

SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS <i>OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, & 30</i>				1. REQUISITION NUMBER RES-17-0236		PAGE OF 1 45	
2. CONTRACT NO.		3. AWARD/ EFFECTIVE DATE	4. ORDER NUMBER NRC-HQ-60-17-P-0003		5. SOLICITATION NUMBER		6. SOLICITATION ISSUE DATE
7. FOR SOLICITATION INFORMATION CALL:		a. NAME BANU GOLDFEIZ		b. TELEPHONE NUMBER <i>(No collect calls)</i>		8. OFFER DUE DATE/LOCAL TIME	
9. ISSUED BY US NRC - HQ ACQUISITION MANAGEMENT DIVISION MAIL STOP TWFN-5E03 WASHINGTON DC 20555-0001			CODE NRCHQ	10. THIS ACQUISITION IS <input checked="" type="checkbox"/> UNRESTRICTED OR <input type="checkbox"/> SET ASIDE: % FOR: <input type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> HUBZONE SMALL BUSINESS <input type="checkbox"/> SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS <input type="checkbox"/> WOMEN-OWNED SMALL BUSINESS (WOSB) ELIGIBLE UNDER THE WOMEN-OWNED SMALL BUSINESS PROGRAM <input type="checkbox"/> EDWOSB <input type="checkbox"/> 8(A) NAICS: 541512 SIZE STANDARD: \$27.5			
11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED <input type="checkbox"/> SEE SCHEDULE		12. DISCOUNT TERMS		<input type="checkbox"/> 13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)		13b. RATING	
15. DELIVER TO US NUCLEAR REGULATORY COMMISSION- MAIL PROCESSING CENTER 4930 BOILING BROOK PARKWAY ROCKVILLE MD 20852		CODE NRCHQ	16. ADMINISTERED BY US NRC - HQ ACQUISITION MANAGEMENT DIVISION MAIL STOP TWFN-5E03 WASHINGTON DC 20555-0001		CODE NRCHQ		14. METHOD OF SOLICITATION <input type="checkbox"/> RFQ <input type="checkbox"/> IFB <input type="checkbox"/> RFP
17a. CONTRACTOR/ OFFEROR SIEMENS PRODUCT LIFECYCLEMANAGEMENT SOFTWARE ATTN MICHAEL BALTES 5800 GRANITE PKWY STE 600 PLANO TX 750246612 TELEPHONE NO. 5135762817		CODE 010712847	FACILITY CODE	18a. PAYMENT WILL BE MADE BY US NUCLEAR REGULATORY COMMISSION TWO WHITE FLINT NORTH 11545 ROCKVILLE PIKE MAILSTOP T9-B07 ROCKVILLE MD 20852-2738		CODE NRCPAYMENTS	
<input type="checkbox"/> 17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER				<input type="checkbox"/> 18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED <input type="checkbox"/> SEE ADDENDUM			
19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES			21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
	This is a firm-fixed price purchase order with Siemens Product Lifecycle Management Software, Inc for the STAR CMM+ Software Licenses and Maintenance. Contractor Point of Contact is [REDACTED] Accounting Info: 2017-X0200-FEEBASED-60-60D099-60B991-6103-11-6-156-252A-11-6-156-6103 Continued ... <i>(Use Reverse and/or Attach Additional Sheets as Necessary)</i>						
25. ACCOUNTING AND APPROPRIATION DATA See schedule					26. TOTAL AWARD AMOUNT <i>(For Govt. Use Only)</i> \$49,900.00		
<input type="checkbox"/> 27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4. FAR 52.212-3 AND 52.212-5 ARE ATTACHED. ADDENDA				<input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED.			
<input checked="" type="checkbox"/> 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4. FAR 52.212-5 IS ATTACHED. ADDENDA				<input checked="" type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED.			
<input checked="" type="checkbox"/> 28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN 1 COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED.				<input type="checkbox"/> 29. AWARD OF CONTRACT: REF. _____ OFFER DATED _____. YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS:			
30a. SIGNATURE OF OFFEROR/CONTRACTOR Morgan Thomas <small>Digitally signed by Morgan Thomas DN: serialNumber=Z003NT6C, givenName=Thomas, sn=Morgan, o=Siemens, cn=Morgan Thomas Date: 2017.06.16 15:02:29 -0700</small>				Tritschler Michael <small>Digitally signed by Tritschler Michael DN: serialNumber=Z00176TL, givenName=Michael, sn=Tritschler, o=Siemens, cn=Tritschler Michael Date: 2017.06.16 21:43:39 -0400</small>		31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER) [REDACTED]	
30b. NAME AND TITLE OF SIGNER <i>(Type or print)</i> Thomas Morgan		30c. DATE SIGNED 16th June 2017		31b. NAME OF CONTRACTING OFFICER <i>(Type or print)</i> HERIBERTO COLON		31c. DATE SIGNED 06/16/2017	

19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
00001	Period of Performance: 06/18/2017 to 06/17/2018 STAR CCM+ Licenses The obligated amount of award: \$49,900.00. The total for this award is shown in box 26.				49,900.00

32a. QUANTITY IN COLUMN 21 HAS BEEN

RECEIVED INSPECTED ACCEPTED, AND CONFORMS TO THE CONTRACT, EXCEPT AS NOTED: _____

32b. SIGNATURE OF AUTHORIZED GOVERNMENT REPRESENTATIVE	32c. DATE	32d. PRINTED NAME AND TITLE OF AUTHORIZED GOVERNMENT REPRESENTATIVE
--	-----------	---

32e. MAILING ADDRESS OF AUTHORIZED GOVERNMENT REPRESENTATIVE	32f. TELEPHONE NUMBER OF AUTHORIZED GOVERNMENT REPRESENTATIVE
	32g. E-MAIL OF AUTHORIZED GOVERNMENT REPRESENTATIVE

33. SHIP NUMBER <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL	34. VOUCHER NUMBER	35. AMOUNT VERIFIED CORRECT FOR	36. PAYMENT <input type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL	37. CHECK NUMBER
--	--------------------	---------------------------------	--	------------------

38. S/R ACCOUNT NUMBER	39. S/R VOUCHER NUMBER	40. PAID BY
------------------------	------------------------	-------------

41a. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT	42a. RECEIVED BY (<i>Print</i>)	
41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER	41c. DATE	42b. RECEIVED AT (<i>Location</i>)
		42c. DATE REC'D (<i>YY/MM/DD</i>)

SECTION B – Supplies and Services/Prices	2
NRCB010A BRIEF DESCRIPTION OF WORK ALTERNATE I	2
NRCB080 CONSIDERATION AND OBLIGATION-FIRM-FIXED-PRICE	2
SECTION C - Description/Specifications	3
BRAND NAME only licenses	3
SECTION D - Packaging and Marking	4
This Section left blank as the licenses are delivered via electronic means.....	4
SECTION E - Inspection and Acceptance	5
Clauses	Error! Bookmark not defined.
SECTION F - Deliveries or Performance	6
52.247-34 F.O.B. DESTINATION. (NOV 1991)	6
SECTION G - Contract Administration Data	7
NRCG030 ELECTRONIC PAYMENT (SEP 2014)	7
Registration in FEDCONNECT® (JULY 2014)	7
SECTION H - Special Contract Requirements.....	8
2052.215-71 CONTRACTING OFFICER’S REPRESENTATIVE AUTHORITY. (OCT 1999)	8
NRCH480 USE OF AUTOMATED CLEARING HOUSE (ACH) ELECTRONIC PAYMENT/REMITTANCE ADDRESS	8
NRCH470 GREEN PURCHASING (SEP 2015)	8
NRCH440 CONTRACTOR RESPONSIBILITY FOR PROTECTING PERSONALLY IDENTIFIABLE INFORMATION (PII)	9
SECTION I - Contract Clauses.....	11
52.252-2 CLAUSES INCORPORATED BY REFERENCE. (FEB 1998).....	11
52.212-4 CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS. (JAN 2017)	11
SECTION J - List of Documents, Exhibits and Other Attachments	27
List of Documents, Exhibits, and Other Attachments	27
Clauses	Error! Bookmark not defined.

SECTION B – Supplies and Services/Prices

Server #	Product Description	Product Code	Agreement Type	LAN/WAN	Duration	Qty	List Price	Discount	Price
1	STAR-CCM+ (#1101.2)	STAR1000	LAN		1 year	3	██████████ ██████████	██████████ ██████████	██████████ ██████████
1	STAR-HPC (#1401.2)	STAR1017	Lease	LAN	1 year	200	██████████ ██████████	██████████ ██████████	██████████ ██████████
Total (ex TAX)									USD 49,900.00

Total Contract Value: \$49,900.00

NRCB010A BRIEF DESCRIPTION OF WORK ALTERNATE I

(a) The title of this project is: STAR CCM+ Software Licenses

(b) Summary work description: This acquisition purchases renewal of the STAR CCM+ Software Licenses

NRCB080 CONSIDERATION AND OBLIGATION-FIRM-FIXED-PRICE

The total amount of the Firm-Fixed-Price portion of this contract is \$49,900.00, and this amount is fully-funded.

SECTION C - Description/Specifications

BRAND NAME only licenses.

SECTION D - Packaging and Marking

This Section left blank as the licenses are delivered via electronic means.

SECTION E - Inspection and Acceptance

SECTION F - Deliveries or Performance

Licenses shall be delivered via electronic download to the NRC. Removal storage device shall only be provided if requested by NRC COR.

Authorized Site: US Nuclear Regulatory Commission, Rockville, MD 20852

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

SECTION G - Contract Administration Data

NRCG030 ELECTRONIC PAYMENT (SEP 2014)

The Debt Collection Improvement Act of 1996 requires that all payments except IRS tax refunds be made by Electronic Funds Transfer. Payment shall be made in accordance with FAR 52.232-33, entitled "Payment by Electronic Funds-Central Contractor Registration".

To receive payment, the contractor shall prepare invoices in accordance with NRC's Billing Instructions. Claims shall be submitted on the payee's letterhead, invoice, or on the Government's Standard Form 1034, "Public Voucher for Purchases and Services Other than Personal," and Standard Form 1035, "Public Voucher for Purchases Other than Personal – Continuation Sheet." The preferred method of submitting invoices is electronically to: NRCPayments@nrc.gov.

(End of Clause)

Registration in FEDCONNECT® (JULY 2014)

The Nuclear Regulatory Commission (NRC) uses Compusearch Software Systems' secure and auditable two-way web portal, *FedConnect*®, to communicate with vendors and contractors. *FedConnect*® provides bi-directional communication between the vendor/contractor and the NRC throughout pre-award, award, and post-award acquisition phases. Therefore, in order to do business with the NRC, vendors and contractors must register to use *FedConnect*® at <https://www.fedconnect.net/FedConnect>. The individual registering in *FedConnect*® must have authority to bind the vendor/contractor. There is no charge for using *FedC01111ect*®. Assistance with *FedConnect*® is provided by Compusearch Software Systems, not the NRC. *FedConnect*® contact and assistance information is provided on the *FedConnect*® web site at <https://www.fedconnect.net/FedConnect>.

SECTION H - Special Contract Requirements

2052.215-71 CONTRACTING OFFICER'S REPRESENTATIVE AUTHORITY. (OCT 1999)

(a) The contracting officer's authorized representative hereinafter referred to as the COR for this contract is:

Name: Nadja Isakovic

Address: Nadja.Isakovic@nrc.gov

Telephone Number: 301-415-1999

(b) The project officer shall:

- (1) Monitor contractor performance and recommend changes in requirements to the contracting officer.
- (2) Inspect and accept products/services provided under the contract.
- (3) Review all contractor invoices/vouchers requesting payment for products/services provided under the contract and make recommendations for approval, disapproval, or suspension.

(c) The COR may not make changes to the express terms and conditions of this contract.

*To be incorporated into any resultant contract

(End of Clause)

NRCH480 USE OF AUTOMATED CLEARING HOUSE (ACH) ELECTRONIC PAYMENT/REMITTANCE ADDRESS

The Debt Collection Improvement Act of 1996 requires that all Federal payments except IRS tax refunds be made by Electronic Funds Transfer. It is the policy of the Nuclear Regulatory Commission to pay government vendors by the Automated Clearing House (ACH) electronic funds transfer payment system. Item 15C of the Standard Form 33 may be disregarded.

(End of Clause)

NRCH470 GREEN PURCHASING (SEP 2015)

(a) In furtherance of the sustainable acquisition goals of Executive Order (EO) 13693, "Planning for Federal Sustainability in the Next Decade," products and services provided under this contract/order shall be energy efficient (EnergyStar® or Federal Energy Management Program - FEMP-designated products), water efficient, biobased, environmentally preferable (excluding EPEAT®-registered products), non-ozone

depleting, contain recycled content, or are non- or low toxic alternatives or hazardous constituents (e.g., non-VOC paint), where such products and services meet agency performance requirements. See: Executive Order (EO) 13693, "Planning for Federal Sustainability in the Next Decade."

(b) The NRC and contractor may negotiate during the contract term to permit the substitution or addition of designated recycled content products (i.e., Comprehensive Procurement Guidelines - CPG), EPEAT®-registered products, EnergyStar®- and FEMP designated energy efficient products and appliances, USDA designated biobased products (Biopreferred® program), environmentally preferable products, WaterSense and other water efficient products, products containing non- or lower-ozone depleting substances (i.e., SNAP), and products containing non- or low-toxic or hazardous constituents (e.g., non-VOC paint), when such products and services are readily available at a competitive cost and satisfy the NRC's performance needs.

(c) The contractor shall flow down this clause into all subcontracts and other agreements that relate to performance of this contract/order.

(End of Clause)

NRCH440 CONTRACTOR RESPONSIBILITY FOR PROTECTING PERSONALLY IDENTIFIABLE INFORMATION (PII)

In accordance with the Office of Management and Budget's guidance to Federal agencies and the Nuclear Regulatory Commission's (NRC) implementing policy and procedures, a contractor (including subcontractors and contractor employees), who performs work on behalf of the NRC, is responsible for protecting, from unauthorized access or disclosure, personally identifiable information (PII) that may be provided, developed, maintained, collected, used, or disseminated, whether in paper, electronic, or other format, during performance of this contract.

A contractor who has access to NRC owned or controlled PII, whether provided to the contractor by the NRC or developed, maintained, collected, used, or disseminated by the contractor during the course of contract performance, must comply with the following requirements:

(1) General. In addition to implementing the specific requirements set forth in this clause, the contractor must adhere to all other applicable NRC guidance, policy and requirements for the handling and protection of NRC owned or controlled PII. The contractor is responsible for making sure that it has an adequate understanding of such guidance, policy and requirements.

(2) Use, Ownership, and Nondisclosure. A contractor may use NRC owned or controlled PII solely for purposes of this contract, and may not collect or use such PII for any purpose outside the contract without the prior written approval of the NRC Contracting Officer. The contractor must restrict access to such information to only those contractor employees who need the information to perform work under this contract, and must ensure that each such contractor employee (including subcontractors' employees) signs a nondisclosure agreement, in a form suitable to the NRC Contracting Officer, prior to being granted access to the information. The NRC retains sole ownership and rights to its PII. Unless the contract states otherwise, upon completion of the contract, the contractor must turn over all PII in its possession to the NRC, and must certify in writing

that it has not retained any NRC owned or controlled PII except as otherwise authorized in writing by the NRC Contracting Officer.

(3) Security Plan. When applicable, and unless waived in writing by the NRC Contracting Officer, the contractor must work with the NRC to develop and implement a security plan setting forth adequate procedures for the protection of NRC owned or controlled PII as well as the procedures which the contractor must follow for notifying the NRC in the event of any security breach. The plan will be incorporated into the contract and must be implemented and followed by the contractor once it has been approved by the NRC Contracting Officer. If the contract does not include a security plan at the time of contract award, a plan must be submitted for the approval of the NRC Contracting Officer within 30 days after contract award.

(4) Breach Notification. The contractor must immediately notify the NRC Contracting Officer and the NRC Contracting Officer's Representative (COR) upon discovery of any suspected or confirmed breach in the security of NRC owned or controlled PII.

(5) Legal Demands for Information. If a legal demand is made for NRC owned or controlled PII (such as by subpoena), the contractor must immediately notify the NRC Contracting Officer and the NRC Contracting Officer's Representative (COR). After notification, the NRC will determine whether and to what extent to comply with the legal demand. The Contracting Officer will then notify the contractor in writing of the determination and such notice will indicate the extent of disclosure authorized, if any. The contractor may only release the information specifically demanded with the written permission of the NRC Contracting Officer.

(6) Audits. The NRC may audit the contractor's compliance with the requirements of this clause, including through the use of online compliance software.

(7) Flow-down. The prime contractor will flow this clause down to subcontractors that would be covered by any portion of this clause, as if they were the prime contractor.

(8) Remedies:

(a) The contractor is responsible for implementing and maintaining adequate security controls to prevent the loss of control or unauthorized disclosure of NRC owned or controlled PII in its possession. Furthermore, the contractor is responsible for reporting any known or suspected loss of control or unauthorized access to PII to the NRC in accordance with the provisions set forth in Article 4 above.

(b) Should the contractor fail to meet its responsibilities under this clause, the NRC reserves the right to take appropriate steps to mitigate the contractor's violation of this clause. This may include, at the sole discretion of the NRC, termination of the subject contract.

(9) Indemnification. Notwithstanding any other remedies available to the NRC, the contractor will indemnify the NRC against all liability (including costs and fees) for any damages arising out of violations of this clause.

(End of Clause)

SECTION I - Contract Clauses

52.202-1 DEFINITIONS. (NOV 2013)

52.203-5 COVENANT AGAINST CONTINGENT FEES. (MAY 2014)

52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT.
(SEP 2006)

52.203-7 ANTI-KICKBACK PROCEDURES. (MAY 2014)

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

52.204-13 SYSTEM FOR AWARD MANAGEMENT MAINTENANCE. (OCT 2016)

52.222-50 COMBATING TRAFFICKING IN PERSONS. (MAR 2015)

52.232-40 PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS
SUBCONTRACTORS. (DEC 2013)

52.252-2 CLAUSES INCORPORATED BY REFERENCE. (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es): [Insert one or more Internet addresses]

(End of clause)

52.212-4 CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS. (JAN 2017)

(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, 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 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:

- (i) 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.

(v) *Incorporation by reference.* The Contractor's representations and certifications, including those completed electronically via the System for Award Management (SAM), are incorporated by reference into the contract.

(End of clause)

52.212-5 CONTRACT TERMSS AND CONDITIONSS REQUIRED TO IMPLEMENT STATUES OR EXECUTIVE ORDERS —Commercial Items.

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (Jan 2017)

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

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

(2) [52.209-10](#), Prohibition on Contracting with Inverted Domestic Corporations (Nov 2015).

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

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

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

[Contracting Officer check as appropriate.]

___ (1) [52.203-6](#), Restrictions on Subcontractor Sales to the Government (Sept 2006), with Alternate I (Oct 1995) ([41 U.S.C. 4704](#) and [10 U.S.C. 2402](#)).

___ (2) [52.203-13](#), Contractor Code of Business Ethics and Conduct (Oct 2015) ([41 U.S.C. 3509](#))).

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

___ (4) [52.204-10](#), Reporting Executive Compensation and First-Tier Subcontract Awards (Oct 2016) (Pub. L. 109-282) ([31 U.S.C. 6101 note](#)).

___ (5) [Reserved].

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

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

x (8) [52.209-6](#), Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment. (Oct 2015) (31 U.S.C. 6101 note).

___ (9) [52.209-9](#), Updates of Publicly Available Information Regarding Responsibility Matters (Jul 2013) (41 U.S.C. 2313).

___ (10) [Reserved].

___ (11)(i) [52.219-3](#), Notice of HUBZone Set-Aside or Sole-Source Award (Nov 2011) ([15 U.S.C. 657a](#)).

___ (ii) Alternate I (Nov 2011) of [52.219-3](#).

___ (12)(i) [52.219-4](#), Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Oct 2014) (if the offeror elects to waive the preference, it shall so indicate in its offer) ([15 U.S.C. 657a](#)).

___ (ii) Alternate I (Jan 2011) of [52.219-4](#).

___ (13) [Reserved]

- ___ (14)(i) [52.219-6](#), Notice of Total Small Business Set-Aside (Nov 2011) ([15 U.S.C. 644](#)).
- ___ (ii) Alternate I (Nov 2011).
- ___ (iii) Alternate II (Nov 2011).
- ___ (15)(i) [52.219-7](#), Notice of Partial Small Business Set-Aside (June 2003) ([15 U.S.C. 644](#)).
- ___ (ii) Alternate I (Oct 1995) of [52.219-7](#).
- ___ (iii) Alternate II (Mar 2004) of [52.219-7](#).
- ___ (16) [52.219-8](#), Utilization of Small Business Concerns (Nov 2016) ([15 U.S.C. 637\(d\)\(2\)](#) and (3)).
- ___ (17)(i) [52.219-9](#), Small Business Subcontracting Plan (Jan 2017) ([15 U.S.C. 637\(d\)\(4\)](#)).
- ___ (ii) Alternate I (Nov 2016) of [52.219-9](#).
- ___ (iii) Alternate II (Nov 2016) of [52.219-9](#).
- ___ (iv) Alternate III (Nov 2016) of [52.219-9](#).
- ___ (v) Alternate IV (Nov 2016) of [52.219-9](#).
- ___ (18) [52.219-13](#), Notice of Set-Aside of Orders (Nov 2011) ([15 U.S.C. 644\(r\)](#)).
- ___ (19) [52.219-14](#), Limitations on Subcontracting (Jan 2017) ([15 U.S.C. 637\(a\)\(14\)](#)).
- ___ (20) [52.219-16](#), Liquidated Damages—Subcon-tracting Plan (Jan 1999) ([15 U.S.C. 637\(d\)\(4\)\(F\)\(i\)](#)).
- ___ (21) [52.219-27](#), Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (Nov 2011) ([15 U.S.C. 657 f](#)).
- ___ (22) [52.219-28](#), Post Award Small Business Program Rerepresentation (Jul 2013) ([15 U.S.C. 632\(a\)\(2\)](#)).
- ___ (23) [52.219-29](#), Notice of Set-Aside for, or Sole Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns (Dec 2015) ([15 U.S.C. 637\(m\)](#)).
- ___ (24) [52.219-30](#), Notice of Set-Aside for, or Sole Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program (Dec 2015) ([15 U.S.C. 637\(m\)](#)).
- ___ (25) [52.222-3](#), Convict Labor (June 2003) (E.O. 11755).
- ___ (26) [52.222-19](#), Child Labor—Cooperation with Authorities and Remedies (Oct 2016) (E.O. 13126).

- ___ (27) [52.222-21](#), Prohibition of Segregated Facilities (Apr 2015).
- ___ (28) [52.222-26](#), Equal Opportunity (Sept 2016) (E.O. 11246).
- ___ (29) [52.222-35](#), Equal Opportunity for Veterans (Oct 2015)([38 U.S.C. 4212](#)).
- ___ (30) [52.222-36](#), Equal Opportunity for Workers with Disabilities (Jul 2014) ([29 U.S.C. 793](#)).
- ___ (31) [52.222-37](#), Employment Reports on Veterans (Feb 2016) (38 U.S.C. 4212).
- ___ (32) [52.222-40](#), Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496).
- ___ (33)(i) [52.222-50](#), Combating Trafficking in Persons (Mar 2015) ([22 U.S.C. chapter 78](#) and E.O. 13627).
- ___ (ii) Alternate I (Mar 2015) of [52.222-50](#) ([22 U.S.C. chapter 78](#) and E.O. 13627).
- ___ (34) [52.222-54](#), Employment Eligibility Verification (Oct 2015). (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial items as prescribed in [22.1803](#).)
- ___ (35) [52.222-59](#), Compliance with Labor Laws (Executive Order 13673) (Oct 2016). (Applies at \$50 million for solicitations and resultant contracts issued from October 25, 2016 through April 24, 2017; applies at \$500,000 for solicitations and resultant contracts issued after April 24, 2017).
- Note to paragraph (b)(35):** By a court order issued on October 24, 2016, 52.222-59 is enjoined indefinitely as of the date of the order. The enjoined paragraph will become effective immediately if the court terminates the injunction. At that time, GSA, DoD and NASA will publish a document in the *Federal Register* advising the public of the termination of the injunction.
- ___ (36) [52.222-60](#), Paycheck Transparency (Executive Order 13673) (OCT 2016).
- ___ (37)(i) [52.223-9](#), Estimate of Percentage of Recovered Material Content for EPA–Designated Items (May 2008) ([42 U.S.C. 6962\(c\)\(3\)\(A\)\(ii\)](#)). (Not applicable to the acquisition of commercially available off-the-shelf items.)
- ___ (ii) Alternate I (May 2008) of [52.223-9](#) ([42 U.S.C. 6962\(i\)\(2\)\(C\)](#)). (Not applicable to the acquisition of commercially available off-the-shelf items.)
- ___ (38) [52.223-11](#), Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (Jun 2016) (E.O. 13693).
- ___ (39) [52.223-12](#), Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners (Jun 2016) (E.O. 13693).
- X (40)(i) [52.223-13](#), Acquisition of EPEAT®-Registered Imaging Equipment (Jun 2014) (E.O.s 13423 and 13514).
- ___ (ii) Alternate I (Oct 2015) of [52.223-13](#).

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

___ (ii) Alternate I (Jun 2014) of [52.223-14](#).

___ (42) [52.223-15](#), Energy Efficiency in Energy-Consuming Products (Dec 2007) ([42 U.S.C. 8259b](#)).

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

___ (ii) Alternate I (Jun 2014) of [52.223-16](#).

X (44) [52.223-18](#), Encouraging Contractor Policies to Ban Text Messaging While Driving (Aug 2011) (E.O. 13513).

___ (45) [52.223-20](#), Aerosols (Jun 2016) (E.O. 13693).

___ (46) [52.223-21](#), Foams (Jun 2016) (E.O. 13693).

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

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

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

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

___ (ii) Alternate I (May 2014) of [52.225-3](#).

___ (iii) Alternate II (May 2014) of [52.225-3](#).

___ (iv) Alternate III (May 2014) of [52.225-3](#).

___ (50) [52.225-5](#), Trade Agreements (Oct 2016) ([19 U.S.C. 2501](#), *et seq.*, [19 U.S.C. 3301](#) note).

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

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

___ (53) [52.226-4](#), Notice of Disaster or Emergency Area Set-Aside (Nov 2007) ([42 U.S.C. 5150](#)).

___ (54) [52.226-5](#), Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov 2007) ([42 U.S.C. 5150](#)).

___ (55) [52.232-29](#), Terms for Financing of Purchases of Commercial Items (Feb 2002) ([41 U.S.C. 4505](#), [10 U.S.C. 2307\(f\)](#)).

___ (56) [52.232-30](#), Installment Payments for Commercial Items (Jan 2017) ([41 U.S.C. 4505](#), [10 U.S.C. 2307\(f\)](#)).

___ (57) [52.232-33](#), Payment by Electronic Funds Transfer—System for Award Management (Jul 2013) ([31 U.S.C. 3332](#)).

___ (58) [52.232-34](#), Payment by Electronic Funds Transfer—Other than System for Award Management (Jul 2013) ([31 U.S.C. 3332](#)).

___ (59) [52.232-36](#), Payment by Third Party (May 2014) ([31 U.S.C. 3332](#)).

___ (60) [52.239-1](#), Privacy or Security Safeguards (Aug 1996) ([5 U.S.C. 552a](#)).

___ (61) [52.242-5](#), Payments to Small Business Subcontractors (Jan 2017)([15 U.S.C. 637\(d\)\(12\)](#)).

___ (62)(i) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) ([46 U.S.C. Appx. 1241\(b\)](#) and [10 U.S.C. 2631](#)).

___ (ii) Alternate I (Apr 2003) of [52.247-64](#).

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

[Contracting Officer check as appropriate.]

___ (1) [52.222-17](#), Nondisplacement of Qualified Workers (May 2014)(E.O. 13495).

___ (2) [52.222-41](#), Service Contract Labor Standards (May 2014) ([41 U.S.C. chapter 67](#)).

___ (3) [52.222-42](#), Statement of Equivalent Rates for Federal Hires (May 2014) ([29 U.S.C. 206](#) and [41 U.S.C. chapter 67](#)).

___ (4) [52.222-43](#), Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (Multiple Year and Option Contracts) (May 2014) ([29 U.S.C. 206](#) and [41 U.S.C. chapter 67](#)).

___ (5) [52.222-44](#), Fair Labor Standards Act and Service Contract Labor Standards—Price Adjustment (May 2014) ([29 U.S.C. 206](#) and [41 U.S.C. chapter 67](#)).

___ (6) [52.222-51](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements (May 2014) ([41 U.S.C. chapter 67](#)).

___ (7) [52.222-53](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services—Requirements (May 2014) ([41 U.S.C. chapter 67](#)).

___ (8) [52.222-55](#), Minimum Wages Under Executive Order 13658 (Dec 2015).

___ (9) [52.222-62](#), Paid Sick Leave Under Executive Order 13706 (JAN 2017) (E.O. 13706).

___ (10) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations (May 2014) ([42 U.S.C. 1792](#)).

___ (11) [52.237-11](#), Accepting and Dispensing of \$1 Coin (Sept 2008) ([31 U.S.C. 5112\(p\)\(1\)](#)).

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

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

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

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

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

(i) [52.203-13](#), Contractor Code of Business Ethics and Conduct (Oct 2015) ([41 U.S.C. 3509](#)).

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

(iii) [52.219-8](#), Utilization of Small Business Concerns (Nov 2016) ([15 U.S.C. 637\(d\)\(2\)](#) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$700,000 (\$1.5 million for construction of any public facility), the subcontractor must include [52.219-8](#) in lower tier subcontracts that offer subcontracting opportunities.

- (iv) [52.222-17](#), Nondisplacement of Qualified Workers (May 2014) (E.O. 13495). Flow down required in accordance with paragraph (l) of FAR clause [52.222-17](#).
- (v) [52.222-21](#), Prohibition of Segregated Facilities (Apr 2015)
- (vi) [52.222-26](#), Equal Opportunity (Sept 2016) (E.O. 11246).
- (vii) [52.222-35](#), Equal Opportunity for Veterans (Oct 2015) ([38 U.S.C. 4212](#)).
- (viii) [52.222-36](#), Equal Opportunity for Workers with Disabilities (Jul 2014) ([29 U.S.C. 793](#)).
- (ix) [52.222-37](#), Employment Reports on Veterans (Feb 2016) ([38 U.S.C. 4212](#))
- (x) [52.222-40](#), Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause [52.222-40](#).
- (xi) [52.222-41](#), Service Contract Labor Standards (May 2014) ([41 U.S.C. chapter 67](#)).
- (xii)
- [52.222-50](#), Combating Trafficking in Persons (Mar 2015) ([22 U.S.C. chapter 78](#) and E.O 13627). Alternate I (Mar 2015) of [52.222-50](#) ([22 U.S.C. chapter 78](#) and E.O 13627).
- (xiii) [52.222-51](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (May 2014) ([41 U.S.C. chapter 67](#)).
- (xiv) [52.222-53](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Requirements (May 2014) ([41 U.S.C. chapter 67](#)).
- (xv) [52.222-54](#), Employment Eligibility Verification (Oct 2015) (E.O. 12989).
- (xvi) [52.222-55](#), Minimum Wages Under Executive Order 13658 (Dec 2015).
- (xvii) [52.222-59](#), Compliance with Labor Laws (Executive Order 13673) (Oct 2016) (Applies at \$50 million for solicitations and resultant contracts issued from October 25, 2016 through April 24, 2017; applies at \$500,000 for solicitations and resultant contracts issued after April 24, 2017).
- Note to paragraph (e)(1)(xvii):** By a court order issued on October 24, 2016, 52.222-59 is enjoined indefinitely as of the date of the order. The enjoined paragraph will become effective immediately if the court terminates the injunction. At that time, GSA, DoD and NASA will publish a document in the *Federal Register* advising the public of the termination of the injunction.
- (xviii) [52.222-60](#), Paycheck Transparency (Executive Order 13673) (Oct 2016)).
- (xix) [52.222-62](#), Paid Sick Leave Under Executive Order 13706 (Jan 2017) (E.O. 13706).
- (xx)(A) [52.224-3](#), Privacy Training (Jan 2017) (5 U.S.C. 552a).

(B) Alternate I (Jan 2017) of 52.224-3.

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

(xxii) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations (May 2014) ([42 U.S.C. 1792](#)). Flow down required in accordance with paragraph (e) of FAR clause [52.226-6](#).

(xxiii) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) ([46 U.S.C. Appx. 1241\(b\)](#) and [10 U.S.C. 2631](#)). Flow down required in accordance with paragraph (d) of FAR clause [52.247-64](#).

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

(End of clause)

SECTION J - List of Documents, Exhibits and Other Attachments

List of Documents, Exhibits, and Other Attachments

Attachment Number	Title
1	BILLING INSTRUCTIONS FOR FIXED-PRICE TYPE CONTRACTS (JAN 2015)
2	SIEMENS LICENCE AGREEMENT
3	SIGNED PLA QUOTE



INVOICE FORMAT FOR FIXED-

PRICE

Version Control Date: January 26, 2015

ATTACHMENT 1

BILLING INSTRUCTIONS FOR FIXED-PRICE TYPE CONTRACTS (JAN 2015)

General: During performance and through final payment of this contract, the contractor is responsible for the accuracy and completeness of data within the System for Award Management (SAM) database and for any liability resulting from the Government's reliance on inaccurate or incomplete SAM data.

The contractor shall prepare invoices/vouchers for payment of deliverables identified in the contract, in the manner described herein. FAILURE TO SUBMIT INVOICES/VOUCHERS IN ACCORDANCE WITH THESE INSTRUCTIONS MAY RESULT IN REJECTION OF THE INVOICE/VOUCHER AS IMPROPER.

Standard Forms: Payment requests for completed work, in accordance with the contract, shall be submitted on the payee's letterhead, invoice/voucher, or on the Government's Standard Form 1034, "Public Voucher for Purchases and Services Other than Personal," and Standard Form 1035, "Public Voucher for Purchases Other than Personal--Continuation Sheet."

Electronic Invoice/Voucher Submissions: The preferred method of submitting invoices/vouchers is electronically to the U.S. Nuclear Regulatory Commission, via email to: NRCPayments@nrc.gov.

Hard-Copy Invoice/Voucher Submissions: If you submit a hard-copy of the invoice/voucher, a signed original and supporting documentation shall be submitted to the following address:

NRC Payments
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Mailstop O3-E17A
Rockville, MD 20852-2738

Purchase of Capital Property: (*\$50,000 or more with life of one year or longer*)

Contractors must report to the Contracting Officer, electronically, any capital property acquired with contract funds having an initial cost of \$50,000 or more, in accordance with procedures set forth in NRC Management Directive (MD).

Agency Payment Office: Payment will continue to be made by the office designated in the contract in Block 12 of Standard Form 26, Block 25 of Standard Form 33, or Block 18a of Standard Form 1449, whichever is applicable.

Frequency: The contractor shall submit invoices/vouchers for payment once each month, unless otherwise authorized by the Contracting Officer.

Format: Invoices/Vouchers shall be submitted in the format depicted on the attached sample form entitled "Invoice/Voucher for Purchases and Services Other Than Personal". Alternate formats are permissible only if they address all requirements of the Billing Instructions. The instructions for preparation and itemization of the invoice/voucher are included with the sample form.

Task Order Contracts: The contractor must submit a separate invoice/voucher for each individual task order with pricing information. This includes items discussed in paragraphs (a) through (p) of the attached instructions. In addition, the invoice/voucher must specify the contract number, and the NRC-assigned task/delivery order number.

Final vouchers/invoices shall be marked "FINAL INVOICE" or "FINAL VOUCHER".

Currency: Invoices/Vouchers must be expressed in U.S. Dollars.

Supersession: These instructions supersede previous Billing Instructions for Fixed-Price Type Contracts (MAY 2013).

**INVOICE/VOUCHER FOR PURCHASES AND SERVICES OTHER THAN PERSONAL
(SAMPLE FORMAT - COVER SHEET)**

1. Official Agency Billing Office

NRC Payments
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Mailstop O3-E17A
Rockville, MD 20852-2738

2. Invoice/Voucher Information

a. Payee's DUNS Number or DUNS+4. The Payee shall include the Payee's Data Universal Number (DUNS) or DUNS+4 number that identifies the Payee's name and address. The DUNS+4 number is the DUNS number plus a 4-character suffix that may be assigned at the discretion of the Payee to identify alternative Electronic Funds Transfer (EFT) accounts for the same parent concern.

b. Taxpayer Identification Number. The Payee shall include the Payee's taxpayer identification number (TIN) used by the Internal Revenue Service (IRS) in the administration of tax laws. (See IRS Web site: [http://www.irs.gov/Individuals/International-Taxpayers/Taxpayer-Identification-Numbers-\(TIN\)](http://www.irs.gov/Individuals/International-Taxpayers/Taxpayer-Identification-Numbers-(TIN))).

c. Payee's Name and Address. Show the name of the Payee as it appears in the contract and its correct address. Where the Payee is authorized to assign the proceeds of this contract in accordance with the clause at Federal Acquisition Regulation (FAR) [52.232-23 Assignment of Claims](#), the Payee shall require as a condition of any such assignment, that the assignee shall register separately in the System for Award Management (SAM) database at <http://sam.gov> and shall be paid by EFT in accordance with the terms of this contract. See FAR [52.232-33 Payment by Electronic Funds Transfer-System for Award Management](#).

d. Contract Number. Insert the NRC contract number (including Enterprise-wide Contract (EWC)), GSA Federal Supply Schedule (FSS), Governmentwide Agency Contract (GWAC) number, or Multiple Agency Contract (MAC) number, as applicable.

e. Task Order Number. Insert the task/delivery order number (If Applicable). **Do not include more than one task order per invoice or the invoice may be rejected as improper.**

f. Invoice/Voucher. The appropriate sequential number of the invoice/voucher, beginning with 001 should be designated. Contractors may also include an individual internal accounting number, if desired, in addition to the 3-digit sequential number.

g. Date of Invoice/Voucher. Insert the date the invoice/voucher is prepared.

h. Billing Period. Insert the beginning and ending dates (day, month, year) of the period during which deliverables were completed and for which payment is requested.

i. Description of Deliverables. Provide a brief description of supplies or services, quantity, unit price, and total price.

j. Work Completed. Provide a general summary description of the services performed or products submitted for the invoice period and specify the section or Contract Line Item Number (CLIN) or SubCLIN, in the contract pertaining to the specified contract deliverable(s).

k. Shipping. Insert weight and zone of shipment, if shipped by parcel post.

l. Charges for freight or express shipments. Attach prepaid bill if shipped by freight or express.

m. Instructions. Include instructions to consignee to notify the Contracting Officer of receipt of shipment.

n. For Indefinite Delivery contracts, the final invoice/voucher shall be marked "FINAL INVOICE" or "FINAL VOUCHER".

o. Total Amount Billed. Insert columns for total amounts for the current and cumulative periods.

p. Adjustments. Insert columns for any adjustments, including outstanding suspensions for deficient or defective products or nonconforming services, for the current and cumulative periods.

q. Grand Totals.

ALTERATIONS Ver 5_16_17

1. These Alterations and the General Terms and Conditions of Software License and/or Technical Enhancements & Customer Support (TECS) (Version Date: January 1, 2017) (the “GT&Cs” and together with the Alterations the “Siemens Terms”) shall be identified as addenda and must be attached in full text to an amendment or modification to Contract No. NRC-HQ-60-15-C-0006 issued by US NRC – HQ ACQUISITION MANAGEMENT DIVISION (the “Contract”) in connection with one of the following two PLA Quote number that the Government orders, either number 346631.1 or 346632.1 (hereinafter referred to as the “PLA Quote”).

2. By incorporating the Siemens Terms as addenda the parties agree that the terms, conditions and provisions of Siemens Terms will form a part of the Contract and **will be** applicable with respect to the software and services provided in connection with the Contract. Any specific term, condition or provision under the Siemens Terms that is not enforceable under federal law will have no force or effect.

3. These Alterations alter and clarify FAR 52.212-4, Contract Terms and Conditions--Commercial Items, referenced under the Contract as follows:

(i) In re 52.212-4(a) Inspection/Acceptance: The clause is deleted in its entirety and is replaced with the following:

(a) 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 services that have been tendered for acceptance, as agreed to in a statement of work ("SOW"). The Government may require repair or replacement of nonconforming services at no increase in contract price as agreed to in a SOW. Supplies are nonconforming when the media is defective in material or workmanship.

(ii) In re 52.212-4(h) Patent Indemnity: The clause is deleted in its entirety and is replaced with the following:

(h) Indemnity.

(1) Infringement Claim. Contractor will indemnify and defend, at its expense, any action brought against the Government to the extent that it is based upon a claim that any supplies (i.e. commercial software) furnished under this Contract infringes a patent, copyright, trade secret or other intellectual property right by paying all costs and damages finally awarded against the Government by a court of competent jurisdiction, provided that Contractor is given prompt and adequate written notice of such claim; Contractor has the right to intervene in the proceedings at its own expense through legal counsel of its own choice; and Contractor is given information and reasonable assistance by the Government in Contractor’s own defense and settlement efforts. Notwithstanding the foregoing, the Government shall not enter into any settlement admitting liability or incurring obligations on behalf of the Contractor, or affecting the Contractor’s supplies and related intellectual property which are at issue under the infringement claim, without the Contractor’s prior written consent.

(2) Injunction. If a permanent injunction is obtained against the Government’s use of the supplies, then Contractor will obtain for the Government the right to continue using the supplies, or will replace or modify the supplies involved so it becomes non-infringing; or, if such remedies are not reasonably available, Contractor will grant the Government a refund of the amount received by Contractor for the supplies involved, and accept the return of the supplies. Contractor, in its sole discretion, may provide the remedies specified in this section prior to the issuance of a permanent injunction.

(3) Exclusions. Contractor shall not have any liability or indemnification obligations to the Government under this clause to the extent that any infringement claim is based in whole or in part, or arises out of: (i) the Government's use of any non-current version of the supplies, to the extent that the Government's liability for the infringement would have been avoided by the use of a more recent version of the supplies, (ii) the combination, operation or use of the supplies with any third party software, equipment, materials or products to the extent that the Government's liability for such infringement would have been avoided in the absence of such combination, use or operation, (iii) a modification, adjustment or repair of the supplies not made by Contractor, (iv) the Government's failure to use a defect correction or patch supplied by Contractor to the Government, (v) compliance with designs, plans or specifications provided by the Government to Contractor, or (vi) any refusal by the Government to install and use a non-infringing version of the supplies offered by Contractor to the Government at no cost to the Government as long as such non-infringing version performs substantially the same functions.

(4) Sole and Exclusive Remedy. This clause represents the sole and exclusive liability of Contractor to the Government for infringement of the intellectual property rights of a third party in connection with the supplies furnished under the Contract.

(iii) In re 52-212-4(k) Taxes: The clause is deleted in its entirety and is replaced with the following:
(k) Taxes, if applicable, will be shown on the applicable invoice.

(iv) In re 52.212-4(m) Termination for Cause: The clause is deleted in its entirety and is replaced with the following:

(m) Except for those commercial off the shelf software items delivered by the Contractor, the Government may terminate this Contract, or any part of it, 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.

(v) In re 52.212-4(n) Title: The clause is deleted in its entirety and is replaced with the following:

(n) The supplies (i.e. commercial software) are commercial products that have been developed exclusively at private expense. If the supplies are acquired directly or indirectly on behalf of a unit or agency of the United States Government under the terms of (i) a United States Department of Defense ("DOD") contract, then the supplies and the related documentation are considered "Commercial Items", as that term is defined in 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation", as such terms are defined in 48 C.F.R. §252.227-7014(a)(5) and 48 C.F.R. §252.227-7014(a)(1), and used in 48 C.F.R. §12.212 and 48 C.F.R. 227.7202, as applicable, consistent with 48 C.F.R. §12.212, 48 C.F.R. §252.227-7015, 48 C.F.R. §227.7202 through 227.7202-4, 48 C.F.R. §52.227-14, and other relevant sections of the Code of Federal Regulations ("C.F.R."); or (ii) a Civilian agency contract, then use, reproduction, or disclosure is subject to the restrictions set forth in clause 27.405-3 of the Federal Acquisition Regulation ("FAR"), entitled Acquisition of Existing Commercial Computer Software, and any restrictions in the agency's FAR supplement and any successor regulations thereto, and the restrictions set forth in the Contract. The United States Government will only have the rights set forth in the Contract. Contractor supplies and related documentation are licensed to United States Government end users with only those rights as granted to all other end users, according to the terms and conditions contained in the Contract. Contractor shall not be required to obtain a security clearance or otherwise be involved in accessing classified information as described in FAR 52.204-2 and the National Industrial Security Program Operating Manual (DoD 5220.22-M).

- (vi) In re 52.212-4(o) Warranty: The clause is deleted in its entirety as warranty is subject to the terms and conditions under the above referenced GT&Cs.
- 4. In the event of any inconsistencies under the documents and the contract provisions and other terms referenced and incorporated under the Contract, the following order of precedence shall apply:
 - (i) FAR 52.212-4(s)
 - (ii) Alternations, Ver 5_16_17
 - (iii) the PLA Quote
 - (iv) the GT&Cs
- 5. The following General Terms and Conditions Software License and/or Technical Enhancements & Customer Support (Version Date: January 1, 2017) shall replace the General Terms and Conditions Software License and/or Technical Enhancements & Customer Support (TECS) (Version Date: July 1, 2012) that was incorporated into the Contract.

5/

General Terms and Conditions

Software License and/or Technical Enhancements & Customer Support (Version Date: January 1, 2017)

These terms and conditions apply to the license and support of Software products by “**Licensor**”. The “**Licensee**” customer, by signing a Purchase/License Agreement (“**PLA**”) for the supply of Software products and customer support, or by using the Software, agrees to these terms and conditions and any special terms and conditions contained in the applicable PLA.

If Licensee does not agree to these terms and conditions, then Licensee may not install, copy, download or otherwise use the Software.

Any modification requests to these terms and conditions may be given to: contracts@cd-adapco.com, Contracts Department, New York Office, 60 Broadhollow Road, Melville, NY USA 11747. Modifications will only be binding if agreed to in writing signed by authorized representatives of Licensor and Licensee.

1. Definitions.

“Affiliates” means companies that control, are controlled by, or are under common control with, the Licensor. For purposes of this definition “control” is defined as the direct or indirect ownership of 50% or more of the voting securities of an affiliate.

“Authorized Site(s)” means the physical location(s) of the Licensee where the Software is licensed and permitted by Licensor to be used by Licensee, as identified in the PLA.

“Authorized Users” means Licensee’s employees, and third party consultants, subcontractors, IT or similar service providers engaged to perform work for Licensee at Licensee’s Authorized Site(s) from the Licensed Server. For purposes of Academic licenses, “Authorized Users” will mean Licensee faculty, staff members, students, graduate assistants.

“Customer Support” means technical assistance and guidance in the installation and operation of the Software by way of e-mail, telephone or other method made available and offered for the customer support.

“Channel Sales Representative” means a third party representative who under agreement with Licensor or its Affiliate may supply Software products and/or provide support services.

“Documentation” means the user manual published for the Software that describes the Software functionalities and use instructions.

“LAN” or “Site License” means local use of the Software at a single Authorized Site identified in the PLA.

“Lease License” means Software that is licensed for use for a specified License Term limited in duration; the standard Lease License is for an annual period.

“Licensee” means the customer identified in the PLA.

“Licensed Server” means the machine location identified in the PLA where the License Key is installed.

“Licensor” means the “Licensor” identified in the PLA.

“License Key” means a software license management tool or other device used to activate use of the Software for a specified time in accordance with the License Term.

“License Term” means the period of time identified in the PLA that the Software is licensed to be used, which starts and ends on the dates specified in the License Key.

“Paid-up License” means Software that is licensed for use for a perpetual duration.

“Purchase/License Agreement” or “PLA” means the form of agreement signed by Licensee and Licensor that incorporates these General Terms and Conditions of Software License and TECS, and identifies the Licensee, Software license configuration, TECS if applicable, Authorized Site or authorized countries, fees, and any special terms and conditions that are specific to the order transaction.

“Software” means the object code version of computer programs, identified in a PLA, licensed by Licensor under the following generic names, or any successor name designated by Licensor: STAR-CCM+, STAR-HPC, STAR-CD, es-ice, DARS, HEEDS, SPEED, Battery Design Studio (BDS), including add-on software, application productivity tools, and Technical Enhancements thereto provided by Licensor.

“WAN” refers to multi-site usage of the Software, where “WAN1” or “Multi-Site License” means use of the Software at more than one Authorized Site within the same country, and where “WAN2”, “WAN3” or “Global Multi-Site License” means multi-site usage of the Software in multiple countries, as identified in a PLA.

“Technical Enhancements” means corrections, improvements, or new features to the Software as they become available by Licensor and are not separately priced or marketed.

“TECS” means maintenance of the Software by way of Technical Enhancements and Customer Support.

2. **License Grant.** Subject to these terms and conditions and payment of applicable fees, Licensor grants Licensee a non-exclusive, non-transferable license during the License Term to use the Software configuration from the Licensed Server at the Authorized Site(s) by Authorized Users. This license grant is limited to LAN use of the Software only at the Authorized Site unless WAN usage is identified in the PLA. Upon request, Licensee agrees to provide records identifying location usage of the Software. If records show that Licensee is using the Software in any way not permitted under this license, in addition to any other rights Licensor may have, applicable license or WAN fees may be charged.
3. **License to Government / Quasi-Governmental Entities.** The Software and Documentation is developed at private expense and is commercial computer software of the type defined under U.S. Federal Acquisition Regulations FAR 2.101. These terms and conditions will govern to the maximum extent not inconsistent with applicable government procurement laws.
4. **Changes in Licensed Server or Authorized Site(s).** Changes in the Licensed Server or Authorized Site(s) require Licensor’s prior consent, and if applicable, delivery of new License Keys and payment of fees attributable to these changes.
5. **License Restrictions.** Except as otherwise permitted under this Agreement, Licensee may not do any of the following without the prior written consent of Licensor:
 - a) Copy the Software or Documentation, except one copy as necessary for Licensee’s back up, disaster recovery;
 - b) Remove any copyright or other proprietary rights notices contained in the Software and Documentation;
 - c) Use the Software other than on the Licensed Server and Authorized Site(s);
 - d) Transfer or sublicense the Software to third parties;
 - e) Alter, reverse-engineer, reverse-assemble, decompile, modify, adapt or translate the Software. If to the extent these activities are expressly permitted by applicable law necessary to achieve Software interoperability with other computer programs used by Licensee, Licensee will not perform these activities without first notifying and requesting the necessary information from Licensor.

6. Conditions on License Types. These conditions apply to license types as identified in the PLA:

- a) **Lease License.** Lease Licenses do not renew automatically. If Licensee is granted an extension of its Lease License until Licensee secures an order for a Lease License renewal, these terms and conditions continue to apply for the extended period. Any such extensions are at Licensor's sole discretion.
- b) **Paid-up License.** Paid-up Licenses that are covered by annual TECS contracts are delivered under annual License Keys to allow availability to the most current Software Technical Enhancements.
- c) **Power on Demand (Real Time Credit) License.** Power on Demand licenses are licensed in hourly blocks of time credit for real time use during a License Term. Any unused license time credit is forfeit at the expiration of the License Term.
- d) **Academic License.** If a Software license is identified as an academic license, the Licensee represents it is an academic institution or other non-profit organization. Licensee's permitted use of the academic Software license is for purposes of teaching, degree-granting programs and/or research that are part of the instructional processes performed by Licensee. Academic licenses are not intended for use in commercial processing or for-profit purposes. For that reason, Licensee agrees that results obtained from using the Software may be publicly shared or published. Licensee agrees to cite the use of the Software in all related scientific academic publications and provide Licensor with copies of such published materials. Materials referencing Licensor's or its Affiliates' trade name, trademarks or logos will be subject to Licensor's policies governing such use.
- e) **Trial Evaluation License.** Trial Evaluation licenses are granted for trial or evaluation purposes and the permitted use of the Software is for the purpose of evaluating the Software in a test environment and not intended for use in production purposes. The Software under Trial Evaluation licenses is provided "AS IS" without warranty of any kind, including any implied warranties of merchantability or fitness for a particular purpose.

7. Delivery and Installation. License Keys will be delivered upon Licensor's acceptance of Licensee's signed PLA and a corresponding order. Licensee is responsible for download and installation of the Software. Temporary License Keys may be issued until fees due are paid in full at which time a full License Key for the remainder of the License Term will be delivered.

8. Technical Enhancements and Customer Support (TECS).

- a) Customer Support within reasonable levels will be provided by Licensor or its designee to Licensee's Authorized Users during regular business hours of Licensor's regional support locations applicable to the Authorized Site(s). Licensor may designate Customer Support to be provided by an Affiliate or Channel Sales Representative. Customer Support does not include training in the use of the Software, which is subject to separate training terms and conditions.
- b) Technical Enhancements are provided as they become commercially available by Licensor.
- c) Lease Licenses include TECS.
- d) Paid-up Licenses must be purchased with TECS for the first twelve (12) months of its perpetual license term. After the first twelve (12) months, annual TECS may be purchased in annual consecutive periods. Licensee is encouraged to purchase TECS annually with no lapse and Licensor will be under no obligation to re-instate lapsed TECS contracts. Re-instatement of lapsed TECS contracts is at the sole discretion of Licensor and will be subject to payment of current and lapsed TECS fees and re-instatement fees to bring the Paid-up License configuration current. There is no guarantee, nor any obligation, to provide TECS contracts for a Paid-up License if the Software is discontinued or no longer supported by Licensor.

If Licensee has purchased TECS contracts for Paid-up Licenses, Licensor's or its designee's responsibility under TECS will be to use commercially reasonable efforts to provide corrections to Software that does not perform substantially to its most current Documentation. Licensee's sole remedy will be for Licensor or its designee, at their option, to: 1) provide corrections to the Software within a reasonable time which may include a separate fix or a workaround solution, or a correction included in the next available Technical Enhancement of the Software, or 2) permit Licensee to terminate the TECS contract and refund Licensee for the unused portion of the TECS fee paid calculated from the date of termination. THE REMEDY UNDER THIS SECTION IS LICENSEE'S SOLE AND EXCLUSIVE REMEDY FOR LICENSOR'S, ITS AFFILIATES AND THEIR CHANNEL SALES REPRESENTATIVE'S BREACH OF TECS OBLIGATIONS.

- e) Power on Demand licenses include Technical Enhancements. Customer Support is subject to separate support fees.
- f) Academic licenses include Technical Enhancements. Customer Support is at the sole discretion of Licensor or its designee.
- g) Trial Evaluation licenses include Technical Enhancements. Customer Support is at the sole discretion of Licensor or its designee.
- h) There will be no obligation to extend TECS to Software: 1) altered or modified by or on behalf of Licensee, 2) if Licensee fails to implement other than the two most recent commercially available releases of the Software provided that a current release is not required to correct the Software problem, 3) problems due to a failure or error of the Licensed Server or operating systems, 4) problems or errors caused by use in combination with hardware not supported by the Software, 5) problems or errors caused by use in combination with other software, including, but not limited to, user subroutines, applications, models or other customizations, 6) used other than in accordance with this Agreement or applicable Software Documentation, or 7) problems caused by Licensee's negligent acts or omissions.
- i) The provision of TECS does not include training in the use of the Software, software customization, engineering analysis, or consulting services. Such additional services are subject to separate fees and are provided pursuant to the terms and conditions found in Licensor's Professional Services Agreement found at <http://mdx2.plm.automation.siemens.com/terms-conditions>, or a separately negotiated agreement signed between the parties.
- j) If training is included in the PLA, training will be subject to and provided in accordance with Licensor's on-line training terms and conditions found at <http://www.cd-adapco.com/training/terms.html>.

9. Software Warranty.

- a) Licensor warrants that the Software under normal use will conform substantially to its most current Documentation for ninety (90) days from the effective date of the License Term, and during the period of TECS coverage. This warranty does not apply to Trial Evaluation Software licenses which are provided without warranty.
- b) In the event the Software fails to perform as warranted in Section a) above, Licensor's sole obligation, at Licensor's option, will be to: 1) correct the non-conforming Software within a reasonable time so that it conforms to the warranty, or 2) if the Documentation is in error, modify the Documentation to accurately reflect the Software's intended functionality without substantially compromising its principal function, or 3) permit Licensee to terminate the non-conforming Software license and refund to Licensee a pro-rata amount of the license fee paid for the Software. For a Paid-up License, the pro-rata license fee refund will be calculated on a straight-line depreciation over a 30-month period from the effective date of its perpetual license term.
- c) This warranty does not apply to Software: 1) altered or modified by or on behalf of Licensee, 2) if Licensee fails to implement other than the two most recent commercially available releases of the Software provided that a current release is not required to correct the Software problem, 3) problems due to a failure or error of the Licensed Server or operating systems, 4) problems or errors caused by use in combination with hardware not supported by the Software, 5) problems or errors caused by use in combination with other software, including, but not limited to, user subroutines, applications, models or other customizations, 6) used other than in accordance with this Agreement or applicable Software Documentation, or 7) problems caused by Licensee's negligent acts or omissions.
- d) EXCEPT FOR THIS EXPRESS WARRANTY, THE SOFTWARE IS PROVIDED "AS IS", INCLUDING WITHOUT WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. LICENSOR, ITS AFFILIATES AND THEIR CHANNEL SALES REPRESENTATIVES AND THIRD PARTY SOFTWARE SUPPLIERS DO NOT WARRANT THAT THE SOFTWARE WILL MEET LICENSEE'S REQUIREMENTS (WHETHER OR NOT THEY KNOW, SHOULD HAVE KNOWN OR BECOME AWARE), OR THAT THE SOFTWARE OPERATION WILL BE UNINTERRUPTED OR ERROR-FREE. LICENSOR, ITS AFFILIATES AND THEIR CHANNEL SALES REPRESENTATIVES AND THIRD PARTY SOFTWARE SUPPLIERS DISCLAIM ANY AND ALL OTHER WARRANTIES, CONDITIONS OR REPRESENTATIONS, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING THAT THE SOFTWARE IS NON-INFRINGEMENT. REMEDY FOR INFRINGEMENT IS PROVIDED FOR UNDER THE INFRINGEMENT SECTION. Some states and jurisdictions do not allow limitations on implied warranties and in such case the preceding limitation may

not apply to Licensee. In that event, such warranties are limited to the minimum warranty scope and period allowed by applicable law.

- e) THE REMEDIES UNDER THIS SECTION ARE LICENSEE'S SOLE AND EXCLUSIVE REMEDY FOR BREACH OF SOFTWARE WARRANTY.

10. Limit of Liability.

- a) THE SOFTWARE IS INTENDED TO ASSIST IN COMPUTER-AIDED DESIGN SIMULATIONS AND THE SOFTWARE IS NOT INTENDED TO BE A SUBSTITUTE FOR SOUND PROFESSIONAL ENGINEERING JUDGMENT, INDEPENDENT DESIGN ANALYSIS, OR INDEPENDENT TESTING OF PHYSICAL PROTOTYPES FOR PRODUCT SAFETY AND USE. SUBJECT TO THE MAXIMUM EXTENT PERMITTED BY LAW, LICENSOR, ITS AFFILIATES AND THEIR CHANNEL SALES REPRESENTATIVES AND THIRD PARTY SOFTWARE SUPPLIERS WILL NOT BE LIABLE IN ANY MANNER FOR THE RESULTS OBTAINED THROUGH THE USE OF THE SOFTWARE, OR THE APPLICATION OR USE OF SUCH RESULTS. IN NO EVENT WILL LICENSOR, ITS AFFILIATES OR THEIR CHANNEL SALES REPRESENTATIVES AND THIRD PARTY SOFTWARE SUPPLIERS BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, OR INCIDENTAL DAMAGES, OR ANY LOST PROFITS, LOST SAVINGS, LOST PRODUCTION, LOST DATA, BUSINESS INTERRUPTION OR COST OF PROCURING SUBSTITUTE SOFTWARE OR SERVICES. Some states and jurisdictions do not allow limitation of liability in certain instances. In that event, portions of the preceding limitations may not apply to Licensee.
- b) THE AGGREGATE LIABILITY UNDER OR IN CONNECTION WITH THIS AGREEMENT WILL BE LIMITED TO, IN THE CASE OF A PAID-UP LICENSE, THE LICENSE FEE INITIALLY PAID FOR THE PAID-UP LICENSE OR, IN THE CASE OF A LEASE LICENSE, THE LICENSE FEE PAID FOR SUCH LEASE LICENSE DURING THE TWELVE (12) MONTHS PRECEEDING A CLAIM.

11. Term / Termination.

- a) These terms and conditions apply until the end of the Software License Term(s) and TECS period under the applicable PLA.
- b) Except as provided for under the TECS Section 8 and Warranty Section 9, if Licensee or Licensor materially defaults in the performance of its obligations under this Agreement and does not cure the default within a reasonable time after receipt of written notice, then this Agreement or the Software license that is the subject of the default may be terminated by the non-defaulting party immediately upon written notice.
- c) Upon termination Licensee agrees to immediately de-install and cease use of the Software and, if requested, certify in writing cessation of use.
- d) The terms of this Agreement which by their nature are intended to survive termination, will survive.

12. Payment of Fees.

- a) Licensee agrees to pay the applicable Software license and/or TECS fees to Licensor or its Affiliate or Channel Sales Representative who Licensor has authorized to perform the invoicing and receive payment.
- b) Licensee will be responsible for paying all sales, use, service, excise, value added, consumption taxes, or other similar tax or government charges imposed on the licensing or use of the Software or TECS. If Licensee claims tax exempt status, Licensee will provide a copy of a valid exemption certificate. If Licensee is required to make any deduction or withholding for any non-refundable tax, duty or other charge imposed by a governmental entity, the fees due will be increased by the amount of such deduction or withholding.
- c) Payment terms are Net 30 days from date of invoice, unless otherwise agreed upon in the PLA. For payments directed to a Channel Sales Representative, invoice payment terms are within the time agreed between Licensee and the Channel Sales Representative.
- d) Overdue payments may be subject to interest at the maximum rate of interest allowed by applicable law.

- 13. Intellectual Property Rights.** The Software and any scripts, subroutines or models provided to the Licensee are licensed, not sold. Licensee acknowledges that the formulas, algorithms, methodologies, techniques, ideas and concepts contained in the Software and Documentation are proprietary information, trade secrets and confidential information of Licensor, its Affiliates and/or their third party software suppliers. Licensee agrees that it will act consistent with Licensor's, its Affiliates and their third party software suppliers' rights to and ownership of all copyright and trade secrets embodied in the Software and Documentation and in any scripts, subroutines or models provided to Licensee and Licensee agrees it will not harm Licensor's,

its Affiliates' and their third party software suppliers' intellectual property rights, or disclose the confidential information contained therein to third parties.

14. Infringement.

- a) Infringement indemnification and remedies are subject to the modified FAR 52.212-4(h) Patent Indemnity provision under Section 3(ii) of the Alterations 5_16_17 above.

15. Export Notice.

- a) The Software is subject to the export and re-export regulations of the United States (U.S.) and United Kingdom/European Union (U.K./E.U.). Licensee acknowledges that it is responsible to comply with all applicable import, export and re-export control and sanctions laws, regulations and orders, as they may be amended from time to time, including without limitation those of the U.S., the U.K./E.U., and jurisdictions in which Licensee is established and from which items are supplied. Under these laws, Licensee is responsible to not, and not permit its employees to, directly or indirectly, use, transfer, release, export or re-export the Software or technology in its possession and control, in violation of applicable laws, including:
 - 1) to any country, destination or person that is the subject of applicable sanctions or embargo imposed by the U.S. or the U.K./E.U. or pursuant to a resolution of the United Nations ("Sanctioned Destinations"), which Sanctioned Destinations currently include without limitation Cuba, Iran, Syria and Sudan;
 - 2) to persons designated by any relevant government as terrorists or any persons on the U.S. Treasury Department's List of Specially Designated Nationals and Blocked Persons or the Bank of England Consolidated List, or on the U.S. Commerce Department's Denied Parties and Entity Lists, or equivalent lists of the U.K./E.U. or other relevant jurisdictions; and
 - 3) to not use, nor permit the use, sale, supply, transfer, export or re-export of any item, including Software or technology, provided by Licensor, its Affiliates and their Licensors where Licensee has been informed, is aware or has grounds for suspecting that such items will be used in connection with the design, development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or nuclear explosive devices, or the development, production, maintenance or storage of missiles capable of delivering such weapons, or for prohibited military end-uses.
- b) There will be no obligation to support or transfer Software, including TECS, if performing such TECS or transfer of Software is in violation of applicable export regulations.

16. Software Security and Monitoring. Licensor reserves the right to embed a software security mechanism within the Software to monitor usage of the Software and to verify Licensee's compliance with this Agreement. Such a security mechanism may store data relating to the usage of the Software and the number of times it has been copied, or may communicate with computers controlled by Licensor over any type of communications link to exchange communications and report data relating to the usage of the Software, its installation, the system on which it has been installed and the number of times it has been copied or accessed. Licensor reserves the right to use license administration software, a license authorization key to control access to the Software and/or a hardware lock device. Licensee may not take any steps to avoid or defeat the purpose of any such measures. Use by Licensee of any Software without any required security mechanism is prohibited.

17. Miscellaneous.

- a) The PLA, the Alterations Ver 5_16_17, the Contract (as defined under the Alterations Ver 5_16_17), and these terms and conditions are the full and complete statement of agreement for the use of the Software or TECS and supersedes any previous or contemporaneous agreements, understandings or communications, whether written or oral, relating to the subject matter. No other purchase order or other document or communications issued by Licensee, even if the purchase order or other document provides that it takes precedence or requires express acknowledgment, will be effective to contradict, modify, delete from or add to the terms and conditions contained herein and in the PLA. Any express written acknowledgment of a purchase order or other order document required by Licensee will be solely for the purpose of acknowledging its receipt for processing the order.
- b) The unenforceability of any provision of this Agreement will not affect the enforceability of any other provision.
- c) Failure to require performance of any provision of this Agreement will not affect the right to subsequently require performance; nor will a waiver of a breach of this Agreement constitute a waiver of any subsequent breach of this Agreement.
- d) Licensee's assignment of this Agreement requires the prior written consent of Licensor. Licensor may assign this Agreement to a company that succeeds to all or substantially all of its interests or assets and written notice

of any such assignment will be given by Licensor or its successor as soon as commercially reasonable. This Agreement will be binding on and inure to the benefit of the successors, representatives, and permitted assigns of Licensee and Licensor.

- e) This Agreement will not be governed by the United Nations Convention on Contracts for the International Sales of Goods and choice of law provisions, the application of which is expressly excluded.
- f) The parties agree that this agreement be entered into in the English language. If this agreement is provided in any other language, it is for interpretation purposes only and the English language version will prevail.
- g) The PLA incorporating these terms and conditions may be signed in counterparts. Signed copies, including by electronic signature, sent by facsimile or in electronic version, or signed in counterparts, will be deemed binding to the same extent as original documents.

###

Quote No. : 349766.1

for renewal of an alternative quantity of annual software licenses for Option Year 2 through July 15, 2018, as follows:

Server #	Product Description	Product Code	Agreement Type	LAN/WAN	Duration	Qty	List Price	Discount	Price
1	STAR-CCM+ (#1101.2)	STAR1000	Lease	LAN	1 year	3			
1	STAR-HPC (#1401.2)	STAR1017	Lease	LAN	1 year	200			
Total (ex TAX)									USD 49,900.00

Special Conditions

In lieu of signing this Quote/PLA, the Licensee will signify acceptance of this Quote/PLA and the commercial software license and maintenance hereunder by attaching the ALTERATIONS Ver 5_16_17 document in full text as addenda to the SF 30 Amendment of Solicitation/Modification of Contract No. NRC-HQ-60-15-C-0006.

Licensed Server(s)			Authorized Site(s)		
Server #	Location (i.e. City, Country)	LAN or WAN	Site #	Location (i.e. City, Country)	Server # Accessed
Server 1	US Nuclear Regulatory Commission Rockville MD 20852	LAN	Site 1	US Nuclear Regulatory Commission Rockville MD 20852	1

This Quote and supply of the products is subject to your acceptance and signature of the Purchase/License Agreement below. Orders and delivery of products will only be processed after receipt and acceptance of a signed Purchase/License Agreement and valid Purchase Order.

Quote Acceptance

This Quote is valid until 27 June, 2017.

To accept this Quote, please send your Purchase Order together with the signed Purchase/License Agreement (below), to:

Siemens Product Lifecycle Management Software Inc. (SPLM)
60 Broadhollow Road • Melville, NY 11747 • USA
tel +1 631 549 2300 • fax +1 631 549 2654
Attention: Accounts Receivable
accounts-us@cd-adapco.com

The signed Purchase/License Agreement may be electronically returned in the same manner received through SPLM's electronic signing system via EchoSign, or sent to the Accounts Receivable address above or to the sales representative.

PURCHASE/LICENSE AGREEMENT ("PLA")

By signing below, the Licensee and Licensor accept and agree to be bound by the terms and conditions contained in this Quote and the terms and conditions of agreement identified in the "Agreement Reference" block below, which are incorporated herein by reference (referred to collectively as "PLA" or "Agreement"). The undersigned represents that it is authorized to bind Licensee and to accept this PLA on behalf of Licensee. No terms and conditions contained in a purchase order or other purchase document applicable to this Quote will modify or supplement the PLA, even if such purchase order or other purchase document provides that it takes precedence over any other agreement between Licensee and Licensor. If you do not agree to be bound by the terms of this PLA, contact the sales representative.

I accept Quote Option: (If multiple quote options, please select applicable options)

349765.1 - Yes <input type="radio"/>	349766.1 - Yes <input checked="" type="radio"/>
No <input checked="" type="radio"/>	No <input type="radio"/>

ACKNOWLEDGEMENT: Licensee acknowledges it has read and agrees to the terms and conditions contained in the Agreement Referenced below.

Agreement Reference : SF 30 Amendment of Solicitation/Modification of Contract No. NRC-HQ-60-15-CC-0006; ALTERATIONS Ver 5_16_17; and the General Terms and Conditions Software License and/or Technical Enhancements & Customer Support (Version Date: January 1, 2017) as negotiated between the parties and incorporated in the ALTERATIONS Ver 5_16_17.
Agreement Reference by Agreement Number or Effective Date executed between Licensee and Licensor.
An executed copy of this Agreement is available upon request by contacting the sales representative.

Licensor: Siemens Product Lifecycle Management Software Inc.

Licensee: Nuclear Regulatory Commission

Signature:	<input type="text"/>	Signature:	<input type="text"/>
Name:	<input type="text"/>	Name:	<input type="text" value="REDACTED"/>
Title:	<input type="text"/>	Title:	<input type="text" value="Contracting Officer"/>
Date Signed:	<input type="text"/>	Date Signed:	<input type="text"/>

Licensor: Siemens Product Lifecycle Management Software Inc.

Signature:	<input type="text"/>
Name:	<input type="text"/>
Title:	<input type="text"/>
Date Signed:	<input type="text"/>