



SUBCONTRACT # [INSERT Subcontract #]  
UNDER  
USAID/DAI PRIME CONTRACT  
No.

“[INSERT Project Name]”

Activity Title: [INSERT Activity title, and possibly activity # if applicable]

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**Contractor:** [DAI Global, LLC (DAI)]

**Subcontractor:** [INSERT subcontractor’s name]  
**Subcontractor’s DUNS #:** [INSERT DUNS number, if applicable.]  
**Period of Performance:** [INSERT starting and ending date of performance, DO NOT include defects and liabilities period, only technical performance period.]

**Type of Subcontract:** Fixed Unit Price  
**Total Subcontract Price:** USD \$ [INSERT total subcontract value, excluding any contingencies or provisional sums]  
**Provisional Sums:** USD \$ [INSERT, optional, only if provisional sums were identified, otherwise delete. This amount should not be included in the obligated value]  
**Current Total Obligation:** USD\$ [INSERT, total maximum obligation]

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Each party represents that it has read this entire subcontract and agrees to perform in accordance with the terms and conditions contained herein. Each signatory to this subcontract warrants by affixing his or her signature below that he or she is duly authorized to bind the party whom such signatory represents.

By signing this Subcontract the Subcontractor certifies (1) that neither it nor its principals are presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any United States Federal agency; and (2) that it is in compliance with Article 14.7 (Anti-lobbying).

**On Behalf of:/ Від імені:**  
DAI Global, LLC

**On Behalf of:/ Від імені:**  
Subcontractor’s Organization/

**Signed:/ Підпис:** \_\_\_\_\_

**Signed:/ Підпис:** \_\_\_\_\_

**Name:/ Ім’я:**

**Name:/ Ім’я:**

**Title:/ Посада:**

**Title:/ Посада:**

**Date:/ Дата:** \_\_\_\_\_

**Date:/ Дата:** \_\_\_\_\_

**Signed:/ Підпис:** \_\_\_\_\_

**Name:/ Ім'я:**

**Title:/ Посада:**

**Date:/ Дата:** \_\_\_\_\_

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# 1. CONDITIONS OF CONTRACT

## 1.1. CONTRACT DATA

- 1) The Funding Agency is
- 2) The Contractor is
- 3) DAI's point of contact is The Chief of Party (COP)
- 4) The Subcontract Administrator for DAI is designed as follows:
- 5) The Address of DAI is
- 6) E-mail:
  
- 7) The Activity Title is [INSERT: the name of the subproject, such as "Rehabilitation of XXX"]
- 8) The Technical Representatives are the Engineers and the Engineer's Representatives, as follows:
  - Engineering Team Leader:
  - 
  - Project Engineer:
  
  - [INSERT: List the names, and titles, of the Site Inspectors, who have delegated authority from the Project Engineer to represent him/her technically on site. See Work Instruction
- 9) The Subcontractor's authorized subcontract administrators, who are authorized to bind the Subcontractor are as follows:
  - a) [INSERT, the subcontractor's names and titles of those people they have authorized to bind their company to execute this subcontract, and any modifications thereof]
- 10) The Currency is the United States Dollar.
- 11) The Subcontract Commencement Date is the signature date of the subcontract agreement.
- 12) The Site Possession Date is the signature date of the subcontract agreement.
- 13) The Retention Period for Defects Liability is 180 days.
- 14) The Subcontract is **not** subject to Price Adjustments for wage, material and/or equipment escalation without a written subcontract modification, modifying the unit prices.
- 15) The Subcontractor shall conform to all requirements under the Ukrainian Law on Labor Protection, DBN A.3.2-2-2009 "Occupational Safety and Industrial Safety in Construction", NAPB A.01.001-2014 Fire Safety Rules and any other licensing and permitting as applicable to this activity in in addition to those required by Section 7 of this subcontract agreement.
- 16) A Mobilization Payment of up to a maximum of 10% of the subcontract Price will be paid to the Subcontractor upon complete and satisfactory receipt of deliverables outlined in Section 8 of this Subcontract Agreement.
- 17) A Bank Letter of Guarantee (BLG) required, in a form of security acceptable to the DAI to the value of 10% of the Subcontract Agreement, as outlined in the terms and conditions herein.

- 18) Liquidated damages shall be applied, as defined in the terms and conditions herein in Section 11. The maximum value of liquidated damages is 10% of the total value of the subcontract. Assessment for Liquidated Damages shall begin after 15 days of inexcusable delays.
- 19) For non-performance or improper performance of obligations under this Subcontract, the Subcontractor shall pay penalties, as well as reimburse the Contractor for losses (expenses made by the other party, loss or damage of construction object, lost income) in an amount not covered by Liquidated damages, in accordance with the procedure established by the law.
- 20) The Subcontractor shall maintain the following amounts of insurance as per Section 12 of this Subcontract Agreement.
- a) Employer's liability insurance.
  - b) Public liability insurance (Agreement of voluntary insurance of construction and installation risks and liability insurance during construction and installation works).
  - c) Defense Based Act (DBA) Insurance is not required.
- 21) The Subcontractor's key personnel shall include the following:  
INSERT: the Names and Titles of key personnel, as stipulated by the solicitation documents. Typically will include a Project Manager, Site Supervisor and any technical specialists unique to the type of subproject:
- Team Lead: First and Second Name
  - Site Engineer (Foreman): First and Second Name
  - Construction Safety Engineer: First and Second Name
- 22) The Subcontractor's key equipment shall include the following:  
INSERT: the type, size, and quantity of all key equipment, as stipulated by the solicitation documents, if any.
- Equipment type, size, and quantity
  - Equipment type, size, and quantity

These Contract Data are further defined in the terms and conditions below, and have been read and fully understood by the Subcontractor, as indicated by the signature affixed above.

This is a Subcontract issued under a United States Federal Government contract. The Subcontractor agrees to comply with all statutes and regulations, including the Federal Acquisition Regulations, applicable to the Contractor's prime contract with the Funding Agency.

Unless set forth herein, the Subcontractor agrees that: (1) the Subcontractor shall perform all acts necessary to assist and allow the Contractor to comply with all obligations under the ERA Prime Contract, including the clauses and provisions incorporated herein by reference; (2) the Subcontractor will refrain from any act that would cause the Subcontractor or the Contractor to be in violation of the ERA Prime Contract, any of the clauses incorporated herein by reference, or any other applicable law or regulation; (3) any provisions or obligations required by the ERA Prime Contract are deemed to be included herein; (4) the Subcontractor shall perform its obligations under the Subcontract in compliance with the clauses incorporated herein by reference, as well as any other provisions of applicable law or regulation.

## 2. GENERAL CONDITIONS

### 2.1. Definitions

- **Architect and Engineer:** also referred to as Design Architect or Engineer means the individual or organization who furnished the design, which includes but not limited to the Drawings and Specifications,
- **The Contractor** means **DAI Global, LLC.** (DAI) of, a corporation organized and existing under the laws of the State of Delaware, with its headquarters office located at 7600 Wisconsin Avenue, Suite 200, Bethesda, MD 20814 (hereinafter referred to as “Contractor” or “DAI”), with local representative as stated in the Contract Data.
- **Commencement Date** is the date provided in the Contract Data of the Subcontract for the intended start of the work.
- **Drawings or Drawings for Construction** are the graphical or pictorial portions of the subcontract agreement showing the design, location and dimensions of the work, generally including plans, elevations, sections, details, schedules and diagrams.
- **Funding Agency** means the organization, entity, or persons who have entered into a contract or agreement with DAI to achieve a development objective. DAI is responsible to manage the funding provided by the Funding Agency. The Funding Agency is provided in the Contract Data.
- **Engineer, or Engineer’s Representative,** means the person or organization whose services have been engaged by DAI to technically monitor and administer the Subcontract as provided therein, as will be notified in writing to the Subcontractor or stated in the Contract Data of the Subcontract.
- **Modification** means a change to the Subcontract Agreement terms
- **Obligation Value** means the sum agreed in the subcontract as the maximum amount of funding available towards the subcontract value. The Obligation Value may be increased to the total subcontract value as funding from the Funding Agency becomes available, or the subcontractor continues to perform satisfactorily.
- **Owner** means the individual or organization that will own, use and be responsible for operations and maintenance of the completed Work.
- **Period of Performance** is the period stated in the Contract Data of this Subcontract.
- **Site** means the land and other places on, under, in or through which the Work or Temporary Work are to be constructed.
- **Subcontract Agreement** means the written agreement and any Appendices or Attachments between the Contractor (DAI) and the Subcontractor, to which these Conditions are annexed, and includes any written modifications signed by both parties. Unless specifically stated in the agreement, the Subcontract Agreement does not include the advertisement or initiation to bid, instructions to bidders, sample formats or other information furnished by the Owner in anticipation of receive bids or proposals, the Subcontractor’s bid or proposal, or portions of any addenda related to bidding requirements.
- **Subcontractor** means the person or corporate body whose bid to carry out the Work has been accepted by the Contractor who, in this case, is DAI Global, LLC (DAI).
- **Subcontract Price** means the total price agreed in the Subcontract as payable to the Subcontractor for the execution and completion of the Work and for remedying of any defects therein in accordance with the Subcontract. This is calculated by multiplying the quantities of work by the unit price for each work item.
- **Subcontracts Administrators** are the only authorized individuals designated by DAI as authorized to bind DAI and Subcontractor contractually. These individuals are the only authorized individuals who may authorize funding, change orders, subcontract modifications, or be a signatory to the Subcontract Agreement. A list of the Subcontract Administrators can be found in the Contract Data.
- **Subcontract Documents** are those documents that form the Agreement between DAI, the Contractor, and the Subcontractor. These documents consist of the Conditions of Contract, all clauses outlined in this document, Special Provisions, General Provisions, and all Appendices and documents incorporated by reference or attachment.



- **Submittals** are those documents or samples that are submitted for approval to demonstrate the way the Subcontractor proposed to conform to the information given and the design concept expressed in the Drawings for Construction and Specifications. Submittals include, but are not limited to, Shop Drawings, product data sheets, and material or application samples.
- **Technical Specifications or Specifications** are that portion of the Subcontract Agreement consisting of the written requirements for materials, equipment, systems, standards, and workmanship for the work, and performance of related services.
- **Temporary Work** shall include items to be constructed which are not intended to be permanent part of the Work.
- **Unit Price** Unit Prices shall include, but not be limited to, furnishing of all labor, supervision, transportation, materials, tools, equipment, quality control, facilities, crews, housing, meals, repair parts, fuel, loading and offloading, handling, maintenance, testing, security, waste removal, taxes, import duties, insurance, overhead, profit, and other elements required to perform the work units defined in the Scope of Work and the Bill of Quantities.
- **Work or Scope of Work** means the Work defined in the to be executed and completed under the Subcontract, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Subcontractor to fulfill the Subcontractor's obligations. The Work may constitute the whole or part of the Project.

## 2.2. The Subcontract

The Subcontract Agreement represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Subcontract Agreement may be amended or modified only by a modification. The Subcontract Agreement shall not be construed to create a contractual relationship of any kind (1) between the Subcontractor and the Architect or Engineer hired for the design or supervision of the Work, (2) between the Owner and the Subcontractor or any of his or her subcontractors, (3) between the Owner and the Design Architect or Engineer, (4) between any persons and entities other than DAI and the Subcontractor, or (5) between the Funding Agency and the Subcontractor.

The Design Architect or Engineer shall, however, be entitled to performance and enforcement of obligations under the Subcontract Agreement intended to facilitate the performance of the Design Architect or Engineer's duties.

## 2.3. Documents and Precedence

The documents listed below, together with any modifications issued under this Subcontract Agreement, constitute the Subcontract Documents of this Agreement. For the purposes of establishing obligations and the resolution of ambiguities in the Subcontract Documents, the following order of precedence shall prevail:

- (1) Subcontract Agreement and Federal Acquisition Regulations as referenced in Appendices A and B
- (2) Appendix C, Scope of Work
- (3) Attachment H.9., Technical Specifications
- (4) Appendix E, Drawings for Construction
- (3) Appendix F, Schedule of Deliverables and Payment Schedule
- (4) Appendix G, Priced Bill of Quantities

## 2.4. Specifications and Drawings for Construction

*(SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION (FEB 1997) ALTERNATE I (APR 1984), 52.236-21)*

- (1) The Subcontractor shall keep on the Site a copy of the Drawings and Specifications and shall at all times give the Engineer or Engineer's Representative access thereto. Additionally, the subcontractor will have at site photographs for at least past seven days; the seven days are to include holidays or other non-working days. Anything mentioned in the specifications and not shown on the Drawings or shown on the Drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between Drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the Drawings, or in the specifications, the matter shall be promptly submitted to Engineer, who shall promptly make a determination in writing. Any adjustment by the Subcontractor without such a determination shall be at its own risk and expense. The Engineer shall furnish from time to time such detailed Drawings and other information as considered necessary, unless otherwise provided.
- (2) Wherever in the specifications or upon the Drawings the words "directed," "required," "ordered," "designated," "prescribed," or words of like import are used, it shall be understood that the "direction," "requirement," "order," "designation," or "prescription," of the Project Manager is intended and similarly the words "approved," "acceptable," "satisfactory," or words of like import shall mean "approved by," or "acceptable to," or "satisfactory to" the Engineer, unless otherwise expressly stated.
- (3) Where "as shown," "as indicated," "as detailed," or words of similar import are used, it shall be understood that the reference is made to the Drawings accompanying this Subcontract Agreement unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place," that is "furnished and installed."
- (4) Shop Drawings means Drawings, submitted to DAI by the Subcontractor, Subcontractor, or any lower tier Subcontractor pursuant to a construction subcontract, showing in detail (1) the proposed fabrication and assembly of structural elements and (2) the installation (i.e., form, fit, and attachment details) of materials of equipment. It includes Drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Subcontractor to explain in detail specific portions of the Work required by the subcontract. DAI may duplicate, use, and disclose in any manner and for any purpose shop Drawings delivered under this subcontract.
- (5) If this subcontract requires shop Drawings, the Subcontractor shall coordinate all such Drawings, and review them for accuracy, completeness, and compliance with subcontract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop Drawings submitted to the Engineer without evidence of the Subcontractor's approval may be returned for resubmission. The Engineer will indicate an approval or disapproval of the shop Drawings and if not approved as submitted shall indicate DAI's reasons therefore. Any Work done before such approval shall be at the Subcontractor's risk. Approval by the Engineer shall not relieve the Subcontractor from responsibility for any errors or omissions in such Drawings, nor from responsibility for complying with the requirements of this subcontract, except with respect to variations described and approved in accordance with (f) below.
- (6) If shop Drawings show variations from the subcontract requirements, the Subcontractor shall describe such variations in writing, separate from the Drawings, at the time of submission.
- (7) The Subcontractor shall submit to the Engineer for approval four copies (unless otherwise indicated) of all shop Drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop Drawings, will be retained by the Engineer and one set will be returned to the Subcontractor. Upon completing the Work under this subcontract, the Subcontractor shall furnish a complete set of all Shop Drawings as finally approved. These Drawings shall show all changes and revisions made up to the time the equipment is completed and accepted.

The terms "approved by," "acceptable to," or "satisfactory to" the Engineer indicate a general evaluation for compliance with the requirements of and information in the subcontract, including Appendices, and for conformance with the design concept; however, the use of these terms do not relieve the Subcontractor of any responsibility to supervise or direct the performance of the Work, nor

do they assign any duty or authority to the Engineer to supervise or direct the performance of the Work.

The organization of the Specifications into divisions, sections and articles, and arrangements of the Drawings shall not control the Subcontractor in dividing the Work among subcontractors nor in establishing the extent of the Work to be performed by a trade.

The Design Architect or Engineer shall be deemed the authors and owners of their respective Construction Drawings and Specifications, and will retain all common law, statutory or other reserved rights, including copyrights. The Subcontractor and his or her subcontractor shall not own or claim a copyright in the Specifications or Drawings. Submittal or distribution to meet official regulatory or Funding Agency requirements or for other purposes in connection with this project is not to be construed as publication in derogation of the design Architect or Engineer's reserved rights. The Subcontractor may not use the Drawings or Specifications on other projects without the specific written consent of the Owner and the Design Architect or Engineer.

The Subcontractor shall maintain a full set of the Drawings, Specifications, Addenda, Change Orders, and subcontract modifications, in good order, and marked currently to indicate field changes and selection made during construction. The Subcontractor shall also maintain approved Shop Drawings, Product Data, and samples on site, as required as Submittals. These shall be available at all times to the Contractor or the Funding Agency.

The Subcontractor shall perform no portion of the Work for which the Drawings or Specifications require submittals, until the respective submittal has been approved by the Engineer. Review and approval of these submittals by the Engineer is not conducted for the purpose of determining the accuracy or completeness of other details such as the dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remains the responsibility of the Subcontractor.

## **2.5. Interpretation**

In interpreting the conditions of subcontract, headings and cross-cross references between clauses have no significance. Words have their normal meaning under the language of the Subcontract Agreement unless otherwise specifically defined.

## **2.6. Language Requirement**

All designs, work plans, reports and other deliverables required by the Subcontract Agreement shall be provided in English and Ukrainian. The Subcontract Agreement is available in two languages - English and Ukrainian. If there are differences in the language interpretation of the text of the Subcontract, the English version shall prevail.

## **2.7. Communications**

The communications between parties which are referred to in this Subcontract Agreement are fully effective only when confirmed in writing. A notice is effective only when it is received. All communications, including email communications shall be in the English and Ukrainian languages. "Written" or "in writing" means hand-written, type-written, printed or electronically made, and resulting in a permanent record.

All communications shall be addressed to the DAI Chief of Party. A copy may be provided to the Project Engineer or Subcontract Administrators.

Whenever the Subcontract Agreement requires giving or issuing approvals, certificates, consents, requests for change orders, modifications, these communications shall be in writing and delivered by hand or sent by courier, or transmitted using any of the agreed systems of electronic transmission, i.e., via email. Approvals, certificates, consents, and modifications shall not be unreasonably withheld or delayed.

All written communications shall be entitled with the Project Title, as outlined in the Contract Data.

### **3. TYPE OF SUBCONTRACT**

#### **3.1. Fixed Unit Price Subcontract**

In consideration for undertaking this Work, the Contractor shall pay the Subcontractor for the Work satisfactorily performed and approved calculated by multiplying the actual completed quantities, as certified by DAI's Engineer by the fixed unit price stated in Appendix G, Priced Bill of Quantities. The total Subcontract Value is stated in the Contract Data and total payments to the Subcontractor shall not exceed the Subcontract Price and current obligation/committed amount without a written modification to the Subcontract.

The subcontractor shall bear the financial responsibility for any fines, fees, penalties, or corrective costs that result as a consequence of the subcontractor's failure to meet the national, regional, local, or other city regulations that results in penalties or fines. Any fines, fees, penalties, or corrective costs that are not paid by the Subcontractor directly, shall be deducted from the final Subcontract Price.

#### **3.2. Unit Prices**

Unit Prices shall include, but not be limited to, furnishing of all labor, supervision, transportation, materials, tools, equipment, quality control, facilities, crews, housing, meals, repair parts, fuel, loading and offloading, handling, maintenance, testing, security, waste removal, taxes, import duties, insurance, overhead, profit, and other elements required to perform the work units defined in the Scope of Work and the Bill of Quantities.

This Subcontract Agreement is not subject to unit price adjustment. The Unit Prices quoted in the Bill of Quantities shall be firm and fixed and not subject to adjustment for the entire period of execution, completion, remedying any parts of the work and until handing over of the work. No revision to prices or any escalation shall be allowed on account of any increase in prices of materials, labor, plant, equipment and overheads, etc. or any other statutory increase during the entire contract period or extended contract period.

Any modifications to unit prices shall be done strictly based on an adequately justifiable and approved Subcontract Agreement modification, approved by the Project Engineer, Chief of Party, and signed by an authorized Subcontract Administrator, and done in compliance with the terms and conditions for a Change Order stated below. The final decision regarding the sufficiency of the evidence is entirely the right of DAI. DAI will not adjust the Subcontract Price due to fluctuations in currency exchange rates, or due to taxes and duties imposed.

#### **3.3. Bill of Quantities**

The quantities shown in the Bill of Quantities are estimated quantities and are not to be taken as a guarantee that the quantities will be carried out in their entirety or that they will not be exceeded.

The Bill of Quantities is used to calculate the total Subcontract Price. The Subcontractor is paid based on the actual quantity of work completed.

#### **3.4. Adjustments to Quantities**

The quantities of individual work items may be adjusted based on the actual work carried out but in no circumstances shall the total amount for payment exceed the Subcontract Price without a written Modification to the Subcontract. Modifications that would exceed ten percent (10%) of an individual line item or that would result in changes that would exceed the Subcontract Price also require the written approval of the DAI Chief of Party and a formal Subcontract Modification. DAI will not adjust the Subcontract Price due to fluctuations in currency exchange rates, changes in material or labor unit costs, or due to taxes and duties.

## **4. THE WORK REQUIREMENTS**

### **4.1. The Work Requirements**

The Subcontractor shall, during the period specified in the Subcontract, and within the Subcontract Price set forth, execute, and complete all the Work. The Work under this Subcontract Agreement shall entail but not be limited to the Scope of Work described in Appendix C.

The Work shall be carried out in a diligent and professional manner utilizing duly qualified personnel. No pleas of ignorance or negligence on the part of the Subcontractor in obtaining clarification shall relieve them of his or her full responsibility in carrying out the Work.

The Subcontractor shall not be relieved of obligations to perform the Work in accordance with the Subcontract Agreement either by the activities or duties of the design Architect or Engineer in the administration or supervision of the Subcontract, or by tests, inspections or approvals required or performed by persons or entities other than the Subcontractor.

By executing this Subcontract Agreement, the Subcontractor represents and confirms that the Subcontractor has visited the site, has become familiar with all local conditions under which the Work is to be performed, and has documented in writing any questions, observations, or concerns about the site conditions prior to the execution of this subcontract and its requirements, and has considered all questions, observations and concerns in the Subcontract Price.

## **5. PRICING AND PAYMENTS**

### **5.1. Mobilization Payment**

The Subcontractor shall be paid an amount not to exceed the designated percentage of the Subcontract as stated in the Contract Data, to enable him or her to mobilize and start the Work, once the deliverables as outlined in Section 8 have been received, are acceptable and complete.

The Subcontractor is to use the mobilization payment for key equipment, key personnel and installation expenses required specifically for mobilizing to the work site.

### **5.2. Progress Payments**

Progress payments shall be made on the basis of the quantity of Work satisfactorily performed, as proposed by the Subcontractor's bid, negotiated, and agreed to, as per Appendix G.

No payments will be made to the Subcontractor for materials on site. Any scrap or unused raw materials are not considered in the actual completed quantity calculations.

### **5.3. Measurement of Work**

The purpose of measuring is to ascertain the work satisfactorily executed by the Subcontractor and therefore determine the amount of the monthly progress payments.

Unless otherwise mentioned in the Bill of Quantities the measurements of works shall be done as specified in the Drawings and Technical Specification.

The Engineer, or Engineer's Representative, shall only measure work satisfactorily executed or which has been certified as complying with quality standards. The Engineer or Engineer's Representative shall not measure non-conforming work.

The Subcontractor shall submit to the Engineer, or Engineer's Representative, statements of the estimated quantities and corresponding values of completed work for the period in formats approved by the Contractor. The Engineer shall inspect and certify these quantities of completed work.

The Subcontractor or the Subcontractor's authorized representative who shall forthwith attend or send a qualified person to assist the Engineer, or Engineer's Representative, in making such measurement and shall furnish all particulars required by either of them. Should the Subcontractor not attend or neglect to send such agent, or if there is any disagreement in the measurement, the measurement made by the Engineer, or the Engineer's Representative, approved by him or her shall be accepted as accurate.

#### **5.4. Retention Payment**

Ten percent (10%) of all approved progress payment amounts, shall be withheld from each progress payment as a retention amount. 100% of the retention shall be released after the completion of the Defects and Liabilities period, and all requests for defects and liabilities repairs or replacements have been satisfactorily resolved, as mutually agreed by DAI and the Subcontractor.

Any uncompensated liquidated damages, if applicable, for inexcusable delays (as defined in Section 11) in the Subcontractor's performance will be deducted from the final payment.

#### **5.5. Change Orders and Subcontract Modifications**

A request for a time or price (both total price and unit prices) Subcontract Modification is called a Potential Change Order until both parties agree upon the reasonable change(s) and a change order is approved by a Subcontract Administrator or until the potential change order is rejected. Approved change orders become effective subcontract modifications and shall be subject to all subcontract terms and conditions herein. Verbal or written instructions provided by the Engineer, the Engineer's Representative, the Owner, or client, do not constitute modifications, only modifications to the subcontract, signed by a Subcontracts Administrator, constitute modifications.

Change orders shall not be approved for situations when the Subcontractor failed to price the work adequately, when actual construction costs are expected to exceed the fixed price, when the Subcontractor is unable to complete the work per the contract conditions or within the Period of Performance, or other items for which the construction subcontractor is contractually responsible.

Requests for Change Orders shall be submitted in writing, entitled "Notification of Potential Change Order," and shall include a detailed description, justification, supporting evidence and documents, impact on period of performance, and the proposed price of the potential change order conditions. See Attachment H.11. Notification of Potential Change Order.

The Subcontractor shall submit a Notification of Potential Change Order within a maximum of 20 days of the discovery of Differing Site Conditions or the receipt of instructions from DAI. Failure to notify DAI within these 20 days waives the right of the Subcontractor to be compensated for this work.

The Subcontractor shall notify DAI in writing within 20 days of discovering defective contract documents and within 10 days of incurring costs as a result of defective contract documents. Failure to notify DAI within these time periods waives the right of the Subcontractor to be compensated for this work.

The Contractor may prepare and issue Change Orders or Construction Directives and may authorize minor changes in the work, which do not involve adjustments to the Fixed Unit Price or Period of Performance and are consistent with the intent of the Drawings and Specifications.

#### **5.6. Claims**

If the Subcontractor considers himself or herself to be entitled to any additional payment, under any Clause of this Subcontract Agreement or otherwise in conjunction with this Subcontract, as a matter of dispute or controversy (as outlined in Section 12 of this subcontract), and the Subcontractor has already received a response to a Notification of Potential Change Order, the Subcontractor shall give written notice to the DAI Chief of Party, with a copy to the Subcontracts Administrator, of its intention to submit a Claim under the Disputes Clause of this Subcontract. The Subcontractor shall describe the event or circumstances giving rise to the Claim. The notice shall be given as soon as is practicable, and

not later than 20 days after the Subcontractor becomes aware, or should be aware, of the event or circumstances.

If the Subcontractor fails to give notice within 20 days, the Period of Performance shall not be extended, nor shall the Subcontractor be entitled to any additional payment, and DAI shall be discharged from all liability in connection with the claim.

The following conditions apply to any and all claims submitted by the Subcontractor:

- (1) The Subcontractor shall submit any other notices required by the Subcontract, and supporting particulars for the Claim, all as relevant to such event or circumstances
- (2) The Subcontractor must keep such contemporary records, evidence, photographs, test results, etc. as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Engineer, or Engineer's Representative. Without admitting DAIs liability, the Engineer may, after receiving notice of a claim, monitor the record-keeping and/or instruct the Subcontractor to keep further contemporary records. The Subcontractor shall permit the Engineer to inspect these records in a timely way and shall (if instructed) submit copies to the Engineer.

## **6. TIME CONTROL**

### **6.1. Calendar Days**

All periods of time referred to in this Subcontract Agreement shall be measured in calendar days, unless otherwise specified.

### **6.2. Period of Performance**

The period of performance for this Subcontract Agreement shall begin on the date on the title page and listed in the Contract Data and continue through to its Final Completion listed on the title page, unless terminated earlier by or extended by DAI as provided herein.

### **6.3. Defects and Liabilities Period**

The Subcontractor shall be held responsible for a Defects and Liabilities period, also known as the Warranty Period, in the amount of time stated in the Contract Data. The "Defects Liabilities Period," begins when the Subcontractor receives the Certificate of Substantial Completion and expires in accordance with the time period specified in the Contract Data. The Defects and Liabilities period extends beyond the Period of Performance listed on the cover page of this Subcontract Agreement. The period is intended to cover any latent defects (workmanship, materials, components, parts, etc., and does not include normal wear and tear) that may be found to exist in the complete Work, and a period during which the Subcontractor is expected to maintain, repair, and remedy defects discovered after Substantial Completion.

### **6.4. Commencement, Prosecution, and Completion of Work**

#### ***(FAR 52.211-10 (APR 1984) Alternate)***

The Subcontractor shall be required to (a) commence the Work under this Subcontract Agreement immediately upon receiving the Notice to Proceed (b) prosecute the Work diligently, and (c) complete the entire Work ready for use not later than total "Period of Performance" after the commencement of the Work. The time stated for completion shall include mobilization period and final clean-up of the premises.

### **6.5. Notice to Proceed**

The completion date is based on the assumption that the Subcontractor will receive the Notice to Proceed shortly, or immediately, after receipt of an executed Subcontract. The Period of Performance

will not be extended by the number of calendar days after the above date that the Subcontractor receives the Notice to Proceed.

The deliverables that are required to be submitted prior to the Notice to Proceed being issued are listed in Appendix F: Schedule of Deliverables and Payment Schedule.

Any work completed prior to receipt of the Notice to Proceed is done at the subcontractor's own risk.

Contact information for the DAI Engineer and Engineer's Representative shall be provided by the DAI COP in the Notice to Proceed. See Attachment H.13. Notice to Proceed, Suspend or Resume Work Order.

## **6.6. Mobilization**

Upon receipt of a Notification to Proceed, the Subcontractor shall mobilize all the required personnel (i.e. experienced project manager, supervisors, project engineers, surveyors, foremen, equipment operators and workmen), (minor) equipment, materials, tools and implements in such numbers as will be required to initiate the Work.

## **6.7. Suspension or Stop Work**

### ***(Subpart 42.13—Suspension of Work, Stop-Work Orders)***

DAI retains the right to issue a Suspension or Stop-Work Order at any time to the Subcontractor for work that is being performed in a grossly unsatisfactory manner, work that is pending a decision by DAI, Owner, or Client, or work methods that are identified as negligent. Suspension or Stop-work orders shall include—

- (1) A description of the work to be suspended;
- (2) Instructions concerning DAI's issuance of further orders for materials or services;
- (3) Guidance to the Subcontractor on action to be taken; and
- (4) Other suggestions.

Promptly after issuing the stop-work order, the Subcontracts Administrator or designated representative shall discuss the stop-work order with the Subcontractor and modify the order, if necessary, in light of the discussion. As soon as feasible after a stop-work order is issued, but before its expiration, the Subcontracts Administrator shall take appropriate action to:

- (1) Terminate the Subcontract Agreement;
- (2) Cancel the stop-work order (any cancellation of a stop-work order shall be subject to the same approvals as were required for its issuance); or
- (3) Extend the period of the stop-work order if it is necessary and if the Subcontractor agrees, issue an extension of the stop-work order through a supplemental order.

See Attachment H.13. Notice to Proceed, Suspend or Resume Work Order.

## **6.8. Schedule of Work**

The Subcontractor shall submit a Schedule of Work showing the general methods, arrangements, order and timing for all the activities in the Work, with specific emphasis on equipment utilization, labor requirements, and production. The schedule shall be submitted in accordance with the timeline outlined in Appendix F, Schedule of Deliverables and Payment Schedule.

Lists of equipment and personnel to be brought on site during and following mobilization are to be given by stage and segment of the Work.



Anticipated quantities of work to be performed each month are to be indicated in the Work Schedule including a bar chart. Technical and management manpower, construction equipment and other resources are to be shown by activity.

If, during the progress of the Work, the quantities of work performed each month fall more than ten (10) percent below those shown in the program, or if the sequence of operations is altered, the Subcontractor shall submit a revised written program within a week of the occurrence.

These schedules shall include the time by which construction Drawings, product data, samples and other submittals required by the Subcontract Agreement will be submitted for approval.

The Subcontractor shall revise such schedules (1) to account for the actual progress of the Work, (2) to reflect approved adjustments in the performance schedule, and (3) as required by the Engineer to achieve coordination with the Work by DAI and any separate subcontractors hired by DAI. The Subcontractor shall submit a schedule which sequences the Work so as to minimize disruption at the job site.

All schedules shall be in the English and Ukrainian languages.

No extension of time shall be allowed due to a delay by DAI in approving such deliverables if the Subcontractor has failed to act promptly and responsively in submitting its deliverables. The Subcontractor shall identify each deliverable as required by the subcontract.

Schedules shall use the metric system of measurement.

Refer to Clause 8.5 Progress Reports for Schedule submittal requirements.

The Engineer's approval of the schedule shall not alter the Subcontractor's obligations to perform within the Period of Performance. The Subcontractor may revise the schedule and submit it to the Engineer again at any time. A revised schedule shall show the effect of Change Orders, where applicable.

## **6.9. Acceptance of Schedule of Work**

The Period of Performance is defined on the Cover Sheet of this Subcontract Agreement. The Subcontractor shall schedule the Work such that it will be fully and adequately completed within that period. When DAI has accepted the Subcontractor's Schedule of Work, it shall be binding upon the Subcontractor. Any acceptance of Subcontractor's Schedule by DAI simply means that the Schedule meets the minimum requirements of the Subcontract Agreement but does not imply DAI's concurrence in the adequacy of the Schedule for any other purpose. The Period of Performance dates are fixed, and are not adjusted based on an updated Schedule of Work. The Period of Performance may only be extended by a written Subcontract Modification signed by authorized Subcontracts Administrators. Acceptance or approval of any schedule or revision thereof by DAI shall not (1) extend the completion date or obligate DAI to do so, (2) constitute acceptance or approval of any delay, or (3) excuse the Subcontractor from or relieve the Subcontractor of its obligation to maintain the progress of the Work and achieve final completion by the established completion date.

## **6.10. Notice of Delay**

If the Subcontractor receives a notice of any change in the Work, or if any other conditions arise which are likely to cause or are actually causing delays which the Subcontractor believes may result in late completion of the Work, the Subcontractor shall notify the Chief of Party, Subcontracts Administrator, and Engineer. The Subcontractor's notice shall state the effect, if any, of such change or other conditions upon the approved schedule, and shall state in what respects, if any, the relevant schedule or the completion date should be revised. The Subcontractor shall give this notice not more than five (5) days after the first event-giving rise to the delay or prospective delay.

## **6.11. Working Hours**

The working hours shall be determined by the Subcontractor but shall be both reasonable and in accordance with the laws of Ukraine. Any hours or days of overtime, weekend, or holiday work shall be an exclusive arrangement of the subcontractor and his or her work force without further obligation to DAI. The Subcontractor shall inform the Engineer or the Engineer's Representative of the proposed working hours prior to the commencement of the Work.

## **6.12. Excusable Delays**

### ***FAR 52.249-10, Default***

The Subcontractor will be allowed time, not money, for excusable delays. Examples of such cases include:

- (1) Acts of God or of the public enemy,
- (2) Acts of the client in either its sovereign or contractual capacity,
- (3) Acts of Government of the host country in its sovereign capacity,
- (4) Fires,
- (5) Floods,
- (6) Strikes,
- (7) Epidemics,
- (8) Quarantine restrictions,
- (9) Freight embargoes, and
- (10) Unusually severe weather.

In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Subcontractor, and the failure to perform. Furthermore, the failure:

- (1) Must be one that the Subcontractor could not have reasonably anticipated and taken adequate measures to protect against,
- (2) Cannot be overcome by reasonable efforts to reschedule the Work, and
- (3) Directly and materially affects the date of final completion of the project.

The Subcontractor shall notify the Engineer, or Engineer's Representative, in writing the reason for the delay at the time of the failure to perform.

## **6.13. Inexcusable Delays**

Any delay in the project execution not explicitly described by Section 6.12 "Excusable Delays" shall be considered an Inexcusable Delay.

# **7. QUALITY CONTROL AND ACCEPTANCE**

## **7.1. Compliance with Design Standards**

The Subcontractor, when/if carrying out design work, shall comply with accepted standards for materials, designs, and methods in the development of Drawings and specifications. At a minimum, all design and work shall conform with those required by the Government of Ukraine. Additional specific design standards applicable to this Subcontract Agreement are stated in Contract Data, if any.

All design work shall be performed by a duly certified and/or licensed engineer.

The Designer of Record, under an agreement with Contractor, ensures the Author's (of the design) supervision during construction. The Author's supervision is carried out by the appropriate person of the Design firm in accordance with Ukrainian legislation throughout the construction period and provides for control over the compliance of construction and installation works to the Specifications, Drawings, and other requirements of this Subcontract Agreement.

The Subcontractor shall perform its duties in accordance with the Resolution of the Cabinet of Ministers of Ukraine “The procedure for Authors and Technical supervision during the construction of an architectural object” during communication with appropriate persons of Author’s supervision. The Subcontractor is responsible for preparing and submitting a Quality Assurance Plan to DAI’s Engineer. The Quality Assurance Plan shall be developed in accordance with the template provided as Appendix H.1. to this Contract.

## **7.2. Quality Assurance**

The Subcontractor is responsible to prepare and submit a Quality Assurance Plan to DAI’s Engineer. This Plan shall describe in specific detail the systematic actions to be taken by the Subcontractor and its team with confidence that components and installations shall be purchased, designed, and constructed in accordance with applicable standards, specifications and Drawings, as specified by subcontract. The schedule shall be submitted in accordance with the timeline outlined in Appendix F, Schedule of Deliverables and Payment Schedule.

The Subcontractor shall institute an appropriate inspection plan set forth in a quality assurance plan. The plan shall include checklists of duties to be carried out, ensuring these duties are carried out by the supervisory staff and senior employees, and carrying out regular inspections to determine whether the various services are being performed according to the Subcontract. The Subcontractor shall photograph construction operations daily. The Subcontractor shall provide copies of the inspection reports and photographs to the Engineer, or ERA’s Construction Supervision Consultant.

The Subcontractor shall correct and improve promptly any shortcomings and substandard conditions noted during inspections. The Subcontractor shall promptly bring any conditions beyond the responsibility of the Subcontractor to the attention of the DAI COP, DAI Engineer, or ERA’s Construction Supervision Consultant, or the Designer of Record.

Independent Construction Site Supervision (CSS) will be provided by ERA to provide site supervision and quality assurance. Construction Site Supervision subcontractor will be required to use the construction document system established by Designers, follow the requirements of Quality Assurance Plan and Quality Construction Plan.

## **7.3. Workmanship and Quality Control**

The Subcontractor is responsible to prepare and submit a Quality Control Plan to DAI’s Engineer. This Plan shall describe in specific detail the systematic actions to be taken by the Subcontractor and its team with confidence that components and installations shall be purchased, designed, and constructed in accordance with applicable standards, specifications, and Drawings, as specified by subcontract. The Schedule shall be submitted in accordance with the timeline outlined in Appendix F, Schedule of Deliverables and Payment Schedule.

The Subcontractor shall institute an appropriate inspection plan set forth in a Quality Control Plan. The plan shall include checklists of duties to be carried out, ensuring these duties are carried out by the supervisory staff and senior employees, and carrying out regular inspections to determine whether the various services are being performed according to the Subcontract. The Subcontractor shall photograph construction operations daily. The Subcontractor shall provide copies of the inspection reports and photographs to the Engineer, or Engineer’s Representative.

The Subcontractor shall correct and improve promptly any shortcomings and substandard conditions noted during inspections. The Subcontractor shall promptly bring any conditions beyond the responsibility of the Subcontractor to the attention of the DAI COP, Engineer, or ERA’s Construction Supervision Consultant, Designer of Record.

The Subcontractor is expected to produce the Work which conforms in quality and accuracy of detail to the technical specifications, Drawings, and standards, and at his or her own expense, is to institute a quality control system and provide experienced managers, engineers, foremen, surveyors, materials technicians and other technical staff, together with all transport, instruments and equipment, to ensure adequate supervision and execution of the Work at all times.

The Subcontractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures for coordinating all portions of the Work under the Subcontract, unless the Drawings or Specifications give other specific instructions concerning these matters. If the Drawings or Specifications give specific instructions concerning construction means, methods, technique, sequences, or procedures, the Subcontractor shall evaluate and mitigate any health and safety implications of these instructions.

The Subcontractor shall ensure materials and workmanship meet the requirements described in the Scope of Work, Drawings, and technical specifications and in accordance with the Engineer's, or the Engineer's Representative, technical instructions, within the Scope of Work, and shall be subjected to such tests as the Engineer, or the Engineer's Representative, may direct at the place of manufacture or fabrication, or on the Site or at all or any of such places. The Subcontractor shall provide such assistance, instruments, machines, labor and materials as are normally required for examining, measuring and testing any work and the quality, weight or quantity of any materials used and shall supply samples of materials before incorporation in the Work for testing as may be selected and required by the Engineer, or Engineer, or ERA's Construction Supervision Consultant, Designer of Record.

The cost of all supervision and process control, including testing, so carried out by the Subcontractor shall be deemed to be included in the subcontract.

Specific quality assurance test requirements are indicated in the Technical Specifications and the Subcontractor should ensure practical attendance and other compliance requirements directed by the Engineer, or Engineer's Representative.

#### **7.4. Inspection by the Engineer**

The Engineer, or the Engineer's Representative, will routinely inspect the services being performed and the supplies furnished to determine whether the Work is being performed in a satisfactory manner, and that all supplies are of acceptable quality and standards. The Subcontractor shall be responsible for any countermeasures or corrective action, within the scope of this subcontract, which may be required by the Engineer, as a result of such inspection.

#### **7.5. Testing**

The Subcontractor shall mobilize the necessary field testing apparatus and equipment complete with standards and procedures for performing the required field test as required in the technical specifications. Imported materials that cannot be tested on sites and are delivered to the site shall bear with them certifications of their suitability to be utilized (i.e. cement, reinforcing steel and etc.). The Engineer shall be furnished with copies of the certification from manufacturers of the classification, strength capacities etc. of these items. Supplied imported materials for which no testing equipment is available for verification shall bear with the supply, a certification from the manufacturer of the quality of the material. If the material does not pass the required standards of quality as described in the Subcontract Agreement, it shall be taken out of the site and not used for the Work. Refer to Attachment H.6. Inspection and Testing Plan.

#### **7.6. Inspection by the Funding Agency**

The designated Funding Agency representative may conduct routine inspections of the work being performed to determine whether the Work is being performed in a satisfactory manner, and that all materials are of an acceptable quality. The Subcontractor agrees to cooperate fully with requests for inspection from the Engineer, or Designer of Record, and/or ERA's Construction Supervision Consultant, or the designated Funding Agency representative.

The Subcontractor shall neither seek nor accept direct instructions from the Funding Agency in connection with the performance of his or her services under this Subcontract, unless issued through an approved Change Order Modification to the Subcontract Agreement.

The Subcontractor shall be responsible for any countermeasures or corrective action, within the scope of this subcontract, which may be required by the COP or Engineer, as a result of such inspection.

## **7.7. Inspection**

The Subcontractor shall maintain and adhere to its Inspection Plan as outlined in its Quality Assurance Plan, Quality Control Plan, Inspection and Testing Plan.

### ***52.246-12 Inspection of Construction (August 1996)***

The Subcontractor shall maintain an adequate inspection system and perform such inspections as will ensure that the Work performed under the Subcontract Agreement conforms to Subcontract requirements. The Subcontractor shall maintain complete inspection records and make them available to DAI and/or the Funding Agency. All work shall be conducted under the general direction of the Chief of Party and is subject to DAI's, representing the Funding Agency, inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.

DAI, and or the Funding Agency, inspections and tests are for the sole benefit of DAI, and or the Funding Agency, and do not:

- (1) Relieve the Subcontractor of responsibility for providing adequate quality control measures;
- (2) Relieve the Subcontractor of responsibility for damage to or loss of the material before acceptance;
- (3) Constitute or imply acceptance; or
- (4) Affect the continuing rights of DAI, or the Funding Agency, after acceptance of the completed work under paragraph (i) of this section.

The presence or absence of a DAI inspector does not relieve the Subcontractor from any subcontract requirement, nor is the inspector authorized to change any term or condition of the specification without the authorized Subcontract Administrator's written authorization.

The Subcontractor shall promptly furnish, at no increase in subcontract price, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by DAI. DAI may charge to the Subcontractor any additional cost of inspection or test when work is not ready at the time specified by the Subcontractor for inspection or test, or when prior rejection makes re-inspection or retest necessary. DAI shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the subcontract. Subcontractor shall schedule all inspections with a reasonable amount of advance notice.

The Subcontractor shall, without charge, replace or correct work found by DAI not to conform to contract requirements, unless in the public interest the Owner consents to accept the work with an appropriate adjustment in contract price. The Subcontractor shall promptly segregate and remove rejected material from the premises.

If the Subcontractor does not promptly replace or correct rejected work, DAI may:

- (1) By subcontract or otherwise, replace or correct the work and charge the cost to the Subcontractor; or
- (2) Terminate for default the Subcontractor's right to proceed.

If, before acceptance of the entire work, DAI decides to examine already completed work by removing it or tearing it out, the Subcontractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of the Subcontractor or its subcontractors, the Subcontractor shall defray the expenses of the

examination and of satisfactory reconstruction. However, if the work is found to meet subcontract requirements, the Subcontracts Administrator shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.

### **7.8. Inspection and Acceptance**

DAI's inspection and acceptance of services, reports and other required deliverables or outputs shall be delivered to DAI's Address as stated in the Contract Data or at any other location where the services are performed and reports and deliverables or outputs are produced or submitted. The Engineer, or Engineer's Representative, have been delegated authority to inspect and accept all services, reports and required deliverables or outputs.

### **7.9. Site Possession**

While the site is within the possession of the Subcontractor, the Subcontractor shall be fully responsible for all security of materials and equipment on site, including those that were present at the time of Site Possession, belonging to, or in the care of, DAI or the Funding Agency, Owner, or others.

The Subcontractor shall be responsible to replace or repair any damage, loss, theft, or abuse of the site while the site is in its possession.

### **7.10. Requests for Information or Clarification**

The Subcontractor shall submit to the Designer of Record or ERA's Construction Supervision Consultant written Requests for Information or Clarification when there is need to confirm the interpretation of a standard, specification, instruction, or note on the construction Drawings or to secure a documented directive or clarification from DAI, the designer, Funding Agency, or Owner, that is needed to continue work.

In some cases, a Request for Information or Clarification raised by the Subcontractor that has been answered by DAI and distributed to all stakeholders may be accepted as a change to the Scope of Work unless further approval is required for price or time extensions associated with the change, which shall be further requested by the Subcontractor through a Request for Potential Change Order.

The Designer of Record shall respond in a timely fashion to the Subcontractor's Requests For Information. Refer to Attachment H.8. Construction Supervision Plan (CSP) to see RFI form.

### **7.11. Environmental Quality Assurance**

The Subcontractor shall adhere to all environmental compliance and mitigation requirements outlined by DAI prior to award of this subcontract, and those determined necessary during the period of performance.

The Subcontractor shall also comply with any and all applicable specifications, standards, or national or local environmental regulations. The Subcontractor shall be responsible for any fines, fees, or penalties associated with failing to comply with environmental laws and regulations.

### **7.12. Differing Site Conditions**

*(Differing Site Conditions, FAR 52.236-2 Apr 1984)*

The Subcontractor shall promptly, and before the conditions are disturbed, give a written notice as per Section 5.5 of this Subcontract Agreement, to DAI of:

- (1) Subsurface or latent physical conditions at the site which differ materially from those indicated in this contract; or

- (2) Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.

The Project Engineer or ERA's Construction Supervision Consultant shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Subcontractor's cost of, or the time required for, performing any part of the work under this subcontract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the Subcontract Agreement modified in writing accordingly.

No request by the Subcontractor for an equitable adjustment to the subcontract under this clause shall be allowed, unless DAI has given the written notice required; provided, that the time prescribed for giving written notice may be extended by DAI.

No request by the Subcontractor for an equitable adjustment to the Subcontract Agreement for differing site conditions shall be allowed if made after final payment under this subcontract.

The Contractor may furnish surveys or studies describing physical characteristics, legal limitations, or utility locations for the site. The Subcontractor shall be entitled to rely on the accuracy of the information contained in the surveys or studies, but shall exercise proper precautions related to the safe and compliance performance of the Work in accordance with the Drawings and Specifications.

If, in the course of the Work, the Subcontractor encounters human remains or recognizes the existence of burial markers, archaeological sites, wetlands or other protected resources not indicated in the Drawings, the Subcontractor shall immediately suspend any operations that would affect them and notify the Contractor, who shall work with government authorities to resume operations. The Subcontractor shall continue with all other operations that do not affect those remains or features.

### **7.13. Examination of Work Before Covering Up**

No work shall be covered up or put out of view with prior approval from Engineer, or ERA's Construction Supervision Consultant, Designer of Records. The Subcontractor shall afford full opportunity of the Engineer, or ERA's Construction Supervision Consultant, Designer of Record, to examine and measure any work which is about to be covered up, or put out of view, before permanent work is placed thereupon. The subcontractor shall give due notice to the ERA's Construction Supervision Consultant, whenever any such work is ready, or about to be ready, for examination. The ERA's Construction Supervision Consultant shall, without unreasonable delay unless he or she considers it unnecessary and advises the Subcontractor accordingly, attend for the purpose of examining and measuring such work or of examining such foundations.

If a portion of the Work is covered up, contrary to the DAI Engineer's request for the Specifications, the Subcontractor must, if requested in writing, uncover the Work for the Engineer's inspection and be replaced at the Subcontractor's own cost, without any request or Claim for an adjustment to the Period of Performance.

### **7.14. Removal of Improper work or materials**

The Chief of Party, Engineer, or Engineer's Representative shall have the authority to issue instructions as necessary for:

- (1) The removal from the site, within such time or times as may be specified in the instruction, of any materials or work, that are not in accordance with the Subcontract;
- (2) The substitution of proper and suitable materials and work; and
- (3) The proper re-execution of any work or materials not in accordance with the Subcontract.

Any costs associated with these instructions, shall be borne at the sole expense of the Subcontractor.

## **7.15. Remedial Work**

When any part of the Work or any equipment or material is found, upon examination by the ERA's Construction Supervision Consultant, Designer of Records, not to conform to requirements, or is at any stage before Final Completion and Acceptance, is damaged, so that it no longer conforms to requirements, the Project Engineer may order its repair or complete removal and replacement, at the Subcontractor's expense.

## **7.16. Substantial Completion**

"Substantial Completion" means the stage in the progress of the Work as determined and certified by the Project Engineer and the DAI COP, on which the Work (or a portion designated by DAI) is sufficiently complete and satisfactory. Substantial completion means that the Work may be used for the purpose for which it is intended, and only minor items remain to be completed or corrected which:

- (1) Do not interfere with the intended utilization of the Work, and
- (2) Can be completed or corrected within the time period required for final completion.

A Substantial Completion inspection shall be held between DAI and Subcontractor, and when possible the Owner, to jointly inspect the Work and to determine whether all equipment, materials, and installation are complete, fully operational, and functioning.

Any equipment, installation, or system that is not fully functioning and operational means that Substantial Completion is not realized.

The "date of substantial completion" means the date determined by the Engineer or COP of which substantial completion of the Work has been achieved. When possible, the "date of substantial completion" shall be confirmed, and signed, by the Owner, through representative attendance at the Substantial Completion Inspection.

All system tests and commissioning must be complete before the Substantial Completion Inspection, and reports from any testing or commissioning inspectors or authorities must be available for the Substantial Completion inspection. Testing of systems shall be based on Technical Specifications.

A Punch List shall be generated at the Substantial Completion inspection, and shall include a list of all incomplete, defective, damaged, or not functioning materials, installation or equipment.

The Subcontractor may request partial demobilization from the site upon Substantial Completion.

Any accrual of liquidated damages shall cease upon Substantial Completion.

The Subcontractor shall submit to DAI, and thus the Owner, any Operations and Maintenance Manuals, materials, or training required under this Subcontract Agreement upon Substantial Completion.

Substantial Completion includes formal hand over of the Work to the Owner, and submittal by the Subcontractor of all documents and other items required upon completion of the Work, including a request for Substantial Completion payment

- 1) Receipt of Final Report;
- 2) Receipt of required product and installation certifications and warranties, Operations and Maintenance manuals, trainings or materials as required;
- 3) Confirmation that all Defects requests by the beneficial occupant or owner have been resolved to the satisfaction of the Engineer.
- 4) As-built Drawings

### **Certificate of Substantial Completion**

When the Chief of Party, via the DAI Engineer Team Leader, and Subcontractor's Construction Supervision Consultant, are satisfied that the Work under the Subcontract Agreement is complete in accordance with Section 7.16 and 7.17, (with the exception of continuing obligations as specifically



excluded), the Chief of Party shall issue to the Subcontractor a Certificate of Substantial Completion. Refer to Attachment H.8. Construction Supervision Plan (CSP).

### **7.17. Punch List**

When any part of the Work or any equipment, material, or installation is found, upon examination by the Engineer during the Substantial Completion Inspection, not to conform to requirements it shall be recorded on a Punch List. This punch list shall only include materials or installations that do not interfere with the intended use or operation by the Owner.

The Subcontractor shall complete all Punch List items within thirty (30) days of the Substantial Completion Inspection Date, and notify the Project Engineer, within thirty (30) days of the Substantial Completion Date, when the Punch List items have been resolved and agreed by the Engineer. The Subcontractor remains responsible for the continuing security of its own assets, labor, and safety and security during the time it takes to complete the Punch List.

Upon completion of all Punch list Items, the Subcontractor shall request, in writing, the Substantial Completion Certificate. However, the Subcontractor remains responsible for any of its own materials, equipment, or personnel on site and shall provide adequate security and protection for these items until fully demobilized.

The Subcontractor remains responsible for the continuing security of its own assets, labor, and safety and security during the time it takes to complete the Punch List.

Failure to include an item on the Punch List does not alter the responsibility of the Subcontractor to complete all Work in accordance with the Subcontract Agreement, technical specifications, and Drawings.

### **7.18. Final Completion and Acceptance**

"Final Completion and Acceptance" means the stage in the progress of the Work as determined by the Project Engineer and COP, and confirmed in writing to the Subcontractor, at which all the Work required under the Subcontract Agreement has been completed in a satisfactory manner, subject to the discovery of defects after final completion, and except for items specifically excluded in the Certificate of Final Acceptance.

The "date of Final Completion and Acceptance" means the date determined by the DAI Engineer and COP when final completion of the Work has been achieved, as indicated by written notice to the Subcontractor.

Final Completion and Acceptance shall be determined through a joint inspection of all of the materials, equipment, and installation.

When possible, the Certificate of Final Completion and Acceptance shall be confirmed by the Owner, through representative attendance at the Final Completion Inspection.

The Subcontractor may request demobilization from the site upon Final Completion. Site Possession ceases upon the date of Final Completion, however, the Subcontractor remains responsible for any of its own materials, equipment, or personnel on site and shall provide adequate security and protection for these items until fully demobilized.

### **7.19. Certificate of Final Completion and Acceptance**

When the COP, via the DAI Engineer Team Leader, or ERA's Construction Supervision Consultant, are satisfied that the Work under the Subcontract Agreement is complete (with the exception of continuing obligations as specifically excluded), the COP shall issue to the Subcontractor a Certificate of Final Acceptance and make final payment, minus retention, upon:

- (1) A final inspection that any discovered defects have been rectified and that the Work is finally complete (subject to the discovery of defects after issuing Substantial Completion Certificate);
- (2) Submittal by the Subcontractor of all documents and other items required upon completion of the Work, including a final request for payment (Request for Final Acceptance).

Refer to Attachment H.8. Construction Supervision Plan (CSP).

## **7.20. Defects and Liabilities**

The Defects and Liabilities period is intended to cover any defects that may be found to exist in the complete Work, including but not limited to latent defects, and is a period during which the Subcontractor is expected to maintain, repair, and remedy defects discovered after Substantial Completion.

The Subcontractor is not responsible to repair or replace items which can be proven to have been damaged by improper use, lost, or stolen by the infrastructure users, visitors, building occupants or maintenance staff, during the Defects and Liability Period.

During the Defects and Liabilities Period, the Subcontractor is responsible to respond to all requests by DAI, Funding Agency, or Owner to repair or replace latent defects discovered during use and operations.

Only upon the completion, repair or replacement of all latent defects shall one hundred percent (100%) of the Retention Money, less any liquidated damages or penalties, be certified by the DAI COP, via DAI Engineer, or ERA Construction Supervision Consultant, for payment to the Subcontractor.

## **8. REPORTS, MEETINGS, AND DELIVERABLES**

### **8.1. Deliverables**

A full schedule of deliverables required under this Subcontract Agreement is provided in Appendix F, Schedule of Deliverables and Payment Schedule.

### **8.2. Preconstruction Conference**

A preconstruction conference will be scheduled at the location and time of the issuance of the Letter of Award.

### **8.3. Site Meetings**

Site Meetings shall be attended monthly by the Subcontractor, the Engineer, and/or the Engineer's Representative, and shall be held throughout the Period of Performance of the Subcontract Agreement. The Engineer, or the Engineer's Representative, will chair the Meetings and keep the minutes, copies of which shall be provided to each party within a timely manner. The following shall be presented by the subcontractor at each meeting, at a minimum:

- (1) Site Inspection and site walk through
- (2) Presentation of work progress
- (3) Procurement update, as applicable
- (4) Labor and equipment schedules
- (5) Review status of submittals: requests for information, variances, alternatives and substitutions
- (6) Upcoming activities planned by the Subcontractor that may require testing

### **8.4. Health and Safety of Persons and Property**

The Subcontractor is responsible to prepare and submit a Health and Safety Plan to DAI, in accordance with the timeline outlined in Appendix F, Schedule of Deliverables and Payment Schedule. This Plan shall describe in specific detail the systematic actions to be taken by the Subcontractor and its team with

confidence that there shall be continuous and adequate provisions for the management of health, safety, and security at the Site. The Health and Safety Plan shall include, at a minimum:

- (1) Acknowledgement and acceptance of the responsibility to manage health and safety of workers, visitors, and all equipment, and materials on site.
- (2) Designation of responsibilities on the construction site and contact numbers.
- (3) Training and education requirements – both routine and in response to an incident.
- (4) Incident procedures and reporting.
- (5) Emergency medical, fire and ambulance contact information and directions.
- (6) Compliance with any health and safety regulations and standards required by the host-country or DAI.
- (7) Communication protocols for notifying and/or sending a copy of all incident reports to the Project Engineer as soon as an incident occurs.

## **8.5. Progress Reports**

The Subcontractor shall submit Progress Reports, at monthly intervals which provide a written status of progress, problems, or updates to the Engineer and the COP. The Progress Report shall at a minimum include the following elements:

- (1) Comparison (bar chart) of work progress against the approved Schedule. Refer to Clause 6.8 Schedule of work;
- (2) Notification of delays;
- (3) Labor and equipment schedules, usage, or problems or concerns;
- (4) Field observations, problems and conflicts;
- (5) Quality control issues or concerns;
- (6) List of completed, current, or upcoming testing;
- (7) Report of health & safety statistics;
- (8) Social or environmental impact issues, workforce concerns, or expectations;
- (9) List of submittals and correspondences provided during the period, and their corresponding status;
- (10) Photographs of work progress, installation, and activities on Site during the period

## **8.6. Final Report**

The Subcontractor shall submit to the Engineer, or Engineer's Representative, a Final Report including bar charts of progress and selected photos along with the final invoice, summing up observations resulting from the inspections, progress, difficulties or irregularities encountered, resolution of problems, measures taken to improve conditions, recommendations, and other matters related to this subcontract.

## **8.7. Environmental Impact Assessment and Reports**

An environmental impact assessment report may be requested that meets the Funding Agency requirements. When requested by DAI, the Subcontractor shall assist DAI as requested in completion of this assessment, and any subsequent environmental reports required to monitor compliance.

# **9. CONTRACTUAL AND TECHNICAL DIRECTION**

## **9.1. Subcontract Administration**

For purposes of this Subcontract Agreement, only the authorized individuals designated as the Subcontractor's administrators are authorized to bind DAI and Subcontractor contractually. A list of those authorized is found in the Contract Data.

For the subcontractor, only the signatory of the Subcontract Agreement is authorized to bind the subcontractor contractually.

## 9.2. Technical Direction

The Chief of Party (COP) is responsible for the overall management and technical direction of all DAI activities in Ukraine, including this activity. The COP's representative, the "Engineer," shall be as specified in the Contract Data.

The Engineer may delegate technical duties and authorities vested in the Engineer to the Engineer's Representative, such as a Site Inspector, and may from time to time revoke such delegation. Such delegation and revocation shall be in writing and copied to DAI and Subcontractor in this Subcontract. Such information shall only take effect after receipt by DAI or Subcontractor.

The COP, and his or her designated representatives, including the Project Engineer, reserves the right to attend any/all meetings, participate in site visits, provide management or technical direction through the Engineer, or Engineer's Representative, and take any other action deemed necessary to manage the performance of the subcontractor.

The Engineer is responsible for providing day-to-day supervision, technical direction, record keeping, performance documentation, and reporting. The Engineer shall carry out all duties specified by the Subcontract.

The term "technical direction" is defined to comprise:

- (1) Supervising the Subcontractor, technically administering the subcontract, certifying measurements, deliverables, and payments to the subcontractor, reviewing Change Order Requests, interpreting the Subcontract Agreement appendices, recommending extensions of time, rejecting or accepting materials used, reviewing all deliverables under the Subcontract Agreement and other duties as may be assigned from time to time by DAI.
- (2) Provision of written directions, within the Scope of the Subcontract, to facilitate completion of the Work;
- (3) Provision of written information to the Subcontractor which assists in the interpretation of Drawings, specifications, or technical portions of the Scope of Work by responding in a timely manner to Requests for Clarification or Information.
- (4) Review and, where required, provide written approval of technical reports, Drawings, specifications, or technical information to be delivered. Technical directions must be in writing, and must be within the Scope of the Work.
- (5) The Engineer, or Engineer's Representative, shall at all times have access to the Work during any stage of the execution or preparation or completion.
- (6) The Engineer shall represent DAI during the whole of the period of constructions under this Subcontract. The Engineer shall advise, report, and consult with DAI on all matters relating to this Subcontract. DAI's instructions or any correspondence of any form to the Subcontractor shall be forwarded through the Engineer. The Engineer shall have authority to act on behalf of DAI only to the extent provided in the Subcontract Documents as they may be amended in writing in accordance with the Subcontract.
- (7) Keep DAI informed of the progress of the Work, based on on-site inspections.
- (8) Certify, verify, and measure Work completed based on photographs, site inspections, or testing results.
- (9) Authorized by designation to take any or all action with respect to the following, except any action specifically prohibited by the terms of this Subcontract:
  - i. Assure that the Subcontractor performs the technical requirements of the Subcontract Agreement in accordance with the Subcontract Agreement terms, conditions, and specifications.

- ii. Perform or cause to be performed, inspections necessary in connection with 1) above and require the Subcontractor to correct all deficiencies; perform acceptance for DAI.
  - iii. Maintain day-to-day liaison and direct communications with the Subcontractor.
- 10) Monitor the Subcontractor's production or performance progress and notify the Subcontractor in writing of deficiencies observed during surveillance, and direct appropriate action to effect correction. Record and report to the COP and authorized Subcontracts Administrators as incidents of gross faulty or nonconforming work, health or safety violations, delays or problems.

**LIMITATIONS:**

- (1) Neither the Engineer nor Engineer's Representative is authorized to approve Subcontract Modifications, including change orders that would increase the Subcontract Agreement price or change the period of performance. These changes require the approval of the Engineer, the Chief of Party, and shall be signed by an authorized Subcontracts Administrator of the Contractor.
- (2) Neither the Engineer nor Engineer's Representative is empowered to award, agree to, or sign any subcontract (including delivery or purchase orders) or modifications thereto, or in any way to obligate the payment of money by DAI. Neither the Engineer, nor Engineer's Representative, may take any action which may impact on the Subcontract Agreement Schedule, funds, or scope without the written approval of the COP.

Neither the Engineer nor Engineer's Representative shall be held liable for, nor will they have control of, construction process, techniques, procedures, safety precautions and schedules relating to the Scope of Work. Nor shall the Engineer, or Engineer's Representative, be responsible for or be in control or charge of acts or omissions of the Subcontractor.

The Engineer, or Engineer's Representative, shall not be liable or responsible for any of the Subcontractor's mistakes or the Subcontractor's failure to perform the Work in accordance with the Subcontract Agreement documents except where such performance of the Subcontractor is due to the Engineer, or Engineer's Representative's failure to perform his/her functions in accordance with the agreement between the Engineer, or Engineer's Representative, and DAI.

The Engineer, or Engineer's Representative, is required to meet with the Subcontractor, at intervals outlined in Appendix F, Schedule of Deliverables and Payment Schedule, concerning performance of items delivered under this Subcontract Agreement and any other administration or technical issues. The venue and time of meeting shall be arranged by the Engineer, and shall involve all relevant stakeholders of the Project. Telephonic reports may be made if no problems are being experienced.

In the absence of the designated Engineer or Engineer's Representative, the COP will designate appropriate someone to serve as Engineer in their place.

Contact information for the Engineer, and Engineer's Representative, shall be provided by the COP in the Notice to Proceed.

**9.3. Communications with the Funding Agency**

All of the Subcontractor's contractual written or oral communications with or to the Funding Agency, or local agencies relative to the Work under the subcontract, must be through or with the prior written authorization of COP. Direction given by the Funding Agency or local agencies relative to the work under the Subcontract Agreement shall not be effective unless and until confirmed in writing by the COP.

**9.4. Subcontracting**

In the event the Subcontractor requires the services of subcontractors other than any approved nominated subcontractors, the Subcontractor shall obtain prior written approval the Contracts Administrator, for all such subcontracts which are in excess of 20% of the total Subcontract Price. The

approval by DAI shall not relieve the Subcontractor of any of his/her obligations under this Subcontract Agreement, and the terms of any subcontract shall be subject to, and be in conformity with, the provisions of this Subcontract Agreement.

All clauses, terms and conditions of this Subcontract Agreement shall flow down to the subcontractors, and all subcontractors shall equally abide by the same terms and conditions of this Subcontract Agreement between DAI and the Subcontractor.

DAI has a right to request written evidence from the Subcontractor that the Subcontractor has properly paid its subcontractors and material and equipment suppliers. If the Subcontractor fails to furnish such evidence within seven days after such a request, DAI shall have the right to contact subcontractors directly to ascertain whether they have been properly paid. DAI retains the right to notify any surety that has provided a Bank Letter of Guarantee (as covered in Section 12) if DAI confirms that subcontractors or material and equipment suppliers have not been properly paid. Neither DAI, the Funding Agency, nor the Owner shall have an obligation to pay or to see the payment of money to a subcontractor, except as otherwise required by law.

## **10.SUBCONTRACTOR'S GENERAL OBLIGATIONS**

### **10.1. Subcontractor's General Responsibilities**

The Subcontractor shall, with due care and diligence, design (to the extent provided for by the Subcontract), execute and complete the Work and remedy any defects therein in accordance with the provisions of the Subcontract. The Subcontractor shall provide all superintendence, labor, materials, plant, Subcontractor's equipment and all other things, whether of a temporary or permanent nature, required in and for such design, execution, completion and remedying of any defects, so far as the necessity for providing the same is specified in or is reasonably to be inferred from the Subcontract.

The Subcontractor shall confine operations at the Site to areas permitted by applicable law, statutes, ordinances, codes, rules or regulations, and lawful orders of public authorities, and shall not unreasonably encumber the Site with materials or equipment. The Subcontractor shall not conduct any business of its own on the Site which does not directly relate the performance of this Subcontract Agreement.

### **10.2. Site Operations and Methods of Construction**

The Subcontractor shall take full responsibility for the adequacy, stability and safety of all Site operations and means and methods of construction. Where the Subcontract Agreement expressly provides that part of the Work shall be designed by the Subcontractor, it shall be fully responsible for that part of such Work, notwithstanding any approval by the Engineer, or Engineer's Representative.

### **10.3. Site Security and Lighting**

The Subcontractor shall take full responsibility for his or her own security of his or her own tools, materials, supplies, and equipment on site, and maintain, at his or her own cost, all lights, guards, fencing, and locks.

### **10.4. Extraordinary Traffic and Special Loads**

The Subcontractor shall use every reasonable means to prevent any of the roads or bridges connecting with or en route to the site, from being damaged by any traffic of the Subcontractor. The Subcontractor shall select routes, choose and use appropriate and safe vehicles, and restrict and distribute loads so that any such extraordinary traffic will be limited as far as reasonably possible and so that no unnecessary damage may occur to such roads and bridges.

## **10.5. Opportunities for other Subcontractors**

The Subcontractor shall in accordance with the requirements of DAI and the Engineer, or ERA's Construction Supervision Consultant, afford all reasonable opportunities for carrying out work by other Subcontractors employed by DAI, their workforce, DAI employees, and any other duly constituted authorities who may be employed in the execution on or near the worksite. Subcontractor shall be responsible for coordination of its workforce, labor, materials and equipment with all other labor on site, whether employed by Subcontractor or not.

## **10.6. Site Clean-up**

Subcontractors must maintain a clean work site, by disposing of all debris and leftover material which were used for the work. All debris will be disposed of in an approved and certified dump site authorized by DAI, via ERA's Construction Supervision Consultant, or Environmental Officer. The Subcontractor is responsible to keep the work site free from all obstruction and shall store or dispose any construction plant and surplus materials, and clear away/remove from site any wreckage, rubbish or temporary Work no longer required. The Subcontractor shall properly dispose any debris arising from installation.

The Subcontractor is responsible to bear all costs associated with the provision of the necessary health and safety equipment and methods for clean-up, proper removal and disposal of materials on site.

## **10.7. Hazardous Materials**

In the event of the discovery of the presence of hazardous or environmentally dangerous materials, the Subcontractor shall immediately notify the Engineer prior to removing or otherwise disturbing the material in question, and shall immediately stop Work in the affected area. In accordance with applicable specifications, standards, or national or local health or environmental regulations, the Subcontractor shall provide the workers with mandated, and/or, appropriate health and safety material and equipment. Hazardous and dangerous materials shall be stored and disposed of in compliance with the technical specifications, standard, or national or local regulations and laws.

When the hazardous material has been rendered harmless, as certified by an appropriate authority, the Work in the affected area shall resume upon written direction by DAI. The Subcontractor may submit a request for an extension in the Period of Performance based on the Work stopped in this area. This request for an extension of the Period of Performance must show evidence that the entire Work was delayed due to the affected area, and the overall work schedule, i.e., sequence of work, could not be adjusted within the Period of Performance.

## **10.8. Assignment**

The Subcontractor shall not further subcontract or assign any services or the Work to be performed under this Subcontract Agreement without prior written authorization from the Subcontracts Administrator.

## **10.9. Taxes due by Subcontractor**

The Subcontractor shall be responsible for the payment of all charges and taxes, with respect to income tax, value added tax, import and custom taxes, in accordance with the Income Tax Laws and regulations in force, and all amendments thereto, with the exception of those taxes exempt through a waiver granted on the basis of the Bilateral Agreement between the United States and the Government of Ukraine (FAR 52.229-6, Taxes – Foreign Fixed Price Contracts). It is the Subcontractor's responsibility to make all the necessary inquiries in this respect and he or she shall be deemed to have satisfied him or herself regarding the application of all relevant tax laws.

## **10.10. Employees of the Subcontractor**

The Subcontractor shall be subject to and operate under all applicable Ukrainian Labor laws regarding employers' liability, worker's compensation, and unemployment compensation insurance. The

Subcontractor expressly agrees that it is an independent contractor and its employees engaged in the Work are not and shall not be treated or considered employees of DAI. The Subcontractor shall be responsible for verifying the education and work experience of any key personnel, or representative (“Personnel”) assigned to perform the Work under the Subcontract Agreement and shall provide DAI with written proof of such verification.

All employees of the Subcontractor shall comply with the Government of Ukraine laws and regulations in force in regards to the import, sale, use, barter, consumption or disposal of alcoholic drinks, narcotics, weapons, and arms. The Subcontractor shall ensure that all employees have due regard to all holiday, recognized festivals, religious, and or other customs. The Subcontractor shall, at all times, take all reasonable precautions to prevent any unlawful, riotous, or disorderly conduct by, or amongst, his or her employees and for the preservation of peace and the protection of persons and property onsite or within the communities at large.

DAI reserves the right to disapprove the assignment of or request the removal of any Personnel assigned to perform the Work hereunder. DAI shall notify the Subcontractor, in writing, of the disapproved assignment or requested removal. The Subcontractor shall propose a qualified replacement for DAI’s approval, and the Funding Agency if required, within ten (10) working days of receipt of such notice.

### **10.11. Key Personnel**

The Subcontractor shall furnish the Key Personnel outlined in the Contract Data for performance under this Subcontract. The Subcontractor shall employ the key personnel proposed at the time of tender, to carry out the functions stated in the Schedule or other personnel approved by the Engineer.

Personnel identified as “Key Personnel” are considered to be essential to the Work being performed.

The Subcontractor must submit CVs for all of the Key Personnel, and DAI may request an interview of proposed Key Personnel.

Prior to substituting or replacing the individual(s) or diverting any portion of the specified individual’s time to other programs, the Subcontractor shall notify the Subcontract Administrator, via the Engineer, reasonably in advance, or as soon as possible thereafter, and shall submit justification, including proposed substitutions, in sufficient detail to permit evaluation of the impact on the program. No diversion, substitution, or replacement shall be made by the Subcontractor without the prior written consent of the Engineer.

### **10.12. Key Equipment**

The Subcontractor shall furnish the Key Equipment outlined in the Contract Data for performance under this Subcontract, if any. The Subcontractor shall ensure the Key Equipment is available at the necessary times, in accordance with the approved schedule, to carry out the functions stated in the Schedule or other personnel approved by the Engineer.

Equipment identified as “Key Equipment” are considered to be essential to the Work being performed.

No diversion, substitution, or replacement for Key Equipment shall be made by the Subcontractor without the prior written consent of the Engineer.

### **10.13. Removal of Subcontractor’s Employees**

DAI shall have the right, at any time, to request removal of any Personnel provided by the Subcontractor whom DAI and/or USAID reasonably deems, in consultation with the Subcontractor, to be unsatisfactory. Upon such request, the Subcontractor shall use all reasonable efforts to promptly replace such removed personnel with substitute Subcontractor Personnel having the skills and training suitable to provide the services required of the Subcontractor under this subcontract.

The Subcontractor shall ensure that the person leaves the Site within seven (7) days and has no further connection with the work in the Subcontract.



If any of the personnel is discharged by the Subcontractor for misconduct or inexcusable nonperformance, travel and transportation costs associated with the repatriation of such personnel and the assignment of replacement personnel shall not be an allowable cost under the Subcontract.

#### **10.14. Source of Instructions**

The Subcontractor shall neither seek nor accept instructions from any authority external to DAI, the Engineer, or their authorized representatives in connection with the performance of his or her services under this Subcontract. The Subcontractor shall refrain from any action which may adversely affect DAI and shall fulfill his or her commitments with fullest regard for the interest of DAI.

#### **10.15. Safety and Security**

The Subcontractor shall take all prudent measures to ensure the personal safety and security of all Subcontractor employees as well as DAI's Engineer, or ERA's Construction Supervision Consultant, and other project staff visiting the Site, consistent with its Health and Safety Plan. DAI is responsible for all costs and logistics associated with providing Site security. The Subcontractor shall comply with all applicable laws, ordinances, rules, regulations, lawful authorities, or any public authority having jurisdiction for the safety of persons or property and protect the same from damage, injury, or loss.

The Subcontractor shall erect and maintain, as required by existing conditions and performance of the Subcontract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, publicize safety regulations and notifying owners and users of adjacent sites and utilities.

The Subcontractor agrees to cooperate with and adhere to requests from DAI's Security Manager and other DAI hired security staff in regard to the security of DAI's project personnel.

#### **10.16. Permits**

Except as otherwise directed by DAI, the Subcontractor has or will have, prior to commencement of any Work, all necessary business and professional licenses, permits, and other licenses as may be required to enable the Subcontractor to perform the services required hereunder in accordance with applicable laws.

#### **10.17. Branding and Marking Plan**

The Subcontractor shall comply with the requirements of the policy directives and required procedures outlined in USAID Automated Directive System (ADS) 320.3.2 "[Branding and Marking in USAID Direct Contracts](https://www.usaid.gov/sites/default/files/documents/320.pdf)" at <https://www.usaid.gov/sites/default/files/documents/320.pdf> and "[USAID Graphic Standards Manual and Partner Co-Branding Guide](https://www.usaid.gov/sites/default/files/documents/1869/USAID_GSM-02_04_2020.pdf)" at [https://www.usaid.gov/sites/default/files/documents/1869/USAID\\_GSM-02\\_04\\_2020.pdf](https://www.usaid.gov/sites/default/files/documents/1869/USAID_GSM-02_04_2020.pdf), or any successor branding policy.

The DAI approved Branding and Marketing plan, dated August 23, 2018, is written in accordance with ADS 320.3.2 and is hereby incorporated into this Subcontract Agreement as Appendix K. The Subcontractor must comply with all requirements contained therein, unless Subcontractor submits a written request for an exception or a waiver to DAI for onward submission to the Client for approval and such approval is received.

#### **10.18. Publicity and News Release**

No publicity or news releases shall be made to the news media or the general public relating to participation on the Program without the prior written approval of Chief of Party, which approval shall not be unreasonably withheld. The parties further agree that news releases made by either of them shall recognize the participation and contribution of the other party.

## **10.19. Publications**

The Subcontractor shall not publish or publicly disseminate any information or data derived or obtained from or in connection with any services rendered hereunder, without the prior written consent of the Chief of Party.

## **10.20. Audit and Records**

The Subcontractor shall maintain books, records, documents, and other evidence to substantiate, without limitation, all costs incurred under or in connection with the Subcontract Agreement and to substantiate the other subcontract requirements in accordance with generally accepted accounting principles prevailing in the United States, the Cooperating Country, or the International Accounting Standards Committee (an affiliate of the International Federation of Accountants) to substantiate properly all transactions under or in connection with the subcontract. This clause does not apply to cost records for non-reimbursable cost items incurred under fixed-price (lump sum or unit price) contracts, but it does apply to records concerning source of goods and other comparable contract requirements applicable to such items. The foregoing constitutes "records" for the purpose of this clause.

The Subcontractor shall maintain such records during the Subcontract Agreement term and for a period of three (3) years after final payment. However, records which relate to appeals under the "Disputes and Appeals" clause or litigation or the settlement of claims arising out of the performance of this Subcontract Agreement shall be retained until such appeals, litigation, or claims have been finally settled.

All records shall be subject to inspection and audit by DAI, its Funding Agency, or its authorized agents at all reasonable times. The Subcontractor shall afford the auditor proper facilities for such inspection and audit.

## **11. INVOICING**

### **11.1. Invoicing Instructions**

The Subcontractor shall submit invoices to DAI's Accounts Payable department and concurrently submit a copy to the Chief of Party, at the address listed in Contract Data.

Electronic copies will be accepted provided the original invoice with all documentation is received within three (3) days of the electronic submission.

### **11.2. Required Documentation for Payment**

Invoices submitted to DAI must include the following:

- (1) Subcontractor Name and Address
- (2) Invoice Date and Invoice Number
- (3) Subcontract Agreement Number
- (4) Subcontractor's SAM UEI number
- (5) DAI Contract Number
- (6) Subcontractor Remittance Address
- (7) Total payment requested in accordance with the Payment Schedule, Schedule of Deliverables and confirmed quantities that are shown in the BOQ
- (8) Cumulative payments to date
- (9) Certification signed by DAI's Engineer, or Engineer's Representative, verifying the quality and acceptability of the deliverables, i.e., Work performed during the period, in accordance with the quantities that are shown in the BOQ, Payment Schedule and Schedule of Deliverables
- (10) Copies of Progress Report(s) submitted during the timeframe

- (11) Copies of Progress Meeting Note(s) during the timeframe
- (12) Digital Photographs of the Work completed during the invoice period

In addition to the above, each copy of the invoice must contain the following certification, signed by an authorized representative of the Subcontractor’s organization. Failure to provide the required invoice information will result in the invoice being returned to the Subcontractor for correction.

See Attachment H.12. Unit-Price Payment Application

*Subcontractor certification:*

I hereby certify, to the best of my knowledge and belief, that

- (1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;
- (2) All payments due to subcontractors and suppliers from previous payments received under the contract have been made, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance Subcontract Agreement and the requirements of Chapter 39 of Title 31, United States Code;
- (3) This request for payment does not include any amounts which the Subcontractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract; and
- (4) This certification is not to be construed as final acceptance of the Subcontractor’s performance.

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

### **11.3. Taxes Withheld from Payments**

**Taxes and VAT:** ERA is exempt from cooperating country taxes, duties, and VAT. Therefore, ERA shall pay for the cost of goods or services exclusive of VAT.

DAI is implementing international technical assistance programs and projects in Ukraine in accordance with the Agreement between the Government of the United States of America and the Government of Ukraine about Humanitarian and Technical Economic Cooperation of May 07, 1992. DAI has to purchase goods, works and services in order to carry out the above mentioned international technical assistance project. In accordance with the abovementioned agreement and Procedure of engaging, using and monitoring international technical assistance approved by the Cabinet of Ministers of Ukraine Resolution No.153 (153-2002-п) as of February 15, 2002, “On creating a unified system for engaging, using and monitoring international technical assistance”, the cost of such goods (works, services) is exempt from Value Added Tax (VAT).

Procurement of goods, works and services shall be made at the cost of the international technical assistance project and is relevant to the category (type) of goods, works and services mentioned in the procurement plan.

ERA shall provide the Subcontractor with a copy of the registration card of the ERA for purchasing the goods, works and services, issued by the Secretariat of Cabinet of Ministers of Ukraine and certified by

the ERA stamp, and a copy of the procurement plan or an extract from the procurement plan certified by the ERA stamp.

The Subcontractor shall submit a fiscal bill for goods (works, services) completed in accordance with the procedure set forth below and marked "without VAT". A fiscal bill shall include the grounds for VAT exemption (project name, number and date of the relevant contract). The Subcontractor shall submit the declaration to the state tax authority at its location taking into account the abovementioned operations and mentioning VAT exemption code according to the Tax Exemptions Directory.

#### **11.4. Payment Terms**

DAI shall pay the subcontractor within 30 calendar days after receipt of a proper invoice and acceptance of deliverables outlined Appendix F, Schedule of Deliverables and Payment Schedule, Appendix G, Priced Bill of Quantities of this Subcontract Agreement. DAI shall reserve the right to withhold payment if the subcontractor fails to meet its obligations, in part or in full under this purchase order.

#### **11.5. Final Payment**

Final payment to the Subcontractor, including the balance of the retention, is withheld until the Subcontractor has met all its obligations under the Subcontract. Final Payment shall be made following:

- (1) Issuance of Certificate of Final Completion and Acceptance of the Work to the Subcontractor indicating that completion and acceptance of the Work has been certified by the Engineer and the COP
- (2) Receipt of Final Report
- (3) Receipt of required product and installation certifications and warranties, Operations and Maintenance manuals, trainings or materials as required
- (4) Confirmation that all Defects and Liabilities requests by the beneficial occupant or owner have been resolved to the satisfaction of the Engineer
- (5) Receipt of signed Release by the Subcontractor of all future monetary claims against DAI

The making of final payment by DAI to the Subcontractor constitutes a waiver of Claims by DAI, except those arising from:

- (1) Liens, claims, security interests or encumbrances arising out of the Subcontract Agreement and unsettled;
- (2) Failure of the Work to comply with the requirements of the Subcontract Agreement;
- (3) Terms of special warranties required by the Subcontract Agreement.

#### **11.6. Final Invoice**

Notwithstanding any other provision in this Subcontract Agreement to the contrary, the Subcontractor is required to submit the final request for payment application/invoice, appropriately marked as such, under this Subcontract Agreement not later than thirty (30) calendar days after the Certificate of Final Completion and Acceptance. Any invoices received after that date will not be paid by DAI. All final invoices must be marked as such, and the following shall accompany the final invoice:

- (1) A certification by the Subcontractor that its suppliers, if any, have been paid.
- (2) A release signed by the Subcontractor discharging DAI of and from any liabilities, obligations, and claims arising out of or under this Subcontract.

## **11.7. Monies due by the Subcontractor**

Whenever throughout the life of the Subcontract Agreement and before final payment, certain monies become due by the Subcontractor, DAI shall have the right to recover such costs by either of the following methods or combination thereof:

- (1) Deduction from monies due the Subcontractor, or to become due the Subcontractor, or being retained by DAI pending final acceptance of the Work, or
- (2) Recovery from the Subcontractor's performance and/or payment security/bond.

## **11.8. Liquidated Damages**

*FAR Clause 52.211-12 "Liquidated Damages – Construction" (APR 1984)*

In the event that the Subcontractor does not complete the Work within the number of days indicated in the Contract Data following the end of the completion period of the Subcontract Agreement then the Liquidated Damages (found in the Contract Data) shall be levied beyond this period shall be deducted from the final payment until the Work is authorized as completed by the Engineer and COP. The Parties mutually agree that if the Project is delayed, Contractor OR Owner will suffer significant damages that are difficult to ascertain and quantify. As such, the Parties mutually agree to a liquidated daily rate specified in the Contract Data as fair and reasonable compensation to Contractor and not as a penalty. The said sum shall be payable by the sole fact of the delay without the need for any previous notice or any legal proceedings, or proof of damage, which shall in all cases be considered as ascertainable.

## **12. BONDS, INSURANCE, AND RISK ALLOCATION**

### **12.1. Bank Letter of Guarantee**

For United States Government (USG) funded projects (including those funded by the United States Agency for International Development (USAID), the Federal Acquisitions Regulation (FAR) requires performance bonds and payment bonds for all construction subcontracts with values above the simplified acquisition threshold, currently at \$150,000 USD. (FAR 28.102-1). For USG projects, the FAR requires a minimum of two forms of payment protection, including a Performance Bond, a Payment Bond, or a Bid Bond for construction projects between \$30,000 and \$150,000 (FAR 28.102-2). These are mandatory bonds, unless a waiver by the Funding Agency is obtained. Due to the absence of access to Surety and contract insurance services within Ukraine, a Bank Letter of Guarantee is an acceptable form of bonding for this Subcontract agreement. Bank Letters of Guarantee are a typical tool for managing risk in the Ukrainian construction industry.

Subcontractor shall, at its own expense, obtain and provide to DAI a Bank Letter of Guarantee from a Financial Institution acceptable to DAI within the time period outlined in Appendix F, Schedule of Deliverables and Payment Schedule, and if required in the Contract Data. The Bank Letter of Guarantee shall be issued in the format and language approved by DAI. See Attachment H.5. for an example of an acceptable Bank Letter of Guarantee. The amount of the performance security shall not be less than the amount stated in the Contract Data, represented by a percentage (%) of the Total Subcontract Value and shall be in U.S. dollars.

The Bank Letter of Guarantee shall remain valid until the Subcontractor has executed and completed the Work and remedied any defects therein in accordance with this Subcontract. The Bank Letter of Guarantee will be called upon after a written statement, stating that DAI is in breach of its obligations under the Contract, is received by the Subcontractor. The Financial Institution will promptly make payments to all persons, firms, subcontractors, and corporations furnishing materials and/or financing, or performing labor in the execution of the work provided for in such contract, including all amounts due for supplies, labor, transportation, equipment, tools, repairs on machinery, and materials consumed or used in connection with the construction of such work, and for all labor, performed in such work whether by subcontractor or otherwise.

Prior to making any claim under the Bank Letter of Guarantee, DAI shall, in every case, notify the Subcontractor in writing stating the nature of the default in respect of which claim is made.

## **12.2. Liability Insurance**

The Subcontractor agrees to maintain liability insurance as required and customary in the construction industry in Ukraine and as stated in this provision and as outlined in Contract Data. Adequate liability insurance shall be maintained for all personnel and equipment during the entire period of performance of this Subcontract. Such insurance will protect the Subcontractor and its employees, DAI, and the Funding Agency from the following claims which may arise out of or result from its operations hereunder (whether by itself, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable): claims under workmen's compensation, disability benefit and other similar employee benefit acts; claims for damages because of bodily injury, occupational sickness or disease, or death, of its employees or any other person; claims which are sustained by any person as a result of the actions of the Subcontractor or by any other person; and claims for damages because of injury to or destruction of tangible property, including loss of use.

Insurance required under this Subcontract Agreement shall not contain war or hostile zone exclusions.

## **12.3. Insurance of the Work and Subcontractor's Equipment**

The Subcontractor shall purchase and maintain insurance to prevent against loss or damage and cover replacement of equipment deemed necessary to complete the Work. The insurance shall provide coverage for:

- (1) The Work, together with materials and Plant for incorporation therein, to the full replacement cost
- (2) An additional sum of 15 percent (%) of such replacement cost, to cover any additional costs of and incidental to the rectification of loss or damage including professional fees and the cost of demolishing and removing any part of the Work and of removing debris of whatsoever nature
- (3) The Subcontractor's Equipment and other things brought onto the Site by the Subcontractor, for a sum sufficient to provide for their replacement at the Site

Delays in the Work due to loss or damage to construction equipment which is not insured are considered Inexcusable delays.

## **12.4. Insurance Against Accident to Workmen**

DAI shall not be liable for or in respect of any damages or compensation payable to any workman or other person in the employment of the Subcontractor or any other subcontractor. The Subcontractor shall indemnify and keep indemnified DAI against all claims, proceedings, damages, cost, charges and expenses whatsoever in respect thereof or in relation thereto.

The Subcontractor shall insure against such liability and shall continue such insurance during the whole of the time that any persons are employed by him or her on the Work. Provide that, in respect of any of any persons employed by any subcontractor, the Subcontractor's obligations to insure as aforesaid under this clause shall be satisfied if the subcontractor shall have insured against liability in respect of such persons in such a manner that DAI is indemnified under the policy, but the Subcontractor shall require such subcontractor to produce to DAI, when required, such policy of insurance and the receipt of the payment of the current premium.

## **12.5. Third Party Insurance**

The Subcontractor shall, without limiting its or DAI's obligations and responsibilities, insure, in the joint names of the Subcontractor and DAI, against liabilities for death of or injury to any person or loss of or damage to any property or loss of or damage to any property (other than the Work) arising out of the performance of the Subcontract.

## **12.6. Evidence of Insurance**

Prior to the issuance of a Notice to Proceed, the Subcontractor shall furnish DAI with Certificates of Insurance, for those listed above, as documentation that all insurance required herein has been effected. Each insurer must be reasonably acceptable to DAI, licensed to conduct business in all countries where this Subcontract Agreement shall apply. If requested, Subcontractor shall provide copies of receipts for the payment of the current premium. It is specifically agreed that the types and amounts of insurance shall not limit Subcontractor's liability to indemnify, defend, and hold DAI harmless.

DAI may investigate, approve, or reject the credibility and rating of the Insurance Company, i.e., surety.

The subcontractor shall provide evidence of insurance renewals upon expiration of an insurance policy that expires during the period of performance.

Subcontractor shall provide at least thirty (30) days prior written notice of cancellation or material change in any insurance.

## **12.7. Indemnification**

The Subcontractor shall defend, indemnify, and hold harmless, DAI, and the Funding Agency, agents, officers and directors, and employees, from and against any and all claims, liability, losses, cost or expenses, including attorney's fees, arising out of the acts, errors or omissions of the Subcontractor, its agents, officers and directors, employees, and anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. This indemnification obligation shall not be limited in any way by required, actual, or available insurance coverage.

Specifically, in regard to damage to persons and property, the Subcontractor shall indemnify DAI and the Funding Agency against all losses and claims in respect of: (a) death of or injury to any person, or (b) loss of or damage to any property which may arise out of or in consequence of the execution and completion of the Work and the remedying of any defects therein, and against all claims, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.

Likewise, DAI shall defend, indemnify, and hold harmless the Subcontractor and its agents, officers and directors, and employees from and against all claims, liability, losses, cost or expenses, including attorney's fees, arising out of the acts, errors or omissions of DAI, its agents, officers and directors, employees, subcontractors, and anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. This indemnification obligation shall not be limited in any way by required, actual, or available insurance coverage.

## **12.8. Relationship of Parties**

The Subcontractor has entered into this Agreement as an independent contractor. Nothing contained herein shall be construed as creating the relationship of employer and employee between Subcontractor and DAI or any of its employees.

## **12.9. Rights and Remedies**

No failures of or delay by DAI in the exercise of any right under this Agreement shall constitute a waiver thereof, nor shall any single or partial exercise of any such right preclude other or further exercise thereof or of any other such right. The waiver by DAI of any breach of any provision of this Agreement shall not be deemed to be a waiver of any subsequent breach or of any other provision of this Subcontract.

Neither DAI nor its Funding Agency's review, approval, nor payment for, any of the services required under this Subcontract Agreement shall be construed to have operated as a waiver of any rights under this Agreement, or of any cause of action arising out of the performance of this Subcontract Agreement and the Subcontractor Subcontract Agreement shall be and remain liable to DAI and its Funding Agency for damages caused by the Subcontractor's negligent performance of any of the services furnished under this subcontract.

The rights and remedies of DAI or the Subcontractor provided for under this Subcontract Agreement are in addition to any other rights and remedies provided by law.

#### **12.10. Dispute Resolution**

Any controversy or claim arising out of or relating to the terms of this Subcontract Agreement or any Task Order issued hereunder, or the breach thereof, which cannot be settled amicably, shall be settled by arbitration under the Rules of Conciliation and Arbitration of the International Chamber of Commerce. The place of arbitration shall be Maryland, United States of America. The language to be used in the arbitral proceedings shall be English. As independent, irrevocable covenants to each other, neither party will institute any action or proceed against the other party in any court or judicial forum concerning any matter under dispute, other than to seek entry of a judgment upon an award rendered by the arbitrator(s) pursuant to these terms and conditions. The provisions shall survive the termination or expiration of the Subcontract. During the term of any pending controversy or claim hereunder, the Subcontractor shall proceed diligently with the performance of the Work under the Subcontract Agreement in accordance with the direction(s) given by DAI.

Nothing in this Subcontract Agreement shall be construed as granting the Subcontractor the right to bring a direct claim or direct course of action against the Client.

#### **12.11. Legal Effect of Funding Agency Approvals and Decisions**

The parties hereto understand that the Subcontract Agreement has reserved to the Funding Agency certain rights such as, but not limited to, the right to approve the terms of this subcontract, the Subcontractor, and any or all plans, reports, specifications, subcontracts, bid documents, Drawings, or other documents related to this Subcontract Agreement and the project of which it is part. The parties hereto further understand and agree that the Funding Agency, in reserving any or all of the foregoing approval rights, has acted solely as a financing entity to assure that proper use of funds, and that any decision by the Funding Agency to exercise or refrain from exercising these approval rights shall be made as a financier in the course of financing this project and shall not be construed as making the Funding Agency a party to the subcontract. The parties hereto understand and agree that the Funding Agency may, from time to time, exercise the foregoing approval rights, or discuss matters related to these rights and the project with the parties jointly or separately, without thereby incurring any responsibilities or liability to the parties jointly or to any of them. Any approval (or failure to disapprove) by the Funding Agency shall not bar DAI or the Funding Agency from asserting any right, or relieve the Subcontractor of any liability which the Subcontractor might otherwise have to DAI or the Funding Agency.

#### **12.12. Applicable Law**

In the performance of the Work under this Subcontract, the Subcontractor shall comply with all applicable laws, rules, and regulations. This Subcontract Agreement shall be construed, interpreted and applied in accordance with the laws of the State of Maryland, except those portions of the Federal Acquisition Regulation (FAR) or other regulations applicable to government procurement that are incorporated by full text or reference in the Subcontract. These provisions shall be interpreted in accordance with the Federal common law of Government as applied by the Federal Courts, Board of Contract Appeals, and quasi-judicial agencies of the Federal government.

### **13.SUSPENSION AND TERMINATION**

#### **13.1. Suspension of the Work**

The Subcontractor will, upon written notice from Subcontracts Administrator identified in the Contract Data, suspend, delay, or interrupt all or a part of the scope of the Work. In such event, the Subcontractor will resume the Work upon the suspended activities upon written notice from DAI. If any suspension, delay or interruption causes an increase or decrease in the Subcontractor's cost of, or the time required



for, the performance of any part of the Work, DAI shall make an equitable adjustment and modify the Subcontract Agreement in writing. Any claim by the Subcontractor for an adjustment under this paragraph must be asserted in writing, fully supported by factual information, to the Subcontracts Administrator within thirty (30) calendar days from the date of receipt by Subcontractor of the written notice of suspension from DAI or within such extension of that 30 day period, as DAI, in its sole discretion, may grant in writing at the Subcontractor's request prior to expiration of said period. Nothing herein will be construed as relieving Subcontractor of its obligations to perform, including without limitation, the failure of the parties to agree upon Subcontractor entitlement to, or the amount of, any adjustment in time or compensation. If the Work is reduced by a change authorization issued hereunder, such action will not be the basis for a claim based on loss of anticipated profits.

### **13.2. Termination for Default**

DAI may, by written notice, terminate the whole or any part of a Subcontract Agreement issued hereunder for default in the event that the Subcontractor fails to perform any of the provisions of this Subcontract or, in the opinion of DAI, becomes financially or legally incapable of completing the Subcontract and does not correct such to DAI's reasonable satisfaction within a period of seven (7) calendar days after receipt of a written cure notice from DAI specifying such failure. Failures may include, but are not limited to:

- (1) Repeatedly refusing or failing to supply enough properly skilled workers or properly materials;
- (2) Failing to make payment to subcontractors for materials or labor in accordance with the respective agreements;
- (3) Repeatedly disregarding applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- (4) Being found guilty or negligent of a substantial breach of a provision in this Subcontract Agreement, including repeated failure to conform to Drawings or specifications; or
- (5) Failure to progress the work such that Contractor has a reasonable concern that Subcontractor will not finish the work by the Subcontract Agreement completion date.

If, after notice of termination, it is determined for any reason that Subcontractor was not in default or that the default was excusable, the rights and obligations of the parties will be the same as if the notice of termination had been issued pursuant to termination for convenience. In the event of termination for default, Subcontractor will not be entitled to termination expenses. Regardless of the cause of termination, the Subcontractor shall deliver to DAI legible copies of all completed or partially completed Work and documents including, but not limited to, laboratory, field, or other notes, log book pages, technical data, computations, and designs. In the event of termination, DAI will be entitled to recover from Subcontractor any additional costs it incurs in completing Subcontractor's scope of work.

### **13.3. Termination for Convenience by DAI**

All or part of the Work issued hereunder may be terminated by DAI for its convenience upon thirty (30) days written notice to the Subcontractor. In such event, Subcontractor will be entitled to compensation for services competently performed up to the date of termination and its allowable, allocable, and reasonable termination expenses as determined by the Funding Agency. Subcontractor will not be permitted to recover profit or overhead on unperformed work.

## **14. OTHER CLAUSES**

### **14.1 CONFIDENTIAL AND PROPRIETARY INFORMATION**

14.1.1 In performing the Work, the Subcontractor shall not directly or indirectly or through its employees disclose to any third person or use for the benefit of anyone other than DAI, either during or after the term of this Subcontract Agreement (or for the period of time stipulated in applicable data), any proprietary information of DAI, whether relating to the Work performed hereunder or to the business and affairs of DAI, or DAI's Client. Such information shall include, without limitation, DAI or Client manuals, forms, or procedures. Disclosure shall not be made without the prior written

consent of DAI unless disclosure is required by law, in which case notification of the request for such information shall be provided to DAI prior to release. Information identified in writing by the Subcontractor as confidential and/or proprietary shall be similarly treated by DAI. This clause applies to information which has been designated as proprietary or which should be treated as proprietary in light of the circumstances surrounding its acquisition without the prior written consent of DAI. Notwithstanding the foregoing, nothing shall restrict or limit the Client's rights with regard to data, tooling, or designs it owns or has a right to use, including the right to authorize the Subcontractor's use of such data, tooling, or designs in direct contracts between the Subcontractor and the Client.

14.1.2 The Subcontractor shall not publish or publicly disseminate any information or data derived or obtained from or in connection with any services rendered hereunder, without the prior written consent of DAI which shall not be unreasonably withheld.

14.1.3 All evaluations, reports, records, and other work products relating hereto produced by the Subcontractor pursuant to this Agreement shall be considered technical data and subject to the provisions of FAR 52.227-14, Rights in Data--General.

## **14.2 Force Majeure**

The Subcontractor shall not be liable by reason of any failure in the performance of this Agreement in accordance with the terms hereunder if such failure arises out of causes beyond the control and without the fault or negligence of the Subcontractor. Such causes may include, but are not limited to, acts of God, acts of war or other military conflicts, acts of government, municipal, or other authority, fires, floods, epidemics, quarantines, strikes, and labor disputes.

## **14.3 Standards of Business Ethics and Conduct**

DAI believes in fair and open competition and is committed to conducting its business fairly, impartially and in an ethical and proper manner. It is imperative that DAI employees, agents, subcontractors and representatives adhere to a particularly high ethical standard. DAI's expectation is that Subcontractor also will conduct its business fairly, impartially and in an ethical and proper manner. If Subcontractor has cause to believe that DAI or any employee or agent of DAI has acted improperly or unethically under this Subcontract Agreement, the Subcontractor shall report such behavior to the DAI Ethics Hotline 1-888-288-3387 (Toll Free for use within the United States) or DAI's International Crisis Hotline 01-443-716-2339.

The Federal Acquisition Regulation ("FAR") has recently added requirements for many contractors and subcontractors to create and implement a company-specific code of ethics and business conduct as well as a compliance program in order to avoid and detect improper and unethical behavior. FAR 52.203-13 sets forth the specific requirements. DAI encourages Subcontractor to implement its own code of ethics and business conduct and compliance program. Where applicable, the following changes are made to these clauses for incorporation into this Subcontract:

"Contractor" or "prime contractor" will mean

"Subcontractor."

"Government" will mean "DAI."

"Contracting Officer" will mean "DAI."

"Contract" or "Schedule" will mean this "Subcontract."

Signing this Subcontract Agreement certifies that Subcontractor meets any and all applicable requirements for having a code of ethics and business and compliance program.

## **14.5 Whistleblower Provision:**

## CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (APRIL 2014)

(a) This contract and employees working on this contract will be subject to the whistleblower rights and remedies in the pilot program on Contractor employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L.112-239) and FAR 3.908.

(b) The Contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as described in section 3.908 of the Federal Acquisition Regulation.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts over the simplified acquisition threshold.

### 14.6 Pay Transparency Nondiscrimination Provision:

The contractor will not discharge or in any other manner discriminate against employees or applicants because they have inquired about, discussed, or disclosed their own pay or the pay of another employee or applicant. However, employees who have access to the compensation information of other employees or applicants as a part of their essential job functions cannot disclose the pay of other employees or applicants to individuals who do not otherwise have access to such compensation information, unless such disclosure is (a) in response to a formal complaint or charge, (b) in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or (c) consistent with the contractor's legal duty to furnish information.

### 14.7 Anti-lobbying

**[Internal note: Please remove this article for subcontracts less than \$150,000]** The Subcontractor certifies, to the best of its knowledge, that no United States Federal appropriated funds have been paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress, on its behalf in connection with the awarding of any federal contract, the making of any federal loan, or the entering into any cooperative agreement. The Subcontractor shall disclose to DAI any lobbying contact that Subcontractor has or that occurs in relation to this Subcontract Agreement.

### 14.8 Combating Trafficking in Persons Provision

#### COMBATING TRAFFICKING IN PERSONS (Mar 2015)

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

“Agent” means any individual, including a director, an officer, an employee, or an independent contractor, authorized to act on behalf of the organization.

“Coercion” means—

- (1) Threats of serious harm to or physical restraint against any person;
- (2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

(3) The abuse or threatened abuse of the legal process.

“Commercial sex act” means any sex act on account of which anything of value is given to or received by any person.

“Commercially available off-the-shelf (COTS) item” means--

(1) Any item of supply (including construction material) that is—

(i) A commercial item (as defined in paragraph (1) of the definition at FAR 2.101);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

“Debt bondage” means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

“Employee” means an employee of the Contractor directly engaged in the performance of work under the contract who has other than a minimal impact or involvement in contract performance.

“Forced labor” means knowingly providing or obtaining the labor or services of a person—

(1) By threats of serious harm to, or physical restraint against, that person or another person;

(2) By means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or

(3) By means of the abuse or threatened abuse of law or the legal process.

“Involuntary servitude” includes a condition of servitude induced by means of—

(1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or

(2) The abuse or threatened abuse of the legal process.

“Severe forms of trafficking in persons” means—

(1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

“Sex trafficking” means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

“Subcontract” means any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract.

“Subcontractor” means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor.

“United States” means the 50 States, the District of Columbia, and outlying areas.

(b) *Policy.* The United States Government has adopted a policy prohibiting trafficking in persons including the trafficking-related activities of this clause. Contractors, contractor employees, and their agents shall not—

- (1) Engage in severe forms of trafficking in persons during the period of performance of the contract;
- (2) Procure commercial sex acts during the period of performance of the contract;
- (3) Use forced labor in the performance of the contract;
- (4) Destroy, conceal, confiscate, or otherwise deny access by an employee to the employee's identity or immigration documents, such as passports or drivers' licenses, regardless of issuing authority;
- (5)
  - (i) Use misleading or fraudulent practices during the recruitment of employees or offering of employment, such as failing to disclose, in a format and language accessible to the worker, basic information or making material misrepresentations during the recruitment of employees regarding the key terms and conditions of employment, including wages and fringe benefits, the location of work, the living conditions, housing and associated costs (if employer or agent provided or arranged), any significant cost to be charged to the employee, and, if applicable, the hazardous nature of the work;
  - (ii) Use recruiters that do not comply with local labor laws of the country in which the recruiting takes place;
- (6) Charge employees recruitment fees;
- (7)
  - (i) Fail to provide return transportation or pay for the cost of return transportation upon the end of employment--
    - (A) For an employee who is not a national of the country in which the work is taking place and who was brought into that country for the purpose of

working on a U.S. Government contract or subcontract (for portions of contracts performed outside the United States); or

(B) For an employee who is not a United States national and who was brought into the United States for the purpose of working on a U.S. Government contract or subcontract, if the payment of such costs is required under existing temporary worker programs or pursuant to a written agreement with the employee (for portions of contracts performed inside the United States); except that--

(ii) The requirements of paragraphs (b)(7)(i) of this clause shall not apply to an employee who is--

(A) Legally permitted to remain in the country of employment and who chooses to do so; or

(B) Exempted by an authorized official of the contracting agency from the requirement to provide return transportation or pay for the cost of return transportation;

(iii) The requirements of paragraph (b)(7)(i) of this clause are modified for a victim of trafficking in persons who is seeking victim services or legal redress in the country of employment, or for a witness in an enforcement action related to trafficking in persons. The contractor shall provide the return transportation or pay the cost of return transportation in a way that does not obstruct the victim services, legal redress, or witness activity. For example, the contractor shall not only offer return transportation to a witness at a time when the witness is still needed to testify. This paragraph does not apply when the exemptions at paragraph (b)(7)(ii) of this clause apply.

(8) Provide or arrange housing that fails to meet the host country housing and safety standards; or

(9) If required by law or contract, fail to provide an employment contract, recruitment agreement, or other required work document in writing. Such written work document shall be in a language the employee understands. If the employee must relocate to perform the work, the work document shall be provided to the employee at least five days prior to the employee relocating. The employee's work document shall include, but is not limited to, details about work description, wages, prohibition on charging recruitment fees, work location(s), living accommodations and associated costs, time off, roundtrip transportation arrangements, grievance process, and the content of applicable laws and regulations that prohibit trafficking in persons.

(c) *Contractor requirements.* The Contractor shall—

(1) Notify its employees of—

(i) The United States Government's policy prohibiting trafficking in persons, described in paragraph (b) of this clause; and

(ii) The actions that will be taken against employees or agents for violations of this policy. Such actions for employees may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment; and

(2) Take appropriate action, up to and including termination, against employees, agents, or subcontractors that violate the policy in paragraph (b) of this clause.

(d) *Notification.*

(1) The Contractor shall inform the Contracting Officer and the agency Inspector General immediately of—

(i) Any credible information it receives from any source (including host country law enforcement) that alleges a Contractor employee, subcontractor, subcontractor employee, or their agent has engaged in conduct that violates the policy in paragraph (b) of this clause (see also 18 U.S.C. 1351, Fraud in Foreign Labor Contracting, and 52.203-13(b)(3)(i)(A), if that clause is included in the solicitation or contract, which requires disclosure to the agency Office of the Inspector General when the Contractor has credible evidence of fraud); and

(ii) Any actions taken against a Contractor employee, subcontractor, subcontractor employee, or their agent pursuant to this clause.

(2) If the allegation may be associated with more than one contract, the Contractor shall inform the contracting officer for the contract with the highest dollar value.

(e) *Remedies.* In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraphs (c), (d), (g), (h), or (i) of this clause may result in—

(1) Requiring the Contractor to remove a Contractor employee or employees from the performance of the contract;

(2) Requiring the Contractor to terminate a subcontract;

(3) Suspension of contract payments until the Contractor has taken appropriate remedial action;

(4) Loss of award fee, consistent with the award fee plan, for the performance period in which the Government determined Contractor non-compliance;

(5) Declining to exercise available options under the contract;

(6) Termination of the contract for default or cause, in accordance with the termination clause of this contract; or

(7) Suspension or debarment.

(f) *Mitigating and aggravating factors.* When determining remedies, the Contracting Officer may consider the following:

(1) *Mitigating factors.* The Contractor had a Trafficking in Persons compliance plan or an awareness program at the time of the violation, was in compliance with the plan, and has taken appropriate remedial actions for the violation, that may include reparation to victims for such violations.

(2) *Aggravating factors.* The Contractor failed to abate an alleged violation or enforce the requirements of a compliance plan, when directed by the Contracting Officer to do so.

(g) *Full cooperation.*

(1) The Contractor shall, at a minimum—

(i) Disclose to the agency Inspector General information sufficient to identify the nature and extent of an offense and the individuals responsible for the conduct;

(ii) Provide timely and complete responses to Government auditors' and investigators' requests for documents;

(iii) Cooperate fully in providing reasonable access to its facilities and staff (both inside and outside the U.S.) to allow contracting agencies and other responsible Federal agencies to conduct audits, investigations, or other actions to ascertain compliance with the Trafficking Victims Protection Act of 2000 (22 U.S.C. chapter 78), E.O. 13627, or any other applicable law or regulation establishing restrictions on trafficking in persons, the procurement of commercial sex acts, or the use of forced labor; and

(iv) Protect all employees suspected of being victims of or witnesses to prohibited activities, prior to returning to the country from which the employee was recruited, and shall not prevent or hinder the ability of these employees from cooperating fully with Government authorities.

(2) The requirement for full cooperation does not foreclose any Contractor rights arising in law, the FAR, or the terms of the contract. It does not—

(i) Require the Contractor to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine;

(ii) Require any officer, director, owner, employee, or agent of the Contractor, including a sole proprietor, to waive his or her attorney client privilege or Fifth Amendment rights; or

(iii) Restrict the Contractor from—

(A) Conducting an internal investigation; or

(B) Defending a proceeding or dispute arising under the contract or related to a potential or disclosed violation.

(h) *Compliance plan.*

(1) This paragraph (h) applies to any portion of the contract that—

(i) Is for supplies, other than commercially available off-the-shelf items, acquired outside the United States, or services to be performed outside the United States; and

(ii) Has an estimated value that exceeds \$500,000.

(2) The Contractor shall maintain a compliance plan during the performance of the contract that is appropriate—

(i) To the size and complexity of the contract; and



(ii) To the nature and scope of the activities to be performed for the Government, including the number of non-United States citizens expected to be employed and the risk that the contract or subcontract will involve services or supplies susceptible to trafficking in persons.

(3) *Minimum requirements.* The compliance plan must include, at a minimum, the following:

(i) An awareness program to inform contractor employees about the Government's policy prohibiting trafficking-related activities described in paragraph (b) of this clause, the activities prohibited, and the actions that will be taken against the employee for violations. Additional information about Trafficking in Persons and examples of awareness programs can be found at the Web site for the Department of State's Office to Monitor and Combat Trafficking in Persons at <http://www.state.gov/j/tip/>.

(ii) A process for employees to report, without fear of retaliation, activity inconsistent with the policy prohibiting trafficking in persons, including a means to make available to all employees the hotline phone number of the Global Human Trafficking Hotline at 1-844-888-FREE and its email address at [help@befree.org](mailto:help@befree.org).

(iii) A recruitment and wage plan that only permits the use of recruitment companies with trained employees, prohibits charging recruitment fees to the employee, and ensures that wages meet applicable host-country legal requirements or explains any variance.

(iv) A housing plan, if the Contractor or subcontractor intends to provide or arrange housing, that ensures that the housing meets host-country housing and safety standards.

(v) Procedures to prevent agents and subcontractors at any tier and at any dollar value from engaging in trafficking in persons (including activities in paragraph (b) of this clause) and to monitor, detect, and terminate any agents, subcontracts, or subcontractor employees that have engaged in such activities.

(4) *Posting.*

(i) The Contractor shall post the relevant contents of the compliance plan, no later than the initiation of contract performance, at the workplace (unless the work is to be performed in the field or not in a fixed location) and on the Contractor's Web site (if one is maintained). If posting at the workplace or on the Web site is impracticable, the Contractor shall provide the relevant contents of the compliance plan to each worker in writing.

(ii) The Contractor shall provide the compliance plan to the Contracting Officer upon request.

(5) *Certification.* Annually after receiving an award, the Contractor shall submit a certification to the Contracting Officer that—

(i) It has implemented a compliance plan to prevent any prohibited activities identified at paragraph (b) of this clause and to monitor, detect, and terminate any agent, subcontract or subcontractor employee engaging in prohibited activities; and

(ii) After having conducted due diligence, either—

(A) To the best of the Contractor's knowledge and belief, neither it nor any of its agents, subcontractors, or their agents is engaged in any such activities; or

(B) If abuses relating to any of the prohibited activities identified in paragraph (b) of this clause have been found, the Contractor or subcontractor has taken the appropriate remedial and referral actions.

(i) *Subcontracts.*

(1) The Contractor shall include the substance of this clause, including this paragraph (i), in all subcontracts and in all contracts with agents. The requirements in paragraph (h) of this clause apply only to any portion of the subcontract that—

(A) Is for supplies, other than commercially available off-the-shelf items, acquired outside the United States, or services to be performed outside the United States; and

(B) Has an estimated value that exceeds \$500,000.

(2) If any subcontractor is required by this clause to submit a certification, the Contractor shall require submission prior to the award of the subcontract and annually thereafter. The certification shall cover the items in paragraph (h)(5) of this clause.

## **14.9 PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES**

### **Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (Aug 2020)**

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

*Backhaul* means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).

*Covered foreign country* means The People's Republic of China.

*Covered telecommunications equipment or services* means—

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

(2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

(3) Telecommunications or video surveillance services provided by such entities or using such equipment; or

(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

*Critical technology* means—

(1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;

(2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled-

- (i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or
- (ii) For reasons relating to regional stability or surreptitious listening;

(3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);

(4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);

(5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or

(6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

*Interconnection arrangements* means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

*Reasonable inquiry* means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.

*Roaming* means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

*Substantial or essential component* means any component necessary for the proper function or performance of a piece of equipment, system, or service.

(b) *Prohibition.*

(1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Contractor is prohibited from providing to the Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104.

(c) *Exceptions.* This clause does not prohibit contractors from providing—

(1) A service that connects to the facilities of a third party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(d) Reporting requirement.

(1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (d)(2) of this clause to the Contracting Officer, unless elsewhere in this contract are established procedures for reporting the information; in the case of the Department of Defense, the Contractor shall report to the website at <https://dibnet.dod.mil>. For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at <https://dibnet.dod.mil>.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause

(i) Within one business day from the date of such identification or notification: the contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) *Subcontracts*. The Contractor shall insert the substance of this clause, including this paragraph (e) and excluding paragraph (b)(2), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

## APPENDIX A: SPECIAL SUBCONTRACT PROVISIONS

The following clauses are incorporated from the Prime Task Order and are applicable to this Subcontract:

The Subcontractor agrees to comply with all applicable requirements, specifications, and conditions of the Prime Contract to the extent to which they are incorporated into this Subcontract Agreement. Any applicable requirements, specifications, and conditions of the Prime Contract, specified by law, are included in this Subcontract Agreement. The clauses in FAR Subpart 52.2 and AIDAR Subpart 752 referenced in the Prime Contract are required to be flowed down to subcontractors, in effect on the date of this Subcontract. In this section, Clauses from Section H – Prime Contract Special Requirements – are herein incorporated by Reference and are listed below. In addition, other clauses are listed in full text. Whether a clause appears as incorporated by reference or as full text, it applies to this Subcontract Agreement.

In all such clauses, the term “Contractor” shall mean the Subcontractor performing under this Subcontract, the term “Contract” shall mean this Subcontract, and the terms “Government”, “Contracting Officer” and equivalent phrases shall mean the Contractor and the DAI Contractual Representative, respectively. It is intended that the referenced clauses shall apply to the Subcontractor in such manner as is necessary to reflect the position of the Subcontractor as a subcontractor to the Prime Contractor, to insure the Subcontractor’s obligations to the Prime Contractor and to the U.S. Government, and to enable the Prime Contractor to meet its obligations under its Prime Contract. Clauses not requiring flow down from the Contractor to the Subcontractor, but nevertheless specified herein shall have full force and effect in performance of this Subcontract.

### Clauses Incorporated by Reference

This Subcontract incorporates one or more of the following clauses by reference, suitably modified to properly identify the parties, with same force and effect as if they were given in full text. The complete text will be made available to Subcontractor upon request.

The following contract clauses pertinent to this section are hereby incorporated by reference (by Citation Number, Title, and Date) in accordance with the clause at FAR "52.252-2 Clauses Incorporated By Reference" in Section H of this contract. See FAR 52.252-2 for an internet address (if specified) for electronic access to the full text of a clause. The full text of a clause may be accessed electronically at these addresses:

AIDAR: <http://www.usaid.gov/policy/ads/300/aidar.pdf>

FAR: <http://www.acquisition.gov>

### USAID ACQUISITION REGULATION - AIDAR (48 CFR Chapter 7)

AIDAR NUMBER	TITLE	DATE
752.245-71	TITLE TO AND CARE OF PROPERTY	APR 1984
752.7027	PERSONNEL	DEC 1990

### H.1 AIDAR 752.225-70 SOURCE AND NATIONALITY REQUIREMENTS (FEB 2012)

(a) Except as may be specifically approved by the Contracting Officer, the Contractor must procure all commodities (e.g., equipment, materials, vehicles, supplies) and services (including commodity transportation services) in accordance with the requirements at 22 CFR Part 228 "Rules on Procurement of Commodities and Services Financed by USAID Federal Program Funds." The authorized source for procurement is Geographic Code 937 unless otherwise specified in the schedule

of this contract. Guidance on eligibility of specific goods or services may be obtained from the Contracting Officer.

(b) Ineligible goods and services. The Contractor must not procure any of the following goods or services under this contract:

- (1) Military equipment
- (2) Surveillance equipment
- (3) Commodities and services for support of police and other law enforcement activities
- (4) Abortion equipment and services
- (5) Luxury goods and gambling equipment, or
- (6) Weather modification equipment.

(c) Restricted goods. The Contractor must obtain prior written approval of the Contracting Officer or comply

with required procedures under an applicable waiver when procuring any of the following goods or services:

- (1) Agricultural commodities,
- (2) Motor vehicles,
- (3) Pharmaceuticals and contraceptive items
- (4) Pesticides,
- (5) Fertilizer,
- (6) Used equipment, or
- (7) U.S. government-owned excess property.

If USAID determines that the Contractor has procured any of these specific restricted goods under this contract without the prior written authorization of the Contracting Officer or fails to comply with required procedures under an applicable waiver as provided by the Contracting Officer, and has received payment for such purposes, the Contracting Officer may require the contractor to refund the entire amount of the purchase.

## **H.2 ADS 302.3.5.19 USAID-FINANCED THIRD-PARTY WEB SITES (NOV 2017)**

(a) Definitions:

### **“Third-party web sites”**

Sites hosted on environments external to USAID boundaries and not directly controlled by USAID policies and staff, except through the terms and conditions of a contract. Third-party Web sites include project sites.

(b) The contractor must adhere to the following requirements when developing, launching, and maintaining a third-party Web site funded by USAID for the purpose of meeting the project implementation goals:

- (1) Working through the COR, the contractor must notify the USAID Bureau for Legislative and Public Affairs/Public Information, Production and Online Services (LPA/PIPOS) of the Web site URL as far in advance of the site's launch as possible.
- (2) The contractor must comply with Agency branding and marking requirements comprised of the USAID logo and brandmark with the tagline “from the American people,” located on the USAID Web site at [www.usaid.gov/branding](http://www.usaid.gov/branding), and USAID Graphics Standards manual at <http://www.usaid.gov>.
- (3) The Web site must be marked on the index page of the site and every major entry point to the Web site with a disclaimer that states: "The information provided on this Web site is not official U.S. Government information and does not represent the views or positions of the U.S. Agency for International Development or the U.S. Government."
- (4) The Web site must provide persons with disabilities access to information that is comparable to the access available to others. As such, all site content must be compliant with the requirements of the Section 508 amendments to the Rehabilitation Act.
- (5) The contractor must identify and provide to the COR, in writing, the contact information for the information security point of contact. The contractor is responsible for updating the contact information whenever there is a change in personnel assigned to this role.
- (6) The contractor must provide adequate protection from unauthorized access, alteration, disclosure, or misuse of information processed, stored, or transmitted on the Web sites. To minimize security

risks and ensure the integrity and availability of information, the contractor must use sound: system/software management; engineering and development; and secure coding practices consistent with USAID standards and information security best practices. Rigorous security safeguards, including but not limited to, virus protection; network intrusion detection and prevention programs; and vulnerability management systems must be implemented, and critical security issues must be resolved as quickly as possible or within 30 days. Contact the USAID Chief Information Security Officer (CISO) at [ISSO@usaid.gov](mailto:ISSO@usaid.gov) for specific standards and guidance.

(7) The contractor must conduct periodic vulnerability scans, mitigate all security risks identified during such scans, and report subsequent remediation actions to CISO at [ISSO@usaid.gov](mailto:ISSO@usaid.gov) and COR within 30 workdays from the date vulnerabilities are identified. The report must include disclosure of the tools used to conduct the scans. Alternatively, the contractor may authorize USAID CISO at [ISSO@usaid.gov](mailto:ISSO@usaid.gov) to conduct periodic vulnerability scans via its Web-scanning program. The sole purpose of USAID scanning will be to minimize security risks. The contractor will be responsible for taking the necessary remediation action and reporting to USAID as specified above.

(c) For general information, agency graphics, metadata, privacy policy, and 508 compliance requirements, refer to <http://www.usaid.gov>

### **H.3 ADS 302.3.5.22 SUBMISSION OF DATASETS TO THE DEVELOPMENT DATA LIBRARY (DDL) (OCT 2014)**

(a) Definitions. For the purpose of submissions to the DDL:

(1) “Dataset” is an organized collection of structured data, including data contained in spreadsheets, whether presented in tabular or non-tabular form. For example, a Dataset may represent a single spreadsheet, an extensible mark-up language (XML) file, a geospatial data file, or an organized collection of these. This requirement does not apply to aggregated performance reporting data that the contractor submits directly to a USAID portfolio management system or to unstructured data, such as email messages, PDF files, PowerPoint presentations, word processing documents, photos and graphic images, audio files, collaboration software, and instant messages. Neither does the requirement apply to the contractor’s information that is incidental to award administration, such as financial, administrative, cost or pricing, or management information.

Datasets submitted to the DDL will generally be those generated with USAID resources and created in support of Intellectual Work that is uploaded to the Development Experience Clearinghouse (DEC) (see AIDAR 752.7005 “Submission Requirements for Development Experience Documents”).

(2) “Intellectual Work” includes all works that document the implementation, monitoring, evaluation, and results of international development assistance activities developed or acquired under this award, which may include program and communications materials, evaluations and assessments, information products, research and technical reports, progress and performance reports required under this award (excluding administrative financial information), and other reports, articles and papers prepared by the contractor under the award, whether published or not.

The term does not include the contractor’s information that is incidental to award administration, such as financial, administrative, cost or pricing, or management information.

(b) Submissions to the Development Data Library (DDL)

(1) The Contractor must submit to the Development Data Library (DDL), at [www.usaid.gov/data](http://www.usaid.gov/data), in a machine-readable, non-proprietary format, a copy of any Dataset created or obtained in performance of this award, including Datasets produced by a subcontractor at any tier. The submission must include supporting documentation describing the Dataset, such as code books, data dictionaries, data gathering tools, notes on data quality, and explanations of redactions.

(2) Unless otherwise directed by the Contracting Officer (CO) or the Contracting Officer Representative (COR), the contractor must submit the Dataset and supporting documentation within thirty (30) calendar days after the Dataset is first used to produce an Intellectual Work or is of sufficient quality to produce an Intellectual Work. Within thirty (30) calendar days after award completion, the contractor must submit to the DDL any Datasets and supporting documentation that have not previously been submitted to the DDL, along with an index of all Datasets and Intellectual Work created or obtained under the award. The contractor must also provide to the COR an itemized list of any and all DDL submissions.



The contractor is not required to submit the data to the DDL, when, in accordance with the terms and conditions of this award, Datasets containing results of federally funded scientific research are submitted to a publicly accessible research database. However, the contractor must submit a notice to the DDL by following the instructions at [www.usaid.gov/data](http://www.usaid.gov/data), with a copy to the COR, providing details on where and how to access the data. The direct results of federally funded scientific research must be reported no later than when the data are ready to be submitted to a peer-reviewed journal for publication, or no later than five calendar days prior to the conclusion of the award, whichever occurs earlier.

(3) The contractor must submit the Datasets following the submission instructions and acceptable formats found at [www.usaid.gov/data](http://www.usaid.gov/data).

(4) The contractor must ensure that any Dataset submitted to the DDL does not contain any proprietary or personally identifiable information, such as social security numbers, home addresses, and dates of birth. Such information must be removed prior to submission.

(5) The contractor must not submit classified data to the DDL.

#### **H.5 AIDAR 752.7007 PERSONNEL COMPENSATION (JULY 2007)**

(a) Direct compensation of the Contractor's personnel will be in accordance with the Contractor's established policies, procedures, and practices, and the cost principles applicable to this contract.

(b) Reimbursement of the employee's base annual salary plus overseas recruitment incentive, if any, which exceed the USAID Contractor Salary Threshold (USAID CST) stated in USAID Automated Directives System (ADS) Chapter 302 USAID Direct Contracting, must be approved in writing by the Contracting Officer, as prescribed in 731.205-6(b) or 731.371(b), as applicable.

#### **H.6 ADDITIONAL REQUIREMENTS FOR PERSONNEL COMPENSATION**

a. Limitations:

1. If, during contract performance, the contractor proposes salary or wages for a new individual(s) that exceeds **10%** of the individual's current salary or wage or the highest rate of annual salary or wage received during any full year of the immediately preceding three (3) years, the Cognizant Contracting Officer's approval is required.

2. In addition, there is a ceiling on the reimbursable base salary or wage paid to personnel under the Contract equivalent to the maximum annual salary rate specified in section H.6 above unless an advance written waiver is granted by the USAID Procurement Executive.

b. Salaries during Travel

Salaries and wages paid while in travel status will not be reimbursed for a travel period greater than the time required for travel by the most direct and expeditious air route.

c. Return of Overseas Employees

Salaries and wages paid to an employee serving overseas who is discharged by the Contractor for misconduct, inexcusable nonperformance, or security reasons will in no event be reimbursed for a period which extends beyond the time required to return him/her promptly to his/her point of origin by the most direct and expeditious air route.

d. Annual Salary Increases

Annual salary increases (e.g. cost of living and merit increases and other) may be granted once a year and cannot exceed 5%. Annual salary increases of any kind exceeding this limitation or exceeding the USAID Contractor Salary Threshold (CST) may be granted only with the advance written approval of the Contracting Officer.

e. Consultants

Any consultant's daily or hourly compensation shall be negotiated with due regard for prevailing compensation levels for similar consulting services, and shall not exceed the highest rate of compensation received by the consultant during immediately preceding three years. Annual increases are not authorized for consultants.

f. Definitions

As used herein, the terms "Salaries," "Wages," and "Compensation" mean the periodic remuneration received for professional or technical services rendered, exclusive of any of the differentials or allowances defined in the clause of this contract entitled "Differentials and Allowances" (AIDAR 752.7028), unless otherwise stated. The term "compensation" includes payments for personal services



(including fees and honoraria). It excludes earnings from sources other than the individual's professional or technical work, overhead, or other charges under the contract.”

#### **H.7 AIDAR 752.228-70 MEDICAL EVACUATION (MEDEVAC) SERVICES (JUL 2007)**

(a) Contractor must provide MEDEVAC service coverage to all U.S. citizen, U.S. resident alien, and Third Country National employees and their authorized dependents (hereinafter "individual") while overseas under a USAID-financed direct contract. USAID will reimburse reasonable, allowable, and allocable costs for MEDEVAC service coverage incurred under the contract. The Contracting Officer will determine the reasonableness, allowability, and allocability of the costs based on the applicable cost principles and in accordance with cost accounting standards.

(b) Exceptions.

(i) The Contractor is not required to provide MEDEVAC insurance to eligible employees and their dependents with a health program that includes sufficient MEDEVAC coverage as approved by the Contracting Officer.

(ii) The Mission Director may make a written determination to waive the requirement for such coverage. The determination must be based on findings that the quality of local medical services or other circumstances obviate the need for such coverage for eligible employees and their dependents located at post.

(c) Contractor must insert a clause similar to this clause in all subcontracts that require performance by contractor employees overseas.

#### **H.8 AIDAR 752.222-70 USAID DISABILITY POLICY (DEC 2004)**

The objectives of the USAID Disability Policy are (1) to enhance the attainment of United States foreign assistance program goals by promoting the participation and equalization of opportunities of individuals with disabilities in USAID policy, country and sector strategies, activity designs and implementation; (2) to increase awareness of issues of people with disabilities both within USAID programs and in host countries; (3) to engage other U.S. government agencies, host country counterparts, governments, implementing organizations and other donors in fostering a climate of nondiscrimination against people with disabilities; and (4) to support international advocacy for people with disabilities. The full text of the policy paper can be found at the following website: [http://pdf.usaid.gov/pdf\\_docs/PDABQ631.pdf](http://pdf.usaid.gov/pdf_docs/PDABQ631.pdf).

(a) USAID therefore requires that the contractor not discriminate against people with disabilities in the implementation of USAID programs and that it makes every effort to comply with the objectives of the USAID Disability Policy in performing this contract. To that end and within the scope of the contract, the contractor's actions must demonstrate a comprehensive and consistent approach for including men, women and children with disabilities.

#### **H.9 AUTHORIZED GEOGRAPHIC CODE**

The authorized geographic codes for procurement of goods and services under this Contract is 110 and 937 defined as the United States, the independent states of the former Soviet Union, or a developing country, but excluding any country that is a prohibited source and the United States, the Cooperating Country, and developing countries other than advanced developing countries, but excluding any country that is a prohibited source. For accurate identification of developing countries, advanced developing countries, and prohibited sources, please refer to Automated Directives System (ADS) Chapter 310 entitled "Source and Nationality Requirements for Procurement of Commodities and Services Financed by USAID."

#### **H.10 EXECUTIVE ORDERS ON TERRORISM FINANCING**

The Contractor is reminded that U.S. Executive Orders (including E.O. 13224) and U.S. law prohibit transactions with, and the provision of resources and support to, individuals and organizations associated with terrorism. It is the legal responsibility of the contractor to ensure compliance with these Executive Orders and laws.

FAR 25.701 prohibits agencies and their contractors and subcontractors from acquiring any

supplies or services from individuals or organizations, if any proclamation, Executive Order, Office of Foreign Assets Control (OFAC) regulations, or statute administered by OFAC would prohibit such a transaction. Accordingly, the Contracting Officer must check the U.S. Department of the Treasury's OFAC List to ensure that the names of the Contractor and proposed subcontractors (and individuals from those organizations who have been made known to them), are not on the list. Mandatory FAR clause 52.225-13 "Restrictions on Certain Foreign Purchases" is included by reference in Section I.1 of this contract. By accepting this contract, the Contractor acknowledges and agrees that it is aware of the list as part of its compliance with the requirements of that clause. This clause must be included in all subcontracts/sub-awards issued under this contract.

## **H.11 COMMUNICATIONS AND OUTREACH APPROVAL REQUIREMENTS**

1. In addition to the requirements of AIDAR 752.7035 "Public Notices," the Contractor will obtain prior COR and USAID Development Outreach and Communication Specialist authorization for all public notices, press releases, interviews and other media contacts.
2. If the Contractor would like to arrange a meeting with ministerial-level host government officials, it shall obtain permission from the COR and/or alternate COR for such a meeting at least one week before any such meeting is likely to be scheduled.
3. The Contractor must coordinate all press inquiries and statements with USAID's COR. Contractor must seek approval from COR before agreeing to or allowing staff to conduct interviews with the press. The Contractor must not speak on behalf of USAID but will refer all requests for USAID information to the USAID COR/Communication/press officer.
4. No news release pertaining to this contract will be made without prior USAID approval, as appropriate, and then only in coordination with the COR.

## **H.12 GOVERNMENT FURNISHED FACILITIES OR PROPERTY**

- (a) The Contractor and any employee or consultant of the Contractor is prohibited from using U.S. Government facilities (such as office space or equipment) or U.S. Government clerical or technical personnel in the performance of the services specified in the Contract unless the use of Government facilities or personnel is specifically authorized in the Contract or is authorized in advance, in writing, by the CO.
- (b) If at any time it is determined that the Contractor, or any of its employees or consultants, have used U.S. Government facilities or personnel either in performance of the Contract itself, or in advance, without authorization in writing, by the Contracting Officer, then the amount payable under the Contract will be reduced by an amount equal to the value of the U.S. Government facilities or personnel used by the Contractor, as determined by the Contracting officer.
- (c) If the parties fail to agree on an adjustment made pursuant to this clause it will be considered a "dispute" and will be dealt with under the terms of the "Disputes" clauses of the Contract.

## **H.13 FOREIGN GOVERNMENT DELEGATIONS TO INTERNATIONAL CONFERENCES**

Funds in this contract may not be used to finance the travel, per diem, hotel expenses, meals, conference fees or other conference costs for any member of a foreign government's delegation to an international conference sponsored by a public international organization, except as provided in ADS Mandatory Reference "Guidance on Funding Foreign Government Delegations

to International Conferences" found at <http://www.usaid.gov/sites/default/files/documents/1868/350maa.pdf> or as approved by the CO/COR.

#### **H.14 LOGISTICAL SUPPORT**

The Contractor shall be responsible for furnishing all logistic support in the United States and overseas unless otherwise specified in the contract.

The USAID/Ukraine Contractors Support Unit (CSU) will assist the Contractor with project registration, accreditation, customs and tax exemption issues, property transfers at contract closeout, etc. The contact person is Ms. Tatiana Kistanova, CSU Assistant, Tel: (380-44) 525-5736, e-mail: [tkistanova@usaid.gov](mailto:tkistanova@usaid.gov).

The Contractor shall address all requirements under U.S. and local law for the transfer of property and shall provide the inventory schedule required by FAR 52.245-1. The proposed property disposition must be approved in writing by the Contracting Officer.

#### **H.15 LANGUAGE REQUIREMENTS**

All deliverables must be produced in English and Ukrainian.

#### **H.16 AIDAR 752.7032 INTERNATIONAL TRAVEL APPROVAL AND NOTIFICATION REQUIREMENTS (APR 2014)**

Prior written approval by the contracting officer, or the contracting officer's representative (COR) if delegated in the Contracting Officer's Representative Designation Letter, is required for all international travel directly and identifiably funded by USAID under this contract. The Contractor must therefore present to the contracting officer or the contracting officer's representative, an itinerary for each planned international trip, showing the name of the traveler, purpose of the trip, origin/destination (and intervening stops), and dates of travel, as far in advanced of the proposed travel as possible, but in no event less than three weeks before travel is planned to commence. The contracting officer's or contracting officer's representative's (if delegated by the contracting officer) prior written approval may be in the form of a letter or telegram or similar device or may be specifically incorporated into the schedule of the contract. At least one week prior to commencement of approved international travel, the Contractor must notify the cognizant Mission, with a copy to the contracting officer or contracting officer's representative, of planned travel, identifying the travelers and the dates and times of arrival.

#### **H.17 FRAUD REPORTING**

The Contractor is required to report on indications of fraud in host-country institutions or other matters that could reasonably be expected to be of foreign policy interest to the U.S. Government's development and stabilization efforts. Corruption, real or perceived, may critically impact USAID programming objectives as might other knowledge the Contractor acquires in its normal course of business. This clause must not be construed to require the Contractor to conduct investigation for such information outside of its normal business practices or to report on matters not directly or indirectly related to USAID programming or the proper use of U.S. Government funds. In the event awardee has special non-disclosure requirements or confidentiality requirements (such as prevalent in the legal and banking industries), or Contractor determines such reporting would conflict with applicable laws, Contractor must include a proposal to obtain any necessary waivers from the applicable host-country institution allowing such reporting to the maximum extent possible. Reports under this requirement must be submitted as a deliverable under the award.

## **H.18 ENVIRONMENTAL COMPLIANCE**

The Contract will be covered by the following approved Initial Environmental Examination (IEE, Number: 2018-URK-031).

- 1) The Foreign Assistance Act of 1961, as amended, Section 117 requires that the impact of USAID's activities on the environment be considered and that USAID include environmental sustainability as a central consideration in designing and carrying out its development programs. This mandate is codified in Federal Regulations (22 CFR 216) and in USAID's Automated Directives System (ADS) ADS 201 and ADS 204, which, in part, require that the potential environmental impacts of USAID-financed activities are identified prior to a final decision to proceed and that appropriate environmental safeguards are adopted for all activities. Applicant's environmental compliance obligations under these regulations and procedures are specified in the following paragraphs of this Contract.
- 2) In addition, the Contractor must comply with host country environmental regulations unless otherwise directed in writing by USAID. In case of conflict between host country and USAID regulations, the latter shall govern.
- 3) No activity funded under this Contract will be implemented unless an environmental threshold determination, as defined by 22 CFR 216, has been reached for that activity, as documented in a Request for Categorical Exclusion (RCE), Initial Environmental Examination (IEE), or Environmental Assessment (EA) duly signed by the Bureau Environmental Officer (BEO). (Hereinafter, such documents are described as "approved Regulation 216 environmental documentation.")

The Initial Environmental Examination (IEE, Number 2018-UKR-031) has been approved for the Activity funding this Contract. It will cover program activities discussed in Appendix C, Scope of Work, of this Contract. USAID has determined that a Negative Determination with conditions applies to one or more of the proposed activities discussed in the Appendix C, SOW, of this award. This indicates that if these activities are implemented subject to the specified conditions, they are expected to have no significant adverse effect on the environment. The Contractor shall be responsible for implementing all IEE conditions pertaining to activities to be funded under this award.

- 4) As part of its initial Implementation Plan, and all Annual Implementation Plans thereafter, the Contractor, in collaboration with the USAID Contracting Officer's Representative (COR) and Mission Environmental Officer or Bureau Environmental Officer, as appropriate, shall review all ongoing and planned activities under this award to determine if they are within the scope of the approved Regulation 216 environmental documentation.
- 5) If the Contractor plans any new activities outside the scope of the approved Regulation 216 environmental documentation, it shall prepare an amendment to the documentation for USAID review and approval. No such new activities shall be undertaken prior to receiving written USAID approval of environmental documentation amendments.
- 6) Any ongoing activities found to be outside the scope of the approved Regulation 216 environmental documentation shall be halted until an amendment to the documentation is submitted and written approval is received from USAID.

## **H.19 DISCLOSURE OF INFORMATION**

- (a) Contractors are reminded that information furnished under this solicitation/contract may be subject to disclosure under the Freedom of Information Act (FOIA). Therefore, all items that are confidential to business, or contain trade secrets, proprietary, or personnel information must

be clearly marked. Marking of items will not necessarily preclude disclosure when the U.S. Office of Personnel Management (OPM or the U.S. Government) determines disclosure is warranted by FOIA. However, if such items are not marked, all information contained within the submitted documents will be deemed to be releasable.

(b) Any information made available to the contractor by the U.S. Government must be used only for the purpose of carrying out the provisions of this contract and must not be divulged or made known in any manner to any person except as may be necessary in the performance of the contract.

(c) In performance of this contract, the contractor assumes responsibility for protection of the confidentiality of U.S. Government records and must ensure that all work performed by its subcontractors must be under the supervision of the contractor or the contractor's responsible employees.

Each officer or employee of the contractor or any of its subcontractors to whom any U.S. Government record may be made available or disclosed must be notified in writing by the contractor that information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such information, by any means, for a purpose or to an extent unauthorized herein, may subject the offender to criminal sanctions imposed by 19 U.S.C. § 641. That section provides, in pertinent part, that whoever knowingly converts to their use or the use of another, or without authority, sells, conveys, or disposes of any record of the United States or whoever receives the same with intent to convert it to their use or gain, knowing it to have been converted, must be guilty of a crime punishable by a fine of up to \$10,000, or imprisoned up to ten years, or both.

**H.20 FACILITIES USED FOR RELIGIOUS ACTIVITIES**

Unless otherwise authorized in writing by the Contracting Officer, Contractor shall not use Contract funds for any work related to facilities of any type where the intended use of such a facility is for inherently religious activities. In cases where work addressed by this provision is authorized by the Contracting Officer, such authorization will be limited and explicit.

**H.21 RESERVED**

**H.22 INSURANCE AND SERVICES**

Pursuant to AIDAR 752.228-3 Worker’s Compensation Insurance (Defense Base Act), USAID’s DBA insurance carrier is: Allied World Assurance Company (AWAC) under USAID contract number AID- OAA-C-16-00015.

**A. RATES**

<b>Contract Year</b>	<b>Period of Performance</b>	<b>Services</b>	<b>Construction</b>	<b>Security</b>
Base Period	12/1/15 - 11/30/17	\$2.00	\$4.50	\$7.50
Option 1	12/1/17 - 11/30/18	\$2.00	\$4.50	\$7.50/\$10.00/\$12.50 (see Notes)
Option 2	12/1/18 - 11/30/19	\$2.00	\$4.50	\$7.50/\$10.00/\$12.50 (see Notes)
Option 3	12/1/19 - 11/30/20	\$2.00	\$4.50	\$7.50/\$10.00/\$12.50 (see Notes)

Notes:

For Option Periods 1, 2 and 3, the percentage of USAID security payroll would be measured as of the last day of the preceding period (i.e. the base period or the immediately preceding option period), which is referred to as the “measurement date”.

1) If at the measurement date, the percentage of USAID security payroll remains between 0-10.0%

of total payroll, the security rate in the next option period will be \$7.50/\$100 employee remuneration.

2) If at the measurement date, the percentage of USAID security payroll is above 10.0% to 25.0% of total payroll, the security rate in the next option period will be \$10.00/\$100 employee remuneration.

3) If at the measurement date, the percentage of USAID security payroll exceeds 25.0% of total payroll, the security rate in the next option period will be \$12.50/\$100 employee remuneration.

4) The term “wages” means the money rate at which the service rendered by an employee is compensated by an employer under the contract of hiring in force at the time of the injury, including the reasonable value of any advantage which is received from the employer and included for purposes of any withholding of tax under subtitle C of the Internal Revenue Code of 1954 [26 USC §§ 3101 et seq.] (relating to employee taxes). The term wages do not include fringe benefits, including (but not limited to) employer payments for or contribution to a retirement, pension, health and welfare, life insurance, training, social security or other employee or dependent benefit plan for the employee’s or dependent’s benefit, or any other employee’s dependent entitlement.

Maximum rate of compensation shall not exceed 200 per centum of the applicable national average weekly wage (NAWW) as calculated by the Secretary of Labor. The current NAWW can be found at <http://www.dol.gov/owcp/dlhwc/nawwinfo.htm>.

5) The new rate structure aligns DBA rates to the likelihood that specific types of contracts will incur different frequency of DBA payouts and of differing dollar amounts. Those having greater risk pay greater premiums. Those with anticipated lower risk pay lesser premiums. The concept is to associate specific costs to a contract predicated upon the potential DBA risks under the same contract. The risk is predicated on the nature and inherent danger of certain categories of contracts (and performance under those awards).

6) For contracts that include Aviation, ground crews shall be categorized as Construction, and flight crew shall be categorized as Security.

Upon the Option Year being exercised, the contractor must confirm in writing, the security payroll percentage as of the measurement date of the preceding period of performance to the CO.

**This AAPD will be amended within thirty (30) calendar days of the exercise of an option to provide the new “Security” rate as determined in accordance with Notes 1 through 3 above. In the interim between exercise of an option and the amendment to the AAPD, COs may obtain the rate from the agent listed in Section B below.**

#### B. OBTAINING DBA COVERAGE

Contractors must apply for coverage directly to AON Risk Insurance Services Inc., the agent for AWAC DBA Insurance. For instructions on the required application form and submission requirements, contact the following office:

AON Risk Insurance Services West, Inc. 2033 N. Main St., Suite 760  
Walnut Creek, CA 94596-3722  
Hours: 8:30 A.M. to 5:00 PM, Pacific Time Primary Contact: Fred Robinson  
Phone: (925) 951-1856  
Fax: (925) 951-1890  
Email: [Fred.Robinson@aon.com](mailto:Fred.Robinson@aon.com)

#### C. NOTICE OF EXCLUSION OF MEDICAL EVACUATION COVERAGE



Pursuant to AIDAR 752.228-70, medical evacuation insurance is a separate insurance requirement for overseas performance of USAID contracts; the Defense Base Act insurance does not provide coverage for medical evacuation.

#### D. WAIVERS FOR THIRD COUNTRY AND LOCAL NATIONALS

The list of countries with active DBA waivers is available at <http://www.dol.gov/owcp/dlhwc/dbawaivers/dbawaivers.htm>. In accordance with ADS 302, Missions may obtain a country-based waiver by sending a request to M/OAA Evaluation Division at [dbawaiwerrequests@usaid.gov](mailto:dbawaiwerrequests@usaid.gov).

### H.23 RESERVED

### H.24 CLOUD COMPUTING (APRIL 2018)

(a) Definitions. As used in this special contract requirement-

“Cloud computing” means a model for enabling ubiquitous, convenient, on-demand network access to a shared pool of configurable computing resources (e.g., networks, servers, storage, applications, and services) that can be rapidly provisioned and released with minimal management effort or service provider interaction. This includes other commercial terms, such as on-demand self-service, broad network access, resource pooling, rapid elasticity, and measured service. It also includes commercial offerings for software-as-a-service, infrastructure-as-a-service, and platform-as-a-service.

"Federal information" means information created, collected, processed, disseminated, or disposed of by or for the Federal Government, in any medium or form. (OMB A-130)

“Information” means any communication or representation of knowledge such as facts, data, or opinions in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual (Committee on National Security Systems Instruction (CNSSI) 4009).

“Information Security Incident” means an occurrence that

(1) actually, or imminently jeopardizes, without lawful authority, the integrity, confidentiality, or availability of information or an information system; or

(2) constitutes a violation or imminent threat of violation of law, security policies, security procedures, or acceptable use policies.

“Privacy Incident means a violation or imminent threat of violation of security policies, acceptable use policies, or standard security practices, involving the breach of Personally Identifiable Information (PII), whether in electronic or paper format.

“Spillage” means a security incident that results in the transfer of classified or other sensitive or sensitive but unclassified information to an information system that is not accredited,(i.e., authorized) for the applicable security level of the data or information. “Cloud Service Provider” or CSP means a company or organization that offers some component of cloud computing – typically Infrastructure as a Service (IaaS), Software as a Service (SaaS) or Platform as a Service (PaaS) – to other businesses, organizations or individuals.

“Penetration Testing” means security testing in which assessors mimic real-world attacks to identify methods for circumventing the security features of an application, system, or network. (NIST SP 800- 115)

“Third Party Assessment Organizations” means an organization independent of the organization whose IT system is being assessed. They are required to meet the ISO/IEC 17020:1998 standards for independence and managerial competence and meet program requirements for technical FISMA competence through demonstrated expertise in assessing cloud-based solutions.

“Personally Identifiable Information (PII)” means information that can be used to distinguish or

trace an individual's identity, such as their name, Social Security Number (SSN), biometric records, etc., alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc. The definition of PII is not anchored to any single category of information or technology. Rather, it requires a case-by-case assessment of the specific risk that an individual can be identified. In performing this assessment, it is important to recognize that non-PII can become PII whenever additional information is made publicly available — in any medium and from any source — that, when combined with other available information, could be used to identify an individual. PII examples include name, address, SSN, or other identifying number or code, telephone number, and e-mail address. PII can also consist of a combination of indirect data elements such as gender, race, birth date, geographic indicator (e.g., zip code), and other descriptors used to identify specific individuals. When defining PII for USAID purposes, the term “individual” refers to a citizen of the United States or an alien lawfully admitted for permanent residence.

(b) Applicability

This special contract requirement applies to the Contractor and all personnel providing support under this contract (hereafter referred to collectively as “Contractor”) and addresses specific USAID requirements in addition to those included in the Federal Acquisition Regulation (FAR), Privacy Act of 1974 (5 U.S.C. 552a - the Act), E-Government Act of 2002 - Section 208 and Title III, Federal Information Security Management Act (FISMA), the Health Insurance Portability and Accountability Act of 1996 (HIPAA, Pub. L. 104-191, 110 Stat. 1936), the Sarbanes-Oxley Act of 2002 (SOX, Pub. L. 107- 204, 116 Stat 745), National Institute of Standards and Technology (NIST), Federal Information Processing Standards (FIPS) and the 800-Series Special Publications (SP), Office of Management and Budget (OMB) memorandums, and other laws, mandates, or executive orders pertaining to the development and operations of information systems and the protection of sensitive information and data.

(c) Limitations on access to, use and disclosure of Federal information.

(1) The Contractor shall not access, use, or disclose Government data unless specifically authorized by the terms of this contract issued hereunder.

(i) If authorized by the terms of this contract issued hereunder, any access to, or use or disclosure of, Federal information shall only be for purposes specified in this contract.

(ii) The Contractor shall ensure that its employees are subject to all such access, use, and disclosure prohibitions and obligations.

(iii) These access, use, and disclosure prohibitions and obligations shall remain effective beyond the expiration or termination of this contract.

(2) The Contractor shall use related Federal information only to manage the operational environment that supports the Federal information and for no other purpose unless otherwise permitted with the prior written approval of the Contracting Officer.

(d) Records Management and Access to Information

(1) The Contractor shall support a system in accordance with the requirement for Federal agencies to manage their electronic records in accordance with capabilities such as those identified in the provisions of this contract and National Archives and Records Administration (NARA) retention policies.

(2) Upon request by the government, the Contractor shall deliver to the Contracting Officer all Federal information, including data schemas, metadata, and other associated data artifacts, in the



format specified in the schedule or by the Contracting Officer in support of government compliance requirements to include but not limited to Freedom of Information Act, Privacy Act, e-Discovery, e- Records and legal or security investigations.

(3) The Contractor shall retain and maintain all Federal information in accordance with records retention provisions negotiated by the terms of the contract and in accordance with USAID records retention policies.

(4) The Contractor shall dispose of Federal information in accordance with the terms of the contract and provide the confirmation of disposition to the Contracting Officer in accordance with contract closeout procedures.

(e) Notification of third-party access to Federal information: The Contractor shall notify the Government immediately of any requests from a third party for access to Federal information or, including any warrants, seizures, or subpoenas it receives, including those from another Federal, State, or Local agency, that could result in the disclosure of any Federal information to a third party. The Contractor shall cooperate with the Government to take all measures to protect Federal information from any loss or unauthorized disclosure that might reasonably result from the execution of any such request, warrant, seizure, subpoena, or similar legal process.

Spillage and Information Security Incidents: Upon written notification by the Government of a spillage or information security incident involving classified information, or the Contractor's discovery of a spillage or security incident involving classified information, the Contractor shall immediately (within 30 minutes) notify [CIO-HELPDESK@usaid.gov](mailto:CIO-HELPDESK@usaid.gov) and the Office of Security at [SECinformationsecurity@usaid.gov](mailto:SECinformationsecurity@usaid.gov) to correct the spillage or information security incident in compliance with agency-specific instructions. The Contractor will also notify the Contracting Officer or Contracting Officer's Representative and the Contractor Facilities Security Officer. The Contractor will abide by USAID instructions on correcting such a spill or information security incident. For all spills and information security incidents involving unclassified and/or SBU information, the protocols outlined above in section (g) and (h) below shall apply.

(f) Information Security Incidents

(1) Security Incident Reporting Requirements: All Information Security Incidents involving USAID data or systems must be reported in accordance with the requirements below, even if it is believed that the information security incident may be limited, small, or insignificant. USAID will determine the magnitude and resulting actions.

(i) Contractor employees must report via e-mail all Information Security Incidents to the USAID Service Desk immediately, but not later than 30 minutes, after becoming aware of the Incident, at: [CIOHELPDESK@usaid.gov](mailto:CIOHELPDESK@usaid.gov), regardless of day or time, as well as the Contracting Officer and Contracting Officer's representative and the Contractor Facilities Security Officer.

Contractor employees are strictly prohibited from including any Sensitive Information in the subject or body of any e-mail concerning information security incident reports. To transmit Sensitive Information, Contractor employees must use FIPS 140-2 compliant encryption methods to protect Sensitive Information in attachments to email. Passwords must not be communicated in the same email as the attachment.

(ii) The Contractor must provide any supplementary information or reports related to a previously reported information security incident directly to [CIO-HELPDESK@usaid.gov](mailto:CIO-HELPDESK@usaid.gov), upon request. Correspondence must include related ticket number(s) as provided by the USAID Service Desk with the subject line "Action Required: Potential Security Incident".

(g) Privacy Incidents Reporting Requirements: Privacy Incidents may result in the unauthorized

use, disclosure, or loss of personally identifiable information, and can result in the loss of the public's trust and confidence in the Agency's ability to safeguard personally identifiable information. PII breaches may impact individuals whose PII is compromised, including potential identity theft resulting in financial loss and/or personal hardship experienced by the individual. Contractor employees must report by e-mail all Privacy Incidents to the USAID Service Desk immediately (within 30 minutes), after becoming aware of the Incident, at: CIO-HELPDESK@usaid.gov, regardless of day or time, as well as the USAID Contracting Officer or Contracting Officer's representative and the Contractor Facilities Security Officer. If known, the report must include information on the format of the PII (oral, paper, or electronic.) The subject line shall read "Action Required: Potential Privacy Incident".

(h) Information Ownership and Rights: USAID information stored in a cloud environment remains the property of USAID, not the Contractor or cloud service provider (CSP). USAID retains ownership of the information and any media type that stores Federal information. The CSP shall only use the Federal information for purposes explicitly stated in the contract. Further, the cloud service provider shall export Federal information in a machine-readable and non-proprietary format that USAID requests at the time of production, unless the parties agree otherwise.

(i) Security Requirements:

The Contractor shall adopt and maintain administrative, technical, operational, and physical safeguards and controls that meet or exceed requirements contained within the Federal Risk and Authorization Management Program (FedRAMP) Cloud Computing Security Requirements Baseline, current standard for NIST 800-53 (Security and Privacy Controls for Federal Information Systems) and Organizations, including Appendix J, and FedRAMP Continuous Monitoring Requirements for the security level and services being provided, in accordance with the security categorization or impact level as defined by the government based on the Federal Information Processing Standard (FIPS) Publication 199 (FIPS-199).

(1) The Contractor shall comply with FedRAMP requirements as mandated by Federal laws and policies, including making available any documentation, physical access, and logical access needed to support this requirement. The Level of Effort for the security assessment and authorization (SA&A) is based on the system's complexity and security categorization. The Contractor shall create, maintain and update the following documentation using FedRAMP requirements and templates, which are available at <https://www.FedRAMP.gov>.

(2) The Contractor must support SA&A activities to include assessment by an accredited Third-Party Assessment Organization (3PAO) initially and whenever there is a significant change to the system's security posture in accordance with the FedRAMP Continuous Monitoring Plan. The Contractor must make available to the Contracting Officer, the most current, and any other, Security Assessment Reports for consideration as part of the Contractor's overall Systems Security Plan.

(3) The Government reserves the right to perform penetration testing or request Penetration Testing by an independent source. If the Government exercises this right, the Contractor shall allow Government employees (or designated third parties) to conduct Security Assessment activities to include control reviews in accordance with FedRAMP requirements. Review activities include but are not limited to scanning operating systems, web applications, databases, wireless scanning; network device scanning to include routers, switches, and firewall, and IDS/IPS; databases and other applicable systems, including general support structure, that support the processing, transportation, storage, or security of Federal information for vulnerabilities.

(4) Identified gaps between required FedRAMP Security Control Baselines and Continuous Monitoring controls and the Contractor's implementation as documented in the Security

Assessment Report must be tracked by the Contractor for mitigation in a Plan of Action and Milestones (POA&M) document.

Depending on the severity of the gaps, the Government may require them to be remediated before any restricted authorization is issued.

(5) The Contractor is responsible for mitigating all security risks found during SA&A and continuous monitoring activities. All high-risk vulnerabilities must be mitigated within thirty (30) calendar days and all moderate risk vulnerabilities must be mitigated within sixty (60) calendar days from the date vulnerabilities are formally identified. USAID may revoke an ATO for any system if it is determined that the system does not comply with USAID standards or presents an unacceptable risk to the Agency. The Government will determine the risk rating of vulnerabilities.

(6) The Contractor shall provide access to the Federal Government, or their designee acting as their agent, when requested, in order to verify compliance with the requirements and to allow for appropriate risk decisions for an Information Technology security program. The Government reserves the right to conduct onsite inspections. The Contractor must make appropriate personnel available for interviews and provide all necessary documentation during this review and as necessary for continuous monitoring activities.

(j) Privacy Requirements: Cloud Service Provider (CSP) must understand and adhere to applicable federal Privacy laws, standards, and guidance to protect Personally Identifiable Information (PII) about individuals that will be collected and maintained by the Contractor solution. The Contractor responsibilities include full cooperation for any request for disclosure, subpoena, or other judicial process seeking access to records subject to the Privacy Act of 1974.

(k) Data Location: The Contractor must disclose the data server locations where the Agency data will be stored as well as the redundant server locations. The Contractor must have prior Agency approval to store Agency data in locations outside of the United States.

(l) Terms of Service (ToS): The Contractor must disclose any requirements for terms of service agreements and clearly define such terms prior to contract award. All ToS provisions regarding controlling law, jurisdiction, and indemnification must align with Federal statutes, policies, and regulations.

(m) Service Level Agreements (SLAs): The Contractor must be willing to negotiate service levels with USAID; clearly define how performance is guaranteed (such as response time resolution/mitigation time, availability, etc.); monitor their service levels; provide timely notification of a failure to meet the SLAs; and evidence that problems have been resolved or mitigated. Additionally, at USAID's request, the Contractor must submit reports or provide a dashboard where USAID can continuously verify that service levels are being met. Where SLAs fail to be met, USAID may assess monetary penalties or service credit.

(n) Trusted Internet Connection (TIC): The Contractor must route all USAID traffic through the TIC.

(o) Forensics, Freedom of Information Act (FOIA), Electronic Discovery, or additional Information Requests: The Contractor must allow USAID access required to retrieve information necessary for FOIA and Electronic Discovery activities, as well as, forensic investigations for both criminal and noncriminal purposes without their interference in these activities. USAID may negotiate roles and responsibilities for conducting these activities in agreements outside of this contract.

(1) The Contractor must ensure appropriate forensic tools can reach all devices based on an

approved timetable.

- (2) The Contractor must not install forensic software or tools without the permission of USAID.
- (3) The Contractor, in coordination with USAID Bureau for Management, Office of The Chief Information Officer (M/CIO)/ Information Assurance Division (IA), must document and preserve data required for these activities in accordance with the terms and conditions of the contract.
- (4) The Contractor, in coordination with USAID M/CIO/IA, must clearly define capabilities, procedures, roles and responsibilities and tools and methodologies for these activities.
- (p) The Contractor shall include the substance of this special contract requirement, including this paragraph (p), in all subcontracts, including subcontracts for commercial items.

## **H.25 ORGANIZATIONAL CONFLICT OF INTEREST**

Any concerns/issues related to Organizational Conflict of Interest MUST be brought to the attention of the Cognizant Contracting Officer as soon as it appears. See CIB 99-17: <http://www.usaid.gov/sites/default/files/documents/1868/cib9917.pdf>.

## **H.26 CONFLICT OF INTEREST**

It is understood and agreed that some of the work required hereunder may place the contractor, or its personnel or its subcontractors or their personnel (hereinafter referred to collectively as "contractor"), in the position of having a potential personal or organizational conflict of interest (OCI), i.e., because of other activities or relationships with other persons, (1) the contractor is unable or potentially unable to render impartial assistance or advice; or (2) the contractor's objectivity in performing the contract is or might be impaired; or (3) the contractor may receive an unfair competitive advantage; or (4) the contractor may have a financial or other personal interest which would or potentially would impair his/her objectivity and/or from which he/she would improperly benefit. Further discussion of OCIs may be found in FAR 9.5, Organizational and Consultant Conflicts of Interest.

- (a) The performance/actions of personnel under this contract will be imputed to the contractor (or subcontractor(s) by whom they are employed or retained, and the performance/actions of any subcontractor will be imputed to the contractor, unless the contractor, on a case-by-case basis, can demonstrate otherwise and satisfy the contracting Officer that such imputation is unreasonable.
- (b) In accordance with the clause of this contract entitled "Organizational Conflicts of Interest Discovered After Award" (AIDAR 752.209-71), the Contractor agrees not to undertake any activity which may involve a personal conflict of interest or an OCI without first notifying the contracting officer of such potential conflict and receiving the contracting officer's authorization to undertake that activity.
- (c) If the potential conflict relates to performance of the work hereunder (e.g., where the contractor is to evaluate an activity in which the contractor had some previous involvement, thereby rendering the contractor unable or potentially unable to provide impartial assistance or advice, or impairing or potentially impairing the contractor's objectivity), and the contracting officer cannot neutralize, mitigate, or avoid the conflict, the contracting officer may decline to authorize performance of that work by the contractor.
- (d) If the potential conflict relates to future activities (e.g., where the contractor is to perform a needs assessment, feasibility study, or design/development of a project or activity to be procured

under another contract for which the contractor will or might compete or which may be awarded noncompetitively to the contractor, thereby potentially providing an unfair competitive advantage to the contractor, and/or rendering the contractor unable or potentially unable to provide impartial assistance or advice, or impairing or potentially impairing the contractor's objectivity; or where the work under this contract might affect the personal or financial interests of the contractor), the contracting officer may decline to authorize performance of that work by the contractor or, if such work is authorized, the contracting officer may place restrictions on the contractor's future activities, as permitted by FAR 9.5, and as necessary to neutralize, mitigate, or avoid the potential conflict.

(e) The contracting officer's approval to undertake such activities, if given, may be based on the contracting officer's determination that a significant potential conflict does not exist or does not appear to exist, or may be conditioned on the acceptance by the contractor of restrictions on the contractor's future activities. If restrictions are to be placed on future activities, the contractor may decline to perform the work.

(f) If it is discovered that the contractor engaged in any activities which constitute a potential or actual conflict without having first obtained the contracting officer's approval to undertake such activities; or if it is subsequently discovered that, notwithstanding the contracting officer's authorization to undertake the activity based on his/her initial determination that no significant potential conflict existed or appeared to exist, a conflict did, in fact exist or arise, restrictions, as permitted by FAR 9.5, on the contractor's future activities may be placed unilaterally by the contracting officer for this contract or the contracting officer for such other contract as may be involved in the conflict, and other remedies (including termination of this contract for default, debarment or suspension, and those permitted by the clauses of this contract entitled "Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity" (FAR 52.203-8 JAN 1997) and "Price or Fee Adjustment for Illegal or Improper Activity" (FAR 52.203-10 JAN 1997), may be taken by USAID.

(g) If it is discovered that the contractor engaged in any activities in violation of the restrictions placed by a contracting Officer on the contractor's future activities, other remedies (including termination of this contract for default, debarment or suspension, and those permitted by the clauses of this contract entitled "Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity" (FAR 52.203-8) and "Price or Fee Adjustment for Illegal or Improper Activity" [FAR 52.203-10]), may be taken by USAID.

(h) Nothing in this provision precludes the application of any other remedies available to USAID by law, regulation, or other provisions of this contract.

## **H.27 ELECTRONIC PAYMENT SYSTEM**

### **1. Definitions:**

a. "Cash Payment System" means a payment system that generates any transfer of funds through a transaction originated by cash, check, or similar paper instrument. This includes electronic payments to a financial institution or clearing house that subsequently issues cash, check, or similar paper instrument to the designated payee.

b. "Electronic Payment System" means a payment system that generates any transfer of funds, other than a transaction originated by cash, check, or similar paper instrument, which is initiated through an electronic terminal, telephone, mobile phone, computer, or magnetic tape, for the purpose of ordering, instructing or authorizing a financial institution to debit or credit an account. The term includes debit cards, wire transfers, transfers made at automatic teller machines, and point-of-sale terminals.



2. The contractor agrees to use an electronic payment system for any payments under this award to beneficiaries, subcontractors, or grants under contracts, where applicable.

3. Exceptions. The contractor is allowed the following exceptions, provided the contractor documents its contract file with the appropriate justification:

a. Cash payments made while establishing electronic payment systems, provided that this exception is not used for more than six months from the effective date of this award.

b. Cash payments made to payees where the contractor does not expect to make payments to the same payee on a regular, recurring basis, and payment through an electronic payment system is not reasonably available.

c. Cash payments to vendors below the micro purchase level as defined by FAR 2.101, or for Grants Under Contracts for less than \$3000, when payment through an electronic payment system is not reasonably available.

d. The contractor has received a specific written exception from the Contracting Officer that a specific payment or all cash payments are authorized, based on the contractor's written justification, which provides a basis and cost analysis for the requested exception.

4. More information about how to establish, implement, and manage electronic payment methods is available to contractors at <http://solutionscenter.nethope.org/programs/c2e-toolkit>."

**H.28 AIDAR 752.204-72 ACCESS TO USAID FACILITIES AND USAID'S INFORMATION SYSTEMS (APRIL 2018) (DEVIATION NO. M/OAA-DEV-AIDAR-18-2c)**

HSPD-12 and Personal Identity Verification (PIV). Individuals engaged in the performance of this award as employees, consultants, or volunteers of the contractor must comply with all applicable Homeland Security Presidential Directive-12 (HSPD-12) and Personal Identity Verification (PIV) procedures, as described below, and any subsequent USAID or Government-wide HSPD-12 and PIV procedures/policies.

(a) A U.S. citizen or resident alien engaged in the performance of this award as an employee, consultant, or volunteer of a U.S. firm may obtain access to USAID facilities or logical access to USAID's information systems only when and to the extent necessary to carry out this award and in accordance with this clause. The contractor's employees, consultants, or volunteers who are not U.S. citizens or resident aliens as well as employees, consultants, or volunteers of non-U.S. firms, irrespective of their citizenship, will not be granted logical access to U.S. Government information technology systems (such as Phoenix, GLAAS, etc.) and must be escorted to use U.S. Government facilities (such as office space).

(b)(1) No later than five business days after award, the Contractor must provide to the Contracting Officer's Representative (COR) a complete list of employees that require access to USAID facilities or information systems. (2) Before a contractor (or a contractor employee, consultant, or volunteer) or subcontractor at any tier may obtain a USAID ID (new or replacement) authorizing the individual routine access to USAID facilities in the United States, or logical access to USAID's information systems, the individual must provide two forms of identity source documents in original form to the Enrollment Office personnel when undergoing processing. One identity source document must be a valid Federal or State Government-issued picture ID. Contractors may contact the USAID Security Office to obtain the list of AAPD 16-02 Special Requirements for Information Technology (IT) 2 acceptable forms of documentation. Submission of these documents, to include documentation of security background investigations, is mandatory in order for the contractor to receive a PIV/Facilities Access Card (FAC) card and be granted access to any of USAID's information systems. All such individuals

must physically present these two source documents for identity proofing at their enrollment.

(c) The Contractor must send a staffing report to the COR by the fifth day of each month. The report must contain the listing of all staff members with access that separated or were hired under this contract in the past sixty (60) calendar days. This report must be submitted even if no separations or hiring occurred during the reporting period. Failure to submit the 'Contractor Staffing Change Report' each month may, at USAID's discretion, result in the suspension of all logical access to USAID information systems and/or facilities access associated with this contract. USAID will establish the format for this report.

(d) Contractor employees are strictly prohibited from sharing logical access to USAID information systems and Sensitive Information. USAID will disable accounts and revoke logical access to USAID IT systems if Contractor employees share accounts.

(e) USAID, at its discretion, may suspend or terminate the access to any systems and/or facilities when a potential Information Security Incident or other electronic access violation, use, or misuse incident gives cause for such action. The suspension or termination may last until such time as USAID determines that the situation has been corrected or no longer exists.

(f) The Contractor must notify the COR and the USAID Service Desk at least five business days prior to the Contractor employee's removal from the contract. For unplanned terminations of Contractor employees, the Contractor must immediately notify the COR and the USAID Service Desk (CIOHELPDESK@usaid.gov or (202) 712-1234). The Contractor or its Facilities Security Officer must return USAID PIV/FAC cards and remote authentication tokens issued to Contractor employees to the COR prior to departure of the employee or upon completion or termination of the contract, whichever occurs first.

(g) The contractor is required to insert this clause including this paragraph (h) in any subcontracts that require the subcontractor, subcontractor employee, or consultant to have routine physical access to USAID space or logical access to USAID's information systems.

### **H.30 ELECTRONIC AND INFORMATION TECHNOLOGY ACCESSIBILITY (APRIL 2018)**

(a) Definitions:

"Information and Communication Technology (ICT) means information technology and other equipment, systems, technologies, or processes, for which the principal function is the creation, manipulation, storage, display, receipt, or transmission of electronic data and information, as well as any associated content. Examples of ICT include, but are not limited to: computers and peripheral equipment; information kiosks and transaction machines; telecommunications equipment; customer premises equipment; multifunction office machines; software; applications; Web sites; videos; and, electronic documents. (Appendix A to Part 1194 – Section 508 of the Rehabilitation Act).

(b) Federal agencies are required by Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794d), to offer access to information and communication technology for disabled individuals within its employment, and for disabled members of the public seeking information and services. This access must be comparable to that which is offered to similar individuals who do not have disabilities. Standards for complying with this law are prescribed by the Architectural and Transportation Barriers Compliance Board ("The Access Board"). The contractor must comply with any future updates of standards by the Access Board. 36 CFR 1194 implements Section 508 of the Rehabilitation Act of 1973, as amended, and is viewable at <http://www.access-board.gov/sec508/508standards.htm>.

(c) Except as indicated elsewhere in the contract, all electronic and information technology (EIT)

procured through this contract must meet the applicable accessibility standards at 36 CFR 1194 as follows:

1194.21 Software applications and operating systems

1194.22 Web-based intranet and Internet information and applications 1194.23 Telecommunications products

1194.24 Video and multimedia products 1194.25 Self-contained, closed products 1194.26 Desktop and portable computers 1194.31 Functional performance criteria

1194.41 Information, documentation, and support

(d) Deliverable(s) must incorporate these standards as well.

(e) The final work product must include documentation that the deliverable conforms with the Section 508 Standards promulgated by the US Access Board.

(f) The Contractor must comply with 508 standards, and any changes needed to conform to the standards will be at no additional charge to USAID.

### **H.31 LIMITATION ON ACQUISITION OF INFORMATION TECHNOLOGY (DEVIATION NOs. M/OAA-DEV-FAR-18-2c and M/OAA-DEV-AIDAR-18-2c) (APRIL 2018)**

(a) Definitions. As used in this contract -- "Information Technology" means

(1) Any services or equipment, or interconnected system(s) or subsystem(s) of equipment, that are used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the agency; where

(2) such services or equipment are ' used by an agency' if used by the agency directly or if used by a contractor under a contract with the agency that requires either use of the services or equipment or requires use of the services or equipment to a significant extent in the performance of a service or the furnishing of a product.

(3) The term " information technology" includes computers, ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, services (including provisioned services such as cloud computing and support services that support any point of the lifecycle of the equipment or service), and related resources.

(4) The term "information technology" does not include any equipment that is acquired by a contractor incidental to a contract that does not require use of the equipment.

(b) The Federal Information Technology Acquisition Reform Act (FITARA) requires Agency Chief Information Officer (CIO) review and approval of contracts that include information technology or information technology services.

(c) The Contractor must not acquire information technology as defined in this clause without the prior written approval by the contracting officer as specified in this clause.

(d) Request for Approval Requirements: Clauses and Special Contract Requirements for Facilities Access, Security, and Information Technology (IT) (Class Deviations M/OAA-DEV-FAR-18-2c, and M/OAA-DEV-AIDAR-18-2c) 8 (1) If the Contractor determines that any information technology will be necessary to meet the Government's requirements or to facilitate activities in the Government's Scope of Work, the Contractor must request prior written approval from the Contracting Officer. (2) As part of the request, the Contractor must provide the



Contracting Officer a description and an estimate of the total cost of the information technology equipment, software, or services to be procured under this contract. The Contractor must simultaneously notify the Contracting Officer's Representative (COR) and the Office of the Chief Information Office at [ITAuthorization@usaid.gov](mailto:ITAuthorization@usaid.gov).

(e) The Contracting Officer will provide written approval to the Contractor through modification to the contract expressly specifying the information technology equipment, software, or services approved for purchase by the COR and the Agency CIO. The Contracting Officer will include the applicable clauses and special contract requirements in the modification.

(f) Except as specified in the contracting officer's written approval, the Government is not obligated to reimburse the Contractor for any costs incurred for information technology as defined in this clause. (g) The Contractor must insert the substance of this clause, including this paragraph (g), in all subcontracts. (End of Clause).

## APPENDIX B: GENERAL PROVISIONS

### FAR and AIDAR Provisions.

The Subcontractor agrees to comply with all applicable requirements, specifications, and conditions of the Prime Contract as are, in turn, incorporated into this Subcontract. Any applicable requirements, specifications, and conditions of the Prime Contract specified by law, are included in this Subcontract. In all such clauses the term "Contractor" shall mean the Subcontractor performing under this Subcontract, the term "Contract" shall mean this Subcontract, and the terms "Government," "Contracting Officer," and equivalent phrases shall mean DAI and the DAI Subcontract Administrator, respectively. It is intended that the referenced clauses shall apply to the Subcontractor in such a manner as is necessary to reflect the position of the Subcontractor as a Subcontractor to the Prime Contractor, to ensure the Subcontractor's obligations to the Prime Contractor and the U.S. Government, and to enable the Prime Contractor to meet its obligations under its Prime Contract. Clauses not requiring flow down from DAI to the Subcontractor, but nevertheless specified herein shall have full force and effect in performance of this Subcontract Agreement.

The following contract clauses pertinent to this section are hereby incorporated by reference (by Citation Number, Title, and Date) in accordance with the clause at FAR "52.252-2 CLAUSES INCORPORATED BY REFERENCE" in Section I of this contract. See FAR 52.252-2 for an internet address (if specified) for electronic access to the full text of a clause.

<http://arnet.gov/far>  
<http://www.usaid.gov>

### FEDERAL ACQUISITION REGULATION (48 CFR Chapter 1)

NUMBER	TITLE	DATE
52.202-1	DEFINITIONS	JUL 2004
52.203-3	GRATUITIES	APR 1984
52.203-5	COVENANT AGAINST CONTINGENT FEES	APR 1984
52.203-6	RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT	JUL 1995
52.203-7	ANTI-KICKBACK PROCEDURES	OCT 2010
52.203-8	CANCELLATION, RESCISSION AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY	JAN 1997
52.203-10	PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY	JAN 1997
52.203-12	LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS	OCT 2010
52.209-6	PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED SUSPENDED, OR PROPOSED FOR DEBARRMENT	OCT 2010
52.215-2	AUDIT AND RECORDS – NEGOTIATION	OCT 2010
52.215-10	PRICE REDUCTION FOR DEFECTIVE COSTS OR PRICING DATA – MODIFICATION	OCT 2010
52.215-12	SUBCONTRACTOR COST OR PRICING DATA	OCT 2010

52.215-13	SUBCONTRACTOR COST OR PRICING DATA - MODIFICATIONS	OCT 2010
52.215-14	INTEGRITY OF UNIT PRICES	OCT 2010
52.222-50	COMBATING TRAFFICKING IN PERSONS	FEB 2009
52.228-04	WORKSER'S COMPENSATION AND WAR-HAZARD INSURANCE OVERSEAS	APR 1984
52.228-07	INSURANCE – LIABILITY TO THIRD PERSONS	MAR 1996
52.232-20	LIMITATION OF COST	APR 1984
52.232-22	LIMITATION OF FUNDS	APR 1984
52.242-15	STOP-WORKS ORDER	AUG 1989
52.223-5	POLLUTION PREVENTION AND RIGHT-TO-KNOW	MAY 2011
52.223-14	TOXIC CHEMICAL RELEASE REPORTING	OCT 2000
52.225-13	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES	JUN 2008
52.227-4	PATENT INDEMNITY--CONSTRUCTION CONTRACTS	DEC 2007
52.229-6	TAXES--FOREIGN FIXED-PRICE CONTRACTS	JAN 1991
52.232-17	INTEREST	OCT 2010
52.232-23	ASSIGNMENT OF CLAIMS	JAN 1986
52.233-1	DISPUTES	JUL 2002
52.233-3	PROTEST AFTER AWARD	AUG 1996
52.236-3	SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORKS	APR 1984
52.236-5	MATERIAL AND WORKSMANSHIP	APR 1984
52.236-6	SUPERINTENDENCE BY THE SUBCONTRACTOR	APR 1984
52.236-7	PERMITS AND RESPONSIBILITIES	NOV 1991
52.236-8	OTHER CONTRACTS	APR 1984
52.236-9	PROTECTION OF EXISTING VEGETATION STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS	APR 1984
52.236-10	OPERATIONS AND STORAGE AREAS	APR 1984
52.236-11	USE AND POSSESSION PRIOR TO COMPLETION	APR 1984
52.236-12	CLEANING UP	APR 1984
52.236-13	ACCIDENT PREVENTION	NOV 1991
52.236-15	SCHEDULES FOR CONSTRUCTION CONTRACTS	APR 1984
52.236-17	LAYOUT OF WORKS	APR 1984

52.236-26	PRECONSTRUCTION CONFERENCE	FEB 1995
52.242-13	BANKRUPTCY	JUL 1995
52.243-4	CHANGES	AUG 1987
52.244-5	COMPETITION IN SUBCONTRACTING	DEC 1996
52.249-2	TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED PRICE) ALTERNATE I	MAY 2004
52.249-10	DEFAULT (FIXED-PRICE CONSTRUCTION)	APR 1984
52.253-1	COMPUTER GENERATED FORMS	JAN 1991

**AID ACQUISITION REGULATIONS (48 CFR CHAPTER 6)**

752.202-1(b)	DEFINITIONS	JAN 1990
752.202-1(d)	DEFINITIONS FOR OVERSEAS CONTRACTS	AUG 1999
752.204-2	SECURITY REQUIREMENTS	FEB 1999
752.211-70	LANGUAGE AND MEASUREMENT	JUN 1992
752.255-70	SOURCE AND NATIONALITY REQUIREMENTS	FEB 2012
752.226-2	SUBCONTRACTING WITH DISADVANTAGED ENTERPRISES	JUL 1997
752.226-3	LIMITATIONS ON SUBCONTRACTING	JUN 1993
752.228-3	WORKSER'S COMPENSATION INSURANCE (DEFENSE BASE ACT)	APR 1984
752.228-7	INSURANCE-LIABILITY TO THIRD PERSONS	JUL 1997
752.228-9	CARGO INSURANCE	DEC 1988
752.228-70	MEDICAL EVACUATION (MEDVAC) SERVICES	JUL 2007
752.231-71	SALARY SUPPLEMENTS FOR HG EMPLOYEES	OCT 1998
752.245-70	GOVERNMENT PROPERTY - USAID REPORTING REQUIREMENTS	JUL 1997
752.245-71	TITLE TO AND CARE OF PROPERTY	APR 1984
752.247-70	PREFERENCE FOR PRIVATELY OWNED US FLAG COMMERCIAL VESSELS	FEB 1999
752.7003	DOCUMENTATION FOR PAYMENT	APR 1984
752.7008	USE OF GOVERNMENT FACILITIES OR PERSONNEL	APR 1984
752.7010	CONVERSION OF U.S. DOLLARS TO LOCAL CURRENCY	APR 1984
752.7013	CONTRACTOR-MISSION RELATIONSHIPS	OCT 1989

## APPENDIX C: SCOPE OF WORK

[INSERT or Attach: A copy of the Scope of Work, this is generally in paragraph form when there are construction drawings and specifications. This will include the general description of the subproject construction, its goals, its location, size, etc.

The major activities to be undertaken for this improvement/rehabilitation are as follows:

Insert high-level description of the work to be done, as shown by example below:

- Mobilize and demobilize the work site
- Foundation work
- Reinforced concrete work
- Installation of all required hardware, such as plumbing
- Plastering and final finish work
- Testing and commissioning],

And then delete this highlighted paragraph.

<b>OBJECTIVE</b>
<p>The proposed project includes .....</p> <ul style="list-style-type: none"> <li>• The Subcontractor shall provide the service .....to Scope of Work (SOW), construction legislation in Ukraine and all other applicable building codes and regulations, including USAID regulations.</li> </ul>
<b>SUBCONTRACTOR’S RESPONSIBILITIES</b>
<p>The Subcontractor shall perform all of the Work shown in the attached Construction Drawings, Specifications, and Design Narrative, in addition to the deliverables shown in “Subcontractor’s Responsibilities” below.</p> <p>The Subcontractor shall develop method statement within 10 days after the award, in compliance with DBN A.3.1-5:2016 Construction Master Plan.</p> <p>All work shall be performed in accordance with the Ukrainian Law on Labor Protection, DBN A.3.2-2-2009 “Occupational Safety and Industrial Safety in Construction”, NAPB A.01.001-2014 Fire Safety Rules.</p>
<p><b>Attachment H.1. Quality Assurance Plan (QAP)</b>          To this Subcontract Agreement includes a template form of the required Subcontractor’s Quality Assurance Plan (QAP) for the Subcontractor’s reference. A similar (but specific to this project) bilingual document (English and Ukrainian) shall be developed by the Subcontractor and approved by USAID ERA within 10 days after award of the Subcontract, and prior to the Subcontractor receiving Notice To Proceed. The subcontractor’s QAP shall indicate the testing methods, quality control methodology, staffing, and other tools the Subcontractor plans to use for controlling the quality of the work. The QAP shall specifically show what methods the Subcontractor will use to correct quality deficiencies. The Subcontractor’s QAP shall take into account the technology, personnel, and methods considered in the proposal. All site works must be performed in compliance with USAID ERA approved Quality Control Plans.</p>
<p><b>Attachment H.2. Health, Environment, and Safety Plan (HESP)</b>          To this Subcontract Agreement provides a Template Subcontractor’s Health, Environment, and Safety Plan (HESP) for the Subcontractor’s reference. A similar (but specific to this project) bilingual document (English and Ukrainian) shall be developed by the successful Bidder and approved by USAID ERA within 10 days after award of Subcontract, and prior to the Subcontractor receiving Notice To Proceed. The Subcontractor’s HESP shall take into account the technology, personnel, and methods considered in the proposal. All site works shall be performed in compliance with project-specific USAID ERA approved Health, Environment, and Safety Plans developed by the Subcontractor.</p>
<p><b>Attachment H.3. Schedule of Work bilingual document (English and Ukrainian)</b>          To this Subcontract Agreement provides a Subcontractor’s Schedule of Work for the Subcontractor’s reference. A similar (but specific to this project) bilingual document (English and Ukrainian) shall be developed by the</p>

Subcontractor and approved by USAID ERA within 10 days after award of Subcontract, and prior to the Subcontractor receiving Notice To Proceed. The Subcontractor shall be responsible for compliance with the Schedule of Work as described in this Subcontract Agreement.

**Attachment H.4. Quality Control Plan (QCP)**

To this Subcontract Agreement provides a template Subcontractor's Quality Control Plan (QCP) for the Subcontractor's reference. A similar (but specific to this project) bilingual document (English and Ukrainian) must be developed by the Subcontractor and approved by USAID ERA within 10 days after award of Subcontract, and prior to the Subcontractor receiving Notice To Proceed. The Subcontractor's QCP shall take into account the technology, personnel, and methods considered in the proposal. All site works must be performed in compliance with project-specific USAID ERA approved Quality Control Plans, developed by the Subcontractor.

**Attachment H.5. Bank Letter of Guarantee (BLG) bilingual document (English and Ukrainian)**

i. Subcontractor shall submit a BLG in the amount of 10% of the Subcontract Value. See the template letter provided as Subcontract Agreement Appendix H.6.

ii. Within SEVEN (7) calendar days after the date of Subcontract Award, the Subcontractor shall submit to the DAI Global, LLC Subcontract Administrator a Bank Letter of Guarantee for the performance of the work in the amount of ten percent (10%) of the anticipated maximum Subcontract Value, conforming to the format of the sample BLG. Failure to submit the Bank Letter of Guarantee may be deemed a breach of subcontract. The Bank Letter of Guarantee will be dated as of the Subcontract Agreement award date or as soon thereafter as possible. The Bank Letter of Guarantee shall state that it will continue in effect without change in amount or terms until the work has been finally inspected and accepted by DAI Global, LLC.

The Bank Letter of Guarantee shall also state that the bank agrees and consents that the Subcontract Agreement may be modified by change order or supplemental agreement without affecting the validity of the Bank Letter of Guarantee. DAI Global, LLC Subcontract Administrator may require, and the Subcontractor shall furnish the DAI Global, LLC Subcontract Administrator an increase in the amount of the Bank Letter of Guarantee because of increases to the Subcontract Value. The authorization to issue "Notice to Proceed" will not be in effect until after approval and acceptance by the DAI Global, LLC Subcontract Administrator of the Bank Letter of Guarantee. The Bank Letter of Guarantee shall be interpreted in accordance with U.S. and Ukrainian law.

**Attachment H.6. Inspection and Testing Plan**

To this Subcontract Agreement provides a template Inspection and Testing Plan (ITP) for the Subcontractor's reference. A similar (but specific to this project) bilingual document (English and Ukrainian) must be developed by the Subcontractor and approved by USAID ERA within 10 days after award of Subcontract, and prior to the Subcontractor receiving Notice To Proceed. The Subcontractor's ITP shall take into account the testing of materials, personnel, and methods considered in the proposal. All site works must be performed in compliance with project-specific USAID ERA approved ITP, developed by the Subcontractor.

**Attachment H.7. Bill of Quantities (BoQ) bilingual document (English and Ukrainian)**

To this Subcontract Agreement provides a Bill of Quantities (BoQ) with estimation of the materials quantities and unit costs to deliver a complete, finished project based on the Design as shown in the Appendices to this Subcontract.

**Attachment H.8. Construction Supervision Plan (CSP) bilingual document (English and Ukrainian)**

To this Subcontract Agreement provides a Construction Supervision Plan (CSP) that explains the site supervision oversight procedures during construction on site.

**Attachment H.9. Specifications bilingual document (English and Ukrainian)**

To this Subcontract Agreement includes the Specifications. All requirements of the Specifications are mandatory including but not limited to safety, quality, testing, and workmanship requirements.

**Attachment H.10. Construction Drawings and Design Narrative bilingual document (English and Ukrainian)**

To this Subcontract Agreement includes the project-specific Construction Drawings and Design Narrative, which show the Work that is to be performed.

The Subcontractor shall be appropriately licensed and hold all appropriate permits for any hazardous works execution and operation of facilities, machines and mechanisms of increased risk given by the State Service for Labor Matters and other permits required in accordance with current legislation. All work shall be performed in accordance with the Ukrainian Law on Labor Protection, DBN A.3.2-2-2009 "Occupational Safety and Industrial

Safety in Construction”, NAPB A.01.001-2014 Fire Safety Rules and any other licensing and permitting as applicable to this Project.

The Subcontractor, at their own expense and with their own efforts, shall establish the necessary facilities for workers, arrange temporary roads and areas for unloading and storage of materials and equipment, and carry out a set of measures necessary for the execution of construction works and the protection of material values.

Appendix D: Reserved



## APPENDIX F: SCHEDULE OF DELIVERABLES AND PAYMENT SCHEDULE

NOTE: Replace with the Schedule of Deliverables for a specific project and then delete this highlighted sentence.

The following items shall be delivered under this subcontract:

<b>Schedule of Deliverables</b>			
<b>Description of Deliverable</b>	<b>Quantity</b>	<b>Requirements</b>	<b>Deliver To</b>
<b>Mobilization</b>	<b>1</b>	Key equipment, key personnel and installation expenses required specifically for mobilizing to the work site.  Expenses for the functioning of the labor protection service (trainings, briefings, etc.) Expenses for providing PPE employees Expenditures for measures to protect workers from COVID-19 Testing of materials and structures  Site Supervision/Quality control	DAI COP DAI Subcontracts Administrator DAI Project Engineer
NTP package	1	Evidence of Insurance: - Employer's liability insurance - Public liability insurance (Agreement of voluntary insurance of construction and installation risks and liability insurance during construction and installation works)  Schedule of Work Health, Environment and Safety Plan Quality Assurance Plan Subcontractor Quality Control Plan Temporary Work Plan and Method Statement Inspection and Testing Plan Security Plan Bank Guarantee in the amount of 10% of the total award price	DAI COP DAI Subcontracts Administrator DAI Project Engineer
Deliverable 3 (based on BOQ line items)	1	BOQ line items from 3 to 5.4	DAI COP DAI Subcontracts Administrator DAI Project Engineer
Deliverable 4 (based on BOQ line items)	1	BOQ line items from 6 to 6.8	DAI COP

			DAI Subcontracts Administrator DAI Project Engineer
Deliverable 5 (based on BOQ line items)	1	BOQ line items from 7 to 7.1	DAI COP DAI Subcontracts Administrator DAI Project Engineer
Deliverable 6 (based on BOQ line items)	1	BOQ line items from 8 to 8.4	DAI COP DAI Subcontracts Administrator DAI Project Engineer

## PAYMENT SCHEDULE

NOTE: Replace with the Payment Schedule for a specific project and then delete this highlighted sentence.

Schedule of Deliverables					
1	2	3	4	5	6
Application No.	Deliverable	Anticipated Dates	Cost of adjusted BOQ lines	RETENTION 10% of adjusted cost (0.1X column 4, UNO)	Invoice payment (column 4 minus column 5 UNO)
1	Mobilization	On Subcontract Award Date	5% of number line of BOQ from Item 3 to Item 8	0 (advance payment)	5% of total contract value
2	NTP package	10 days after award	5% of number line of BOQ from Item 3 to Item 8.4	0 (advance payment)	5% of total contract value
3	Deliverable 3 (based on BOQ line items)	According to schedule of work	BOQ line items from Item 3-Item 5	10%	Deduct the cost of Deliverable 1
4	Deliverable 4 (based on BOQ line items)	According to schedule of work	BOQ line item 6	10%	Deduct the cost of Deliverable 2
5	Deliverable 5 (based on BOQ line items)	According to schedule of work	BOQ line item 7	10%	
6	Deliverables 6 (based on BOQ line items) + Certificate of Substantial Completion	According to schedule of work	BOQ line item 8	10%	
7	Certificate of Final Completion and Acceptance,	End of warrantee period 186 days after Certificate of Substantial Completion	N/A	0	Total of all retention deductions

## APPENDIX G: PRICED BILL OF QUANTITIES

**NTP and Mobilization shall not exceed up to a maximum of 10% of the Subcontract Price. The outlined below BOQ is only for example.**

NOTE: Replace with the BoQ for a specific project and then delete this highlighted sentence.

<b>Bill of Quantities</b>						
Number	Specifications number	Description of work / materials	Unit	Quantity	Unit cost, UAH, without VAT	Total cost, UAH, without VAT
1	2	3	4	5	6	7
		<b>Mobilization</b>				
Item 1		Experienced project manager, supervisors, project engineers, surveyors, foremen, equipment operators, and workmen, (minor) equipment, materials, tools, and implements in such numbers as will be required to initiate and complete the construction Work. Expenses for the functioning of the labor protection service (trainings, briefings, etc.) Expenses for providing PPE employees Expenditures for measures to protect workers from COVID-19 Testing of materials and structures Site Supervision/Quality control	Kit	1	5% of total value of number line of BOQ from Item 3 to Item 8	5% of total value of subcontract
		<b>NTP</b>				
Item 2		1. Evidence of Insurance: Employer's liability insurance Public liability insurance (Agreement of voluntary insurance of construction and installation risks and liability insurance during construction and installation works) 2. Schedule of Work 3. Health, Environment and Safety Plan 4. Quality Assurance Plan 5. Subcontractor Quality Control Plan 6. Temporary Work Plan and Method Statement 7. Inspection and Testing Plan 8. Bank Guarantee in the amount of 10% of the total award price 9. Security Plan	Package	1	5% of total value of number line of BOQ from Item 3 to Item 8	5% of total value of subcontract
		<b>Entrance area</b>				

		<b>Ramp</b>				
Item 3		Disassembly of asphalt concrete coatings in a mechanized way	100 M3			
Item 4		Disassembling of rubble coverings and bases	100 M3			
Item 5		sandy base under the ramp	100 M3			
		Wood planks, length 4-6.5 m, thickness 75-150 mm, grade III or higher	M3			
		Water	M3			
		Sand	M3			
		Electricity	kW			
Item 6		Cast in place reinforced concrete foundations under the ramp	M3			
		Nails	T			
		Steel low carbon wire for different types of use, d=1.6mm	T			
		Electrodes diameter of 4 mm, mark e 42	T			
		Wood planks, length 4-6.5 m, thickness 75-150 mm, grade III or higher	M3			
		Shields of scaffolding, width 300-750 mm, thickness 25 mm	M2			
		Heavy ready concrete mixture, concrete B20, filler more than 40 mm	M3			
		Rebar A400 c, 12 mm diameter	T			
		Electricity	kW			
Item 7		Arrangement of protective layer of reinforced concrete slab	100 M2			
		Hydrofoil Akvaproof (or equivalent)	L			
		Canopy				
Item 8		Installation of a canopy	T			
		Elements from profile steel	T			
		Sheet steel	T			
		Decking PK-35, t = 0.6 mm	M2			
		Electricity	kW			
<b>Total by section</b>						<b>0.00</b>
<b>Total by facility</b>						<b>0.00</b>
<b>Total cost of works, materials, electricity, and equipment without VAT</b>						<b>0.00</b>
	Including					
	Works					0.00
	Materials and equipment					0.00
	Electricity					0.00

For the template refer to Attachment H.7.



## **APPENDIX H: OTHERS**

Attachments are included with this Subcontract Agreement as separate documents. Appendices are integral to this Subcontract Agreement.

- Attachment H.1. Quality Assurance Plan Template
- Attachment H.2. Health, Environment, and Safety Plan (HESP) Template
- Attachment H.3. Schedule of Work, Template
- Attachment H.4. Subcontract Quality Control Plan Template
- Attachment H.5. Bank Letter of Guarantee (BLG) Template
- Attachment H.6. Inspection and Testing Plan Template
- Attachment H.7. BOQ Template
- Attachment H.8. Construction Supervision Plan (CSP)
- Attachment H.9. Technical Specifications
- Attachment H.10. Construction Drawings and Design Narrative
- Attachment H.11. Notification of Potential Change Order
- Attachment H.12. Unit-Price Payment Application
- Attachment H.13. Notice to Proceed, Suspend or Resume Work Order

[INSERT or ATTACH: a list of other documents incorporated such as design studies or analysis, if any, and delete this highlighted sentence]

## APPENDIX I. EXECUTIVE COMPENSATION CERTIFICATION/ ДОДАТОК I. СЕРТИФІКАЦІЯ ЩОДО КОМПЕНСАЦІЇ

<p><b>FAR 52.204-10 Reporting Subcontractor Awards</b></p>	<p><b>Правила закупівель для федеральних потреб (FAR) 52.204-10 «Подання звітності за контрактами субпідрядника»</b></p>
<p><b>Section A.</b> FAR 52.204-10 requires DAI, as prime contractor of U.S. federal government contracts, to report compensation levels of the five most highly compensated subcontractor or grantee executives to the Federal Funding Accountability and Transparency Act Sub-Award Report System (FSRS) subject to the following criteria:</p>	<p><b>Розділ А.</b> FAR 52.204-10 вимагає від компанії «DAI» як головного підрядника за контрактами, що фінансуються з федерального бюджету Сполучених Штатів, подання інформації про рівень винагороди п'яти найбільш високооплачуваних керівників субпідрядників або грантоотримувачів до федеральній системі звітності (FSRS) згідно Закону «Про підзвітність та прозорість фінансування за рахунок асигнувань федерального бюджету» за умови відповідності таким критеріям:</p>
<p><input type="checkbox"/> The subcontractor or grantee must have generated at least 80 percent of its overall revenue in the preceding fiscal year from U.S. federal government contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; AND</p>	<p><input type="checkbox"/> Принаймні 80% загального доходу субпідрядника або грантоотримувача за попередній фінансовий рік отримано за рахунок контрактів (та субконтрактів), позик, грантів (субгрантів), угод про співпрацю, що фінансуються з федерального бюджету, та інших форм федеральної фінансової допомоги; ТА</p>
<p><input type="checkbox"/> The subcontractor or grantee must have generated at least USD 25 million in annual gross revenue in the preceding fiscal from U.S. federal government contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; AND</p>	<p><input type="checkbox"/> Принаймні 25 мільйонів доларів США сукупного річного доходу субпідрядника або грантоотримувача за попередній фінансовий рік отримано за рахунок контрактів (та субконтрактів), позик, грантів (та субгрантів), угод про співпрацю, що фінансуються з федерального бюджету, та інших форм федеральної фінансової допомоги; ТА</p>
<p><input type="checkbox"/> The subcontractor or grantee must not already publicly report executive compensation levels to either the Internal Revenue Service (IRS) or Securities and Exchange Commission (SEC) as mandated by the subcontractor's or grantee's status as a non-profit organization or publicly traded company, respectively.</p>	<p><input type="checkbox"/> Субпідрядник або грантоотримувач не має зобов'язання публічно звітувати про рівень винагороди керівників ні Федеральній податковій службі (IRS), ні Комісії з цінних паперів та фондового ринку (SEC) як вимагається статусом субпідрядника або грантоотримувача як неприбуткової організації чи відкритого акціонерного товариства відповідно.</p>
<p>If any of the above <i>does not</i> apply to your firm, then DAI is exempt from reporting your executive compensation and you need not provide such information to DAI. Please skip to Section C to certify your status as exempt from reporting executive compensation levels under FAR 52.204-10.</p>	<p>Якщо щось із зазначеного вище <i>не застосовується</i> до вашої фірми, компанія «DAI» звільняється від вимоги про подання звітності про винагороду керівникам, а ви не повинні надавати таку інформацію компанії «DAI». Будь-ласка, перейдіть до Розділу С для засвідчення вашого звільнення від подання звітності про рівень винагороди керівного персоналу згідно FAR 52.204-10.</p>
<p><b>Section B.</b> If all of the criteria listed in Section A are true of your firm, then FAR 52.204-10 requires DAI to report the full compensation of your firm's five most highly compensated executives including, but not limited to: salary, stock options, benefits, and fringe. This information must be attested to by an employee at the Chief Financial Officer level or higher and will be made public at <a href="http://www.fsr.gov">http://www.fsr.gov</a>.</p>	<p><b>Розділ В.</b> Якщо всі критерії, що перераховані в Розділі А, застосовуються до вашої фірми, FAR 52.204-10 встановлюють вимогу про подання компанії «DAI» інформації про повний розмір винагороди п'яти найбільш високооплачуваних керівників, включаючи, проте не обмежуючись, таким: заробітна плата, право купівлі акцій за пільговою ціною, соціальні виплати та додаткові пільги. Ця інформація повинна бути завірена для працівника на рівні Фінансового директора чи вище, і буде оприлюднена на <a href="http://www.fsr.gov">http://www.fsr.gov</a>.</p>



Employee Name:/ ПІП працівника: Full Compensation:/ Повна сума винагороди:	
Employee Name:/ ПІП працівника: Full Compensation:/ Повна сума винагороди:	
Employee Name:/ ПІП працівника: Full Compensation:/ Повна сума винагороди:	
Employee Name:/ ПІП працівника: Full Compensation:/ Повна сума винагороди:	
Employee Name:/ ПІП працівника: Full Compensation:/ Повна сума винагороди:	
Duly Authorized Company Signatory:  _____	Особа, яка належним чином уповноважена підписувати від імені компанії:  _____
Name:	ПІП:
Position:	Посада:
Date:	Дата:
<b>Section C.</b> If you are exempt, please certify to your exemption below.	<b>Розділ С.</b> Якщо до вас застосовуються виключення від застосування вимог, будь-ласка, надайте засвідчення вашого звільнення нижче.
I hereby certify that “_____”, LLC is exempt from reporting executive compensation under FAR 52.204-10 for the following reason(s) (check all that apply).	ЦИМ Я ЗАСВІДЧУЮ, ЩО ДО ТОВ «_____» застосовується виключення від застосування вимоги про подання звітності про винагороду керівників згідно FAR 52.204-10 на таких підставах (відмітьте все, що застосовується).
<input type="checkbox"/> The subcontractor or grantee did not generate at least 80 percent of its overall revenue from U.S. federal government contracts (and subcontracts), loans, grants, cooperative agreements, and other forms of Federal financial assistance in the preceding fiscal year.	<input type="checkbox"/> Принаймні 80% загального доходу субпідрядника або грантоотримувача за попередній фінансовий рік не було отримано за рахунок контрактів (та субконтрактів), позик, грантів, угод про співпрацю, що фінансуються з федерального бюджету, та інших форм федеральної фінансової допомоги.
<input type="checkbox"/> The subcontractor or grantee did not generate at least USD 25 million of annual gross revenue from U.S. federal government contracts (and subcontracts), loans, grants, cooperative agreements, and other forms of Federal financial assistance in the preceding fiscal year.	<input type="checkbox"/> Принаймні 25 мільйонів доларів США сукупного річного доходу субпідрядника або грантоотримувача за попередній фінансовий рік не було отримано за рахунок контрактів (та субконтрактів), позик, грантів, угод про співпрацю, що фінансуються з федерального бюджету, та інших форм федеральної фінансової допомоги.
<input type="checkbox"/> The subcontractor or grantee already publicly reports executive compensation levels to: <ul style="list-style-type: none"> <li>• Internal Revenue Service (IRS)</li> <li>• U.S. Securities and Exchange Commission (SEC)</li> </ul>	<input type="checkbox"/> Субпідрядник або грантоотримувач вже публічно подає звітність про рівень винагороди керівників: <ul style="list-style-type: none"> <li>• до Федеральної податкової служби (IRS)</li> <li>• до Комісії з цінних паперів та фондового ринку (SEC)</li> </ul>
Duly Authorized Company Signatory:  _____	Особа, яка належним чином уповноважена підписувати документи від імені компанії:  _____
Name:	ПІП:
Position: Director	Посада: Директор
Date:	Дата:

## APPENDIX K: CONTRACTOR'S APPROVED BRANDING AND MARKING PLAN/ ДОДАТОК К: ЗАТВЕРДЖЕНИЙ ПЛАН ПІДРЯДНИКА ЩОДО БРЕНДУВАННЯ ТА МАРКУВАННЯ

### Branding Strategy

Per ADS 320.3.2.1, the Branding Strategy for this Contract is as follows:

**A. Program Name:** USAID Economic Resilience Activity

**B. Branding:** DAI will use full branding and the USAID tagline “This assistance is from the American people” on all materials and communications. Co-branding and no branding will only be considered on a case-by-case basis as considered appropriate by the Contracting Officer’s Representative (COR). All activities will include USAID logos.

**a. Construction activities:** DAI will specify the site’s specific name and the site’s specific activity as construction, rehab, or repair for all construction activities.

**C. USAID Logo:** The USAID logo must be posted at every static support position. The USAID logo must be used on all reports and printed materials produced under the “USAID Economic Resilience Activity.”

Contractor employee business cards will be marked so that any person reading the card can know this is a Contractor employee. Contractor employee email and correspondence will be marked so that any person reading the document can know this a Contractor employee.

**D. Desired level of visibility:** Where required, the USAID Identity must be of equal or greater prominence than all other logos and symbols.

**E. Other organizations to be acknowledged:** No other organizations are required to be acknowledged. The presence of any logo or symbol belonging to the Contractor must conform to the policy in ADS 320 and is subject to negotiation.

**F. Branding Implementation Plan (BIP) and Marking Plan:** Contractor is required to submit a Branding Implementation Plan and Marking Plan prior to award.

### Branding Implementation Plan

With reference to the Automated Directives System (ADS) Section 320.3.2, below is the Branding and Marking Plan for the USAID Economic Resilience Activity.

The DAI team understands that “branding” is a

### Стратегія брендування

Відповідно до ADS 320.3.2.1 Стратегія брендування для цього Договору є такою:

**A. Назва програми:** Проект USAID «Економічна підтримка Східної України»

**B. Брендування:** Компанія «DAI» використовуватиме повне брендування та слоган USAID «Це допомога від американського народу» на всіх матеріалах та у всій комунікації. Кобрендування та відсутність брендування розглядаються лише в кожному конкретному випадку, як вважатиме доречним куратор проекту від USAID. Уся діяльність включатиме логотипи USAID.

**a. Будівельна діяльність:** Компанія «DAI» зазначить конкретну назву майданчика та конкретну діяльність майданчика, наприклад, будівництво, реконструкція чи ремонт, для всієї будівельної діяльності.

**C. Логотип USAID:** Логотип USAID повинен бути розміщений на видному місці у незмінній позиції. Логотип USAID повинен використовуватися у всіх звітах та друкованих матеріалах, що випускаються в рамках Проекту USAID «Економічна підтримка Східної України».

Візитні картки співробітників Підрядника будуть марковані так, щоб будь-яка особа, яка читає картку, знала, що це працівник Підрядника. Електронна пошта та кореспонденція працівника Підрядника будуть марковані таким чином, щоб будь-яка особа, яка читає документ, знала, що це працівник Підрядника.

**D. Бажаний рівень видимості:** Там, де це потрібно, айдендика USAID повинна мати однакову або більшу видимість, ніж усі інші логотипи та символи.

**E. Визнання інших організацій:** Ніякі інші організації не повинні визнаватися. Наявність будь-якого логотипу чи символу, що належать Підряднику, має відповідати політиці в ADS 320 і підлягає обговоренню.

**F. План впровадження брендування (ПВБ) та план маркування:** Підрядник повинен надати План впровадження брендування та план маркування до присудження договору.

### План впровадження брендування

З посиланням на Розділ 320.3.2 Автоматизованої системи директив (ADS) нижче наводиться План брендування та маркування для Проекту USAID «Економічна підтримка Східної України».

Команда компанії «DAI» розуміє, що «брендування» – це

partnership between USAID and the Contractor to set the highest standard for development assistance, and for publicizing those efforts in the most secure, realistic, and professional manner. It is DAI's policy to communicate to all projects, activities, and partners the letter and spirit of the guidelines. DAI's home office communications team has prepared policies and templates to brand all USAID Economic Resilience Activity, public communications, and commodities with the USAID standard graphic identity. The communications team will support USAID Economic Resilience Activity personnel by providing communications strategy templates for in-house documents, external reports, and activities.

**How to Incorporate the Message.** DAI will use full branding and USAID taglines "From the American People" on all materials and communications. Co-branding with host-country partners and no branding will be considered on a case-by-case basis as considered appropriate by the Contracting Officer (CO) or COR. All activities will prominently feature the USAID logo, however DAI understands that the USAID Economic Resilience Activity name is not a sub-brand and will not be paired with the USAID logo under any circumstances.

**Messages.** Main messages during the implementation of the project should incorporate what has been achieved to improve the overall economic resilience of eastern Ukraine in response to Russian aggression.

All materials and events from the project will be branded as from USAID and prepared by DAI as part of the USAID Economic Resilience Activity. With the same exception, as such, all materials will acknowledge that they were produced with support "from the American people." In cases where a local language predominates above English, the appropriate translation into the local language (Ukrainian and/or Russian) will be used in branding the program.

Additional ideas to increase awareness that the American people support this program are: all of the trainers will be trained to include in each presentation or training session a statement at the beginning of their meeting or training session that the technical assistance that they provide and the other program services are made possible as a result of "the assistance from the American people." The USAID Economic Resilience Activity will follow specific

партнерство між USAID та Підрядником з метою встановлення найвищих стандартів допомоги у розвитку та оприлюдненні цих зусиль найбільш безпечним, реалістичним та професійним способом. Політика компанії «DAI» полягає в тому, щоб доносити до всіх проєктів, заходів та партнерів букву та дух керівних принципів. Команда з питань комунікації головного офісу компанії «DAI» підготувала правила та шаблони для брендуння всього Проєкту USAID «Економічна підтримка Східної України», публічних комунікацій та товарів за допомогою стандартної графічної айдентики USAID. Команда з питань комунікації буде підтримувати персонал Проєкту USAID «Економічна підтримка Східної України», надаючи шаблони комунікаційних стратегій для внутрішніх документів, зовнішніх звітів та заходів.

**Як інкорпоровати повідомлення.** Компанія «DAI» використовуватиме повне брендуння та слоган USAID «Це допомога від американського народу» на всіх матеріалах та у всій комунікації. Кобрендуння з партнерами країни виконання контракту та відсутність брендуння розглядаються в кожному конкретному випадку, як вважатиме доречним фахівець з укладання контрактів та куратор проєкту від USAID. На всіх заходах буде використовуватися логотип USAID, однак компанія «DAI» розуміє, що назва «Проєкт USAID «Економічна підтримка Східної України» не є суббрендом і за жодних обставин не буде поєднуватися з логотипом USAID.

**Повідомлення.** Основні повідомлення під час реалізації проєкту повинні включати те, що було досягнуто для покращення загальної економічної стійкості Східної України у відповідь на російську агресію.

Всі матеріали та заходи проєкту будуть брендвані, як матеріали та заходи від USAID та підготовлені компанією «DAI» в рамках Проєкту USAID «Економічна підтримка Східної України». З тим самим винятком, як такі, усі матеріали підтверджуватимуть, що вони були виготовлені за підтримки «американського народу». У випадках, коли місцева мова переважає над англійською, для брендуння програми буде використано відповідний переклад на місцеву мову (українську та/або російську).

Додаткові ідеї для підвищення обізнаності про те, що американський народ підтримує цю програму: усі тренери будуть навчені включати до кожної презентації або тренінгу заяву на початку своєї зустрічі чи тренінгу про те, що технічна допомога, яку вони надають, та інші програмні послуги стали можливими завдяки «допомозі американського народу». Проєкт USAID «Економічна підтримка Східної України» буде дотримуватися конкретних процедур включення вимог Плану

procedures for including the Branding Implementation Plan requirements as stated in the mandatory internal reference Branding and Marking in USAID Direct Contracting in the Automated Directives System, Chapter 320.

**How to Publicize the Activity.** DAI will position the USAID Economic Resilience Activity as a USAID activity with a high level of visibility, as appropriate, at both the national and sub-national levels; emphasizing the message that “this assistance is from the American people” through USAID. If deemed suitable, documents and marking may be translated into local languages.

For interactions and communications (both verbally and in print) with activity beneficiaries, government officials, and other stakeholders, the USAID Economic Resilience Activity will ensure that USAID is appropriately acknowledged as the donor responsible for supporting this activity and that the role of the contractor is to implement the activity on behalf of USAID. Trainers and workshop leaders will include in each presentation a statement that the technical assistance they provide and all activity services are made possible by support “from the American people.”

**Tools.** The following communication tools will be used: Press releases; press conferences; media interviews; site visits; VIP visits; success stories; beneficiary testimonials; professional photography; public service announcements (PSAs); video and radio spots; webcasts, e-invitations, blast emails, or other internet activities. Additional tools may be added at the request of USAID.

**Key Milestones.** The following key milestones or opportunities are anticipated to generate awareness that the program is from the American people. These milestones may be linked to specific points in time, such as at the beginning or end of the activity, or to an opportunity to showcase publications or other materials, research findings, or activity successes. These include, but are not limited to: launching the activity; announcing research findings; holding training events; publishing reports; highlighting success stories; promoting final or interim reports; featuring beneficiaries as spokespeople; showcasing before-and-after photos; securing endorsements from partner oblasts, ministries, or local organizations; and communicating program impact/overall results.

#### **Audiences.**

Subject to approval by USAID, the USAID Economic

впровадження брендування, як зазначено в обов’язковій внутрішній довідці «Брендування та маркування в Прямих контрактах USAID» у системі автоматизованих директив, глава 320.

**Як пропагувати Проєкт.** Компанія «DAI» позиціонує Проєкт USAID «Економічна підтримка Східної України» як проєкт USAID з високим рівнем прозорості, як на національному, так і на регіональному рівнях; підкреслюючи повідомлення про те, що «ця допомога надається американським народом» через USAID. Якщо вважатиметься доречним, документи та маркування можуть бути перекладені на місцеві мови.

Для взаємодії та комунікації (як усної, так і в друкованому вигляді) з бенефіціарами проєкту, урядовцями та іншими зацікавленими сторонами, Проєкт USAID «Економічна підтримка Східної України» забезпечить належне визнання USAID донором, відповідальним за підтримку цього проєкту, а також того, що роль Підрядника – це реалізація проєкту від імені USAID. Тренери та керівники семінарів включатимуть до кожної презентації заяву про те, що технічна допомога, яку вони надають, та всі послуги, пов’язані з проєктом, можливі завдяки підтримці «американського народу».

**Інструменти.** Будуть використані такі засоби комунікації: прес-релізи; прес-конференції; інтерв’ю у ЗМІ; візити на місце події/заходу; візити важливих осіб; історії успіху; відгуки бенефіціарів; професійні фоторепортажі; рекламні оголошення; відео та радіо-ролики; веб-трансляції, електронні запрошення, електронні листи чи інші дії в Інтернеті. На прохання USAID можуть бути використані/додані додаткові інструменти.

**Ключові віхи.** Очікуються наступні ключові віхи або можливості, що сприятимуть усвідомленню того, що програма підтримується американським народом. Ці віхи можуть бути пов’язані з конкретними моментами часу, наприклад, на початку або в кінці проєкту, або з можливістю продемонструвати публікації чи інші матеріали, результати досліджень або успіхи проєкту. Сюди належать, поміж іншого: запуск проєкту; оголошення результатів дослідження; проведення навчальних заходів; публікація звітів; висвітлення історій успіху; просування остаточних або проміжних звітів; залучення бенефіціарів як речників; демонстрація фотографій до та після; схвалення від партнерів на рівні області, міністерств чи місцевих організацій; та інформування про вплив програми/загальні результати.

#### **Аудиторія.**

За умови схвалення USAID, Проєкт USAID «Економічна



Resilience Activity has the following target audiences with whom it will promote and publicize USAID sponsorship:

#### **Primary Audience**

The primary audience for all materials and documents produced under this contract are: conflict-affected populations, including internally displaced people and communities with a large influx of IDPs, vulnerable populations, business owners and entrepreneurs, government authorities at local and national levels, and national and international private sector companies.

#### **Secondary Audience**

The secondary audience for materials and documents produced by the USAID Economic Resilience Activity includes USAID stakeholders in the United States like Congress, other US agencies; nongovernmental organizations, contractors, and researchers; European stakeholders; and local, regional, national and international media.

#### **Acknowledgements**

**Acknowledging USAID and the USAID Equate Funding Mechanism.** The following acknowledgment will be included on external USAID Economic Resilience Activity publications and internal publications, such as quarterly reports, as appropriate:

*“This document was produced for review by the United States Agency for International Development. It was prepared by [name of organization] for the USAID Economic Resilience Activity, contract number [contract number].”*

**Acknowledging Host-country Governments.** All USAID Economic Resilience Activity documents will follow USAID Branding Guidelines. If during the course of this program other major sponsors are involved, we will advise the COR of their involvement and request permission to include them as necessary.

**Acknowledging Other Host-country Partners.** Co-branding with civil society groups will occur when these organizations have contributed funds to the activity. Co-branding with in-country partners may also be desirable when trying to promote local ownership and capacity building. However, when products are fully funded by USAID, CO approval is required for any exceptions to full branding requirements.

підтримка Східної України» має наступні цільові аудиторії, серед яких буде просувати та рекламувати спонсорство USAID:

#### **Основна аудиторія**

Основною аудиторією для всіх матеріалів та документів, виготовлених за цим контрактом, є: населення, яке постраждало від конфлікту, включаючи внутрішньо переміщених осіб (ВПО) та громади з великим припливом ВПО, вразливе населення, власники підприємств та підприємці, органи влади на місцевому та національному рівнях, національні та міжнародні компанії приватного сектору.

#### **Вторинна аудиторія**

Вторинна аудиторія для матеріалів та документів, вироблених Проектом USAID «Економічна підтримка Східної України», включає зацікавлені сторони USAID у Сполучених Штатах, такі як Конгрес, інші американські установи; неурядові організації, підрядники та наукові працівники; зацікавлені сторони з Європейських країн; а також місцеві, регіональні, національні та міжнародні ЗМІ.

#### **Визнання ролі**

**Визнання ролі USAID та Механізму рівного фінансування USAID.** Наступне визнання ролі буде включено до зовнішніх публікацій Проекту USAID «Економічна підтримка Східної України» та внутрішніх публікацій, таких як щоквартальні звіти, в залежності від ситуації:

*«Цей документ підготовлений для ознайомлення Агентством США з міжнародного розвитку. Він був підготовлений [назва організації] для Проекту USAID «Економічна підтримка Східної України», номер контракту [номер контракту]».*

**Визнання ролі урядів країн виконання контракту.** Усі документи Проекту USAID «Економічна підтримка Східної України» будуть відповідати керівним принципам USAID щодо брендування. Якщо у ході цієї програми будуть задіяні інші основні спонсори, ми повідомимо куратора проекту від USAID про їх участь і попросимо дозволу включити їх за необхідності.

**Визнання ролі інших партнерів країни виконання контракту.** Кобрендування із групами громадянського суспільства відбуватиметься, коли ці організації вкладуть кошти в проєкт. Спільне брендування з партнерами країни виконання контракту може бути також бажаним для просування підприємницької діяльності на місцевому рівні та розбудові потенціалу. Однак, коли продукція повністю фінансується USAID, для будь-яких винятків із вимог до повного брендування потрібно затвердження зі сторони фахівця з укладання контрактів.

**Co-branding with Other International Кобрендування з іншими міжнародними**

**Organizations.** In such cases, the guidelines for co-branding will be followed, assuming the funding contributed is more than a token amount.

### Marking Plan

With reference to and aligned with ADS Section 320.3.2, the USAID Graphic Standards Manual, below is the preliminary Marking Plan for the USAID Economic Resilience Activity.

### Marking Plan for Materials to Be Produced.

The table below outlines the types of materials that may be produced under the USAID Economic Resilience Activity. Any materials that are not anticipated below, but are produced under the initiative, will also be subject to branding guidelines and CO approval, as appropriate. Please note that marking is not required on items used as part of the administration of the contract, such as stationery products, equipment, and offices. The goal is to mark programs and projects, and not implementing partners. Thus, letterhead, name tags, business cards, office space, equipment, and supplies are not subject to branding.

Every contract deliverable that is marked with the USAID identity for the USAID Economic Resilience Activity will follow design guidance for color, type, and layout in the Graphic Standards Manual as related to equipment, reports, studies, events, and public communication (including printed products, audio, visual, and electronic materials). The USAID logo will be used for programmatic correspondence. In compliance with ADS 320.3.1.5, DAI letterhead will be used for administrative matters such as correspondence (emails, letters, and faxes) with the cooperating government concerning compliance with local laws (e.g. taxation, customs, registration, renting office space and equipment, and personnel management, etc.) and will not feature the USAID logo. Business cards will not show the USAID logo, but may include “USAID Contractor” above their name to inform recipients of the business card that this individual is associated with USAID.

All studies, reports, publications, websites, and informational and promotional products not authored, reviewed, or edited by USAID will contain a provision substantially as follows:

*“This [study/report/web site] is made possible by the support of the American people through the United States Agency for International Development (USAID.) The contents of this [specify] are the sole responsibility of [name of organization] and do not necessarily reflect*

*організаціями.* У таких випадках слід дотримуватися вказівок щодо кобрендування, припускаючи, що фінансування перевищує символічну суму.

### План маркування

З посиланням на Розділ 320.3.2 ADS та Посібник з графічних стандартів USAID, нижче наведений План маркування для Проєкту USAID «Економічна підтримка Східної України».

### План маркування матеріалів, що будуть виготовлені.

У наведеній нижче таблиці викладено типи матеріалів, які можуть вироблятися в рамках Проєкту USAID «Економічна підтримка Східної України». Будь-які матеріали, які не передбачені нижче, але виготовляються в рамках ініціативи, також підлягатимуть правилам щодо брендування та затвердженню фахівцем з укладання контрактів, в залежності від ситуації. Зверніть увагу, що маркування не потрібне на елементах, що використовуються в рамках адміністрування контракту, таких як канцелярські товари, обладнання та офісні приміщення. Мета – позначити програми та проєкти, а не партнерів-виконавців. Таким чином, бланки, бейджі, візитні картки, офісні приміщення, обладнання та витратні матеріали не підлягають брендуванню.

Кожен контракт, який позначається айденікою USAID для Проєкту USAID «Економічна підтримка Східної України», буде відповідати правилам дизайну в частині кольору, типу шрифтів та макетуванню, які описано в Посібнику з графічних стандартів, і стосуються обладнання, звітів, досліджень, заходів та публічних комунікацій (включаючи друковану продукцію, аудіо, візуальні та електронні матеріали). Логотип USAID буде використовуватися для програмної кореспонденції. Відповідно до ADS 320.3.1.5, фірмовий бланк компанії «DAI» буде використовуватися для адміністративних питань, таких як листування (електронні листи, листи та факси) із співпрацюючим урядом щодо дотримання місцевого законодавства (наприклад, оподаткування, митниця, реєстрація, оренда офісних приміщень та обладнання, управління персоналом тощо) і не матиме логотипу USAID. Візитівки не будуть містити логотип USAID, але можуть містити надпис «Підрядник USAID» над ім'ям для інформування одержувачів візитної картки, що ця особа пов'язана з USAID.

Усі дослідження, звіти, публікації, веб-сайти та інформаційно-промоційні продукти, не створені, не переглянуті та не відредаговані USAID, міститимуть положення, по суті близьке до такого:

*«Це [дослідження/звіт/веб-сайт] стало можливим завдяки підтримці американського народу через Агентство США з міжнародного розвитку (USAID). Зміст цього [вказати] є виключною відповідальністю [найменування організації] та не обов'язково відображає*

*the views of USAID or the United States Government.”* *погляди USAID або уряду США».*

With reference to ADS Section 320.3.2.2, the table below details the required Marking Plan. Threats and restrictions to the security of the activity will be identified and assessed in order to request any necessary exception from the marking requirement in accordance with ADS 320.3.2.

З посиланням на Розділ 320.3.2.2 ADS, таблиця нижче деталізує необхідний План маркування. Загрози та обмеження безпеки проекту будуть визначені та оцінені для запиту будь-яких необхідних винятків з вимог до маркування відповідно до ADS 320.3.2.

Category / Категорія	Type of Marking / Тип маркування
Stationery products (administrative related) / Канцелярські товари (адміністративні прилади)	USAID standard graphic identity will not be used. Pertains to letterhead, envelopes, and mailing labels. / Стандартна графічна айдентика USAID не буде використовуватися. Стосується бланків, конвертів та поштових марок.
Stationery products (program related) / Стационарні продукти (пов'язані з програмою)	USAID standard graphic identity will not be used. Pertains to letters that accompany program materials. / Стандартна графічна айдентика USAID не буде використовуватися. Стосується листів, що супроводжують програмні матеріали.
Business cards / Візитні карточки	USAID standard graphic identity will not be used. DAI will use its own business cards but include the line "Economic Resilience Activity" on the business card. / Стандартна графічна айдентика USAID не буде використовуватися. DAI буде використовувати власні візитні карточки, проте включити до них рядок «Економічна підтримка Східної України»
Office signs / Офісні вивіски	USAID standard graphic identity will not be used. / Стандартна графічна ідентичність USAID не буде використовуватися.
Project deliverables / Результати проєкту	Follows USAID Graphics Standard Manual guidelines for full branding. / Відповідно до Стандартного посібника з графіки USAID щодо повного брендування.
Technical reports and studies / Технічні звіти та дослідження	The USAID identity will be printed on the cover of documents; design follows USAID Graphics Standard Manual guidelines for full branding unless co-branding is acceptable or an exception is granted for no branding. / Айдентика USAID буде надрукована на обкладинці документів; дизайн відповідно до Стандартного посібника з графіки USAID щодо повного брендування, якщо не допускається кобрендування або не надається виняток для відсутності брендування.
Briefing papers, memoranda, and policy recommendations / Брифінги, меморандуми та рекомендації щодо політики	The USAID identity will be printed on the cover of documents; design follows USAID Graphics Standard Manual guidelines for full branding unless co-branding is acceptable or an exception is provided for no branding. / Айдентика USAID буде надрукована на обкладинці документів; дизайн відповідно до Стандартного посібника з графіки USAID щодо повного брендування, якщо не допускається кобрендування або не надається виняток для відсутності брендування.
Government policies, strategies, plans, and guidelines (regional, national, and sub-national levels) or other materials positioned as being from the host-country government / Урядова політика, стратегії, плани та керівні принципи (регіональний, національний та субнаціональний рівні) або інші матеріали, що позиціонуються як матеріали уряду країни виконання контракту	Follows USAID Graphics Standard Manual guidelines for full branding (if applicable). / Відповідно до Стандартного посібника з графіки USAID щодо повного брендування (якщо застосовне).
Organizations' policies, strategies, plans, and guidelines or other materials positioned as being from the host-country partner / Політика, стратегії, плани та керівні принципи організацій та інші матеріали, що позиціонуються як такі, що належать партнеру країни виконання контракту	Follows USAID Graphics Standard Manual guidelines for full branding (if applicable). / Відповідно до Стандартного посібника з графіки USAID щодо повного брендування (якщо застосовне).
Training materials and manuals / Навчальні матеріали та посібники	The USAID identity will be printed on the cover of documents; design follows USAID Graphics Standard Manual guidelines for full branding unless co-branding is acceptable or an exception is provided for no branding. / Ідентифікація USAID буде надрукована на обкладинці документів; дизайн відповідно до Стандартного посібника з графіки USAID щодо повного брендування, якщо не допускається кобрендування або не надається виняток для відсутності брендування.
CDs-ROM/ Компакт-диски	The USAID identity will be printed on the CD label, splash screen/menu, and packaging; design follows USAID Graphics Standard Manual guidelines for full branding unless co-branding is acceptable, or an exception is provided for no branding. / Ідентифікація USAID буде надрукована на етикетці компакт-диска, екрані-заставці/меню та упаковці; дизайн відповідно до Стандартного посібника з графіки USAID щодо повного брендування, якщо не допускається кобрендування або не надається виняток для відсутності брендування.
PowerPoint presentations/ Презентації PowerPoint	The USAID identity will be printed on the title breaker slides; design follows USAID Graphics Standard Manual guidelines for full branding unless co-branding is acceptable or an exception is provided for no branding. / Айдентика USAID буде надрукована на слайдах-розділювачах заголовків; дизайн відповідно до Стандартного посібника з графіки USAID щодо повного брендування, якщо не допускається кобрендування або не надається виняток для відсутності брендування.



Conference posters and presentations/ Постери та презентації для конференцій	The USAID identity will be printed on the poster or presentation; design follows USAID Graphics Standard Manual guidelines for full branding unless co-branding is acceptable or an exception is provided for no branding. / Айдентика USAID буде надрукована на постері або презентації; дизайн відповідно до Стандартного посібника з графіки USAID щодо повного брендуння, якщо не допускається кобрендування або не надається виняток для відсутності брендуння.
Videos / Відео	Follows USAID Graphics Standard Manual guidelines and disclaimer. / Відповідно до Стандартного посібника з графіки USAID та відмови від
Program materials / Матеріали програми	Follows USAID Graphics Standard Manual guidelines and disclaimer. / Відповідно до Стандартного посібника з графіки USAID та відмови від
Technical web portal / Технічний веб-портал	Follows guidelines for co-branding; the USAID identity will be included on the homepage and sub-pages as appropriate. Individual documents included on the portal will be branded as appropriate. / Відповідно до керівництв щодо кобрендування; Айдентика USAID буде включена до головної сторінки та підсторінок, в залежності від ситуації. Окремі документи, розміщені на порталі, будуть брендунятися відповідним чином.
Event signs, banners, and exhibition booths materials / Вивіски подій, банери та матеріали виставкових кіосків	The USAID identity will be printed on the materials; design follows USAID Graphics Standard Manual guidelines for full branding unless co-branding is acceptable or an exception is provided for no branding. / Айдентика USAID буде надрукована на матеріалах; дизайн відповідно до Стандартного посібника з графіки USAID щодо повного брендуння, якщо не допускається кобрендування або не надається виняток для відсутності брендуння.
Project promotional materials / Промоційні матеріали проекту	The USAID identity will be printed on the materials; design follows USAID Graphics Standard Manual guidelines for full branding. Applies to success stories, beneficiary announcement of research, testimonials, findings, or project results. / Айдентика USAID буде надрукована на матеріалах; дизайн відповідно до Стандартного посібника з графіки USAID щодо повного брендуння. Застосовується до історій успіху, оголошень бенефіціарів про дослідження, відгуків, висновків або результатів проекту.
Materials for policy launch / Матеріали для запуску політики	Not applicable. / Не застосовується
Materials for site visits / Матеріали для візитів на майданчик	The USAID identity will be printed on the materials; design follows USAID Graphics Standard Manual guidelines for full branding. / Айдентика USAID буде надрукована на матеріалах; дизайн відповідно до Стандартного посібника з графіки USAID щодо повного брендуння.

**Grants under Contract.** Grants under contracts, when authorized in accordance with ADS 302, “USAID Direct Contracting” must be branded and marked like grants. The policy directives and required procedures for branding and marking of assistance awards in ADS Section 320.3.3 and 22 CFR 226.91 apply. The contractor is responsible for including branding and marking requirements for these grants in its Branding Implementation Plan and Marking Plan, as part of its overall responsibility for managing grants under its contract.

**Гранти за контрактом.** Гранти за контрактами, коли вони дозволені відповідно до ADS 302, «Прямі контракти з USAID», повинні бути брендвані та марковані як гранти. Застосовуються установчі директиви та процедури брендуння та маркування присуджень контрактів, передбачені Розділом ADS 320.3.3 та 22 CFR 226.91. Підрядник несе відповідальність за включення вимог до брендуння та маркування цих грантів до Плану впровадження брендуння та Плану маркування в рамках своєї загальної відповідальності за управління грантами за контрактом.

**Production Review.** USAID reserves the right to request reproduction review of USAID-funded public communications and program material for compliance with USAID graphic standards and the approved Marking Plan.

**Оцінка виробництва.** USAID залишає за собою право вимагати до виробничого перегляду комунікаційних та програмних матеріалів, що фінансуються USAID, на відповідність графічним стандартам USAID та затвердженому Плану маркування.