agreement. Records of all quality control inspection work by Subcontractor shall be kept complete and available to Company and its customers.

28. RELEASE OF INFORMATION

Except as required by law, no public release of any information, or confirmation or denial of same, with respect to this Agreement or the subject matter hereof, will be made by Subcontractor or its subcontractors without the prior written approval of Company. Subcontractor shall not use Company's name, brand, trademark, or logo related to the term "Palladium" or any other trademark or logo owned by Company, in whatever shape or form, without the prior written consent of Company.

29. RETENTION OF RECORDS

Unless a longer period is specified in the Cover Sheet to this Agreement or by law or regulation, Subcontractor shall retain all records related to this Agreement for four (4) years from the date of final payment received by Subcontractor. Records related to this Agreement include, but are not limited to, financial, proposal, procurement, specifications, production, inspection, test, quality, shipping and export, and certification records. At no additional cost, Subcontractor shall timely provide access to such records to the US Government and/or Company upon request.

30. SUBCONTRACTOR BUSINESS SYSTEMS

"**Subcontractor Business Systems**" as used in this clause means Subcontractor's material management and accounting system, cost estimating system, accounting system, earned value management system, property management system, and purchasing system.

If Subcontractor's Business Systems are reviewed and approved by a Government agency, Subcontractor shall provide prompt notice to Company whenever there is a material change in the status of the Government's approval or determination of adequacy of any of Subcontractor's Business Systems.

31. SEVERABILITY

Each clause, paragraph and subparagraph of this Agreement is severable, and if one or more of them are declared invalid, the remaining provisions of this Agreement will remain in full force and effect.

32. SURVIVABILITY

All rights, obligations, and duties hereunder, which by their nature or by their express terms extend beyond the expiration or termination of this Agreement, including but not limited to warranties, indemnifications, intellectual property (including rights to and protection of intellectual property and proprietary information), and product support obligations shall survive the expiration or termination of this Agreement.

33. TIMELY PERFORMANCE

- (a) Subcontractor's timely performance is a critical element of this Agreement.
- (b) Subcontractor shall provide Company status of performance of this Agreement when requested. In addition, if Subcontractor becomes aware of an impending labor dispute involving Subcontractor or any lower tier subcontractor, or any other difficulty in performing the Work, Subcontractor shall timely notify Company, in writing, giving pertinent details. These notifications shall not change any delivery schedule.

34. TRAVEL COSTS

- (a) All travel incurred by Subcontractor in the performance of this Agreement is included within the Agreement price and shall not be separately reimbursed by Company unless such travel is expressly authorized in writing in advance by Company's Contracting Representative.
- (b) When travel is authorized under this Agreement, Subcontractor shall be reimbursed only for necessary, reasonable, and actual travel expenses for transportation, lodging, meals and incidental expenses only to the extent that they do not exceed the maximum per diem rate in effect at the time of travel, as set forth in the United States Federal Travel Regulations or US Department of State regulations for the area of travel authorized under this Agreement. Air travel shall be reimbursed for coach class only. Lodging expenses are reimbursable only where incurred from establishments serving the general public.
- (c) Subcontractor shall provide a detailed summary of all such costs by category of expense with each invoice. Subcontractor shall provide a legible receipt for each claimed individual expense exceeding USD \$75.00.
- (d) International Travel approval must be obtained from Company Representative at least two (2) weeks prior to proposed travel in writing.

35. USE OF FREE, LIBRE AND OPEN SOURCE SOFTWARE (FLOSS)

- (a) This clause only applies to Work that includes the delivery of software (including software residing on hardware).
- (b) Subcontractor shall disclose to Company in writing any FLOSS that will be used or delivered in connection with this Agreement and shall obtain Company's prior written consent before using or delivering such FLOSS in connection with this Agreement. Company may withhold such consent in its sole discretion.
- (c) As used herein, "FLOSS License" means the General Public License (GPL), Lesser/Library GPL, (LGPL), the Affero GPL (APL), the Apache license, the Berkeley Software Distribution (BSD) license, the MIT license, the Artistic License (e.g., PERL), the Mozilla Public License (MPL), or variations thereof, including without limitation licenses referred to as "Free Software License", "Open Source License", "Public License", or "GPL Compatible License."
- (d) As used herein, "FLOSS" means software that incorporates or embeds software in, or uses software in connection with, as part of, bundled with, or alongside any (1) open source, publicly available, or "free" software, library or documentation, or (2) software that is licensed under a FLOSS License, or (3) software provided under a license that (a) subjects the delivered software to any FLOSS License, or (b) requires the delivered software to be licensed for the purpose of making derivative works or be

redistributable at no charge, or (c) obligates Company to sell, loan, distribute, disclose or otherwise make available or accessible to any third party (i) the delivered software, or any portion thereof, in object code and/or source code formats, or (ii) any products incorporating the delivered software, or any portion thereof, in object code and/or source code formats.

- (e) Subcontractor shall defend, indemnify, and hold harmless Company, its customers and suppliers from and against any claims, damages, losses, costs, and expenses, including reasonable attorney's fees, relating to use in connection with this Agreement or the delivery of FLOSS. No other provision in this Agreement, including but not limited to the Indemnity clause, shall be construed to limit the liabilities or remedies of the parties for the use of FLOSS in connection with this Agreement or for the delivery of FLOSS under this Agreement.

36. USE OF DELIVERABLE TECHNICAL DATA AND COMPUTER SOFTWARE

- (a) This clause applies only to technical data or computer software delivered by Subcontractor to Company under this Agreement.
- (b) As used in this clause "Nonconforming Marking" means any confidential, proprietary, or other restrictive-use markings that are not expressly permitted by applicable FAR, FAR Supplements or other applicable U.S. Government agency acquisition clauses incorporated into this Agreement. Subcontractor shall not deliver technical data or computer software that contains Nonconforming Markings.
- (c) On behalf of the Government, Company may notify Subcontractor of such a Nonconforming Marking. If Subcontractor fails to remove or correct such marking within sixty (60) days after such notification, Company may, notwithstanding any other provision of this Agreement, ignore or, at Subcontractor's expense, remove or obliterate any such Nonconforming Marking as may be on technical data or computer software delivered by Subcontractor.

37. WAIVERS, APPROVALS, AND REMEDIES

- (a) Failure by either party to enforce any of the provisions of this Agreement or applicable law shall not constitute a waiver of the requirements of such provisions or law, or as a waiver of the right of a party thereafter to enforce such provision or law.
- (b) Company's approval of documents shall not relieve Subcontractor of its obligation to comply with the requirements of this Agreement.
- (c) The rights and remedies of either party in this Agreement are cumulative and in addition to any other rights and remedies provided by law or in equity.

38. WARRANTY

- (a) Subcontractor warrants that it is and shall remain free of any obligation or restriction which would interfere or be inconsistent with or present a conflict of interest concerning the Work to be furnished by Subcontractor under this Agreement.
- (b) Subcontractor warrants that it will perform the services under this Agreement with the degree of high professional skill and sound practices and judgment which is normally exercised by recognized professional firms with respect to services of a similar nature.
- (c) Subcontractor warrants that all Work furnished pursuant to this Agreement shall strictly conform to applicable specifications, drawings, samples, descriptions, and other requirements of this Agreement and be free from defects in design, material, and workmanship. This warranty shall begin upon final acceptance and extend for a period of one (1) year. If any non-conforming Work is identified within the warranty period, Subcontractor, at Company's option, shall promptly repair, replace, or reperform the Work.
- (d) Transportation of replacement Work, return of non-conforming Work, and re-performance of Work shall be at Subcontractor's expense. If repair, or replacement, or reperformance of Work is not timely, Company may elect to return, reperform, repair, replace, or re-procure the Work at Subcontractor's expense. All warranties shall run to Company and its customers.

39. WORK ON COMPANY AND THIRD-PARTY PREMISES

- (a) "Premises" as used in this clause means premises of Company, its customers, or other third parties where Work is being performed.
- (b) Subcontractor shall ensure that Subcontractor personnel working on Premises comply with any on-premises policies and: (i) do not bring weapons of any kind onto Premises; (ii) do not manufacture, sell, distribute, possess, use or be under the influence of controlled substances or alcoholic beverages while on Premises; (iii) do not possess hazardous materials of any kind on Premises without Company's authorization; (iv) remain in authorized areas only; (v) do not conduct any non-Company related business activities (such as interviews, hiring, dismissals or personal solicitations) on Premises, (vi) do not send or receive non-Company related mail through Company's or third party's mail systems; (vii) do not sell, advertise or market any products or memberships, distribute printed, written or graphic materials on Premises without Company's written permission or as permitted by law; and (viii) follow instruction from Company in the event of an actual or imminent safety or environmental hazard on Premises.
- (c) All persons, property, and vehicles entering or leaving Premises may be subject to search.
- (d) Subcontractor shall promptly notify Company and provide a report of any accidents or security incidents involving loss of or misuse or damage to Company, customer, or third party intellectual or physical assets, and all physical altercations, assaults, or harassment.
- (e)
 - 1) Prior to entry on Premises, Subcontractor shall coordinate with Company to gain access. Subcontractor shall provide information reasonably required by Company to ensure proper identification of personnel, including, but not limited to verification of citizenship, lawful permanent resident status, protected individual or other status.
 - 2) Subcontractor personnel requiring access to Premises shall, prior to entry, be screened by Subcontractor at no charge to Company through the Company Subcontractor Screen Program, or otherwise screened by Subcontractor in a manner satisfactory to Company.
- (f) Subcontractor shall ensure that Subcontractor personnel: (i) do not remove Company, customer, or third party assets from Premises without Company authorization; (ii) use Company, customer, or third party assets only for purposes of this Agreement; (iii) only connect with, interact with or use computer resources, networks, programs, tools or routines authorized by Company; and (iv) do not share or disclose user identifiers, passwords, cipher keys or computer dial port telephone numbers. Company may periodically audit Subcontractor's data residing on Company, customer, or third-party assets on Premises.
- (g) Company may, at its sole discretion, have Subcontractor remove any specified employee of Subcontractor from Premises and require that such employee not be reassigned to any Premises under this Agreement.
- (h) Violation of this clause may result in termination of this Agreement in addition to any other remedy available to Company at law or in equity. Subcontractor shall reimburse Company, customer, or third party for any unauthorized use of Company, customer, or third-party assets.
- (i) Subcontractor shall advise the Company Procurement Representative of any unauthorized direction or course of conduct.
- (j) Subcontractor shall immediately report to Company all emergencies (e.g., medical, fire, spills or release of any hazardous material) and non-emergency incidents (e.g., job-related injuries or illnesses) affecting the Work. Subcontractor shall provide Company with a copy of any reports of such incidents Subcontractor makes to governmental authorities.

40. EXCUSABLE DELAYS

- (a) Except for defaults and inexcusable delays of subcontractors at any tier, the Subcontractor shall not be in default solely because of any failure to perform this Agreement under its terms if the failure is excusable and arises from causes totally beyond the control and without the fault or negligence of the Subcontractor. Examples of these causes are (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6)

- quarantine restrictions, (7) labor strikes, (8) freight embargoes, and (9) unforeseeable and unusually severe weather (to the extent such weather was experienced not due to other delays caused by the Subcontractor which pushed the Project or Subcontractor's Work into that adverse weather). In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Subcontractor. Default includes failure to make progress in the Work so as to endanger performance.
- (b) If the failure to perform is caused by the failure of a subcontractor of Subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Subcontractor and its lower tier subcontractor, and without the fault or negligence of either, the Subcontractor shall not be deemed to be in default, unless –
- (1) The subcontracted supplies or services were obtainable from other sources;
 - (2) The Company ordered the Subcontractor in writing to purchase these supplies or services from the other source; and
 - (3) The Subcontractor failed to comply reasonably with this order.
- (c) Notwithstanding the above, the Company reserves the right to self-perform any of the services which the Subcontractor is unable to perform due to excusable delays as outlined above and reduce the ceiling or portions of work assigned to the Subcontractor under this Agreement accordingly.
- (d) Furthermore, if the Client determines that the delay is inexcusable or otherwise claims damages or other recovery against the Company for the Subcontractor-caused delay, then Subcontractor shall be liable to the Company therefor and agrees to indemnify and hold the Company harmless for any claims or damages relating thereto.
- (e) Upon request of the Subcontractor, the Company shall ascertain the facts and extent of the failure. If the Company determines that any failure to perform results from one or more of the excusable causes above, the delivery schedule shall be revised, subject to the rights of the Company under the termination clause of this Agreement.

41. TERMINATION FOR CONVENIENCE

- (a) The Company may terminate performance of work under this Agreement in whole or, from time to time, in part where such action is reasonably required as a result of government action affecting all or part of the performance of work under the Prime Contract. The Company's Contracting Representative shall terminate by delivering to the Subcontractor a Notice of Termination specifying the extent of termination and the effective date.
- (b) After receipt of a Notice of Termination, and except as directed by the Company Contracting Representative, the Subcontractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:
- 1) Stop work as specified in the notice.
 - 2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the Agreement.
 - 3) Terminate all subcontracts to the extent they relate to the work terminated.
 - 4) Assign to the Company, as directed by the Company's Contracting Representative, all right, title, and interest of the Subcontractor under the subcontracts terminated, in which case the Company shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
 - 5) With approval or ratification to the extent required by the Company's Contracting Representative, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.
 - 6) As directed by the Company's Contracting Representative, transfer title and deliver to the Company –
 - (i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and
 - (ii) The completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Company.
 - 7) Complete performance of the work not terminated.
 - 8) Take any action that may be necessary, or that the Company's Contracting Representative may direct, for the protection and preservation of the property related to this Agreement that is in the possession of the Subcontractor and in which the Company has or may acquire an interest.

- 9) Use its best efforts to sell, as directed or authorized by the Company's Contracting Representative, any property of the types referred to in paragraph (b)(6) of this clause; provided, however, that the Subcontractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by the Company's Contracting Representative. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Company under this Agreement, credited to the price or cost of the work, or paid in any other manner directed by the Company's Contracting Representative.
- (c) The Subcontractor shall submit complete termination inventory schedules no later than 60 days from the effective date of termination, unless extended in writing by the Company's Contracting Representative upon written request of the Subcontractor within this 60-day period.
- (d) Omitted.
- (e) After termination, the Subcontractor shall submit a final termination settlement proposal to the Company's Contracting Representative in the form and with the certification prescribed by the Company's Contracting Representative. The Subcontractor shall submit the proposal promptly, but no later than 6 months from the effective date of termination, unless extended in writing by the Company's Contracting Representative upon written request of the Subcontractor within this 6-month period. However, if the Company's Contracting Representative determines that the facts justify it, a termination settlement proposal may be received and acted on after 6 months or any extension. If the Subcontractor fails to submit the proposal within the time allowed, the Company's Contracting Representative may determine, on the basis of information available, the amount, if any, due the Subcontractor because of the termination and shall pay the amount determined.
- (f) Subject to paragraph (e) of this clause, the Subcontractor and the Company's Contracting Representative may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (f) or paragraph (g) of this clause, exclusive of costs shown in paragraph (g)(3) of this clause, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The Agreement shall be modified, and the Subcontractor paid the agreed amount. Paragraph (g) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.
- (g) If the Subcontractor and the Company's Contracting Representative fail to agree on the whole amount to be paid because of the termination of work, the Company's Contracting Representative shall pay the Subcontractor the amounts determined by the Company's Contracting Representative as follows, but without duplication of any amounts agreed on under paragraph (f) of this clause:
 - 1) The Agreement price for completed supplies or services accepted by the Company (or sold or acquired under paragraph (b)(9) of this clause) not previously paid for, adjusted for any saving of freight and other charges.
 - 2) The total of-
 - (i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under paragraph (g)(1) of this clause;
 - (ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Agreement if not included in subdivision (g)(2)(i) of this clause; and
 - (iii) A sum, as profit on subdivision(g)(2)(i) of this clause, determined by the Company's Contracting Representative under section 49.202 of the Federal Acquisition Regulation, in effect on the date of this Agreement, to be fair and reasonable; however, if it appears that the Subcontractor would have sustained a loss on the entire Agreement had it been completed, the Company's Contracting Representative shall allow no profit under this subdivision(g)(2)(iii) and shall reduce the settlement to reflect the indicated rate of loss.
 - 3) The reasonable costs of settlement of the work terminated, including-
 - (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
 - (ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
 - (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

- (h) Except for normal spoilage, and except to the extent that the Company expressly assumed the risk of loss, the Company's Contracting Representative shall exclude from the amounts payable to the Subcontractor under paragraph (g) of this clause, the fair value as determined by the Company's Contracting Representative, of property that is destroyed, lost, stolen or damaged so as to become undeliverable to the Company or to any other buyer.
- (i) The cost principles and procedures of part 31 of the Federal Acquisition Regulation, in effect on the date of this Agreement, shall govern all costs claimed, agreed to, or determined under this clause.
- (j) The Subcontractor shall have the right of appeal, under the Disputes clause, from any determination made by the Company's Contracting Representative under paragraph (e), (g), or (l) of this clause, except that if the Subcontractor failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (e) or (l), respectively, and failed to request a time extension, there is no right of appeal.
- (k) In arriving at the amount due the Subcontractor under this clause, there shall be deducted-
 - 1) All unliquidated advance or other payments to the Subcontractor under the terminated portion of this Agreement;
 - 2) Any claim which the Company has against the Subcontractor under this Agreement; and
 - 3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Subcontractor or sold under the provisions of this clause and not recovered by or credited to the Company.
- (l) If the termination is partial, the Subcontractor may file a proposal with the Company's Contracting Representative for an equitable adjustment of the price(s) of the continued portion of the Agreement. The Company's Contracting Representative shall make any equitable adjustment agreed upon. Any proposal by the Subcontractor for an equitable adjustment under this clause shall be requested within 45 days from the effective date of termination unless extended in writing by the Company's Contracting Representative.
- (m)
 - 1) The Company may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Subcontractor for the terminated portion of the Agreement, if the Company's Contracting Representative believes the total of these payments will not exceed the amount to which the Subcontractor will be entitled.
 - 2) If the total payments exceed the amount finally determined to be due, the Subcontractor shall repay the excess to the Company's Contracting Representative upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App.1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Subcontractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Subcontractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Company's Contracting Representative because of the circumstances.
- (n) Unless otherwise provided in this Agreement or by statute, the Subcontractor shall maintain all records and documents relating to the terminated portion of this Agreement for 3 years after final settlement. This includes all books and other evidence bearing on the Subcontractor's costs and expenses under this Agreement. The Subcontractor shall make these records and documents available to the Government, at the Subcontractor's office, at all reasonable times, without any direct charge. If approved by the Company's Contracting Representative, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

42. TERMINATION FOR DEFAULT

- (a)
 - 1) The Company may, subject to paragraphs (c) and (d) below, by written notice of default to the Subcontractor, terminate this Agreement in whole or in part if the Subcontractor fails to –
 - (i) Deliver the supplies or to perform the services within the time specified in this Agreement or any extension;
 - (ii) Make progress, so as to endanger performance of this Agreement (but see subparagraph (a)(2) below); or

- (iii) Perform any of the other provisions of this Agreement or abide by any of the terms of this Agreement, including all applicable FAR flow down clauses (but see subparagraph (a)(2) below).
- 2) The Company's right to terminate this Agreement under subdivisions (1)(ii) and (1)(iii) above, may be exercised if the Subcontractor does not cure such failure within 7 days (or more if authorized in writing by the Company's Contracting Representative) after receipt of the notice from the Company's Contracting Representative specifying the failure.
- (b) If the Company terminates this Agreement in whole or in part, it may acquire, under the terms and in the manner the Company's Contracting Representative considers appropriate, supplies or services similar to those terminated, and the Subcontractor will be liable to the Company for any excess costs for those supplies or services. However, the Subcontractor shall continue the work not terminated.
- (c) Except for defaults of subcontractors at any tier, the Subcontractor shall not be liable for any excess costs if the failure to perform the Agreement arises from causes beyond the control and without the fault or negligence of the Subcontractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the US Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Subcontractor.
- (d) If the failure to perform is caused by the default of an approved by the Company subcontractor at any tier, and if the cause of the default is beyond the control of both the Subcontractor and subcontractor, and without the fault or negligence of either, the Subcontractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Subcontractor to meet the required delivery schedule.
- (e) If this subcontract is terminated for default, the Company may require the Subcontractor to transfer title and deliver to the US Government or the Company, as directed by the Company's Contracting Representative, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as manufacturing materials in this clause) that the Subcontractor has specifically produced or acquired for the terminated portion of this Agreement. Upon direction of the Company's Contracting Representative, the Subcontractor shall also protect and preserve property in its possession in which the Government or the Company has an interest.
- (f) The Company shall pay Agreement price for completed supplies delivered and accepted. The Subcontractor and the Company's Contracting Representative shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The Company may withhold from these amounts any sum the Company's Contracting Representative determines to be necessary to protect the Company against loss because of outstanding liens or claims of former lien holders.
- (g) If, after termination, it is determined that the Subcontractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience.
- (h) The rights and remedies of the Company in this clause are in addition to any other rights and remedies provided by law or under this Agreement.

43. INCORPORATION OF FAR CLAUSES

The Federal Acquisition Regulation (FAR) clauses referenced below are incorporated herein by reference, with the same force and effect as if they were given in full text, and are applicable, including any notes following the clause citation, to this Agreement. If the date or substance of any of the clauses listed below is different from the date or substance of the clause actually incorporated in the Prime Agreement referenced by number herein, the date or substance of the clause incorporated by said Prime Agreement shall apply instead. The Contracts Disputes Act shall have no application to this Agreement, and nothing in this Agreement grants Subcontractor a direct claim or cause of action against the U.S. Government. Any reference to a "Disputes" clause shall mean the "Disputes" clause of this Agreement. Subcontractor shall include in each lower-tier subcontract the appropriate flow down clauses as required by the FAR and FAR Supplement clauses included in this Agreement.

43.1 GOVERNMENT SUBCONTRACT

- (a) This Agreement is entered into by the parties in support of a U.S. Government contract.
- (b) As used in the FAR clauses referenced below and otherwise in this Agreement:

- 1) "Commercial Item" means a commercial item as defined in FAR 2.101.
- 2) "Commercially available off-the-shelf (COTS) item" means a COTS item as defined in FAR 2.101.
- 3) "Agreement" means this Agreement.
- 4) "Contracting Officer" shall mean the U.S. Government Contracting Officer for Company's government prime contract under which this Agreement is entered.
- 5) "Subcontractor" and "Offeror" means Subcontractor, which is the party identified on the face of the Agreement with whom Palladium is contracting, acting as the immediate subcontractor to Company.
- 6) "Prime Agreement" means the contract between Company and the U.S. Government or between Company and its higher-tier contractor who has a contract with the U.S. Government.
- 7) "Subcontract" means any contract placed by the Subcontractor or lower-tier subcontractors under this Agreement.

43.2 NOTES

- (a) The following notes apply to the clauses incorporated by reference below only when specified in the parenthetical phrase following the clause title and date.
 - 1) Substitute "Company" for "Government" or "United States" throughout this clause.
 - 2) Substitute "Company Contracting Representative" for "Contracting Officer", "Administrative Contracting Officer", and "ACO" throughout this clause.
 - 3) Insert "and Company" after "Government" throughout this clause.
 - 4) Insert "or Company" after "Government" throughout this clause.
 - 5) Communication/notification required under this clause from/to Subcontractor to/from the Contracting Officer shall be through Company.
 - 6) Insert "and Company" after "Contracting Officer", throughout the clause.
 - 7) Insert "or Company Contracting Representative" after "Contracting Officer", throughout the clause.
 - 8) If Subcontractor is an international contractor, this clause applies to this Agreement only if Work under the Agreement will be performed in the United States or Subcontractor is recruiting employees in the United States to Work on the Agreement.
- (b) See also the clause of this Agreement entitled Communication with Company Customer with respect to communications between Subcontractor and the Government.

43.3 AMENDMENTS REQUIRED BY PRIME CONTRACT

Subcontractor agrees that upon the request of Company it will negotiate in good faith with Company relative to amendments to this Agreement to incorporate additional provisions herein or to change provisions hereof, as Company may reasonably deem necessary in order to comply with the provisions of the applicable Prime Agreement or with the provisions of amendments to such Prime Agreement. If any such amendment to this Agreement causes an increase or decrease in the cost of, or the time required for, performance of any part of the Work under this Agreement, an equitable adjustment shall be made pursuant to the "Changes" clause of this Agreement.

43.4 PRESERVATION OF THE GOVERNMENT'S RIGHTS

If Company furnishes designs, drawings, special tooling, equipment, engineering data, or other technical or proprietary information (Furnished Items) which the U. S. Government owns or has the right to authorize the use of, nothing herein shall be construed to mean that Company, acting on its own behalf, may modify or limit any rights the Government may have to authorize Subcontractor's use of such Furnished Items in support of other U. S. Government prime contracts.

43.5 PROVISIONS OF THE FEDERAL ACQUISITION REGULATION (FAR) INCORPORATED BY REFERENCE

The following FAR clauses apply to this Agreement:

FAR Clause	Title	Date	Application
FAR 52.202-1	DEFINITIONS	(NOV 2013)	
FAR 52.203-6	RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT	(SEP 2006)	(Applies if this Agreement exceeds \$150,000.)
FAR 52.203-7	ANTI-KICKBACK PROCEDURES	(MAY 2014)	(Applies if this Agreement exceeds \$150,000.)

FAR Clause	Title	Date	Application
FAR 52.203-12	LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS	(OCT 2010)	(Applies if this Agreement exceeds \$150,000.)
FAR 52.203-13	CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT	(OCT 2015)	(Applies if this Agreement exceeds \$5,500,000 and the period of performance is more than 120 days. Disclosures made under this clause shall be made directly to the Government entities identified in the clause with copy to the Company.)
FAR 52.203-14	DISPLAY OF HOTLINE POSTER(S)	(OCT 2015)	(Applies if this Agreement exceeds \$5,500,000. Contact the Palladium Contracting Representative for the location where posters may be contained if not indicated elsewhere in the Agreement. Note 8 applies.)
FAR 52.203-16	PREVENTING PERSONAL CONFLICTS OF INTEREST	(DEC 2011)	(Applies if this Agreement exceeds \$150,000 where in which Subcontractor employees will perform acquisition functions closely associated with inherently governmental functions (i.e., instead of performance only by a self-employed individual)
FAR 52.203-17	CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS	(APR 2014)	(Applies if this Agreement exceeds \$150,000.)
FAR 52.203-19	PROHIBITION ON REQUIRING CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS OR STATEMENTS	(JAN 2017)	
FAR 52.204-10	REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS	(OCT 2018)	(Subparagraph (d)(2) does not apply. If Subcontractor meets the thresholds specified in paragraphs (d)(3) and (g)(2) of the clause, Subcontractor shall report required executive compensation by posting the information to the Government's System for Award Management (SAM) database. All information posted will be available to the general public.)
FAR 52.204-14	SERVICE CONTRACT REPORTING REQUIREMENTS	(OCT 2016)	(Information required for first tier subcontractors under paragraph (f) of the clause must be submitted to Company annually by November 1)
FAR 52.204-23	PROHIBITION ON CONTRACTING FOR HARDWARE, SOFTWARE, AND SERVICES DEVELOPED OR PROVIDED BY KASPERSKY LAB AND OTHER COVERED ENTITIES	(JUL 2018)	(Subcontractor shall provide Company copies of any reports provided under this clause which relate to the performance of this Agreement.)
FAR 52.204-25	PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT	(AUG 2020)	(Note 4 applies. Delete paragraph (b)(2) of the clause.)

FAR Clause	Title	Date	Application
FAR 52.209-6	PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT	(OCT 2015)	(Applies if this Agreement exceeds \$35,000. Copies of notices provided by Subcontractor to the Contracting Officer shall be provided to Company.)
FAR 52.215-14	INTEGRITY OF UNIT PRICES	(OCT 2010)	(Applies if this Agreement exceeds \$150,000. Delete paragraph (b) of the clause.)
FAR 52.215-15	PENSION ADJUSTMENTS AND ASSET REVERSIONS	(OCT 2010)	(Applies if this Agreement meets the applicability requirements of FAR 15.408(g). Note 5 applies.)
FAR 52.215-17	WAIVER OF FACILITIES CAPITAL COST OF MONEY	(OCT 1997)	(Applies only if this Agreement is subject to the Cost Principles at FAR Subpart 31.2 and Subcontractor did not propose facilities capital cost of money in its offer.)
FAR 52.215-19	NOTIFICATION OF OWNERSHIP CHANGES	(OCT 1997)	(Applies if this Agreement meets the applicability requirements of FAR 15.408(k). Note 5 applies.)
FAR 52.215-23	LIMITATION ON PASS-THROUGH CHARGES	(OCT 2009)	Applies if this is a cost-reimbursement subcontract in excess of \$150,000, except if the prime contract to which this contract relates is with DoD, then the clause applies to both cost-reimbursement subcontracts and fixed-price subcontracts, except those identified in 15.408(n)(2)(i)(B)(2), that exceed \$750,000. Notes 4 and 6 apply.)
FAR 52.219-8	UTILIZATION OF SMALL BUSINESS CONCERNS	(OCT 2018)	(Note 8 applies.)
FAR 52.219-9	SMALL BUSINESS SUBCONTRACTING PLAN	(AUG 2018)	(Applies if this Agreement exceeds \$700,000 except the clause does not apply if Subcontractor is a small business concern. Note 2 is applicable to paragraph (c) only. Subcontractor's subcontracting plan is incorporated herein by reference. Note 8 applies.)
FAR 52.222-21	PROHIBITION OF SEGREGATED FACILITIES	(APR 2015)	(Note 8 applies.)
FAR 52.222-26	EQUAL OPPORTUNITY	(SEP 2016)	(Note 8 applies.)
FAR 52.222-29	NOTIFICATION OF VISA DENIAL	(APR 2015)	
FAR 52.222-50	COMBATING TRAFFICKING IN PERSONS	(MAR 2015)	(Note 2 applies. In paragraph (e) Note 3 applies.)
FAR 52.222-54	EMPLOYMENT ELIGIBILITY VERIFICATION	(OCT 2015)	(Applies if this Agreement exceeds \$3,500 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. Note 8 applies.)

FAR Clause	Title	Date	Application
FAR 52.223-18	ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING	(AUG 2011)	(Applies if this Agreement exceeds \$3,500. Note 8 applies.)
FAR 52.225-13	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES	(JUN 2008)	
FAR 52.225-25	PROHIBITION ON CONTRACTING WITH ENTITIES ENGAGING IN CERTAIN ACTIVITIES OR TRANSACTIONS RELATING TO IRAN - REPRESENTATION AND CERTIFICATIONS	(OCT 2015)	
FAR 52.227-14	RIGHTS IN DATA - GENERAL	(MAY 2014)	
FAR 52.228-3	WORKER'S COMPENSATION INSURANCE (DEFENSE BASE ACT)	(JUL 2014)	(All applications must be submitted through Company to USAID's DBA Provider unless an existing policy is in force. Copy of the DBA coverage must be made available upon request).
FAR 52.230-2	COST ACCOUNTING STANDARDS	(OCT 2015)	(Applies only when full CAS coverage applies. "United States" means "United States or Company." Delete paragraph (b) of the clause.)
FAR 52.230-3	DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES	(OCT 2015)	(Applies only when modified CAS coverage applies. "United States" means "United States or Company." Delete paragraph (b) of the clause.)
FAR 52.230-6	ADMINISTRATION OF COST ACCOUNTING STANDARDS	(JUN 2010)	(Applies if FAR 52.230-2, FAR 52.230-3, FAR 52.230-4 or FAR 52.230-5 applies.)
FAR 52.232-40	PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS	(DEC 2013)	(Applies if Subcontractor is a small business concern. Note 1 applies. This clause does not apply if Company does not receive accelerated payments under the prime contract. Not all agencies provide accelerated payments.)
FAR 52.233-3	PROTEST AFTER AWARD	(AUG 1996)	(In the event Company's customer has directed Company to stop performance of the Work under the Prime Agreement under which this Agreement is issued pursuant to FAR 33.1, Company may, by written order to Subcontractor, direct Subcontractor to stop performance of the Work called for by this Agreement. "30 days" means "20 days" in paragraph (b)(2). Note 1 applies except the first time "Government" appears in paragraph (f). In paragraph (f) add after "33.104(h) (1)" the following: "and recovers those costs from Company".)
FAR 52.242-13	BANKRUPTCY	(JUL 1995)	(Notes 1 and 2 apply.)
FAR 52.242-15	STOP-WORK ORDER	(AUG 1989)	(Notes 1 and 2 apply.)

FAR Clause	Title	Date	Application
FAR 52.243-1	CHANGES - FIXED PRICE	(AUG 1987)	(Notes 1 and 2 apply. Alternate I applies if this Agreement is for services. Alternate II applies if this contract is for supplies and services.)
FAR 52.244-5	COMPETITION IN SUBCONTRACTING	(DEC 1996)	
FAR 52.244-6	SUBCONTRACTS FOR COMMERCIAL ITEMS	(OCT 2018)	
FAR 52.246-2	INSPECTION OF SUPPLIES - FIXED PRICE	(AUG 1996)	(Note 2 applies. Note 3 applies, except in paragraph (b) the second time "Government" appears; (f), (h), (j), and (l) where Note 1 applies.)
FAR 52.246-4	INSPECTION OF SERVICES - FIXED PRICE	(AUG 1996)	(Note 3 applies, except in paragraphs (e) and (f) where Note 1 applies.)
FAR 52.247-63	PREFERENCE FOR U.S.-FLAG AIR CARRIERS	(JUN 2003)	(Applies if this Agreement involves international air transportation.)
FAR 52.247-64	PREFERENCE FOR PRIVATELY OWNED U.S. FLAG COMMERCIAL VESSELS	(FEB 2006)	

The following AIDAR clauses apply to this Agreement: **AIDAR 48 CFR CHAPTER 7**

AIDAR Clause	Title	Date	Application
AIDAR 752.7032	INTERNATIONAL TRAVEL APPROVAL AND NOTIFICATION REQUIREMENTS	(APR 2014)	
AIDAR 752.7033	PHYSICAL FITNESS	(JUL 1997)	
AIDAR 752.7037	CHILD SAFEGUARDING STANDARDS	(AUG 2016)	
AIDAR 752.225-70	SOURCE AND NATIONALITY REQUIREMENTS	(FEB 2012)	
AIDAR 752.7013	CONTRACTOR-MISSION RELATIONSHIPS	(JUNE 2018)	
AIDAR 752.7013	CONTRACTOR-MISSION RELATIONSHIPS. (M/OAA-DEV-AIDAR-18-04c)		
AIDAR 752.7038	NONDISCRIMINATION AGAINST END-USERS OF SUPPLIES OR SERVICES	(OCT 2016)	

43.6 OTHER CLAUSES APPLICABLE TO SUBCONTRACTOR BY PRESCRIPTION IN THE PRIME CONTRACT

43.6.1 AUTHORIZED GEOGRAPHIC CODE

The authorized geographic code for procurement of goods and services under this contract is 935.

43.6.2 AIDAR 752.229-71 REPORTING OF FOREIGN TAXES (JULY 2007)

- (a) The Subcontractor must annually submit a report by April 1 of the next year.
- (b) Contents of report. The report must contain:
 - (1) Subcontractor name.
 - (2) Contact name with phone, fax number and email address.
 - (3) Contract number(s).

(4) Amount of foreign taxes assessed by a foreign government [each foreign government must be listed separately] on commodity purchase transactions valued at \$500 or more financed with U.S. foreign assistance funds under this agreement during the prior U.S. fiscal year.

(5) Only foreign taxes assessed by the foreign government in the country receiving U.S. assistance are to be reported. Foreign taxes by a third-party foreign government are not to be reported. For example, if a Subcontractor performing in Lesotho using foreign assistance funds should purchase commodities in South Africa, any taxes imposed by South Africa would not be included in the report for Lesotho (or South Africa).

(6) Any reimbursements received by the Subcontractor during the period in paragraph (b)(4) of this clause regardless of when the foreign tax was assessed and any reimbursements on the taxes reported in paragraph (b)(4) of this clause received through March 31.

(7) Report is required even if the Subcontractor did not pay any taxes during the reporting period.

(8) Cumulative reports may be provided if the Subcontractor is implementing more than one program in a foreign country.

(c) Definitions. As used in this clause—

(1) Agreement includes USAID direct and country contracts, grants, cooperative agreements and interagency agreements.

(2) Commodity means any material, article, supply, goods, or equipment.

(3) Foreign government includes any foreign governmental entity.

(4) Foreign taxes mean value-added taxes and customs duties assessed by a foreign government on a commodity. It does not include foreign sales taxes.

(d) Where. Submit the reports to: Company Contracting Representative identified on the Cover Page to this Agreement.

(e) For further information see <http://2001-2009.state.gov/s/d/rm/c10443.htm>.

43.6.3 AIDAR 752.222-70 USAID DISABILITY POLICY (DEC 2004)

(a) The objectives of the USAID Disability Policy are: (1) To enhance the attainment of United States foreign assistance program goals by promoting the participation and equalization of opportunities of individuals with disabilities in USAID policy, country and sector strategies, activity designs and implementation; (2) To increase awareness of issues of people with disabilities both within USAID programs and in host countries; (3) To engage other U.S. Government agencies, host country counterparts, governments, implementing organizations and other donors in fostering a climate of non-discrimination against people with disabilities; and (4) To support international advocacy for people with disabilities. The full text of USAID's policy can be found at the following Web site: http://pdf.usaid.gov/pdf_docs/PDABQ631.pdf.

(b) USAID therefore requires that the Subcontractor not discriminate against people with disabilities in the implementation of USAID programs and that it make every effort to comply with the objectives of the USAID Disability Policy in performing this contract. To that end and within the scope of the contract, the Subcontractor's actions must demonstrate a comprehensive and consistent approach for including men, women, and children with disabilities.

43.6.4 AIDAR 752.222-71 NONDISCRIMINATION (JUNE 2012)

FAR part 22 and the clauses prescribed in that part prohibit contractors performing in or recruiting from the U.S. from engaging in certain discriminatory practices.

USAID is committed to achieving and maintaining a diverse and representative workforce and a workplace free of discrimination. Based on law, Executive Order, and Agency policy, USAID prohibits discrimination in its own workplace on the basis of race, color, religion, sex (including pregnancy and gender identity), national origin, disability, age, veteran's status, sexual orientation, genetic information, marital status, parental status, political affiliation, and any other conduct that does not adversely affect the performance of the employee. USAID does

not tolerate any type of discrimination (in 04/22/2016 Partial Revision 93 any form, including harassment) of any employee or applicant for employment on any of the above-described bases.

Contractors are required to comply with the nondiscrimination requirements of the FAR. In addition, the Agency strongly encourages all its contractors (at all tiers) to develop and enforce nondiscrimination policies consistent with USAID's approach to workplace nondiscrimination as described in this clause, subject to applicable law.

43.6.5 AIDAR 752.231-72 CONFERENCE PLANNING AND REQUIRED APPROVALS (AUG 2013)

(a) Definitions. Conference means a seminar, meeting, retreat, symposium, workshop, training activity or other such event that requires temporary duty travel of USAID employees. For the purpose of this policy, an employee is defined as a U.S. direct hire; personal services contractor, including U.S. PSCs, Foreign Service National (FSN)/Cooperating Country National (CCN) and Third Country National (TCN); or a Federal employee detailed to USAID from another government agency.

(b) The Subcontractor must obtain approval from Palladium, prior to committing costs related to conferences funded in whole or in part with USAID funds when:

- (1) Twenty (20) or more USAID employees are expected to attend.
- (2) The net conference expense funded by USAID will exceed \$100,000 (excluding salary of employees), regardless of the number of USAID participants.

(c) Conferences approved at the time of award will be incorporated into the award. Any subsequent requests for approval of conferences must be submitted by the Subcontractor to Palladium.

(d) The request for conference approval must include:

- (1) A brief summary of the proposed event;
- (2) A justification for the conference and alternatives considered, e.g., teleconferencing and video conferencing;
- (3) The estimated budget by line item (e.g., travel and per diem, venue, facilitators, meals, equipment, printing, access fees, ground transportation);
- (4) A list of USAID employees attending and a justification for each; and the number of other USAID funded participants (e.g., institutional contractors);
- (5) The venues considered (including government-owned facility), cost comparison, and justification for venue selected if it is not the lowest cost option;
- (6) If meals will be provided to local employees (a local employee would not be in travel status), a determination that the meals are a necessary expense for achieving Agency objectives; and
- (7) A certification that strict fiscal responsibility has been exercised in making decisions regarding conference expenditures, the proposed costs are comprehensive and represent the greatest cost advantage to the U.S. Government, and that the proposed conference representation has been limited to the minimum number of attendees necessary to support the Agency's mission.

43.6.6 USE OF INFORMATION TECHNOLOGY NOTIFICATION (MAY 2016) (DEVIATION NO. M/OAA-DEV-FAR- 16-1c)

(a) Definitions. As used in this contract "Information Technology" means (1) Any services or equipment, or interconnected system(s) or subsystem(s) of equipment that are used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the agency; Where (2) such services or equipment are ' used by an agency' if used by the agency directly or if used by a Subcontractor under a contract with the agency that requires either use of the services or equipment or requires use of the services or equipment to a significant extent in the performance of a service or the furnishing of a product. (3) The term "information technology" includes computers, ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, services (including provisioned services such as cloud computing and support services that support any point of the lifecycle of the equipment or service), and related resources. (4) The term "information technology" does not include any equipment that is acquired by a Subcontractor incidental to a contract that does not require use of the equipment.

(b) This special contract requirement applies to the Subcontractor and all personnel providing support under this contract (hereafter referred to collectively as "Subcontractor") and addresses specific USAID requirements in addition to those included in the Federal Acquisition Regulation (FAR), Privacy Act of 1974 (5 U.S.C. 552a - the Act), the Health Insurance Portability and Accountability Act of 1996 (HIPAA, Pub. L. 104-191, 110 Stat. 1936),

the Sarbanes-Oxley Act of 2002 (SOX, Pub. L. 107-204, 116 Stat 745), Federal Information Security Management Act (FISMA) of 2002, Federal Information Technology Acquisition Reform Act (FITARA) and other laws, mandates, or executive orders pertaining to the development and operations of information systems and the protection of sensitive information and data.

The following should not be construed to alter or diminish civil and/or criminal liabilities provided under various laws or mandates.

(c) Notification Requirements: The Federal Information Technology Acquisition Reform Act (FITARA) requires Agency Chief Information Officer (CIO) review and approval of contracts or interagency agreements for information technology or information technology services.

(1) The Contracting Officer's written confirmation of the Agency CIO approval must be in place prior to starting work on the information technology component(s) of the contract. If approval has not already been obtained, the Subcontractor must work through the Contracting Officer and Contracting Officer Representative (COR) to do so immediately. Please refer to paragraph (3) below for notification procedures.

(2) The Subcontractor shall notify the Contracting Officer in writing whenever it becomes aware that any IT equipment, software or services necessary to meet the Government's requirement or to facilitate activities in the Government's Performance Work Statement were not disclosed in the schedule or Performance Work Statement.

(3) As part of the notification, the Subcontractor shall provide the Contracting Officer an estimate of the total cost of the IT equipment, software, and associated services regarding this contract and to obtain approval for procurement, development or modifications. The Subcontractor must notify Palladium.

(4) Except as required by other provisions of this contract, specifically stated to be an exception to this special contract requirement, the Government is not obligated to reimburse the Subcontractor for costs incurred in excess of the IT equipment, software or services specified in the Schedule.

(c) The Subcontractor shall insert the substance of this special contract requirement, including this paragraph (d), in all subcontracts.

43.6.7 FAR 52.223-99 ENSURING ADEQUATE COVID-19 SAFETY PROTOCOLS FOR FEDERAL CONTRACTORS (OCT 2021)

(a) Definition. As used in this clause - United States or its outlying areas means—

(1) The fifty States;

(2) The District of Columbia;

(3) The commonwealths of Puerto Rico and the Northern Mariana Islands;

(4) The territories of American Samoa, Guam, and the United States Virgin Islands; and

(5) The minor outlying islands of Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Islands, Navassa Island, Palmyra Atoll, and Wake Atoll.

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

(c) Compliance. The Subcontractor shall comply with all guidance, including guidance conveyed through Frequently Asked Questions, as amended during the performance of this subcontract, for contractor or subcontractor workplaces published by the Safer Federal Workforce Task Force (Task Force Guidance) at <https://www.saferfederalworkforce.gov/contractors/>. While at a Prime Contractor (Palladium) or U.S. Government workplace, covered subcontractor employees must also comply with any additional Prime Contractor or agency workplace safety requirements for that workplace that are applicable to federal employees, as amended (see USAID's COVID-19 Safety Plan and Workplace Guidelines (Safety Plan)).

(d) Subcontracts. The Subcontractor 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 in the United States or its outlying areas.

43.6.8 INSURANCE ON PRIVATE AUTOMOBILES

If the subcontractor or any of its employees or their dependents transport or cause to be transported (whether or not at subcontract expense) privately owned automobiles in the country of performance, or they or any of them purchase an automobile within the country of performance, the subcontractor agrees to make certain that all such automobiles during such ownership within the country of performance will be covered by a paid-up insurance policy issued by a reliable company providing the following minimum coverage or such other minimum coverage as may be set by the Prime Contractor, payable in United States dollars or its equivalent in the currency of the country of performance: injury to persons, \$10,000/\$20,000; property damage, \$5,000.

The premium costs for such insurance shall not be a reimbursable cost under this subcontract. Copies of such insurance policies shall be preserved and made available as part of the subcontractor's records which are required to be preserved and made available by the audit and records provisions of this subcontract.

44. CERTIFICATIONS AND REPRESENTATIONS

Subcontractor acknowledges that Company will rely upon Subcontractor certifications and representations, including representations as to business size and socio-economic status as applicable, contained in this clause and in any written offer, proposal or quote, or company profile submission, which results in award of a contract to Subcontractor. By entering into such contract, Subcontractor republishes the certifications and representations submitted with its written offer, including company profile information, and oral offers/quotations made at the request of Company, and Subcontractor makes those certifications and representations set forth below. Subcontractor shall immediately notify Company of any change of status regarding any certification or representation.

44.1 FAR 52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (Applicable to solicitations and contracts exceeding \$150,000)

Definitions. As used in this provision—

"Lobbying contact" has the meaning provided at 2 U.S.C. 1602(8).

The terms "agency," "influencing or attempting to influence," "officer or employee of an agency," "person," "reasonable compensation," and "regularly employed" are defined in the FAR clause of this solicitation entitled "Limitation on Payments to Influence Certain Federal Transactions" (52.203-12).

Prohibition. The prohibition and exceptions contained in the FAR clause of this solicitation entitled "Limitation on Payments to Influence Certain Federal Transactions" (52.203-12) are hereby incorporated by reference in this provision.

Certification. Subcontractor hereby certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on its behalf in connection with the awarding of this contract.

Disclosure. If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the offeror with respect to this contract, Subcontractor shall complete and submit, with its offer, to Company OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. Subcontractor need not report regularly employed officers or employees of the offeror to whom payments of reasonable compensation were made.

Penalty. Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by 31 U.S.C. 1352. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure required to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

44.2 FAR 52.209-5 Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters

(a)(1) Subcontractor certifies, to the best of its knowledge and belief, that—

Prime Contract Number:
Subcontractor Name:
Subcontract Number:

Subcontractor and/or any of its Principals—

Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

Have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property;

Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(1)(i)(B) of this provision; and

Subcontractor has not, within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

Have not, within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds \$3,500 for which the liability remains unsatisfied.

Federal taxes are considered delinquent if both of the following criteria apply:

The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

Examples.

(i) The taxpayer has received a statutory notice of deficiency, under I.R.C. Sec. 6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

The IRS has filed a notice of Federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. Sec. 6320 entitling the taxpayer to request a hearing with the IRS Office of Appeals contesting the lien filing, and to further appeal to the Tax Court if the IRS determines to sustain the lien filing. In the course of the hearing, the taxpayer is entitled to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek tax court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

The taxpayer has entered into an installment agreement pursuant to I.R.C. Sec. 6159. The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.

The taxpayer has filed for bankruptcy protection. The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. 362 (the Bankruptcy Code).

(2) Principal, for the purposes of this certification, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a division, or business segment; and similar positions).

Subcontractor shall provide immediate written notice to Company if, at any time prior to contract award, Subcontractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that Subcontractor knowingly rendered an erroneous certification, in addition to other remedies available, Company may terminate this contract for default.

44.3 FAR 52.222-22 Previous Contracts and Compliance Reports

Subcontractor represents that if Subcontractor has participated in a previous contract or subcontract subject to the Equal Opportunity clause (FAR 52.222-26): (1) Subcontractor has filed all required compliance reports and (2) that representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

Paragraph (a) applies only to the extent (1) Subcontractor performs work in the United States, or (2) recruits employees in the United States to Work on this Agreement.

44.4 FAR 52.222-25 Affirmative Action Compliance

Subcontractor represents: (1) that Subcontractor has developed and has on file at each establishment, Affirmative Action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2), or (2) that in the event such a program does not presently exist, Subcontractor will develop and place in operation such a written Affirmative Action Compliance Program within one-hundred twenty (120) days from the award of this Agreement.

Paragraph (a) applies only to the extent (1) Subcontractor performs work in the United States, or (2) recruits employees in the United States to Work on this Agreement.

45. FAR 52.204-27 PROHIBITION ON A BYTEDANCE COVERED APPLICATION.

(a) Definitions. As used in this clause—

Covered application means the social networking service TikTok or any successor application or service developed or provided by ByteDance Limited or an entity owned by ByteDance Limited.

Information technology, as defined in 40 U.S.C. 11101(6)—

(1) Means any equipment or interconnected system or subsystem of equipment, used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the executive agency, if the equipment is used by the executive agency directly or is used by a Subcontractor under a contract funded by the executive agency that requires the use—

(i) Of that equipment; or

(ii) Of that equipment to a significant extent in the performance of a service or the furnishing of a product;

(2) Includes computers, ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, services (including support services), and related resources; but

(3) Does not include any equipment acquired by Subcontractor incidental to a Federal contract.

(b) Prohibition. Section 102 of Division R of the Consolidated Appropriations Act, 2023 (Pub. L. 117-328), the No TikTok on Government Devices Act, and its implementing guidance under Office of Management and Budget (OMB) Memorandum M-23-13, dated February 27, 2023, “No TikTok on Government Devices” Implementation Guidance, collectively prohibit the presence or use of a covered application on executive agency information technology, including certain equipment used by Federal contractors/subcontractors. The Subcontractor is prohibited from having or using a covered application on any information technology owned or managed by the Government, or on any information technology used or provided by the Subcontractor under this contract, including equipment provided by the Subcontractor’s employees.

ANNEX A: DELIVERABLES

A.1. Statement of Work

[Insert Statement of Work/Statement of Objectives/Performance Work Statement/Specifications]

A.2. Deliverable Specifications

[Insert detailed description of deliverables and other expectations under the Agreement.]

A.3. Deliverable Acceptance Criteria

[Insert detailed description of deliverable acceptance criteria under the Agreement.]

A.4. Progress Payments

This is a Firm Fixed Price Subcontract for the delivery of item **XXXXX** at the total price of **\$XXXXX**.

Final deliverables may be submitted **within one week** of the stated deadline to be considered on-time unless a separate deadline is approved by the authorized Company Contracting Representative in writing. Final deliverables must be submitted via **email OR INDICATE DELIVERY INSTRUCTIONS** to **POC**.

In consideration of the period of performance, the Company agrees to provide progress/milestone financing payments to the Subcontractor as outlined below (**INDICATE ITEMS**). The milestone progress payments are financing payments, as opposed to delivery payments, and do not represent payments for completed deliverables. The Company recoups progress payments through deduction of liquidations from payments that would otherwise be due to the Subcontractor for delivery of completed contract items (i.e. **INDICATE ITEMS**), i.e. **\$XXXX** (Firm Fixed Price). In the event of termination for default, any unliquidated progress payments must be returned to the Company.

FAR 52.212-4 guides the termination for convenience events. In the event of such termination, the Subcontractor 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 Subcontract, the Subcontractor shall be paid a percentage of the subcontract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Subcontractor can demonstrate to the satisfaction of the Company using its standard record keeping system, have resulted from the termination. The Subcontractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Company any right to audit the Subcontractor's records. The Subcontractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

All progress payment milestones must adhere to the respective specifications (A.2. Deliverable Specifications) and acceptance criteria (A.3. Deliverable Acceptance Criteria) above in order to trigger a payment. If the final deliverables (**INDICATE ITEMS**) are deemed unacceptable in accordance with the specifications (A.2. Deliverable Specifications) or acceptance criteria (A.3. Deliverable Acceptance Criteria), and the issues are not cured within a reasonable time, as may be approved by the Company, and the subcontract is terminated for default, the Subcontractor shall, on demand, repay to the Company the amount of progress payments within 30 days of the notification of termination for default. The Company shall be liable for no payment under this Subcontract except as provided by the Default clause of this Subcontract.

A.5. Deliverables Schedule

The following deliverables must be provided and accepted by the due dates specified.

The following deliverables must be provided and accepted by the due dates specified.

[explain if drafts will be allowed to be submitted and how long after the draft submission the Company will provide comments and how long after that the final submission must be made and, if accepted, trigger the payment of the corresponding milestone amount below]

Deliverable Item #	Deliverable Description	Required Documentation	Acceptance Criteria	Margin of Error	Due Date	# of items	Price Per Item	Total Price
1A Progress Payment				Nil				
1B				Nil				
2A				Nil				
3A				Nil				

ANNEX B: INVOICING/VOUCHER INSTRUCTIONS

- (1) Invoice Contents. A proper invoice must contain the following information:
 - (a) Name and complete address of Subcontractor;
 - (b) Date of invoice;
 - (c) Description of services/products being billed.;
 - (d) Name and complete address of Subcontractor official/bank to send payment to (if payment is to be sent to a bank account, provide complete account number and bank address plus appropriate forms provided by the Company); and
 - (e) Name and complete address of Subcontractor official to notify if the invoice is found to be defective.
 - (f) A certification signed by an authorized representative of the Subcontractor, as follows:
"The undersigned hereby certifies to the best of my knowledge and belief that the sum claimed under this Subcontract is proper and due; the work reflected by these deliverables has been performed, and the quantities and amounts involved are consistent with the requirements of this Subcontract; all required Prime Contractor approvals have been obtained; this request does not include any amounts which the Prime Contractor intends to withhold or retain in accordance with the terms and conditions of the subcontract; and this certification is not to be construed as final acceptance of a subcontractor's performance."
- (2) Invoice Submission. The Subcontractor shall submit one (1) original and two (2) copies of its invoice to the following:
INSERT
- (3) Final Invoice. Within sixty (60) days of the termination of this Subcontract, the Subcontractor shall submit a final invoice or voucher for works completed after the completion of all services delivered under this Subcontract.
- (4) Rejection of invoices. Invoices submitted without Subcontract number (found on the cover page and footers of the Subcontract) stated on the invoice will not be accepted and will be returned to Subcontractor.

ANNEX C: COMPANY POLICIES AND PROCEDURES

By signing this Agreement, Subcontractor acknowledges that it has received and read the following policies of the Company and agrees to comply fully with such policies in performing this Agreement:

- Business Partner Code of Conduct
- Child Protection Guidelines
- [Insert Others as Required]

All documents can be downloaded in full at <http://www.thepalladiumgroup.com/policies>.