

SECTION H - CONTRACT ADMINISTRATION

H.1 LISTING OF SECTION H CLAUSES INCORPORATED BY REFERENCE

The following clauses are incorporated by reference in accordance with Federal Acquisition Regulation (FAR) 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998):

I. FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1)

<u>Clause Number</u>	<u>Title</u>	<u>Date</u>
52.236-13	ACCIDENT PREVENTION	NOV 1991

II. NASA FAR SUPPLEMENT (48 CFR CHAPTER 18) CLAUSES

<u>Clause Number</u>	<u>Title</u>	<u>Date</u>
1852.208-81	RESTRICTIONS ON PRINTING AND DUPLICATING-	NOV 2004
1852.223-70	SAFETY AND HEALTH	APR 2002
1852.223-75	MAJOR BREACH OF SAFETY OR SECURITY	FEB 2002

(End of Clause)

H.2 LIMITATION OF FUTURE CONTRACTING

- (a) The Contracting Officer has determined that this acquisition may give rise to a potential organizational conflict of interest. Accordingly, the attention of prospective offerors is invited to FAR Subpart 9.5 - Organizational Conflicts of Interest.
- (b) The nature of this conflict is unequal access to information.
 - (1) The Contractor will have access to contractor bid or proposal data as defined in FAR 3.104-1, Definitions; source selection information as defined in FAR 2.101(b), Definitions; intellectual property of other firms; other types of proprietary, privileged, or financial data from other companies; and NASA's financial and procurement management systems.
 - (2) The Contractor may be able to use this information or data to gain an unfair competitive advantage on future NASA procurement opportunities.
- (c) To avoid, neutralize, or mitigate this potential organizational conflict of interest (OCI):

- (1) The Contractor shall not utilize or disclose this information or data for any purpose other than the performance of this contract.
- (2) During the term of this contract, Contractor personnel performing work under this contract are prohibited from engaging in any marketing, consulting or advisory activities for the purpose of obtaining additional NASA work under existing contracts or new procurement opportunities.
- (3) During the term of this contract, Contractor personnel performing work under this contract are prohibited from participating on any business development, proposal preparation, or capture team that was formed for the purpose of obtaining additional NASA work under existing contracts or new procurement opportunities.
- (4) Prior to submitting an offer on any NASA solicitation, the Contractor shall provide a written certification to the Contracting Officer that no contractor personnel performing work under this contract participated on the business development, proposal preparation, or capture team that was formed to prepare the offer.
- (5) The Contractor shall develop and implement a comprehensive OCI plan that includes training, execution of nondisclosure agreements, internal corporate firewalls, and oversight to protect against the disclosure of information or data obtained under this contract to other contractor employees that do not perform work on this contract. At a minimum, the plan shall include:
 - (i) A listing of all contractor personnel performing work under this contract who are prohibited from participating on any business development, proposal preparation, or capture team that was formed for the purpose of obtaining additional NASA work under existing contracts or new procurement opportunities. This listing shall be updated by the Contractor as necessary to keep current.
 - (ii) Description of the training that will be provided to all contractor personnel performing work. At a minimum, this training shall include: discussions on the nature and types of OCIs; mitigation techniques; firewalls; management and protection of information and data; contractual requirements; applicable regulations and statutes; penalties for unauthorized disclosure or use; and corporate policies and procedures.
 - (iii) The frequency that training will be conducted, how the training will be conducted, who will provide the training, and maintenance of training records. The Contractor must educate its employees, through formal training, not to divulge the proprietary data, trade secrets, confidential information, or restricted data of companies received in connection with the performance of work under this contract.

- (iv) Approach for ensuring nondisclosure agreements have been obtained from contractor personnel performing work under this contract before they are permitted to begin work.
- (d) The term "Contractor", as used in this clause, includes: the corporate or other entity executing this contract with the Government; such entity's parent, subsidiary, affiliate, or successor in interest to the extent that the parent, subsidiary, affiliate, or successor entity has responsibility for the performance of this contract; and any subcontractor, regardless of tier, that has personnel performing work under this contract.
- (e) The term " term of the contract" as used in this clause includes options; extensions to the period of performance issued under a bilateral agreement; or extensions to the period of performance issued pursuant to the Continuity of Services incorporated by reference in Clause I.2.
- (f) The term "Contractor personnel performing work under this contract" as used in this clause, means any contractor or subcontractor employee who charges time as a direct cost to this contract regardless of the number of hours incurred and is located on-site at a NASA installation. The term also includes supervisory personnel of the Contractor, regardless of location, who are responsible for the day-to-day direction of contract activities, reviewing and/or approving work products and contract deliverables, evaluating the performance of covered employees, and/or the hiring and termination of covered employees.
- (g) The term "information or data" as used in this clause, means recorded information regardless of form or the media on which it may be recorded. The term also includes technical data and computer software.
- (h) The Contractor shall include paragraphs (a) through (g) of this clause in every subcontract.

(End of Clause)

H.3 1852.235-71 KEY PERSONNEL AND FACILITIES (MAR 1989)

- (a) The personnel and/or facilities listed below (or specified in the contract Schedule) are considered essential to the work being performed under this contract. Before removing, replacing, or diverting any of the listed or specified personnel or facilities, the Contractor shall (1) notify the Contracting Officer reasonably in advance and (2) submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract.

- (b) The Contractor shall make no diversion without the Contracting Officer's written consent; provided, that the Contracting Officer may ratify in writing the proposed change, and that ratification shall constitute the Contracting Officer's consent required by this clause.
- (c) The list of personnel and/or facilities (shown below or as specified in the contract Schedule) may, with the consent of the contracting parties, be amended from time to time during the course of the contract to add or delete personnel and/or facilities. No more than eight individuals shall be designated as key personnel under this clause.

TABLE H-1 KEY PERSONNEL		
	Name of Personnel	Key Position
1		Program Manager
2		Service Delivery Manager
3		
4		
5		
6		
7		
8		

(End of Clause)

H.4 1852.242-72 OBSERVANCE OF LEGAL HOLIDAYS (AUG 1992) – Alternate I (SEP 1989) and Alternate II (OCT 2000)

- (a) The on-site Government personnel observe the following holidays:

New Year's Day
 Labor Day
 Martin Luther King, Jr.'s Birthday
 Columbus Day
 President's Day
 Veterans Day
 Memorial Day
 Thanksgiving Day
 Independence Day
 Christmas Day

Any other day designated by Federal statute, Executive order, or the President's proclamation.

- (b) When any holiday falls on a Saturday, the preceding Friday is observed. When any holiday falls on a Sunday, the following Monday is observed. Observance of such days

by Government personnel shall not by itself be cause for an additional period of performance or entitlement of compensation except as set forth within the contract.

- (c) On-site personnel assigned to this contract shall not be granted access to the installation during the holidays in paragraph (a) of the clause, except as follows: the Contractor shall provide sufficient on-site personnel to perform round-the-clock requirements of critical work already in process, unless otherwise instructed by the Contracting Officer or authorized representative. If the Contractor's on-site personnel work during a holiday other than those in paragraph (a) of this clause, no form of holiday or other premium compensation shall be reimbursed as either a direct or indirect cost. However, this does not preclude reimbursement for authorized overtime work that would have been overtime regardless of the status of the day as a holiday.
- (d) The Contractor shall place identical requirements, including this paragraph, in all subcontracts that require performance of work on-site, unless otherwise instructed by the Contracting Officer.
- (e) When the NASA installation grants administrative leave to its Government employees (e.g., as a result of inclement weather, potentially hazardous conditions, or other special circumstances), Contractor personnel working on-site should also be dismissed. However, the contractor shall provide sufficient on-site personnel to perform round-the-clock requirements of critical work already in process, unless otherwise instructed by the Contracting Officer or authorized representative.
- (f) Whenever administrative leave is granted to Contractor personnel pursuant to paragraph (e) of this clause, it shall be without loss to the Contractor. The cost of salaries and wages to the Contractor for the period of any such excused absence shall be a reimbursable item of cost under this contract for employees in accordance with the Contractor's established accounting policy.
- (g) Whenever administrative leave is granted to the Contractor personnel pursuant to paragraph (e) of this clause, any adverse effects on productivity will be taken into consideration during performance evaluation, under Clause F.5, *Award Term Options-Terms and Conditions*.

(End of Clause)

H.5 ASSOCIATE CONTRACTOR AGREEMENTS (ACA)

- (a) The Contractor shall enter into Associate Contractor Agreements (ACA) for any portion of the contract requiring cooperation and coordination (with Contractors under other NASA contracts) in the accomplishment of the Government's requirement. The agreements shall include the basis for sharing information, data, technical knowledge, expertise, and/or resources essential to ensure the greatest degree of cooperation to meet the terms of the contract. Associate Contractors are listed in paragraph (g) below.

- (b) ACAs shall include the following general information:
 - 1) Identify the associate Contractors and their relationships.
 - 2) Identify the program(s) involved and the relevant Government contracts of the associate Contractors.
 - 3) Describe the associate Contractor interfaces by general subject matter.
 - 4) Specify the categories of information to be exchanged or support to be provided.
 - 5) Include the expiration date (or event) of the ACA.
 - 6) Identify potential conflicts between relevant Government contracts and the ACA; include agreements on protection of proprietary data and restrictions on employees.

- (c) A copy of such agreement shall be provided to the CO for review before execution of the document by the cooperating associate Contractors. The CO has the right to ask questions and receive answers from each party, make comments and suggestions, and provide edits prior to execution by the parties. Initial ACAs should be in place 3 months after contract award. Subsequent ACAs required during contract performance shall be accomplished within 3 months of written notification from the CO to the Contractor.

- (d) Nothing in the foregoing shall affect compliance with the requirements of Clause H.2, Limitation of Future Contracting and the offeror’s incorporated OCI plan.

- (e) The Contractor is not relieved of any contract requirements or entitled to any adjustments to the contract terms because of a failure to resolve a disagreement with an associate Contractor.

- (f) Liability for the improper disclosure of any proprietary data contained in or referenced by any agreement shall rest with the parties to the agreement, and not the Government.

- (g) All costs associated with the agreements are included in the firm fixed rates of this contract. Agreements may be amended as required by the Government during the performance of the contract. The following are “Associate Contractors” with whom agreements are required:

Contract	Services	Contractor
NASA Integrated Communications Services (NICS)	Agency Wide-Area Network / Local Area Network & Telecommunications	SAIC
Agency Consolidated End-User Services (ACES)	Agency Desktop computing services	HPES
Web Enterprise Service Technologies (WEST)	Agency Web Portal	Infozen, Inc.

Enterprise Application Services Technology (EAST)	Applications	SAIC
Agency Closeout and Procurement Support Services Contract	Agency-wide contract closeout services	Brandan Enterprises, Inc

(End of Clause)

H.6 REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFERORS OR RESPONDENTS

- (a) The completed provision 52.204-8 Annual Representations and Certifications, including any amended representation(s) made at paragraph (b) of the provision; and other representations, certifications and other statements contained in Section K completed and submitted as part of the approved offer are hereby incorporated by reference in this resulting contract.

(End of Clause)

H.7 DATA RIGHTS

- (a) All data developed under this contract shall be a deliverable under this contract and shall be provided to the Government with unlimited rights as defined in FAR clause 52.227-14 (Rights in Data-General) as modified by NFS 1852.227-14 and this clause.
- (b) The data specified in FAR 52.227-14(b)(1) includes but is not necessarily limited to:
- (1) All data inputted into any Government owned and/or provided Information Technology System and the Contractor owned and/or provided system as a result of performance of this contract;
 - (2) All computer software produced in performance of this contract;
 - (3) All documented processes and procedures produced in performance of this contract; and
 - (4) All data identified as a deliverable under the contract

(End of Clause)

[End of Section]