

FEDERAL ACQUISITION REGULATION (“FAR”) FLOWDOWN CLAUSES FOR COMMERCIAL ITEMS

Supplier hereby recognizes that Level 3 is a government contractor and is subject to various federal laws, executive orders and regulations that also may be applicable to Supplier and its subcontractors. Supplier hereby agrees that, to the extent required by the referenced clauses, and only as applicable, it shall comply with, incorporate into its subcontracts, and require its subcontractors at all tiers to incorporate in their lower tier subcontracts, the following contract clauses below as continuously updated by the government and found at <https://acquisition.gov/far/index.html>. For the purpose of Supplier’s compliance with this mandatory requirement, “Contractor” shall mean Supplier, “Contracting Officer” shall mean Level 3’s Contract Administrator, and “subcontracts awarded under this contract” shall mean any lower tier company that provides services to Supplier in support of the government contract where Supplier is supporting Level 3 with any portion of the work.

[52.244-6](#) Subcontracts for Commercial Items (Jan 2017).

(a) Definitions. As used in this clause-

“Commercial item and commercially available off-the-shelf item” have the meanings contained in Federal Acquisition Regulation [2.101](#), Definitions.

“Subcontract” includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.

(c)(1) The Contractor shall insert the following clauses in subcontracts for commercial items:

(i) [52.203-13](#), Contractor Code of Business Ethics and Conduct (Oct 2015) ([41 U.S.C. 3509](#)), if the subcontract exceeds \$5.5 million and has a performance period of more than 120 days. In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.

(ii) [52.203-15](#), Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (Section 1553 of [Pub. L. 111-5](#)), if the subcontract is funded under the Recovery Act.

(iii) [52.203-19](#), Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (JAN 2017).

(iv) [52.204-21](#), Basic Safeguarding of Covered Contractor Information Systems (JUN 2016), other than subcontracts for commercially available off-the-shelf items, if flow down is required in accordance with paragraph (c) of FAR clause [52.204-21](#).

(iii) [52.219-8](#), Utilization of Small Business Concerns (Nov 2016) (15 U.S.C. 637(d)(2) and (3)), if the subcontract offers 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) [52.222-21](#), Prohibition of Segregated Facilities (Apr 2015).

(v) [52.222-26](#), Equal Opportunity (Sep 2016) (E.O. 11246).

- (vi) [52.222-35](#), Equal Opportunity for Veterans (Oct 2015) (38 U.S.C. 4212(a));
- (vii) [52.222-36](#), Equal Opportunity for Workers with Disabilities (Jul 2014) (29 U.S.C. 793).
- (viii) [52.222-37](#), Employment Reports on Veterans (Feb 2016) (38 U.S.C. 4212)
- (ix) [52.222-40](#), Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496), if flow down is required in accordance with paragraph (f) of FAR clause [52.222-40](#).
- (x)(A) [52.222-50](#), Combating Trafficking in Persons (Mar 2015) (22 U.S.C. chapter 78 and E.O. 13627).
- (B) Alternate I (Mar 2015) of [52.222-50](#) (22 U.S.C. chapter 78 and E.O. 13627).
- (xi) [52.222-55](#), Minimum Wages under Executive Order 13658 (Dec 2015).
- (xiii) [52.222-59](#), Compliance with Labor Laws (Executive Order 13673) (OCT 2016), if the estimated subcontract value exceeds \$500,000, and is for other than commercially available off-the-shelf items.

NOTE TO PARAGRAPH (c)(1)(xiii): 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, DoD, GSA, and NASA will publish a document in the Federal Register advising the public of the termination of the injunction.

- (xiv) [52.222-60](#), Paycheck Transparency (Executive Order 13673) (OCT 2016), if the estimated subcontract value exceeds \$500,000, and is for other than commercially available off-the-shelf items.
- (xvi) [52.222-62](#), Paid Sick Leave Under Executive Order 13706 (JAN 2017) (E.O. 13706), if flowdown is required in accordance with paragraph (m) of FAR clause [52.222-62](#).
- (xvii)(A) [52.224-3](#), Privacy Training (JAN 2017) (5 U.S.C. 552a) if flow down is required in accordance with [52.224-3\(f\)](#).
- (B) Alternate I (JAN 2017) of [52.224-3](#), if flow down is required in accordance with [52.224-3\(f\)](#) and the agency specifies that only its agency-provided training is acceptable).

- (xii) [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).
- (xiii) [52.232-40](#), Providing Accelerated Payments to Small Business Subcontractors (Dec 2013), if flow down is required in accordance with paragraph (c) of FAR clause [52.232-40](#).
- (xiv) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. App. 1241 and 10 U.S.C. 2631), if flow down is required in accordance with paragraph (d) of FAR clause [52.247-64](#).

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

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

The following clauses are also incorporated and shall be included in all subcontracts awarded under this contract:

[52.222-54](#), Employment Eligibility Verification (Oct 2015) (E.O. 12989). Information on registration for and use of the E-Verify program can be obtained via the Internet at the Department of Homeland Security Web site: <http://www.dhs.gov/E-Verify>.

[52.203-17](#), Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights (Apr 2014) ([41 U.S.C. 4705](#) and 4712)

Examination of Records by GSA (Feb 1996) (Deviation) The Contractor agrees that the Administrator of General Services or any duly authorized representatives shall, until 10 years from the expiration or the termination of the contract, have access to and the right to examine any books, documents, papers, and records of the Contractor involving transactions related to this contract or compliance with any clauses there under. The Contractor further agrees to include in all its subcontracts hereunder a provision to the effect that the subcontractor agrees that the Administrator of General Services or any authorized representatives shall, until the expiration of 3 years after final payment under the subcontract, or of the time periods for the particular records specified in Subpart 4.7 of the Federal Acquisition Regulation (48 CFR 4.7), whichever expires earlier, have access to and the right to examine any books, documents, papers, and records of such subcontractor involving transactions related to the subcontract or compliance with any clauses there under. The term "subcontract" as used in this clause excludes (a) purchase orders not exceeding \$100,000 and (b) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

Supplier shall notify Level 3's Contract Administrator immediately upon discovery that any of the service(s) provided by it to Level 3 would no longer be considered Commercial Items under FAR part [2.101](#).