

February 20, 2024

## Request for Proposal (RFP)

Subject RFP #:	217810-BASP-2024-001
RFP Issue Date:	February 22, 2024
Terms of Reference / Specifications:	Business Advisory Services
Project	The USAID Financial Innovation Program
The Company	Palladium International, LLC
Country of Performance	Georgia
Closing Date and Time	September 30, 2024 (evaluation and awarding will be done on rolling basis)
Contact Person	Sophio Gengiuri, Grants & Contracts Manager
Details for Submission	procurement217810@thepalladiumgroup.com

Thank you for your interest in the Business Advisory Service Providers procurement. As the implementer of the USAID Financial Innovation Program, Palladium International invites you to submit a proposal for the terms of reference described below. Your proposal must be valid for the Validity Period as shown in the **Timeline** section below.

Please submit your proposal in accordance with the Details for Submission above by the Closing Date and Time. This RFP in no way obligates Palladium to award a contract nor does it commit Palladium to pay any cost incurred in the preparation and submission of a proposal. Palladium bears no responsibility for data errors resulting from transmission or conversion processes.

Please note that the **Informational Sessions** in hybrid format will be held periodically, depending on attendance requests received. The first Session will be held on **March 12, 2024 at 3:00 p.m.** at the Program office in the D Block co-working space located in Stamba Hotel on 14 M. Kostava Street, Tbilisi and simultaneously via the Zoom Platform, for participants who will not be able to attend the session in person. In case you are interested in attending the Informational Session, please email us a request with attendee name, position title, mobile number, email, and organization name at [procurement217810@thepalladiumgroup.com](mailto:procurement217810@thepalladiumgroup.com) no later than **March 7, 2024**. Please indicate whether the participant is attending the session in person or will be connecting via online Conference. Attendance requests for all Informational Sessions must be sent via email to [procurement217810@thepalladiumgroup.com](mailto:procurement217810@thepalladiumgroup.com) providing the information detailed above. We will confirm the requests accordingly and provide instructions, as applicable.

I look forward to your response. If you have any queries, please do not hesitate to contact us by e-mail at [procurement217810@thepalladiumgroup.com](mailto:procurement217810@thepalladiumgroup.com).

Yours sincerely,



Sophio Gengiuri

Grants & Contracts Manager

## Terms and conditions

### 1. Proposal Conditions

By submitting a proposal, potential suppliers are bound by these terms and conditions. Potential suppliers must submit offers with all details provided in English and with prices quoted in a single currency.

### 2. Proposal Lodgement

The Company may grant extensions to the Closing Time at its discretion. The Company will not consider any quotes received after the Closing Time specified in the RFP unless the Company determines to do so otherwise at its sole discretion.

### 3. Evaluation

The Company may review all proposal to confirm compliance with this RFP and to determine the best proposal in the circumstances.

### 4. Alterations

The Company may decline to consider a proposal in which there are alterations, erasures, illegibility, ambiguity or incomplete details.

### 5. The Company's Rights

The Company may, at its discretion, discontinue the RFP; decline to accept any proposal; terminate, extend or vary its selection process; decline to issue any contract; seek information or negotiate with any potential supplier that has not been invited to submit a proposal; satisfy its requirement separately from the RFP process; terminate negotiations at any time and commence negotiations with any other potential supplier; evaluate proposals as the Company sees appropriate (including with reference to information provided by the prospective supplier or from a third party); and negotiate with any one or more potential suppliers.

### 6. Amendments and Queries

The Company may amend, or clarify any aspect of the RFP prior to the RFP Closing Time by issuing an amendment to the RFP in the same manner as the original RFP was distributed. Such amendments or clarifications will, as far as is practicable be issued simultaneously to all parties.

Any queries regarding this RFP should be directed to the Contact Person identified on the cover page of this RFP.

### 7. Clarification

The Company may, at any time prior to execution of a contract, seek clarification or additional information from, and enter into discussions and negotiations with, any or all potential suppliers in relation to their proposals. In doing so, the Company will not allow any potential supplier to substantially tailor or amend their proposal.

### 8. Confidentiality

In their proposal, potential suppliers must identify any aspects of their proposal that they consider should be kept confidential, with reasons. Potential suppliers should note that the Company will only agree to treat information as confidential in cases that it considers appropriate. In the absence of such an agreement, potential suppliers acknowledge that the Company has the right to disclose the information contained in their proposal.

The potential supplier acknowledges that in the course of this RFP, it may become acquainted with or have access to the Company's Confidential Information (including the existence and terms of this RFP and the TOR). It agrees to maintain the confidence of the Confidential Information and to prevent its unauthorised disclosure to any other person. If the potential supplier is required to disclose Confidential Information due to a relevant law or legal proceedings, it will provide reasonable notice of such disclosure to the Company. The parties agree that this obligation applies during the RFP and after the completion of the process.

### 9. Alternatives

Potential suppliers may submit proposals for alternative methods of addressing the Company's requirement described in the RFP where the option to do so was stated in the RFP or agreed in writing with the Company prior to the RFP Closing Time. Potential suppliers are responsible for providing a sufficient level of detail about the alternative solution to enable its evaluation.

### 10. Reference Material

If the RFP references any other materials including, but not limited to, reports, plans, drawings, samples or other reference material, the potential supplier is responsible for obtaining the referenced material and considering it in framing their proposal. And provide it to the Company upon request.

### 11. Price/Cost Basis

Prices or costs quoted must show the tax exclusive price, the tax component and the tax inclusive price.

The contract price, which must include any and all taxes, supplier charges and costs, will be the maximum price payable by the Company for the Goods and/or Services.

### 12. Financial information

If requested by the Company, potential suppliers must be able to demonstrate their financial stability and ability to remain viable as a provider of the Goods and/or Services over the term of any agreement.

If requested by the Company, the potential supplier must promptly provide the Company with such information or documentation as the Company reasonably requires in order to evaluate the potential supplier's financial stability.

### 13. Referees

The Company reserves the right to contact the potential supplier's referees, or any other person, directly and without notifying the potential supplier.

### 14. Conflict of interest

Potential suppliers must notify the Company immediately if any actual, potential or perceived conflict of interest arises (a perceived conflict of interest is one in which a reasonable person would think that the person's judgement and/or actions are likely to be compromised, whether due to a financial or personal interest (including those of family members) in the procurement or the Company).

### 15. Inconsistencies

If there is inconsistency between any of the parts of the RFP the following order of precedence shall apply:

- (a) these Terms and Conditions;
- (b) the first page of this RFP; and
- (c) the Schedule

so that the provision in the higher ranked document will prevail to the extent of the inconsistency.

### 16. Collusion and Unlawful Inducements

Potential suppliers and their officers, employees, agents and advisors must not engage in any collusive, anti-competitive conduct or any other similar conduct with any other potential supplier or person or quote any unlawful inducements in relation to their proposal or the RFP process.

Potential suppliers must disclose where proposals have been compiled with the assistance of current or former the Company employees (within the previous 9 months and who was substantially involved in the design, preparation, appraisal, review, and or daily management of this activity) and should note that this may exclude their proposal from consideration.

Potential suppliers warrant that they have not provided or offered any payment, gift, item, hospitality or any other benefit to the Company, its employees, consultants, agents, subcontractors (or any other person involved in the decision-making process relating to this RFP) which could give rise to a perception of bribery or corruption in relation to the RFP or any other dealings between the parties.

### 17. Jurisdiction

This RFP shall be subject to the laws of the District of Columbia, United States of America. The language of the arbitration will be English.

The Potential Supplier and the Company will use their best efforts to settle amicably any dispute, controversy, or claim arising out of, or relating to this RFP or the breach, termination, or invalidity thereof. If no agreeable settlement can be found, any dispute, controversy, or claim arising out of or relating to this RFP or the breach, termination, or invalidity thereof, shall be settled by mediation through the American Arbitration Association by filing a request for mediation with the AAA and the other party. The Parties will be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such dispute.

## Purpose

This Request for Proposals (RFP) seeks to engage **multiple** Business Advisory Service Providers (BASPs) from within **Georgia and internationally** for participation in USAID Financial Innovation Program's pay-for-results (P4R) program. The primary aim of the program is to enhance access of Georgian enterprises to risk capital and innovative financial products and services. This will be facilitated through BASPs and incentivized by the USAID Financial Innovation Program (the Program). To achieve this, the Program will identify and select multiple BASPs for participation in the P4R program. BASPs who are selected to be part of the P4R program will play a crucial role in originating and closing financing deals for Georgian enterprises. (Please note that the primary focus of the Program is to facilitate risk capital and innovative financing for Small and Medium Enterprises (SMEs) and innovative startups). These transactions will involve various financial products, including but not limited to asset-based finance products (e.g. factoring, warehouse receipts financing, leasing, etc.), working capital and supply chain financing, venture capital and private equity investments. It's important to clarify that this initiative excludes real estate backed loans provided by traditional lending institutions unless those are sustainable finance loans as defined by the National Bank of Georgia's sustainable finance criteria.

## Type of Contract

The subcontracts issued under this RFP will be commission-based Firm Fixed Price (see *Table 2* and

*Table 3* below). Selected BASPs will be subcontracted for an initial fee ceiling amount of up to a maximum of USD 50,000. The subcontract ceiling increase opportunities are described in detail in the **Scope of Work** below.

## Anticipated Contract Term

Subcontracts will be offered to approved applicants for a period of up to twelve (12) months with the option for an extension based on performance and the availability of funding, at the sole discretion of the USAID Financial Innovation Program team.

## Company Information

Palladium is the implementing organization behind the USAID Financial Innovation Program. As a global leader in the design, development and delivery of Positive Impact, Palladium creates enduring social and economic value. We work with corporations, governments, foundations, investors, communities, and civil society to formulate strategies and implement solutions that generate lasting social, environmental and financial benefits.

## Project

The USAID Financial Innovation Program is a five-year USAID funded program launched in February 2023. The purpose of the Program is to increase the flow of diversified investment resources and innovative financial products to Georgia's private sector in order to expand businesses, create jobs, and attract additional private investment. The Program will achieve this through a holistic approach that:

- Strengthens the financial market regulatory environment and infrastructure institutions while leveraging innovations in financial technology;
- Stimulates the market for equity and quasi-equity instruments and supports finance providers to offer an expanded set of innovative and diversified financial products and services tailored to Georgian startups and high potential SMEs; and,
- Supports Georgian businesses to access fit-for-purpose financing instruments through a network of professional transaction advisors.

The Program will focus primarily, but not exclusively, on expanding access to finance for startups and SMEs with high potential for employment generation. It will also include a focus on non- traditional finance providers. Furthermore, it envisions the establishment of a catalytic, blended finance investment mobilization platform to be available to de-risk and leverage innovation and risk taking. The Program will be implemented using adaptive management, enabling the Program to adapt activities and targets in response to changes in the political and economic landscape that arise during implementation.

## Timeline

On March 12, 2024, the USAID Financial Innovation Program will hold a three-hour informational session for interested offerors. The following sessions will be held on rolling basis, depending on frequency of attendance requests. During the sessions, the Program staff will present a brief overview of the BASP P4R program, instructions on proposal preparation/submission will be provided and all potential offerors will have opportunity to ask questions and receive comprehensive answers. Closing date for this RFP is September 30, 2024. Required validity period of the proposals must be three (3) months from the submission date. Proposals will be evaluated on a first come first served basis. Proposals submitted before 25<sup>th</sup> of every month will be evaluated by the 10<sup>th</sup> of following month. Subcontracts will be awarded on a rolling basis.

## Scope of Work

Under the BASP P4R program, Business Advisory Service Providers will be required to a) build a pipeline of financing deals by identifying and engaging with eligible enterprises<sup>1</sup>, and b) provide business advisory services to selected enterprises, leading to successful closure of financing transaction. Such business advisory services are anticipated to include services (detailed below) that will help enterprises secure financing from prospective investors and/or financial institutions (FIs). BASPs will be eligible to receive a success fee if they will successfully raise eligible forms of capital/finance for the Georgian enterprises. There are two categories of transactions expected to be performed under the BASP P4R program:

- Asset-based financings
- Venture capital and private equity investments

The Program will compensate BASPs based on achieved results. Potential services for Georgian enterprises provided by BASPs may include, but are not limited to, the following:

Arrange financing for selected enterprises. Financial facilitation support may include, but is not limited to:

- Providing financial advisory services to identify the financing needs of client enterprises and recommend the type of financial instrument and sources of financing best suited for individual enterprises.
- Assisting client enterprises in the preparation of financial statements, business plans, corporate presentations and other paperwork required to obtain the financing.
- Advising client enterprises on financing terms typical for various types of financings as well as assisting them in negotiations with financing providers.
- Assisting client enterprises to ensure compliance with Financial Institution due diligence requirements.
- Linking client enterprises to venture capital, private equity, and other risk capital investors.
- Supporting client enterprises in the investor due diligence process.
- Advising client enterprises on the principles of equity investment valuation and on the equity investment process in general, providing negotiation support or other services required to ensure a client enterprise is "investor ready".

The Program will conduct promotional activities to popularize the P4R program and to help BASPs to build their pipeline of financing deals. In addition, the Program will organize BASP technical capacity building activities and trainings to develop the institutional capacity of BASPs in areas such as equity financing, quasi-

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<sup>1</sup> The enterprises eligibility criteria are described below, under the Client Enterprise Eligibility and Selection.

equity, exit strategies, liquidity risk assessment, financial modelling, insurance risk integration to the financial model, and others as needed.

The duration of the initial subcontract will be twelve (12) months, with the possibility of extension options.

The initial subcontract ceiling will be USD 50,000. BASPs may request a cost extension based on two circumstances:

- After utilizing 75% of the initial subcontract amount (USD 50,000) and presenting additional pipeline of deals to the Program.
- If the projected amount of the Program's payable incentive(s) associated with a BASP's presented deal pipeline equals to or exceeds 75% of the initial ceiling amount (USD 50,000).

**Note:** After concluding the first iteration of the BASP P4R program, the USAID Financial Innovation Program may release a new RFP, potentially containing different terms and conditions. BASPs participating in the initial BASP P4R program will be eligible to re-apply.

### Exclusions

- Transactions involving real estate backed loans provided by traditional lending institutions **are ineligible** unless those are sustainable finance loans as defined by the National Bank of Georgia's sustainable finance criteria.
- Transactions related to issuance and placement of bonds **are ineligible** under this RFP. These transactions are supported by the Program through the Capital Market Support (CMS) program implemented in partnership with LEPL Enterprise Georgia. Details of the CMS program will be publicly posted on Enterprise Georgia website.
- Transactions closed by subcontracted BASPs with a Financial Institution (FI) that are related entities **are ineligible** for incentives under this RFP. Related entities are defined as:
  - The BASP is a subsidiary of the Financial Institution, or the Financial Institution is the subsidiary of the BASP;
  - The BASP and FI share a common ultimate parent organization;
  - The BASP has an ownership share in the FI;
  - The FI has an ownership share in the BASP.

### Client Enterprise Eligibility and Selection

BASPs will be required to build the pipeline of investment deals by identifying (and engaging with) **eligible enterprises** which score a minimum of 5 points based on the deal scoring matrix below.

The pipeline must contain enterprises legally registered in Georgia, which do not have any active "exclusion" or negative records in the following international public databases:

- SAM (U.S. General Services Administration System for Award Management);
- OFAC (U.S. Department of the Treasury Office of Foreign Assets Control Specially Designated Nationals and Blocked Persons List); and
- UN SC SL (United Nations Security Council Sanctions List).

Potential deals will be approved by the Program's technical evaluation committee during the proposal review process or as a part of the pre-approval process, where applicable.

Table 1: Enterprise Evaluation Criteria/Deal Scoring Matrix

Enterprise Evaluation Criteria	Points
Transaction is an equity or mezzanine finance raised from international sources or an Initial Public Offering (IPO). No cash out of existing shareholders will be accepted	5.0
A client enterprise is innovative startup. A startup refers to a company in the first stages of operations up to 5 years. Startups are newly founded companies by one or more entrepreneurs who want to develop an innovative products or services for which they believe there is demand and they have a potential to achieve large-scale soon	5.0
Transaction is performed through a warehouse receipt financing	5.0
Transaction is for domestic mezzanine finance or equity raised from domestic sources. No cash out of existing shareholders will be accepted	3.5
Factoring Transactions	3.0
A client enterprise is an SME (SME is an enterprise with an annual turnover below GEL 60 million and with number of employees below 250)	2.0
Transaction is performed through trade finance or asset-based finance such as leasing, accreditive, letter of credit	2.0
Transaction is a sustainable loan as defined by the National Bank of Georgia's sustainable finance criteria; or the client enterprise is a women owned, woman managed, or woman employing business; or at least 30% of funds raised through the transaction are directed for financing of female owned, managed, or employing enterprises; or at least 75% of raised funds are directed for financing SMEs	1.5
Investment is between USD 30,000 - 300,000	1.5

## Deliverables and Payments

**Deliverables:** All BASPs that are subcontracted under this RFP will have similar deliverable schedules. BASPs are expected to provide Pre-Approval Request and one (1) key Deliverable to receive incentives/payments from the Program.

- 1. Pre-Approval Request.** Upon the identification of an eligible transaction, and prior to engaging in any service delivery as described above, the BAS provider must submit the Pipeline Pre-approval Request (see Attachment A1 of this RFP).
- 2. Deliverable #1.** Documents submitted shall include a) Evidence of transaction OR the approval of financing by the FI/Investor to the client enterprise, and b) the proof of the enterprise commitment for BAS cost contribution that shall not be less than 25% of the total BAS cost negotiated between BASP and the enterprise.

**Note:** the negotiation of the terms of the engagement is between the BASP and the client enterprise only, and the BASP is solely responsible for the collection of fees related to the enterprise commitment for BAS cost contribution. The Program is under no obligation to pay, subsidize, support or collect any fee or cost of any kind agreed for this contribution upon between the BASP and the client enterprise.

**Payments:** Payments will only be made for closed transactions. Proofs of financing approval and client enterprise commitment must be provided. This proof must include: duly signed and legally binding financing contract, or a contract to invest, or a signed letter from the investor attesting to the value of the transaction and

its execution; the enterprise commitment for BAS cost contribution that shall not be less than 25% of the total BASP cost negotiated between BASP and the enterprise.

The USAID Financial Innovation Program, at its discretion, may require further documentation for a transaction before certifying this deliverable. Should it be determined that the documents are deficient in any way, payment may be withheld, postponed, or denied until all documents are deemed to be acceptable.

Payments will be distributed through an incentive fee structure (sliding scale) and only disbursed once documents have been verified by the USAID Financial Innovation Program assigned staff member(s). Please note that USAID Financial Innovation Program is free of VAT tax. Tax exemption letter will be provided to subcontractors as needed. Payments are calculated based on the U.S. dollar value of the deal closed. The actual payments to local BASPs will be made in local currency (GEL) with the exchange rate of the National Bank of Georgia on the payment day. The actual payments to intranational BASPs will be made in U.S. dollars.

**The required deliverables and payment terms are described in the Table 2 and**

**Table 3 below.**

*Table 2: Incentive scheme for facilitating innovative finance for enterprises*

Milestone/Deliverable	Amount payable by the Program for initial investment	Only relevant for follow-on transactions to the same client	
		Amount payable by the Program for the second follow-on investment service provided to existing clients	Amount payable by the Program for the third follow-on investment service provided to existing clients
<p><b>Pre-approval:</b>            Proof Required: Work plan/project description; Deal score based on deal scoring matrix; Engagement letter signed by the client enterprise, informing the latter about the projected incentive amount payable by the Program; Due Diligence screening (SAM, OFAC, UN SCSL) results.</p>	<p><b>No payment associated with the Pre-approval.</b>            The BASP will be allowed to engage with Deliverable #1 only after receiving the pre-approval in writing from the Program.</p>		

Milestone/Deliverable	Amount payable by the Program for initial investment	Only relevant for follow-on transactions to the same client	
		Amount payable by the Program for the second follow-on investment service provided to existing clients	Amount payable by the Program for the third follow-on investment service provided to existing clients
<b>Deliverable #1:</b> Proof Required: a) Evidence of transaction OR the approval of financing by the FI/Investor to the enterprises. Evidence must include: duly signed and legally binding financing contract, or a contract to invest, or a signed letter from the investor attesting to the value of the transaction and its execution; and b) The proof of the enterprise commitment for BAS cost contribution that shall not be less than 25% of the total BASP cost negotiated between BASP and the enterprise.	1.2% of the transaction value	0.6% of the transaction value	0.3% of the transaction value
Maximum Amount Payable by the Program per transaction (excluding additional/bonus payments).	\$50,000 (in case of facilitated factoring or leasing, the maximum payable will be \$10,000)	\$25,000 (in case of facilitated factoring or leasing, the maximum payable will be \$5,000)	\$12,500 (in case of facilitated factoring or leasing, the maximum payable will be \$2,500)

**Note:** \$50,000 is the maximum amount payable to BASP by the Program per transaction (not including bonus/additional payments).

Table 3: Additional (bonus) incentive scheme for facilitating innovative finance for enterprise.

Additional incentive eligibility criteria	Bonus amount
BASPs help enterprises to close equity and/or mezzanine transactions with a FI/investor that equals or is above \$600,000	\$10,000 for transactions below \$6,000,000 and additional \$10,000 per each \$1,000,000 above \$5,000,000 with a maximum cap of \$50,000
BASPs help enterprise to close equity transactions with a FI/investor through IPO	\$100 per raised \$1,000

Additional incentive eligibility criteria	Bonus amount
BASPs help innovative startups to close a venture/angel investment transaction with a FI/investor that is equal to or exceeds a value of \$300,000	\$5,000 per transaction closed
BASPs help innovative startups to close a venture/angel investment transaction with a FI/investor that is equal to or exceeds a value of \$25,000	\$3,000 per transaction closed
Transaction is a sustainable loan as defined by the National Bank of Georgia's sustainable finance criteria; or the client enterprise is a women owned, managed, or employing business; or at least 30% of funds raised through the transaction are directed for financing of female owned, managed, or employing enterprises; or at least 75% of raised funds are directed for financing SMEs	\$1,000 per transaction closed

**Evaluation and Award Process**

**BASP (including accelerators/incubators) eligibility criteria:**

- Must be legally registered (in Georgia or internationally) entity and provide a copy of the registration.
- Organization or key staff must have a minimum of three (3) years of relevant experience.
- Must present at least one (1) deal in pipeline while responding to this RFP (See Attachment A1).
- Must be owned by nationals of a country not considered a prohibited source or barred from doing business with the US.
- Must have a Unique Entity Identifier (UEI) number and an "active" registration status at [www.sam.gov](http://www.sam.gov).
- Must not have any active exclusions in SAM, OFAC, UN SCSL or other international compliance databases.

**BASP selection/evaluation criteria:**

- **Technical approach (max 30 points)**
  - Technical Proposal must demonstrate clear understanding of the Scope of Work to be undertaken to support The USAID Financial Innovation Program in implementation of the BASP P4R program.
- **Substance of potential deals in presented pipeline (max 25 points)**
  - This includes the quantity of presented potential deals and the total volume of projected finance that BASP intends to facilitate for the client enterprise.
- **Past performance/experience (max 20 points)**
  - Demonstrable experience in similar assignments through supporting documentation submitted in response to this RFP.
- **Key personnel (max 20 points)**
  - CVs of key personnel demonstrating ability to support and carry out the Scope of Work stated in this RFP.

- **Majority women-owned or led (5 points)**

- If a BASP is women-owned/led, bonus score of 5 will be appointed.

**Applicants must receive an overall consolidated score of 70 points to be considered technically acceptable. The program will evaluate technically acceptable proposals on a best value basis and select multiple applicants.**

Palladium reserves the right to award under this solicitation without further negotiations. The offerors are encouraged to offer their best terms (and prices) with the original submission.

## **PROCUREMENT INTEGRITY AND ETHICS**

It is Palladium's Policy that no gifts of any kind and of any value be exchanged between vendors/contractors and Palladium personnel. Discovery of the same will be grounds for disqualification of the vendor/contractor from participation in any Palladium's procurements and may result in disciplinary actions against Palladium personnel involved in such discovered transactions.

### **Instructions to the Offerors**

The following items are required to be submitted as part of the proposal:

- Entity registration copy
- Technical Proposal (See Attachment A)
- Pipeline Pre-Approval Request (See Attachment A1)
- Past Experience Information (See Attachment B)
- Key Personnel CVs
- At least two (2) references (See Attachment C)
- Completed Due Diligence Form (See Attachment D)
- Signed Certifications: Terrorism, Anti-Kick Back, Debarment, Foreign Corrupt Practices Act (See Attachment G)

### **Attachments**

Please review the additional documentation and proposed contracts terms and conditions which should be given consideration when preparing your proposal. By submitting your proposal, you will certify that that you are in agreement with the contract terms and conditions as included in this solicitation and that all prices include all aspects of the required compliance with the terms and conditions of the proposed contract.

- Attachment A: Technical Proposal Format
- Attachment A1: Pipeline Pre-Approval Request Format
- Attachment B: Past Performance Format
- Attachment C: Reference Format
- Attachment D: Due Diligence Form
- Attachment E: Business Partner Code of Conduct
- Attachment F: USAID Branding Requirements
- Attachment G: Certifications - Terrorism, Anti-Kick Back, Debarment, Foreign Corrupt Practices Act
- Attachment H: Subcontract Template

Any contract/purchase order resulting from this solicitation must be signed by both parties in order to be considered valid and in force. All costs associated with, but not limited to, production, preparation and/or delivery of goods or services, including deliveries, accepted by Palladium staff, without a fully executed (signed by both parties) contract/purchase order, are at the vendor's risk only. Palladium shall not pay for any costs,

without limitation, associated with production, preparation or delivery of goods and/or services under this or any other contract/purchase order, which has not been signed by both parties.

If your proposal is successful, you will be required to enter into the Company's standard contract for the types of goods or services being provided. In the provision of the Goods and Services, you will be required to comply with the Company's policies, including (without limitation) its Business Partner Code of Conduct and any relevant client terms and conditions. Potential suppliers must also comply with the Company's Business Partner Code of Conduct in the submission of any proposals pursuant to this RFP.

If you are bidding as part of a joint venture, partnership or similar, please make this clear in your submission. Likewise, if you propose to subcontract any part of the goods or services provision, then disclose this fact within your submission. The Company may require additional information from you and approval for subcontracting will not be automatic as subcontractors will be subject to Palladium's Due Diligence process and may be required to submit for USAID Partner Vetting.

### Attachment A: Technical Proposal Format

Name of the Business Advisory Service Provider (BASP) company:

Provide a brief overview of how your Business Advisory Service Provider (BASP) company will build a sustainable and replenishable pipeline of potential deals for the BASPs P4R program. Meaning, how you will identify and engage client enterprises in a process leading to raising risk-tolerant capital for them. The outline shall cover a) methodology for identification of client enterprises with growth potential, b) approaches for enhancing client enterprises' awareness about alternative financing instruments, and c) expected frequency of bringing new potential deals in the pipeline that have a high probability of success.

*(Max 350 words):*

Provide an illustrative list of financial institutions and investors (including international ones) your company will work with to facilitate finance/investment for client enterprises under the BASPs P4R program.

*(Max 200 words):*

Provide a brief overview of the process outlining illustrative steps you will undertake with client enterprises on one hand and with financial institutions/investors on the other hand, to facilitate finance/investment for the former. This may include, but are not limited to, the following:

- Providing financial advisory services to identify the financing needs of client enterprises and recommend the type of financial instrument and sources of financing best suited for individual enterprises.
- Assisting client enterprises in the preparation of financial statements, business plans, corporate presentations and other paperwork required to obtain the financing.
- Advising client enterprises on financing terms typical for various types of financing as well as assisting them in negotiations with financing providers.
- Assisting client enterprises to ensure compliance with Financial Institution due diligence requirements.
- Linking client enterprises to venture capital, private equity, and other risk capital investors.
- Supporting client enterprises in the investor due diligence process.
- Advising client enterprises on the principles of equity investment valuation and on the equity investment process in general, providing negotiation support, etc.

*(Max 350 words):*

Outline the roles for the proposed team, including Key Personnel and Support/Admin Staff.  
(Max 100 words):

## Attachment A1: Pipeline Pre-approval Request

*Attachment A1* also represents an engagement letter between the Business Advisory Service Provider (BASP) and the client enterprise. By signing this document, the BASP and the Client enterprise provide their preliminary consent to engage in the transaction advisory process (on terms outlined below) leading to facilitation of finance/investment for the client enterprise

<b>NAME OF THE BASP</b>	
<b>NAME AND CONTACT DETAILS OF THE CLIENT ENTERPRISE</b>	
<b>Name</b>	
<b>Address</b>	
<b>ID Number</b>	
<b>Contact Person Name</b>	
<b>Contact Person Tel.</b>	
<b>Contact Person Email</b>	
<b>OPERATIONAL DETAILS OF THE CLIENT ENTERPRISE</b>	
<b>Type of Enterprise (check multiple options as applicable)</b>	<input type="checkbox"/> SME <input type="checkbox"/> Startup <input type="checkbox"/> Corporate <input type="checkbox"/> Green business <input type="checkbox"/> Women led, managed, or employing <input type="checkbox"/> Youth (15-29) led or managed
<b>Sector of activity</b>	
<b>The Client Enterprise Description: products/services produced/offered</b>	
<b>ENGAGEMENT DETAILS</b>	
<b>Projected USD or GEL value of transaction</b>	
<b>Projected USD or GEL value of incentive payable by the Financial Innovation Program as a portion of the success fee</b>	
<b>Projected USD or GEL value of the cost contribution of the client enterprise as a portion of the success fee</b>	
<b>Type of Finance Needed (check multiple options as applicable)</b>	<input type="checkbox"/> Factoring <input type="checkbox"/> Equity <input type="checkbox"/> Leasing <input type="checkbox"/> Venture/Angel investment <input type="checkbox"/> Warehouse Receipt <input type="checkbox"/> IPO <input type="checkbox"/> Sustainable finance <input type="checkbox"/> <b>Other</b> <small>Click or tap here to enter text.</small>
<b>Expected Source of Finance</b>	<input type="checkbox"/> Bank <input type="checkbox"/> Venture Capital <input type="checkbox"/> Angel Investor <input type="checkbox"/> Leasing Company <input type="checkbox"/> <b>Other</b> <small>Click or tap here to enter text.</small>

<b>Proposed use of Finance/Investment by the Client Enterprise (max 100 words)</b>	Click or tap here to enter text.
<b>Type of Assistance needed from BASP</b>	<input type="checkbox"/> Proposal Development <input type="checkbox"/> Due Diligence <input type="checkbox"/> Link to Investors/Financiers <input type="checkbox"/> Business Planning <input type="checkbox"/> Other Click or tap here to enter text.
<b>Client Enterprise's score for the deal based on the Enterprise Evaluation Criteria/Deal Scoring Matrix provided below as well as in the RFP</b>	Score in figures: _____

### Deal Scoring Matrix

Enterprise Evaluation Criteria	Points	Scored
Transaction is an equity or mezzanine finance raised from international sources or an Initial Public Offering (IPO). No cash out of existing shareholders will be accepted	5	<input type="checkbox"/>
A client enterprise is innovative startup. A startup refers to a company in the first stages of operations up to 5 years. Startups are newly founded companies by one or more entrepreneurs who want to develop an innovative products or services for which they believe there is demand and they have a potential to achieve large-scale soon	5	<input type="checkbox"/>
Transaction is performed through a warehouse receipt financing	5	<input type="checkbox"/>
Transaction is for domestic mezzanine finance or equity raised from domestic sources. No cash out of existing shareholders will be accepted	3.5	<input type="checkbox"/>
Factoring Transactions	3	<input type="checkbox"/>
A client enterprise is an SME (SME is an enterprise with an annual turnover below GEL 60 million and with number of employees below 250)	2	<input type="checkbox"/>
Transaction is performed through trade finance or asset-based finance such as leasing, accreditive, letter of credit	2	<input type="checkbox"/>
Transaction is a sustainable loan as defined by the National Bank of Georgia's sustainable finance criteria; or the client enterprise is a women owned, woman managed, or woman employing business; or at least 30% of funds raised through the transaction are directed for financing of female owned, managed, or employing enterprises; or at least 75% of raised funds are directed for financing SMEs	1.5	<input type="checkbox"/>
Investment is between USD 30,000 - 300,000	1.5	<input type="checkbox"/>

**BASP and the Client enterprise provide their preliminary consent to engage in the transaction advisory process (on terms outlined above) leading to facilitation of finance/investment for the client enterprise.**

BASP legal name \_\_\_\_\_

Name of the authorized representative \_\_\_\_\_

Signature \_\_\_\_\_ Date: \_\_\_\_\_

Client Enterprise legal name \_\_\_\_\_

Name of the authorized representative \_\_\_\_\_

Signature \_\_\_\_\_ Date: \_\_\_\_\_

**Attachment B: Past Performance Report**

Instructions: For use in collecting past performance information on the projects (preferably similar) implemented by your organization over the past three (3) years. Use the below structure, with any necessary customization, for inclusion in solicitations. Ensure that mention is made that Palladium may contact references directly for information on a contractor's past performance.

Please, use separate tables for each project, add tables as needed.

Contract Number:
Contractor (Name and Address):
Type of Contract: <input type="checkbox"/> Fixed Price <input type="checkbox"/> Cost Reimbursement <input type="checkbox"/> Hybrid <input type="checkbox"/> Time & Materials / Labor Hour <input type="checkbox"/> Other (explain)
Complexity of Work: <input type="checkbox"/> Difficult <input type="checkbox"/> Routine
Description, location, and relevancy of work: Location:  Description:  Relevancy to Solicitation:
Contract Value:
Status: <input type="checkbox"/> Active <input type="checkbox"/> Completed
Date of Award:
Contract Completion Date (including extensions):
Type and Extent of Subcontracting (if applicable):
Name, Address, Telephone Number, and E-mail Address of the Procuring Officer and/or the Technical Representative (and other references if applicable):

Contract Number:
Contractor (Name and Address):
Type of Contract: <input type="checkbox"/> Fixed Price <input type="checkbox"/> Cost Reimbursement <input type="checkbox"/> Hybrid <input type="checkbox"/> Time & Materials / Labor Hour <input type="checkbox"/> Other (explain)
Complexity of Work: <input type="checkbox"/> Difficult <input type="checkbox"/> Routine
Description, location, and relevancy of work: Location:  Description:  Relevancy to Solicitation:
Contract Value:
Status: <input type="checkbox"/> Active <input type="checkbox"/> Completed
Date of Award:
Contract Completion Date (including extensions):
Type and Extent of Subcontracting (if applicable):
Name, Address, Telephone Number, and E-mail Address of the Procuring Officer and/or the Technical Representative (and other references if applicable):

Contract Number:
Contractor (Name and Address):
Type of Contract: <input type="checkbox"/> Fixed Price <input type="checkbox"/> Cost Reimbursement <input type="checkbox"/> Hybrid <input type="checkbox"/> Time & Materials / Labor Hour <input type="checkbox"/> Other (explain)
Complexity of Work: <input type="checkbox"/> Difficult <input type="checkbox"/> Routine
<b>Description, location, and relevancy of work:</b> Location:  Description:  Relevancy to Solicitation:
Contract Value:
Status: <input type="checkbox"/> Active <input type="checkbox"/> Completed
Date of Award:
Contract Completion Date (including extensions):
Type and Extent of Subcontracting (if applicable):
Name, Address, Telephone Number, and E-mail Address of the Procuring Officer and/or the Technical Representative (and other references if applicable):

**Attachment C: Vendor Reference Check Form**

1	Organization Name	<i>(Name of the party for whom reference is sought)</i>
2	Reference Provider's Name	
3	Reference Provider's Title and Organization	
4	Nature of Work or Services Undertaken	One-time <input type="checkbox"/> Regular/Ongoing <input type="checkbox"/>
5	Dates of Work	From Enter date To Enter date
6	Describe the work or services undertaken by the Organization.  <i>(Include information like type of contract; description; location and relevancy of work and any other important details from ARBP Past Performance Report.)</i>	
7	Did the Organization deliver on time, within the quoted price, and at the expected level of quality?  Yes <input type="checkbox"/> No <input type="checkbox"/>  <i>(If 'No', please elaborate on your response.)</i>	
8	What strengths and weaknesses of the Organization did you observe during your work with them?  Strengths:  Weaknesses:	
9	Did you witness any issues with integrity, business ethics, or compliance by the organization? If so, please provide details.  Click here to enter text	
10	If /when problems arose on the project, was the organization able to resolve the issue to your satisfaction in a timely manner?  Click here to enter text	
11	Would you work with this Organization again?	Yes <input type="checkbox"/> No <input type="checkbox"/>
12	Is there any other information you would like to share with us?  Click here to enter text	

## Due diligence form

Please provide answers to and information regarding all of the questions below. For any answer requiring more space than is given in this form, please attach the complete answer on a separate sheet. To the extent permitted by law, all information provided in this form will be held in confidence and not disclosed to any third parties without prior notice and approval.

### Part 1 Identifying information

#### Part 1 a

To be completed if an **organisation** is the subject of Due Diligence

---

Name of organisation: ...

Organisation headquarters address/main office: ...

Country or countries where activities will take place: ...

Website for organisation: ...

Name of owner/managing director for organisation: ...

List any former name(s) owner/managing director for organisation: ...

---

#### Part 1 b

To be completed either if an **individual** is the Subject of Due Diligence or, if an **organisation** is the Subject of Due Diligence, then to be filled out by the owner/managing director of the organisation

---

Full Legal Name (As written on passport or national identification card) ...

Home address for individual or owner/managing director, phone number, and email address: ...

Identify card / Passport: ...

Nationality: ... Date of birth: dd/mm/yyyy

Telephone: ... E-mail: ...

---

## Part 2 Business information

*(Only applicable if an organisation is the Subject of Due Diligence. For individual move to part 4)*

To be completed by the owner/managing director

---

a Sole Proprietorship  Partnership  Corporation  Non Profit  Other

If other, please specify below:

...

b Is this organisation registered? If so,  Yes  No  
please note the country and registration  
number below

...

d Is the entity an organisation listed on a  Yes  No  
public stock exchange? If so, please  
provide relevant details below.

...

e If applicable, please list any parent companies or subsidiaries below:

...

---

Does any Public Official or government entity have any financial, management  Yes  No  
or controlling interest in your organisation? If so, provide details and level of  
interest below.

...

---

Please list the full names and date of birth of all Principals for your organisation. (Note: the term  
"Principal" includes, but is not limited to, the executive officers, partners, owners, directors, trustees  
or others who exercise control over your organisation).

...

## Part 3 Compliance, health and safety

---

Does the organisation have an institutionalized Financial and internal controls policy? If so, please attach or provide details below.  Yes  No

...

---

Does the organisation have an occupational health and safety (OHS) policy? If so, please attach or provide details below.  Yes  No

...

---

Please state whether the organisation meets the legislative requirement of compulsory insurance where business will take place and please attach the certification or provide details by country or countries.

...

---

## Part 4 Government relationships

To be completed by the individual or owner/managing director of the organisation

---

Please state whether:	You are currently, or have been during the last two years, a Public Official (as that term is defined in Part 7 below)	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	Your organisation employs a current Public Official ( <i>If applicable</i> )	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	You are a close relative (i.e. mother, father, sister, brother, spouse or child) of a Public Official	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	Any Principal of your organisation has a close relative who is a Public Official ( <i>If applicable</i> )	Yes <input type="checkbox"/>	No <input type="checkbox"/>

For any person identified as a close relative above, please provide their name (surnames and given name), title, relationship to you or the organisation, and responsibilities for the government, agency, or government controlled enterprise or company. If additional space is needed, attach a separate sheet of paper.

...

---

## Part 5 Prior conduct

To be completed by the individual or owner/managing director of the organisation

---

Have you (or any Principals of your organisation) ever been investigated for, charged with, convicted or otherwise implicated in criminal, corrupt, unethical, or unlawful conduct? Yes  No

*(If applicable)* Has the organisation, or any subsidiary or affiliate of your organisation ever been investigated for, charged with, convicted or otherwise implicated in criminal, corrupt, unethical, or unlawful conduct? Yes  No

*(If applicable)* Has the organisation ever been issued a sanction or committed a violation of law or regulation? Yes  No

If yes to any of the above, please describe the circumstances below:

...

---

## Part 6 Additional disclosures

To be completed by the individual or owner/managing director of the organisation

---

Please provide any additional information below that would assist the company in performing its due diligence review. If more space is needed, attach a separate sheet.

...

---

## Part 7 Certification

To be completed by the individual or owner/managing director of the organisation

---

### Certification

I hereby certify that:

To the best of my knowledge, all information in this response is truthful, correct and complete; I have read the information at the websites noted below and I am familiar with the requirements of these anticorruption statutes:

UK Bribery Act 2010;

Australian Criminal Code;

U.S. Foreign Corrupt Practices Act;

I have read the definition of Public Official below and declare that neither I, nor any of my immediate family members, are Public Officials, except as previously disclosed.

I have never paid, approved for payment or otherwise provided, directly or indirectly, anything of value to a Public Official for any improper, corrupt or illegal purpose, nor will I; and I have never created a false invoice or otherwise manipulated documentation to disguise making a payment or otherwise providing anything of value to a Public Official for any purpose, nor will I.

NOTE: "Public Official" means any person, whether elected or appointed who holds an executive, legislative, administrative or judicial office or position in any public entity, including any international agency. In addition, "Public Official" includes any person who performs public functions in any branch of the national, state, local or municipal government of any country or territory or who exercises a public function, by employment or under contract, for any public entity, agency or enterprise of such country or territory, including state owned or controlled enterprises, or any part of a government. The definition of "Public Official" also includes any official of a political party or any candidate for political office.

I further hereby acknowledge that I have reviewed the Business Partner Code of Conduct and I, and/or my organisation, will comply with all requirements set out in such Code.

### Data Collection Notice

If you are completing this form for yourself as an individual, then you acknowledge the following. If you are completing this form for an organisation (whether a company, trust, charity or similar), you acknowledge that you have obtained consent to the following from the relevant individuals.

---

Palladium is committed to the protection of personal information and compliance with relevant data protection and privacy laws. The information requested by this form is collected directly from you to assess your suitability, or that of a relevant individual, to provide services to Palladium, its clients and/or any of its projects. The information we will collect pursuant to this due diligence exercise is as outlined in this form, but we may also obtain information through an investigative report, which may draw on public registers, interviews or public media. We collect this information on the legal basis of your consent, and then will later use it for the performance of any contract with you or for the performance of any relevant contract with our clients.

This information may be shared with any of Palladium's related companies or relevant clients where such sharing is a) required by a relevant law, our contract with you or with our clients; or b) permitted by a relevant data protection law. Where sharing is with related companies, such related companies will comply with Palladium data protection guidelines.

This information may be provided to our offices/related companies overseas, subject to such overseas offices/related companies being bound by the same data protection standards as the office or company to which you provide the information and provided also that such transfer of information is required as part of fulfilling the purpose of or reasons for the provision of the information, or for the performance of any subsequent contract. An example of this might be that the relevant decision maker or individual involved in the decision is based in another location. Further details are available at <http://thepalladiumgroup.com/legal/our-policies>.

The information you provide will be used to a) make an informed assessment about whether Palladium can enter into an agreement with you or your organisation, b) manage your contract and services with Palladium in the event we enter into an agreement with you, or c) assess certain internal diversity and inclusion metrics. If you do not provide your data or consent to processing by us then we cannot assess your suitability to enter into a contract with you.

Depending on your country of residence, you may have certain data protection or privacy rights. You can find details, including our retention guidelines, at <http://thepalladiumgroup.com/legal/our-policies>. Privacy or data protection queries can be directed to [Privacy@thepalladiumgroup.com](mailto:Privacy@thepalladiumgroup.com)

Signature:

Name: ...

Title: ...

Date: ...

---

# GBL CC02 Business Partner Code of Conduct

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Approved by:	CEO	Policy type:	GBL
Responsible official:	Managing Director Organisational Effectiveness	Policy number:	GBL CC02
		Version:	1.4
		Effective date:	27 July 2021

## Revision history

Version:	Effective date:	Approved by:	Summary of changes:
1.0	1 September 2015	CEO	NA
1.1	1 November 2017	CEO	Updated to align with Regional Business Partnerships
1.2	10 August 2019	CEO	Update for respectful workplace, safeguarding and other
1.3	27 February 2020	CEO	Updated Child Protection requirements
1.4	27 July 2021	CEO	Updated responsible official

## Statement

This is a controlled document. The master document is posted on the Company website. Representatives may print off this document for training and reference purposes but are responsible for regularly checking the Company website for the current version.

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# 1. Purpose

This Policy describes the Company's expectations of Business Partners when conducting business around the world. Business Partners must operate worldwide in a manner fully consistent with the highest standards of conduct including following best practices in integrity and ethics, anti-discrimination, anti-harassment, child protection, prevention of sexual exploitation and abuse, health and safety, anti-corruption and other areas in order to promote good governance and positive impact.

# 2. Applicability

This Policy is applicable to all Business Partners. Any deviation from this Policy requires the approval of the Responsible Official.

The Company has in place Guidelines, Standard Operating Procedures (SOPs), Business Processes and Tools to support the implementation of this Policy.

The Responsible Official, with input from the business as appropriate, is responsible for preparing and implementing the related Guidelines, SOPs, Business Processes and Tools.

Guidelines, SOPs, Business Processes and Tools may vary with different operating environments if required by local legislation, Client rules and regulations and other factors, subject to the approval of the Responsible Official.

# 3. Definitions

"Bribery" or "Bribe" means to directly or indirectly offer, promise or provide a financial or other advantage (including hospitality) to another person to:

- ❑ Induce or encourage the other person to perform a function improperly;
- ❑ Induce or encourage the other person to expedite the performance of a routine government action (see "Facilitation Payment"); or
- ❑ Reward the other person for the improper performance of a function.

"Bullying" means repeated unreasonable behaviour over time, where the behaviour causes or has the potential to cause harm to another person or persons.

"Business Partner" means any contractor, subcontractor, grantee, sub-grantee, awardee, sub-awardee, law firm, affiliate, vendor, supplier, landlord or organization providing goods or services to the Company.

"Business Process" means a sequence of linked tasks and related decisions that result in or contribute to the delivery of a product or service.

"Child" or "Children" means a person or persons who is or are below the age of 18, regardless of the age of majority/consent in the relevant country. Where the age of majority/consent in the relevant country is anyone aged 18 or above 18 then that higher age limit shall apply and take precedence.

"Child abuse" means all forms of physical abuse, emotional ill-treatment, sexual abuse and exploitation, neglect or negligent treatment, commercial (e.g. for financial gain) or other exploitation of a Child and includes any actions that results in actual or potential harm to a Child.

"Child abuse material" means material that depicts (expressly or implicitly) a Child as a victim of torture, cruelty or physical abuse.

“Child exploitation material” means material, irrespective of its form, which is classified as Child abuse material or Child pornography material.

“Child pornography material” means material that depicts a person, or is a representation of a person, who is, or appears to be, under 18 years of age and is engaged in, or appears to be engaged in, a sexual pose or sexual activity, or is in the presence of a person who is engaged in, or appears to be engaged in, a sexual pose or activity, and does this in a way that a reasonable person would regard as being, in all the circumstances, offensive.

“Client” means any individual or entity who engages the Company to provide goods or services.

“Commercial Sex Act” means any sex act on account of which anything of value is given or received.

“Compliance” means adherence to laws, codes, regulations, rules, standards, policies, and guidelines concerning proper conduct, management, and business transactions.

“Conflict of Interest” means when a Business Partner’s interests are (or potentially are) inconsistent with or are (or potentially are) otherwise in opposition to the interests of the Company, the Company’s Clients, or the Company’s stakeholders.

“Company” refers to Palladium Group Holdings Pty Ltd and all of its subsidiaries or related companies.

“Corruption” means the abuse or perversion of entrusted power, including the expectation of impartiality, for private or unlawful gain.

“Discrimination” is any unfair treatment or arbitrary distinction based on personal characteristics such as age, gender, sexual orientation or identity, disability, marital or parental status, pregnancy, religious belief or activity, political belief or activity, race (including colour, national origin or ethnicity) or citizenship.

“Diversity” refers to the individual differences and variety of characteristics that we all bring to the Company.

“Duty of Care” refers to the obligation of the Company and Business Partners to take reasonable care to prevent foreseeable harm to any Representative or employee of the Business Partner and provide a safe system of work.

“Facilitation Payment” means a direct or indirect payment to a Public Official to carry out or expedite the performance of a routine government action. Routine government actions include, but are not limited to, clearing customs, processing visas and scheduling inspections.

“Fraud” means dishonestly obtaining a benefit or causing a loss by dishonest or other improper means.

“Graft” means the misuse of authority for personal gain.

“Guidelines” means the written elaborations on Company policy that provide further information and interpretation for the implementation of policy.

“Guiding Principles” means the principles to which all Company Representatives commit to aligning their behaviours in order to create and deliver a successful Company culture.

“Harassment” means any improper and unwanted behaviour that makes a person feel threatened, intimidated, degraded, humiliated or offended.

“Inclusion” means ensuring that the right conditions are in place so that every person is able to achieve their full potential regardless of personal characteristics, socioeconomic background or personality type.

“Intellectual Property” means rights including, but not limited to, patents, copyrights, and trademarks, with regard to goods and/or services and other materials which bear a direct relation to or are produced, prepared, or collected in consequence of or in the course of the execution of an agreement or contract with the Company.

“Personally Identifiable Information” means any data that could potentially identify a specific individual or any information that could be used to distinguish one person from another and can be used for de-anonymising anonymous data.

“Privacy” means a person’s right to control access to his or her personally identifiable information.

“Prohibited Act” means any offence under any applicable statute in any jurisdiction.

“Public Official” means an elected or appointed executive, administrative, legislative or judicial officer or employee of a country, state, territory, or political subdivision thereof; an officer or employee of a public international organisation; or an officer or employee of a public enterprise or public body, including officers or employees of State owned or controlled entities. In addition, Public Official includes any person who performs a public function or exercises public authority, by employment or contract, for any branch of the national, state, local or municipal government of any country or territory. Public Official also includes employees or officers of political parties as well as candidates for political office.

“Representative” means an Employee or any person who has an independent individual contractual relationship with the Company, whether as a contractor, consultant or agent of the Company. This includes non-executive directors of the board.

“Safeguarding” means action taken by the Company to protect the beneficiaries and communities with which we work, our Representatives and Clients from harm

“Security” means a stock, bond, note or debenture, as well as options, warrants and similar instruments related to such stock, bonds, notes or debentures.

“Sexual Abuse” is any actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions.

“Sexual Exploitation” means any actual or attempted abuse of position of vulnerability, differential power, or trust, for sexual purposes, including but not limited to, profiting monetarily, socially, or politically from the sexual exploitation of another.

“Sexual Harassment” means unwanted sexual advances, request for sexual favour, verbal or physical conduct or gesture of a sexual nature, or any other behaviour of a sexual nature that might reasonably be expected or be perceived to cause offence or humiliation to another. Any gender can be either a victim or offender.

“Standard Operating Procedures” or “SOPs” are the detailed written descriptions of Business Processes that aim to ensure consistency and quality in process execution.

“Tool” means templates, forms, charts, informational and any other material prescribed for use in conjunction with an element of a Policy, Guideline, Business Process and SOPs.

“Trafficking” means the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, abduction, fraud, deception, the abuse of power or a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

## 4. Policy

### 4.1. Integrity and Ethics

#### 4.1.1. General Integrity

The conduct of Business Partners is a direct reflection on the Company and the Company's values and Guiding Principles.

Business Partners are required to:

- ❑ Observe and abide by all applicable laws and regulations, including relevant treaty obligations and internal policies, both in the countries where the Business Partner is registered and, if different, in the countries where the Business Partner is doing business;
- ❑ Read and comply with all Company Policies, Guidelines, SOPs and Business Processes applicable to Business Partners;
- ❑ Conduct business in a truthful, honest, diligent, transparent, and ethical manner;
- ❑ Treat Clients, employees, suppliers, consultants, Representatives, communities with which we work and others with whom Business Partners interact, fairly, humanely, and with proper regard for their human rights and obligations;
- ❑ Respect cultural differences among Clients, employees, suppliers, consultants, Representatives and others with whom Business Partners interact and conduct themselves in a manner that will not reflect adversely on the Company, its shareholders, Clients, partners, or the wider community; and
- ❑ Honour commitments and keep confidences.

#### 4.1.2. Accountability

The Company holds Business Partners accountable for their conduct and expects all Business Partners to adhere to the spirit and letter of this Policy. To ensure compliance with this Policy, the Company asks its Business Partners to:

- ❑ Review this Policy and commit to abide by it;
- ❑ Ensure that questions about this Policy are addressed promptly and all employees of Business Partners know how to seek guidance about complying with this Policy;
- ❑ Ensure that non-compliant conduct is reported through any means including Company email, telephone, or the Company Whistle-blower mechanism as soon as practicable; and
- ❑ Report any known or suspected unlawful or unethical conduct related to the Company.

Self-reporting of non-compliance is encouraged.

The Company will investigate any credible report of a violation of this Policy or any unethical or unlawful conduct.

#### 4.1.3. Transparency and Record Keeping

The Company is committed to transparency in all business dealings. The Company maintains a comprehensive system of record keeping. Business Partners must ensure that all official records are

properly identified and maintained according to the Records Management Policy. The records are required to be true and accurate and any intentional misuse, editing, or handling of the official records is prohibited.

#### 4.1.4. Duty of Care

Employees of Business Partners come under the Duty of Care of the Business Partner and the Business Partner must manage risks associated with the performance of work. Unless otherwise indicated, the Company is not responsible for security arrangements, health, or safety of individuals and/or property that is the responsibility of the Business Partner. The Company expects that the Business Partner will hold appropriate levels of insurance to protect their interests and the interests of the Company and Company Representatives.

#### 4.1.5. Tax

Business Partners will comply with all obligations to pay taxes, duties, and charges imposed or levied in the countries in which the Business Partner is registered and in the countries in which the Business Partner is doing business as required by law including all taxes, entitlements, other statutory charges and/or any other amounts payable to personnel in the relevant jurisdiction.

#### 4.1.6. Procurement

Business Partners must follow the principles of fair competition and compete honestly, transparently, and fairly for potential contracts, grants, and other opportunities. Business Partners should always seek to outperform competition in a fair and honest manner and seek competitive advantage through superior performance. Business Partners will not collude with competitors when bidding for contracts and, if collusion is brought to the Company's attention it will be investigated and addressed without delay. Business Partners are required to follow all applicable procurement laws and regulations. In a tender process, Business Partners will, to the best of their ability, provide accurate and truthful information and will not misrepresent their approaches, capabilities, or pricing.

Business Partners must never ask for or receive preferential treatment or special privileges or make use of information they are not authorised to have, including non-public documents or other proprietary data, including information released to the Company under Non-Disclosure Agreements. Representatives. Business Partners must not take unfair or improper advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of facts, or any other illegal or unethical trade practice. Business Partners will not attempt to influence Public Officials or other Clients with payments, gifts, offers of employment, or otherwise unlawful conduct.

#### 4.1.7. Anticorruption/Bribery/Graft

Business Partners must be committed to honesty, transparency, and fairness and have zero tolerance for Bribery, including making Facilitation Payments or Graft. Business Partners will reject Corruption in all of its forms and comply with the spirit and letter of all applicable anticorruption laws and regulations. Business Partners are required to:

- ❶ Reject Corruption in all of its forms, including Bribery, making Facilitation Payments, Graft or any Prohibited Act;
- ❷ Understand and appreciate that Bribery and Graft are unlawful and therefore strictly prohibited, regardless of jurisdiction or circumstance;
- ❸ Adopt and enforce all policies that prevent Corruption in the conduct of business;
- ❹ Ensure that no Public Official benefits financially or in any other unlawful way from the relationship with the Business Partner (or any Client);

- ❑ Operate with an adequate system of internal accounting controls and maintain accurate records that document relevant transactions; and
- ❑ Immediately inform the Company, if information is discovered indicating that a Prohibited Act has been committed, has been requested, or otherwise suggested by any person, including a Public Official or private individual, in connection with, in the relationship with, or work for the Company.

Business Partners must not:

- ❑ Directly or indirectly, commit or attempt to commit, any Prohibited Act, including Bribery, Graft or making a Facilitation Payment;
- ❑ Directly or indirectly, receive a Bribe;
- ❑ Use their authority for personal gain; or
- ❑ Offer, provide or receive unlawful gifts, benefits, hospitality, advantages, courtesies or entertainment from a Public Official where a reasonable person could interpret the offer, provision or receipt as a Prohibited Act made in connection with the Representative's duties, status or authority.

Hospitality is permitted under specific circumstances. Bona fide hospitality or other business expenditure with the aim of presenting the Business Partner, Company or its products or services, or establishing cordial relations is permitted. However, hospitality or promotional expenditure can be misinterpreted as Bribery and Business Partners must keep in mind appearances and perceptions and not offer hospitality where it could be mistaken to have the intention of influencing a Public Official to secure a business advantage, to perform a function improperly, or to expedite the performance of a routine government action.

Receipt and provision of gifts, benefits or entertainment must be notified on relevant registers kept for that purpose in accordance with a relevant Business Process.

#### 4.1.8. Intellectual Property

Unless otherwise specified, all Intellectual Property developed in the course of the business relationship between the Company and the Business Partner remains the property of the Company or, where contractually specified, the property of its Clients.

Business Partners are required to comply with all applicable laws, rules and regulations Company policies and procedures and contractual policies and procedures of Clients covering Intellectual Property rights.

#### 4.1.9. Scientific integrity

The Company is committed to the highest standards of scientific integrity when performing any science-based and research-oriented work. These include ensuring that research and science-based work is grounded in documented approaches, is supported by validated data and information, and that results and conclusions are independent and unbiased.

Business Partners are required to ensure that there are no actual or perceived Conflicts of Interest that might bias work they are undertaking or otherwise call into question the validity or accuracy of their work. Business Partners will not falsify, fabricate, or misrepresent data or results, even if pressured to do so by internal or external sources. Due credit must be given when the work is not the Business Partner's own. If the Business Partner is involved in any research work involving human subjects, then it must follow the highest standards, ethical considerations, laws, rules and regulations applicable and take great care to interact with any human subjects with empathy and respect.

#### 4.1.10. Fraud/waste/abuse

The Company does not tolerate fraudulent activity, waste of Company or Client resources, or abuse of authority by Business Partners. Business Partners are required to prevent, detect, and report Fraud, waste, abuse, or any other Prohibited Acts about which they know or reasonably should have known. The Company Whistle-blower mechanism is available to report confirmed or suspected violations and Business Partners and their employees are expected to cooperate fully if and when investigations are undertaken.

#### 4.1.11. Conflicts of Interest

The Company believes in open and transparent business dealings. Business Partners must separate their own personal interests from those of the business transaction with the Company. Conflict of Interest arises when, for example, a Business Partner, their employee or any member of his or her immediate family, his or her partner, an organisation that employs or is about to employ any of the above, has a financial or other interest in, or will receive a tangible personal benefit from, an action taken by the Business Partner. Actual or potential Conflicts of Interest must be reported immediately to the Company so that action can be taken to manage and mitigate the Conflict of Interest, including but not limited to the exclusion of the Business Partner from any relevant decisions.

Sexual relationships between Business Partners, their employees and/or with others connected with the Company's projects or suppliers may be a Conflict of Interest and are strongly discouraged. Accordingly, any and all such relationships must be disclosed to the Company.

In the event that a Business Partner is subject to codes or rules of conduct other than those contained in the Company Policies, Guidelines, SOPs or Business Processes (such as other professional codes), and a conflict arises between these codes, it is the Business Partner's responsibility to bring the conflict to the attention of the Company for resolution.

## 4.2. Privacy and Information Protection

### 4.2.1. Privacy Protection, Responsibilities and Expectations

The Company's Privacy Policy sets out the details of the collection, storage, use, disclosure, access to, and correction of Personally Identifiable Information by the Company.

Protecting sensitive and Personally Identifiable Information and preventing its misuse are essential to ensure that the Company maintains the highest standards of professional conduct, including complying with data protection legislation wherever the Company carries out its business. Business Partners, Clients and beneficiaries have a right to be protected against unwarranted infringement of their privacy resulting from the collection, maintenance, use and dissemination of their personal information. The Company is dedicated to the protection of the information we hold and to the prevention of actions that could result in harm, embarrassment, inconvenience or unfairness to anyone with whom or with which the Company has a relationship.

All Business Partners are responsible for protecting sensitive and Personally Identifiable Information from unauthorised exposure and reducing the volume and types of Personally Identifiable Information to only that which is necessary for business functions. Business Partners must protect the Personally Identifiable Information they collect, handle, maintain and transmit and they must use proper collection, storage, transmission and disposal methods. Further, Business Partners must not access Personally Identifiable Information they do not need to complete their job functions and must not disclose Personally Identifiable Information to unauthorised parties.

Failure to protect Personally Identifiable Information may result in immediate termination of all business relationships with the Company. All Business Partners are obligated to notify the Company if they discover any actual or potential privacy breaches.

Users of Company information systems have no reasonable expectation of privacy. This means that any information transiting or stored on a Company system can be monitored, intercepted, searched and seized by the Company. Further, any information transiting or stored on a Company system may be disclosed or used for any lawful governmental purpose including law enforcement, public health or security purposes.

#### 4.2.2. Access to and Protection of Information

In the performance of their duties, Business Partners may be granted access to many sources of information, confidential or otherwise. Any information provided as part of a Business Partner's duties or any information to which the Business Partner has access must be used only for official purposes. Business Partners will not make any unauthorised, improper, or unlawful use of any information made available to them in the performance of their duties. Further, Business Partners will not access information without an official purpose related to the performance of their duties.

#### 4.2.3. Access to and Protection of Resources

In the performance of their duties, Business Partners must also protect Company resources. Business Partners are expected to:

- ❑ Use or manage both human and material resources efficiently and effectively;
- ❑ Avoid waste, misuse, and abuse of Company resources and conserve and protect Company assets;
- ❑ Ensure that all facilities, physical resources, and other property belonging to or leased by the Company are given due care and maintenance; and
- ❑ Budget honestly.

The Company reserves the right to immediately terminate any business relationships for violations relating to access to and protection of information and misuse of Company resources.

#### 4.2.4. Information Communication Technology Systems Use

All Company information communication technology systems, including email and any connected computer communications network, server, individual computer workstation, laptop, or Smartphone may only be used for business purposes, subject to the following. The Company will permit limited personal use of the information technology systems as long as the personal use does not interfere with the Business Partner's work or incur an unreasonable expense to the Company. Business Partner use of information technology systems is a business privilege and, as such, the Company reserves the right to immediately terminate any business relationship for violations relating to use of the information technology systems.

The following are some examples of unacceptable and, therefore, prohibited actions involving the Company information technology systems. Actions include, but are not limited to:

- ❑ Excessive use of Company information technology systems for personal use;
- ❑ Intentionally inefficient or wasteful use of Company assets or resources;
- ❑ Unauthorised access or use of any information technology system;
- ❑ Intentional disruption of the Company's internet service, a third party's internet service, and/or the global internet;
- ❑ Compromising or damaging the integrity of or misusing any host/server information technology assets or resources;
- ❑ Compromising the privacy of any Company or third party users;

- ❉ Violating information rules, regulations or policies in the jurisdiction in which the Business Partner is registered or performing work;
- ❉ Compromising corporate proprietary or otherwise sensitive information; and
- ❉ Using information communication technology systems to violate corporate policies or procedures, including sending or forwarding emails that violate any of the Company's policies.

Although the Company has software to detect known viruses, Business Partners must be aware that pirated software, email or basic internet use can introduce viruses into their computer, the corporate network and broader information technology systems. Caution should be used when opening emails and files from unknown senders and downloading content from the internet.

Business Partners who are unsure of their obligations in relation to any aspect of information communication technology system use in the workplace should contact the Company for advice and assistance.

### 4.3. Respectful Workplace

The Company supports Diversity and Inclusion and is committed to nurturing a positive workplace environment in which all Representatives and Business Partners are treated with respect and dignity. We foster a culture that is diverse, inclusive and respectful. The Company encourages a workplace free of Discrimination.

All Business Partners are expected to demonstrate professional and respectful behaviours in the workplace, at Company events, and/or under any circumstances when representing the Company. This includes business travel and time spent at Company related social events, whether held on or off Company premises and whether during or outside working hours.

Discrimination, Harassment and Bullying, in any form, are unacceptable. Business Partners are expected to adhere to the requirements of this Code of Conduct and to proactively report on Discrimination, Harassment, Bullying or other breaches of the Company's policy.

Management of poor performance or poor conduct does not constitute Discrimination, Harassment or Bullying when it is conducted in accordance with the relevant Company Guidelines.

#### 4.3.1. Anti-Discrimination

The Company values Diversity and employs and partners with individuals and organisations from a diverse range of backgrounds, cultures and races. The Company is committed to an open, inclusive and Discrimination-free workplace.

The Company is dedicated to promoting an accessible and inclusive workplace where all reasonable accessibility requirements and requests will be considered and, where reasonably possible, accommodated.

Business Partners must not engage in any Discrimination including, but not limited to, the following:

- ❉ Refusing to hire or promote Representatives on the basis of any personal characteristics that are not relevant to the requirements of the role;
- ❉ Terminating Representatives on the basis of any irrelevant personal characteristics;
- ❉ Refusing to provide reasonable accommodations for those Representatives with disabilities; and
- ❉ Refusing to excuse Representatives for documented, medically necessary appointments related to a personal characteristic.

### 4.3.2. Anti-Harassment

Harassment of any kind is unacceptable and is not tolerated inside or outside of the workplace. It can include a one-off incident or a series of incidents. Business Partners must not engage in any form of Harassment.

### 4.3.3. Anti-Bullying

Bullying is unacceptable and is not tolerated inside or outside of the workplace, or inside or outside working hours, when the parties involved are also colleagues or Business Partners.

### 4.3.4. Grievances

The Company encourages an open environment in which all Business Partners can raise their work-related concerns, complaints or grievances fairly, honestly and responsibly. The Company acknowledges that to achieve a fair, equitable and productive work environment, there must be a transparent and consistent process for resolving grievances. The Company aims, as far as practicable, to achieve a fair and prompt resolution to individual grievances raised by Business Partners in the course of their employment or interaction with the Company.

## 4.4. Safeguarding

The Company commits to work with internal and external stakeholders to protect the safety and welfare of the beneficiaries and communities with which we work, our Representatives, and our Clients. We foster a culture of Safeguarding at all times and support those who have experienced abuse.

### 4.4.1. Child Protection

The Company is committed to upholding the values and purpose of the UN Convention on the Rights of the Child, which requires that Children will be protected from performing any work that is likely to be hazardous, interfere with a Child's education, or is harmful to a Child's physical, mental, spiritual, moral or social health. Regardless of the jurisdiction in which the Business Partner is registered or doing business, these activities are prohibited.

The Company has a zero tolerance of Child abuse and expects the same commitment to Child protection from Business Partners. Specifically, Business Partners will:

- ❶ Establish and maintain an environment that promotes and enables Children's participation and is welcoming, culturally safe and inclusive for all Children and their families;
- ❷ Involve Children in making decisions about activities, policies and processes that concern them, wherever possible;
- ❸ Treat Children and their families with respect and value their ideas and opinions regardless of race, colour, gender, sexual orientation or identity, physical or mental health, language, religion, political or other opinion, national, ethnic or social origin, property, birth, or other protected and/or irrelevant characteristic;
- ❹ Whenever possible, ensure that another adult is present when working in the proximity of Children;
- ❺ Use any computers, mobile phones, video and digital cameras, personal electronic devices, and social media appropriately, and never to exploit or harass Children or to access Child exploitation material through any medium;
- ❻ Refrain from physical punishment or physical discipline of Children;

- ❑ Refrain from hiring Children for domestic or other labour;
- ❑ Comply with all applicable laws, rules, and regulations concerning Child protection, including laws in relation to Child labour;
- ❑ Respond to any concerns or complaints of Child abuse in line with the complaints handling procedure; and
- ❑ Immediately disclose to the Company all charges, convictions and other outcomes of any offences that relate to Child exploitation and abuse, including (in countries where this is applicable) those under traditional or customary law.

Business Partners will not:

- ❑ Use language or behaviour towards Children (including via online communication) that is inappropriate, harassing, abusive, sexually provocative, demeaning, or culturally inappropriate;
- ❑ Engage in any activity that is likely to physically, sexually or emotionally harm a Child;
- ❑ Engage Children in any form of sexual activity. Mistaken belief in the age of a person is not a defence;
- ❑ Arrange personal contact, including online contact, with Children associated with the Company's project or activity for a purpose unrelated to that project or activity;
- ❑ Invite unaccompanied Children into the Representative's home or place of residence;
- ❑ Be alone with a Child unnecessarily or sleep close to unsupervised Children;
- ❑ Supply alcohol or controlled drugs to Children except medications under an approved administration of medication plan;
- ❑ Work with Children while under the influence of alcohol or prohibited drugs;
- ❑ Disclose personal or sensitive information about a Child, including images of a Child, unless the Child and their parent or legal guardian consent, or unless required to by the Company policy and procedure on reporting; and
- ❑ Ignore or disregard any suspected or disclosed Child harm or abuse.

When photographing or filming a Child for work-related purposes, Business Partners will:

- ❑ Assess and endeavour to comply with local traditions or restrictions for reproducing personal images before photographing or filming a Child;
- ❑ Explain how the photograph or film will be used and obtain consent from the child's parent or legal guardian before photographing or filming a Child;
- ❑ Ensure photographs and films however recorded and stored present Children in a dignified and respectful manner and not in a vulnerable or submissive manner;
- ❑ Ensure that Children are adequately clothed and not in poses that could be seen as sexually suggestive;
- ❑ Ensure images are honest representations of the context and the facts; and
- ❑ Ensure that physical and electronic labels of photographs and films do not reveal identifying information about a Child.

It is the responsibility of Business Partners to use common sense and good judgment to avoid actions and behaviours that could be construed as Child abuse.

Business Partners are required to report concerns or allegations of Child abuse, or other conduct inconsistent with this Policy, to the Company through any means including Company email, telephone, or the Whistle-blower mechanism.

#### 4.4.2. Prevention of Sexual Exploitation, Abuse and Harassment

Sexual Exploitation, Sexual Abuse, and Sexual Harassment are unacceptable and prohibited conduct for all Business Partners. For example, it is prohibited for Business Partners to engage in:

- ❶ Any act of sexually humiliating, degrading or exploitative behaviour;
- ❷ Any type of sexual activity with Children. Mistaken belief in the age of a person is not a defence;
- ❸ Exchange money, employment, goods or services for sex regardless of whether or not this is illegal in the relevant country;

All Business Partners must encourage an environment that prevents Sexual Exploitation, Abuse and Harassment. Managers at all levels have responsibilities to support and develop systems which maintain this environment. All Business Partners must report any concerns regarding Sexual Exploitation, Abuse, and Harassment through established reporting mechanisms.

### 4.5. Environment, Health and Safety

#### 4.5.1. Sustainability and the Environment

Business Partners will engage in environmentally sustainable development, promote conservation and sustainable use of natural resources, conservation of bio-diversity and heritage sites and disaster risk reduction planning, ensuring Compliance with environmental protection legislation in the countries where the Business Partner is registered and the countries where the Business Partner works.

#### 4.5.2. Health and Safety

Business Partners will provide a safe working environment that protects the health and wellbeing of their employees. The Business Partner will comply with all work health and safety legislative requirements and, in doing so, focuses on actions to prevent harm and ensure reasonable care of all employees.

#### 4.5.3. Anti-Narcotics and Drug-Free Workplaces

The Business Partner will maintain a drug-free workplaces and not tolerate the manufacture, sale, transportation, distribution, possession, or use of any drug or narcotic substance deemed to be illegal in the countries in which the Business Partner is registered or is performing work. The Business Partner will use its best efforts to ensure that payments provided to or by the Business Partner do not provide direct or indirect support or resources to entities and individuals involved in drug trafficking.

#### 4.5.4. Antipersonnel Mines

The Company does not do business with Business Partners who are engaged in the sale or manufacture of antipersonnel mines or components used in the manufacture of such mines. The Business Partner confirms that it is not involved in the sale or manufacture of these items.

## 4.6. International Governance

### 4.6.1. Political Activity

The Company respects and supports Business Partner's rights to engage in civil society in their personal capacity. Business Partners are free to engage in political activity in their country of citizenship providing that their involvement is not in conflict with their obligations to the Company or is during work hours and does not use Company resources. Business Partners who engage in political activity are prohibited from representing that the Company endorses or is in any way associated with their political activity or other political activities of any type.

### 4.6.2. Human Trafficking

The Company does not tolerate or condone the transportation, sale or otherwise Trafficking of human beings for profit or otherwise. Regardless of the jurisdiction in which the Business Partner is registered or doing business, these activities are prohibited.

Business Partners will prohibit transactions with, and the provision of resources and support to, individuals and organisations associated with human Trafficking. Further, Business Partners must not:

- ❑ Engage in any form of Trafficking in persons;
- ❑ Procure a Commercial Sex Act; or
- ❑ Use forced labour in the performance of any work.

### 4.6.3. Terrorism

The Company does not tolerate or condone the engagement, directly or indirectly, in terrorism or in the financing of or support to terrorists. Further, the Business Partner must use its best efforts to ensure that payments provided to or by the Business Partner do not provide direct or indirect support or resources to entities and individuals involved in terrorism. Transactions with, and the provision of resources and support to, individuals and organisations associated with terrorism are prohibited.

### 4.6.4. Sanctions

The Company expects Business Partners to abide by the sanctions put in place by the international community including but not limited to the United Nations, the European Union, the United States Office of Foreign Asset Control, the United Kingdom Foreign and Commonwealth Office, and the Australian Department of Foreign Affairs and Trade.

The Company expects Business Partners to abide by sanctions related, but not limited to:

- ❑ Counter Narcotics Trafficking;
- ❑ Counter Terrorism;
- ❑ Non-Proliferation;
- ❑ Rough Diamond Trade Controls; and
- ❑ Transnational Criminal Organisations.

Updated sanctions lists can be found here:

<http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>

<https://www.gov.uk/sanctions-embargoes-and-restrictions>

<http://hmt-sanctions.s3.amazonaws.com/sanctionsconlist.htm>

<http://www.un.org/sc/committees/consolidated.htm>

<http://dfat.gov.au/international-relations/security/sanctions/Pages/consolidated-list.aspx>

## 5. Duty to Comply

It is the responsibility of each Business Partner to comply fully with this Policy. Failure to comply may result in immediate termination of any business relationship or other appropriate action.

## 6. Reporting

Business Partners are required to report violations of this Policy to the Company or through the Company's Whistle-blower mechanism.

**Attachment F:**

**BRANDING STRATEGY AND MARKING GUIDLINE**

**Programs, Projects, or Activities Funded through Agreements between USAID and its Programs:**

USAID's policy is that programs, projects, activities, public communications, or commodities implemented or delivered in cooperation with other U.S. Government agencies or other donors are "co-branded and co-marked" as follows:

a. Projects funded in whole or in part by, or implemented in whole or in part, through participating U.S. Government Departments or Agencies must be co-branded and marked appropriately, in accordance with the terms of the applicable interagency agreement.

b. USAID's Missions and Operating Units should address requirements for branding and marking in the overall project agreement with co-donors. Missions and Operating Units should ensure that the USAID Identity appears on programs, projects, activities, public communications, or commodities with equivalent or greater size and prominence than any other donor's identity or logo. Missions and Operating Units can customize this requirement to represent the relative contributions of the donor(s) or to achieve programmatic goals.

**Branding Strategy**

**1. The name of this program is:** The USAID Financial Innovation Program

The funded project/initiative should use the USAID Financial Innovation Program full branding and the tagline for the materials and communication, which may be translated into the local language as appropriate: *Financed/Supported by USAID with the generous support of the American people; By the Support from the USAID Financial Innovation Program/With the support from the USAID Financial Innovation Program.*

**Disclaimer for Publications:**

The following disclaimer should be included on the publications and related materials when USAID has not approved the content:

"This report/website/activity (specify) is made possible by the support of the American People through the Financial Innovation Program of the United States Agency for International Development (USAID). The contents of this (specify) are the sole responsibility of (name of organization) and do not necessarily reflect the views of USAID or the United States Government."

The materials and the publication as well as platforms created with the support of the USAID Financial Innovation Program should include disclaimer text on a relevant language: *The views expressed in the publication/video/material do not necessarily reflect the views of the United States Agency for International Development or the United States Government.*

Web platforms/portals created with the support of the USAID Financial Innovation Program should include only the USAID logo along with the disclaimer text written in both Georgian and English languages. As for materials such as roll-up banners, stands, digital banners, invitations, handouts, social media posters, visuals, and other PR/Communication materials created with the Program's financial support, all of them should include the USAID logo along with the Program's name. *Please see the example below:*



Guidelines/Guidebooks, reports and publications should include only the USAID logo on the very first page along with the text indicating prominently that the document was prepared with the support of the USAID Financial Innovation Program. In addition, the disclaimer text on a relevant language: The views expressed in the publication/video/material do not necessarily reflect the views of the United States Agency for International Development or the United States Government should be indicated on the second page of the document.

The appropriate USAID logo should be of equivalent size and prominence. For logo placement, the USAID logo will be placed on the far left. USAID Georgian and English logos should be used according to the language of the document. *Please see the example below:*



**Grant recipients/subcontractors should ensure:** To use Font **Calibri** while creating reports and internal documents and use **Gill Sans** while working on the posters, social media visuals, invitations or other related PR and marketing products. **All the materials should be coordinated and cleared by the USAID Financial Innovation Program Communications Department before distribution.**

**2. Graphic Standards Manual and Public Communications**

Documents and messages intended for distribution to wide or external audiences such as correspondence, publications, studies, reports, audio visual productions, and other informational products; applications, forms, press and promotional materials used in connection with USAID-funded projects, or activities, including signage and plaques; websites/Internet activities; and events such as training courses, conferences, seminars, press conferences, should be marked with the USAID Identity.



**USAID**  
FROM THE AMERICAN PEOPLE

### **3. The main program message is:**

#### About USAID's Partnership with Georgia:

*USAID first opened its doors in Georgia in 1992. In total, USAID has invested approximately \$1.9 billion in programs to help Georgia to build effective and accountable public institutions; improved education, healthcare, and other public services; an economy that creates jobs and prosperity for workers, families, and communities across the country; and democratic processes that put citizens at the center. USAID currently invests in 40 development programs that support Georgia in a number of key areas – economic growth, energy security, education, democratic governance, and many others – all of which are aligned with Georgia's domestic priorities to strengthen its security, prosperity, and democracy and to continue advancing toward Europe. For more information, please visit: <https://www.usaid.gov/georgia>.*

#### About the USAID Economic Security Program

*The USAID Financial Innovation Program is a five-year Program funded by the American people through the United States Agency for International Development (USAID). The Program works to increase the flow of diversified investment resources and innovative financial products to Georgia's private sector to expand businesses, create jobs, and attract additional private investment. The USAID Financial Innovation Program is implemented by Palladium.*

Above-mentioned texts along with the other parties/organizations "about" text should be placed on every press release and media advisory documents elaborated for the specific events.

### **4. Acknowledgements**

USAID and the USAID-project funding mechanism will be acknowledged in English or the local language as appropriate on external USAID-project publications and internal productions, such as quarterly reports, as appropriate.

**For more details regarding the USAID's Graphic Standards Manual and Partner Co-Branding please visit the website: <https://www.usaid.gov/branding/gsm>**

## Attachment G: Certifications and Representations

For  
Subcontracts Under Prime Contracts with USAID

### To be completed by prospective subcontractor

#### 1. Certification Regarding Debarment and Suspension

- (1) Subcontractor certifies to the best of its knowledge and belief that it and its “principals” (as defined below):
  - a. Are not presently debarred, suspended, proposed for disbarment, or declared ineligible for the award of contracts by any Federal agency;
  - b. Have not within a three-year period preceding this Subcontract 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, or receiving stolen property;
  - c. Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with, commission of any of the offenses enumerated in paragraph b. of this certification;
  - d. Have not, within a three-year period preceding this Subcontract, been notified of any delinquent Federal taxes in an amount that exceeds \$3,500 for which the liability remains unsatisfied; and
  - e. Have not within a three-year period preceding this Subcontract had one or more contracts terminated for default by any Federal agency.
- (2) “Principal” 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).
- (3) Subcontractor shall not enter into any lower-tier subcontract in excess of \$35,000 with a subcontractor that is debarred, suspended, or proposed for debarment by any U.S. executive agency, unless approved in advance by the Company.

As the authorized certifying official, I hereby certify that the above specified certifications are true.

Business Name: ...  
Authorized Representative  
Name (print) ...  
Authorized Representative Title ...  
(print)  
Authorized Representative  
Signature  
  
Date ...

#### 2. Certification Regarding Lobbying

By signing this contract, Subcontractor 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 US agency, a member of US Congress, an officer or employee of US Congress, or an employee of a member of US Congress on Subcontractor's behalf in connection with the awarding of this Subcontract or awarding, making, entering into, extending, continuing, renewing, amending, or modifying any Federal contract, grant, loan, or cooperative agreement.

If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of Subcontractor with respect to this Subcontract, Subcontractor shall complete and submit to the 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.

As the authorized certifying official, I hereby certify that the above specified certifications are true.

Business Name: ...  
Authorized Representative Name (print) ...  
Authorized Representative Title (print) ...  
Authorized Representative Signature  
  
Date ...

### 3. Certification Regarding Terrorist Financing

By signing and submitting this application, the Subcontractor provides and is bound by the certification set out below:

1. Subcontractor, to the best of its current knowledge, did not provide, within the previous ten years, and will take all reasonable steps to ensure that it does not and will not knowingly provide, material support or resources to any individual or entity that commits, attempts to commit, advocates, facilitates, or participates in terrorist acts, or has committed, attempted to commit, facilitated, or participated in terrorist acts, as that term is defined in paragraph 3. The certification in the preceding sentence will not be deemed applicable to material support or resources provided by the Subcontractor pursuant to an authorization contained in one or more applicable licenses issued by the U.S. Treasury's Office of Foreign Assets Control (OFAC).
2. The following steps may enable Subcontractor to comply with its obligations under paragraph 1:
  - a. Before providing any material support or resources to an individual or entity, Subcontractor will verify that the individual or entity does not (i) appear on the master list of Specially Designated Nationals and Blocked Persons, which list is maintained by the U.S. Treasury's Office of Foreign Assets Control (OFAC) and is available online at <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx> or (ii) is not included in any supplementary information concerning prohibited individuals or entities that may be provided by the Company to Subcontractor.
  - b. Before providing any material support or resources to an individual or entity, Subcontractor also will verify that the individual or entity has not been designated by the United Nations Security (UNSC) sanctions committee established under UNSC Resolution 1267 (1999) (the "1267 Committee") [individuals and entities linked to the Taliban, Usama bin Laden, or the Al Qaida Organization]. To determine whether there has been a published designation of an individual or entity by the 1267 Committee, Subcontractor should refer to the consolidated list available online at the Committee's website: [https://www.un.org/sc/suborg/en/sanctions/1267/aq\\_sanctions\\_list](https://www.un.org/sc/suborg/en/sanctions/1267/aq_sanctions_list).
  - c. Before providing any material support or resources to an individual or entity Subcontractor will consider all information about that individual or entity of which it is aware and all public information that is reasonably available to it or of which it should be aware.
  - d. Subcontractor also will implement reasonable monitoring and oversight procedures to safeguard against assistance being diverted to support terrorist activity.

3. For purposes of this Certification:

- a. "Material support and resources" means currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.
  - i. "Training" means instruction or teaching designed to impart a specific skill, as opposed to general knowledge.
  - ii. "Expert advice or assistance" means advice or assistance derived from scientific, technical, or other specialized knowledge.
- b. "Terrorist act" means-
  - i. an act prohibited pursuant to one of the 19 United Nations Conventions and Protocols related to terrorism (see UN terrorism conventions Internet site: <https://www.un.org/sc/ctc/resources/international-legal-instruments/>); or
  - ii. an act of premeditated, politically motivated violence perpetrated against noncombatant targets by sub-national groups or clandestine agents; or
  - iii. any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.
- c. "Entity" means a partnership, association, corporation, or other organization, group or subgroup.
- d. References in this Certification to the provision of material support and resources shall not be deemed to include the furnishing of USAID funds or USAID-financed commodities to the ultimate beneficiaries of USAID assistance, such as recipients of food, medical care, micro-enterprise loans, shelter, etc., unless Subcontractor has reason to believe that one or more of these beneficiaries commits, attempts to commit, advocates, facilitates, or participates in terrorist acts, or has committed, attempted to commit, facilitated or participated in terrorist acts.
- e. Subcontractor's obligations under paragraph 1 are not applicable to the procurement of goods and/or services by Subcontractor that are acquired in the ordinary course of business through contract or purchase, e.g., utilities, rents, office supplies, gasoline, etc., unless Subcontractor has reason to believe that a vendor or supplier of such goods and services commits, attempts to commit, advocates, facilitates, or participates in terrorist acts, or has committed, attempted to commit, facilitated or participated in terrorist acts.

*Any violation, notified or discovered, of this Certification prior to completion of the Subcontract work shall be grounds for voidance of the Subcontract in its entirety by the Company and no costs shall be recoverable by the Subcontractor. Any violation of this Certification, notified or discovered after any of the Work has been performed under this Subcontract, shall result in immediate termination of this Subcontract by the Company and no payments for any Work performed or goods delivered prior to such termination shall be made without express written approval of USAID.*

Business Name: ...  
Authorized Representative Name (print) ...  
Authorized Representative Title (print) ...  
Authorized Representative Signature  
  
Date ...

**4. Certification of Compliance with Laws and the U.S. Foreign Corrupt Practices Act**

Subcontractor shall comply with all laws and regulations in the jurisdictions where it is performing under this

Agreement. Contractor is familiar with applicable anti-corruption, anti-bribery, anti-kickback, laws and regulations and will not undertake any actions that may violate these laws and regulations. Contractor is familiar with the U.S. Foreign Corrupt Practices Act (the "FCPA"), its prohibitions and purposes, and will not undertake any actions that may, if taken by a U.S. person, violate the FCPA.

Accordingly, Contractor hereby agrees that:

1. Contractor will not employ a person who is a governmental official or employee, including employees of government owned or government-controlled corporations, agencies or bodies.
2. Contractor will not, directly or indirectly, make any payment, offer or promise to make any payment or transfer of anything of value to a governmental official or employee, or to any political party or any candidate for political office, with the purpose of influencing decisions favorable to the Contractor and its business in contravention of the FCPA or other applicable laws.
3. Contractor will immediately advise the Company in writing in the event that any person employed by or associated with Contractor becomes such government official, political party official or candidate.
4. Contractor shall maintain true and accurate records necessary to demonstrate compliance with the Agreement (including the requirements of this Certification) and shall provide to the Company evidence of such compliance upon simple request.
5. Contractor shall provide the Company and/or its representatives, with access to financial records and supporting documentation to demonstrate the existence of normal and anticipated payment patterns and financial arrangements as well as transparency in expenses and accounting records related to transactions arising out of this Application.
6. Contractor understands that if it fails to comply with any of the provisions of this Certification (irrespective of the size, nature or materiality of such violation), such failure shall be deemed to be a material breach of any resulting Agreement and, upon any such failure, the Company shall have the right to terminate any Agreement with immediate effect upon written notice to Contractor, without penalty or liability of any nature whatsoever.

Business Name: ...

Authorized Representative  
Name (print) ...

Authorized Representative Title  
(print) ...

Authorized Representative  
Signature

Date ...

## 5. Certification Regarding Trafficking in Persons Compliance Plan

If any portion of the Subcontract is (i) for supplies (other than commercially available off-the-shelf items as defined in FAR 52.222-50) acquired outside the U.S. or services to be performed outside the U.S., and (ii) has an estimated value that exceeds \$500,000, Subcontractor certifies as follows regarding that portion of the Subcontract:

- (a) Subcontractor has implemented a compliance plan to prevent any prohibited activities identified in paragraph (b) of the clause at FAR 52.222-50, Combatting Trafficking in Persons, and to monitor, detect, and terminate any agent, lower-tier subcontract or lower-tier subcontractor employee engaging in any such prohibited activities; and
- (b) After having conducted due diligence, either –
  - (i) To the best of Subcontractor's knowledge and belief, neither it nor any of its proposed agents, lower-tier subcontractors, or their agents is engaged in any such activities; or
  - (ii) If abuses relating to any of the prohibited activities identified in FAR 52.222-50(b) have been

found, Subcontractor or the proposed lower-tier subcontractor has taken the appropriate remedial and referral actions.

Business Name: ...

Authorized Representative  
Name (print) ...

Authorized Representative Title  
(print) ...

Authorized Representative  
Signature

Date ...

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

**COVER SHEET**

<b>Company Name</b> ("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	<a href="mailto:Olga.Wall@thepalladiumgroup.com">Olga.Wall@thepalladiumgroup.com</a>
<b>Subcontractor Name</b> ("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.
<b>Client</b> ("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.
<b>Effective Date of this Agreement</b> ("Effective Date")	Click here to enter a date.
<b>Term</b> ("Term")	<b>Start:</b> Click here to enter a date. <b>End:</b> Click here to enter a date.
<b>Country of Performance</b> ("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.

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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.

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## 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 LLC 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.)

<b>FAR Clause</b>	<b>Title</b>	<b>Date</b>	<b>Application</b>
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.)

<b>FAR Clause</b>	<b>Title</b>	<b>Date</b>	<b>Application</b>
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.)

<b>FAR Clause</b>	<b>Title</b>	<b>Date</b>	<b>Application</b>
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.)

Prime Contract Number:  
Subcontractor Name:  
Subcontract Number:

<b>FAR Clause</b>	<b>Title</b>	<b>Date</b>	<b>Application</b>
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**

<b>AIDAR Clause</b>	<b>Title</b>	<b>Date</b>	<b>Application</b>
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](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>.