



**WORLEYPARSONS GROUP INC.  
CONSULTING AGREEMENT  
(INSTITUTE OF POWER ENGINEERING)**

This Agreement (the "Agreement") is made effective this 27th of February, 2019, by and between INSTITUTE OF POWER ENGINEERING, (hereinafter referred to as "CONSULTANT"), whose address is 5, Academiei str., Chisinau, Moldova, MD2028, and WORLEYPARSONS GROUP INC., whose address is 2330 E. Bidwell Street, Suite 150, Folsom, CA, 95630 (hereinafter referred to as "WORLEYPARSONS"), each a "Party" and collectively the "Parties".

CONSULTANT shall furnish engineering and associated consulting services (the "Services") in accordance with one or more task / purchase orders ("TASK ORDERS") issued from time to time by WORLEYPARSONS. Such TASK ORDERS will identify the WorleyParsons' Client, describe the scope of the Services to be provided by CONSULTANT, the schedule for the Services, the applicable compensation provisions and any additional terms and conditions that are pertinent to the Services but are not contained in the General Conditions attached hereto. CONSULTANT shall not perform any Services unless a TASK ORDER has been mutually agreed to, in writing, by both WORLEYPARSONS and CONSULTANT.

This Agreement shall be effective from the date first written above for an initial term of one year and then shall extend automatically on a month to month basis thereafter, subject to the termination provisions as otherwise provided for in Article 11.

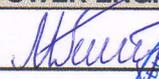
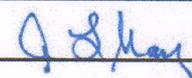
Any Services started under this Agreement, regardless of whether or not completed by the specified completion date or whether suspended or restarted thereafter, shall be performed in accordance with and shall be subject to the terms of this Agreement until completed.

**ORDER OF PRECEDENCE**

In the event of any conflict between the terms of this agreement and the applicable client flow down terms, the flowdown terms shall control. In the event of any conflict between the following documents, all of which are hereby incorporated by reference into this Agreement, the order of precedence shall be as follows:

1. Latest Revision of Subcontract Task Order
2. Subcontract Task Order
3. Agreement with flow down terms (if applicable)

In WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the day and year first written above.

| INSTITUTE OF POWER ENGINEERING   | WORLEYPARSONS GROUP, INC.   |
|--|---|
| Signed _____  | Signed _____  |
| Printed Name: <u>Mihai Tirsu</u>   | Printed Name: <u>Alexandra May</u>  |
| Title: <u>Director</u>   | Title: <u>Procurement Manager, Advisian Americas</u>  |



**GENERAL CONDITIONS  
WORLEYPARSONS GROUP, INC.  
CONSULTING AGREEMENT  
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**1. PERFORMANCE OF THE SERVICES**

- 1.1 The Parties acknowledge that time is of the essence in respect of the performance of the Services for each TASK ORDER. CONSULTANT shall start the Services promptly and shall perform them diligently, in an orderly manner and in accordance with the schedule as expressly set forth in the applicable TASK ORDER or as otherwise provided by WORLEYPARSONS, as practicable, advising WORLEYPARSONS on a regular basis as to the progress of the Services.
- 1.2 During the course of the Services, CONSULTANT shall keep WORLEYPARSONS fully informed of all factors which may affect CONSULTANT's progress of the Services and the anticipated final completion date of the Services.

**2. INDEPENDENT CONTRACTOR**

- 2.1 CONSULTANT shall be an independent contractor in all its activities hereunder. CONSULTANT's employees are not to be considered WORLEYPARSONS' employees for any purpose and shall not be entitled to accrual or payment of any WORLEYPARSONS employee benefits. Neither CONSULTANT nor its employees are authorized to represent WORLEYPARSONS or WORLEYPARSONS' client(s) or otherwise bind WORLEYPARSONS or WORLEYPARSONS' client(s) in any dealings between CONSULTANT and any third parties.
- 2.2 CONSULTANT shall perform all Services using its own employees and shall not utilize the services of any third party to perform the Services without the prior written approval of WORLEYPARSONS, which approval shall not be unreasonably withheld. Requests for such approval must be supported by evidence of the intended performer's qualifications and experience and must be submitted in sufficient time to allow for WORLEYPARSONS' review and written determination. WORLEYPARSONS, in the absence of such prior written determination, shall have no obligation to accept Services performed wholly or partially by a third party, and shall have no obligation to pay for Services performed wholly or partially by a third party.

**3. COMPENSATION AND INVOICING**

- 3.1 CONSULTANT's compensation for Services satisfactorily performed, as determined by WORLEYPARSONS, shall be as set forth in a TASK ORDER issued pursuant to this Agreement. Unless otherwise specifically stated in a TASK ORDER, the rates and charges set forth in a TASK ORDER are fixed and firm, all inclusive, and not subject to adjustment and are effective for the duration of the CONSULTANT's assignment as set forth in the TASK ORDER. CONSULTANT shall be solely responsible for the payment of all costs incurred in connection with CONSULTANT's business, including overhead costs (including the cost of office space and office equipment, heating, cooling, electricity, office supplies, computers, and related costs), local transportation, all federal, state and local income taxes, property taxes, sales and use taxes, health and accident insurance, unemployment compensation, and all other costs, charges and assessments, whether similar or dissimilar to the foregoing. Where employees of CONSULTANT are performing the Services in WORLEYPARSONS' offices, they shall be provided suitable office space and office services at no charge.

Out-of-pocket expenses incurred by CONSULTANT's employees in connection with the performance of the Services and not provided for in Article 3.1 above, will be reimbursed to CONSULTANT at actual cost, supported by itemized receipts, provided CONSULTANT has provided notice of such expenses to WORLEYPARSONS prior to their being incurred, and WORLEYPARSONS has approved such expenses to be incurred in advance in writing. *Any expenses not so approved will not be reimbursed.* Such out-of-pocket expenses will be paid according to the requirements of WORLEYPARSONS policy in effect at the time the expense was incurred.

- 3.2 CONSULTANT, by the fifth (5<sup>th</sup>) day of the month following the month in which the Services are actually performed or according to such other schedule as set forth in the applicable TASK ORDER, shall submit itemized invoices showing days and dates worked and tasks performed by Consultant's



employees and the number of hours spent on each task. If required by WORLEYPARSONS, supporting documentation substantiating the time charged shall accompany invoices rendered.

WORLEYPARSONS, within forty-five days after receipt of invoice WorleyParsons, shall pay CONSULTANT the approve amount of CONSULTANT's invoice for Services rendered hereunder. Invoice(s) will not be processed if required deliverables as specified in the respective TASK ORDER are incomplete or found to be not acceptable by WORLEYPARSONS.

3.3 Upon final completion of the Services under a TASK ORDER, CONSULTANT shall present an invoice marked "Final Payment Invoice" for the amount due to or payable by WORLEYPARSONS. WORLEYPARSONS' payment or acceptance of the invoice for final payment shall not release CONSULTANT from any unperformed obligations of this Agreement. **Invoices submitted more than six (6) months after CONSULTANT's completion of any Services will not be honored.**

3.5 CONSULTANT shall submit invoices to:

WorleyParsons Group, Inc.  
[alexandra.may@WorleyParsons.com](mailto:alexandra.may@WorleyParsons.com)  
WorleyParsons Purchase Order No.: 108010-00765-0001  
"example"

For proper processing, all invoices submitted by CONSULTANT must reference this Agreement, the specific TASK ORDER NUMBER, and the WORLEYPARSONS Purchase Order Number issued for the Services being billed.

**4. INSURANCE**

4.1 Not Applicable

**5. INDEMNIFICATION**

5.1 To the fullest extent permitted by law, CONSULTANT, in proportion to its negligence, shall release, defend and indemnify WORLEYPARSONS and its Client and their respective parent corporations, subsidiaries, affiliates, officers, directors, employees, representatives, subcontractors and vendors of any tier (the "Indemnitees") against and shall hold same harmless from all loss, cost, liability, penalty and expense, or claims thereof for illness of, injury to or death of employees of CONSULTANT and/or any third parties, or loss of or damage to property belonging to CONSULTANT and/or any third parties, including the Client, and arising out of or relating to the performance of this Agreement and the Services hereunder. CONSULTANT shall have no obligation to indemnify WORLEYPARSONS pursuant to this Article 5.1 if the claim or loss complained of resulted from the sole negligence of WORLEYPARSONS.

5.2 To the fullest extent permitted by law, WorleyParsons, in proportion to its negligence, shall release, defend and indemnify CONSULTANT against and shall hold same harmless from all loss, cost, liability, penalty and expense, or claims thereof for illness of, injury to or death of employees of WorleyParsons and/or any third parties, or loss of or damage to property belonging to WORLEYPARSONS and/or any third parties, including the Client, and arising out of or relating to the performance of this Agreement and the Services performed by WorleyParsons. WorleyParsons shall have no obligation to indemnify Consultant pursuant to this Article 5.2 if the claim or loss complained of resulted from the sole negligence of Consultant.

5.3 Any and all personal injury or property claims, damages, losses and expenses arising from or caused by the joint acts or omissions of the parties shall be apportioned between the parties in accordance with applicable law.

**6. AUTHORIZATION AND SUPERVISION**

The Services to be provided hereunder shall be under the general direction of WORLEYPARSONS' Project Manager or his/her designee, but the methods and means of performance of the Services will be entirely at



the Consultant's discretion. Such Services shall be limited to those Services described within the applicable TASK ORDERS issued by WORLEYPARSONS to CONSULTANT. All contractual matters relating to this Agreement or any TASK ORDER issued hereunder are to be referred to WORLEYPARSONS' Manager of Purchasing, or his/her designee, who are the only persons authorized to alter any provisions of this Agreement. Any changes to this Agreement or to any TASK ORDER issued hereunder must be in writing and signed by WORLEYPARSONS' Manager of Purchasing or his/her designee. Any direction received by CONSULTANT from any WORLEYPARSONS representative or personnel other than the Manager of Purchasing or his/her designee which is considered by CONSULTANT a change to the scope of work must be confirmed in writing by the Manager of Purchasing or his/her designee prior to CONSULTANT's performance of such change. Absent such confirmation CONSULTANT performs such change solely at its risk and expense.

**7. CONFIDENTIALITY**

- 7.1 CONSULTANT and its employees shall not disclose to others any information relating to this Agreement or the Services without the prior written permission of WORLEYPARSONS.
- 7.2 Matters upon which CONSULTANT will be working pursuant to this Agreement shall include receipt or development of information which WORLEYPARSONS deems confidential, including without limitation, patented or proprietary processes of WORLEYPARSONS, WORLEYPARSONS' Client(s) and others. Accordingly, CONSULTANT or its employees shall not disclose to third parties nor utilize any information concerning the Services in respect of which CONSULTANT agrees to perform under this Agreement, except only such information which 1) at the time of receipt from WORLEYPARSONS was in CONSULTANT's prior possession, or 2) was or thereafter becomes a matter of public knowledge other than by reason of breach of this Agreement, or 3) which may thereafter be obtained by CONSULTANT from a third party who is not under the obligation of secrecy or confidentiality to WORLEYPARSONS shall not be subject to such non-disclosure restrictions. Unless pre-approved by WORLEYPARSONS, CONSULTANT will not at any time publish or otherwise disclose engagement by WORLEYPARSONS under this Agreement except as is necessary to perform the Services.
- 7.3 No news release, including photographs and films, public announcement, denial or confirmation shall be made by CONSULTANT concerning the subject matter of this Agreement, or any phase of any program hereunder, without the prior written approval of WORLEYPARSONS.

**8. GUARANTEES: REMEDY**

- 8.1 CONSULTANT guarantees that the Services to be performed hereunder shall be performed in conformity with all of the specific requirements, performances and capacities required by this Agreement and any TASK ORDER, and to the extent unspecified in this Agreement or a TASK ORDER, in accordance with applicable codes and recognized standards of good care for similar professionals performing similar work in the same geographic area.
- 8.2 If CONSULTANT fails to conform to this standard of performance, and such failure is discovered by WORLEYPARSONS within one year after completion of the Services, then CONSULTANT, at its own cost and expense shall, to the extent requested by WORLEYPARSONS, correct such deficient Services necessary to conform the Services to the foregoing guarantees. If such defective Services are not subject to re-performance, then CONSULTANT shall refund to WORLEYPARSONS all amounts paid by WORLEYPARSONS for such defective or non-conforming Services. Re-performance is required when required by WorleyParsons. Refund is due, in lieu of re-performance, only when requested by WorleyParsons and Client. To the extent that CONSULTANT's non-conforming Services shall result in direct damages or losses to the work or related deliverables of WORLEYPARSONS or others, CONSULTANT shall also compensate WORLEYPARSONS for such damages and losses.

**9. INVENTIONS, DISCOVERIES, AND IMPROVEMENTS**

CONSULTANT shall disclose promptly to WORLEYPARSONS and shall assign to WORLEYPARSONS all rights, both United States and foreign, in any and all inventions, discoveries, and improvements, whether



patentable or not, conceived or made by CONSULTANT's employees while directly engaged in any Services for WORLEYPARSONS, or derived from information that CONSULTANT is required to keep confidential pursuant to the terms of this Agreement. CONSULTANT shall retain all intellectual property rights owned or created by CONSULTANT prior to the effective date of this Agreement; and/or created outside the scope of this Agreement.

**10. PATENTS AND ROYALTIES**

CONSULTANT shall defend all suits and claims against WORLEYPARSONS and WORLEYPARSONS' client, and shall hold each of them free and harmless, and hereby indemnifies WORLEYPARSONS and WORLEYPARSONS' client from all liability, damage, costs and royalties, from: (a) any infringement or alleged infringement of any patent, or for the misuse of any patented article, by CONSULTANT and its subcontractors in the performance of the Services, or (b) the infringement or alleged infringement of any patent by WORLEYPARSONS' client's use or operation of the Services following the completion thereof by CONSULTANT, or (c) the use or misuse, by CONSULTANT or its subcontractors during the performance of the Services, of any confidential information or secret processes, or (d) any use or misuse of confidential information or secret processes by WORLEYPARSONS' client in the use or operation of the Services following acceptance.

**11. TERMINATION**

11.1 WORLEYPARSONS may terminate this Agreement or any TASK ORDER hereunder without cause at any time. Any termination shall become effective in the manner specified in a written notice of termination and shall be without prejudice to any claim which WORLEYPARSONS may have against CONSULTANT.

11.2 In the event of termination, WORLEYPARSONS shall only be obligated to reimburse CONSULTANT in accordance with the terms and conditions of this Agreement for Services satisfactorily completed prior to the date of termination.

**12. LIMITATION OF LIABILITY**

12.1 Consequential Damages. Neither Party shall be liable to the other for special, indirect, incidental, punitive or consequential damages of any nature (regardless of whether such damages are alleged to have risen from negligence; breach of warranty; breach of contract; or other act, error or omission; or from strict or absolute liability in tort; or from any other cause whatsoever; or any combination of the foregoing) including, but not limited to: damages arising from the use or loss of use of any facility; loss of anticipated profits or revenues; costs of replacement services, goods and utilities; damages arising from delay; claims of customers; or interest.

12.2 Limitation of Liability. Except for liabilities associated with CONSULTANT's identity obligations herein or arising from the gross negligence or willful misconduct of CONSULTANT in the performance of this Agreement, CONSULTANT's maximum cumulative liability under any Task Order issued under this Agreement, exclusive of the proceeds of any required insurance, shall not, in the aggregate, exceed the total compensation received under such Task Order.

**13. TAXES**

13.1 CONSULTANT's compensation includes, and CONSULTANT shall pay, all sales, use and any other applicable taxes, whether federal, state, local, or otherwise, on personal property used or purchased for use in connection with the Services, and shall also pay all income, gross receipts, ad valorem, privilege, occupational, business, excise, import taxes or duties, and any other taxes to which CONSULTANT may be liable as a result of the conduct of its business or the performance of the Services.



13.2 CONSULTANT shall defend, indemnify and hold WORLEYPARSONS and WORLEYPARSONS' client(s) harmless from and against all claims by any governmental or taxing authority claiming failure of CONSULTANT or any of its agents or employees to comply with Article 13.1 above.

**14. AUDIT**

WORLEYPARSONS' duly authorized representative shall have access at all reasonable times to all records, documents, files, and personnel necessary to audit and verify CONSULTANT's charges to WORLEYPARSONS for Services performed. CONSULTANT shall retain records, documents, and files related to such charges for a period of three (3) years following the date of final payment to CONSULTANT for all Services performed. WORLEYPARSONS' Representative shall have the right to reproduce any of the aforesaid documents.

**15. SAFETY**

15.1 CONSULTANT, when working on the premises of WORLEYPARSONS or WORLEYPARSONS' client(s), represents and warrants that it will familiarize its employees with and will require them to follow all applicable safety rules and regulations promulgated by WORLEYPARSONS and/or its client(s). CONSULTANT further represents and warrants that it maintains and actively implements and enforces a safety program that is appropriate for the Services to be provided under this Agreement.

15.2 CONSULTANT understands that if the Services entail entering the premises of a WORLEYPARSONS' Client, CONSULTANT's employees will be required to undergo such pre-access background checks, safety, health and environmental training as the Client may require. The cost of any time expended and/or any third party charges incurred, whether by WORLEYPARSONS' or its Client(s), will be to CONSULTANT's account unless otherwise provided in a TASK ORDER. CONSULTANT is also responsible for providing personal protective equipment for its employees in accordance with the Client's requirements at CONSULTANT's expense, unless otherwise provided in a TASK ORDER. CONSULTANT understands that its employees will be subject to WORLEYPARSONS and WORLEYPARSONS' Clients' drug free workplace requirements.

**16. SUPPLIER CODE OF CONDUCT**

CONSULTANT, ITS SUBCONTRACTORS AND THEIR SUPPLIERS, AT ALL TIERS, SHALL COMPLY WITH WORLEYPARSONS' CODE OF CONDUCT IN THE AWARD AND PERFORMANCE OF ALL CONTRACTS AND SUBCONTRACTS. The WorleyParsons' Code of Conduct requires that Consultant and each of its Subcontractors demonstrate a strong commitment to compliance, ethics, sustainability, and supplier diversity as a foundation to successful business. Consultant must complete its Work for WorleyParsons in full compliance with the Code of Conduct, as it may be modified from time-to-time. The WorleyParsons Code of Conduct is attached hereto and incorporated by reference into this Contract.

**17. GOVERNING LAW**

This Agreement shall be construed and interpreted in accordance with the laws of the State of California, USA, without regard to its rules concerning conflicts of laws.

**18. ASSIGNMENT**

CONSULTANT shall not subcontract or assign this Agreement, or any part thereof, or any monies to become due, without first obtaining the prior written consent of WORLEYPARSONS in each and every instance, which consent may be withheld for any reason at the sole discretion of WORLEYPARSONS.

**19. EFFECT OF INVALIDITY**

If any provision in this Agreement is determined to be void or unenforceable, such determination shall not affect the validity of any other provision and the Parties shall make every good faith attempt to agree to a replacement provision that as near as possible achieves the same purpose as the void or unenforceable provision.



**20. WAIVERS**

The waiver by either party of any breach of any term, covenant, condition or agreement contained in this Agreement shall not be deemed to be a waiver of any subsequent breach of the same, or of a breach of any other term, covenant, condition, or agreement.

**21. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between WORLEYPARSONS and CONSULTANT, and there are no terms, conditions, or provisions, either oral or written, between the Parties other than those herein contained, and this Agreement supersedes any and all oral or written representatives, inducements, or understandings of any kind or nature between the Parties relating to the Services to be performed hereunder. The body of this Agreement takes precedence over, and notice of objection is hereby given to additional or different terms and conditions contained in any proposal, unless such additional or different terms and conditions are contained in the applicable TASK ORDER; and then such terms and conditions shall only apply to the applicable TASK ORDER, unless this Agreement is amended by written instrument signed by the authorized representatives of both Parties.

**END OF GENERAL CONDITIONS**

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**SECTION H – SPECIAL CONTRACT REQUIREMENTS**

**H.1 INSURANCE AND SERVICES**

a) Pursuant to AIDAR 752.228-3 Worker's Compensation Insurance (Defense Base Act), to obtain DBA insurance, contractors and subcontractors must apply for coverage directly from AON Risk Insurance Services (AON), the agent for Allied World Assurance Company (AWAC).

Contractors must apply for coverage directly to AON Risk Insurance Services Inc., the agent for AWAC DBA Insurance. For instructions on the required application form and submission requirements, contact the following office:

AON Risk Insurance Services West, Inc.  
2033 N. Main St., Suite 760  
Walnut Creek, CA 94596-3722  
Hours: 8:30 A.M. to 5:00 PM, Pacific Time  
Primary Contact: Fred Robinson  
Phone: (925) 951-1856 Fax: (925) 951-1890  
Email: Fred.Robinson@aon.com

b) In compliance with new Agency guidelines, Contractors will be required to submit a copy of DBA coverage for which contract performance is to occur outside of the U.S. This document must be provided prior to start of performance overseas.

c) New Rates: There are three different rates depending on the nature of the services to be provided. If a contract contains more than one of the services listed, the premium will be distributed proportionally.

|             | <b>Period of Performance</b> | <b>Services</b> | <b>Construction</b> | <b>Security Guards</b>                |
|-------------|------------------------------|-----------------|---------------------|---------------------------------------|
| Base Period | 12/1/15 – 11/30/17           | 2.00            | \$4.50              | 7.5                                   |
| Option 1    | 12/1/17 – 11/30/18           | 2.00            | \$4.50              | \$7.50/\$10.00/ \$12.50<br>(see Note) |
| Option 2    | 12/1/18 – 11/30/19           | 2.00            | \$4.50              | \$7.50/\$10.00/ \$12.50<br>(see Note) |
| Option 3    | 12/1/19 – 11/30/20           | 2.00            | \$4.50              | \$7.50/\$10.00/ \$12.50<br>(see Note) |

Notes available at: [https://www.usaid.gov/sites/default/files/documents/1868/aapd17\\_01.pdf](https://www.usaid.gov/sites/default/files/documents/1868/aapd17_01.pdf)

**H.3 EXECUTIVE ORDER ON TERRORISM FINANCING**

The Contractor is reminded that U.S. Executive Orders (including E.O. 13224) and U.S. law prohibit transactions with, and the provision of resources and support to, individuals and organizations associated with terrorism. It is the legal responsibility of the contractor to ensure compliance with these Executive Orders and laws. FAR 25.701 prohibits agencies and their contractors and subcontractors from acquiring any supplies or services from individuals or organizations, if any proclamation, Executive Order, Office of Foreign Assets Control (OFAC) regulations, or statute administered by OFAC would prohibit such a transaction. Accordingly, the Contracting Officer must check the U.S. Department of the Treasury's OFAC List to ensure that the names of the Contractor and proposed subcontractors (and individuals from those organizations who have been made known to them), are not on the list. Mandatory FAR clause 52.225-13 "Restrictions on Certain Foreign

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Purchases” is included by reference in Section I.1 of this contract. By accepting this contract, the Contractor acknowledges and agrees that it is aware of the list as part of its compliance with the requirements of that clause. This clause must be included in all subcontracts/sub-awards issued under this contract.

**H.4 AIDAR 752.222-70 USAID DISABILITY POLICY (DEC 2004)**

(a) The objectives of the USAID Disability Policy are:

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

Website: [http://pdf.usaid.gov/pdf\\_docs/PDABQ631.pdf](http://pdf.usaid.gov/pdf_docs/PDABQ631.pdf).

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

**H.5 AIDAR 752.222-71 NONDISCRIMINATION (JUNE 2012)**

FAR part 22 and the clauses prescribed in that part prohibit contractors performing in or recruiting from the U.S. from engaging in certain discriminatory practices. USAID is committed to achieving and maintaining a diverse and representative workforce and a workplace free of discrimination. Based on law, Executive Order, and Agency policy, USAID prohibits discrimination in its own workplace on the basis of race, color, religion, sex (including pregnancy and gender identity), national origin, disability, age, veteran's status, sexual orientation, genetic information, marital status, parental status, political affiliation, and any other conduct that does not adversely affect the performance of the employee. USAID does not tolerate any type of discrimination (in any form, including harassment) of any employee or applicant for employment on any of the above-described bases. Contractors are required to comply with the nondiscrimination requirements of the FAR. In addition, the Agency strongly encourages all its contractors (at all tiers) to develop and enforce nondiscrimination policies consistent with USAID's approach to workplace nondiscrimination as described in this clause, subject to applicable law.

**H.6 CONFLICTS OF INTEREST**

(a) It is understood and agreed that some of the work required hereunder may place the contractor, or its personnel or its subcontractors or their personnel (hereinafter referred to collectively as "contractor"), in the position of having a potential personal or organizational conflict of interest (OCI), i.e., because of other activities or relationships with other persons,

- (1) the contractor is unable or potentially unable to render impartial assistance or advice; or
- (2) the contractor's objectivity in performing the contract is or might be impaired; or
- (3) the contractor may receive an unfair competitive advantage; or

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(4) the contractor may have a financial or other personal interest which would or potentially would impair his/her objectivity and/or from which he/she would improperly benefit. Further discussion of OCIs may be found in FAR 9.5, Organizational and Consultant Conflicts of Interest.

(b) The performance/actions of personnel under this contract will be imputed to the contractor (or subcontractor(s) by whom they are employed or retained, and the performance/actions of any subcontractor will be imputed to the contractor, unless the contractor, on a case-by-case basis, can demonstrate otherwise and satisfy the contracting Officer that such imputation is unreasonable.

(c) In accordance with the clause of this contract entitled "Organizational Conflicts of Interest Discovered After Award" (AIDAR 752.209-71), the Contractor agrees not to undertake any activity which may involve a personal conflict of interest or an OCI without first notifying the contracting officer of such potential conflict and receiving the contracting officer's authorization to undertake that activity.

(d) If the potential conflict relates to performance of the work hereunder (e.g., where the contractor is to evaluate an activity in which the contractor had some previous involvement, thereby rendering the contractor unable or potentially unable to provide impartial assistance or advice, or impairing or potentially impairing the contractor's objectivity), and the contracting officer cannot neutralize, mitigate, or avoid the conflict, the contracting officer may decline to authorize performance of that work by the contractor.

(e) If the potential conflict relates to future activities (e.g., where the contractor is to perform a needs assessment, feasibility study, or design/development of a project or activity to be procured under another contract for which the contractor will or might compete or which may be awarded noncompetitively to the contractor, thereby potentially providing an unfair competitive advantage to the contractor, and/or rendering the contractor unable or potentially unable to provide impartial assistance or advice, or impairing or potentially impairing the contractor's objectivity; or where the work under this contract might affect the personal or financial interests of the contractor), the contracting officer may decline to authorize performance of that work by the contractor or, if such work is authorized, the contracting officer may place restrictions on the contractor's future activities, as permitted by FAR 9.5, and as necessary to neutralize, mitigate, or avoid the potential conflict.

(f) The contracting officer's approval to undertake such activities, if given, may be based on the contracting officer's determination that a significant potential conflict does not exist or does not appear to exist, or may be conditioned on the acceptance by the contractor of restrictions on the contractor's future activities. If restrictions are to be placed on future activities, the contractor may decline to perform the work.

(g) If it is discovered that the contractor engaged in any activities which constitute a potential or actual conflict without having first obtained the contracting officer's approval to undertake such activities; or if it is subsequently discovered that, notwithstanding the contracting officer's authorization to undertake the activity based on his/her initial determination that no significant potential conflict existed or appeared to exist, a conflict did, in fact exist or arise, restrictions, as permitted by FAR 9.5, on the contractor's future activities may be placed unilaterally by the contracting officer for this contract or the contracting officer for such other contract as may be involved in the conflict, and other remedies (including termination of this contract for default, debarment or suspension, and those permitted by the clauses of this contract entitled "Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity" (FAR 52.203-8 JAN 1997) and "Price or Fee Adjustment for Illegal or Improper Activity" (FAR 52.203-10 JAN 1997), may be taken by USAID.

(h) If it is discovered that the contractor engaged in any activities in violation of the restrictions placed by a contracting Officer on the contractor's future activities, other remedies (including termination of this contract for default, debarment or suspension, and those permitted by the clauses of this contract entitled "Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity" (FAR 52.203-8) and "Price or Fee Adjustment for Illegal or Improper Activity" [FAR 52.203-10]), may be taken by USAID.

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(i) Nothing in this provision precludes the application of any other remedies available to USAID by law, regulation, or other provisions of this contract.

**H.8 AIDAR 752.7032 INTERNATIONAL TRAVEL APPROVAL AND NOTIFICATION REQUIREMENTS (APR 2014)**

Prior written approval by the Contracting Officer (CO), or the Contracting Officer's Representative (COR) if delegated in the Contracting Officer's Representative Designation Letter, is required for all international travel directly and identifiably funded by USAID under this contract. The Contractor shall therefore present to the CO or the COR, an itinerary for each planned international trip, showing the name of the traveler, purpose of the trip, origin/destination (and intervening stops), and dates of travel, as far in advance of the proposed travel as possible, but in no event less than three weeks before travel is planned to commence. The CO's or COR's (if delegated by the CO) prior written approval may be in the form of a letter or may be specifically incorporated into the schedule of the contract. At least one week prior to commencement of approved international travel, the Contractor shall notify the cognizant Mission, with a copy to the CO or COR, of planned travel, identifying the travelers and the dates and times of arrival.

**H. 11 LIMITATION ON ACQUISITION OF INFORMATION TECHNOLOGY (DEVIATION NOS. M/OAA-DEV-FAR-18-2c and M/OAA-DEV-AIDAR-18-2c) (APRIL 2018)**

(a) *Definitions.* As used in this contract --

"Information Technology" means

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

(b) The Federal Information Technology Acquisition Reform Act (FITARA) requires Agency Chief Information Officer (CIO) review and approval of contracts that include information technology or information technology services.

(c) The Contractor must not acquire information technology as defined in this clause without the prior written approval by the contracting officer as specified in this clause.

(d) Request for Approval Requirements:

- (1) If the Contractor determines that any information technology will be necessary to meet the Government's requirements or to facilitate activities in the Government's statement of work, the Contractor must request prior written approval from the Contracting Officer.

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- (2) As part of the request, the Contractor must provide the Contracting Officer a description and an estimate of the total cost of the information technology equipment, software, or services to be procured under this contract. The Contractor must simultaneously notify the Contracting Officer's Representative (COR) and the Office of the Chief Information Office at [ITAuthorization@usaid.gov](mailto:ITAuthorization@usaid.gov).
- (e) The Contracting Officer will provide written approval to the Contractor through modification to the contract expressly specifying the information technology equipment, software, or services approved for purchase by the COR and the Agency CIO. The Contracting Officer will include the applicable clauses and special contract requirements in the modification.
- (f) Except as specified in the contracting officer's written approval, the Government is not obligated to reimburse the Contractor for any costs incurred for information technology as defined in this clause.
- (g) The Contractor must insert the substance of this clause, including this paragraph (g), in all subcontracts.

**I.3 FAR 52.203-17 CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (APR 2014)**

- (a) This contract and employees working on this contract will be subject to the whistleblower rights and remedies in the pilot program on Contractor employee whistleblower protections established at [41 U.S.C. 4712](#) by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and FAR [3.908](#)
- (b) The Contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under [41 U.S.C. 4712](#), as described in section [3.908](#) of the Federal Acquisition Regulation.
- (c) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts over the simplified acquisition threshold.

**I.4 FAR 52.203-19 PROHIBITION ON REQUIRING CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS OR STATEMENTS (JAN 2017)**

- (a) Definitions. As used in this clause--

"Internal confidentiality agreement or statement" means a confidentiality agreement or any other written statement that the contractor requires any of its employees or subcontractors to sign regarding nondisclosure of contractor information, except that it does not include confidentiality agreements arising out of civil litigation or confidentiality agreements that contractor employees or subcontractors sign at the behest of a Federal agency.

"Subcontract" means any contract as defined in subpart 2.1 entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

"Subcontractor" means any supplier, distributor, vendor, or firm (including a consultant) that furnishes supplies or services to or for a prime contractor or another subcontractor.

- (b) The Contractor shall not require its employees or subcontractors to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or subcontractors from lawfully reporting waste, fraud, or abuse related to the performance of a Government

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contract to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information (e.g., agency Office of the Inspector General).

(c) The Contractor shall notify current employees and subcontractors that prohibitions and restrictions of any preexisting internal confidentiality agreements or statements covered by this clause, to the extent that such prohibitions and restrictions are inconsistent with the prohibitions of this clause, are no longer in effect.

(d) The prohibition in paragraph (b) of this clause does not contravene requirements applicable to Standard Form 312 (Classified Information Nondisclosure Agreement), Form 4414 (Sensitive Compartmented Information Nondisclosure Agreement), or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

(e) In accordance with 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) use of funds appropriated (or otherwise made available) is prohibited, if the Government determines that the Contractor is not in compliance with the provisions of this clause.

(f) The Contractor shall include the substance of this clause, including this paragraph (f), in subcontracts under such contracts.

**I.5 52.204-23 PROHIBITION ON CONTRACTING FOR HARDWARE, SOFTWARE, AND SERVICES DEVELOPED OR PROVIDED BY KASPERSKY LAB AND OTHER COVERED ENTITIES (JUL 2018)**

(a) Definitions. As used in this clause--

Covered article means any hardware, software, or service that

- (1) Is developed or provided by a covered entity;
- (2) Includes any hardware, software, or service developed or provided in whole or in part by a covered entity; or
- (3) Contains components using any hardware or software developed in whole or in part by a covered entity

Covered entity means—

- (1) Kaspersky Lab;
- (2) Any successor entity to Kaspersky Lab;
- (3) Any entity that controls, is controlled by, or is under common control with Kaspersky Lab; or
- (4) Any entity of which Kaspersky Lab has a majority ownership.

(b) Prohibition. Section 1634 of Division A of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115-91) prohibits Government use of any covered article. The Contractor is prohibited from--

- (1) Providing any covered article that the Government will use on or after October 1, 2018; and

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- (2) Using any covered article on or after October 1, 2018, in the development of data or deliverables first produced in the performance of the contract.
- (c) Reporting requirement.
- (1) In the event the Contractor identifies a covered article provided to the Government during contract performance, or the Contractor is notified of such by a subcontractor at any tier or any other source, the Contractor shall report, in writing, to the Contracting Officer or, in the case of the Department of Defense, to the website at <https://dibnet.dod.mil/>. For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at <https://dibnet.dod.mil/>.
  - (2) The Contractor shall report the following information pursuant to paragraph (c)(1) of this clause:
    - (i) Within 1 business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; brand; model number (Original Equipment Manufacturer (OEM) number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
    - (ii) Within 10 business days of submitting the report pursuant to paragraph (c)(1) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of a covered article, any reasons that led to the use or submission of the covered article, and any additional efforts that will be incorporated to prevent future use or submission of covered articles.
- (d) Subcontracts.
- The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts, including subcontracts for the acquisition of commercial items