



Information Technology Association of America (ITAA)

Application Service Provider (ASP) Service Level Agreement (SLA) Guidelines for the Federal Marketplace

The Information Technology Association of America (ITAA) provides global public policy, business networking, and national leadership to promote the continued rapid growth of the IT industry. ITAA consists of nearly 500 direct corporate members throughout the U.S., and a global network of 41 countries' IT associations.

The Association plays the leading role in issues of IT industry concern including taxes and finance policy, intellectual property, telecommunications competition, workforce and education, encryption, information security, global trade, online privacy and consumer protection, securities litigation reform, government IT procurement, and human resources policy. ITAA members range from the smallest IT start-ups to industry leaders in the Application Service Provider (ASP), Internet, software, IT services, digital content, systems integration, telecommunications, and enterprise solution fields.

Over the past year, ITAA has played a leading role in defining the emerging ASP Industry. With assistance from member volunteers, ITAA created the following definition for the ASP Industry:

"Any 'for profit' company which provides aggregated information technology resources to subscribers/clients remotely via the Internet or other networked arrangement."

ITAA broadens the definition by providing the following:

"From remote facilities, ASPs host and manage applications and other IT resources including hardware, networking, and operating software. ASPs are able to coordinate ongoing support, maintenance and upgrades of any applications provided to their customers. Through the use of ASPs companies achieve increased security, reliability and manageability.

ASPs generate income by charging customers to access IT resources through a Web browser, local access or dedicated networking arrangements. As more companies turn to information technology to help them streamline business operations and improve strategic positioning, access to state of the art IT resources becomes critically important. ASPs make these resources available and affordable to a wide range of entities who, instead of acquiring all of the needed software licenses and technology, companies can contract with an ASP on a subscription basis."

ITAA ASP Program Contact:

Nathan Ridnour
Director, ASP Programs, ITAA
1401 Wilson Blvd., Suite 1100
Arlington, VA 22209

(703) 284-5308
Fax (703) 525-2279
nridnour@itaa.org
www.itaa.org/asp



ITAA's ASP SLA Guidelines For the Federal Marketplace

The Information Technology Association of America (ITAA), through its Application Service Provider (ASP) subcommittees, has published Service Level Agreement (SLA) Guidelines for the ASP Industry. These SLA Guidelines, which are available through <http://www.ita.org/asp>, offer guidance on terms of SLAs, which are the core documents of agreement in ASP services. These SLA Guidelines, prepared with assistance from the law firm of McKenna & Cuneo, L.L.P., identify some of the key issues to be considered when negotiating an SLA.

The ultimate terms of the SLA will, of course, be a product of negotiations between the ASP and the customer or buyer.

Those negotiations will take on special attributes in the federal marketplace, because of the unique regulatory requirements of federal contracting. Below, this memorandum, prepared with input from the law firm of Holland & Knight LLP, sets forth the standard commercial SLA guidance, with highlights (*in italics*) regarding special federal contracting requirements.

Service Level Agreement (SLA) Guidelines

Federal Contracting for Commercial ASP Services: *Because most ASP services purchased by the government are likely to be commercially available services, most federal contracts for ASP services are likely to be formed under Part 12 of the Federal Acquisition Regulation, which governs commercial item purchases. FAR Part 12 allows government agencies to use streamlined, commercial terms when contracting for commercial items.*

The government's use of streamlined commercial contracting is strongly supported by law. FAR 12.101 specifically states that the government should, where possible, purchase commercial items – such as commercial ASP services – rather than goods or services specially designed for the government. FAR 12.301 in turn provides that when the government enters into commercial item contracts, those contracts generally should include only those terms (1) required to implement provisions of law, or (2) which are "consistent with customary commercial practice." Thus, except where specific provisions are mandated by federal law, SLAs with the federal government can and should, where possible, conform to commercial practices.

To comply with these legal requirements under the FAR, therefore, government ASP agreements should incorporate commercial terms to the maximum extent practicable, and should include the special terms required by federal law. This means, in practice, that government ASP agreements should (if possible) include the technical and commercial terms recommended by the SLA Guidelines, and should include any other special terms required by law. The memorandum below offers suggestions on how the commercial and government terms can be combined.

Standard Terms for Commercial Item Contracting: *As noted, FAR Part 12 sets forth the government's key policies regarding commercial item contracting. The FAR includes a separate part, FAR Part 52, which sets forth standard contract clauses. FAR 52.212, in particular, includes the standard provisions used to undertake commercial item contracting.*

As a practical matter, this means that a federal contracting officer will use FAR 52.212-4 (included in the Appendix to this memorandum), which lists terms to be included in a commercial-item contract, as a starting point for negotiations. Many of those terms can be "tailored" to conform to commercial practice, per FAR



12.301 and 12.302.¹ Because the contracting officer is specifically instructed, per FAR 12.301, to do commercial market research before tailoring the contract terms to conform to commercial practice, the ITAA SLA Guidelines offer contracting officers an excellent source of guidance on commercial practices.

Below, the standard terms recommended by the ITAA SLA Guidelines are set forth, with discussions (in italics) of the overarching government requirements.

1. Service Level

- a) Service levels are a standard component of almost all SLAs
- b) The SLA will define the percentage of monthly service availability
- c) The SLA will define specifically what "availability" is being guaranteed
- d) Identify any exclusions to the monthly service availability, such as routine maintenance, customer caused outages due to customer's action on the server, server over utilization, *force majeure*, and any other events beyond ASP's reasonable control. (The term "reasonable control" should be defined in the SLA.)

Note: *This generally comports with the relevant standard federal clause (FAR 52.212-4(f)), which provides as follows:*

(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.

- e) Identify any potential for monthly service availability modification
- f) Identify any notification procedures for planned outages

¹ Some terms set forth in FAR Part 52 cannot be tailored, however, as FAR 12.302(b) explains:

(b) *Tailoring 52.212-4, Contract Terms and Conditions--Commercial Items.* The following paragraphs of the clause at 52.212-4, Contract Terms and Conditions--Commercial Items, implement statutory requirements and shall not be tailored—

- (1) Assignments;
- (2) Disputes;
- (3) Payment (except as provided in Subpart 32.11);
- (3) Invoice;
- (5) Other compliances; and
- (6) Compliance with laws unique to Government contracts.



2. Security

- a) Describe how physical access to data center and network components will be determined
- b) Identify responsibility for adding/changing user access to network and applications
- c) Identify security layers for applications, network, and platform
 - user authentication
 - firewalls
 - virus scanning
 - intrusion detection
- d) Describe any monitoring software and procedures for detecting security violations and remedial actions for any such violations
- e) Specify any reporting on security intrusions including procedures for reporting incidences to law enforcement agencies
- g) Describe whether there will be any third-party testing to ensure minimum standard for protecting data integrity and confidentiality of customers' data
- h) Describe any measures taken to prevent service provider staff or contractors from security violations (e.g., training, access privileges, bonding, policy on violations)

Note: *The FAR generally does not set requirements for information security, although it does endorse the use of electronic systems in procurement. Contracting officers should be aware, however, that there are other agency- and government-wide requirements governing information security and privacy. If, for example, exchanges with the ASP will be secured using Public Key Infrastructure (PKI) technology (also commonly referred to as "digital signature" technology), the contracting officer may need to look to the Department of Defense guidance regarding PKI. In another example, if data protected by the Privacy Act is to be transferred to or otherwise shared with the ASP – perhaps through an offsite data storage facility – the agency may need to assess its compliance under the Privacy Act (including the Computer Security Act of 1987, and the Computer Matching and Privacy Protection Act of 1988), the Paperwork Reduction Act of 1980, the Information Management Technology Reform Act of 1996 (the Clinger-Cohen Act), and the Government Paperwork Elimination Act (GPEA). To focus its review under these various statutes, the agency may look to the guidance issued by the Office of Management and Budget (OMB), including OMB Circular A-130.*

3. Tracking and Reporting

- a) Define the approach and extent to which ASP will monitor all necessary (e.g., network devices, circuits, servers and applications) services to prevent service unavailability
- b) Define how ASP will detect and track downtime
- c) Identify how ASP will report service level – method and frequency
- d) Discuss any ability of customer to audit ASP tracking and reporting mechanisms

Note: *There is no FAR guidance regarding technical tracking. Because auditing for procurement purposes does not reach the technical issues raised by this provision, the parties would be well served to clarify responsibilities regarding tracking and reporting in the SLA.*

4. System Performance

- a) Identify any performance benchmark targets
- b) Identify any applicable performance metrics such as response time, throughput, etc.
- c) Describe any performance monitoring and reporting
- d) Describe scalability – capability to quickly increase or decrease solution's capacity



5. Remedies

- a) Define performance penalties in the event ASP fails to execute to the agreed upon service levels
- b) Performance penalties could include:
 - 1) monthly percentage fee rebates correlated to degree of under performance
 - 2) specific fee reductions or rebates if performance is not met
 - 3) contract termination if the underperformance is chronic

Note: Per FAR 52.212-4, the following terms should be included regarding risk and remedies (though all – including the warranty of merchantability -- are subject to tailoring to conform to commercial practice). This point bears emphasis: because the FAR allows for flexibility here to conform to commercial practice, the parties may agree to replace the FAR's warranty provisions with the contractor's normal commercial warranties and limitations on liability. Note that the inspection clause extends the right of rejection to defective services, such as ASP services, that are discovered within a reasonable time by the government.

(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 re-performance of nonconforming services at no increase in contract price. The Government must exercise its post-acceptance 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.

* * * *

(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 or implied warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

In the context of FAR Part 12 contracting, as paragraph (p) suggests, it is especially important that consequential damages be specifically excluded.

Disputes are a separate issue in federal contracting. Almost all federal contracts are subject to the Contract Disputes Act, and as noted above the Disputes provision may not be "tailored" even in a commercial-item federal contract. Under the Contract Disputes Act, any dispute must pass through the contracting officer for decision; only if a contracting officer denies a claim -- or grants a government claim for damages -- can the dispute be appealed to the U.S. Court of Federal Claims or an agency board of contract appeals. From there, an adverse decision can in turn be appealed to the U.S. Court of Appeals for the Federal Circuit.

Although the Contract Disputes Act imposes this framework upon contract disputes, ASP contractors -- and their agency customers -- should not ignore the benefits that Alternative Dispute Resolution (ADR) approaches may offer. If, for example, the contracting company regularly calls for ADR in its standard contractual provisions, the government may well be



willing to accept language in the SLA that will guide the parties through ADR, even if that ADR is not binding. Requiring both parties to engage in intensive mediation early in the disputes process would, for example, be a useful addition to the normal disputes process under the federal Contract Disputes Act.

6. Upgrades

- a) Address upgrade expectation and procedure, including provisions to meet customer critical issues (ex: maintenance blackout periods)
- b) Describe recovery or reversal procedures for upgrade failure
- c) Describe patches, minor upgrade procedures

Note: *There is no FAR guidance directly on point regarding upgrade requirements. There may, however, be intellectual property issues raised here under FAR Parts 12 and 27, and there may be planning requirements mandated by the Clinger-Cohen Act.*

7. Contingency, Backup and Disaster Recovery

- a) Describe back-ups of data and applications
- b) Describe system redundancy
- c) Describe recovery parameters – how quickly can data be restored
- d) Describe priority and process for ASP disaster recovery
- e) Describe process for customer disaster recovery

Note: *There is no FAR guidance directly on point regarding these requirements. The ASP and the customer agency should negotiate commercially reasonable terms.*

8. Support and Help Desk Services

- a) Describe scope of services offered by support and help desk services
- b) Describe standard support and help desk availability
- c) Specify methods of contact – phone, fax, email, and/or website
- d) Describe how problems will be characterized
- e) Describe response time
- f) Describe resolution time
- g) Describe escalation process
- h) Describe any customer training requirements
- i) Describe any customer and system level reporting and monitoring for support and help desk services
- j) Describe any mechanisms and/or procedures for identifying systematic errors through support and help desk monitoring

Note: *There is no FAR guidance directly on point regarding these requirements. The ASP and the customer agency should negotiate commercially reasonable terms.*

9. Termination

- a) Specify any applicable time period for a return of data
- b) Specify cooperation for data transition
- c) Describe process for any unilateral termination



Note: FAR Part 12 requires the following Disputes provision:

(d) *Disputes.* This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). 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.

Government contracts include extensive provisions to protect the government's right to terminate, whether for the government's convenience or for default (for "cause"). The FAR calls for the following provisions (which may be tailored):

(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.

Consistent with commercial practices and FAR Subpart 11.5, an ASP and a customer agency may wish to negotiate liquidated damages provisions that provide the government a ready remedy, short of default, in the event of system failures.

10. Ownership

- a) Specify ASP's ownership or interest in ASP's patents trademarks, trade names, inventions, copyrights, know how, and trade secrets relating to ASP's offerings
- b) Specify that customer's use of ASP's intellectual property rights is authorized only for limited use
- c) Specify customer's ownership of data

Note: *The government's ownership and control of intellectual property is an extremely complex area of law, subject to constraints under various government-wide and agency-specific laws and regulations. FAR Part 12 mandates that when the government purchases commercial goods and services – such as ASP services – the government's rights should at least track customers' rights in the commercial marketplace:*



12.211 Technical data.

Except as provided by agency-specific statutes, the Government shall acquire only the technical data and the rights in that data customarily provided to the public with a commercial item or process. The contracting officer shall presume that data delivered under a contract for commercial items was developed exclusively at private expense. When a contract for commercial items requires the delivery of technical data, the contracting officer shall include appropriate provisions and clauses delineating the rights in the technical data in addenda to the solicitation and contract (see Part 27 or agency FAR supplements).

12.212 Computer software.

- (a) Commercial computer software or commercial computer software documentation shall be acquired under licenses customarily provided to the public to the extent such licenses are consistent with Federal law and otherwise satisfy the Government's needs. Generally, offerors and contractors shall not be required to—
 - (1) Furnish technical information related to commercial computer software or commercial computer software documentation that is not customarily provided to the public; or
 - (2) Relinquish to, or otherwise provide, the Government rights to use, modify, reproduce, release, perform, display, or disclose commercial computer software or commercial computer software documentation except as mutually agreed to by the parties.
- (b) With regard to commercial computer software and commercial computer software documentation, the Government shall have only those rights specified in the license contained in any addendum to the contract.

11. Intellectual Property Indemnification

- a) State whether ASP will indemnify customer for claims that ASP's services utilized by customer infringe upon the intellectual property rights of others
- b) Describe parameters of indemnification

Note: *The FAR calls for the following indemnification provision (which may be tailored):*

(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.

12. Indemnification by Customer

State whether customer will indemnify ASP for third-party claims against ASP as a result of customer activities

Note: *Federal law sharply constrains the circumstances under which the government may agree, prospectively, to indemnify a contractor.*



13. General

- a) Address whether SLA is subject to terms and conditions of any other agreement between ASP and customer
- b) If SLA is not subject to other agreement between the parties, certain legal provisions should be added to the SLA
- c) Describe any contract or service level obligation in the event of an acquisition or merger

Note: *There are a number of other terms set forth in FAR 52.212-4, which (as noted) are either recommended or mandated. The complete text of FAR 52.212-4 is set forth in the appendix to this memorandum. With regard to assignment of payments, FAR 52.212-4 calls for the following provision, which may not be amended:*

(b) *Assignment.* The Contractor or its assignee's rights to be paid amounts due as a result of performance of this contract, may be assigned 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).

Because federal law generally prohibits the transfer of a government contract to a third party, contractors seeking to transfer their obligations to third parties will face significant requirements. See FAR Subpart 42.12.



**Information Technology
Association of America (ITAA)**

**APPENDIX:
FAR 52.212-4**



52.212-4 Contract Terms and Conditions--Commercial Items.

As prescribed in 12.301(b)(3), insert the following clause:

Contract Terms and Conditions--Commercial Items (May 1999)

(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 re-performance of nonconforming services at no increase in contract price. The Government must exercise its post-acceptance 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's rights to be paid amounts due as a result of performance of this contract, may be assigned 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).

(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 the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). 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.* 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--

- (1) Name and address of the Contractor;
- (2) Invoice date;
- (3) Contract number, contract line item number and, if applicable, the order number;
- (4) Description, quantity, unit of measure, unit price and extended price of the items delivered;
- (5) Shipping number and date of shipment including the bill of lading number and weight of shipment if shipped on Government bill of lading;
- (6) Terms of any prompt payment discount offered;
- (7) Name and address of official to whom payment is to be sent; and
- (8) Name, title, and phone number of person to be notified in event of defective invoice. Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and



Office of Management and Budget (OMB) Circular A-125, Prompt Payment. Contractors are encouraged to assign an identification number to each invoice.

(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.* Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract. The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) Circular A-125, Prompt Payment. If the Government makes payment by Electronic Funds Transfer (EFT), see 52.212-5(b) for the appropriate EFT clause. 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.

(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 or implied 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. 327, *et seq.*, Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 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, and Compliance with Laws Unique to Government Contracts 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.
- (9) The specification.

(End of clause)

FCH1 #44933 v2