

Department of Education

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agreement shall survive the expiration or termination of the agreement.

[Insert business name.]

Recipient's Business Name

[Have representative sign.]

Authorized Representative

[Insert date.]

Date

[Insert name and title.]

Representative's Typed Name and Title

(End of clause)

3452.227-73 Limitations on the use or disclosure of Government-furnished information marked with restrictive legends.

As prescribed in 3427.409, insert the following clause in all contracts of third party vendors who require access to Government-furnished information including other contractors' technical data, proprietary information, or software:

LIMITATIONS ON THE USE OR DISCLOSURE OF GOVERNMENT-FURNISHED INFORMATION MARKED WITH RESTRICTIVE LEGENDS (MAR 2011)

(a) For contracts under which data are to be produced, furnished, or acquired, the terms *limited rights* and *restricted rights* are defined in the rights in data—general clause (FAR 52.227-14).

(b) Proprietary data, technical data, or computer software provided to the contractor as Government-furnished information (GFI) under this contract may be subject to restrictions on use, modification, reproduction, release, performance, display, or further disclosure.

(1) *Proprietary data with legends that serve to restrict disclosure or use of data.* The contractor shall use, modify, reproduce, perform, or display proprietary data received from the Government with proprietary or restrictive legends only in the performance of this contract. The contractor shall not, without the express written permission of the party who owns the data, release, or disclose such data or software to any person.

(2) *GFI marked with limited or restricted rights legends.* The contractor shall use, modify, reproduce, perform, or display technical data received from the Government with limited rights legends or computer software received with restricted rights legends only in the performance of this contract. The contractor shall not, without the express written permission of the party whose name appears in the legend, release or disclose such data or software to any person.

(3) *GFI marked with specially negotiated license rights legends.* The contractor shall use, modify, reproduce, release, perform, or dis-

play proprietary data, technical data, or computer software received from the Government with specially negotiated license legends only as permitted in the license. Such data or software may not be released or disclosed to other persons unless permitted by the license and, prior to release or disclosure, the intended recipient has completed the use and non-disclosure agreement. The contractor shall modify paragraph (c)(1)(iii) of the use and non-disclosure agreement (3452.227-72) to reflect the recipient's obligations regarding use, modification, reproduction, release, performance, display, and disclosure of the data or software.

(c) Indemnification and creation of third party beneficiary rights.

(1) The contractor agrees to indemnify and hold harmless the Government, its agents, and employees from every claim or liability, including attorneys fees, court costs, and expenses, arising out of, or in any way related to, the misuse or unauthorized modification, reproduction, release, performance, display, or disclosure of proprietary data, technical data, or computer software received from the Government with restrictive legends by the contractor or any person to whom the contractor has released or disclosed such data or software.

(2) The contractor agrees that the party whose name appears on the restrictive legend, in addition to any other rights it may have, is a third party beneficiary who has the right of direct action against the contractor, or any person to whom the contractor has released or disclosed such data or software, for the unauthorized duplication, release, or disclosure of proprietary data, technical data, or computer software subject to restrictive legends.

(End of clause)

3452.228-70 Required insurance.

As prescribed in 3428.311-2, insert the following clause in all solicitations and resultant cost-reimbursement contracts:

REQUIRED INSURANCE (MAR 2011)

(a) The contractor shall procure and maintain such insurance as required by law or regulation, including but not limited to the requirements of FAR Subpart 28.3. Prior written approval of the contracting officer shall be required with respect to any insurance policy, the premiums for which the contractor proposes to treat as a direct cost under this contract, and with respect to any proposed qualified program of self-insurance. The terms of any other insurance policy shall be submitted to the contracting officer for approval upon request.

(b) Unless otherwise authorized in writing by the contracting officer, the contractor

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shall not procure or maintain for its own protection any insurance covering loss or destruction of, or damage to, Government property.

(End of clause)

3452.232-70 Limitation of cost or funds.

The following clause shall be inserted in all contracts that include a Limitation of cost or Limitation of funds clause in accordance with 3432.705-2:

LIMITATION OF COST OR FUNDS (MAR 2011)

(a) Under the circumstances in FAR 32.704(a)(1), the contractor shall submit the following information in writing to the contracting officer:

- (1) Name and address of the contractor.
 - (2) Contract number and expiration date.
 - (3) Contract items and amounts that will exceed the estimated cost of the contract or the limit of the funds allotted.
 - (4) The elements of cost that changed from the original estimate (for example: labor, material, travel, overhead), furnished in the following order:
 - (i) Original estimate.
 - (ii) Costs incurred to date.
 - (iii) Estimated cost to completion.
 - (iv) Revised estimate.
 - (v) Amount of adjustment.
 - (5) The factors responsible for the increase.
 - (6) The latest date by which funds must be available to the contractor to avoid delays in performance, work stoppage, or other impairments.
- (b) A fixed fee provided in a contract may not be changed if a cost overrun is funded. Changes in a fixed fee may be made only to reflect changes in the scope of work that justify an increase or decrease in the fee.

(End of clause)

3452.232-71 Incremental funding.

As prescribed in 3432.705-2, insert the following provision in solicitations if a cost-reimbursement contract using incremental funding is contemplated:

INCREMENTAL FUNDING (MAR 2011)

Sufficient funds are not presently available to cover the total cost of the complete project described in this solicitation. However, it is the Government's intention to negotiate and award a contract using the incremental funding concepts described in the clause titled "Limitation of Funds" in FAR 52.232-22. Under that clause, which will be included in the resultant contract, initial funds will be obligated under the contract to cover an estimated base performance period. Additional funds are intended to be allotted

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to the contract by contract modification, up to and including the full estimated cost of the entire period of performance. This intent notwithstanding, the Government will not be obligated to reimburse the contractor for costs incurred in excess of the periodic allotments, nor will the contractor be obligated to perform in excess of the amount allotted.

(End of provision)

3452.237-70 Services of consultants.

As prescribed in 3437.270, insert the following clause in all solicitations and resultant cost-reimbursement contracts that do not provide services to FSA:

SERVICES OF CONSULTANTS (MAR 2011)

Except as otherwise expressly provided elsewhere in this contract, and notwithstanding the provisions of the clause of the contract entitled "Subcontracts" (FAR 52.244-2), the prior written approval of the contracting officer shall be required—

- (a) If any employee of the contractor is to be paid as a "consultant" under this contract; and
- (b)(1) For the utilization of the services of any consultant under this contract exceeding the daily rate set forth elsewhere in this contract or, if no amount is set forth, \$800, exclusive of travel costs, or if the services of any consultant under this contract will exceed 10 days in any calendar year.
- (2) If that contracting officer's approval is required, the contractor shall obtain and furnish to the contracting officer information concerning the need for the consultant services and the reasonableness of the fee to be paid, including, but not limited to, whether fees to be paid to any consultant exceed the lowest fee charged by the consultant to others for performing consultant services of a similar nature.

(End of clause)

3452.237-71 Observance of administrative closures.

As prescribed in 3437.170, insert the following clause in all solicitations and service contracts:

OBSERVANCE OF ADMINISTRATIVE CLOSURES (MAR 2011)

(a) The contract schedule identifies all Federal holidays that are observed under this contract. Contractor performance is required under this contract at all other times, and compensated absences are not extended due to administrative closures of Government facilities and operations due to inclement weather, Presidential decree, or other administrative issuances where Government