

1. The Commodity Futures Trading Commission (CFTC) requests quotes for Microsoft Office Online Training. All Quoters shall be registered in the System for Award Management (SAM) (<https://www.sam.gov/>) effective as of the date quotations are due. Per FAR 52.212-3, quoters shall complete the annual representations and certifications electronically in SAM or with the quotation.
2. Delivery/Period of Performance: Delivery shall be made 30 days from after receipt of order (ARO). The period of performance is one (1) year from date of award.
3. Award will be made to the vendor that submits the low-priced technically acceptable quote. The Government is not liable for any costs incurred by a quoter in submitting a quotation in response to this RFQ.

Technical acceptability is defined as a quote submitted by a vendor that meets all the requirements as stated in the Delivery Order – 1. Schedule of Supplies and Services (Enclosure 1) and can meet the period of performance.

Pricing shall be firm fixed price. The evaluated price will be the sum of all line items. Quotes must include pricing for the annual maintenance of all requirements contained in the Delivery Order as well as indicate any discounts provided. The submitted quote must meet the stated items in the Delivery Order – 1. Schedule of Supplies and Services (Enclosure 1).

The CFTC does not intend to incorporate any additional terms and conditions other than those included in Enclosure 1 –Delivery Order Terms and Conditions. However, if a quoter submits additional terms and conditions (to include license agreements) CFTC will review and may negotiate those terms and conditions to ensure compliance with standard Federal regulations (to include FAR 52.212-4).

4. **Quotes must be received via email – [shong@cftc.gov](mailto:shong@cftc.gov) by 10:00 am (Eastern) on August 24, 2020.** The Government takes no responsibility for any delays in the transmission of an uploaded quote. Please note that CFTC quarantines all emails that exceed 100MB in size. Quotations received by the Contracting Officer beyond the submission date and time as a result of being quarantined may not be considered timely. Quoters assume full responsibility for assuring that quotations are received in a timely manner. Facsimile submissions or email submissions that require CFTC to retrieve the quotation volumes (e.g., through the use of a file transfer website or a personal network storage and backup website) will not be accepted.

Quotations received after the time and date specified above will not be accepted unless the Contracting Officer determines that acceptance of the quotation is in the Government's best interest and will not unduly delay the acquisition.

5. Requirement: See attached document (Enclosure 1)
6. Quote submission requirements: Completed pricing reference table in Delivery Order – 1. Schedule of Supplies and Services (Enclosure 1)
7. All questions concerning this RFQ must be submitted in writing to Contracting Officer Susan Hong. Prospective quoters are warned against contacting any CFTC personnel other than the Contracting Officer prior to award of a contract resulting from this RFQ. If such a contact occurs and is found to be prejudicial to competing vendors, the vendor making such a contact may be excluded from award consideration.

Questions may be submitted to the Contracting Officer via email to shong@cftc.gov.

No information concerning this RFQ will be provided in response to telephone calls. All such requests must be submitted in writing to the Contracting Officer by email.

Prospective quoters are asked to submit their questions grouped by solicitation section and making reference to the particular paragraph. Questions are due by 10:00 AM on August 20, 2020. Any questions received after this date and time may not be answered.

8. NOTICE LISTING SOLICITATION PROVISIONS INCORPORATED BY REFERENCE

The following solicitation provisions pertinent to this Part are hereby incorporated by reference (by Citation Number, Title, and Date), with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of provisions incorporated by reference may be accessed electronically at this Internet address:

<https://www.acquisition.gov/far>

<b>NUMBER</b>	<b>TITLE</b>	<b>DATE</b>
52.203-11	CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS	SEPT 2007
52.204-7	SYSTEM FOR AWARD MANAGEMENT	OCT 2018
52.204-16	COMMERCIAL AND GOVERNMENT ENTITY CODE REPORTING	JUL 2016
52.204-17	OWNERSHIP OR CONTROL OF OFFEROR	JUL 2016
52.209-2	PROHIBITION ON CONTRACTING WITH INVERTED DOMESTIC CORPORATIONS–REPRESENTATION	NOV 2015
52.212-1	INSTRUCTIONS TO OFFERORS–COMMERCIAL ITEMS (SEE CHANGES DESCRIBED IN PROVISION III.3, BELOW)	MAR 2020
52.225-25	PROHIBITION ON CONTRACTING WITH ENTITIES ENGAGING IN CERTAIN ACTIVITIES OR TRANSACTIONS RELATING TO IRAN– REPRESENTATION AND CERTIFICATIONS	AUG 2018

Enclosures:  
Delivery Order Terms and Conditions

DELIVERY ORDER TERMS AND CONDITIONS

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**PART I**  
**IT Training Purchase**  
**Statement of Work (SOW)**

**Background**

The Commodity Futures Trading Commission (also referred to as “CFTC” or “Commission”) organization consists of the offices of the Chairman, Commissioners, and the agency's operating units.

The mission of the CFTC is to foster open, transparent, competitive, and financially sound markets, to avoid systemic risk, and to protect the market users and their funds, consumers, and the public from fraud, manipulation, and abusive practices related to derivatives and other products that are subject to the Commodity Exchange Act.

The Office of Data and Technology (ODT) services the Commission by providing technology and data management support for Commission market and financial oversight, surveillance, enforcement, legal support, and public transparency activities. ODT also provides general network, communication, storage, computing, and information management infrastructure and services.

**Objective**

The objective of this procurement is to acquire IT training material to support CFTC for eLearning through the agency's learning management system, interactive training, quick reference guides, and customizable training material.

This training capability will enhance productivity of all Commission staff (e.g., investigators, examinations, international affairs staff, and support staff) by ensuring availability of up-to-date information for Microsoft products (e.g., Microsoft Windows, Word, Excel). Implementation of this new eLearning capability will complement the following key Commission objectives:

- Provide user access to up-to-date Microsoft training materials
- Provide CFTC with customizable material to target/enhance division needs
- Provide training through CFTC's LMS
- Provide tracking for completed training

**eLearning Requirements**

The eLearning solution shall include print on demand courseware, instructor guides, unlimited reproduction rights, interactive online learning, practice files, quick reference guides and interactive assessments for all core software titles. It is estimated that the software solution be able to support 800 users.

The contract shall provide eLearning access for CFTC that meets or exceeds the requirements listed below:

- Requirement for access within 14 days of award
- Readily available courseware for Microsoft Products (e.g., Word, Excel, Outlook, PowerPoint, Access, Windows 10, OneDrive, OneNote, TEAMS, etc.)
- Courseware version availability at a minimum to cover Windows 10, Office 2013 or newer (e.g., Office 2013, Office 2016, Office 2019, O365) Courseware that is editable in Microsoft Word format
- Courseware that is customizable for CFTC branding
- Courseware shall have instructor and student guides available
- Courseware availability of practice files
- Print on-demand courseware
- eLearning interactive videos are Shareable Content Object Reference Model (SCORM) compliant
- The courseware shall be compatible with Interactive online eLearning direct from CFTC's Learning Management System (LMS) (Cornerstone OnDemand)
- The courseware shall provide an eLearning self-assessment capability from within CFTC's LMS
- eLearning SCORM videos are customizable
- eLearning videos are broken out by course topics and subjects
- Unlimited reproduction rights
- Courseware shall meet accessibility requirements per Section 508 of the Rehabilitation Act of 1973 by conforming to Level A or Level AA of the Web Content Accessibility Guidelines 2.1.

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**PART II**  
**ADDITIONAL TERMS AND CONDITIONS**

**1. DELIVERY ORDER PRICING**

This is a fixed price Delivery Order and the total firm-fixed price is \$\_\_\_\_\_.

ITEM	DESCRIPTION	TYPE	QTY	UNIT	UNIT PRICE	TOTAL PRICE	FUNDED AMOUNT
0001	Base Period Online MS Office Training – supporting up to 800 users	FFP	800	EA			
	<b>DELIVERY ORDER TOTAL</b>						

**2. CONTRACTING OFFICER**

For the purpose of this delivery order, the Contracting Officer is:

Susan Hong  
Commodity Futures Trading Commission  
Financial Management Branch  
1155 21<sup>st</sup> Street, NW  
Washington, DC 20581  
Phone: (202)418-5562  
E-Mail: shong@cftc.gov

**3. CONTRACTING OFFICER'S REPRESENTATIVE**

The Contracting Officer's Representative (COR) for this order will be as follows:

TBD  
Commodity Futures Trading Commission  
Office of Data & Technology (ODT)  
1155 21<sup>st</sup> Street, NW  
Washington, DC 20581  
Phone: (202) 418-XXXX  
E-Mail: XXX@cftc.gov

Performance of work under this order shall be subject to the surveillance and written technical direction of the COR. The COR shall also be responsible for inspection and acceptance of deliverables completed by the Contractor under this order. The COR does not have the authority to authorize any work outside the scope of this Delivery Order. Nor can the COR change any of the expressed terms or conditions of the Delivery Order.

**4. DELIVERY/PERIOD OF PERFORMANCE**

Delivery shall be made 30 days from after receipt of order (ARO). The period of performance is one (1) year from date of award.

## 5. F.O.B. DESTINATION

Delivery of all services and any items under this Delivery Order shall be shipped F.O.B. destination.

Delivery of the items shall be made in coordination with the Contracting Officer's Representative (COR). If needed, physical Delivery shall be made to CFTC HQ at the address below.

Commodity Futures Trading Commission  
1155 21st, NW  
Washington, DC 20581

## 6. PAYMENT TO CONTRACTOR - ELECTRONIC INVOICING AND PAYMENT REQUIREMENTS – iSupplier

The requirements of the Prompt Payment Act, P.L. 97-177, as reflected in the clauses incorporated into the contract (e.g., FAR clauses 52.232-25, Prompt Payment, and 52.212-4, Contract Terms and Conditions--Commercial Items) apply to this task order.

Payment requests (i.e., invoices) shall be submitted electronically through the Delphi eInvoicing system via [Login.gov](http://login.gov) on a for processing and payment. The CFTC's Delphi eInvoicing system is managed by the Department of Transportation's Enterprise Services Center (ESC).

Invoices shall include sufficient detail to identify the contract CLIN(s) for which the request for payment is being made. The contractor shall also complete the "Period of Performance Begin" and "Period of Performance End" fields when submitting an invoice through the eInvoicing system, corresponding to the period of performance of the submitted invoice.

Upon task order award, the contractor shall provide an invoicing point of contact to the Contracting Officer as follows:

- First and Last Name
- Email Address (not a centralized email address)
- Phone Number

The contractor shall notify the Contracting Officer of changes to the above information within ten (10) days after the change.

The contractor shall access the eInvoicing System using the following link:

<http://invoice.esc.gov/>

If the contractor requires assistance with the eInvoicing system, they may contact the ESC help desk:

ESC Help Desk for the Delphi eInvoicing System

- Business Hours: 8:00am to 7:00pm
- 1-866-641-3500

## **7. GOVERNMENT RIGHTS IN DATA**

The Government shall have unrestricted rights in all documentation and other data developed by the Contractor under this Delivery Order, as described in FAR Clause 52.227-14, Rights in Data-General (MAY 2014), which is incorporated herein by reference. In addition, the CFTC retains unlimited rights to all data residing in the items listed in Attachment A.

## **8. INSPECTION AND ACCEPTANCE**

Inspection and acceptance of items delivered or services performed under this order shall be performed by the Contracting Officer's Representative (COR). Delivery of any and all items under this order shall be shipped F.O.B. destination.

## **9. COMPLIANCE WITH THE REHABILITATION ACT OF 1973**

All electronic and information technology ("EIT") procured through this purchase order must meet the applicable accessibility standards at 36 CFR 1194, unless an agency exception to this requirement exists. 36 CFR 1194 implements Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794d). In the event that the Contractor's work does not meet such standards, and the defect is brought to the Contractor's attention no later than one year after the date of final payment under this purchase order, the Contractor will be responsible for correcting the work at no cost to the Government.

## **10. ORGANIZATIONAL CONFLICTS OF INTEREST (OCI)**

Federal Acquisition Regulation (FAR) Subpart 9.5 prescribes responsibilities, general rules, and procedures for identifying, evaluating and resolving organizational conflicts of interest. The purpose of this clause is to avoid, neutralize, or otherwise mitigate conflicts of interest that might exist related to a contractor's performance of work under this Delivery Order. If the contractor is aware, or becomes aware during the term of this Delivery Order, of any facts that might create an actual or potential conflict of interest, the contractor shall immediately provide a detailed disclosure of such facts to the Contracting Officer. At the request of the Contracting Officer, the contractor shall provide a conflict of interest avoidance or mitigation plan to CFTC. If such a plan is requested, continued performance under the Delivery Order may be conditional upon the Contracting Officer's approval of the plan.

If approved by the Contracting Officer, the conflict of interest avoidance or mitigation plan shall be deemed incorporated into this Delivery Order, pursuant to this provision. This clause shall be included in any teaming or subcontract agreements with respect to work performed under this Delivery Order.

## **11. NOTICE LISTING CONTRACT CLAUSES INCORPORATED BY REFERENCE**

The following clauses are hereby incorporated by reference (by Citation Number, Title, and Date) into the contract, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of clauses incorporated by reference may be accessed electronically at this Internet address: <http://www.acquisition.gov/far>

NUMBER	TITLE	DATE
52.203-3	GRATUITIES	APR 1984
52.203-17	CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS	APR 2014
52.204-4	PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER	MAY 2011
52.204-13	SYSTEM FOR AWARD MANAGEMENT MAINTENANCE	OCT 2018
52.204-18	COMMERCIAL AND GOVERNMENT ENTITY CODE MAINTENANCE	JULY 2016
52.212-4	CONTRACT TERMS AND CONDITIONS – COMMERCIAL ITEMS	OCT 2018
52.224-1	PRIVACY ACT NOTIFICATION	APR 1984
52.224-2	PRIVACY ACT	APR 1984
52.227-17	RIGHTS IN DATA – SPECIAL WORKS	DEC 2007
52.232-40	PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS	DEC 2013

**12. 52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items (Aug 2020)**

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

(1) [52.203-19](#), Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (JAN 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).

(2) [52.204-23](#), Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (JUL 2018) (Section 1634 of Pub. L. 115-91).

(3) [52.204-25](#), Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (AUG 2020) (Section 889(a)(1)(A) of Pub. L. 115-232).

(4) [52.209-10](#), Prohibition on Contracting with Inverted Domestic Corporations (NOV 2015).

(5) [52.233-3](#), Protest After Award (AUG 1996) ([31 U.S.C. 3553](#)).

(6) [52.233-4](#), Applicable Law for Breach of Contract Claim (OCT 2004) (Public Laws 108-77 and 108-78 ( [19 U.S.C. 3805 note](#))).

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the



Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

[Contracting Officer check as appropriate.]

\_\_\_ (1) [52.203-6](#), Restrictions on Subcontractor Sales to the Government (JUNE 2020), with *Alternate I* (OCT 1995) ([41 U.S.C. 4704](#) and [10 U.S.C. 2402](#)).

\_\_\_ (2) [52.203-13](#), Contractor Code of Business Ethics and Conduct (JUN 2020) ([41 U.S.C. 3509](#))).

\_\_\_ (3) [52.203-15](#), Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (JUN 2010) (Section 1553 of Pub. L. 111-5). (Applies to contracts funded by the American Recovery and Reinvestment Act of 2009.)

\_\_\_ (4) [52.204-10](#), Reporting Executive Compensation and First-Tier Subcontract Awards (JUN 2020) (Pub. L. 109-282) ( [31 U.S.C. 6101 note](#)).

\_\_\_ (5) [Reserved].

\_\_\_ (6) [52.204-14](#), Service Contract Reporting Requirements (OCT 2016) (Pub. L. 111-117, section 743 of Div. C).

\_\_\_ (7) [52.204-15](#), Service Contract Reporting Requirements for Indefinite-Delivery Contracts (OCT 2016) (Pub. L. 111-117, section 743 of Div. C).

\_\_\_ (8) [52.209-6](#), Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment. (JUN 2020) ([31 U.S.C. 6101 note](#)).

\_\_\_ (9) [52.209-9](#), Updates of Publicly Available Information Regarding Responsibility Matters (OCT 2018) ([41 U.S.C. 2313](#)).

\_\_\_ (10) [Reserved].

\_\_\_ (11) (i) [52.219-3](#), Notice of HUBZone Set-Aside or Sole-Source Award (MAR 2020) ([15 U.S.C. 657a](#)).

\_\_\_ (ii) Alternate I (MAR 2020) of [52.219-3](#).

\_\_\_ (12) (i) [52.219-4](#), Notice of Price Evaluation Preference for HUBZone Small Business Concerns (MAR 2020) (if the offeror elects to waive the preference, it shall so indicate in its offer) ([15 U.S.C. 657a](#)).

\_\_\_ (ii) Alternate I (MAR 2020) of [52.219-4](#).

\_\_\_ (13) [Reserved]

\_\_\_ (14) (i) [52.219-6](#), Notice of Total Small Business Set-Aside (MAR 2020) of [52.219-6](#) ([15 U.S.C. 644](#)).

- \_\_\_ (ii) Alternate I (MAR 2020) of [52.219-6](#).
  
- \_\_\_ (15) (i) [52.219-7](#), Notice of Partial Small Business Set-Aside (MAR 2020) ([15 U.S.C. 644](#)).
  
- \_\_\_ (ii) Alternate I (MAR 2020) of [52.219-7](#).
  
- \_\_\_ (16) [52.219-8](#), Utilization of Small Business Concerns (OCT 2018) ([15 U.S.C. 637\(d\)\(2\)](#) and (3)).
  
- \_\_\_ (17) (i) [52.219-9](#), Small Business Subcontracting Plan (JUN 2020) ([15 U.S.C. 637\(d\)\(4\)](#)).
  
- \_\_\_ (ii) Alternate I (NOV 2016) of [52.219-9](#).
  
- \_\_\_ (iii) Alternate II (NOV 2016) of [52.219-9](#).
  
- \_\_\_ (iv) Alternate III (JUN 2020) of [52.219-9](#).
  
- \_\_\_ (v) Alternate IV (JUN 2020) of [52.219-9](#).
  
- \_\_\_ (18) (i) [52.219-13](#), Notice of Set-Aside of Orders (MAR 2020) ([15 U.S.C. 644\(r\)](#)).
  
- \_\_\_ (ii) Alternate I (MAR 2020) of [52.219-13](#).
  
- X\_\_\_ (19) [52.219-14](#), Limitations on Subcontracting (MAR 2020) ([15 U.S.C. 637\(a\)\(14\)](#)).
  
- \_\_\_ (20) [52.219-16](#), Liquidated Damages-Subcontracting Plan (JAN 1999) ([15 U.S.C. 637\(d\)\(4\)\(F\)\(i\)](#)).
  
- \_\_\_ (21) [52.219-27](#), Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (MAR 2020) ([15 U.S.C. 657f](#)).
  
- \_\_\_ (22) (i) [52.219-28](#), Post Award Small Business Program Rerepresentation (MAY 2020) ([15 U.S.C. 632\(a\)\(2\)](#)).
  
- \_\_\_ (ii) Alternate I (MAR 2020) of [52.219-28](#).
  
- \_\_\_ (23) [52.219-29](#), Notice of Set-Aside for, or Sole Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns (MAR 2020) ([15 U.S.C. 637\(m\)](#)).
  
- \_\_\_ (24) [52.219-30](#), Notice of Set-Aside for, or Sole Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program (Mar2020) ([15 U.S.C. 637\(m\)](#)).
  
- \_\_\_ (25) [52.219-32](#), Orders Issued Directly Under Small Business Reserves (MAR 2020) ([15 U.S.C. 644\(r\)](#)).
  
- \_\_\_ (26) [52.219-33](#), Nonmanufacturer Rule (MAR 2020) ([15 U.S.C. 637\(a\)\(17\)](#)).

- X\_\_ (27) [52.222-3](#), Convict Labor (JUN 2003) (E.O.11755).
- X\_\_ (28) [52.222-19](#), Child Labor-Cooperation with Authorities and Remedies (JAN2020) (E.O.13126).
- X\_\_ (29) [52.222-21](#), Prohibition of Segregated Facilities (APR 2015).
- X\_\_ (30) (i) [52.222-26](#), Equal Opportunity (SEP 2016) (E.O.11246).
- \_\_ (ii) Alternate I (FEB 1999) of [52.222-26](#).
- \_\_ (31) (i) [52.222-35](#), Equal Opportunity for Veterans (JUN 2020) ([38 U.S.C. 4212](#)).
- \_\_ (ii) Alternate I (JUL 2014) of [52.222-35](#).
- \_\_ (32) (i) [52.222-36](#), Equal Opportunity for Workers with Disabilities (JUN 2020) ([29 U.S.C. 793](#)).
- \_\_ (ii) Alternate I (JUL 2014) of [52.222-36](#).
- \_\_ (33) [52.222-37](#), Employment Reports on Veterans (JUN 2020) ([38 U.S.C. 4212](#)).
- \_\_ (34) [52.222-40](#), Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496).
- X\_\_ (35) (i) [52.222-50](#), Combating Trafficking in Persons (JAN 2019) ([22 U.S.C. chapter 78](#) and E.O. 13627).
- \_\_ (ii) Alternate I (MAR 2015) of [52.222-50](#) ([22 U.S.C. chapter 78](#) and E.O. 13627).
- \_\_ (36) [52.222-54](#), Employment Eligibility Verification (OCT 2015). (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial items as prescribed in [22.1803](#).)
- \_\_ (37) (i) [52.223-9](#), Estimate of Percentage of Recovered Material Content for EPA–Designated Items (May 2008) ( [42 U.S.C. 6962\(c\)\(3\)\(A\)\(ii\)](#)). (Not applicable to the acquisition of commercially available off-the-shelf items.)
- \_\_ (ii) Alternate I (MAY 2008) of [52.223-9](#) ([42 U.S.C. 6962\(i\)\(2\)\(C\)](#)). (Not applicable to the acquisition of commercially available off-the-shelf items.)
- \_\_ (38) [52.223-11](#), Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (Jun 2016) (E.O. 13693).
- \_\_ (39) [52.223-12](#), Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners (JUN 2016) (E.O. 13693).
- \_\_ (40) (i) [52.223-13](#), Acquisition of EPEAT®-Registered Imaging Equipment (JUN 2014) (E.O.s 13423 and 13514).

\_\_ (ii) Alternate I (OCT 2015) of [52.223-13](#).

\_\_ (41) (i) [52.223-14](#), Acquisition of EPEAT®-Registered Televisions (JUN 2014) (E.O.s 13423 and 13514).

\_\_ (ii) Alternate I (Jun2014) of [52.223-14](#).

\_\_ (42) [52.223-15](#), Energy Efficiency in Energy-Consuming Products (MAY 2020) ([42 U.S.C. 8259b](#)).

\_\_ (43) (i) [52.223-16](#), Acquisition of EPEAT®-Registered Personal Computer Products (OCT 2015) (E.O.s 13423 and 13514).

\_\_ (ii) Alternate I (JUN 2014) of [52.223-16](#).

X\_\_ (44) [52.223-18](#), Encouraging Contractor Policies to Ban Text Messaging While Driving (JUN 2020) (E.O. 13513).

\_\_ (45) [52.223-20](#), Aerosols (JUN 2016) (E.O. 13693).

\_\_ (46) [52.223-21](#), Foams (Jun2016) (E.O. 13693).

\_\_ (47) (i) [52.224-3](#) Privacy Training (JAN 2017) (5 U.S.C. 552 a).

\_\_ (ii) Alternate I (JAN 2017) of [52.224-3](#).

\_\_ (48) [52.225-1](#), Buy American-Supplies (May 2014) ([41 U.S.C. chapter 83](#)).

\_\_ (49) (i) [52.225-3](#), Buy American-Free Trade Agreements-Israeli Trade Act (MAY 2014) ([41 U.S.C. chapter 83](#), [19 U.S.C. 3301](#) note, [19 U.S.C. 2112](#) note, [19 U.S.C. 3805](#) note, [19 U.S.C. 4001](#) note, Pub. L. 103-182, 108-77, 108-78, 108-286, 108-302, 109-53, 109-169, 109-283, 110-138, 112-41, 112-42, and 112-43).

\_\_ (ii) Alternate I (MAY 2014) of [52.225-3](#).

\_\_ (iii) Alternate II (MAY 2014) of [52.225-3](#).

\_\_ (iv) Alternate III (MAY 2014) of [52.225-3](#).

\_\_ (50) [52.225-5](#), Trade Agreements (OCT 2019) ([19 U.S.C. 2501](#), *et seq.*, [19 U.S.C. 3301](#) note).

X\_\_ (51) [52.225-13](#), Restrictions on Certain Foreign Purchases (JUN 2008) (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

\_\_ (52) [52.225-26](#), Contractors Performing Private Security Functions Outside the United States (Oct 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; [10 U.S.C. 2302](#)Note).

\_\_\_ (53) [52.226-4](#), Notice of Disaster or Emergency Area Set-Aside (Nov2007) ([42 U.S.C. 5150](#)).

\_\_\_ (54) [52.226-5](#), Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov2007) ([42 U.S.C. 5150](#)).

\_\_\_ (55) [52.229-12](#), Tax on Certain Foreign Procurements (JUN 2020).

\_\_\_ (56) [52.232-29](#), Terms for Financing of Purchases of Commercial Items (FEB 2002) ([41 U.S.C. 4505](#), [10 U.S.C. 2307\(f\)](#)).

\_\_\_ (57) [52.232-30](#), Installment Payments for Commercial Items (Jan2017) ([41 U.S.C. 4505](#), [10 U.S.C. 2307\(f\)](#)).

X\_\_\_ (58) [52.232-33](#), Payment by Electronic Funds Transfer-System for Award Management (OCT2018) ([31 U.S.C. 3332](#)).

\_\_\_ (59) [52.232-34](#), Payment by Electronic Funds Transfer-Other than System for Award Management (Jul 2013) ([31 U.S.C. 3332](#)).

\_\_\_ (60) [52.232-36](#), Payment by Third Party (MAY 2014) ([31 U.S.C. 3332](#)).

\_\_\_ (61) [52.239-1](#), Privacy or Security Safeguards (AUG 1996) ([5 U.S.C. 552a](#)).

\_\_\_ (62) [52.242-5](#), Payments to Small Business Subcontractors (JAN 2017) ([15 U.S.C. 637\(d\)\(13\)](#)).

\_\_\_ (63) (i) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) ([46 U.S.C. Appx. 1241\(b\)](#) and [10 U.S.C. 2631](#)).

\_\_\_ (ii) Alternate I (APR 2003) of [52.247-64](#).

\_\_\_ (iii) Alternate II (FEB 2006) of [52.247-64](#).

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

[*Contracting Officer check as appropriate.*]

\_\_\_ (1) [52.222-41](#), Service Contract Labor Standards (AUG 2018) ([41 U.S.C. chapter67](#)).

\_\_\_ (2) [52.222-42](#), Statement of Equivalent Rates for Federal Hires (MAY 2014) ([29 U.S.C. 206](#) and [41 U.S.C. chapter 67](#)).

\_\_\_ (3) [52.222-43](#), Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (Multiple Year and Option Contracts) (AUG 2018) ([29 U.S.C. 206](#) and [41 U.S.C. chapter 67](#)).

\_\_\_ (4) [52.222-44](#), Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (May 2014) ( [29U.S.C.206](#) and [41 U.S.C. chapter 67](#)).

\_\_\_ (5) [52.222-51](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (May 2014) ([41 U.S.C. chapter 67](#)).

\_\_\_ (6) [52.222-53](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Requirements (MAY 2014) ([41 U.S.C. chapter 67](#)).

\_\_\_ (7) [52.222-55](#), Minimum Wages Under Executive Order 13658 (DEC 2015).

\_\_\_ (8) [52.222-62](#), Paid Sick Leave Under Executive Order 13706 (JAN 2017) (E.O. 13706).

\_\_\_ (9) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations (Jun 2020) ([42 U.S.C. 1792](#)).

(d) *Comptroller General Examination of Record.* The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, as defined in FAR [2.101](#), on the date of award of this contract, and does not contain the clause at [52.215-2](#), Audit and Records-Negotiation.

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

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR [subpart 4.7](#), Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

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

(e)

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

(i) [52.203-13](#), Contractor Code of Business Ethics and Conduct (JUN 2020) ([41 U.S.C. 3509](#)).

(ii) [52.203-19](#), Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).

(iii) [52.204-23](#), Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (JUL 2018) (Section 1634 of Pub. L. 115-91).

(iv) [52.204-25](#), Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (AUG 2020) (Section 889(a)(1)(A) of Pub. L. 115-232).

(v) [52.219-8](#), Utilization of Small Business Concerns (OCT 2018) ([15 U.S.C. 637\(d\)\(2\)](#) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds the applicable threshold specified in FAR [19.702](#)(a) on the date of subcontract award, the subcontractor must include [52.219-8](#) in lower tier subcontracts that offer subcontracting opportunities.

(vi) [52.222-21](#), Prohibition of Segregated Facilities (APR 2015).

(vii) [52.222-26](#), Equal Opportunity (SEP 2015) (E.O.11246).

(viii) [52.222-35](#), Equal Opportunity for Veterans (JUN 2020) ([38 U.S.C. 4212](#)).

(ix) [52.222-36](#), Equal Opportunity for Workers with Disabilities (JUN 2020) ([29 U.S.C. 793](#)).

(x) [52.222-37](#), Employment Reports on Veterans (JUN 2020) ([38 U.S.C. 4212](#)).

(xi) [52.222-40](#), Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause [52.222-40](#).

(xii) [52.222-41](#), Service Contract Labor Standards (Aug2018) ([41 U.S.C. chapter 67](#)).

(xiii) (A) [52.222-50](#), Combating Trafficking in Persons (JAN 2019) ([22 U.S.C. chapter 78](#) and E.O 13627).

(B) Alternate I (Mar2015) of [52.222-50](#) ([22 U.S.C. chapter 78](#) and E.O. 13627).

(xiv) [52.222-51](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (May2014) ([41 U.S.C. chapter 67](#)).

(xv) [52.222-53](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Requirements (MAY2014) ([41 U.S.C. chapter 67](#)).

(xvi) [52.222-54](#), Employment Eligibility Verification (OCT 2015) (E.O. 12989).

- (xvii) [52.222-55](#), Minimum Wages Under Executive Order 13658 (DEC 2015).
- (xviii) [52.222-62](#), Paid Sick Leave Under Executive Order 13706 (JAN 2017) (E.O. 13706).
- (xix) (A) [52.224-3](#), Privacy Training (Jan 2017) ([5 U.S.C. 552a](#)).
- (B) Alternate I (JAN 2017) of [52.224-3](#).
- (xx) [52.225-26](#), Contractors Performing Private Security Functions Outside the United States (OCT 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; [10 U.S.C. 2302 Note](#)).
- (xxi) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations (JUN 2020) ([42 U.S.C. 1792](#)). Flow down required in accordance with paragraph (e) of FAR clause [52.226-6](#).
- (xxii) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) ([46 U.S.C. Appx. 1241\(b\)](#) and [10 U.S.C. 2631](#)). Flow down required in accordance with paragraph (d) of FAR clause [52.247-64](#).

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

### **13. COMMERCIAL SUPPLIER AGREEMENTS – UNENFORCEABLE CLAUSES**

(a) “Commercial supplier agreements” means terms and conditions customarily offered to the public by vendors of supplies or services that meet the definition of “commercial item” set forth in FAR 2.101 and intended to create a binding legal obligation on the end user. Commercial supplier agreements are particularly common in information technology acquisitions, including acquisitions of commercial computer software and commercial technical data, but they may apply to any supply or service. The following terms apply–

(1) Regardless of the format or style of the document. For example, a commercial supplier agreement may be styled as standard terms of sale or lease, Terms of Service (TOS), End User License Agreement (EULA), Subscription Agreement, governing terms or another similar legal instrument or agreement, and may be presented as part of a proposal or quotation responding to a solicitation for a contract or order;

(2) Regardless of the media or delivery mechanism used. For example, a commercial supplier agreement may be presented as one or more paper documents or may appear on a computer or other electronic device screen during a purchase, software installation, other product delivery, registration for a service, or another transaction.

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

(1) Notwithstanding any other provision of this agreement, the following shall apply:



(i) *Applicability.* This agreement is a part of a contract between the commercial supplier and the CFTC for the acquisition of the supply or service that necessitates a license or other similar legal instrument (including, but not limited to, all contracts, task orders, and delivery orders under FAR Part 12).

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

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

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

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

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

(iv) *Continued performance.* The supplier or licensor shall not unilaterally revoke, terminate or suspend any rights granted to the CFTC except as allowed by this contract. If the supplier or licensor believes the CFTC to be in breach of the agreement, it shall pursue its rights under the Contract Disputes Act or other applicable Federal statute while continuing performance.

(v) *Disputes.* This contract is subject 41 U.S.C. chapter 71, Contract Disputes. Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(vi) *Arbitration; equitable or injunctive relief.* In the event of a claim or dispute arising under or relating to this agreement, a binding arbitration shall not be used, and equitable or injunctive relief, including the award of attorney fees, costs or interest, may be awarded against the CFTC only when explicitly provided by statute (e.g., Prompt Payment Act or Equal Access to Justice Act).

(vii) *Updating terms.*

(A) After award, the contractor may unilaterally revise commercial supplier agreement terms if they are not material. A material change is defined as:

(I) Terms that change CFTC rights or obligations;

(II) Terms that increase CFTC prices;

(III) Terms that decrease overall level of service; or

(IV) Terms that limit any other CFTC right addressed elsewhere in this contract.

(B) For revisions that will materially change the terms of the contract, the revised commercial supplier agreement must be incorporated into the contract using a bilateral modification.

(C) Any agreement terms or conditions unilaterally revised subsequent to award that are inconsistent with any material term or provision of this contract shall not be enforceable against the CFTC, and the CFTC shall not be deemed to have consented to them.

(viii) *No automatic renewals.* If any license or service tied to periodic payment is provided under this agreement (e.g., annual software maintenance or annual lease term), such license or service shall not renew automatically upon expiration of its current term without prior express consent by an authorized CFTC representative.

(ix) *Indemnification and Unauthorized Obligations.*

(A) When any supply or service acquired under this contract is subject to any commercial supplier agreement that includes any language, provision, or clause requiring the Government to directly or indirectly indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability or similar that would or reasonably could create an Anti-Deficiency Act violation (31 U.S.C. 1341), any such language, provision, or clause is unenforceable against the Government, and will be treated as if those terms were deleted and do not otherwise exist.

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

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

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

(B) This charge, if disputed by the CFTC, will be resolved in accordance with subparagraph (v) (Disputes); no payment obligation shall arise on the part of the CFTC until the conclusion of the dispute process.

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

(D) Any contractor requesting a right to audit CFTC's end user compliance must provide CFTC 30 days prior written notice before being permitted to conduct any on-site audit.

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

(xii) *Non-assignment.* This agreement may not be assigned, nor may any rights or obligations thereunder be delegated, without the CFTC's prior approval, except as expressly permitted under the clause at FAR 52.212-4, Contract Terms and Conditions-Commercial Items, which is incorporated herein by reference.

(xiii) *Confidential information.* If this agreement includes a confidentiality clause, such clause is hereby removed. Issues regarding release of "unit pricing" will be resolved consistent with the Freedom of Information Act.

(END OF SOLICITATION)