52.212-5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services.

As prescribed in 12.301(b)(4), insert the following clause:

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services (May 2022)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial products and commercial services:

(1) 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).

(2) 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Nov 2021) (Section 1634 of Pub. L. 115-91).

(3) 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (Nov 2021) (Section 889(a)(1)(A) of Pub. L. 115-232).

(4) 52.209-10, Prohibition on Contracting with Inverted Domestic Corporations (Nov 2015).


(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial products and commercial services:

[Contracting Officer check as appropriate.]


__ (3) 52.203-15, Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (Section 1553 of Pub. L. 111-5). (Applies to contracts funded by the American

(5) [Reserved].


(10) [Reserved].

(11) 52.219-3, Notice of HUBZone Set-Aside or Sole-Source Award (Sep 2021) (15 U.S.C. 657a).

(12) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Sep 2021) (if the offeror elects to waive the preference, it shall so indicate in its offer) (15 U.S.C. 657a).

(13) [Reserved]

(14)


(ii) Alternate I (Mar 2020) of 52.219-6.

(15)


(ii) Alternate I (Mar 2020) of 52.219-7.
(16) 52.219-8, Utilization of Small Business Concerns (Oct 2018) (15 U.S.C. 637(d)(2) and (3)).

(17) (i) 52.219-9, Small Business Subcontracting Plan (Nov 2021) (15 U.S.C. 637(d)(4)).

(ii) Alternate I (Nov 2016) of 52.219-9.

(iii) Alternate II (Nov 2016) of 52.219-9.

(iv) Alternate III (Jun 2020) of 52.219-9.

(v) Alternate IV (Sep 2021) of 52.219-9.

(18) (i) 52.219-13, Notice of Set-Aside of Orders (Mar 2020) (15 U.S.C. 644(r)).

(ii) Alternate I (Mar 2020) of 52.219-13.

(19) 52.219-14, Limitations on Subcontracting (Sep 2021) (15 U.S.C. 637s).

(20) 52.219-16, Liquidated Damages—Subcontracting Plan (Sep 2021) (15 U.S.C. 637(d)(4)(F)(i)).


(22) (i) 52.219-28, Post Award Small Business Program Rerepresentation (Sep 2021) (15 U.S.C. 632(a)(2)).

(ii) Alternate I (Mar 2020) of 52.219-28.

(23) 52.219-29, Notice of Set-Aside for, or Sole-Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns (Sep 2021) (15 U.S.C. 637(m)).

(24) 52.219-30, Notice of Set-Aside for, or Sole-Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program (Sep 2021) (15 U.S.C. 637(m)).

(26) 52.219-33, Nonmanufacturer Rule (Sep 2021) (15 U.S.C. 637(a)(17)).

(27) 52.222-3, Convict Labor (Jun 2003) (E.O.11755).

(28) 52.222-19, Child Labor-Cooperation with Authorities and Remedies (Jan 2022) (E.O.13126).

(29) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).

(30) (i) 52.222-26, Equal Opportunity (Sep 2016) (E.O.11246).

(ii) Alternate I (Feb 1999) of 52.222-26.


(ii) Alternate I (Jul 2014) of 52.222-35.


(ii) Alternate I (Jul 2014) of 52.222-36.


(34) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496).


(36) **52.222-54**, Employment Eligibility Verification (May 2022) (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of *commercial products or commercial services* as prescribed in FAR 22.1803.)

(37)

(i) **52.223-9**, Estimate of Percentage of Recovered Material Content for EPA-Designated Items (May 2008) (42 U.S.C. 6962(c)(3)(A)(iii)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

(ii) Alternate I (May 2008) of **52.223-9** (42 U.S.C. 6962(i)(2)(C)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

(38) **52.223-11**, *Ozone-Depleting Substances* and High Global Warming Potential Hydrofluorocarbons (Jun 2016) (E.O. 13693).

(39) **52.223-12**, Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners (Jun 2016) (E.O. 13693).

(40)

(i) **52.223-13**, Acquisition of EPEAT®-Registered Imaging Equipment (Jun 2014) (E.O.s 13423 and 13514).

(ii) Alternate I (Oct 2015) of **52.223-13**.

(41)

(i) **52.223-14**, Acquisition of EPEAT®-Registered Televisions (Jun 2014) (E.O.s 13423 and 13514).

(ii) Alternate I (Jun 2014) of **52.223-14**.


(43)

(i) **52.223-16**, Acquisition of EPEAT®-Registered Personal Computer Products (Oct 2015) (E.O.s 13423 and 13514).

(ii) Alternate I (Jun 2014) of **52.223-16**.

(44) **52.223-18**, Encouraging Contractor Policies to Ban Text Messaging While Driving (Jun
2020) (E.O. 13513).

__(45) 52.223-20, Aerosols (Jun 2016) (E.O. 13693).

__(46) 52.223-21, Foams (Jun 2016) (E.O. 13693).

__(47)

(i) **52.224-3** Privacy Training (Jan 2017) (5 U.S.C. 552 a).

__(ii) Alternate I (Jan 2017) of **52.224-3**.


__(49)


__(ii) Alternate I (Jan 2021) of **52.225-3**.

__(iii) Alternate II (Jan 2021) of **52.225-3**.

__(iv) Alternate III (Jan 2021) of **52.225-3**.


__(51) 52.225-13, Restrictions on Certain Foreign Purchases (Feb 2021) (E.O.’s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).


__(54) 52.226-5, Restrictions on Subcontracting Outside Disaster or Emergency Area

- (55) 52.229-12, Tax on Certain Foreign Procurements (Feb 2021).


- (59) 52.232-34, Payment by Electronic Funds Transfer-Other than System for Award Management (Jul 2013) (31 U.S.C. 3332).


- (62) 52.242-5, Payments to Small Business Subcontractors (Jan 2017) (15 U.S.C. 637(d)(13)).

- (63)


- (ii) Alternate I (Apr 2003) of 52.247-64.

- (iii) Alternate II (Nov 2021) of 52.247-64.

(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial products and commercial services:

[Contracting Officer check as appropriate.]


  (7) 52.222-55, Minimum Wages for Contractor Workers Under Executive Order 14026 (Jan 2022).

  (8) 52.222-62, Paid Sick Leave Under Executive Order 13706 (Jan 2022) (E.O. 13706).


(d) **Comptroller General Examination of Record.** The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, as defined in FAR 2.101, on the date of award of this contract, and does not contain the clause at 52.215-2, Audit and Records-Negotiation.

  (1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor’s directly pertinent records involving transactions related to this contract.

  (2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

  (3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.
(e)

(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in this paragraph (e)(1) in a subcontract for commercial products or commercial services. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause-


(ii) 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).

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

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

(v) 52.219-8, Utilization of Small Business Concerns (Oct 2018) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds the applicable threshold specified in FAR 19.702(a) on the date of subcontract award, the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(vi) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).

(vii) 52.222-26, Equal Opportunity (Sep 2015) (E.O.11246).


(xi) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause 52.222-40.


(B) Alternate I (Mar 2015) of 52.222-50 (22 U.S.C. chapter 78 and E.O. 13627).

(xv) **52.222-53**, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Requirements (May 2014) (**41 U.S.C. chapter 67**).

(xvi) **52.222-54**, Employment Eligibility Verification (May 2022) (E.O. 12989).

(xvii) **52.222-55**, Minimum Wages for Contractor Workers Under Executive Order 14026 (Jan 2022).


(xix) (A) **52.224-3**, Privacy Training (Jan 2017) (**5 U.S.C. 552a**).

(B) Alternate I (Jan 2017) of **52.224-3**.

(xx) **52.225-26**, Contractors Performing Private Security Functions Outside the United States (Oct 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; **10 U.S.C. 2302 Note**).

(xxi) **52.226-6**, Promoting Excess Food Donation to Nonprofit Organizations (Jun 2020) (**42 U.S.C. 1792**). Flow down required in accordance with paragraph (e) of FAR clause 52.226-6.

(xxii) **52.247-64**, Preference for Privately Owned U.S.-Flag Commercial Vessels (Nov 2021) (**46 U.S.C. 55305** and **10 U.S.C. 2631**). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.

(2) While not required, the Contractor may include in its subcontracts for *commercial products* and *commercial services* a minimal number of additional clauses necessary to satisfy its contractual obligations.

(End of clause)

*Alternate I* (Feb 2000). As prescribed in **12.301**(b)(4)(i), delete paragraph (d) from the basic clause, redesignate paragraph (e) as paragraph (d), and revise the reference to “paragraphs (a), (b), (c), or (d) of this clause” in the redesignated paragraph (d) to read "paragraphs (a), (b), and (c) of this clause".

*Alternate II* (May 2022). As prescribed in **12.301**(b)(4)(ii), substitute the following paragraphs (d)(1) and (e)(1) for paragraphs (d)(1) and (e)(1) of the basic clause as follows:

(d)(1) The Comptroller General of the United States, an appropriate Inspector General appointed under section 3 or 8 G of the Inspector General Act of 1978 (**5 U.S.C. App.**), or an authorized representative of either of the foregoing officials shall have access to and right to—

(i) Examine any of the Contractor’s or any subcontractors’ records that pertain to, and involve transactions relating to, this contract; and

(ii) Interview any officer or employee regarding such transactions.

(e)(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), and (c), of this clause, the Contractor is not required to flow down any FAR clause in a subcontract for *commercial*
products or commercial services, other than—

(i) **Paragraph (d) of this clause.** This paragraph flows down to all subcontracts, except the authority of the Inspector General under paragraph (d)(1)(ii) does not flow down; and

(ii) **Those clauses listed in this paragraph (e)(1).** Unless otherwise indicated below, the extent of the flow down shall be as required by the clause-


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

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

(E) 52.219-8, Utilization of Small Business Concerns (Oct 2018) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds the applicable threshold specified in FAR 19.702(a) on the date of subcontract award, the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(F) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).

(G) 52.222-26, Equal Opportunity (Sep 2016) (E.O. 11246).


(J) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause 52.222-40.


(O) 52.222-54, Employment Eligibility Verification (May 2022) (Executive Order 12989).

(P) 52.222-55, Minimum Wages for Contractor Workers Under Executive Order 14026 (Jan 2022).
(Q) 52.222-62, Paid Sick Leave Under Executive Order 13706 (Jan 2022) (E.O. 13706).


(2) Alternate I (Jan 2017) of 52.224-3.


(T) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations. (Jun 2020) (42 U.S.C. 1792). Flow down required in accordance with paragraph (e) of FAR clause 52.226-6.

(U) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Nov 2021) (46 U.S.C. 55305 and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.

Parent topic: 52.212 [Reserved]