

UNIVERSITY OF DELAWARE

FEDERAL FUNDING ADDENDUM FOR PROCUREMENT CONTRACTS OR PURCHASE ORDERS

All Contracts or Purchase Orders made or entered into by the University of Delaware (“University”) which are paid in whole or in part with funds from the United States federal government pursuant to a grant, contract, loan, insurance, or guarantee, shall contain the terms of 2 CFR Part 200, including, but not limited to the contract provisions of Appendix II to Part 200, as they may be amended. University and the contracting party, whether referred to in the contract as Supplier, Contractor, Vendor, Subcontractor, Recipient, Payee, or another descriptor (hereinafter in this Addendum referred to as “Supplier” or “Contractor”) agree to incorporate 2 CFR Part 200 terms and this federal funding addendum (collectively referred to as the “Federal Funding Addendum”) into the contract between University and Supplier which supersedes all other terms unless otherwise expressly noted. Acceptance of payment from the University or of a University purchase order noting use of federal funds confirms Supplier’s acknowledgement and agreement with the terms of this Federal Funding Addendum, and a signature on this Federal Funding Addendum is not required.

GENERAL TERMS:

- A. Equal Employment Opportunity** – Supplier shall comply with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor" as amended. Supplier agrees to abide by the provisions of the following related to equal employment opportunity, to the extent applicable, which are incorporated herein by reference: 41 C.F.R. §§ 60-1.4, 60-300.5(a), 60-741.5(a), 61-300.10, and 29 CFR Part 471, Appendix A to Subpart A with respect to affirmative action programs, contract clauses, and posting requirements. **These regulations prohibit discrimination against individuals based on their race, color, religion, sex, sexual orientation, gender identity, national origin, or protected veteran status or disability. Moreover, these regulations require affirmative action by covered prime contractors and subcontractors to take affirmative actions to employ and advance in employment qualified individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability.**
- B. Prohibition on certain telecommunications and video surveillance services or equipment (2 CFR §200.216)** – Supplier represents and warrants that no part of the equipment, services or systems provided to the University hereunder uses or consists of covered telecommunications equipment or services (as defined by 2 CFR §200.216) as a substantial or essential component of any equipment, service or system provided, or as a critical technology as part of any system provided.
- C. Rights to Inventions Made Under a Contract or Agreement** – If the Purchase Order includes the performance of experimental, developmental, or research work, Supplier shall provide for the rights of the Federal Government and the University in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
- D. Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended** – If the Purchase Order amount exceeds \$100,000, Supplier shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). Supplier shall report each violation to the University, and understands that the University will, in turn, report each violation as required to The Federal Emergency Management Agency (FEMA) and the appropriate Environmental Protection Agency Regional Office. Supplier shall include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.
- E. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)** – If the Purchase Order amount is for \$100,000 or more, Supplier (and, if required, any sub-contractors) shall file the certifications required by this law and related regulations, certifying that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Supplier (and, if required, any sub-contractors) shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.
- F. Debarment and Suspension (E.O.s 12549 and 12689)** – Supplier represents and warrants that neither it (nor any other person or entity affiliated with Supplier and for whom the standing under these laws is imputed to Supplier) is listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Non- procurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. The Supplier shall ensure that any of its subcontractors under this contract are not listed on the Excluded Parties List System.
- G. Records Access** – University, the Federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Supplier which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.
- H. Energy Policy and Conservation** – Supplier will comply with the Energy Policy and Conservation Act (P.L. 94-163; 42 U.S.C. 6201-6422), and the provisions of the state Energy Conservation Plan adopted pursuant thereto.
- I. Procurement of Recovered Materials** – In the performance of the contract, Supplier shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired (1) Competitively within a timeframe providing for compliance with the contract performance schedule; (2) Meeting contract performance requirements; or (3) At a reasonable price. Supplier will comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and the provisions of the state Energy Conservation Plan adopted pursuant thereto.
- J. Waste Disposal Act** – Supplier shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource

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Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

- K. Appropriation.** (In accordance with 2 CFR App. II to Pt. 200, this provision applies to contracts in excess of \$10,000.) The performance of the University of any of its obligations under a contract utilizing federal or state funds shall be subject to and contingent upon the availability of funds appropriated by federal or state government or otherwise lawfully expendable for the purpose of the contract for the current and future periods. University shall provide notice to the Supplier of the non-availability of such funds and the intent to terminate the contract when University has such knowledge. Upon receipt of such notice by Supplier, Supplier shall be entitled to payment only for those services performed prior to the date notice is received or for items procured pursuant to the contract prior to date of notice and that cannot be cancelled. The determination of whether funds are available shall be made in the sole discretion of the University.
- L. Termination.** (In accordance with 2 CFR App. II to Pt. 200, this provision applies to contracts in excess of \$10,000.) Unless otherwise negotiated in a written agreement signed by both parties, University shall have the right to terminate a contract for convenience with 30 days written notice. University shall have the right to terminate a contract for cause immediately. Upon receipt of such notice by Supplier, Supplier shall be entitled to payment only for those services performed to the date notice is received or effective.

CONSTRUCTION AND/OR REPAIR:

In addition to the above provisions, the following provisions shall apply in relation to contracts or Purchase Orders for construction or repair:

- A. Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c)** – (Applies to contracts or purchase orders in excess of \$2000 for construction or repair). Supplier shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that Supplier is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. Supplier shall include language as to this obligation in any subcontracts.. A breach of this may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.
- B. Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7) (projects in excess of \$2,000.00)** – If required by the Federal program legislation, Supplier covenants and agrees that all laborers and mechanics employed by Supplier and its subcontractors on this project will be paid in compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, Supplier is required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, Supplier is required to pay wages not less than once a week.
- C. Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333)** – (Applies to purchase orders in excess of \$2000 for construction projects and purchase orders in excess of \$2500 for other contracts that involve the employment of mechanics or laborers). Supplier shall comply with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, Supplier shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. Supplier shall include language as to this obligation in any subcontracts, and ensure that its subcontractors include in any lower tier subcontracts.
- D. Domestic Preferences for Procurements.** As appropriate and to the extent consistent with law, the Supplier should, to the greatest extent practicable when using federal funds, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards, including all contracts and purchase orders for work or products for this award. (2 CFR 200.322).

ANY PROVISION REQUIRED TO BE IN THE CONTRACT OR PURCHASE ORDER UNDER APPENDIX II TO THE UNIFORM RULES (CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS UNDER 2 C.F.R. § 200.326 AND 2 C.F.R. PART 200, AND WHICH ARE NOT OUTLINED ABOVE, ARE HEREIN INCLUDED IN THIS ADDENDUM BY THIS REFERNECE.

IN THE EVENT OF SUPPLIER'S NONCOMPLIANCE WITH THE CLAUSES OF THIS CONTRACT OR PURCHASE ORDER OR WITH ANY OF THE SAID RULES, REGULATIONS, OR ORDERS, THE CONTRACT/PURCHASE ORDER MAY BE CANCELED, TERMINATED, OR SUSPENDED BY UNIVERSITY IN WHOLE OR IN PART.

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ADDENDUM FOR PROCUREMENT SUBCONTRACTS AND PURCHASE ORDERS
FOR COMMERCIAL PRODUCTS AND SERVICES

The following clauses apply to Contracts or Purchase Orders for “commercial products and commercial services,” defined at FAR 52.202-1. In general, a commercial product is a product, other than real property, that is customarily used and sold, leased, or licensed to the general public or non-governmental entities for other than governmental purposes. Commercial services are generally installation, maintenance, repair, training and other services for support of a commercial product.

SUBCONTRACTS FOR COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES (NOV 2023)

(Authority: 48 CFR 52.244-611)

(a) *Definitions.* As used in this clause—

Commercial product, commercial service and commercially available off-the-shelf item have the meanings contained in Federal Acquisition Regulation (FAR) [2.101](#).

Subcontract includes a transfer of commercial products or commercial services between divisions, subsidiaries, or affiliates of the Supplier 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 products, commercial services, or non-developmental items as components of items to be supplied under this contract.

(c) The Contractor shall insert the following clauses in subcontracts for commercial products or commercial services:

(i) [52.203-13](#), Contractor Code of Business Ethics and Conduct (NOV 2021) ([41 U.S.C. 3509](#)), if the subcontract exceeds the threshold specified in FAR [3.1004\(a\)](#) on the date of subcontract award, 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) [52.203-17](#), Contractor Employee Whistleblower Rights (NOV 2023) ([41 U.S.C. 4712](#)); this clause does not apply to contracts of DoD, NASA, the Coast Guard, or applicable elements of the intelligence community—see FAR [3.900\(a\)](#).

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

(v) [52.204-21](#), Basic Safeguarding of Covered Contractor Information Systems (NOV 2021), 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](#).

(vi) [52.204-23](#), Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (NOV 2021) (Section 1634 of Pub. L. 115-91).

(vii) [52.204-25](#), Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (NOV 2021) (Section 889(a)(1)(A) of Pub. L. 115-232).

(viii) [52.204-27](#), Prohibition on a ByteDance Covered Application (JUN 2023) (Section 102 of Division R of Pub. L. 117-328).

(ix) [52.219-8](#), Utilization of Small Business Concerns (SEP 2023) ([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 the applicable threshold specified in FAR [19.702\(a\)](#) on the date of subcontract award, the subcontractor must include [52.219-8](#) in lower tier subcontracts that offer subcontracting opportunities.

(x) [52.222-21](#), Prohibition of Segregated Facilities (APR 2015).

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

(xii) [52.222-35](#), Equal Opportunity for Veterans (JUN 2020) ([38 U.S.C.4212\(a\)](#));

(xiii) [52.222-36](#), Equal Opportunity for Workers with Disabilities (JUN 2020)([29 U.S.C.793](#)).

(xiv) [52.222-37](#), Employment Reports on Veterans (JUN 2020) ([38 U.S.C.4212](#)).

(xv) [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](#).

(xvi) (A) [52.222-50](#), Combating Trafficking in Persons (NOV 2021) ([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).

(xvii) [52.222-55](#), Minimum Wages for Contractor Workers under Executive Order 14026 (JAN 2022), if flow down is required in accordance with paragraph (k) of FAR clause [52.222-55](#).

(xviii) [52.222-62](#), Paid Sick Leave Under Executive Order 13706 (JAN 2022) (E.O. 13706), if flow down is required in accordance with paragraph (m) of FAR clause [52.222-62](#).

(xix) (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).

(xx) [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. Subtitle A, Part V, Subpart G Note).

(xxi) [52.232-40](#), Providing Accelerated Payments to Small Business Subcontractors (MAR 2023) , if flow down is required in accordance with paragraph (c) of FAR clause [52.232-40](#).

(xxii) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (NOV 2021) ([46 U.S.C. 55305](#) 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 products or commercial services 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.