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**I. CONTRACT TERMS AND CONDITIONS--COMMERCIAL ITEMS (52.212-4) (MAY 2014)**

(a) Inspection/Acceptance. The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. If repair/replacement or reperformance will not correct the defects or is not possible, the Government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its postacceptance rights (1) within a reasonable time after the defect was discovered or should have been discovered; and (2) before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

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

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

(d) Disputes. This contract is subject to 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.

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

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

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

(i) Name and address of the Contractor;

(ii) Invoice date and number;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) Overpayments. If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall—

(i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—

(A) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(B) Affected contract number and delivery order number, if applicable;

(C) Affected contract line item or subline item, if applicable; and

(D) Contractor point of contact.

(ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(6) Interest. (i) All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in 41 U.S.C. 7109, which is applicable to the period in which the amount becomes due, as provided in (i)(6)(v) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(ii) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(iii) Final decisions. The Contracting Officer will issue a final decision as required by 33.211 if—

(A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt within 30 days;

(B) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(C) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see 32.607-2).

(iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(v) Amounts shall be due at the earliest of the following dates:

(A) The date fixed under this contract.

(B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(vi) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—

(A) The date on which the designated office receives payment from the Contractor;

(B) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(vii) The interest charge made under this clause may be reduced under the procedures prescribed in 32.608-2 of the Federal Acquisition Regulation in effect on the date of this contract.

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

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

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

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

(l) Termination for the Government's convenience. The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

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

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

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

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

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

(r) Compliance with laws unique to Government contracts. The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. chapter 37, Contract Work Hours and Safety Standards; 41 U.S.C. chapter 87, Kickbacks; 41 U.S.C. 4712 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. chapter 21 relating to procurement integrity.

(s) Order of precedence. Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order: (1) the schedule of supplies/services; (2) The Assignments, Disputes, Payments, Invoice, Other Compliances, Compliance with Laws Unique to Government Contracts, and Unauthorized Obligations paragraphs of this clause; (3) the clause at 52.212-5; (4) addenda to this solicitation or contract, including any license agreements for computer software; (5) solicitation provisions if this is a solicitation; (6) other paragraphs of this clause; (7) the Standard Form 1449; (8) other documents, exhibits, and attachments; and (9) the specification.

(t) System for Award Management (SAM) (1) Unless exempted by an addendum to this contract, the Contractor is responsible during performance and through final payment of any contract for the accuracy and completeness of the data within the SAM database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the SAM database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the SAM database to ensure it is current, accurate and complete. Updating information in the SAM does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(2)(i) If a Contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in FAR subpart 42.12,

the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to (A) change the name in the SAM database; (B) comply with the requirements of subpart 42.12; and (C) agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the legally changed name.

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

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

(4) Offerors and Contractors may obtain information on registration and annual confirmation requirements via SAM accessed through <https://www.acquisition.gov>.

(u) Unauthorized Obligations. (1) Except as stated in paragraph (u)(2) of this clause, when any supply or service acquired under this contract is subject to any End User License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause requiring the Government to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:

(v) Any such clause is unenforceable against the Government.

(ii) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument or agreement is invoked through an "I agree" click box or other comparable mechanism (e.g., "click-wrap" or "browse-wrap" agreements), execution does not bind the Government or any Government authorized end user to such clause.

(iii) Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.

(2) Paragraph (u)(1) of this clause does not apply to indemnification by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

(End of clause)

**SEWP V**  
**Contract No. NNG15SC66B**

**Note!** All clauses within this contract apply to all Groups unless otherwise specified.

**A.1.1. DELIVERABLE REQUIREMENTS (GSFC 52.211-90) (OCT 1988)**

The Contractor shall perform and/or deliver the following:

<b>Item</b>	<b>Description</b>	<b>Reference</b>	<b>Schedule</b>	<b>Shipping Classification</b>	<b>Delivery Method/Addressee(s)</b>
01	Annual Self-Certification	Section A.1.19	Annually	IV	SEWP Contracting Officer
02	RESERVED				
03	Certificate of Maintainability	Section A.1.17	Within 20 calendar days of the issuing Contracting Officer's request	IV	Issuing Contracting Officer
04	Administrative Handling Fee Report	Attachment D (D.6) and Section A.1.27	Quarterly	IV	Electronically to the SEWP Program Management Office (PMO)
05	Small Business Program Representation	Section II: 52.219-28	60 to 120 calendar days prior to the end of the fifth year of the contract	IV	SEWP Contracting Officer
06	Limitations on Subcontracting Certification	Section A.1.41	Annually on October 15	IV	SEWP Contracting Officer
07	IT Security Management Plan (NASA Delivery Orders Only, when applicable)	Section A.1.49	Within 30 calendar days of the issuing Contracting Officer's request	IV	SEWP Contracting Officer

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

The Contractor shall provide all supplies and services in accordance with Attachment C, Statement of Work, and as described in Addendum 1, Attachments A (Technical Specifications) & B (Mandatory Deliverables) herein, at the following prices: Attachment F – Price Exhibit.

The contracts will be awarded by both Category and Group as follows:

**Category A** (Computer Systems/Servers) – NAICS 334111 Group  
A – Computer Based Systems (Full and Open Competition)

**Category B** (Complementary Products) – NAICS 541519  
Group B – Mass Storage Devices (Service Disabled Veteran-Owned Small Business Set-Aside)  
– Mass Storage Devices (Hub-Zone Small Business Set-Aside)

Group C – Server Support Devices / Multi-Functional Devices (Small Business Set-Aside)

Group D – Networking / Security / Video and Conference Tools (Full and Open Competition)

(End of Text)

**A.1.3. PROCEDURES FOR ORDERS**

Supplies or services to be furnished under this contract shall be specified by the issuance of delivery orders from any Government agency priced in accordance with Clause A.1.7 and Attachment F, Pricing Exhibits as defined in the SEWP database of record. Such orders may be issued from the effective date of the contract through the ordering period. Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order inclusive of all options for up to a period of five years beyond the effective ordering period (See A.1.5(d)). The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the Contractor shall not be required to make any deliveries under this contract after the last date of the last item to be delivered in the issued delivery order schedule.

The issuing Contracting Officer may negotiate additional terms and conditions for a specific order. Any additional terms and conditions including licensing agreements proposed by a Contractor must be clearly identified in writing in the quote. All proposed licenses and other terms and conditions must be in accordance with applicable regulations, laws, and policies. The terms and conditions contained in the basic contract shall prevail in the event of conflict with any terms and conditions imposed at the delivery order level. (For example, the ordering Agency IT security policies, procedures and requirements or leasing of SEWP equipment may be included in individual orders.)

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

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

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

Unless an agency receives an exemption from the SEWP Program Management Office (PMO), all delivery orders shall be submitted by the issuing Agency directly to the SEWP PMO whose functions are described in Attachment C, Statement of Work prior to acceptance and processing of the delivery order by the contractor. Submission may be made either via e-mail, fax or other designated electronic commerce methods as defined by the SEWP PMO.

(End of text)

**A.1.4. ORDERING (52.216-18) (OCT 1995)**

(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule. Such orders may be issued from November 1, 2014 – October 31, 2019 (base ordering period) and one option (November 1, 2019- October 31, 2024).

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

(c) If mailed, a delivery order or task order is considered "issued" when the Government deposits the order in the mail. Orders may be issued orally, by facsimile, or by electronic commerce methods only if authorized in the Schedule.

\*\*Note: The Small Business Jobs Act of 2010 allows any issuing CO to set aside orders placed against multiple-award contracts for Small Business Concerns, including small businesses in the 8(a), HUBZone, SDVOSB, and WOSB Programs.

(End of clause)



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

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

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

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

(d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the Contractor shall not be required to make any deliveries under this contract beyond five (5) years from the end of the contract's effective ordering period for those orders placed within the effective ordering period.

(End of clause)

**A.1.6. MINIMUM AND MAXIMUM QUANTITIES**

As referred to in the "Indefinite Quantity" clause of this contract, the minimum amount of supplies or services that shall be ordered during the effective ordering period shall be \$25.00 per contract.

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

The maximum ordering value of each contract shall not exceed \$ 20,000,000,000.

(End of text)

**A.1.7. DISCOUNTS FOR TECHNOLOGY EQUIPMENT**

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

The price of all CLINs in Attachment F, Pricing Exhibits as defined in the SEWP database of record must be equal to or less than the price for the same offering on the Contractor's current GSA Schedule after discounting for any GSA or other Government fee. If the product is not available on the Contractor's current GSA schedule, then the SEWP contract price must be equal to or less than the same offering on the Contractor's current commercial price list and/or any Contractor's comparable Federal Government contracts unless any pricing difference can be justified. The Contractor shall notify the SEWP Contracting Officer and the ordering Agency Contracting Officer, within seven calendar days, of changes to prices below the offering price listed in this contract. If the Contractor's current GSA Schedule Contract price list after discounting any GSA or other Government fee or the Contractor's current

commercial or equivalent Federal Government price list is lower than the above discounted price, the Government retains the right to order at the lesser amount unless justification for the price difference exists.

Pricing must be comparable to that of other SEWP Contractors and similar contract vehicles. Markups above an OEM's wholesale / invoice price list must be reasonable and justified.

The Government may negotiate a lower price on an order-by-order basis.

## **PRODUCT CLASSIFICATIONS**

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

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

### **Training and Documentation**

Training and Documentation (both on-line and hardcopy) CLINS may be provided if the training and documentation directly relates to products that are in scope for SEWP as defined in Attachment C, Statement of Work.

### **Maintenance, Warranty and Licensing**

Maintenance, warranty services and product licensing may be provided for any in scope product.

### **Service Restrictions**

Agencies may utilize SEWP contracts to purchase product based services. These services include site planning, installation, integration and product engineering services using the Service CLINs on the contract provided that the services directly support the site planning, installation and implementation of in scope equipment/products. The products may either be purchased separately from SEWP or another means or at the same time as the services.

Labor services and ancillary products other than product training, maintenance, warranty, site planning, installation, integration and product engineering services and products already defined in the Product Classification Groups may be purchased using the Service CLINs on the contract provided that those services/products directly support the associated equipment purchased on that delivery and provided that these additional services/products do not exceed 5% of the price of the associated equipment/products. These limited services/products shall not be purchased separately from the related product purchase. The 5% restriction does not apply to product training, maintenance, warranty, site planning, installation, integration and product engineering services and products.

The rates for services contained in the contractor's price list applicable to this Contract are reviewed and approved as fair and reasonable. However, for orders with labor services based on labor rates, the issuing CO placing an order against the contract is responsible for considering the labor hours and mix of labor proposed to perform specific task being ordered and for making a determination that the price of those services is fair and reasonable.

(End of text)

**A.1.8. ACCEPTANCE--MULTIPLE LOCATIONS (GSFC 52.246-93) (SEPT 2013)**

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

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

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

(End of clause)

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

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

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

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

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

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

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

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

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

(b) The Contractor shall prepare the DD Form 250 in accordance with NASA FAR Supplement 1846.6. The Contractor shall enclose the copies of the DD Form 250 in the package or seal them in a waterproof envelope, which shall be securely attached to the exterior of the package in the most protected location.

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

(End of clause)

**A.1.10. TIME OF DELIVERY**

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

1. Standard Delivery: Items shall be delivered within 30 calendar days of receipt and processing of the Delivery Order at the SEWP PMO, for non-credit card orders, and within 30 calendar days of placement of credit card orders unless otherwise noted and mutually agreed upon as described below for Expedited and Non-standard Delivery.
2. Expedited Delivery: An expedited delivery schedule of less than 30 calendar days delivery, mutually agreed upon by the Ordering Agency and Contractor, may be added to Delivery Orders.
3. Non-standard Delivery: A delivery schedule other than the 30 calendar day standard delivery time may be proposed on an individual CLIN (item) basis or at the time a quote is provided to the Government
4. If an item cannot be delivered within the delivery time for that item, the Contractor shall notify the issuing Contracting Officer and the SEWP PMO within two business days of receipt of order or notification from the manufacturer of the expected delivery date for the ordered item(s). Upon notification, the Ordering Agency may choose to cancel the order or request due consideration for the delay.

(End of text)

**A.1.11. PARTIAL SHIPMENTS**

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

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

(End of text)

**A.1.12. INDIVIDUALS AUTHORIZED TO ISSUE ORDERS**

**Strategic Sourcing Initiatives**

The Government reserves the right to utilize the SEWP V contracts to support strategic sourcing initiatives. These initiatives may range from a single facility, an agency, or to the entire Federal Government under the auspices of OMB. Socio-economic considerations and goals may be considered as an integral aspect of strategic sourcing. Any Government Contracting Officer or duly authorized representative is authorized to place delivery orders against the contract. Credit card orders may be issued by agency designated ordering officials.

Support Service Contractors may be authorized by their Government Contracting Officer to purchase from the SEWP Contracts on behalf of the Government. To authorize a contractor to purchase from the SEWP contracts, the authorizing contracting officer should send a copy of the authorization letter to the SEWP Program Office containing all of the following information:

1. Authorizing Agency Name, Contracting Officer (CO/KO) Name, Mailing Address, Email Address, Phone/FAX number
2. Complete contractor corporate name, division, and address.
3. Contract number and period of performance
4. A statement that the contractor is authorized to purchase from SEWP contracts in support of the above contract.
5. The CO's/KO's signature and date signed.

Note: Local and State Governments, and Federal Tribes are not authorized to issue orders against these contracts.

(End of text)

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

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

(End of clause)

**A.1.14. WARRANTY**

The Contractor shall provide an extended warranty, which can be purchased and begin at any time during the standard commercial warranty period up to and including the end of the commercial warranty period. Extended warranty packages may be invoiced and paid at the start of the warranty period. This extended warranty shall provide coverage based on the standard commercial warranty.

At the Government's discretion, the Government may order, at any time during a warranty period, monthly maintenance at a Discounted Monthly Extended Warranty amount in lieu of the extended warranty.

(End of text)

**A.1.14.1. SOFTWARE MAINTENANCE / PRODUCT EXTENDED WARRANTY AS A PRODUCT**

Product and software maintenance, warranty and licensing shall be treated as a commercial product unless such product is priced on a usage basis; e.g. maintenance on a printer based on usage must be invoiced monthly. Software maintenance as a product includes the publishing of bug/defect fixes via patches and updates/upgrades in function and technology to maintain the operability and usability of the software product. It may also include other no charge support that is included in the purchase price of the product in the commercial marketplace. No charge support includes items such as user blogs, discussion forums, on-line help libraries and Frequently Asked Questions (FAQ), hosted chat rooms, and limited telephone, email and/or web-based general technical support for users self diagnostics. Software maintenance as a product does NOT include the creation, design, implementation, integration, etc. of a software package. These examples are considered software maintenance as a service and are to be billed monthly.

(End of text)

**A.1.15. ELECTRONIC DATA AND REPORT INTERCHANGE**

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

(End of text)

**A.1.16. OTHER FEDERAL AGENCY UTILIZATION**

Other Federal Agencies, and authorized Contractors, will be allowed to utilize this contract, on a non-mandatory basis.

(End of text)

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

**A.1.17. CERTIFICATE OF MAINTAINABILITY**

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

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

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

(End of text)

**A.1.18. SUBSTITUTE/ENHANCEMENTS FOR SPECIALIZED EQUIPMENT/SOFTWARE TO ACCOMMODATE USERS WITH DISABILITIES**

The Contractor is encouraged to offer equipment or software that becomes available after contract award and offers improvements in technology and that better suits the needs of users with disabilities. If the Government elects to do so, it may evaluate the equipment/software, and substitute the equipment for the equipment covered in the contract but not yet delivered. Any such proposal should contain the general information required by the "Technology Refreshment" clause A.1.19 in this Section.

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

(End of text)

**A.1.19. TECHNOLOGY REFRESHMENT**

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

In the event that the Contractor is no longer able to provide the products it previously offered (because they are no longer being manufactured, for example), the Contractor may, with the Government's approval, remove the products from the contract. For products in the mandatory deliverable lists, the Contractor shall provide substitute products

which shall have the functional capabilities of the products originally provided and shall meet or exceed the original products' rated performance characteristics, at the appropriate discount as indicated in Clause A.1.7.

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

The Government reserves the right to remove any item from the current contract if it deems the item to be out of scope, not reasonably priced, out of date, or missing technical information. Any item on contract for more than 18 months may be considered out of date.

The price on the contract for any CLIN cannot change value within one week of the last update, unless a documented error has been identified and approved. The price on the contract for any CLIN cannot change value within one month of the last update unless prior approval is received from the SEWPPMO.

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

- 1) For mandatory deliverable items, each item must satisfy all original mandatory requirements in the technical specifications of this contract.
- 2) Each item must correspond with an appropriate existing contract product class code and its corresponding price discount.

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

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

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

- Contract Line Item Number (CLIN) (unique for this product)
- Name of Original Equipment Manufacturer
- Original Equipment Manufacturer Part Number
- Original Equipment Manufacturer's Model Number / Model Name
- Product Classification Code
- Classification Subgroup
- Base/Mandatory/Available Component Flag
- Full Item Description
- List Price
- SEWP Price
- GSA price (if item is currently on Contractor's GSA contract)

Additionally several line item specific flags must either be set or will have defaulted values assigned to them. These include:

- Trade Act Agreement (TAA):
  - i. C =TAA Compliant
  - ii. NC=Not Compliant (can only be purchased if a FAR exception exists) - Default Flag

- iii. NA=Not Applicable
- EPEAT
  - i. A = Applicable but no EPEAT compliant product available
  - ii. B = EPEAT certified Bronze
  - iii. G = EPEAT certified Gold
  - iv. NA = Not Applicable
  - v. NC = Non-compliant- Default Flag
  - vi. S = EPEAT certified Silver
  - vii. Y = EPEAT compliant and registered, non-certified Business size
- Energy star compliant
  - i. C = Compliant
  - ii. NA = Not Applicable
  - iii. NC = Not Compliant - Default Flag
- Product Condition
  - i. N = Product is new – Default Flag
  - ii. R = Product is refurbished
  - iii. U = Product is used

All or part of a technology refreshment request may be approved by the Government. All approved items will immediately be added to the electronic SEWP database of record constituting the current data associated with Attachment F of this contract. At that point, the items may be quoted and ordered.

**A.1.19.1. SPECIALIZED CONTRACT LINE ITEM NUMBERS**

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

- 1) TRAVEL-Z: Travel expenses based on the current Government rates for per diem and transportation. Any other travel cost related to an order fulfillment e.g. installation, shall be negotiated on a per order basis
- 2) CREDIT-Z: Credit Discount
- 3) DELIVERY-Z: Delivery Fee

**A.1.19.2. BUNDLED LINE ITEMS**

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

- 1) each of the products are available as separate CLINs in the Contract prior to addition of the bundled CLIN
- 2) a spreadsheet listing the items and individual prices is submitted for approval to the SEWP PMO

**A.1.19.3. BUILT TO ORDER LINE ITEMS**

The Contractor may propose built to order (BTO)/configure to order (CTO) items wherein the exact configuration and pricing is dependent on end user requirements provided that:

- 1) the base product has been separately added to the contract
- 2) a spreadsheet listing the items and individual component prices is submitted to the SEWP PMO and referred to in the TR submission
- 3) each configuration to be quoted is separately listed and priced on the contract using unique CLINs
  - a. the quoted configuration must exactly match the configuration on the contract
- 4) each configuration to be quoted is referenced by the manufacturer part number of the base product

(End of text)



**A.1.20. ORDER LIMITATIONS (52.216-19) (OCT 1995)**

a) Minimum order – All Groups: When the Government requires supplies or services covered by this contract in an amount of less than \$25; the Contractor is not obligated to furnish those supplies or services under the contract.

b) Maximum order : The Contractor is not obligated to honor--

- (1) Any order for a single item in excess of \$2 million;
- (2) Any order for a combination of items in excess of \$10 million;
- (3) A series of orders from the same ordering office within 30 days that together call for quantities exceeding the limitation in subparagraph (1) or (2) above.

(c) If this is a requirements contract (i.e., includes the Requirements clause at subsection 52.216-21 of the Federal Acquisition Regulation (FAR)), the Government is not required to order a part of any one requirement from the Contractor if that requirement exceeds the maximum order limitations in paragraph (b) above.

(d) Notwithstanding paragraphs (b) and (c) above, the Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within seven (7) days after issuance, with written notice stating the Contractor's intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the Government may acquire the supplies or services from another source.

(End of clause)

**A.1.21. FAIR OPPORTUNITY AND REQUESTS FOR QUOTES**

Contractors will be provided fair opportunity at the individual order level as appropriate per FAR Part 16.505(b), including the SEWP RFQ tools. No documentation for the order selection is required to be submitted with the order. All such documentation is to be maintained by the issuing procurement office.

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

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

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

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

Unless the RFQ specifically allows for partial quotes, the Contractor must respond fully to all requirements specified in the RFQ.

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

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

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

As a result of the Small Business jobs act, the issuing Contracting Officer can set aside an order for small businesses as long as there are two or more with that designation.

(End of text)

**A.1.22. INVOICES – SUBMISSION OF**

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

(End of text)

**A.1.23. UNENFORCEABILITY OF UNAUTHORIZED OBLIGATIONS (52.232-39) (JUN 2013)**

(a) Except as stated in paragraph (b) of this clause, when any supply or service acquired under this contract is subject to any End User License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause requiring the Government to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:

(1) Any such clause is unenforceable against the Government.

(2) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument or agreement is invoked through an "I agree" click box or other comparable mechanism (e.g., "click-wrap" or "browse-wrap" agreements), execution does not bind the Government or any Government authorized end user to such clause.

(3) Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.

(b) Paragraph (a) of this clause does not apply to indemnification by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

(End of clause)

**A.1.24. F.O.B. DESTINATION (52.247-34) (NOV 1991)**

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

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

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

(b) The Contractor shall--

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

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

(End of clause)

**A.1.25. DELIVERY AND OTHER CHARGES**

All deliverable line item prices shall be inclusive of all charges that are included in the line item's commercial list pricing. If the delivery order includes specialized delivery requirements such as OCONUS delivery; expedited delivery; specialized handling; etc, an additional fee using the Contract's Delivery-Z CLIN may be quoted.

Items returned prior to the Government's acceptance are not subject to restocking fees or other charges unless the return is due to a Government initiated change.

(End of text)

**A.1.26. EXPORT LICENSES (1852.225-70) (FEB 2000)**

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

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

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

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

(End of clause)

**A.1.27. CONTRACTOR COLLECTION OF AGENCY ADMINISTRATIVE HANDLING FEE**

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

**Contractor Responsibilities:**

- (a) In providing quotations to agencies, the Contractor shall be responsible for including the SEWP fee within the total amount of the quote inclusive of all costs including handling, and travel costs. The fee may be rounded to the nearest whole dollar.
- (b) The fee shall NOT be listed separately on quotes or orders. The fee must be included within the price of the quoted offerings.
- (c) The fee will apply to all such orders. These include, but are not limited to, original orders, modifications to orders, etc. On modifications that reduce the original price of an order, a credit for the handling fee may be included in the new total amount.  
- if a fee cap exists, the cap applies to each order and each separate modification to the original order. This includes any modification that exercises an option or provides additional funding. The fee cap is applied on an individual invoice basis
- (d) The Contractor shall invoice the ordering agency for the entire amount of the order (including the handling fee).
- (e) Quarterly, the Contractor shall be responsible for sending a payment to NASA/Goddard Space Flight Center, SEWP, Code 700, reflecting the total administrative handling fee collected during that period. The Contractor will be only responsible for forwarding payment on handling fees actually invoiced and collected. The Contractor shall determine the timing of the initial quarterly payment. The payment is to be made via electronic methods payable to NASA/Goddard Space Flight Center, at the following website:  
<https://www.nssc.nasa.gov/portal/site/customerservice/menuitem.bb29c518138071c056969daf4dd72749/>
- (f) Coinciding with the payment, the Contractor must send an “Agency Administrative Handling Fees Collected” report electronically to the SEWP Program Office. The report must be an Excel Spreadsheet and include the SEWP Control Number and/or Agency Order number, the Total Order Amount, and the administrative handling fee collected for each order reflected in the total payment. The report must be sorted by SEWP Control Number or by Agency Order number. The report must have totals for the Total Order Amount and the Agency Administrative Handling Fee Collected. This report must be submitted electronically. Reports should be submitted as described in Attachment D, Contractor /Government Communications Requirements, Section D.6.

(End of text)