

**AGENDA ITEM #VIII-D-3  
MARCH 30, 2023  
HIGHLAND COMMUNITY COLLEGE BOARD**

**CONTRACT AWARD  
WELDING CERTIFICATION PROGRAM SERVICES**

**RECOMMENDATION OF THE PRESIDENT:** That the Board of Trustees approves the attached five-year contract with the Federal Bureau of Prisons for the provision of Welding Certification Program Services to be rendered for the Administrative United States Penitentiary in the amount of \$240,540.00.

**BACKGROUND:** Through this contract, the College will provide all the instructional training for each participant of the cohort from Thomson Prison. Participants in the program will be screened by Thomson officials and identified as comparatively low risk. The participants will be able to complete the 16-credit Welding Certificate during the Summer and Fall semesters (June – October), and upon successful completion of the program, will be in a position to enter the workforce as an entry-level welder or pursue an apprenticeship program following release from prison.

At their March 20, 2018, regular meeting, the Board of Trustees approved a similar contract with the Federal Bureau of Prisons for the provision of Welding Certification Program Services. Through the previous five-year, \$226,540.00 contract, four cohort groups completed the program, with an average of eight students per cohort. Due to the COVID-19 pandemic, one cohort was unable to go through the program.

**BOARD ACTION:** \_\_\_\_\_



U.S. Department of Justice  
Federal Bureau of Prisons  
Administration Division

Field Acquisition Office  
Grand Prairie, Texas 75051

Highland Community College Foundation  
Attn: Scott Anderson, Vice President  
2998 West Pearl City Road  
Freeport, Illinois 61032

Re: Offer of Contract Award – Welding Program Services

Dear Mr. Anderson:

Please accept this letter as the official offer of award of contract 15BFA023D00000019 a result of solicitation 15BFA023O00000027 for provision of Welding Program services to be rendered for the Administrative United States Penitentiary (AUSP) located in Thomson, Illinois. The base period of the contract is effective May 1, 2023.

Enclosed is the contract. Please review and indicate your firm's acceptance of the terms and conditions by signing page 1 of the SF 1449 and returning a signed copy to me for inclusion in the contract file. Please email this submission to llwheeler@bop.gov at your earliest convenience.

The Contracting Office located at the AUSP Thomson is designated as the Contract Administration Office (CAO) for this contract and shall be your first point of contact for contractual issues; however, I will be available to offer assistance if necessary. Mr. Justin Wray is the Supervisory Contract Specialist for AUSP Thomson and may be reached at (815) 259-1620 or via email at jwray@bop.gov. Phillip Woolston is the Supervisor of Education for AUSP Thomson and may be reached at (815) 259-1000 extension 1024 or via email at pwoolston@bop.gov.

Pursuant to FAR 22.805(a)(9)(b), I am providing you with the Equal Employment Opportunity poster entitled "Know Your Rights: Workplace Discrimination is Illegal." Please ensure these posters are displayed in a prominent and accessible place at the worksite before contract performance begins.

Pursuant to the Department of Justice Procurement Guidance Document 2016-05, I am providing you with the poster entitled "Whistleblower Information for Department of Justice Contractors, Subcontractors, Grantees or Subgrantees or Personal Services Contractors."

Ensure that your contractors and subcontractors receive a copy of this posters and provide Mr. Wray with an affirmative response when this task has been completed. Your response will become part of the contract administration file.

On behalf of the Federal Bureau of Prisons, we look forward to a successful working relationship with you under the terms of this new contract. If you have any questions, please contact Mr. Wray or feel free to call me.

Sincerely,

*LaQueta Wheeler*

LaQueta Wheeler  
Contracting Officer  
Field Acquisition Office  
U.S. Armed Forces Reserve Complex  
346 Marine Forces Drive  
Grand Prairie, TX 75051  
(972) 352-4536



# Know Your Rights: Workplace Discrimination is Illegal

The U.S. Equal Employment Opportunity Commission (EEOC) enforces Federal laws that protect you from discrimination in employment. If you believe you've been discriminated against at work or in applying for a job, the EEOC may be able to help.

## Who is Protected?

- Employees (current and former), including managers and temporary employees
- Job applicants
- Union members and applicants for membership in a union

## What Organizations are Covered?

- Most private employers
- State and local governments (as employers)
- Educational institutions (as employers)
- Unions
- Staffing agencies

## What Types of Employment Discrimination are Illegal?

Under the EEOC's laws, an employer may not discriminate against you, regardless of your immigration status, on the bases of:

- Race
- Color
- Religion
- National origin
- Sex (including pregnancy and related conditions, sexual orientation, or gender identity)
- Age (40 and older)
- Disability
- Genetic Information (including employer requests for, or purchase, use, or disclosure of genetic tests, genetic services, or family medical history)
- Retaliation for filing a charge, reasonably opposing discrimination, or participating in a discrimination lawsuit, investigation, or proceeding.

## What Employment Practices can be Challenged as Discriminatory?

All aspects of employment, including:

- Discharge, firing, or lay-off
- Harassment (including unwelcome verbal or physical conduct)
- Hiring or promotion
- Assignment
- Pay (unequal wages or compensation)
- Failure to provide reasonable accommodation for a disability or a sincerely-held religious belief, observance or practice
- Benefits
- Job training
- Classification
- Referral
- Obtaining or disclosing genetic information of employees
- Requesting or disclosing medical information of employees
- Conduct that might reasonably discourage someone from opposing discrimination, filing a charge, or participating in an investigation or proceeding.

## What can You Do if You Believe Discrimination has Occurred?

Contact the EEOC promptly if you suspect discrimination. Do not delay, because there are strict time limits for filing a charge of discrimination (180 or 300 days, depending on where you live/work). You can reach the EEOC in any of the following ways:

**Submit** an inquiry through the EEOC's public portal:  
<https://publicportal.eeoc.gov/Portal/Login.aspx>

**Call** 1-800-669-4000 (toll free)  
1-800-669-6820 (TTY)  
1-844-234-5122 (ASL video phone)

**Visit** an EEOC field office (information at [www.eeoc.gov/field-office](http://www.eeoc.gov/field-office))

**E-Mail** [info@eeoc.gov](mailto:info@eeoc.gov)

Additional information about the EEOC, including information about filing a charge of discrimination, is available at [www.eeoc.gov](http://www.eeoc.gov).



## EMPLOYERS HOLDING FEDERAL CONTRACTS OR SUBCONTRACTS

The Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) enforces the nondiscrimination and affirmative action commitments of companies doing business with the Federal Government. If you are applying for a job with, or are an employee of, a company with a Federal contract or subcontract, you are protected under Federal law from discrimination on the following bases:

### Race, Color, Religion, Sex, Sexual Orientation, Gender Identity, National Origin

Executive Order 11246, as amended, prohibits employment discrimination by Federal contractors based on race, color, religion, sex, sexual orientation, gender identity, or national origin, and requires affirmative action to ensure equality of opportunity in all aspects of employment.

### Asking About, Disclosing, or Discussing Pay

Executive Order 11246, as amended, protects applicants and employees of Federal contractors from discrimination based on inquiring about, disclosing, or discussing their compensation or the compensation of other applicants or employees.

### Disability

Section 503 of the Rehabilitation Act of 1973, as amended, protects qualified individuals with disabilities from discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment by Federal contractors. Disability discrimination includes not making reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, barring undue hardship to the employer. Section 503 also requires that Federal contractors take affirmative action to employ and advance in employment qualified individuals with disabilities at all levels of employment, including the executive level.

### Protected Veteran Status

The Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212, prohibits employment discrimination against, and requires affirmative action to recruit, employ, and advance in employment, disabled veterans, recently separated veterans (i.e., within three years of discharge or release from active duty), active duty wartime or campaign badge veterans, or Armed Forces service medal veterans.

### Retaliation

Retaliation is prohibited against a person who files a complaint of discrimination, participates in an OFCCP proceeding, or otherwise opposes discrimination by Federal contractors under these Federal laws.

Any person who believes a contractor has violated its nondiscrimination or affirmative action obligations under OFCCP's authorities should contact immediately:

The Office of Federal Contract Compliance Programs (OFCCP)  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210  
1-800-397-6251 (toll-free)

If you are deaf, hard of hearing, or have a speech disability, please dial 7-1-1 to access telecommunications relay services. OFCCP may also be contacted by submitting a question online to OFCCP's Help Desk at <https://ofccphelpdesk.dol.gov/s/>, or by calling an OFCCP regional or district office, listed in most telephone directories under U.S. Government, Department of Labor and on OFCCP's "Contact Us" webpage at <https://www.dol.gov/agencies/ofccp/contact>.

## PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

### Race, Color, National Origin, Sex

In addition to the protections of Title VII of the Civil Rights Act of 1964, as amended, Title VI of the Civil Rights Act of 1964, as amended, prohibits discrimination on the basis of race, color or national origin in programs or activities receiving Federal financial assistance. Employment discrimination is covered by Title VI if the primary objective of the financial assistance is provision of employment, or where employment discrimination causes or may cause discrimination in providing services under such programs. Title IX of the Education Amendments of 1972 prohibits employment discrimination on the basis of sex in educational programs or activities which receive Federal financial assistance.

### Individuals with Disabilities

Section 504 of the Rehabilitation Act of 1973, as amended, prohibits employment discrimination on the basis of disability in any program or activity which receives Federal financial assistance. Discrimination is prohibited in all aspects of employment against persons with disabilities who, with or without reasonable accommodation, can perform the essential functions of the job.

If you believe you have been discriminated against in a program of any institution which receives Federal financial assistance, you should immediately contact the Federal agency providing such assistance.

# WHISTLEBLOWER INFORMATION

## for EMPLOYEES OF DOJ CONTRACTORS, SUBCONTRACTORS, GRANTEES, OR SUBGRANTEES OR PERSONAL SERVICES CONTRACTORS

Whistleblowers perform an important service to the Department of Justice (DOJ) and the public when they come forward with what they reasonably believe to be evidence of wrongdoing. They should never be subject to reprisal for doing so.

Federal law protects federal employees against reprisal for whistleblowing. In addition, under Title 41, United States Code, Section 4712, it is illegal for an employee of a Federal contractor, subcontractor, grantee, or subgrantee or personal services contractor to be discharged, demoted, or otherwise discriminated against for making a protected whistleblower disclosure. Also, under Presidential Policy Directive (PPD-19), an action affecting access to classified information cannot be taken in reprisal for protected whistleblowing.

The Department of Justice Office of the Inspector General (DOJ OIG) has jurisdiction to investigate allegations of reprisal for whistleblowing by employees of DOJ contractors, subcontractors, grantees, or subgrantees or personal services contractors. Information on how to report suspected reprisal to the OIG is available at: <https://oig.justice.gov/hotline/>.

## WHAT IS A WHISTLEBLOWER

A whistleblower is an employee of a Federal contractor, subcontractor, grantee, or subgrantee or personal services contractor who discloses information that the individual reasonably believes is evidence of:

- Gross mismanagement of a Federal contract or grant;
- A gross waste of Federal funds;
- An abuse of authority relating to a Federal contract or grant;
- A substantial and specific danger to public health or safety; or
- A violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract) or grant.

## TO WHOM MUST THE DISCLOSURE BE MADE TO BE PROTECTED?

To be protected under Section 4712, a disclosure must be made to one of the following:

- A Member of Congress, or a representative of a committee of Congress;
- The OIG;
- The Government Accountability Office (GAO);
- A Federal employee responsible for contract or grant oversight or management at the relevant agency;
- An authorized official of the DOJ or other law enforcement agency;
- A court or grand jury; or
- A management official or other employee of the contractor, subcontractor, or grantee who has the responsibility to investigate, discover, or address misconduct.

Disclosures involving classified information should be made in accordance with otherwise applicable laws, and individuals should consult with the OIG to ensure that such disclosures to it are made appropriately.

## WHAT CAN I DO IF I BELIEVE RETALIATION HAS OCCURED?

Employees of contractors, subcontractors, grantees, or subgrantees or personal services contractors may file a complaint under Section 4712 with the OIG, which will investigate the matter unless the OIG determines that the complaint is frivolous, fails to allege a violation of the prohibition against whistleblower reprisal, or has been addressed in another proceeding. **Upon completion of its investigation, the OIG will submit a report of its findings to the person, the contractor or grantee concerned, and the head of the agency.**

If you are an employee of DOJ, or of a DOJ contractor, subcontractor, grantee, or subgrantee or personal services contractor, and you suspect that a personnel action or an action affecting access to classified information has been taken against you in reprisal for making a disclosure of wrongdoing, you may report it to the OIG.

Nothing in a non-disclosure agreement should be interpreted as limiting your ability to provide information to the OIG.

For further information about whistleblower rights and protections, please see the Whistleblower Protection page on the OIG's website at:

**<https://oig.justice.gov/hotline/whistleblower-protection.htm>**

Note: The OIG does not have authority to investigate EEO complaints.

For such matters, please refer to the DOJ Equal Employment Opportunity Office, website **<https://justice.gov/jmd/eeos>**. If you wish to make a whistleblower disclosure or report reprisal for doing so outside DOJ, you may contact the U.S. Office of Special Counsel, website: **<https://osc.gov>**.

## HOW CAN I REPORT WRONGDOING TO DOJ OIG?

If you know about waste, fraud, abuse, misconduct, or whistleblower reprisal relating to a Department of Justice (DOJ) employee, program, contract, or grant you may report it to the OIG through the following:

**Website:** <https://oig.justice.gov/hotline>

**Hotline:** (800) 869-4499

**Fax:** (202) 616-9881

**Mailing Address:**

U.S. Department of Justice  
Office of the Inspector General  
Inspections Division  
1425 New York Avenue, N.W.  
Suite 7100  
Washington, D.C. 20530-2001



<b>SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24 &amp; 30</b>				1. REQUISITION NUMBER	PAGE 1 OF 35
2. CONTRACT NO. 15BFA023D00000019	3. AWARD/EFFECTIVE DATE 05/01/2023	4. ORDER NUMBER	5. SOLICITATION NUMBER 15BFA023Q00000027	6. SOLICITATION ISSUE DATE 01/23/2023	
7. FOR SOLICITATION INFORMATION CALL: a. NAME LaQueta Wheeler, llwheeler@bop.gov			b. TELEPHONE NUMBER (No collect calls) 972-352-4536	8. OFFER DUE DATE / LOCAL TIME 02/14/2023 03:00 PM CT	
9. ISSUED BY Federal Bureau of Prisons Field Acquisition Office U.S. Armed Forces Reserve Complex 346 Marine Forces Drive Grand Prairie, TX 75051			CODE 15BFA0	10. THE ACQUISITION IS <input checked="" type="checkbox"/> UNRESTRICTED OR <input type="checkbox"/> SET ASIDE: % FOR	
			<input type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> HUBZONE SMALL BUSINESS <input type="checkbox"/> SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS		<input type="checkbox"/> WOMEN-OWNED SMALL BUSINESS (WOSB) ELIGIBLE UNDER THE WOMEN-OWNED SMALL BUSINESS PROGRAM <input type="checkbox"/> EDWOSB <input type="checkbox"/> 8(A)
11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED <input type="checkbox"/> SEE SCHEDULE		12. DISCOUNT TERMS		13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700) <input type="checkbox"/>	
15. DELIVER TO Federal Bureau of Prisons Administrative United States Penitentiary Thomson 1100 One Mile Road Thomson, IL 61285		CODE 15B419	16. ADMINISTERED BY Federal Bureau of Prisons Administrative United States Penitentiary Thomson 1100 One Mile Road Thomson, IL 61285		
17a. CONTRACTOR/OFFEROR HIGHLAND COMMUNITY COLLEGE FOUNDATION 2998 PEARL CITY ROAD FREEPORT, IL 61032-9341 TELEPHONE NO.		CODE	18a. PAYMENT WILL BE MADE BY Federal Bureau of Prisons Administrative United States Penitentiary Thomson 1100 One Mile Road Thomson, IL 61285		
17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER <input type="checkbox"/>		FACILITY CODE UEI: RBVGSNZ16M16 DUNS: 010216521	CODE 15B419		
19. ITEM NO.			20. SCHEDULE OF SUPPLIES/SERVICES		
			The Contractor shall provide Welding Program services to the inmate population at the Administrative United States Penitentiary (AUSP) located in Thomson, Illinois in accordance with the Statement of Work. Firm Fixed Price  See Continuation Sheet(s) <i>(Use Reverse and/or Attach Additional Sheets as Necessary)</i>		
25. ACCOUNTING AND APPROPRIATION DATA Funds will be obligated by individual task/delivery orders.			26. TOTAL AWARD AMOUNT (For Govt. Use Only) \$49,500.00 - Base Year Estimated Maximum		
27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4. FAR 52.212-3 AND 52.212-5 ARE ATTACHED. ADDENDA <input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED			27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4. FAR 52.212-5 IS ATTACHED. ADDENDA <input checked="" type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED		
28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN <u>        </u> COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED <input checked="" type="checkbox"/>			29. AWARD OF CONTRACT: REF. <u>        </u> OFFER DATED <u>        </u> . YOUR OFFER ON SOLICITATION (BLOCK 5) INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS: <input type="checkbox"/>		
30a. SIGNATURE OF OFFEROR/CONTRACTOR			31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER)		
30b. NAME AND TITLE OF SIGNER (TYPE OR PRINT)		30c. DATE SIGNED	31b. NAME OF THE CONTRACTING OFFICER (TYPE OR PRINT)		31c. DATE SIGNED
			LaQueta Wheeler		

19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT

32a. QUANTITY IN COLUMN 21 HAS BEEN

RECEIVED    INSPECTED    ACCEPTED, AND CONFORMS TO THE CONTRACT, EXCEPT AS NOTED: \_\_\_\_\_

32b. SIGNATURE OF AUTHORIZED GOVERNMENT REPRESENTATIVE	32c. DATE	32d. PRINTED NAME AND TITLE OF AUTHORIZED GOVERNMENT REPRESENTATIVE
--	-----------	---

32a. MAILING ADDRESS OF AUTHORIZED GOVERNMENT REPRESENTATIVE	32f. TELEPHONE NUMBER OF AUTHORIZED GOVERNMENT REPRESENTATIVE 32g. E-MAIL OF AUTHORIZED GOVERNMENT REPRESENTATIVE
--	--

33. SHIP NUMBER <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL	34. VOUCHER NUMBER	35. AMOUNT VERIFIED CORRECT FOR	36. PAYMENT <input type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL	37. CHECK NUMBER
--	--------------------	---------------------------------	--	------------------

38. S/R ACCOUNT NUMBER	39. S/R VOUCHER NUMBER	40. PAID BY
------------------------	------------------------	-------------

41a. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT	42a. RECEIVED BY ( <i>Print</i> )		
41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER	41c. DATE	42b. RECEIVED AT ( <i>Location</i> )	
		42c. DATE REC'D ( <i>YYMM/DD</i> )	42d. TOTAL CONTAINERS

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**Section 2 - Commodity or Services Schedule**

Contract Guarantee:

Minimum Guaranteed Quantity	Minimum Guaranteed Amount	Maximum Guaranteed Quantity	Maximum Guaranteed Amount
	\$0.00		\$0.00

**SCHEDULE OF SUPPLIES/SERVICES**

CONTINUATION SHEET

ITEM NO.	SUPPLIES/SERVICES	EST. QUANTITY	UNIT	UNIT PRICE	AMOUNT
0001	Base Year: May 1, 2023 to April 30, 2024 Welding Program Services for 12 students Estimated Maximum. PSC: U006	12	EA	\$4,125.00000	\$49,500.00
0002	Option Year 1: May 1, 2024 to April 30, 2025 Welding Program Services for 12 students Estimated Maximum. PSC: U006	12	EA	\$3,760.00000	\$45,120.00
0003	Option Year 2: May 1, 2025 to April 30, 2026 Welding Program Services for 12 students Estimated Maximum. PSC: U006	12	EA	\$3,900.00000	\$46,800.00
0004	Option Year 3: May 1, 2026 to April 30, 2027 Welding Program Services for 12 students Estimated Maximum. PSC: U006	12	EA	\$4,050.00000	\$48,600.00

0005	Option Year 4: May 1, 2027 to April 30, 2028 Welding Program Services for 12 students Estimated Maximum.	12	EA	\$4,210.00000	\$50,520.00
PSC: U006					
TOTAL					\$240,540.00

**2 Scheduled Continued, SOW, and Special Contract Conditions**

**\*\*Other Than Small Business\*\* Vendors shall self-certify size designation on invoices."**

**Contract Terms and Conditions:**

The Federal Bureau of Prisons, Field Acquisition Office, hereby establishes contract number 15BFA023D00000019 for the Administrative United States Penitentiary (AUSP) located in Thomson, Illinois for the provision of Welding Program services in accordance with 15BFA023Q00000027.

The base year is awarded in the estimated maximum amount of \$49,500.00 for Welding Program services. The contract shall extend from the date of order, May 1, 2023, through April 30, 2024. The contract shall also have up to four option years.

**"Funds shall be obligated by individual Task Order." The estimated maximum amount for the contract is \$240,540.00 (Base Year & Four Option Years).**

**Performance Periods:**

- Option Year 1: May 1, 2024 to April 30, 2025;
- Option Year 2: May 1, 2025 to April 30, 2026;
- Option Year 3: May 1, 2026 to April 30, 2027;
- Option Year 4: May 1, 2027 to April 30, 2028.

**Place of Performance:**

Services will be performed in the Education Department at the AUSP Thomson. The physical address 1100 One Mile Road, Thomson, Illinois 61285. General information about the facility is available at [www.bop.gov](http://www.bop.gov).

**SECTION 2.2 – STATEMENT OF WORK**

**Subject:**

The Federal Bureau of Prisons, Field Acquisition Office, intends to make a single award to an accredited post-secondary institution, vocational training, or industry-based school that will be responsible for providing instruction in a Basic Welding Certification Program for the inmate population located at USP Thomson, Illinois. Successful completion of the training program must qualify inmates for at least entry-level employment in the welding trade upon release.

**Place of Performance:**

Occupational training instruction will be performed in classrooms at the accredited college awarded the contract. The accredited school shall be no further than 50 miles from USP Thomson (1100 One Mile Road, Thomson, IL 61285) in order to be considered for contract award.

**Schedule:**

The contractor will provide five hours of instruction per day, five days per week, excluding Federal Holidays. Work hours will normally be between 9:00 A.M. through 2:00 P.M. These hours may be adjusted to meet the needs of the institution.

Due to the nature of the correctional setting, delays in performance of work may be experienced. Such delays may include but are not limited to inclement weather, electrical or mechanical problems, or other security matters. If the contractor fails to provide coverage, the Government may seek contractual remedy.

**Education and Qualifications:**

The contractor shall not be a self-employed individual or individual employed by a post-secondary institution. The contract must be between USP Thomson and awarded post-secondary institution, vocational training school, or industry-based school.

The occupational education program must fall under the provider's umbrella of accreditation and lead to transferrable credits resulting in a college certificate, Associate in Arts degree (A.A.), an Associate in Science degree (A.S.), or an Associate in Applied Science degree (A.A.S.). Industry-accepted certification is also acceptable. Providers must be accredited by a recognized accrediting agency. If required for employment, certification tests from outside organizations may be administered to individual inmates upon completion of a specific occupational education program. However, the individual skill competency certification will not replace the training program's overall accreditation.

The occupational education program must lead to a college certificate, A.A., A. S., A.A.S., or industry-recognized certificate qualifying inmates for at least an entry-level position of employment. Credits earned from the college certificate, A.A., A.S., or A.A.S. must be transferrable to a four-year college.

Four-year degree programs and programs in liberal arts/general studies are not authorized, although limited and specific courses of a liberal arts/general studies nature may be permitted if directly related to preparation for a specific occupation or vocation.

**Supplies and Equipment:**

The contractor will provide the following supplies, equipment, and curriculum materials:

One set of textbooks, workbooks and other materials customarily provided to college level students for each course. Materials will be provided for 12 students from the USP for each contract performance period. Textbooks shall be utilized from one class to the next and one contract performance period to the next until there is an edition change. The contractor shall be responsible for bearing the expense of providing updated textbooks resulting from edition changes, in the quantities set forth herein. Textbooks provided by the contractor (including edition changes) may be "used" as long as they are in a condition customarily deemed acceptable for use by college-level students.

Textbooks, workbooks and other materials in excess quantities set forth herein which are lost, misplaced, confiscated or destroyed, will be replaced at the USP's expense.

The contractor may make recommendations to the Supervisor of Education pertaining to the selection and purchase of additional supplies and equipment.

**Description of Duties:**

The contractor will provide instruction for a Basic Welding Certification Program in accordance with Bureau of Prisons Program Statement 5353.01, Occupational Education Programs, and Bureau of Prisons Program Statement 5300.21, Education, Training and Leisure Time Program Standards.

Twenty to forty percent (20-40%) of the curriculum's competencies must be hands-on replication of the actual work environment. Application of hands-on work must be occupational in nature. An institution live work project may be utilized to demonstrate or apply hands-on competencies. Electronic or computer-based simulation does not satisfy the hands-on or live work requirement.

The Supervisor of Education must approve live work projects.

Marketable programs shall afford inmates the opportunity to gain in demand skills in a specific occupation, industry, or trade. The marketable program must qualify inmate graduates for at least an entry-level position in the welding trade. As a precondition of the proposal for the contract, the contractor shall specify in writing to the Supervisor of Education the position(s) of employment for which inmate graduates will be eligible to apply.

The Supervisor of Education shall determine the minimum and maximum number of enrollments. However, the Government anticipates that a maximum of 12 students will be enrolled in the program each performance period. Instructors are responsible for the maintenance of transcripts, student attendance records, statistics, and certification records.

The contractor will provide a written curriculum which establishes measurable behavioral objectives and procedures. The curriculum must include clear criteria which establish minimum expectations for program completion, provisions for the assessment of student progress, must identify the hands-on competencies and must require the students to demonstrate them. In addition to core classes needed to attain a college certificate, an industry-accepted certificate, an Associate in Arts degree (A.A.), an Associate in Science degree (A.S.), or an Associate in Applied Science degree (A.A.S.), the curriculum must also include a course on resume development.

The contractor shall assist in the recruitment of employers affiliated with the identified occupation to participate in the institution's mock job fair.

**Inmate Management:**

Provision of services will require frequent and unsupervised contact with inmates. The inmates eligible for this program are minimum security. The contract employee shall not be responsible for the management of any inmates, other than to ensure inmates involved within the contract's scope of work abide by all rules to ensure their safety and well-being. The selected contractor shall attend the Institution Familiarization Orientation program prior to assuming institution involvement. Reimbursement to the contractor for the time spent in the institution orientation or other specific security related training is included in the cost. The contractor is to constantly be aware of security and maintain a professional relationship with inmates at all times. Any violation of the institution rules and regulations are to be brought immediately to the attention of any Government employee employed at the institution. The contractor will be required to provide documentation to the Contracting Officer's Representative (COR) or designee, of any infractions of institutional rules and regulations by inmates for proper action.

**End of Statement of Work**

**SECTION 2.3 – SPECIAL CONTRACT CONDITIONS**

**Point of Acceptance:** The point of acceptance for services is A USP Thomson.

**Non-Personal Services Information:** This service is a contractual arrangement and not a personnel appointment. Payment is based on the provision of an end product or the accomplishment of a specific task. The service does not constitute an employer/employee relationship. The contractor will not be subject to Government supervision, except for security related matters. However, contractor performance shall be monitored.

**Reviews:** The Contracting Officer or designee is authorized to review by on-site survey, review of records, or by any other reasonable manner, the quality of supplies rendered under this contract. All records shall be subject to review by the Contracting Officer or other representative of the BOP.

Payments will be denied when such service does not support the charges or if the service is deemed not necessary or appropriate. Such determinations may be made by the Contracting Officer or COR, whichever is appropriate. All records shall be subject to review by the Contracting Officer or other delegated representatives of the BOP.

**Contracting Officer Responsibility:** Authority to negotiate changes in the terms, conditions, or amounts cited in this contract is reserved to the Contracting Officer. This responsibility may be delegated to an Administrative Contracting Officer by the Contracting Officer.

**Administrative Contracting Office (ACO):** The Contracting Office at AUSP Thomson be the CAO for a resultant contract. This assignment carries with it the authority to perform all normal contract administration functions as listed in FAR 42.302(a), items 1 through 70; to the extent those functions apply to this contract. This assignment also includes delegation of authority to perform functions specified in FAR 42.302(b), items 1 through 11.

**Authorized Ordering Officials:** Task Orders may be issued by any properly warranted Bureau Contracting Officer located at AUSP Thomson utilizing the following methods: orally, facsimile, mail, or electronic commerce methods via "SF-1449".

**Contract Security/Investigative Requirements:** The employees of the contractor entering the institution may be required to meet certain security requirements prior to entering the institution. Primary concerns are the amount of contact that may occur between the contractor and his/her employees with the inmate population during the performance of the contract. Contract employees are allowed access to the institution at the sole discretion of the CEO of the institution.

The Requisition Office (as identified on the Standard Form 1449, Block 16) is responsible for conducting the appropriate law enforcement check on all contractor staff that may need access inside the prison facility. The following investigative procedure will be performed:

The following investigative procedures may be applied and appropriate forms completed before any Contractor employees are permitted inside an institution:

- (1) National Crime Information Center (NCIC) check;
- (2) Declaration of Federal Employment (OF-306);
- (3) FD-258 (fingerprint check);
- (4) Law Enforcement Agency checks;
- (5) Vouchering of Employers;
- (6) Employment Resume;
- (7) Completed Contractor Pre-employment Questionnaire;
- (8) Release of Information;
- (9) Questionnaire for Sensitive Positions (SF-85 for Low Risk, SF-85P for above low risk);
- (10) Credit Check, if applicable;
- (11) Urinalysis, if applicable.

Quoters should also note that contract clause DOJ-03 "Personnel Security Requirements For Contractor Employees" requires that contractor personnel have a "favorable credit report."

By submitting a quote for service, the contractor and its employees agree to complete the required documents and undergo the listed procedures. An individual who does not pass the security clearance will be unable to enter the Bureau facility. Any individual employed by the contractor who is deemed not suitable by the Bureau requirements will not be granted access to perform services under the contract. This is a condition of the contract. Finally, the contractor shall be in compliance with 8 CFR 274a regarding employment of aliens.

**Schedule of Insurance:** In accordance with FAR 52.212-4(q), the Contractor shall comply with all applicable Federal, State, and local laws for the requirements of maintaining applicable insurance coverage.



**Authorized Ordering Officials:** Task Orders may be issued by any properly warranted Bureau Contracting Officer located at AUSP Thomson utilizing the following methods: orally, facsimile, mail, or electronic commerce methods via "SF-1449".

**Privacy Act Notification:** The contract will require contracted staff to operate a system of records and maintain documentation that will require adherence to the Privacy Act of 1974. The system of records will be maintained in accordance with community standards for adult health care. The contractor and/or staff are not authorized to disclose this or any information pertaining to an inmate to any non-Bureau source. Any requests for such information shall be forwarded to the Contracting Officer or COR for proper disposition.

**Section 3 - Contract Clauses****A.1 ADDENDUM TO FAR 52.212-4, Contract Terms and Conditions-Commercial Products and Commercial Services (Dec 2022)**

The terms and conditions for the following clauses are hereby incorporated into this solicitation and resulting contract as an addendum to FAR clause 52.212-4.

**Clauses By Reference****52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)**

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es): [www.acquisition.gov](http://www.acquisition.gov)

Clause	Title	Fill-Ins (if applicable)
52.203-17	Contractor Employee Whistleblower Rights and Requirement To Inform Employees of Whistleblower Rights (Jun 2020)	
52.204-13	System for Award Management Maintenance (Oct 2018)	
52.212-4	Contract Terms and Conditions-Commercial Products and Commercial Services (Dec 2022)	
52.224-1	Privacy Act Notification (Apr 1984)	
52.224-2	Privacy Act (Apr 1984)	
52.228-5	Insurance-Work on a Government Installation (Jan 1997)	
52.232-18	Availability of Funds (Apr 1984)	
52.232-40	Providing Accelerated Payments to Small Business Subcontractors (Nov 2021)	

**Clauses By Full Text****52.216-18 Ordering (Aug 2020)**

(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule. Such orders may be issued from the first day of the current performance period through the last day of the current performance period [*insert dates*].

(b) All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, the contract shall control.

(c) A delivery order or task order is considered "issued" when--

- (1) If sent by mail (includes transmittal by U.S. mail or private delivery service), the Government deposits the order in the mail;
- (2) If sent by fax, the Government transmits the order to the Contractor's fax number; or
- (3) If sent electronically, the Government either--
  - (i) Posts a copy of the delivery order or task order to a Government document access system, and notice is sent to the Contractor; or
  - (ii) Distributes the delivery order or task order via email to the Contractor's email address.
- (d) Orders may be issued by methods other than those enumerated in this clause only if authorized in the contract.

(End of clause)

#### 52.216-19 Order Limitations (Oct 1995)

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(a) *Minimum order.* When the Government requires supplies or services covered by this contract in an amount of less than deliverable as identified in Schedule of Services [*insert dollar figure or quantity*], the Government is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract.

(b) *Maximum order.* The Contractor is not obligated to honor--

- (1) Any order for a single item in excess of the estimated quantities in the Schedule of Items within the current performance period [*insert dollar figure or quantity*];
  - (2) Any order for a combination of items in excess of the estimated quantities in the Schedule of Items within the current performance period [*insert dollar figure or quantity*]; or
  - (3) A series of orders from the same ordering office within 30 days that together call for quantities exceeding the limitation in paragraph (b)(1) or (2) of this section.
- (c) If this is a requirements contract (*i.e.*, includes the Requirements clause at subsection 52.216-21 of the Federal Acquisition Regulation (FAR)), the Government is not required to order a part of any one requirement from the Contractor if that requirement exceeds the maximum-order limitations in paragraph (b) of this section.

(d) Notwithstanding paragraphs (b) and (c) of this section, the Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within 5 days after issuance, with written notice stating the Contractor's intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the Government may acquire the supplies or services from another source.

(End of clause)

#### 52.216-21 Requirements (Oct 1995)

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(a) This is a requirements contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies or services specified in the Schedule are estimates only and are not purchased by this contract. Except as this contract may otherwise provide, if the Government's requirements do not result in orders in the quantities described as "estimated" or "maximum" in the Schedule, that fact shall not constitute the basis for an equitable price adjustment.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. Subject to any limitations in the Order Limitations clause or elsewhere in this contract, the Contractor shall furnish to the Government all supplies or services specified in the Schedule and called for by orders issued in accordance with the Ordering clause. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(c) Except as this contract otherwise provides, the Government shall order from the Contractor all the supplies or services specified in the Schedule that are required to be purchased by the Government activity or activities specified in the Schedule.

(d) The Government is not required to purchase from the Contractor requirements in excess of any limit on total orders under this contract.

(e) If the Government urgently requires delivery of any quantity of an item before the earliest date that delivery may be specified under this contract, and if the Contractor will not accept an order providing for the accelerated delivery, the Government may acquire the urgently required goods or services from another source.

(f) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the Contractor shall not be required to make any deliveries under this contract after the last day of the effective performance period [*insert date*].

(End of clause)

#### 52.217-9 Option to Extend the Term of the Contract (Mar 2000)

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(a) The Government may extend the term of this contract by written notice to the Contractor within the expiration of the current performance period [*insert the period of time within which the Contracting Officer may exercise the option*]; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 60 days [*60 days unless a different number of days is inserted*] before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed 5 (months)(years).

(End of clause)

#### 52.232-19 Availability of Funds for the Next Fiscal Year (Apr 1984)

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Funds are not presently available for performance under this contract beyond September 30. The Government's obligation for performance of this contract beyond that date is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Government for any payment may arise for performance under this contract beyond September 30, until funds are made available to the Contracting Officer for performance and until the Contractor receives notice of availability, to be confirmed in writing by the Contracting Officer.

(End of clause)

#### 2852.201-70 Contracting Officer's Representative (COR) (NOV 2020)

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(a) The Contracting Officer's Representative will be appointed after contract award.

(b) Performance of work under this contract is subject to the technical direction of the COR identified above, or another representative designated in writing by the Contracting Officer. The term "technical direction" includes, without limitation, the following:

- (i) Receiving all deliverables;
  - (ii) Inspecting and accepting the supplies or services provided in accordance with the terms and conditions of this contract;
  - (iii) Clarifying, directing, or redirecting the contract effort, including shifting work between work areas and locations, filling in details, or otherwise serving to accomplish the contractual statement of work to ensure the work is accomplished satisfactorily;
  - (iv) Evaluating performance of the Contractor; and
  - (v) Certifying all invoices/vouchers for acceptance of the supplies or services furnished for payment.
- (c) The COR does not have the authority to issue direction that:
- (i) Constitutes a change of assignment or work outside the contract specification/work statement/scope of work.
  - (ii) Constitutes a change as defined in the clause entitled "Changes" or other similar contract term.
  - (iii) Causes, in any manner, an increase or decrease in the contract price or the time required for contract performance;
  - (iv) Causes, in any manner, any change in a term, condition, or specification or the work statement/scope of work of the contract;
  - (v) Causes, in any manner, any change or commitment that affects price, quality, quantity, delivery, or other term or condition of the contract or that, in any way, directs the contractor or its subcontractors to operate in conflict with the contract terms and conditions;
  - (vi) Interferes with the contractor's right to perform under the terms and conditions of the contract;

- (vii) Directs, supervises, or otherwise controls the actions of the Contractor's employees or a Subcontractor's employees.
- (d) The Contractor shall proceed promptly with performance resulting from the technical direction of the COR. If, in the opinion of the Contractor, any direction by the COR or the designated representative falls outside the authority of (b) above and/or within the limitations of (c) above, the Contractor shall immediately notify the Contracting Officer.
- (e) Failure of the Contractor and Contracting Officer to agree that technical direction is within the scope of the contract is a dispute that shall be subject to the "Disputes" clause and/or other similar contract term.
- (f) COR authority is not re-delegable.
- (End of Clause)

#### BOP 2852.242-71 EVALUATION OF CONTRACTOR PERFORMANCE UTILIZING CPARS (APR 2011)

The services, although not directly supervised, shall be reviewed by Federal Bureau of Prisons (BOP) staff to ensure contract compliance. The contractor's performance will be evaluated in accordance with FAR 42.15. Contract monitoring reports will be prepared by the Contracting Officer's Representative (COR) and maintained in the contract file.

In accordance with FAR 42.1502 and 42.1503, agencies shall prepare an evaluation of contractor performance and submit it to the Past Performance Information Retrieval System (PPIRS). The BOP utilizes the Department of Defense (DOD) web-based Contractor Performance Assessment Reporting System (CPARS) to provide contractor performance evaluations. The contractor shall provide and maintain a current e-mail address throughout the life of the contract. The contractor will receive an e-mail from the Focal Point thru the following website address [webptsmh@navy.mil](mailto:webptsmh@navy.mil) when the contract is registered in CPARS. The e-mail will contain a "user ID" and temporary password to register in the CPARS system. The contractor must be registered to access and review its evaluation and/or provide a response. If assistance is required when registering, please contact the Contracting Staff/Focal Point.

(End of Clause)

#### DOJ-01 Whistleblower Information Distribution (Oct 2021)

Within 30 days of contract award, the contractor and its subcontractors must distribute the "Whistleblower Information for Employees of DOJ Contractors, Subcontractors, Grantees, or Sub-Grantees or Personal Services Contractors" ("Whistleblower Information") document to their employees performing work in support of the products and services delivered under this contract (<https://oig.justice.gov/sites/default/files/2020-04/NDAA-brochure.pdf>). By agreeing to the terms and conditions of this contract, the prime contractor acknowledges receipt of this requirement, in accordance with 41 U.S.C. § 4712 and FAR 3.908 & 52.203-17, and commits to distribution. Within 45 days of award, the contractor must provide confirmation to the contracting officer verifying that it has distributed the whistleblower information as required.

(End of Clause)

#### DOJ-02 Contractor Privacy Requirements (JAN 2022)

##### A. Limiting Access to Privacy Act and Other Sensitive Information

###### *(1) Privacy Act Information*

In accordance with FAR 52.224-1 Privacy Act Notification (APR 1984) and FAR 52.224-2 Privacy Act (APR 1984), if this contract requires Contractor personnel to have access to information protected by the Privacy Act of 1974, the contractor is advised that the relevant DOJ system of records notices (SORNs) applicable to this Privacy Act information may be found at <https://www.justice.gov/opcl/doj-systems-records>. [1] Applicable SORNs published by other agencies may be accessed through those agencies' websites or by searching the Federal Digital System (FDsys) available at <http://www.gpo.gov/fdsys/>. SORNs may be updated at any time.

###### *(2) Prohibition on Performing Work Outside a Government Facility/Network/Equipment*

Except where use of Contractor networks, IT, other equipment, or Workplace as a Service (WaaS) is specifically authorized within this contract, the Contractor shall perform all tasks on authorized Government networks, using Government-furnished IT and other equipment and/or WaaS and Government information shall remain within the confines of authorized Government networks at all times. Any handling of Government information on Contractor networks or IT must be approved by the Senior Component Official for Privacy of the component entering into this contract. Except where remote work is specifically authorized within this contract, the Contractor shall perform all tasks described in this document at authorized Government

facilities; the Contractor is prohibited from performing these tasks at or removing Government-furnished information to any other facility; and Government information shall remain within the confines of authorized Government facilities at all times. Contractors may only access classified materials on government furnished equipment in authorized government owned facilities regardless of remote work authorizations.

*(3) Prior Approval Required to Hire Subcontractors*

The Contractor is required to obtain the Contracting Officer's approval prior to engaging in any contractual relationship (Subcontractor) in support of this contract requiring the disclosure of information, documentary material and/or records generated under or relating to this contract. The Contractor (and any Subcontractor) is required to abide by Government and Agency guidance for protecting sensitive and proprietary information.

*(4) Separation Checklist for Contractor Employees*

The Contractor shall complete and submit an appropriate separation checklist to the Contracting Officer before any employee or Subcontractor employee terminates working on the contract. The Contractor must submit the separation checklist on or before the last day of employment or work on the contract. The separation checklist must verify: (1) return of any Government-furnished equipment; (2) return or proper disposition of personally identifiable information (PII)[2], in paper or electronic form, in the custody of the employee or Subcontractor employee including the sanitization of data on any computer systems or media as appropriate; and (3) termination of any technological access to the Contractor's facilities or systems that would permit the terminated employee's access to PII or other sensitive information.

In the event of adverse job actions resulting in the dismissal of a Contractor or Subcontractor employee before the separation checklist can be completed, the Prime Contractor must notify the Contracting Officer within 24 hours and confirm receipt of the notification. In the case the Contractor is unable to notify the Contracting Officer, then the Contractor should notify the Contract Officer's Representative (COR).

Contractors must complete the separation checklist with the Contracting Officer or COR by returning all Government-furnished property including, but not limited to, computer equipment, media, credentials and passports, smart cards, mobile devices, Personal Identity Verification (PIV) cards, calling cards, and keys and terminating access to all user accounts and systems. Unless the Contracting Officer requests otherwise, the relevant Program Manager or other Key Personnel designated by the Contracting Officer or COR may facilitate the return of equipment.

**B. Privacy Training, Safeguarding, and Remediation**

*(1) Required Security and Privacy Training for Contractors*

The Contractor must ensure that all employees take appropriate privacy training, including Subcontractors who have access to PII as well as the creation, use, dissemination and/or destruction of PII at the outset of the employee's work on the contract and every year thereafter. Training must include procedures on how to properly handle PII, including heightened security requirements for the transporting or transmission of sensitive PII, and reporting requirements for a suspected breach or loss of PII. These courses, along with more information about DOJ security and training requirements for Contractors, are available at <https://www.justice.gov/jmd/learndoj>. The **Federal Information Security Modernization Act of 2014 (FISMA)** requires all individuals accessing DOJ information to complete training on records management, cybersecurity awareness, and information system privacy awareness. Contractor employees are required to sign the "Privacy Rules of Behavior," acknowledging and agreeing to abide by privacy law, policy, and certain privacy safeguards, prior to accessing DOJ information. These Rules of Behavior are made available to all new users of DOJ's computer network and to trainees at the conclusion of DOJ-OPCL-CS-0005.

The Contractor should maintain copies of certificates as a record of compliance and must submit an email notification annually to the COR verifying that all employees working under this contract have completed the required privacy and cybersecurity training.

*(2) Safeguarding PII Requirements*

Contractor employees must comply with DOJ Order 0904 and other guidance published to the publicly-available Office of Privacy and Civil Liberties (OPCL) Resources page[3] relating to the safeguarding of PII, including the use of additional controls to safeguard sensitive PII (e.g., the encryption of sensitive PII). This requirement flows down from the Prime Contractor to all Subcontractors and lower tiered subcontracts.

### ***(3) Non-Disclosure Agreement Requirement***

Prior to commencing work, all Contractor personnel that may have access to PII or other sensitive information shall be required to sign a Non-Disclosure Agreement (NDA) and the DOJ IT Rules of Behavior. The Non-Disclosure Agreement:

- (a) prohibits the Contractor from retaining or divulging any PII or other sensitive information, or derivatives therefrom, furnished by the Government or to which they may otherwise come in contact as a result of their performance of work under the contract/task order that is otherwise not publicly available, whether or not such information has been reduced to writing; and
- (b) requires the Contractor to report any loss of control, compromise, unauthorized disclosure, or unauthorized acquisition of PII or other sensitive information to the component-level or headquarters Security Operations Center within one (1) hour of discovery.

The Contractor should maintain signed copies of the NDA for all employees as a record of compliance. The Contractor should also provide copies of each employee's signed NDA to the Contracting Officer before the employee may commence work under the contract/task order.

### ***(4) Prohibition on Use of PII in Vendor Billing and Administrative Records***

The Contractor's invoicing, billing, and other financial or administrative records or databases is not authorized to regularly store or include any sensitive PII or other confidential government information that is created, obtained, or provided during the performance of the contract without the written permission of the Senior Component Official for Privacy (SCOP). It is acceptable to list the names, titles and contact information for the Contracting Officer, COR, or other personnel associated with the administration of the contract in the invoices as needed.

### ***(5) Reporting Actual or Suspected Data Breach***

Contractors must report any actual or suspected breach of PII within one hour of discovery.[4] A "breach" is an incident or occurrence that involves the loss of control, compromise, unauthorized disclosure, unauthorized acquisition, or any similar occurrence where: (1) a person other than an authorized user accesses or potentially accesses PII or (2) an authorized user accesses or potentially accesses PII for an other than authorized purpose. The report of a breach must be made to DOJ. The Contractor must cooperate with DOJ's inquiry into the incident and efforts to minimize risks to DOJ or individuals, including remediating any harm to potential victims.

- (a) The Contractor must develop and maintain an internal process by which its employees and Subcontractors are trained to identify and report the breach, consistent with DOJ Instruction 0900.00.01[5], Reporting and Response Procedures for a Breach of Personally Identifiable Information.
- (b) The Contractor must report any such breach by its employees or Subcontractors to the DOJ Security Operations Center (dojcert@usdoj.gov, 202-357-7000); Component-level Security Operations Center and Component-level Management Team, where appropriate; the COR; and the Contracting Officer within one (1) hour of the initial discovery.
- (c) The Contractor must provide a written report to the DOJ Security Operations Center (dojcert@usdoj.gov, 202-357-7000) within 24 hours of discovery of the breach by its employees or Subcontractors. The report must contain the following information:
  - (i) Narrative or detailed description of the events surrounding the suspected loss or compromise of information.[6]  
Date, time, and location of the incident.
  - (ii) Amount, type, and sensitivity of information that may have been lost or compromised, accessed without authorization, etc.
  - (iii) Contractor's assessment of the likelihood that the information was compromised or lost and the reasons behind the assessment.[7]
  - (iv) Names and classification of person(s) involved, including victim, Contractor employee/Subcontractor and any witnesses.
  - (v) Cause of the incident and whether the company's security plan was followed and, if not, which specific provisions were not followed.[8]
  - (vi) Actions that have been or will be taken to minimize damage and/or mitigate further compromise.
  - (vii) Recommendations to prevent similar situations in the future, including whether the security plan needs to be modified in any way and whether additional training may be required.

(d) The Contractor shall provide full access and cooperation for all activities determined by the Government to be required to ensure an effective incident response, including providing all requested images, log files, and event information to facilitate rapid resolution of sensitive information incidents.

(e) At the Government's discretion, Contractor employees or Subcontractor employees may be identified as no longer eligible to access PII or to work on that contract based on their actions related to the loss or compromise of PII.

*(6) Victim Remediation*

At DOJ's request, the Contractor is responsible for notifying victims and providing victim remediation services in the event of a breach of PII held by the Contractor, its agents, or its Subcontractors, under this contract. Victim remediation services shall include at least 18 months of credit monitoring and, for serious or large incidents as determined by the Government, call center help desk services for the individuals whose PII was lost or compromised. When DOJ requests notification, the Department Chief Privacy and Civil Liberties Officer and SCOP will direct the Contractor on the method and content of such notification to be sent to individuals whose PII was breached. By performing this work, the Contractor agrees to full cooperation in the event of a breach. The Contractor should be self-insured to the extent necessary to handle any reasonably foreseeable breach, with another source of income, to fully cover the costs of breach response, including but not limited to victim remediation.

**C. Government Records Training, Ownership, and Management**

*(1) Records Management Training and Compliance*

(a) The Contractor must ensure that all employees and Subcontractors that have access to PII as well as to those involved in the creation, use, dissemination and/or destruction of PII take the *DOJ Records and Information Training for New Employees (RIM)* training course or another training approved by the Contracting Officer or COR. This training will be provided at the outset of the Subcontractor's/employee's work on the contract and every year thereafter. The Contractor shall maintain copies of certificates as a record of compliance and must submit an email notification annually to the COR verifying that all employees working under this contract have completed the required records management training.

(b) The Contractor agrees to comply with Federal and Agency records management policies, including those policies associated with the safeguarding of records containing PII and those covered by the Privacy Act of 1974. These policies include the preservation of all records created or received regardless of format, mode of transmission, or state of completion.

*(2) Records Creation, Ownership, and Disposition*

(a) The Contractor shall not create or maintain any records not specifically tied to or authorized by the contract using Government IT equipment and/or Government records or that contain Government Agency information. The Contractor shall certify, in writing, the appropriate disposition or return of all Government information at the conclusion of the contract or at a time otherwise specified in the contract. In accordance with 36 CFR 1222.32, the Contractor shall maintain and manage all Federal records created in the course of performing the contract in accordance with Federal law. Records may not be removed from the legal custody of DOJ or destroyed except in accordance with the provisions of the agency records schedules.

(b) Except as stated in the Performance Work Statement and, where applicable, the Contractor's Commercial License Agreement, the Government Agency owns the rights to all electronic information (electronic data, electronic information systems or electronic databases and all supporting documentation and associated metadata created as part of this contract. All deliverables (including all data and records) under the contract are the property of the U.S. Government and may be considered federal records, for which the Agency shall have unlimited rights to use, dispose of, or disclose such data contained therein. The Contractor must deliver sufficient technical documentation with all data deliverables to permit the agency to use the data.

(c) The Contractor shall not retain, use, sell, disseminate, or dispose of any government data/records or deliverables without the express written permission of the Contracting Officer or Contracting Officer's Representative. The Agency and its contractors are responsible for preventing the alienation or unauthorized destruction of records, including all forms of mutilation. Willful and unlawful destruction, damage or alienation of Federal records is subject to the fines and penalties imposed by 18 U.S.C. § 2701. Records may not be removed from the legal custody of the Agency or destroyed without regard to the provisions of the Agency records schedules.

**D. Data Privacy and Oversight**

*(1) Restrictions on Testing or Training Using Real Data Containing PII*



The use of real data containing PII from any source for testing or training purposes is generally prohibited. The Contractor shall use synthetic or de-identified real data for testing or training whenever feasible.

*(2) Requirements for Contractor IT Systems Hosting Government Data*

The Contractor is required to obtain an Authority To Operate (ATO) for any IT environment owned or controlled by the Contractor or any Subcontractor on which Government data shall reside for the purposes of IT system development, design, data migration, testing, training, maintenance, use, or disposal.

*(3) Requirement to Support Privacy Compliance*

(a) If this contract requires the development, maintenance or administration of information technology[9], the Contractor shall support the completion of the Initial Privacy Assessment (IPA) document, if requested by Department personnel. An IPA is the first step in a process to identify potential privacy issues and mitigate privacy risks. The IPA asks basic questions to help components assess whether additional privacy protections may be needed in designing or implementing a project[10] to mitigate privacy risks, and whether compliance work may be needed. Upon review of the IPA, the OPCL determines whether a Privacy Impact Assessment (PIA) document and/or SORN, or modifications thereto, are required. The Contractor shall provide adequate support to complete the applicable risk assessment and PIA document in a timely manner, and shall ensure that project management plans and schedules include the IPA, PIA, and SORN (to the extent required) as milestones. Additional information on the privacy compliance process at DOJ, including IPAs, PIAs, and SORNs, is located on the DOJ OPCL website (<https://dojnet.doj.gov/privacy/>), including DOJ Order 0601, Privacy and Civil Liberties. The Privacy Impact Assessment Guidance and Template outline the requirements and format for the PIA.

(b) If the contract involves an IT system build or substantial development or changes to an IT system that may require privacy risk assessment and documentation, the Contractor shall provide adequate support to DOJ to ensure DOJ can complete any required assessment, and IPA, PIA, SORN, or other supporting documentation to support privacy compliance. The Contractor shall work with personnel from the program office, OPCL, the Office of the Chief Information Officer (OCIO), and the Office of Records Management and Policy to ensure that the privacy assessments and documentation are kept on schedule, that the answers to questions in the documents are thorough and complete, and that questions asked by the OPCL and other offices are answered in a timely fashion. The Contractor must ensure the completion of required PIAs and documentation of privacy controls consistent with federal law and standards, e.g. NIST 800-53, Rev. 5; and compliance with the Privacy Act of 1974, E-Government Act of 2002, Federal Information Security Modernization Act of 2014, and key OMB guidelines, e.g., OMB Circular A-130.

[1] “[T]he term ‘record’ means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.” 5 U.S.C. § 552a(a)(4). “[T]he term ‘system of records’ means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.” 5 U.S.C. § 552a(a)(5).

[2] As stated in FAR 52.224-3 and Office of Management and Budget (OMB) Circular A-130, Managing Federal Information as a Strategic Resource (2016), “‘personally identifiable information’ means information that can be used to distinguish or trace an individual’s identity, either alone or when combined with other information that is linked or linkable to a specific individual.” Regarding “sensitive PII,” “[t]he sensitivity level of the PII will depend on the context, including the purpose for which the PII is created, collected, used, processed, stored, maintained, disseminated, disclosed, or disposed. For example, the sensitivity level of a list of individuals’ names may depend on the source of the information, the other information associated with the list, the intended use of the information, the ways in which the information will be processed and shared, and the ability to access the information.” OMB Circular A-130, at App. II-2.

[3] The DOJ OPCL Resources page is available at <https://www.justice.gov/opcl/resources>.

[4] As stated in DOJ Instruction 0900, “Contractors must notify the Contracting Officer, the Contracting Officer’s Representative, and JSOC (or component-level SOC) within 1 hour of discovering any incidents, including breaches, consistent with this Instruction, guidance issued by the CPCLO, NIST standards and guidelines, and the US-CERT notification guidelines.”

[5] <https://www.justice.gov/file/4336/download>

[6] As stated in DOJ Instruction 0900, the description should include the type of information that constitutes PII; purpose for which PII is collected, maintained, and used; extent to which PII identifies a peculiarly vulnerable population; the determination of whether the information was properly encrypted or rendered partially or completely inaccessible by other means; format of PII (e.g., whether PII was structured or unstructured); length of time PII was exposed; any evidence confirming that PII is being misused or that it was never accessed.

[7] As stated in DOJ Instruction 0900, the report should include the nature of the cyber threat (e.g., Advanced Persistent Threat, Zero Day Threat, data exfiltration) for cyber incidents.

[8] As stated in DOJ Instruction 0900, the report should include analysis on whether the data is accessible, usable, and intentionally targeted.

[9] As defined in 40 U.S.C. § 11101, the term "information technology" means any equipment or interconnected system or subsystem of equipment, used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the executive agency, if the equipment is used by the executive agency directly or is used by a contractor under a contract with the executive agency that requires the use (i) of that equipment or (ii) of that equipment to a significant extent in the performance of a service or the furnishing of a product; 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 support services), and related resources; but does not include any equipment acquired by a federal contractor incidental to a federal contract.

[10] In this instance, the term "project" is used to scope the activities (e.g., creating, collecting, using, processing, storing, maintaining, disseminating, disclosing, or disposing of information) covered by an IPA. A project is intended to be technology-neutral, and may include an information system, a digital service, an information technology, a combination thereof, or some other activity that may create potential privacy issues or privacy risks that would benefit from an IPA. The scope of a project covered by an IPA is discretionary, but components should work with their SCOP and OPCL.

(End of Clause)

#### DOJ-03 Personnel Security Requirements For Contractor Employees (Nov 2021)

Work performed under this contract will involve any one or more of the following: access to DOJ Information, which may include Controlled Unclassified Information (CUI), i.e., unclassified, sensitive DOJ information, and/or access to DOJ Information Technology (IT) systems, and/or unescorted access to DOJ space or facilities. Contractor employees will occupy Public Trust Positions, unless clause alternates are applied.

##### 1. General Requirements

(a) (1) All references to "contract(or) personnel" and "contract(or) employee" in this clause means all individuals, without limitation, to include individuals employed by the contractor, team member, subcontractor, consultant, and/or independent contractor, who will have access to information of the Department of Justice (DOJ) or information that is within the custody and control of the DOJ, access to DOJ IT systems, and/or unescorted access to DOJ facilities/space in connection with the performance of this contract. "Employment" as used herein does not create nor imply an employer/employee relationship between the DOJ and contractor employees.

(b) (1) The type of security investigation required for each contractor employee will be governed by the type and risk level of information made available to the contractor employee. The contractor will not be permitted to commence performance under this contract until a sufficient number of its personnel, as determined by the Security Programs Manager (SPM), in consultation with the Contracting Officer's Representative if one is appointed, have received the requisite security

(c) Except where specifically noted otherwise, the federal government will be responsible for the cost and conduct of the investigation.

(d) The contractor shall ensure that no contractor employee commences performance prior to receipt of a written authorization from the contracting officer, COR, or the SPM that performance by the respective contractor employee is authorized.

(e) The data and other information to which the contractor may have access as a result of this contract is the property of, and/or within the custody and control of, the Department, and its disclosure to third parties is governed by various statutes and regulations, the violation of which may subject the discloser to criminal

##### 2. Citizenship and Residency Requirements

(a) *Residency Requirement.* (1) Contractor employees in Public Trust positions, both U.S. citizens and non-U.S. citizens, must meet the Department's residency requirement if they will require access to DOJ information, IT systems, or unescorted access to facilities. For three years (not necessarily consecutive years) out of the last five years immediately prior to employment under the Department contract the contractor employee must have: (i) resided in the U.S.; (ii) worked for the U.S. in a foreign country as either an employee or contractor in a federal civilian or military capacity; or, (iii) been a dependent of a federal civilian or military employee or contractor

working for the U.S. in a foreign country. At the Department's sole discretion, the residency requirement may be waived by the Department Security Officer (DSO) for contractor employees on a case-by-case basis where justified by extenuating circumstances.

The residency requirement does not apply to contractor employees residing in foreign countries that are hired to work in American embassies/consulates/missions located outside of the United States and who require access to DOJ information, IT systems, or unescorted access *provided that* an adequate background investigation can be conducted, with favorable adjudication, as determined by the DSO.

*(b) Citizenship.* (1) Aside from the specific exceptions set forth in Section 1.2(b)(2), for Public Trust positions, the DOJ requires that contractor employees be U.S. citizens and nationals, or lawful permanent residents seeking U.S. citizenship. Any prospective non-U.S. citizen contractor employee who requires access to DOJ information systems, DOJ information, and/or unescorted facilities access must also have been granted a waiver as described below in paragraphs 1.2(d) and/or (e). The contractor is responsible for verifying that the non-U.S. citizens working under this contract are lawful permanent residents seeking U.S.

(2) *Exception for Certain Non-U.S. Citizen Contractor Employees:* (i) Non-U.S. citizen expert witnesses, litigative consultants, and interpreters in rare foreign languages are not required to be lawful permanent residents seeking U.S. citizenship. However, they must be granted a waiver for access to unclassified DOJ information, whether CUI or not, DOJ IT systems, and/or unescorted facility access, as described below in paragraph 1.2(d) and (e), regardless of the duration of their duties. (ii) Non-U.S. Citizen contractor employees residing in foreign countries who are hired to work for the Department of Justice in American embassies/consulates/missions outside of the United States are not required to be lawful permanent residents seeking U.S. citizenship.

*(c) Dual Citizenship.* (1) S. citizens who hold dual citizenship with a foreign country are considered U.S. citizens within the meaning of this clause, and may be considered for, but are not entitled to, contract employment as U.S. citizens consistent with this clause. The means by which the contractor employee obtained or exercises his or her dual citizenship status will be a consideration in the Public Trust Investigation (PTI) adjudication, and/or waiver approval processes discussed in this clause.

*(d) Access to DOJ Information Technology Systems.* Non-U.S. citizens are not authorized to access DOJ information technology (IT) systems or assist in the development, operation, management, or maintenance of DOJ IT systems, including providing IT system support, unless a waiver has been granted by the Head of the DOJ component or designee, with the prior concurrence of both the DSO and the DOJ Chief Information Officer, allowing computer access by the non-U.S. citizen. Such a waiver will be granted only in exceptional and unique circumstances on a case-by-case basis. It should be noted that the Justice Consolidated Office Network (JCON) is a sensitive DOJ IT system and any contractor employee who will need access to JCON must be a U.S. citizen or have received a In order for a waiver to be considered for approval: (1) There must be a compelling reason for using this individual as opposed to a U.S. citizen; (2) The type of personnel security vetting that has been conducted on the individual, and vetting results, that would mitigate risk; and (3) The waiver must be in the best interest of the federal government.

*(e) Access to Unclassified DOJ Information and Unescorted Access to DOJ Facilities or Space.* (1) Except as provided under 1.2(b)(2), non-U.S. citizens are not authorized to access DOJ information and/or unescorted access to DOJ facilities or space, unless a waiver has been granted by the DSO, allowing access by the non-U.S. citizen. Such a waiver will be granted on a case-by-case basis where justified at the discretion of the DSO.

### 3. Background Investigation Requirements

(a) (1) Unless otherwise stated below, all contractor personnel are subject to a Public Trust Investigation (PTI). The SPM will determine the type of investigation for each contractor employee based on the risk category (i.e., the nature of the position and degree of harm that could be caused by the individual in that position) and whether the position is long-term or short-term. The PTI risk categories are listed

- (i) High Risk Positions. The minimum background investigation required is a Tier 4 (T4) investigation, and the five-year reinvestigation required is a Tier 4R (T4R) investigation. The 2017 version of the Standard Form (SF) 85P, Questionnaire for Public Trust Positions, is required.
- (ii) Moderate Risk Positions. The minimum background investigation required is a Tier 2 (T2) investigation. The five-year reinvestigation required is a Tier 2R (T2R) investigation. The 2017 version of the SF-85P is
- (iii) Low Risk/Non-Sensitive Positions. The minimum background investigation required for Low Risk/Non-Sensitive positions is a Tier 1 (T1) investigation and the required five-year reinvestigation is also a Tier 1 (T1) investigation. The SF 85, Questionnaire for Non-Sensitive Positions, is

(b) *Exception for Expert Witnesses.* Expert Witnesses, litigative consultants, and interpreters in rare foreign languages may not be subject to full background investigation requirements if alternative security requirements are approved by the DSO.

(c) *Short-Term U.S. Citizen Contractor Employees.* Other than the exception in Section 1.3(b), short-term contractor employees (6 months or less) who are U.S. citizens are not subject to a full background investigation, however, must receive an approved pre-employment background investigation waiver. The required forms to complete and submit are listed in Section 1.4(b) and (c)(2).

(d) *Long-Term U.S. Citizen Contractor Employees.* Other than the exception in Section 1.3(b), all long-term U.S. citizen employees (longer than 6 months) are subject to a full background investigation in the risk category appropriate to the position they will hold.

(e) *Non-U.S. Citizen Contractor Employees.* Other than the exception in 1.3(b), all non-U.S. citizen contractor employees regardless of performance duration (short or long term) are subject to a full background investigation in the risk category appropriate to the position they will hold.

(f) *Reciprocity.* (1) A Public Trust Investigation will be accepted under reciprocity if it meets the following guidelines: (i) the investigation is current (investigations are considered current if completed within the last five years) and favorably adjudicated, or the reinvestigation has been deferred; (ii) the investigation meets or exceeds the level of investigation required for the DOJ contractual instrument; (iii) there has been no continuous (not cumulative) break in federal contract/service employment of two years or more; (iv) there is no derogatory information since the favorable fitness determination or adjudication that calls into question the individual's fitness based on character or conduct; and (v) the investigative record does not show conduct that is incompatible with the core duties of the new contract position. A "core duty" is a continuing responsibility that is of particular importance to the relevant covered position or the achievement of an agency's mission. Core duties will vary from position to position.

#### 4. Background Investigation Process

(a) *e-QIP (or its successor).* Public Trust background investigations/reinvestigations of contractor employees will be performed by the DCSA. The investigative process requires contractor employees to complete the Electronic Questionnaires for Investigations Processing (e-QIP) and provide additional information as specified in paragraph 1.4(b) below. Immediately after contract award, the contractor shall designate an employee as its "e-QIP Initiator" and provide the name of this person to the SPM. The e-QIP Initiator must have, at a minimum, a favorably adjudicated Tier 1 investigation and the appropriate DOJ security approval before being given access to e-QIP. After the e-QIP Initiator's security approval is granted, the Contractor will be configured in e-QIP as a sub-agency to DOJ. The contractor will then be responsible for initiating investigations for all contract personnel, whose previous investigation does not meet reciprocity, in e-QIP for completion of the security questionnaire form and forwarding the electronic form with the remainder of the security package to the SPM. Subject to the prior written approval of the SPM, the contractor may designate an e-QIP Initiator for each subcontractor. Subcontractor e-QIP Initiators must have, at a minimum, a favorably adjudicated Tier 1 investigation and the appropriate DOJ security approval before being provided access to e-QIP.

(b) *Additional Documentation.* (1) In addition to completing the e-QIP questionnaire (see 1.4(a), above), the contractor shall ensure that each contractor employee occupying Public Trust Positions, including short-term employees, completes and submits the following information through the contractor's Corporate Security Officer:

- (i) Digital Fingerprinting/FD-258 Applicant Fingerprint Card. Two sets are required per applicant. The contractor may schedule appointments with the SPM to be digitally fingerprinted; otherwise, fingerprinting by the FBI or other law enforcement entity, as approved by the SPM, is required to ensure the identity of the person being fingerprinted and for printing quality. All pertinent information must be completed by the individual taking the fingerprints (FBI or other). Use of the physical FD-258 Applicant Fingerprint Card should only be used in extenuating circumstances.
- (ii) DOJ-555 Fair Credit Reporting Act Disclosure. Authorizes DOJ to obtain one or more consumer/credit reports on the individual. This form will be required if the Component SPM determines a credit check is necessary for its Low Risk Level 1 contractor positions.
- (iii) OF-306, Declaration for Federal Employment.
- (iv) Foreign National Relatives or Associates Statement. This is only required if foreign national relatives or associates were not disclosed on the security questionnaire form.
- (v) Self-Reporting Requirements for All Contractor Personnel. This is an acknowledgement and acceptance statement that every contractor must sign.
- (vi) Additional information as may be required based on the review of the security questionnaire form.

The contractor shall review all forms/documents to ensure each is complete, accurate and meets all DOJ requirements, including applicable residency and citizenship requirements. The contractor shall resolve any issues or discrepancies with the contractor employee, including resubmission of corrected forms or documentation. Completed forms/documents shall be submitted to the SPM (or designee, which may include the COR) within five (5) calendar days after being finalized.

#### (c) *Adjudication and Pre-Employment Background Investigation Waivers*

(1) Except as set forth in this section, background investigations must be conducted and favorably adjudicated for each contractor employee prior to commencing their work on this contract. Where programmatic needs do not permit the federal government to wait for completion of the entire background investigation, a pre-employment background investigation waiver for *public trust contractors* can be granted by the SPM, in consultation with the cognizant COR. Pre-employment waivers cannot be used to circumvent delays in clearing classified contractors through the DCSA, if access to classified information is required.

(2) As directed by the SPM, the contractor shall initiate pre-employment waivers for Public Trust Positions when necessary. This may entail performing credit history checks and submission of these checks as part of the security package, including satisfactory resolution of any issues prior to submission to the federal government. A waiver will be disapproved if it develops derogatory information that cannot be resolved in the contractor employee's favor. When a waiver has been disapproved, the CO, in consultation with the SPM and COR, will determine (i) whether the contractor employee will no longer be considered for work on a DOJ contract or (ii) whether to wait for the completion and favorable adjudication of the background investigation before the contractor employee commences work on a Department contract. The pre-employment background investigation waiver requirements include:

1. Verification of citizenship (copy of a birth certificate, naturalization certificate, or U.S. passport);
2. Verification of compliance with the *DOJ Residency Requirement* of this Clause;
3. Favorable review of the security questionnaire form;
4. Favorable FBI fingerprint results;
5. Favorable credit report;
6. Favorable review of the OF-306 form, Declaration for Federal Employment;
7. Verification of the initiation of the appropriate background investigation (for long-term personnel); and
8. Receipt of the signed DOJ *Self-Reporting Requirements for All Contractor Personnel* (see Section 1.6, below).

(3) The investigating agency (DCSA) will provide the SPM with the results of each proposed contractor employee's Public Trust investigation. Upon receipt of the investigation and any other pertinent documents from the investigating agency, the SPM will determine whether each proposed contractor employee should be granted employment security approval.

(4) The COR will notify the contractor of the results of Public Trust background investigations as they are completed and adjudicated, including any individual who is found ineligible for employment security approval. For any individual found ineligible for employment on a Department contract, the contractor shall propose a replacement and initiate the background investigation process consistent with this

#### 5. Identity Proofing and Badging

(a) Access to DOJ Information, federally-controlled IT systems, and/or unescorted access to federally-controlled facilities or space (regardless of whether the contractor employee will be issued a DOJ PIV card or building access badge) shall be made available after each respective contractor employee has (1) met the identity proofing requirements outlined below, and (2) completed all other security requirements stated elsewhere in this

(b) (1) Public Trust contractor employees must appear in person at least once before a DOJ official or an official of a trusted contract company (i.e., has a facility security clearance) who is responsible for checking two forms of identification in original form prior to commencement of work by the contractor employee and PIV card or building access badge issuance (as applicable). Approval will be documented by the DOJ official or an official of a trusted contract company. (Acceptable documents are listed in Form I 9, Employment Eligibility Verification, and at least one document must be a valid state or federal government issued picture ID).

(c) [Reserved]

(d) All contractor employees requiring unescorted access to a DOJ controlled facility or space shall comply with the PIV card or building access badge requirements outlined below:

(i) When any contractor employee enters a DOJ building for the first time, he/she shall allow one hour for security processing and the creation and issuance of a building access PIV cards require additional processing time and will not likely be issued on the same day.

(ii) Building access badges shall be subject to periodic review by the contractor employee's supervisor and checked against his/her personal identification. The contractor employees shall present themselves for the issuance of renewed badges when required by the government as scheduled by the COR or his/her designee. The contractor shall notify the COR when contractor employee badges are lost, and must immediately apply for reissuance of a replacement badge. The contractor shall pay for reissued building access badges at no cost to the government. It is the contractor employee's responsibility to

return badges to the COR or his/her designee when a contractor employee is dismissed, terminated or assigned to duties not within the scope of this contract.

## 6. Employee Reporting Requirements

(a) All contractor employees must sign the DOJ *Self-Reporting Requirements for All Contractor Personnel* statement acknowledging and accepting the DOJ requirement that they immediately self-report certain information using the Department's iReport system. The COR or SPM will provide the Self-Reporting statement as well as a list of reportable information, which varies by position sensitivity designation, to the contractor employee before commencing work under the contract. If the contractor employee does not have access to the DOJ iReport System, the COR or SPM will provide a fillable form for the contractor employee to complete and

(b) The COR and SPM will review the written report and documentation and make a determination regarding continued employment on a DOJ

(c) DOJ reporting requirements are in addition to the DCSA reporting requirements and the contractor's internal reporting

## 7. Replacement Personnel

(a) The contractor shall make every effort to avoid costs to the government for security investigations for replacement of contractor employees, and in so doing shall ensure that otherwise satisfactorily performing and physically able contractor employees remain in contract performance for the duration of the contract. The contractor shall take all necessary steps to ensure that contractor personnel who are selected for assignment to this contract are professionally qualified and personally reliable, of reputable background and sound character, and able to meet all other requirements stipulated in the contract.

(b) The fact that the government performs security investigations shall not in any manner relieve the contractor of its responsibility to ensure that all contract personnel are reliable and of reputable background and sound character. Should a security investigation conducted by the government and/or a contractor's self-report or failure to self-report render ineligible a contractor employee, the contracting officer will determine whether the contractor has violated this clause. The contracting officer may direct the contractor, at its own expense, to remove and replace any contractor personnel who fails to comply with or violates applicable requirements of this contract. Such action may be taken at the government's direction without prejudice to its rights under any other provision of this contract, including termination for default, and the contractor may be held liable, at a minimum, for all reasonable and necessary costs incurred by the government to (i) provide coverage (performance) through assignment of individuals employed by the government or third parties in those cases where absence of contractor personnel would cause either a security threat or DOJ program disruption and (ii) conduct security investigations in excess of those which would otherwise be required.

(c) Nothing in this clause shall require the contractor to bear costs involved in the conduct of security investigations for replacement of a contractor employee who separates from the contractor of his/her own accord, is incapacitated, or is deceased.

(d) The contractor shall comply with the terms and conditions set forth under this clause and assumes all liability for failure to comply. The rights and remedies conferred upon the government by this clause are in addition to all and other rights and remedies pursuant to the contract and as established by law.

(End of Clause)

## DOJ-05 Security of Department Information and Systems (APR 2015)

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### I. Applicability to Contractors and Subcontractors

This clause applies to all contractors and subcontractors, including cloud service providers ("CSPs"), and personnel of contractors, subcontractors, and CSPs (hereinafter collectively, "Contractor") that may access, collect, store, process, maintain, use, share, retrieve, disseminate, transmit, or dispose of DOJ Information. It establishes and implements specific DOJ requirements applicable to this Contract. The requirements established herein are in addition to those required by the Federal Acquisition Regulation ("FAR"), including FAR 11.002(g) and 52.239-1, the Privacy Act of 1974, and any other applicable laws, mandates, Procurement Guidance Documents, and Executive Orders pertaining to the development and operation of Information Systems and the protection of Government Information. This clause does not alter or diminish any existing rights, obligation or liability under any other civil and/or criminal law, rule, regulation or mandate.

### II. General Definitions

The following general definitions apply to this clause. Specific definitions also apply as set forth in other paragraphs.

A. **Information** means any communication or representation of knowledge such as facts, data, or opinions, in any form or medium, including textual, numerical, graphic, cartographic, narrative, or audiovisual. Information includes information in an electronic format that allows it be stored, retrieved or transmitted, also referred to as "data," and "personally identifiable information" ("PII"), regardless of form.

B. **Personally Identifiable Information (or PII)** means any information about an individual maintained by an agency, including, but not limited to, information related to education, financial transactions, medical history, and criminal or employment history and information, which can be used to distinguish or trace an individual's identity, such as his or her name, social security number, date and place of birth, mother's maiden name, biometric records, etc., including any other personal information which is linked or linkable to an individual.

C. **DOJ Information** means any Information that is owned, produced, controlled, protected by, or otherwise within the custody or responsibility of the DOJ, including, without limitation, Information related to DOJ programs or personnel. It includes, without limitation, Information (1) provided by or generated for the DOJ, (2) managed or acquired by Contractor for the DOJ in connection with the performance of the contract, and/or (3) acquired in order to perform the contract.

D. **Information System** means any resources, or set of resources organized for accessing, collecting, storing, processing, maintaining, using, sharing, retrieving, disseminating, transmitting, or disposing of (hereinafter collectively, "processing, storing, or transmitting") Information.

E. **Covered Information System** means any information system used for, involved with, or allowing, the processing, storing, or transmitting of DOJ Information.

### III. Confidentiality and Non-disclosure of DOJ Information

A. Preliminary and final deliverables and all associated working papers and material generated by Contractor containing DOJ Information are the property of the U.S. Government and must be submitted to the Contracting Officer ("CO") or the CO's Representative ("COR") at the conclusion of the contract. The U.S. Government has unlimited data rights to all such deliverables and associated working papers and materials in accordance with FAR 52.227-14.

B. All documents produced in the performance of this contract containing DOJ Information are the property of the U.S. Government and Contractor shall neither reproduce nor release to any third-party at any time, including during or at expiration or termination of the contract without the prior written permission of the CO.

C. Any DOJ information made available to Contractor under this contract shall be used only for the purpose of performance of this contract and shall not be divulged or made known in any manner to any persons except as may be necessary in the performance of this contract. In performance of this contract, Contractor assumes responsibility for the protection of the confidentiality of any and all DOJ Information processed, stored, or transmitted by the Contractor. When requested by the CO (typically no more than annually), Contractor shall provide a report to the CO identifying, to the best of Contractor's knowledge and belief, the type, amount, and level of sensitivity of the DOJ Information processed, stored, or transmitted under the Contract, including an estimate of the number of individuals for whom PII has been processed, stored or transmitted under the Contract and whether such information includes social security numbers (in whole or in part).

### IV. Compliance with Information Technology Security Policies, Procedures and Requirements

A. For all Covered Information Systems, Contractor shall comply with all security requirements, including but not limited to the regulations and guidance found in the Federal Information Security Management Act of 2014 ("FISMA"), Privacy Act of 1974, E-Government Act of 2002, National Institute of Standards and Technology ("NIST") Special Publications ("SP"), including NIST SP 800-37, 800-53, and 800-60 Volumes I and II, Federal Information Processing Standards ("FIPS") Publications 140-2, 199, and 200, OMB Memoranda, Federal Risk and Authorization Management Program ("FedRAMP"), DOJ IT Security Standards, including DOJ Order 2640.2, as amended. These requirements include but are not limited to:

1. Limiting access to DOJ Information and Covered Information Systems to authorized users and to transactions and functions that authorized users are permitted to exercise;
2. Providing security awareness training including, but not limited to, recognizing and reporting potential indicators of insider threats to users and managers of DOJ Information and Covered Information Systems;

3. Creating, protecting, and retaining Covered Information System audit records, reports, and supporting documentation to enable reviewing, monitoring, analysis, investigation, reconstruction, and reporting of unlawful, unauthorized, or inappropriate activity related to such Covered Information Systems and/or DOJ Information;
4. Maintaining authorizations to operate any Covered Information System;
5. Performing continuous monitoring on all Covered Information Systems;
6. Establishing and maintaining baseline configurations and inventories of Covered Information Systems, including hardware, software, firmware, and documentation, throughout the Information System Development Lifecycle, and establishing and enforcing security configuration settings for IT products employed in Information Systems;
7. Ensuring appropriate contingency planning has been performed, including DOJ Information and Covered Information System backups;
8. Identifying Covered Information System users, processes acting on behalf of users, or devices, and authenticating and verifying the identities of such users, processes, or devices, using multifactor authentication or HSPD-12 compliant authentication methods where required;
9. Establishing an operational incident handling capability for Covered Information Systems that includes adequate preparation, detection, analysis, containment, recovery, and user response activities, and tracking, documenting, and reporting incidents to appropriate officials and authorities within Contractor's organization and the DOJ;
10. Performing periodic and timely maintenance on Covered Information Systems, and providing effective controls on tools, techniques, mechanisms, and personnel used to conduct such maintenance;
12. Protecting Covered Information System media containing DOJ Information, including paper, digital and electronic media; limiting access to DOJ Information to authorized users; and sanitizing or destroying Covered Information System media containing DOJ Information before disposal, release or reuse of such media;
13. Limiting physical access to Covered Information Systems, equipment, and physical facilities housing such Covered Information Systems to authorized U.S. citizens unless a waiver has been granted by the Contracting Officer ("CO"), and protecting the physical facilities and support infrastructure for such Information Systems;
14. Screening individuals prior to authorizing access to Covered Information Systems to ensure compliance with DOJ Security standards;
15. Assessing the risk to DOJ Information in Covered Information Systems periodically, including scanning for vulnerabilities and remediating such vulnerabilities in accordance with DOJ policy and ensuring the timely removal of assets no longer supported by the Contractor;
16. Assessing the security controls of Covered Information Systems periodically to determine if the controls are effective in their application, developing and implementing plans of action designed to correct deficiencies and eliminate or reduce vulnerabilities in such Information Systems, and monitoring security controls on an ongoing basis to ensure the continued effectiveness of the controls;
17. Monitoring, controlling, and protecting information transmitted or received by Covered Information Systems at the external boundaries and key internal boundaries of such Information Systems, and employing architectural designs, software development techniques, and systems engineering principles that promote effective security; and
18. Identifying, reporting, and correcting Covered Information System security flaws in a timely manner, providing protection from malicious code at appropriate locations, monitoring security alerts and advisories and taking appropriate action in response.

B. Contractor shall not process, store, or transmit DOJ Information using a Covered Information System without first obtaining an Authority to Operate ("ATO") for each Covered Information System. The ATO shall be signed by the Authorizing Official for the DOJ component responsible for maintaining the security, confidentiality, integrity, and



availability of the DOJ Information under this contract. The DOJ standards and requirements for obtaining an ATO may be found at DOJ Order 2640.2, as amended. (For Cloud Computing Systems, see Section V, below.)

C. Contractor shall ensure that no Non-U.S. citizen accesses or assists in the development, operation, management, or maintenance of any DOJ Information System, unless a waiver has been granted by the by the DOJ Component Head (or his or her designee) responsible for the DOJ Information System, the DOJ Chief Information Officer, and the DOJ Security Officer.

D. When requested by the DOJ CO or COR, or other DOJ official as described below, in connection with DOJ's efforts to ensure compliance with security requirements and to maintain and safeguard against threats and hazards to the security, confidentiality, integrity, and availability of DOJ Information, Contractor shall provide DOJ, including the Office of Inspector General ("OIG") and Federal law enforcement components, (1) access to any and all information and records, including electronic information, regarding a Covered Information System, and (2) physical access to Contractor's facilities, installations, systems, operations, documents, records, and databases. Such access may include independent validation testing of controls, system penetration testing, and FISMA data reviews by DOJ or agents acting on behalf of DOJ, and such access shall be provided within 72 hours of the request. Additionally, Contractor shall cooperate with DOJ's efforts to ensure, maintain, and safeguard the security, confidentiality, integrity, and availability of DOJ Information.

E. The use of Contractor-owned laptops or other portable digital or electronic media to process or store DOJ Information covered by this clause is prohibited until Contractor provides a letter to the DOJ CO, and obtains the CO's approval, certifying compliance with the following requirements:

1. Media must be encrypted using a NIST FIPS 140-2 approved product;
2. Contractor must develop and implement a process to ensure that security and other applications software is kept up-to-date;
3. Where applicable, media must utilize antivirus software and a host-based firewall mechanism;
4. Contractor must log all computer-readable data extracts from databases holding DOJ Information and verify that each extract including such data has been erased within 90 days of extraction or that its use is still required. All DOJ Information is sensitive information unless specifically designated as non-sensitive by the DOJ; and,
5. A Rules of Behavior ("ROB") form must be signed by users. These rules must address, at a minimum, authorized and official use, prohibition against unauthorized users and use, and the protection of DOJ Information. The form also must notify the user that he or she has no reasonable expectation of privacy regarding any communications transmitted through or data stored on Contractor-owned laptops or other portable digital or electronic media.

F. Contractor-owned removable media containing DOJ Information shall not be removed from DOJ facilities without prior approval of the DOJ CO or COR.

G. When no longer needed, all media must be processed (sanitized, degaussed, or destroyed) in accordance with DOJ security requirements.

H. Contractor must keep an accurate inventory of digital or electronic media used in the performance of DOJ contracts.

I. Contractor must remove all DOJ Information from Contractor media and return all such information to the DOJ within 15 days of the expiration or termination of the contract, unless otherwise extended by the CO, or waived (in part or whole) by the CO, and all such information shall be returned to the DOJ in a format and form acceptable to the DOJ. The removal and return of all DOJ Information must be accomplished in accordance with DOJ IT Security Standard requirements, and an official of the Contractor shall provide a written certification certifying the removal and return of all such information to the CO within 15 days of the removal and return of all DOJ Information.

J. DOJ, at its discretion, may suspend Contractor's access to any DOJ Information, or terminate the contract, when DOJ suspects that Contractor has failed to comply with any security requirement, or in the event of an Information System Security Incident (see Section V.E. below), where the Department determines that either event gives cause for such action. The suspension of access to DOJ Information may last until such time as DOJ, in its sole discretion, determines that the situation giving rise to such action has been corrected or no longer exists. Contractor understands that any suspension or

termination in accordance with this provision shall be at no cost to the DOJ, and that upon request by the CO, Contractor must immediately return all DOJ Information to DOJ, as well as any media upon which DOJ Information resides, at Contractor's expense.

## V. Cloud Computing

A. **Cloud Computing** means an Information System having the essential characteristics described in NIST SP 800-145, The NIST Definition of Cloud Computing. For the sake of this provision and clause, Cloud Computing includes Software as a Service, Platform as a Service, and Infrastructure as a Service, and deployment in a Private Cloud, Community Cloud, Public Cloud, or Hybrid Cloud.

B. Contractor may not utilize the Cloud system of any CSP unless:

1. The Cloud system and CSP have been evaluated and approved by a 3PAO certified under FedRAMP and Contractor has provided the most current Security Assessment Report ("SAR") to the DOJ CO for consideration as part of Contractor's overall System Security Plan, and any subsequent SARs within 30 days of issuance, and has received an ATO from the Authorizing Official for the DOJ component responsible for maintaining the security confidentiality, integrity, and availability of the DOJ Information under contract; or,
2. If not certified under FedRAMP, the Cloud System and CSP have received an ATO signed by the Authorizing Official for the DOJ component responsible for maintaining the security, confidentiality, integrity, and availability of the DOJ Information under the contract.

C. Contractor must ensure that the CSP allows DOJ to access and retrieve any DOJ Information processed, stored or transmitted in a Cloud system under this Contract within a reasonable time of any such request, but in no event less than 48 hours from the request. To ensure that the DOJ can fully and appropriately search and retrieve DOJ Information from the Cloud system, access shall include any schemas, meta-data, and other associated data artifacts.

## VI. Information System Security Breach or Incident

### A. Definitions

1. **Confirmed Security Breach** (hereinafter, "Confirmed Breach") means any confirmed unauthorized exposure, loss of control, compromise, exfiltration, manipulation, disclosure, acquisition, or accessing of any Covered Information System or any DOJ Information accessed by, retrievable from, processed by, stored on, or transmitted within, to or from any such system.
2. **Potential Security Breach** (hereinafter, "Potential Breach") means any suspected, but unconfirmed, Covered Information System Security Breach.
3. **Security Incident** means any Confirmed or Potential Covered Information System Security Breach.

B. **Confirmed Breach.** Contractor shall immediately (and in no event later than within 1 hour of discovery) report any Confirmed Breach to the DOJ CO and the CO's Representative ("COR"). If the Confirmed Breach occurs outside of regular business hours and/or neither the DOJ CO nor the COR can be reached, Contractor must call DOJ-CERT at 1-866-US4-CERT (1-866-874-2378) immediately (and in no event later than within 1 hour of discovery of the Confirmed Breach), and shall notify the CO and COR as soon as practicable.

### C. **Potential Breach.**

1. Contractor shall report any Potential Breach within 72 hours of detection to the DOJ CO and the COR, unless Contractor has (a) completed its investigation of the Potential Breach in accordance with its own internal policies and procedures for identification, investigation and mitigation of Security Incidents and (b) determined that there has been no Confirmed Breach.
2. If Contractor has not made a determination within 72 hours of detection of the Potential Breach whether an Confirmed Breach has occurred, Contractor shall report the Potential Breach to the DOJ CO and COR within one-hour (i.e., 73 hours from detection of the Potential Breach). If the time by which to report the Potential Breach occurs outside of regular business hours and/or neither the DOJ CO nor the COR can be reached, Contractor must call the DOJ Computer Emergency Readiness Team (DOJ-CERT) at 1-866-US4-CERT (1-866-874-2378) within

one-hour (i.e., 73 hours from detection of the Potential Breach) and contact the DOJ CO and COR as soon as practicable.

D. Any report submitted in accordance with paragraphs (B) and (C), above, shall identify (1) both the Information Systems and DOJ Information involved or at risk, including the type, amount, and level of sensitivity of the DOJ Information and, if the DOJ Information contains PII, the estimated number of unique instances of PII, (2) all steps and processes being undertaken by Contractor to minimize, remedy, and/or investigate the Security Incident, (3) any and all other information as required by the US- CERT Federal Incident Notification Guidelines, including the functional impact, information impact, impact to recoverability, threat vector, mitigation details, and all available incident details; and (4) any other information specifically requested by the DOJ. Contractor shall continue to provide written updates to the DOJ CO regarding the status of the Security Incident at least every three (3) calendar days until informed otherwise by the DOJ CO.

E. All determinations regarding whether and when to notify individuals and/or federal agencies potentially affected by a Security Incident will be made by DOJ senior officials or the DOJ Core Management Team at DOJ's discretion.

F. Upon notification of a Security Incident in accordance with this section, Contractor must provide to DOJ full access to any affected or potentially affected facility and/or Information System, including access by the DOJ OIG and Federal law enforcement organizations, and undertake any and all response actions DOJ determines are required to ensure the protection of DOJ Information, including providing all requested images, log files, and event information to facilitate rapid resolution of any Security Incident.

G. DOJ, at its sole discretion, may obtain, and Contractor will permit, the assistance of other federal agencies and/or third party contractors or firms to aid in response activities related to any Security Incident. Additionally, DOJ, at its sole discretion, may require Contractor to retain, at Contractor's expense, a Third Party Assessing Organization (3PAO), acceptable to DOJ, with expertise in incident response, compromise assessment, and federal security control requirements, to conduct a thorough vulnerability and security assessment of all affected Information Systems.

H. Response activities related to any Security Incident undertaken by DOJ, including activities undertaken by Contractor, other federal agencies, and any third-party contractors or firms at the request or direction of DOJ, may include inspections, investigations, forensic reviews, data analyses and processing, and final determinations of responsibility for the Security Incident and/or liability for any additional response activities. Contractor shall be responsible for all costs and related resource allocations required for all such response activities related to any Security Incident, including the cost of any penetration testing.

#### VII. Personally Identifiable Information Notification Requirement

Contractor certifies that it has a security policy in place that contains procedures to promptly notify any individual whose Personally Identifiable Information ("PII") was, or is reasonably determined by DOJ to have been, compromised. Any notification shall be coordinated with the DOJ CO and shall not proceed until the DOJ has made a determination that notification would not impede a law enforcement investigation or jeopardize national security. The method and content of any notification by Contractor shall be coordinated with, and subject to the approval of, DOJ. Contractor shall be responsible for taking corrective action consistent with DOJ Data Breach Notification Procedures and as directed by the DOJ CO, including all costs and expenses associated with such corrective action, which may include providing credit monitoring to any individuals whose PII was actually or potentially compromised.

#### VIII. Pass-through of Security Requirements to Subcontractors and CSPs

The requirements set forth in the preceding paragraphs of this clause apply to all subcontractors and CSPs who perform work in connection with this Contract, including any CSP providing services for any other CSP under this Contract, and Contractor shall flow down this clause to all subcontractors and CSPs performing under this contract.

Any breach by any subcontractor or CSP of any of the provisions set forth in this clause will be attributed to Contractor.

(End of Clause)

#### DOJ-08 Continuing Contract Performance During a Pandemic Influenza or other National Emergency (OCT 2007)

During a Pandemic or other emergency we understand that our contractor workforce will experience the same high levels of absenteeism as our federal employees. Although the Excusable Delays and Termination for Default clauses used in government

contracts list epidemics and quarantine restrictions among the reasons to excuse delays in contract performance, we expect our contractors to make a reasonable effort to keep performance at an acceptable level during emergency periods.

The Office of Personnel Management (OPM) has provided guidance to federal managers and employees on the kinds of actions to be taken to ensure the continuity of operations during emergency periods. This guidance is also applicable to our contract workforce. Contractors are expected to have reasonable policies in place for continuing work performance, particularly those performing mission critical services, during a pandemic influenza or other emergency situation.

The types of actions a federal contractor should reasonably take to help ensure performance are:

- Encourage employees to get inoculations or follow other preventive measures as advised by the public health service.
- Contractors should cross-train workers as backup for all positions performing critical services. This is particularly important for work such as guard services where telework is not an option.
- Implement telework to the greatest extent possible in the workgroup so systems are in place to support successful remote work in an emergency.
- Communicate expectations to all employees regarding their roles and responsibilities in relation to remote work in the event of a pandemic health crisis or other emergency.
- Establish communication processes to notify employees of activation of this plan.
- Integrate pandemic health crisis response expectations into telework agreements.
- With the employee, assess requirements for working at home (supplies and equipment needed for an extended telework period). Security concerns should be considered in making equipment choices; agencies or contractors may wish to avoid use of employees' personal computers and provide them with PCs or laptops as appropriate.
- Determine how all employees who may telework will communicate with one another and with management to accomplish work.
- Practice telework regularly to ensure effectiveness.
- Make it clear that in emergency situations, employees must perform all duties assigned by management, even if they are outside usual or customary duties.
- Identify how time and attendance will be maintained.

It is the contractor's responsibility to advise the government contracting officer if they anticipate not being able to perform and to work with the Department to fill gaps as necessary. This means direct communication with the contracting officer or in his/her absence, another responsible person in the contracting office via telephone or email messages acknowledging the contractor's notification. The incumbent contractor is responsible for assisting the Department in estimating the adverse impacts of nonperformance and to work diligently with the Department to develop a strategy for maintaining the continuity of operations.

The Department does reserve the right in such emergency situations to use federal employees, employees of other agencies, contract support from other existing contractors, or to enter into new contracts for critical support services. Any new contracting efforts would be acquired following the guidance in the Office of federal Procurement Policy issuance "Emergency Acquisitions", May, 2007 and Subpart 18.2. Emergency Acquisition Flexibilities, of the Federal Acquisition Regulations.

(End of Clause)

**[END OF ADDENDUM TO FAR 52.212-4]**

(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).

(5) 52.233-3, Protest After Award (Aug 1996) (31 U.S.C. 3553).

(6) 52.233-4, Applicable Law for Breach of Contract Claim (Oct 2004)(Public Laws 108-77 and 108-78 (19 U.S.C. 3805 note)).

(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.]*

(1) 52.203-6, Restrictions on Subcontractor Sales to the Government (Jun 2020), with Alternate I (Nov 2021) (41 U.S.C. 4704 and 10 U.S.C. 4655).

(2) 52.203-13, Contractor Code of Business Ethics and Conduct (Nov 2021) (41 U.S.C. 3509)).

(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 Recovery and Reinvestment Act of 2009.)

(4) 52.204-10, Reporting Executive Compensation and First-Tier Subcontract Awards (Jun 2020) (Pub. L. 109-282) (31 U.S.C. 6101 note).

(5) [Reserved].

(6) 52.204-14, Service Contract Reporting Requirements (Oct 2016) (Pub. L. 111-117, section 743 of Div. C).

(7) 52.204-15, Service Contract Reporting Requirements for Indefinite-Delivery Contracts (Oct 2016) (Pub. L. 111-117, section 743 of Div. C).

(8) 52.209-6, Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment. (Nov 2021) (31 U.S.C. 6101 note).

(9) 52.209-9, Updates of Publicly Available Information Regarding Responsibility Matters (Oct 2018) (41 U.S.C. 2313).

(10) [Reserved].

(11) 52.219-3, Notice of HUBZone Set-Aside or Sole-Source Award (Oct 2022) (15 U.S.C. 657a).

(12) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Oct 2022) (if the offeror elects to waive the preference, it shall so indicate in its offer) (15 U.S.C. 657a).

(13) [Reserved]

(14)(i) 52.219-6, Notice of Total Small Business Set-Aside (Nov 2020) (15 U.S.C. 644).

- (ii) Alternate I (Mar 2020) of 52.219-6.
- (15)(i) 52.219-7, Notice of Partial Small Business Set-Aside (Nov 2020) (15 U.S.C. 644).
- (ii) Alternate I (Mar 2020) of 52.219-7.
- (16) 52.219-8, Utilization of Small Business Concerns (Oct 2022) (15 U.S.C. 637(d)(2) and (3)).
- (17)(i) 52.219-9, Small Business Subcontracting Plan (Oct 2022) (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 (Oct 2022) (15 U.S.C. 657s).
- (20) 52.219-16, Liquidated Damages-Subcontracting Plan (Sep 2021) (15 U.S.C. 637(d)(4)(F)(i)).
- (21) 52.219-27, Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (Oct 2022) (15 U.S.C. 657f).
- (22)(i) 52.219-28, Post-Award Small Business Program Rerepresentation (Oct 2022) (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 (Oct 2022) (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 (Oct 2022) (15 U.S.C. 637(m)).
- (25) 52.219-32, Orders Issued Directly Under Small Business Reserves (Mar 2020) (15 U.S.C. 644(r)).
- (26) 52.219-33, Nonmanufacturer Rule (Sep 2021) (15 U.S.C. 657s).
- (27) 52.222-3, Convict Labor (June 2003) (E.O. 11755).
- (28) 52.222-19, Child Labor—Cooperation with Authorities and Remedies (Dec 2022) (E.O. 13126).
- (29) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).
- (30)(i) 52.222-26, Equal Opportunity (Sept 2016) (E.O. 11246).
- (ii) Alternate I (Feb 1999) of 52.222-26.
- (31)(i) 52.222-35, Equal Opportunity for Veterans (Jun 2020) (38 U.S.C. 4212).
- (ii) Alternate I (July 2014) of 52.222-35.
- (32)(i) 52.222-36, Equal Opportunity for Workers with Disabilities (Jun 2020) (29 U.S.C. 793).
- (ii) Alternate I (July 2014) of 52.222-36.

- (33) 52.222-37, Employment Reports on Veterans (Jun 2020) (38 U.S.C. 4212).
- (34) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496).
- (35)(i) 52.222-50, Combating Trafficking in Persons (Nov 2021) (22 U.S.C. chapter 78 and E.O. 13627).
- (ii) Alternate I (Mar 2015) of 52.222-50 (22 U.S.C. chapter 78 and E.O. 13627).
- (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)(ii)). (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.
- (42) 52.223-15, Energy Efficiency in Energy-Consuming Products (May 2020) (42 U.S.C. 8259b).
- (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. 552a).
- (ii) Alternate I (Jan 2017) of 52.224-3.
- (48)(i) 52.225-1, Buy American--Supplies (Oct 2022) (41 U.S.C. chapter 83).
- (ii) Alternate I (Oct 2022) of 52.225-1.
- (49)(i) 52.225-3, Buy American-Free Trade Agreements-Israeli Trade Act (Dec 2022) (19 U.S.C. 3301 note, 19 U.S.C. 2112 note, 19 U.S.C. 3805 note, 19 U.S.C. 4001 note, 19 U.S.C. chapter 29 (sections 4501-4732), Public Law 103-182, 108-77, 108-78, 108-286, 108-302, 109-53, 109-169, 109-283, 110-138, 112-41, 112-42, and 112-43).
- (ii) Alternate I [Reserved].
- (iii) Alternate II (Dec 2022) of 52.225-3.
- (iv) Alternate III (Jan 2021) of 52.225-3.

\_\_ (v) Alternate IV (Oct 2022) of 52.225-3.

\_\_ (50) 52.225-5, Trade Agreements (Dec 2022) (19 U.S.C. 2501, et seq., 19 U.S.C. 3301 note).

**X** (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).

\_\_ (52) 52.225-26, Contractors Performing Private Security Functions Outside the United States (Oct 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. Subtitle A, Part V, Subpart G Note).

\_\_ (53) 52.226-4, Notice of Disaster or Emergency Area Set-Aside (Nov 2007) (42 U.S.C. 5150).

\_\_ (54) 52.226-5, Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov 2007) (42 U.S.C. 5150).

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

\_\_ (56) 52.232-29, Terms for Financing of Purchases of Commercial Products and Commercial Services (Nov 2021) (41 U.S.C. 4505, 10 U.S.C. 3805).

\_\_ (57) 52.232-30, Installment Payments for Commercial Products and Commercial Services (Nov 2021) (41 U.S.C. 4505, 10 U.S.C. 3805).

**X** (58) 52.232-33, Payment by Electronic Funds Transfer--System for Award Management (Oct 2018) (31 U.S.C. 3332).

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

\_\_ (60) 52.232-36, Payment by Third Party (May 2014) (31 U.S.C. 3332).

\_\_ (61) 52.239-1, Privacy or Security Safeguards (Aug 1996) (5 U.S.C. 552a).

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

\_\_ (63)(i) 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).

\_\_ (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.]

\_\_ (1) 52.222-41, Service Contract Labor Standards (Aug 2018) (41 U.S.C. chapter 67).

\_\_ (2) 52.222-42, Statement of Equivalent Rates for Federal Hires (May 2014) (29 U.S.C. 206 and 41 U.S.C. chapter 67).

\_\_ (3) 52.222-43, Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (Multiple Year and Option Contracts) (Aug 2018) (29 U.S.C. 206 and 41 U.S.C. chapter 67).

\_\_ (4) 52.222-44, Fair Labor Standards Act and Service Contract Labor Standards--Price Adjustment (May 2014) (29 U.S.C. 206 and 41 U.S.C. chapter 67).

\_\_ (5) 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment--Requirements (May 2014) (41 U.S.C. chapter 67).



\_\_ (6) 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).

\_\_ (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).

\_\_ (9) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations (Jun 2020) (42 U.S.C. 1792).

(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--

(i) 52.203-13, Contractor Code of Business Ethics and Conduct (Nov 2021) (41 U.S.C. 3509).

(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 2022) (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 (Sept 2016) (E.O. 11246).

(viii) 52.222-35, Equal Opportunity for Veterans (Jun 2020) (38 U.S.C. 4212).

(ix) 52.222-36, Equal Opportunity for Workers with Disabilities (Jun 2020) (29 U.S.C. 793).

(x) 52.222-37, Employment Reports on Veterans (Jun 2020) (38 U.S.C. 4212)

(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.

- (xii) 52.222-41, Service Contract Labor Standards (Aug 2018) (41 U.S.C. chapter 67).
- (xiii) (A) 52.222-50, Combating Trafficking in Persons (Nov 2021) (22 U.S.C. chapter 78 and E.O 13627).
- (B) Alternate I (Mar 2015) of 52.222-50 (22 U.S.C. chapter 78 and E.O 13627).
- (xiv) 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (May 2014) (41 U.S.C. chapter 67).
- (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).
- (xviii) 52.222-62, Paid Sick Leave Under Executive Order 13706 (Jan 2022) (E.O. 13706).
- (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. Subtitle A, Part V, Subpart G 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)

**Section 4 - List of Attachments**

**This Section Is Intentionally Left Blank**

**AGENDA ITEM #VIII-D-4  
MARCH 30, 2023  
HIGHLAND COMMUNITY COLLEGE BOARD**

**ACCEPTANCE OF BASE GAS SALES AGREEMENT  
WITH SYMMETRY ENERGY SOLUTIONS FOR THE  
COLLEGE'S NATURAL GAS SUPPLY**

**RECOMMENDATION OF THE PRESIDENT:** That the Board of Trustees authorizes acceptance of the attached agreement with Symmetry Energy Solutions for the College's natural gas supply for the initial contract period of June 1, 2023, through May 31, 2024, and subject to automatic 12-month renewal periods thereafter unless terminated by either party at a current estimated savings of \$5,000 per year.

**BACKGROUND:** Symmetry Energy Solutions, formerly CenterPoint Energy, is our current and long-term natural gas supplier. Through an audit of our records, it was found that we could change our choice of the way our natural gas rates are calculated from Natural Gas Index (NGI) to a Market Index calculation, which would save us an additional \$5,000 per year on our natural gas costs. This change to a Market Index calculation requires that we approve a new agreement with Symmetry Energy Solutions that reflects the change in calculation method. The State of Illinois exempts natural gas and other energy purchases from the bidding process, as long as we are paying a lower rate than our local utility, Nicor. Historical calculations show that the College saves over 30% on its natural gas costs using Symmetry Energy Solutions versus Nicor.

**BOARD ACTION:** \_\_\_\_\_



**BASE GAS SALES AGREEMENT**

This Base Gas Sales Agreement (this "Base Contract") is entered into as of 2/21/2023 (the "Effective Date") between Symmetry Energy Solutions, LLC, a Delaware limited liability company ("Seller"), and the Buyer as identified below for the sale and purchase of natural gas. Seller or Buyer may hereinafter be referred to individually as a "Party" and together as the "Parties." The Base Contract, along with the Transaction Confirmation (as defined below) governs all transactions that the Parties have entered into on or after the Effective Date for the purchase by Buyer of Gas from Seller (each, a "Transaction", collectively the "Agreement"). For the purposes of this Agreement, natural gas or "Gas" shall mean any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane and used as fuel.

1. **Notices.** Any notice, request, claim, demand, Transaction Confirmation and other communication required under this Agreement must be provided in writing ("Notice") and, unless the method of delivery is expressly stated otherwise in this Agreement, will be sent either via U.S. mail, private courier service, facsimile, or electronic message to the applicable address listed below. In accordance with this Section, Buyer shall advise Seller of any changes or updates to its contact information for Notice purposes. Buyer's failure to provide timely updates to Notice information constitutes a waiver of any challenge to the adequacy of Notice provided by Seller via the contact information identified in this Section 1. Except as otherwise provided in this Base Contract, a Notice will be considered effective (a) on the date sent, if such Notice is sent by either Party via fax machine or electronic message, and (b) on the 2<sup>nd</sup> Business Day after the date such Notice is sent by either Party via U.S. mail or private courier service. "Business Day" means any day except Saturday, Sunday, or Federal Reserve Bank holidays.

<p><b><u>Seller's Address:</u></b>                  9811 Katy Freeway, Suite 1400                  Houston, TX 77024                  Phone: (800) 495-9880</p>	<p><b><u>Buyer's Legal Name:</u></b> Highland Community College - IL                  Buyer's Address: 2998 W. Pearl City Rd.                  City/State/Zip: Freeport, IL 61032                  Phone:</p>
<p><b><u>Seller's Address for Notices</u></b>  <b><u>(Same as above):</u></b>                  Attn: Legal                  Email: <a href="mailto:legal@symmetryenergy.com">legal@symmetryenergy.com</a>                  Attn: Contract Administration                  Email: <a href="mailto:confirms@symmetryenergy.com">confirms@symmetryenergy.com</a></p>	<p><b><u>Buyer's Address for Notices:</u></b>                  Attn: Kurt Simpson Director of Facilities and Safety                  Address: 2998 W. Pearl City Rd.                  City/State/Zip: Freeport, IL 61032                  Phone: (815) 599-3501                  Email: <a href="mailto:kurt.simpson@highland.edu">kurt.simpson@highland.edu</a>                  Email:</p>
<p><b><u>Seller's Address for Transaction Confirmations</u></b>  <b><u>(Same as above):</u></b>                  Attn: Contract Administration                  Email: <a href="mailto:confirms@symmetryenergy.com">confirms@symmetryenergy.com</a></p>	<p><b><u>Buyer's Address for Transaction Confirmations:</u></b>                  Attn: Kurt Simpson Director of Facilities and Safety                  Address: 2998 W. Pearl City Rd.                  City/State/Zip: Freeport, IL 61032                  Phone: (815) 599-3501                  Email: <a href="mailto:kurt.simpson@highland.edu">kurt.simpson@highland.edu</a>                  Email:</p>
<p><b><u>Buyer Other Information:</u></b>                  Federal Tax ID: _____                  Other Tax ID: _____                  Jurisdiction of Organization: _____</p> <p>Company Type: <input type="checkbox"/> Corporation <input type="checkbox"/> Ltd. Partnership  <input type="checkbox"/> LLC <input type="checkbox"/> Partnership  <input type="checkbox"/> LLP <input type="checkbox"/> Governmental Authority</p>	<p><b><u>Buyer's Address for Invoices:</u></b>                  Attn: Kurt Simpson Director of Facilities and Safety                  Address: 2998 W. Pearl City Rd.                  City/State/Zip: Freeport, IL 61032                  Phone: (815) 599-3501                  Email: <a href="mailto:kurt.simpson@highland.edu">kurt.simpson@highland.edu</a>                  Email:</p>

2. **Transaction Confirmations.** With respect to each Transaction, Seller shall sell and deliver, and Buyer shall purchase and receive, the Volume Commitment of the Gas at the Delivery Point(s) for the Delivery Period, and Buyer shall pay Seller the Contract Price. Before a Transaction becomes binding on either Party, Seller shall send a written confirmation of the terms of such Transaction (a "Transaction Confirmation") to Buyer via electronic message as soon as practical after the Parties reach agreement on such terms. A Transaction and the applicable Transaction Confirmation shall become binding on the Parties, (i) absent manifest error, automatically at 5:00 p.m., Central Standard Time, on the second Business Day following the day the Transaction Confirmation is sent to Buyer (the "Confirm Deadline"), unless a Party cancels the Transaction or disputes or revokes the Transaction Confirmation via electronic message to the other Party delivered prior to the Confirm Deadline or (ii) on the effective date of Buyer's execution and delivery to Seller of the unmodified Transaction Confirmation; whichever occurs first. The Transaction Confirmation (as defined herein) represents the Parties' final agreement regarding the specific terms of the Transaction and supersedes any prior oral or written agreements, understandings or promises relating to the Transaction. In the event of a conflict between the terms of the Agreement and Transaction Confirmation, the latter shall control for that relevant Transaction, except as to Sections 4 (Restrictive Orders), 8 (Performance Breach), 9 (Early Termination), 13 (Force Majeure), and 18 (Market Disruption) of this Agreement, which shall always govern and control. Any amendments or modifications to a Transaction Confirmation after the Confirm Deadline must be in writing and signed by both Parties.

### 3. Transaction Terms.

(a) Each Transaction Confirmation will specify, at a minimum, (i) the name of Buyer and Seller, (ii) Buyer's facility or account that is the subject of the Transaction (the "Facility"), (iii) the contract price for Gas (the "Contract Price"), (iv) any associated fees and charges applicable to the Transaction (collectively, the "Additional Charges"), (v) the primary term of the Transaction (the "Initial Period") and whether any automatic term renewals apply following the Initial Period (the term following the Initial Period, a "Renewal Period" and, together with the Initial Period, the "Delivery Period"), (vi) the point(s) where Seller will deliver the Gas to Buyer (the "Delivery Point(s)"), (vii) the Gas volumes Seller is obligated to deliver to and Buyer is obligated to receive at the Delivery Point(s) (the "Contract Quantity" or "Volume Commitment", such terms being used herein interchangeably), and (viii) whether such deliveries and receipts will be Firm or Interruptible (the "Performance Obligation"). If a Transaction Confirmation does not specify that a Renewal Period applies, but Seller continues to deliver and Buyer continues to receive Gas after the expiration of the Initial Period, then the Transaction will be deemed to automatically continue for a month-to-month Renewal Period under the terms of the Transaction Confirmation until terminated by either Party upon 30 days' Notice, except that (i) the Contract Price during each month of such Renewal Period will be determined by Seller and (ii) the Volume Commitment during each month of such Renewal Period will be (x) the quantity nominated by Buyer (or Seller on behalf of Buyer) or (y) Buyer's historical receipt of Gas at the Delivery Point(s) as determined by Seller ("Buyer's Gas History").

(b) Subject to prior credit approval by Seller, Buyer may elect to convert the Contract Price (if it is a floating price) for a portion of the Volume Commitment in a Transaction Confirmation (the "Base Transaction Confirmation") from a floating price to a fixed price (commodity, basis differential, or both). The fixed price (or fixed price component if both commodity and basis differential are not fixed) and the portion of the Volume Commitment subject thereof must be mutually agreed upon by the Parties and the terms of any such agreement will be set forth in a separate fixed price Transaction Confirmation (a "Fixed Price Transaction Confirmation"). Unless otherwise specifically provided for in the Fixed Price Transaction Confirmation, all other terms and conditions of the Base Transaction Confirmation including, but not limited to Additional Charges will continue to apply.

(c) If a Transaction Confirmation specifies (i) a fixed price or a first-of-month (FOM) Index price as the Contract Price and (ii) the Volume Commitment as 100% of Buyer's Gas requirements at the Delivery Point(s), then the following provisions will apply: (a) Buyer acknowledges and understands that Seller is utilizing Buyer's Gas History for purposes of determining the Contract Price, Volume Commitment, and Gas services to Buyer's Gas requirements for the Delivery Period; and (b) in the event of any material variance (hereby defined as plus/minus 10% or greater) between Buyer's actual Gas at the Delivery Point(s) and Buyer's Gas History results in variance charges, incremental Gas purchase or sales, penalties, damages, or other costs and expenses, then such amounts will be reimbursed by, or passed through to, Buyer.

(d) If a Transaction Confirmation is subject to (i) a Renewal Period and (ii) a fixed price with respect to all or part of the Volume Commitment for any month during the Renewal Period, as applicable, then in effect, then the Delivery Period of the Transaction Confirmation will be deemed to have been extended through and including the last calendar month of the Renewal Period in which all or part of the Volume Commitment for any month occurring during such Renewal Period is subject to a fixed price.

4. **Restrictive Orders.** The Parties acknowledge that an operational flow order, curtailment order, critical notice, or other governmental or Transporter directive concerning actual or potential limits or restrictions on the transportation, delivery, receipt, and/or use of Gas to, by, or for Seller, Buyer, or its affiliates (the "RO Gas") or otherwise may occur (a "Restrictive Order") with little to no advance notification. Each Party will comply with and take all commercially reasonable actions necessary to mitigate the impact of such Restrictive Order, and any charges or penalties assessed by a governmental authority or Transporter will be borne by the Party who failed to mitigate or comply with such Restrictive Order. A Restrictive Order may require, or may result in the need for (as reasonably determined by Seller), Seller to sell RO Gas to Buyer at a price subject to then-current market pricing, which may differ from the Contract Price set forth in an affected Transaction, and any such RO Gas will be priced and invoiced to Buyer (including any charges or penalties applicable thereto) as reasonably determined by Seller and paid by Buyer in accordance with Section 5. Seller shall deliver or receive RO Gas on a commercially reasonable basis, including subject to available transportation. For the avoidance of doubt, RO Gas will not be priced at the Contract Price and is not counted towards or subject to the Volume Commitment or Buyer's full requirements of, the affected Transaction. If Buyer fails to comply with a Restrictive Order, Buyer shall be responsible for compensating Seller for Gas, at pricing reasonably determined by Seller, to provide RO Gas or otherwise cover Buyer's receipt or use of Gas. Notwithstanding anything herein, if because of any Restrictive Order Seller is unable to deliver or Buyer is unable to receive all or a portion of RO Gas, then Seller will have no obligation to credit to or repurchase from Buyer any portion of such RO Gas. For the purposes of this Agreement, a "Transporter" is the Gas gathering or pipeline company, or local distribution company, transporting Gas for Seller or Buyer upstream or downstream, respectively, of the Delivery Point(s) specified in a Transaction Confirmation.

5. **Invoicing and Payment.** Seller will invoice Buyer on a monthly basis for all Transactions in effect during the preceding month based on the Contract Price, Volume Commitment and Additional Charges, if any, set forth in the respective Transaction Confirmations. Buyer will pay Seller the full invoice amount in accordance with the payment instructions set forth on the invoice within 10 days of the invoice date (the "Payment Due Date"); *provided, however*, that if the Payment Due Date falls on a non-Business Day, the Payment Due Date shall be the following Business Day; *provided, further, however*, if Buyer, in good faith, disputes the invoice amount, Buyer will pay the undisputed amount of the invoice by the Payment Due Date and provide a dispute Notice, including written documentation with reasonably fully particulars to support the disputed amount, within 10 days following the Payment Due Date or else waive the right to challenge the invoice amount. If Buyer fails to pay any undisputed invoiced amounts or provide written documentation with reasonably fully particulars to support any disputed amount by the Payment Due Date, Seller may charge and collect from Buyer a late fee equal to the lesser of 1¼% of the outstanding balance per month (compounded monthly) or the maximum interest rate allowed by law. Buyer will pay Seller for all costs and expenses incurred by Seller (including reasonable attorneys' fees) to collect any past due invoiced amounts. Buyer will be responsible for and pay all taxes and fees assessed by governmental entities on the purchase and sale of Gas hereunder (including any gross receipts taxes and franchise fees). If Buyer is entitled to a tax exemption, Buyer shall provide Seller with any necessary documentation of such exception. All invoices and associated payments are final unless either Party disputes the accuracy of such invoice(s) or payment(s) in writing, with reasonably full particulars to support such dispute, within two (2) years after the invoice date (or later if applicable Transporter tariff provisions allow).

6. **Measurement.** The Gas quantities used for invoicing purposes will be the Gas quantities as measured during the invoice period by the applicable Transporter operating the Gas metering equipment at the Delivery Point(s) as ultimately determined and reported by the Transporter (the "Measured Volumes"). In the event the Measured Volumes are not reported by the Transporter before Seller's invoice date, the Gas quantities at the Delivery Point(s) for that invoice will be estimated by Seller and such estimated quantities will then be adjusted to the applicable Measured Volumes on Seller's next invoice after such Measured Volumes are reported by the Transporter. For any invoice period during which Gas is delivered by Seller to Buyer under two or more Transactions to the same Delivery Point(s), Seller will apply the Measured Volumes for invoicing purposes in the following order (and therein all in ascending date order): (i) FM Gas, (ii) RO Gas, (iii) fixed price, (iv) index price, and then (v) market rate.

7. **Credit Terms.** Buyer must meet Seller's creditworthiness standards at all times. Buyer will provide to Seller, as Seller may reasonably request from time to time, sufficient information to enable Seller to determine Buyer's creditworthiness, including, but not limited to, financial statements and trade references. If Buyer does not at any time meet Seller's creditworthiness standards Seller may require that Buyer provide sufficient credit support for Buyer's payment obligations under this Agreement, in the form and amount, for a term, and from an issuer (as the case may be) reasonably acceptable to Seller. Any credit support subject to an expiry date and which is not renewed or renewable by the issuer must be replaced with adequate credit support meeting the requirements hereof and provided to Seller prior to the expiration of the expiring credit support. Buyer authorizes Seller to obtain Buyer's Gas usage data and credit history from any Transporter serving Buyer's Facilities and appoints Seller as its agent solely for the purpose of obtaining such usage data and credit history. Each Party agrees that this Section 8 supersedes and replaces in their entirety any requirements of law relating to assurance of future performance, including without limitation Article 2 of the Uniform Commercial Code.

8. **Performance Breach.** As used in this Agreement, "Firm" means that either Party may interrupt its performance without liability only to the extent that such performance is excused by a Force Majeure Event or the action(s) or inaction(s) of the other party, and "interruptible" means that either Party may interrupt its performance at any time for any reason without liability. Except as provided in Section 9, and unless a different remedy for breach of a Firm obligation is specified in a Transaction Confirmation, the sole and exclusive remedy of the Parties in the event of a breach of a Firm obligation is, in addition to the payment or reimbursement of any Transporter imbalance charges or penalties caused by such breach, as follows: (a) in the event of a breach by Seller on any day, Seller shall pay Buyer an amount (that amount, "Seller's Cover Payment") equal to the difference between the Volume Commitment for that day and the quantity of Gas delivered to the Delivery Point(s) during that day, multiplied by the positive difference, if any, obtained by subtracting the Contract Price from a daily index price reflecting then-current market conditions that correlate to the location of the most relevant supply pool, as determined by Seller in a reasonable manner (the "Daily Spot Price"); and (b) in the event of a breach by Buyer on any day, Buyer shall pay Seller an amount (that amount, "Buyer's Cover Payment") equal to the difference between the Volume Commitment for that day and the quantity of Gas received at the Delivery Point(s) during that day, multiplied by the positive difference, if any, obtained by subtracting the Daily Spot Price from the Contract Price. Seller will apply a credit in the amount of Seller's Cover Payment, if any, and a charge in the amount of Buyer's Cover Payment, if any, in the invoice(s).

9. **Early Termination.**

(a) Either Party may (i) terminate a Transaction if (x) the other Party breaches a Firm obligation with respect to such Transaction for a period of more than 30 consecutive days regardless of whether such failure is excused, in whole or in part, by a Force Majeure Event or (y) the Facility or Delivery Point(s) that are the subject of the Transaction are served by a Transporter and become ineligible for transportation service by such Transporter regardless of whether such ineligibility is excused, in whole or in part, by a Force Majeure Event, and (ii) terminate this Agreement and all Transactions then in effect if the other Party or its guarantor (if any) files or has filed against it a petition for relief under the United States Bankruptcy Code or similar state law for the protection of creditors, or otherwise becomes bankrupt or insolvent, has a receiver or similar official appointed with respect to it or substantially all of its assets, makes an assignment or any general arrangement for the benefit of creditors, or is unable to pay its debts as they fall due.

(b) Seller may terminate this Agreement and all Transactions then in effect if Buyer or its guarantor (if any): (i) fails to pay any invoice amount not subject to a Dispute Notice provided pursuant to Section 5 on or before 15 days following the Payment Due Date, if such failure is not excused or cured within 5 business days after written Notice thereof from Seller; (ii) fails to provide credit support in accordance with Section 7 on or before the end of the 2<sup>nd</sup> Business Day following Seller's request; (iii) fails to perform or maintain in full force and effect any obligation owed to Seller with respect to any credit support provided under Section 7; or (iv) makes any representation

or warranty that was false or misleading in any material respect when made or when deemed made or repeated, or if any representation or warranty becomes untrue or incorrect in any material respect.

(c) The Party having the right to terminate under this Section (the "Non-Defaulting Party") may give Notice of termination to the other Party (the "Defaulting Party"), and such termination will be effective upon the date of the Notice, unless a later termination date is designated in the Notice, in which case the termination will be effective upon such later termination date, which later date must be no later than 20 days after the date of the Notice (the effective date of the termination, the "Early Termination Date"). To the extent the right to terminate under this Section has occurred and is continuing, the Non-Defaulting Party may also immediately suspend all delivery, receipt, and payment obligations owed under the Terminated Transactions.

#### 10. Early Termination Damages.

(a) If one or more Transactions will be terminated pursuant to Section 9 (the "Terminated Transactions"), the Non-Defaulting Party will, as soon as reasonably practicable after the Early Termination Date, liquidate and accelerate the outstanding Volume Commitments under each Terminated Transaction (the sum thereof, the "Outstanding Volumes") as of the Early Termination Date at a market price for similar transactions at the affected Delivery Point(s), as determined by the Non-Defaulting Party in a commercially reasonable manner (the "Market Price"). If the product of the Outstanding Volumes multiplied by the Market Price (that product, the "Market Value") is greater than the product of the Outstanding Volumes multiplied by the Contract Price (that product, the "Contract Value"), then the difference between them, as discounted by the Non-Defaulting Party to present value in a commercially reasonable manner as of the Early Termination Date, (the "Liquidated Damages") will be owed by Seller to Buyer and, if the Contract Value is greater than the Market Value, then the Liquidated Damages will be owed by Buyer to Seller.

(b) The Non-Defaulting Party will, as soon as reasonably practicable after determining the Liquidated Damages, (i) net or aggregate, as appropriate, the Liquidated Damages against or with (A) all outstanding payment obligations owed between the Parties under the Terminated Transaction(s) as of the Early Termination Date (including any Buyer Cover Payment or Seller Cover Payment) for which payment has not been received, (B) any and all costs and penalties imposed by a Transporter or other third party on the Non-Defaulting Party as a result of the early termination, (C) all reasonable, out-of-pocket costs and expenses incurred by the Non-Defaulting Party in connection with terminating and liquidating the Terminated Transactions, including but not limited to, any brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred by the Non-Defaulting Party either in terminating any arrangements undertaken to hedge its obligations under the Terminated Transactions or in entering into new arrangements to replace the Terminated Transactions, and (D) any and all costs and expenses incurred by the Non-Defaulting Party (including reasonable attorney fees and court costs, if any) to collect any amounts due, or in connection with enforcing its rights, hereunder, so that all such amounts are netted or aggregated to a single liquidated amount payable by one Party to the other (the "Net Settlement Amount") and (ii) notify the Defaulting Party of the Net Settlement Amount. The Party owing the Net Settlement Amount shall pay it in full to the other Party within 15 days after the date of that Notice. Interest on any unpaid portion of the Net Settlement Amount will accrue from the date due until the date of payment at the rate set forth in Section 5.

11. Risk of Loss, Indemnification and Disclaimer of Implied Warranties. For each Transaction, title to and risk of loss for the Gas will pass to Buyer at the Delivery Point(s). Seller shall indemnify Buyer and save it harmless from all losses, liabilities, damages and demands including reasonable attorneys' fees and costs of court ("Losses") arising from or out of claims of personal injury, including any wrongful death action, or property damage from said Gas (collectively, the "Claims") that attach before title to said Gas passes to Buyer, and Buyer will indemnify Seller and save it harmless from all Losses arising from or out of Claims that attach at and after title to said Gas passes to Buyer. If Buyer is a governmental entity, these indemnity obligations will only apply to the extent permitted by applicable law. Seller warrants that it will have the right to convey and will transfer good and merchantable title to all Gas sold hereunder and delivered to Buyer, free and clear of all liens, encumbrances, and claims. EXCEPT AS PROVIDED IN THE IMMEDIATELY PRIOR SENTENCE, SELLER EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES, WHETHER STATUTORY OR COMMON LAW, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

12. Assignment. Neither Party may assign this Agreement, in whole or in part, without the other Party's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, except that either Party may assign this Agreement after Notice to the other Party, *provided that*: (a) in the case of an assignment by Seller, such assignment is (i) to an Affiliate or a successor resulting from a merger or the acquisition of all or substantially all of Seller's assets or equity or (ii) an assignment, transfer, encumbrance or pledge of this Agreement, or the accounts, revenues or proceeds hereof, in connection with any financing or other financial arrangements; and (b) in the case of an assignment by Buyer, (i) such assignment is to an Affiliate or a successor resulting from a merger or the acquisition of all or substantially all of Buyer's assets or equity and (ii) such Affiliate or successor meets Seller's creditworthiness standards as determined by Seller prior to any such assignment taking effect. In no event may either Party sever a Transaction, or any portion of its rights or obligations to receive or deliver Gas under a Transaction, from this Agreement and transfer such Transaction or such rights or obligations separately from the remainder of the Transaction or this Agreement without the express written consent of the other Party. Notwithstanding any assignment hereunder, the assigning Party shall be liable for all obligations incurred or arising under this Agreement prior to the effective date of an assignment otherwise permitted under this Section 12 (the "effective date" of an assignment shall be the date on which the assignee expressly agrees to accept and assume this Agreement and all corresponding obligations from the assigning Party arising as of such date). As of and after the effective date of such permitted assignment, the assignee shall become liable for all obligations arising hereunder to the same degree and to the same extent as if the assignee was the original Party to this Agreement, the assigning Party shall be released from any further obligations hereunder, and the assignee shall become known as "the Buyer" or "the Seller", as appropriate, under this Agreement on and from said effective date. For the sake of clarity, unless otherwise agreed to in writing by the other Party, the assigning Party will remain liable for all obligations incurred hereunder prior to the effective date of any assignment. Any attempted assignment in violation of this Section will be null and void and without effect. This Agreement will be binding on the Parties'



respective permitted successors and assigns. "Affiliate" means an entity that controls, is controlled by, or is under common control with, the assigning Party. "Control" of any entity means ownership of at least fifty percent of the voting power of the entity.

### 13. Force Majeure.

(a) If either Party is prevented or delayed as a result of a Force Majeure Event from performing, in whole or in part, one or more of its obligations under a Transaction and such Party (the "Claiming Party") uses commercially reasonable efforts to give Notice of the Force Majeure Event to the other Party or to the other Party's representative or agent, then from the date the Force Majeure Event commenced and to the extent and for the duration thereof, the Claiming Party will be excused from the performance of its obligations with respect to such Transaction, and shall not be liable for any delay or failure in performing such obligations, if and to the extent that such failure or delay is a result of such Force Majeure Event (other than the obligation to make payments that are otherwise due and payable under this Agreement), including, without limitation, any obligation to deliver the full Volume Commitment and any obligation to deliver the Volume Commitment or Buyer's full requirements at the Contract Price. The Claiming Party's Notice of such Force Majeure Event may initially provide Notice verbally, but will provide written Notice with reasonable detail of the Force Majeure Event as soon as reasonably practicable. The Claiming Party will use commercially reasonable efforts to remedy the failure or delay to perform as a result of the Force Majeure Event; *provided, however*, (A) Seller is not obligated to deliver, and Buyer is not obligated to receive, Gas under a Transaction at points other than the Delivery Point(s) thereunder; (B) neither Party is required to use extraordinary efforts or incur extraordinary costs to avoid or resolve the Force Majeure Event or its impacts; (C) a Force Majeure Event shall not extend the Delivery Period of any Transaction; (D) Seller is not obligated to procure Gas from alternate sources, such as storage; and (E) neither Party is obligated to make up any quantity of Gas it would otherwise have been obligated to sell or purchase, as the case may be, during any period in which a Force Majeure Event was validly claimed.

(b) In the event of a Force Majeure Event, Seller has the right to reduce the quantity of Gas it is obligated to deliver and allocate Seller's Gas Supply as Seller determines in its sole discretion across its customers, including Buyer. "Seller's Gas Supply" means Gas acquired by or on behalf of Seller from a third-party supplier or suppliers, whether individually or on an aggregated basis, on a regional, pipeline or geographic basis (as determined solely by Seller in the conduct of its regular business), and from which Seller allocates quantities to be used by Seller to fulfill, in whole or in part, the monthly Volume Commitment (or any daily proration thereof) specified in a Transaction; *provided, however*, unless otherwise expressly agreed to in a Transaction that also specifically memorializes any agreed upon monetary consideration or fees paid therefor by Buyer to Seller, 'Seller's Gas Supply' excludes Gas in any type of storage, imbalance account or any incremental or balance-of-month Gas purchased by or on behalf of Seller in the daily spot market. A Force Majeure Event may require, or may result in the need for (as reasonably determined by Seller), Seller to sell Gas to Buyer ("FM Gas") at a price subject to then-current market pricing, which may differ from the Contract Price set forth in an affected Transaction, and any such FM Gas will be priced and invoiced to Buyer (including any charges or penalties applicable thereto) as reasonably determined by Seller and paid by Buyer in accordance with Section 5. Seller shall deliver or receive FM Gas on a commercially reasonable basis, including subject to available transportation. For the avoidance of doubt, FM Gas will not be priced at the Contract Price of, and is not counted towards or subject to the Volume Commitment or Buyer's full requirements of, the affected Transaction. If Buyer receives Gas during a Force Majeure Event, Buyer will be responsible for compensating Seller for Gas, at pricing reasonably determined by Seller, to provide FM Gas or otherwise cover Buyer's receipt or use of Gas. During a Force Majeure Event, Seller's ability or efforts to source Gas or otherwise cover Buyer's receipt of Gas shall not affect Seller's ability to invoice or the validity of a Force Majeure Event or benefit from the rights set forth in this Section. Notwithstanding the foregoing, if as a result of a Force Majeure Event Seller is unable to deliver or Buyer is unable to receive all or a portion of the applicable Volume Commitment, then Seller will have no obligation to credit to or repurchase from Buyer any portion of such Volume Commitment.

(c) "Force Majeure Event" means an event or circumstance, whether of the kind described herein or otherwise, that prevents or delays the Claiming Party from performing, in whole or in part, one or more of its obligations under a Transaction, which event or circumstance is not within the reasonable control of, does not result from the negligence of, and would not have been avoided or overcome by the exercise of reasonable diligence by, the Claiming Party. Subject to the foregoing sentence, Force Majeure Events include, but are not limited to, the following: (i) physical events such as acts of God, landslides, lightning, earthquakes, fires, storms or storm warnings, such as hurricanes, which result in evacuation of the affected area, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery or equipment or lines of pipe; (ii) weather related events affecting an entire geographic region, such as low temperatures which cause freezing or failure of wells, Gas processing facilities, lines of pipe or appurtenant facilities; (iii) interruption, termination and/or curtailment of Firm transportation (including but not limited to Restrictive Orders, pipeline capacity allocations, unscheduled maintenance, pipeline interconnect issues or other similar problems); (iv) acts of others such as strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections or wars, or acts of terror; and (v) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, or regulation (including but not limited to a tariff regulation in a Transporter's tariff). Unless otherwise specified in a Transaction, the term "Firm" in the preceding sentence means Seller's utilization in its sole discretion of firm service agreement(s) with Transporter(s) under which the Delivery Point(s) is not a specified primary point for the delivery of Gas. Neither Party shall be entitled to the provisions of this Section 13 to the extent the Party claiming Force Majeure failed to remedy the condition and to resume performance under this Agreement with reasonable dispatch; *provided, however*, that the settlement of strikes, lockouts or other industrial disturbances shall be within the sole discretion of the Party experiencing such event.

14. Limitation of Liability. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES WILL BE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED, A PARTY'S LIABILITY WILL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, AND NEITHER PARTY WILL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH

NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

15. **Forward Contract.** The Parties agree that this Agreement, and each Transaction and Transaction Confirmation entered into under this Agreement, constitutes a "forward contract," that Seller and Buyer are each "forward contract merchants" and that this Agreement constitutes a "master netting agreement," in each case within the meaning of the United States Bankruptcy Code.

16. **Dodd-Frank Transaction Classification.** Each Party represents as of each time it enters into a Transaction that the Transaction qualifies for either (a) the forward contract exclusion as set forth under Section 1a(47)(B)(II) of the Commodity Exchange Act or (b) the trade option exemption as set forth under 17 C.F.R. Section 32.3(a). Each Party will promptly give Notice to the other Party if the foregoing representation becomes incorrect or misleading. If a Transaction is subject to any governmental reporting requirements, including but not limited to any reporting requirements of the Commodity Futures Trading Commission enacted under Title 7 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, each Party will provide the other Party any information reasonably requested by such other Party to enable it to comply with those requirements.

17. **Buyer Representations.** Buyer represents and warrants to Seller, as of the Effective Date and the date of each Transaction Confirmation, that it (a) is acting for its own account; (b) has made its own independent decision to enter into this Agreement and each Transaction and as to whether this Agreement and each such Transaction is appropriate or proper for it based upon its own judgment; (c) is not relying upon the advice or recommendations of Seller in entering into this Agreement and each Transaction; (d) is capable of assessing the merits of and understands and accepts, the terms, conditions and risks of this Agreement and each Transaction; (e) understands that information and explanations of the terms of each Transaction will not be considered investment or trading advice or a recommendation to enter into that Transaction; (f) understands that no communication (written or oral) received from Seller will be deemed to be an assurance or guarantee as to the expected results of a Transaction; (g) this Agreement and each Transaction Confirmation has been executed by its duly authorized representative; (h) the execution, delivery and performance of the Agreement and each Transaction are within its powers, have been duly authorized by all necessary action, and do not violate any terms and conditions in its governing documents, any contracts to which it is a party or any law applicable to it; and (i) understands that Seller is not acting as a fiduciary or agent for or an advisor to it in respect of this Agreement or any Transaction.

18. **Market Disruption.** If a Market Disruption Event has occurred, then either Party may give Notice thereof to the other Party specifying in reasonable detail the event that has occurred constituting a Market Disruption Event. Upon the giving of such Notice, the Parties will negotiate in good faith to agree on a replacement price for the Index Price (or on a method for determining a replacement price for the Index Price) for the Affected Period. An "Affected Period" is any part of the Delivery Period under a Transaction affected by the Market Disruption Event. If the Parties have not agreed on or before the second Business Day following the date of the Notice of the occurrence of the Market Disruption Event, then the replacement price for the Index Price will be determined within the next two following Business Days with each Party obtaining, in good faith and from non-affiliated market participants in the relevant market, two quotes for prices of natural gas for the Affected Period of a similar quality and quantity in the geographical location closest in proximity to the Delivery Point(s). Once the Parties obtain the quotes, the following methodology shall be used to determine the replacement price for the Index Price: (i) if each Party obtains two quotes, the arithmetic mean of the quotations, excluding the highest and lowest values, shall be utilized; (ii) if one Party obtains two quotes and the other Party only obtains one quote, the highest and lowest values shall be excluded and the remaining quotation shall be utilized; (iii) if both Parties each obtain one quote, the arithmetic mean of the quotations shall be utilized; or (iv) if only one Party is able to obtain a quote, the obtained quotation should be utilized. For the purposes of the foregoing sentence, if more than one quotation is the same as the other quotation, and such quotations are the highest and/or lowest values, only one of the quotations shall be excluded. "Index Price" means the price or a factor of the price, based on a specified published index, agreed to in a Transaction as the Contract Price. "Market Disruption Event" means, relating to an Index Price in a Transaction, any of the following events: (a) the failure of the index to announce or publish information necessary for determining the Index Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading on the exchange or market acting as the Index; (c) the temporary or permanent discontinuance or unavailability of the index; (d) the temporary or permanent closing of any exchange acting as the Index; or (e) a market abnormality, anomaly or other occurrence, other than during or caused by a Force Majeure Event, which causes the Index Price to no longer be reflective of the market price of Gas for the relevant market in the geographic area in which the Delivery Point(s) is located.

19. **Dispute Negotiations.** Any dispute, controversy, or Claim arising out of or relating to this Agreement, or the breach, termination, or invalidity hereof, including a dispute of the Invoice amount as contemplated by Section 5 (a "Dispute") must be sent in writing to the other Party ("Dispute Notice"). The Parties shall first attempt in good faith to resolve any Dispute set forth in the Dispute Notice by negotiation and consultation between the Parties, including not fewer than two negotiation sessions attended by an authorized representative of each Party. Any third-party energy manager or consultant of Buyer will not be deemed to be an authorized representative of Buyer for purposes of this Section unless Buyer expressly specifies such in writing to Seller. In the event the Parties are unable to resolve such Dispute within sixty (60) days of the date of the Dispute Notice for whatever reason, either Party may pursue arbitration in accordance with Section 20 to enforce its rights pursuant to this Agreement.

20. **Arbitration as a Final Resort.** If the Parties cannot in good faith resolve any Dispute for any reason, including, but not limited to, the failure of negotiation sessions, then any Dispute (including its arbitrability) that is not resolved under the provisions of Section 19 within a period of no later than sixty (60) days will, upon notice by either Party to the other, be finally settled by arbitration administered by the American Arbitration Association ("AAA") in accordance with the provisions of the Expedited Procedures of the AAA's Commercial Arbitration Rules as in force in 2021, except as to the selection of arbitrators, the procedure for which is described herein. There shall be three (3) arbitrators. The Parties agree that one arbitrator shall be appointed by each Party within fourteen (14) days of receipt by respondent(s) of the notice requesting arbitration or in default thereof appointed by the AAA in accordance with its Commercial Rules, and

the third presiding arbitrator shall be appointed by agreement of the Parties within fourteen (14) days of the appointment of the second arbitrator or, in default of such agreement, by the AAA. For the avoidance of doubt, there shall be no discovery other than the exchange of Exhibits pursuant to the AAA's Commercial Rules, Expedited Procedures, Rule E-5, and merits hearings (of no more than two days in length) must be scheduled to occur within thirty (30) days of confirmation of the third arbitrator's appointment, and an award rendered within fourteen (14) days of the end of the merits hearings. The substantially prevailing party in such arbitration, which shall be determined by the arbitrators in their award, shall be entitled to an award of attorneys' fees and costs. Such fees and costs shall be determined by the arbitrators within fourteen (14) days of the issuance of the merits award after the submission of a single five (5) page brief by each party within seven (7) days of such issuance. The arbitration venue shall be seated in Houston, Texas. Judgment on the award(s) rendered by the arbitrators may be entered in any court having jurisdiction thereof.

21. **Governing Law & Forum Selection.** This Agreement is to be construed and governed by the laws of the State of Texas, exclusive of its choice of law rules. The Parties agree that the exclusive jurisdiction for any Dispute or litigation arising out of or relating to this Agreement shall be in a Texas District Court in Harris County, Texas or the United States District Court for the Southern District of Texas. The Parties waive any objection to jurisdiction and venue which the Parties otherwise may have to this venue for any such lawsuit.

22. **Class Action Waiver.** The Parties agree to bring claims only in their individual capacity and not as a plaintiff or class member in any purported class, consolidated or representative action or proceeding of any kind. Further, unless both Parties agree otherwise in writing, arbitrators may not consolidate more than one party's claims and may not otherwise preside over any form of a class, consolidated or representative action or proceeding of any kind. BY AGREEING TO THIS PROVISION, THE PARTIES UNDERSTAND THAT THEY ARE WAIVING ANY RIGHT TO PARTICIPATE IN A CLASS ACTION OR CLASS ACTION PROCEEDINGS, INCLUDING AS A CLASS REPRESENTATIVE OR CLASS MEMBER.

23. **Miscellaneous.** This Agreement and its terms are considered confidential by each Party and may not be disclosed to third parties except to the extent disclosure is necessary for its implementation or otherwise required by law, and except to such Party's or its Affiliates' employees, auditors, lawyers or other agents or advisors or prospective lenders, investors or purchasers of all or substantially all of such Party's assets or any of its rights under this Agreement, provided such persons are required to keep the information that is disclosed in confidence. No delay in exercising, waiver, or forbearance of any provision of this Agreement will be held to be a waiver or forbearance or require a waiver or forbearance of such provision in the future. Any portion of this Agreement which may be deemed to be unenforceable or illegal will not affect the enforceability or legality of its remaining terms. This Agreement will not be construed as creating any third-party beneficiaries hereof. Any and all amounts payable by either Party under this Agreement will be in U.S. dollars. This Agreement shall be deemed to have been drafted by both Parties. Both Parties obtained advice from competent counsel before executing this Agreement. This Agreement and each Transaction Confirmation may be executed in one or more counterparts. Delivery of an executed counterpart by facsimile or electronic mail in portable document format (.pdf) shall have the same effect as delivery of an executed original.

24. **Entire Agreement, Amendment and Construction.** This Agreement constitutes the entire agreement between Buyer and Seller and supersedes any and all prior written or oral agreements and promises regarding the subject matter herein. This Agreement and all binding Transaction Confirmations (including any amendments to any of the foregoing) will be construed as a single integrated agreement. This Agreement cannot be amended except by written instrument signed by both Parties.

25. **Agreement Termination.** This Agreement may be terminated upon the earlier of: (a) by either Party upon the expiration of 30 days' prior Notice to the other Party if no Transactions are in effect and no obligations thereunder are outstanding, (b) automatically and without further action by the Parties, 2 years after the Effective Date if no Transactions are in effect and no obligations thereunder are outstanding, and (c) as otherwise set forth in this Agreement. Sections 6, 11, 12, 15 and 20 through 25 will survive any termination of this Agreement and continue in effect until the rights and obligations therein have been satisfied. It is further agreed that this Agreement, and/or any Transaction(s) then in effect, may be terminated by either Party upon the expiration of 30 days' prior Notice to the other Party if: (I) a Transporter files a tariff change or a court or governmental agency with jurisdiction (including, without limitation, the Federal Energy Regulatory Commission) causes a Transporter to initiate a tariff change in a manner that causes a Party to incur additional, unanticipated, material capital or operating costs (including, but not limited to, Transporter fixed and/or variable charges or fuel, or in connection with Transporter system operational limitations or restrictions) relating to its performance hereunder; and (II) the Parties are unable, after good faith negotiations, to renegotiate the terms hereof and/or those of an affected Transaction.

*[Remainder of Page Intentionally Left Blank; Signature Page Follows]*

**IN WITNESS WHEREOF** the Parties have executed this Agreement with effect from the Effective Date.

**["SELLER"]**

**["BUYER"]**

**Seller: Symmetry Energy Solutions, LLC**

**Buyer: Highland Community College - IL**

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_



## Symmetry Customer Portal

**Register for the Symmetry Customer Portal to access your information 24 hours a day:**

- View and Print Invoice and Account Payment History
- Manage account contacts and contact preferences
- View and Export Daily Usage and Monthly Billing volumes
- Sign up to receive your monthly Invoices as an attachment to an email
- Pay your Invoice securely online by clicking on the Invoice and Payment Options link
- View Energy Resources and Insights

**To register, go to <https://portal.symmetryenergy.com/> (formerly myCES) and click on the Register link or reach out to your sales rep directly. Maintaining contact details with Symmetry will ensure you stay up to date with the latest information, including critical account notices, emergency notifications, invoices and more. As some information may be time sensitive, please review and update your contact information today.**

## Paperless Invoicing

**We're now fully Paperless! Eliminating paper invoices helps us reduce waste and direct more resources to serving our customers. Invoices can now be received monthly via e-mail or online at our Customer Portal.**

## Payment Options

Method	Cost	Instructions
<b>Automatic Bank Draft (ABD)</b>	Free Maximum amount per transaction is \$9,999,999.99	Funds are automatically withdrawn monthly from your bank account in the amount of your current invoice on your invoice due date. To enroll, please complete the online authorization form at <a href="https://portal.symmetryenergy.com/">https://portal.symmetryenergy.com/</a> and hover over Invoice and Payment Options, selecting Sign Up for Auto Draft.
<b>Online</b>	Free Maximum amount per transaction is \$9,999,999.99	<b>Electronic Funds Transfer (EFT)</b> Funds are withdrawn from your bank account in the amount that you specify. There is no cost for this service! Payments are accepted by calling 866-578-7617 or online at <a href="https://portal.symmetryenergy.com/">https://portal.symmetryenergy.com/</a> . You will need your bank account and bank routing numbers, as well as the first seven-digits of your Symmetry Energy Solutions invoice number to process payment.
	\$57.95 per transaction* Maximum amount per transaction is \$3,000.00	<b>Credit/Debit Card</b> Credit and debit card payments are processed through HP Convenience Pay™, which charges a transaction fee. Discover, MasterCard and Visa cards are accepted. Payments are accepted by calling 866-578-7617 or online at <a href="https://portal.symmetryenergy.com/">https://portal.symmetryenergy.com/</a> . You will need the first seven-digits of your Symmetry Energy Solutions invoice number and card information to process payment. Please note that you do not need to be registered for the Symmetry Customer Portal to make this type of payment.
<b>Phone</b>	Cost varies by payment method	Call HP Convenience Pay at 866-578-7617. You will need the first seven-digits of your Symmetry Energy Solutions invoice number.
<b>Wire or ACH Transfer</b>	Free	Please use the wire or ACH transfer instructions and bank account number listed at the bottom of your current invoice, <b>WIRE TRANSFER (ABA #021000021) or ACH (ABA #111000614):</b> <b>Account Number: 100080578</b>


**symmetry**  
 ENERGY SOLUTIONS

## Quote Proposal

**Date: 02/21/2023**  
**Quote Number: 00161278**

The terms of this quote proposal are not binding and represent an offer from Seller to Buyer. Buyer may accept the terms of this quote proposal by providing written acceptance to Seller. In the event Buyer acknowledges the acceptance of this quote proposal and an agreement has been executed between Buyer and Seller, Seller will execute the quote proposal and issue a Transaction Confirmation to Buyer.

<b>Seller:</b>	<b>Symmetry Energy Solutions, LLC</b>	<b>Buyer:</b>	<b>Highland Community College - IL</b>
<b>Address:</b>	9811 Katy Fwy, Ste 1400	<b>Address:</b>	2998 W. Pearl City Rd.
<b>City/State:</b>	Houston, TX 77024-1296	<b>City/State:</b>	Freeport, IL 61032
<b>Attention:</b>	Scott Christiansen		
<b>Phone:</b>	(830) 795-2583		
<b>Fax:</b>	(713) 393-0263		
<b>Email:</b>	scott.christiansen@symmetryenergy.com		
<b>Base Contract No:</b>	EA-52268		

**Contract Price:** Market Rate for full requirements

**Delivery Period:** Begin: 06/01/2023      End: 05/31/2024

**Performance Obligation:** Firm

**Contract Quantity/Volume Commitment ("Volume Commitment"):** Full requirements

**Fees:** Applicable Taxes  
 Meter Reading Fee: \$ 40.00/month  
 Telemetering Install/Repair: Applicable Telemetering Install/Repair

**Dodd-Frank Transaction Classification:** Forward Contract

**Delivery Point:** Utility Citygate - Nicor

**Special Conditions:**

**Agency:** Buyer hereby appoints Seller to act as its limited agent for the following purposes, as deemed applicable by Seller to its performance of this Transaction: (a) making nominations to any Utility or Pipeline on Buyer's behalf; and (b) executing documents on Buyer's behalf commercially necessary for Seller to provide natural gas to Buyer.

**Renewal Period:** This Transaction Confirmation shall be in effect for the Initial Period set forth above, and will automatically renew or extend for successive 12 month periods (each a "Renewal Period") unless either party terminates this Transaction Confirmation by providing the other party with written notice at least 90 days prior to the end of the Initial Period or any Renewal Period, as applicable, or otherwise terminated in accordance with the Agreement.

Subject to prior credit approval by Seller, Buyer may elect to lock in the price for a portion of the Volume Commitment. The locked price and the quantity of Gas subject thereof must be mutually agreed upon by the Parties and the terms of any such agreement will be set forth in a separate fixed price transaction confirmation. Unless otherwise specifically provided in the fixed price transaction confirmation, quantities subject of a fixed price will also be subject to all transport charges, fuel, management fees, administrative charges or other fees or charges provided in this Transaction. If a fixed price transaction is for the sale and delivery of fixed price quantities of Gas in any Month(s) beyond the end of the Delivery Period hereof, then Buyer will be deemed to have elected to renew this Transaction and the Delivery Period for another term ("Renewal Term"). Not later than ninety (90) Days before the end of the then current Delivery Period, Seller may offer a revised Contract Price to Buyer to be effective during the Renewal Term. If Buyer accepts such revised price or if the parties mutually agree upon another applicable price to be effective during the Renewal Term, then Seller will issue a new base Transaction Confirmation for the Renewal Term reflecting the new Contract Price and any fixed price transaction for any Month during the Renewal Term will be deemed to be part of the new base Transaction Confirmation. If Seller has elected to revise the Contract Price for the Renewal Term and Buyer does not agree to the revised price, or if the parties have been unable to agree upon another price, then Seller may elect to proceed with this Transaction at the then effective price or terminate this Transaction as of the end of the then current Delivery Period. If Seller elects to terminate this Transaction, then Seller will provide written notice thereof to Buyer not less than thirty (30) Days before the end of the then current Delivery Period and any fixed price transactions for any Month(s) thereafter will be liquidated by Seller in accordance with the early termination provisions of the Base Contract in the course of unwinding this Transaction.

**Billing Type:** As of the Initial Period, Buyer's Facilities are designated with the Billing Type of Usage. The Billing Type shall determine the methodology Seller shall use to calculate Buyer's monthly invoices.

For Facilities designated with the Billing Type "Usage", Buyer shall be invoiced based on natural gas usage as reported by Utility, plus an amount equal to the "Unaccounted For Factor" (as defined in Utility's applicable tariffs).

For Facilities designated with the Billing Type "Deliveries", Buyer shall be invoiced based on the cumulative total volume of gas nominated by Seller for Buyer's Facilities during the applicable month ("Gas Account"). Each month, any difference between Buyer's Gas Account, including adjustments for the Unaccounted For Factor, and Buyer's usage as reported by Utility, shall be injected or withdrawn from "Buyer's Utility Storage Account" (as defined in Utility's applicable tariffs), as applicable.

If Buyer's Utility Storage Account has a positive balance, and such balance has been invoiced by Seller and paid for by Buyer, then Seller agrees to provide Buyer with a credit for the remaining natural gas if a) this Transaction is terminated for any reason, b) the designated Billing Type is changed from Deliveries to Usage, or c) Buyer's Facilities do not maintain the required telemetry status with the Utility and such Utility converts the Facilities to a different rate schedule or class. Such credit shall be calculated according to the following formula: positive volume balance multiplied by the "Index Price" less a \$0.035/MMBtu administrative fee.

For purposes hereunder, Index Price is defined as the "First of Month Index via Chicago Citygate" as published in the *Natural Gas Intelligence* Bld Week Survey for the applicable month for which the credit is calculated.

**Restrictive Order:** The Parties acknowledge that an operational flow order, curtailment order, critical notice, or other governmental or Transporter directive concerning actual or potential limits or restrictions on the transportation, delivery, receipt, and/or use of Gas to, by, or for Seller, Buyer, or its affiliates (the "RO Gas") or otherwise may occur (a "Restrictive Order") with little to no advance notification. Each Party will comply with and take all commercially reasonable actions necessary to mitigate the impact of such Restrictive Order, and any charges or penalties assessed by a governmental authority or Transporter will be borne by the Party who failed to mitigate or comply with such Restrictive Order. A Restrictive Order may require or may result in the need for (as reasonably determined by Seller), Seller to sell RO Gas to Buyer at a price subject to then-current market pricing, which may differ from the Contract Price, and any such RO Gas will be priced and invoiced to Buyer (including any charges or penalties applicable thereto) as reasonably determined by Seller and paid by Buyer in accordance with the Base Contract. Seller shall deliver or receive RO Gas on a commercially reasonable basis, including subject to available

transportation. For the avoidance of doubt, RO Gas will not be priced at the Contract Price and is not counted towards or subject to the Volume Commitment or Buyer's full requirements. If Buyer fails to comply with a Restrictive Order, Buyer shall be responsible for compensating Seller for Gas, at pricing reasonably determined by Seller, to provide RO Gas or otherwise cover Buyer's receipt or use of Gas. Notwithstanding anything herein, if because of any Restrictive Order Seller is unable to deliver or Buyer is unable to receive all or a portion of RO Gas, then Seller will have no obligation to credit to or repurchase from Buyer any portion of such RO Gas. For the purposes of this Transaction, a 'Transporter' is the Gas gathering or pipeline company, or local distribution company, transporting Gas for Seller or Buyer upstream or downstream, respectively, of the Delivery Point(s).

**Market Disruption:**

If a Market Disruption Event has occurred, then either Party may give Notice thereof to the other Party specifying in reasonable detail the event that has occurred constituting a Market Disruption Event. Upon the giving of such Notice, the Parties will negotiate in good faith to agree on a replacement price for the Index Price (or on a method for determining a replacement price for the Index Price) for the Affected Period. An 'Affected Period' is any part of the Delivery Period under a Transaction affected by the Market Disruption Event. If the Parties have not agreed on or before the second Business Day following the date of the Notice of the occurrence of the Market Disruption Event, then the replacement price for the Index Price will be determined within the next two following Business Days with each Party obtaining, in good faith and from non-affiliated market participants in the relevant market, two quotes for prices of natural gas for the Affected Period of a similar quality and quantity in the geographical location closest in proximity to the Delivery Point(s). Once the Parties obtain the quotes, the following methodology shall be used to determine the replacement price for the Index Price: (i) if each Party obtains two quotes, the arithmetic mean of the quotations, excluding the highest and lowest values, shall be utilized; (ii) if one Party obtains two quotes and the other Party only obtains one quote, the highest and lowest values shall be excluded and the remaining quotation shall be utilized; (iii) if both Parties each obtain one quote, the arithmetic mean of the quotations shall be utilized; or (iv) if only one Party is able to obtain a quote, the obtained quotation should be utilized. For the purposes of the foregoing sentence, if more than one quotation is the same as the other quotation, and such quotations are the highest and/or lowest values, only one of the quotations shall be excluded. 'Index Price' means the price or a factor of the price, based on a specified published index, agreed to in a Transaction as the Contract Price. 'Market Disruption Event' means, relating to an Index Price in a Transaction, any of the following events: (a) the failure of the index to announce or publish information necessary for determining the Index Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading on the exchange or market acting as the index; (c) the temporary or permanent discontinuance or unavailability of the index; (d) the temporary or permanent closing of any exchange acting as the index; or (e) a market abnormality, anomaly or other occurrence, other than during or caused by a Force Majeure Event, which causes the Index Price to no longer be reflective of the market price of Gas for the relevant market in the geographic area in which the Delivery Point(s) is located.

**Tariff:**

In addition to any provisions for early termination set forth in the Base Contract, the Parties agree that either Party may terminate this Transaction if: (i) a Transporter files a tariff change or a court or governmental agency with jurisdiction (including, without limitation, the Federal Energy Regulatory Commission) causes a Transporter to initiate a tariff change in a manner that causes a party to incur additional, unanticipated material capital or operating costs (including, but not limited to, Transporter fixed and/or variable charges or fuel, or in connection with Transporter system operational limitations or restrictions) relating to its performance hereunder; and (ii) the parties are unable, after good faith negotiations, to renegotiate this Transaction.

**Facilities:**

Account numbers are accurate as of the Date above and may be modified by Utility/Pipeline

<u>Facility Name</u>	<u>Account Number</u>	<u>Meter Number</u>	<u>Address</u>	<u>City</u>	<u>State</u>
Highland Community College	4250391000	3195602	2998 W Pearl City	Freeport	IL
Highland Community College	6118932000	3778600	NS Pearl City Rd	Freeport	IL

**Contract Price Symbols:** "GDD" means Gas Daily Midpoint for the applicable delivery Day for the specified location. "GDA" means the average of Gas Daily Midpoint for the applicable delivery Month for the specified location. "IF" means Inside FERC's Gas Market Report, Index, first publication for the Month, for the delivery Month for the specified location. "NYMEX" means the New York Mercantile Exchange gas futures contract, Last Day Settle price, unless otherwise specified. "NGI" means NGI's Bidweek Survey, AVG, for the applicable delivery Month for the specified location. "Market Rate" means a delivered market-based rate for natural gas that is reasonably reflective of the geographic area in which the Delivery Point is located. "Utility Cashout" and "Pipeline Cashout" means applicable rates prescribed by the local distribution company, gas gathering or pipeline company.



**AGENDA ITEM #VIII-D-5  
MARCH 30, 2023  
HIGHLAND COMMUNITY COLLEGE BOARD**

**PAYMENT OF BILLS AND AGENCY FUND REPORT  
FEBRUARY 2023**

**RECOMMENDATION OF THE PRESIDENT:** It is recommended that the Highland Community College Board approves the following Resolution for the payment of the February 2023 bills, including Board travel.

**RESOLUTION:** Resolved that Jill Janssen, Treasurer, be and she is hereby authorized and directed to make payments or transfers of funds as reflected by warrants 356976 through 357424 amounting to \$822,374.28, Automated Clearing House (ACH) debits W0000639 amounting to \$36,300.29, and Electronic Refunds of \$43,767.36, with 3 adjustments of \$175.00, such warrants amounting to \$902,266.93. Transfers of funds for payroll amounted to \$627,697.99.

Automated Clearing House (ACH) debits are Fifth Third Bank in the amount of \$36,300.29. Electronic Refunds are issued to students.

**BOARD ACTION:** \_\_\_\_\_

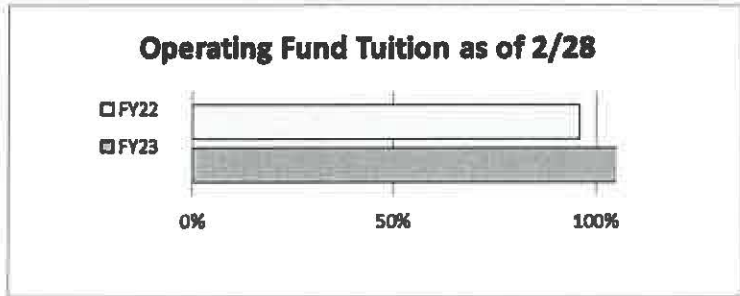
**HIGHLAND COMMUNITY COLLEGE  
AGENCY FUND  
Balance Sheet, February 28, 2023**

	<b>PREVIOUS BALANCE</b>	<b>RECEIPTS</b>	<b>DISBURSEMENTS</b>	<b>BALANCE</b>
<b>US BANK</b>	<b>\$341,466.04</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$341,466.04</b>
<b>FIFTH THIRD</b>	<b>11,091.67</b>	<b>0.00</b>	<b>0.00</b>	<b>11,091.67</b>
<b>UNION LOAN AND SAVINGS</b>	<b>176,338.92</b>	<b>0.00</b>	<b>0.00</b>	<b>176,338.92</b>
<b>TOTAL ASSETS</b>	<b>\$528,896.63</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$528,896.63</b>
<b>1010 HCC ORCHESTRA</b>	<b>\$0.00</b>			<b>\$0.00</b>
<b>1011 TRANSFER FUNDS</b>				
<b>1012 FORENSICS SCHOLAR</b>	<b>0.00</b>			<b>0.00</b>
<b>1013 INTEREST ON INVEST.</b>				
<b>1014 TRUSTS AND AGENCIES</b>				
<b>1015 CARD FUND</b>				
<b>1016 DIST #145 ROAD AND LOT</b>	<b>65,074.89</b>			<b>65,074.89</b>
<b>1017 HCC ROAD AND LOT</b>	<b>102,651.85</b>			<b>102,651.85</b>
<b>1018 YMCA ROAD AND LOT</b>	<b>95,984.52</b>			<b>95,984.52</b>
<b>1019 YMCA BLDG/MAINT</b>	<b>74,549.87</b>			<b>74,549.87</b>
<b>1020 HCC BLDG/MAINT</b>	<b>78,972.13</b>			<b>78,972.13</b>
<b>1021 YMCA/HCC INTEREST</b>	<b>100,571.70</b>			<b>100,571.70</b>
<b>1022 HCC SECTION 125 PLAN</b>	<b>11,091.67</b>			<b>11,091.67</b>
<b>1023 Ic3SP CAREER SERVICES</b>	<b>0.00</b>			<b>0.00</b>
<b>TOTAL</b>	<b>\$528,896.63</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$528,896.63</b>

**AGENDA ITEM #IX  
MARCH 30, 2023  
HIGHLAND COMMUNITY COLLEGE BOARD  
FY23**

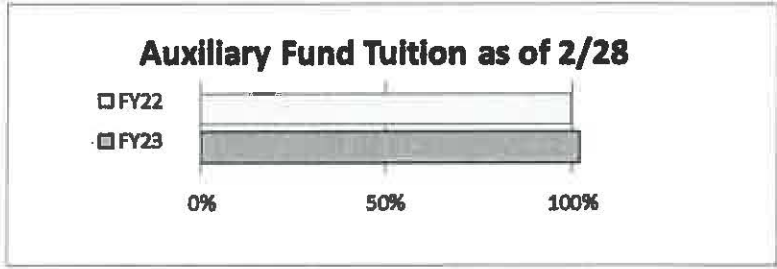
**TREASURER'S REPORT  
STATEMENTS OF REVENUE, EXPENDITURES, AND  
CHANGES IN FUND BALANCE**

- As of February 28th, we are 66% of the way into FY23.
- **Current Results as of Month End:** The following charts show the comparison of the FY23 financial results for various items, as labeled, to FY22 results as of February 28th. The FY22 bar is the year to date results as of February 28, 2022, divided by the actual year end results for FY22. The FY23 bar is the year to date results for February 28, 2023, divided by the annual budgeted amount for FY23.

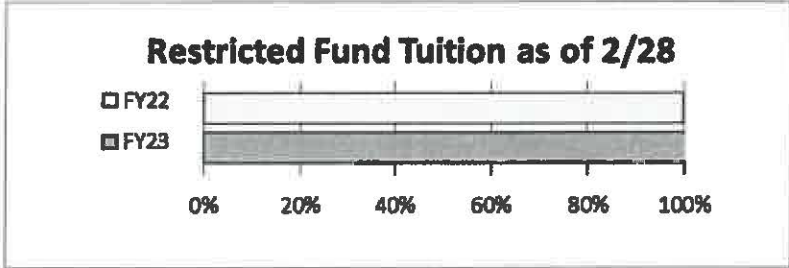


At the time, Operating Fund tuition appears to be about 5% or \$129,000 above budget. The majority of this amount, \$116,000, is truck driver training revenue.

The College has received the annual draw down from the Matching Grant, in the amount of \$355,160. This is reflected in Other Revenue in the Operating Funds.



At this time, Auxiliary Fund tuition revenue, which accounts for the per credit hour activity fee, appears to be about 2% or \$9,000 above the budgeted amount for FY23.



At this time, Restricted Fund tuition revenue, which accounts for the per credit hour technology fee, appears to be about 2% or \$11,000 above the budgeted amount for FY23.

AGENDA ITEM #IX  
MARCH 30, 2023  
HIGHLAND COMMUNITY COLLEGE  
FY23

OPERATING FUNDS (EDUCATIONAL AND OPER. & MAINT. FUNDS COMBINED)  
Statement of Revenue, Expenditures, & Changes in Fund Balance  
For the Period Ended February 28, 2023

<u>REVENUE:</u>	<u>Budget</u>	<u>Year- to-Date</u>	<u>Percent</u>
Local Taxes	\$7,237,650	3,549,560	49.0%
Credit Hour Grants	1,274,865	894,200	70.1%
Equalization	50,000	33,333	66.7%
ICCB Career/Tech Education	136,719	136,719	100.0%
ICCB Performance	15,000	-	0.0%
CPP Replacement Tax	1,285,000	714,283	55.6%
Federal Sources	72,000	64,017	88.9%
Tuition & Fees	4,378,900	4,615,084	105.4%
Sales & Services	29,550	18,343	62.1%
Facilities Revenue	111,850	62,418	55.8%
Interest on Investments	72,000	134,525	186.8%
Non-Govt. Gifts, Grants	355,161	355,160	100.0%
Miscellaneous	44,376	40,260	90.7%
Total Revenue	\$15,063,071	\$10,617,902	70.5%
<u>EXPENDITURES:</u>			
Salaries	\$9,925,107	\$5,747,705	57.9%
Employee Benefits	2,330,670	1,652,190	70.9%
Contractual Services	1,279,288	1,038,566	81.2%
Materials & Supplies	934,410	577,297	61.8%
Conference & Meeting	269,788	127,107	47.1%
Fixed Charges	62,390	47,428	76.0%
Utilities	581,716	511,729	88.0%
Capital Outlay	38,745	32,337	83.5%
Other Expenditures	137,957	240,093	174.0%
Transfers (In) Out	(497,000)	-	0.0%
Total Expenditures	\$15,063,071	\$9,974,452	66.2%
Excess of Revenues Over Expenditures	\$0	\$643,450	
Fund Balance 7/1/22	6,771,616	6,771,616	
Fund Balance 2/28/23	\$6,771,616	\$7,415,066	

**AGENDA ITEM #IX  
MARCH 30, 2023  
HIGHLAND COMMUNITY COLLEGE BOARD  
FY23**

**OPERATIONS AND MAINTENANCE FUND (RESTRICTED)  
Statement of Revenue, Expenditures, & Changes in Fund Balance  
For the Period Ended February 28, 2023**

<b>REVENUE:</b>	<b>Budget</b>	<b>Year to-Date</b>	<b>Percent</b>
-----	-----	-----	-----
Local Taxes	\$957,500	461,343	48.2%
Interest	-	260,752	100.0%
Bond Proceeds	7,245,000	7,354,000	100.0%
-----	-----	-----	-----
<b>Total Revenue</b>	<b>\$8,202,500</b>	<b>\$8,076,095</b>	<b>100.0%</b>
<b>EXPENDITURES:</b>			
-----			
Contractual Services	120,800	156,459	0.0%
Capital Outlay	10,692,319	1,891,818	17.7%
Other	-	169,534	100.0%
-----	-----	-----	-----
<b>Total Expenditures</b>	<b>10,813,119</b>	<b>2,217,811</b>	<b>20.5%</b>
Excess of Revenues Over Expenditures	(\$2,610,619)	\$5,858,284	
Fund Balance 7/1/22	\$4,054,017	\$4,054,017	
-----	-----	-----	
Fund Balance 2/28/23	\$1,443,398	\$9,912,301	

AGENDA ITEM #IX  
MARCH 30, 2023  
HIGHLAND COMMUNITY COLLEGE BOARD  
FY23

AUXILIARY ENTERPRISE FUND  
Statement of Revenue, Expenditures, & Changes in Fund Balance  
For the Period Ended February 28, 2023

REVENUE:	Budget	Year to-Date	Percent
Tuition and Fees	\$425,000	\$434,475	102.2%
Bookstore Sales	425,000	377,558	88.8%
Athletics	41,040	17,800	43.4%
Other	70,350	139,587	198.4%
<b>Total Revenue</b>	<b>\$961,390</b>	<b>\$969,420</b>	<b>100.8%</b>
<b>EXPENDITURES:</b>			
Salaries	\$323,600	\$197,208	60.9%
Employee Benefits	33,433	29,522	88.3%
Contractual Services	120,330	65,086	54.1%
Materials & Supplies	539,635	482,538	89.4%
Conference & Meeting	322,063	212,318	65.9%
Fixed Charges	13,459	11,314	84.1%
Utilities	17,295	765	4.4%
Capital Outlay	650	6,707	1031.8%
Other Expenditures	25,773	31,632	122.7%
<b>Total Expenditures</b>	<b>\$1,396,238</b>	<b>\$1,037,090</b>	<b>74.3%</b>
Excess of Revenues Over Expenditures	(\$434,848)	(\$67,670)	
Fund Balance 7/1/22	\$1,471,702	\$1,471,702	
Fund Balance 2/28/23	\$1,036,854	\$1,404,032	

AGENDA ITEM #IX  
MARCH 30, 2023  
HIGHLAND COMMUNITY COLLEGE BOARD  
FY23

RESTRICTED PURPOSE FUND  
Statement of Revenue, Expenditures, & Changes in Fund Balance  
For the Period Ended February 28, 2023

<u>REVENUE:</u>	<u>Budget</u>	<u>Year-to-Date</u>	<u>Percent</u>
Vocational Education	\$153,441	74,681	48.7%
Adult Education	253,516	116,490	45.9%
Other Illinois Sources	131,865	326,895	247.9%
Department of Education	3,624,293	1,743,024	48.1%
Other Federal Sources	565,013	104,175	18.4%
Tuition & Fees	520,000	531,025	102.1%
Sales & Service Fees	24,500	4,699	19.2%
Interest	20,000	47,217	236.1%
Non-govt. Gifts, Grants	376,614	168	0.0%
Other	298,951	203,061	67.9%
	-----	-----	-----
Total Revenue	\$5,968,193	3,151,435	52.8%
 <u>EXPENDITURES:</u>			
Salaries	\$1,363,927	\$876,074	64.2%
Employee Benefits	358,188	231,841	64.7%
Contractual Services	836,554	285,944	34.2%
Materials & Supplies	281,409	183,931	65.4%
Conference & Meeting	140,706	90,130	64.1%
Fixed Charges	26,758	708	2.6%
Utilities	4,872	-	0.0%
Capital Outlay	1,036,653	327,051	31.5%
Other Expenditures	430,040	215,281	50.1%
Financial Aid	2,588,010	1,251,936	48.4%
Transfers out (in)	427,000	-	0.0%
	-----	-----	-----
Total Expenditures	\$7,494,117	\$3,462,896	46.2%
Excess of Expenditures Over Revenue	(\$1,525,924)	(\$311,461)	
Fund Balance 7/1/22	2,235,248	2,235,248	
	-----	-----	
Fund Balance 2/28/23	\$709,324	\$1,923,787	



AGENDA ITEM #IX  
MARCH 30, 2023  
HIGHLAND COMMUNITY COLLEGE BOARD  
FY23

AUDIT FUND  
Statement of Revenue, Expenditures, & Changes in Fund Balance  
For the Period Ended February 28, 2023

REVENUE:	Budget	Year to-Date	Percent
Local Taxes	\$60,000	\$26,297	43.8%
Total Revenue	\$60,000	\$26,297	43.8%
EXPENDITURES:			
Contractual Services	\$57,000	\$58,000	101.8%
Total Expenditures	\$57,000	\$58,000	101.8%
Excess of Revenues Over Expenditures	\$3,000	(\$31,703)	
Fund Balance 7/1/22	(\$2,785)	(\$2,785)	
Fund Balance 2/28/23	\$215	(\$34,488)	

AGENDA ITEM #IX  
MARCH 30, 2023  
HIGHLAND COMMUNITY COLLEGE BOARD  
FY23

BOND AND INTEREST FUND  
Statement of Revenue, Expenditures, & Changes in Fund Balance  
For the Period Ended February 28, 2023

REVENUE:	Budget	Year to-Date	Percent
Local Taxes	\$1,831,050	912,601	49.8%
Total Revenue	\$1,831,050	\$912,601	49.8%
EXPENDITURES:			
Fixed Charges	\$1,776,050	1,708,975	96.2%
Total Expenditures	\$1,776,050	\$1,708,975	96.2%
Excess of Revenues Over Expenditures	\$55,000	(\$796,374)	
Fund Balance 7/1/22	\$870,056	\$870,056	
Fund Balance 2/28/23	\$925,056	\$73,682	

AGENDA ITEM #IX  
MARCH 30, 2023  
HIGHLAND COMMUNITY COLLEGE BOARD  
FY23

LIABILITY, PROTECTION, AND SETTLEMENT FUND  
Statement of Revenue, Expenditures, & Changes in Fund Balance  
For the Period Ended February 28, 2023

REVENUE:	Budget	Year to-Date	Percent
-----	-----	-----	-----
Local Taxes	\$1,327,500	\$635,022	47.8%
-----	-----	-----	-----
Total Revenue	\$1,327,500	\$635,022	47.8%
EXPENDITURES:			
-----			
Salaries	\$310,613	\$202,102	65.1%
Employee Benefits	309,017	210,636	68.2%
Contractual Services	389,425	375,260	96.4%
Materials & Supplies	16,300	8,691	53.3%
Conference & Meetings	23,220	14,460	62.3%
Fixed Charges	251,122	252,850	100.7%
Utilities	36,400	2,705	7.4%
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Total Expenditures	\$1,336,097	\$1,066,704	79.8%
Excess of Revenues Over Expenditures	(\$8,597)	(\$431,682)	
Fund Balance 7/1/22	\$414,929	\$414,929	
-----	-----	-----	
Fund Balance 2/28/23	\$406,332	(\$16,753)	

**AGENDA ITEM #XI-B-1  
MARCH 30, 2023  
HIGHLAND COMMUNITY COLLEGE BOARD**

**MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN  
HIGHLAND COMMUNITY COLLEGE (BOARD OF TRUSTEES) AND  
HIGHLAND COMMUNITY COLLEGE FACULTY SENATE, AFFILIATED WITH  
AFT/IFT LOCAL 1957 REGARDING EXTENSION OF  
ACADEMIC TECHNOLOGY RESOURCES VACANCY INTERIM PLAN**

**RECOMMENDATION OF THE PRESIDENT:** It is recommended that the Highland Community College Board approves the attached Memorandum of Understanding between Highland Community College (Board of Trustees) and Highland Community College Faculty Senate, affiliated with AFT/IFT Local 1957 extending the interim plan for the Coordinator of Academic Technology Resources due to a continued vacancy. It is further recommended that Mr. Michael Skwara, User Services Librarian/Coordinator of Learning Management System, continues to serve as a temporary replacement for the Coordinator, Academic Technology Resources position, provide mentoring and training to the new person, and receive six hours of overload pay through June 16, 2023.

**BACKGROUND:** With the departure of the full-time Coordinator, Academic Technology Resources in December 2021, many of the position’s responsibilities transitioned to Michael Skwara, User Services Librarian/Coordinator of Learning Management System. The attached agreement outlines the responsibilities and compensation while Mr. Skwara continues to fulfill these responsibilities on a temporary basis and provides mentoring and training to the new person.

**BOARD ACTION:** \_\_\_\_\_

**Memorandum of Agreement**  
**Between**  
**Highland Community College**  
**and**  
**Illinois Federation of Teachers, AFT, AFL-CIO; Local 1957,**  
**Highland Community College Faculty Senate**

March 14, 2023

**ISSUE:**

This Memorandum of Agreement is entered into by the parties to temporarily extend the November 22, 2022 Memorandum of Agreement that clarified and codified the increased responsibilities currently being assumed by User Services Librarian/Coordinator of Learning Management System, Michael Skwara. The November 22, 2022 Memorandum of Agreement is set to expire on March 17, 2023.

**BACKGROUND:**

Effective December 8, 2021, Highland Community College has been without a full-time Coordinator, Academic Technology Resources. In response and since that time, User Services Librarian/Coordinator of Learning Management System, Michael Skwara, took on the bulk of responsibilities and duties that were previously attributed to the Coordinator, Academic Technology Resources. The revised duties and structure of the Coordinator, Academic Technology Resources have been finalized and the College has begun the search process for a permanent position.

**AGREEMENT:**

1. User Services Librarian/Coordinator of Learning Management System, Michael Skwara, will continue to serve as a temporary replacement for the Coordinator, Academic Technology Resources position and provide mentoring and training for the new person from March 17, 2023 through June 16, 2023.
2. Skwara will receive compensation amounting to six (6) hours of overload pay for the duration of his work in this position.
3. Both parties understand that the circumstances surrounding this agreement are unique and do not constitute a precedent for future negotiations.

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*Board Chair / date*

*Chelsea Martini*

3-14-23

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*Faculty Senate President / date*