

SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS

OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, & 30

1. REQUISITION NUMBER
NCUA-RQ19-PAC006

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2. CONTRACT NO.
NCUA19C00072

3. AWARD/
EFFECTIVE DATE
12/20/2019

4. ORDER NUMBER

5. SOLICITATION NUMBER
NCUA19R0050

6. SOLICITATION
ISSUE DATE

7. FOR SOLICITATION
INFORMATION CALL:

a. NAME
JOHN ZIU

b. TELEPHONE NUMBER
(b)(6)

(No collect calls)

8. OFFER DUE DATE/LOCAL TIME

9. ISSUED BY CODE DPF

Chief Financial Officer
NCUA
1775 Duke Street
Alexandria VA 22314

10. THIS ACQUISITION IS UNRESTRICTED OR SET ASIDE: % FOR:

SMALL BUSINESS WOMEN-OWNED SMALL BUSINESS
 HUBZONE SMALL BUSINESS (WOSB) ELIGIBLE UNDER THE WOMEN-OWNED SMALL BUSINESS PROGRAM NAICS: 541613
 SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS EDWOSB 8(A) SIZE STANDARD: \$16.5

11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED
 SEE SCHEDULE

12. DISCOUNT TERMS

13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)

13b. RATING

14. METHOD OF SOLICITATION
 RFQ IFB RFP

15. DELIVER TO CODE

Multiple Destinations

16. ADMINISTERED BY CODE DPF

Chief Financial Officer
NCUA
1775 Duke Street
Alexandria VA 22314

17a. CONTRACTOR/OFFEROR CODE

DANIEL J EDELMAN INC
Attn: NCUA 8F338
EDELMAN
200 E RANDOLPH ST FL 63
CHICAGO IL 60601-6705

FACILITY CODE

18a. PAYMENT WILL BE MADE BY CODE NCUA NATL ACCTG

Enterprise Services Center
NCUA AP BRANCH, AMZ-160
PO BOX 25710
OKLAHOMA CITY OK 73125

TELEPHONE NO.

17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER

18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED SEE ADDENDUM

19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
	<p>DUNS Number: 072324379</p> <p>The contractor shall provide Branding and Strategic Communications services in accordance with the contractor's attached Statement of Work, NCUA Clauses, and Nondisclosure Agreement. The NCUA's Statement of Objectives under solicitation NCUA-19-R-0050, and the contractor's technical proposal dated November 18, 2019, are hereby incorporated by reference.</p> <p>Service OA TAS: YES</p> <p>Continued ...</p> <p>(Use Reverse and/or Attach Additional Sheets as Necessary)</p>				

25. ACCOUNTING AND APPROPRIATION DATA
See schedule

26. TOTAL AWARD AMOUNT (For Govt. Use Only)
\$490,122.66

27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4. FAR 52.212-3 AND 52.212-5 ARE ATTACHED. ADDENDA ARE ARE NOT ATTACHED.

27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4. FAR 52.212-5 IS ATTACHED. ADDENDA ARE ARE NOT ATTACHED.

28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN 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.

29. AWARD OF CONTRACT: _____ OFFER DATED _____ YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS:

30a. SIGNATURE OF OFFEROR/CONTRACTOR

(b)(6)

31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER)

JOHN ZIU Digitally signed by JOHN ZIU
Date: 2019.12.20.19:06:34 -05'00'

30b. NAME AND TITLE OF SIGNER (Type or print)

Vikram Tohan / EVP Finance

30c. DATE SIGNED

12/20/19

31b. NAME OF CONTRACTING OFFICER (Type or print)

JOHN ZIU

31c. DATE SIGNED

19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
	Accounting Info: (b)(4) Period of Performance: 12/20/2019 to 06/20/2020				
00001	Deliverable 1: Agency Brand Strategy and Brand Identity Assessment and Evaluation Obligated Amount: (b)(4)				(b)(4)
00002	Deliverable 2: Agency Brand Strategy and Brand Identity Assessment and Evaluation -- Comparison to other Federal Financial Regulators and Similar Public and Private Sector Entities Obligated Amount: (b)(4)				(b)(4)
00003	Deliverable 3: New Brand Strategy and Brand Identity Obligated Amount: (b)(4)				(b)(4)
00004	Strategic Communications to include the following: The contractor shall provide in real time or in the most expedited manner possible strategic communication support services concerning how best to respond to stakeholders verbally or in writing through television, newspapers, magazines, radio, the Internet and Continued ...				(b)(4)

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
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32e. 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
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38. S/R ACCOUNT NUMBER	39. S/R VOUCHER NUMBER	40. PAID BY
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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 (YY/MM/DD)	42d. TOTAL CONTAINERS

CONTINUATION SHEET

REFERENCE NO. OF DOCUMENT BEING CONTINUED
 NCUA19C00072

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NAME OF OFFEROR OR CONTRACTOR
 DANIEL J EDELMAN INC

ITEM NO. (A)	SUPPLIES/SERVICES (B)	QUANTITY (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)
	<p>social media, both proactively and in response to inquiries. The contractor shall provide in real time suggested tactical communications content, or the review of content prepared by the NCUA, regarding key messaging on topics critical to the NCUA and key stakeholders verbally or in writing through television, newspapers, magazines, radio, the Internet and social media, both proactively and in response to inquiries. The contractor shall provide training to agency principals and staff in order for them to respond to media interviews and delivery testimony before congress on matters of vital importance effectively. The contractor shall provide other strategic communications related services as mutually agreed upon.</p> <p>Senior Vice President, Crisis & Risk labor category at (b)(4)/hour. The amount shown is a not-to-exceed ceiling amount. Obligated Amount: (b)(4)</p>				
00005	<p>Deliverable 4: Branding Book -- Guidelines and Standards (Option Line Item)</p>				(b)(4)
00006	<p>Deliverable 5: Brand Strategy and Brand Identity Implementation Plan (Option Line Item)</p>				(b)(4)
00007	<p>Optional Task 1 Qualitative Research (Option Line Item)</p>				(b)(4)
00008	<p>Optional Task 2 Message Framework (Option Line Item)</p>				(b)(4)
	<p>The obligated amount of award: (b)(4). The total for this award is shown in box 26.</p>				

STATEMENT OF WORK

INTRODUCTION

Serving a broad base of members from all walks of life and income levels, credit unions are a catalyst for financial inclusion and promote economic security. Owned by members, credit unions provide everyday financial products and services with a goal of helping those members and their communities achieve their financial goals. As Chairman Hood recently noted, “Credit unions are on the frontline of providing affordable access and opportunity to the financial system.”

Needless to say, America’s credit unions play a vital role in the U.S. financial system and the National Credit Union Administration (NCUA) has the critical charge of protecting financial institutions and the consumers who own them.

However, NCUA faces significant challenges that are common for government agencies and financial services agencies in particular. Specifically, it is challenged with:

(b)(4)

To meet these challenges head-on, (b)(4)

(b)(4)

The agency’s brand must also enable its audiences to recognize who the agency is and what it ultimately stands for.

(b)(4); (b)(5) the brand strategy and implementation plan Edelman provides will:

(b)(4)

Our federal, strategic planning, creative, and financial services experts are ready to begin this work on day one and look forward to partnering with NCUA on this effort.

OUR APPROACH

(b)(4)

As noted in our oral presentation, our approach will be implemented in four distinct phases (Figure 1).

(b)(4)

Each phase is described in detail in the sections below. Within each section, we have bolded the following deliverables from the RFP and proposed two optional deliverables:

(b)(4)

(b)(4)

NCUA Clauses Table of Contents

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9.1304-1 Organizational Conflicts of Interest (DEC 2018)

(a) *Purpose.* The purpose of this clause is to ensure that the contractor (1) is not biased because of its financial, contractual, organizational, or other interests which relate to the work under this contract, and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this contract.

(b) *Scope.* The restrictions described herein shall apply to performance or participation by the contractor and any of its partners, affiliates or their successors in interest (after this collectively referred to as the "contractor") in the activities covered by this clause as a prime contractor, subcontractor, cosponsor, joint venture, consultant, or in any similar capacity. For the purpose of this clause, affiliation occurs when a business concern is controlled by or has the power to control another or when a third party has the power to control both.

(1) Use of Contractor's Work Product.

(i) The contractor shall be ineligible to participate in any capacity in National Credit Union Administration (NCUA) contracts, subcontracts, or proposals therefor (solicited and unsolicited) which stem directly from the contractor's performance of work under this contract for a period of 1 year after completion of this contract. Furthermore, unless so directed in writing by the Contracting Officer, the contractor shall not perform any advisory and assistance services work under this contract on any of its products or services or the products or services of another firm if the contractor is or has been substantially involved in their development or marketing. Nothing in this subparagraph shall preclude the contractor from competing for follow-on contracts for advisory and assistance services.

(ii) If, under this contract, the contractor prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions, the contractor is ineligible to perform or participate in any capacity in any contractual effort which is based on such statement of work or specifications. The contractor shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by the Contracting Officer, in which case the restriction in this subparagraph shall not apply.

(iii) Nothing in this clause precludes the contractor from offering or selling its standard commercial items to the Government.

(2) Access to and use of information.

(i) If the contractor, in the performance of this contract, obtains access to information, such as Corporate plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or data which has not been released or otherwise made available to the public, the contractor agrees that without prior written approval of the Contracting Officer it shall not:

(A) use such information for any private purpose unless the information has been released or otherwise made available to the public;

(B) compete for work for the NCUA based on such information for a period of six months after either the completion of this contract or until such information is released or otherwise made available to the public, whichever is first;

(C) submit an unsolicited proposal to the Government which is based on such information until one year after such information is released or otherwise made

available to the public; and

(D) release such information unless such information has previously been released or otherwise made available to the public by the NCUA.

(ii) In addition, the contractor agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 or other confidential or privileged technical, business, or financial information under this contract, it shall treat such information in accordance with all restrictions imposed on disclosure and use of such information.

(c) *Disclosure after award.*

(1) The contractor agrees that if changes, including additions, to the facts disclosed by it prior to award of this contract, occur during the performance of this contract, it shall make an immediate and full disclosure of such changes in writing to the Contracting Officer. Such disclosure may include a description of any action which the contractor has taken or proposes to take to avoid, neutralize, or mitigate any resulting conflict of interest. The NCUA may, however, terminate the contract for convenience if it deems such termination to be in the best interest of the Government.

(2) In the event that the contractor was aware of facts required to be disclosed or the existence of an actual or potential organizational conflict of interest and did not disclose such facts or such conflict of interest to the Contracting Officer, the NCUA may terminate this contract for default.

(d) *Remedies.* For breach of any of the above restrictions or for nondisclosure or misrepresentation of any facts required to be disclosed concerning this contract, including the existence of an actual or potential organizational conflict of interest at the time of or after award, the Government may terminate the contract for default, disqualify the contractor from subsequent related contractual efforts, and pursue such other remedies as may be permitted by law or this contract.

(e) *Waiver.* Requests for waiver under this clause shall be directed in writing to the Contracting Officer, and shall include a full description of the requested waiver and the rationale supporting the request. If it is determined to be in the best interests of the Government, the Contracting Officer may grant the waiver, after consultation with the NCUA Office of General Counsel.

(f) *Subcontracts.*

(1) The contractor shall include a clause, substantially similar to this clause, including this paragraph (f), in subcontracts expected to exceed \$100,000. The terms "contract," "contractor," and "Contracting Officer" shall be appropriately modified to preserve the Government's rights.

(2) Prior to the award under this contract of any such subcontracts for advisory and assistance services, the contractor shall obtain from the proposed subcontractor or consultant a disclosure of all existing or potential organizational conflicts of interest and shall determine in writing whether the interests disclosed present a significant potential for an organizational conflict of interest. Where an actual or significant potential organizational conflict of interest is identified, the contractor shall take actions to avoid, neutralize, or mitigate the organizational conflict to the satisfaction of the contractor. If the conflict cannot be avoided or neutralized, the contractor must obtain the approval of the Contracting Officer prior to entering into the subcontract.

9.3000-1 General Contract Terms and Conditions (DEC 2018)

(a) *Primary Government Roles and Responsibilities.* This paragraph describes the roles and responsibilities of

individuals and/or authorized users who will be the primary Points of Contact (POC) for the Government on matters regarding contract administration as well as other administrative information. The Government reserves the right to unilaterally change any of these individual assignments at any time. The individuals name and contact information will be provided at contract award.

(1) *Contracting Officer (CO)*. The CO, within the Division of Procurement and Facilities Management (DPFM), has the overall responsibility for administration of the contract. The CO, without right of delegation, is the only authorized individual to take actions on behalf of the Government to amend, modify or deviate from the contract terms, conditions, requirements, specifications, details and/or delivery schedules.

(2) *Contracting Officer's Representative (COR)*. The COR is responsible for the receipt and acceptance of the contract deliverables and reports and past performance reporting for the contract. The COR supports the CO in the general management of the program. The COR will be identified by the CO through a written designation. A copy of the letter of designation with specific duties and responsibilities will be provided to the Contractor.

The COR will represent the CO in the administration of technical details within the scope of the contract. The COR is also responsible for the final inspection and acceptance of all deliverables and reports. The COR is not otherwise authorized to make any representations or commitments of any kind on behalf of the CO or the Government. The COR does not have authority to alter the Contractor's obligations or to change the specifications, price, terms or conditions. If, as a result of technical discussions, it is desirable to modify the contract obligations or the specification, changes will be issued in writing and signed by the CO.

(b) *Submission of Invoices.*

(1) The Contractor shall submit an electronic invoice (*e.g. pdf file*) via email to:

(b)(4) the Contracting Officer, and the Contracting Officer's Representative.

- (2) An invoice must include—
- (i) Name and address of the Contractor;
 - (ii) Invoice date and number;
 - (iii) Contract or task order / delivery order / purchase order number;
 - (iv) Line item number as identified in the contract, describing the goods or services, and the amount invoiced for each line item number;
 - (v) Description, quantity, unit of measure, unit price, extended price of goods delivered or services performed, and the total invoice amount;
 - (vi) Payment terms (discounts for prompt payment);
 - (vii) Remittance address (must be the same as that in the contract or in a proper notice of assignment);
 - (viii) Name, title, email address, and phone number of person to notify in event of defective invoice;
 - (ix) Shipping information (*e.g.* shipment number, date of shipment, bill of lading number and weight of shipment). Shipping charges, if any, must be shown as a separate item on the invoice;
 - (x) Any other information or documentation required by the contract, which may include:

- (A) For time and materials or labor hour contracts, copies of time sheets in support of direct labor charges;
- (B) Invoices for contract entered into in the receivership capacity, while not subject to the Prompt Payment Act, must include allocation of all hours and expenses to financial institution number and asset name/number, if applicable.

(3) Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR Part 1315.

(c) *Inspection/Acceptance.* The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. If repair/replacement or reperformance will not correct the defects or is not possible, the government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its post-acceptance rights --

- (1) Within a reasonable time after the defect was discovered or should have been discovered; and
- (2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(d) *Assignment.* The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. § 3727). However, when a third party makes payment (e.g., use of the Government-wide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.

(e) *Changes.* Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(f) *Disputes.* This contract is subject to 41 U.S.C. chapter 71, Contract Disputes. Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the process outlined in this paragraph.

(1) Claim, as used in this paragraph, refers to a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising or relating to this contract. However, a claim exceeding \$100,000 is not a claim under 41 U.S.C. chapter 71 until certified. A voucher, invoice, or other routine request for payment not in dispute when submitted is not considered a claim. The submission may be converted to a claim under 41 U.S.C chapter 71 by complying with the submission and certification requirements of this section if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(2) A claim by the Contractor shall be made in writing and, unless otherwise stated in the contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A

claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

- (i) The Contractor shall provide the certification specified in paragraph (1) of this section when submitting any claim exceeding \$100,000.
- (ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.
- (iii) The certification shall state as follows, "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am authorized to certify the claim on behalf of the Contractor."

(3) The certification may be executed by any person authorized to bind the Contractor with respect to the claim.

(4) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(5) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use an alternative dispute resolution (ADR). If the Contractor refuses to offer an ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.

(6) The Government shall pay interest on the amount found due and unpaid from

- (i) The date the Contracting Officer receives the claim (certified, if required); or
- (ii) The date that payment otherwise would be due, if that date is later, until the date of payment.

(7) With regard to claims having defective certifications, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury, as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claims and then at the applicable rate for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(8) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(g) *Excusable delays.* The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence, such as acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy

such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(h) *Patent indemnity.* The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(i) *Payment.*

(1) *Items accepted.* Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

(2) *Discount.* In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(3) *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall—

(i) Remit the overpayment amount to:

(b)(4)

Search: NCUA One-Time Payments

Purpose of Payment: Supplier Overpayment

(A) Circumstances of the overpayment (*e.g.*, duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(B) Affected contract number and delivery order number, if applicable;

(C) Affected line item or subline item, if applicable; and

(D) Contractor point of contact.

(ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(4) *Interest.*

(i) All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in 41 U.S.C. 7109, which is applicable to the period in which the amount becomes due, as provided in (i)(4)(v) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(ii) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(iii) Final decisions. The Contracting Officer will issue a final decision if—

(A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt within 30 days;

(B) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts

were not repaid because the Contractor has requested an installment payment agreement; or

(C) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer

(iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(v) Amounts shall be due at the earliest of the following dates:

(A) The date fixed under this contract.

(B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(vi) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—

(A) The date on which the designated office receives payment from the Contractor;

(B) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(j) *Risk of loss.* Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination or f.o.b. destination, within consignee's premises.

(k) *Taxes.* The contract price includes all applicable Federal, State, and local taxes and duties, as applicable.

(l) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate have resulted from the termination to the satisfaction of the Government using its standard record keeping system. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) *Title*. Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(o) *Warranty*. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(p) *Limitation of liability*. Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(q) *Other compliances*. The Contractor shall comply with all Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

(r) *Compliance with laws unique to Government contracts*. The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. chapter 37, Contract Work Hours and Safety Standards; 41 U.S.C. chapter 87, Kickbacks; 41 U.S.C. 4712 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. chapter 21 relating to procurement integrity.

(s) *Order of precedence*. Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

- (1) The schedule of supplies/services.
- (2) The Assignments, Disputes, Payments, Invoice, Other Compliances, Compliance with Laws Unique to Government Contracts, and Unauthorized Obligations paragraphs of this clause.
- (3) Addenda to this solicitation or contract, including any license agreements for computer software.
- (4) Solicitation provisions if this is a solicitation.
- (5) Other paragraphs of this clause.
- (6) The contract form.
- (7) Other documents, exhibits, and attachments.
- (8) The specification.

(t) *Unauthorized Obligations*.

(1) Except as stated in paragraph (s)(2) of this clause, when any supply or service acquired under this contract is subject to any End Use License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause requiring the Government to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:

- (i) Any such clause is unenforceable against the Government.

(ii) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument or agreement is invoked through an “I agree” click box or other comparable mechanism (e.g., “click-wrap” or “browse-wrap” agreements), execution does not bind the Government or any Government authorized end user to such clause.

(iii) Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.

(2) Paragraph (s)(1) of this clause does not apply to indemnification by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

(u) *Incorporation by reference.* The Contractor’s representations and certifications, including those completed electronically via the System for Award Management (SAM) and the NCUA representations and certifications, are incorporated by reference into the contract.

(v) *Dissemination of Contract Performance Information.* The Contractor must not publish, permit to be published, or distribute for public consumption, any information, oral or written, concerning the results or conclusions made pursuant to the performance of this contract, without the prior written consent of the Contracting Officer. Two copies of any material proposed to be published or distributed must be submitted to the Contracting Officer for approval.

(w) *Contractor Advertisements, Publicizing Award, and News Releases.*

(1) Under no circumstances shall the Contractor, or anyone acting on behalf of the Contractor, refer to the supplies, services, or equipment furnished pursuant to the provisions of this contract in any publicity/ news release or commercial advertising without first obtaining explicit written consent to do so from the Contracting Officer.

(2) The Contractor agrees not to refer to awards in commercial advertising in such manner as to state or imply that the product or service provided is endorsed or preferred by the Federal Government or is considered by the Government to be superior to other products or services.

(x) *Whistleblower Protections.* Contractor agrees to inform its employees in writing of the rights and remedies provided under 41 U.S.C. 4712, regarding protection from reprisal for disclosure of certain information, in the predominant native language of its workforce.

9.3000-2 General Contract Terms and Conditions—Alternate I (DEC 2018)

When a time-and-materials or labor-hour contract or CLIN is contemplated, the following paragraphs (a), (e), (i), (l), and (m) apply in lieu of those in the basic General Terms and Conditions clause.

(a) *Inspection/Acceptance.*

(1) The Government has the right to inspect and test all materials furnished and services performed under this contract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. The Government may also inspect the plant or plants

of the Contractor or any subcontractor engaged in contract performance. The Government will perform inspections and tests in a manner that will not unduly delay the work.

(2) If the Government performs inspection or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

(3) Unless otherwise specified in the contract, the Government will accept or reject services and materials at the place of delivery as promptly as practicable after delivery, and they will be presumed accepted 60 days after the date of delivery, unless accepted earlier.

(4) At any time during contract performance, but not later than 6 months (or such other time as may be specified in the contract) after acceptance of the services or materials last delivered under this contract, the Government may require the Contractor to replace or correct services or materials that at time of delivery failed to meet contract requirements. Except as otherwise specified in paragraph (a)(6) of this clause, the cost of replacement or correction shall be determined under paragraph (i) of this clause, but the "hourly rate" for labor hours incurred in the replacement or correction shall be reduced to exclude that portion of the rate attributable to profit. Unless otherwise specified below, the portion of the "hourly rate" attributable to profit shall be 10 percent. The Contractor shall not tender for acceptance materials and services required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken.

(5)

- (i) If the Contractor fails to proceed with reasonable promptness to perform required replacement or correction, and if the replacement or correction can be performed within the ceiling price (or the ceiling price as increased by the Government), the Government may—
 - (A) By contract or otherwise, perform the replacement or correction, charge to the Contractor any increased cost, or deduct such increased cost from any amounts paid or due under this contract; or
 - (B) Terminate this contract for cause.
- (ii) Failure to agree to the amount of increased cost to be charged to the Contractor shall be a dispute under the Disputes clause of the contract.

(6) Notwithstanding paragraphs (a)(4) and (5) above, the Government may at any time require the Contractor to remedy by correction or replacement, without cost to the Government, any failure by the Contractor to comply with the requirements of this contract, if the failure is due to--

- (i) Fraud, lack of good faith, or willful misconduct on the part of the Contractor's managerial personnel; or
- (ii) The conduct of one or more of the Contractor's employees selected or retained by the Contractor after any of the Contractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.

(7) This clause applies in the same manner and to the same extent to corrected or replacement materials or services as to materials and services originally delivered under this contract.

(8) The Contractor has no obligation or liability under this contract to correct or replace materials and services that at time of delivery do not meet contract requirements, except as provided in this clause or as may be otherwise specified in the contract.

(9) Unless otherwise specified in the contract, the Contractor's obligation to correct or replace Government-furnished property shall be governed by the clause pertaining to Government property.

(e) *Definitions.*

(1) As used in this clause—

(i) *Direct materials* means those materials that enter directly into the end product, or that are used or consumed directly in connection with the furnishing of the end product or service.

(ii) *Hourly rate* means the rate(s) prescribed in the contract for payment for labor that meets the labor category qualifications of a labor category specified in the contract that are—

(A) Performed by the contractor;

(B) Performed by the subcontractors; or

(C) Transferred between divisions, subsidiaries, or affiliates of the contractor under a common control.

(iii) *Materials* means—

(A) Direct materials, including supplies transferred between divisions, subsidiaries, or affiliates of the contractor under a common control;

(B) Subcontracts for supplies and incidental services for which there is not a labor category specified in the contract;

(C) Other direct costs (*e.g.*, incidental services for which there is not a labor category specified in the contract, travel, computer usage charges, etc.);

(D) The following subcontracts for services which are specifically excluded from the hourly rate: none; and

(E) Indirect costs specifically provided for in this clause.

(iv) *Subcontract* means any contract entered into with a subcontractor to furnish supplies or services for performance of the prime contract or a subcontract including transfers between divisions, subsidiaries, or affiliates of a contractor or subcontractor. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

(i) *Payments.*

(1) *Work performed.* The Government will pay the Contractor as follows upon the submission of commercial invoices approved by the Contracting Officer:

(i) *Hourly rate.*

(A) The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the contract by the number of direct labor hours performed. Fractional parts of an hour shall be payable on a prorated basis.

(B) The rates shall be paid for all labor performed on the contract that meets the labor qualifications specified in the contract. Labor hours incurred to perform tasks for which labor qualifications were specified in the contract will not be paid to the extent the work is performed by individuals that do not meet the qualifications specified in the contract, unless specifically authorized by the Contracting Officer.

(C) Invoices may be submitted once each month (or at more frequent intervals, if approved by the Contracting Officer) to the Contracting Officer or the authorized representative.

(D) When requested by the Contracting Officer or the authorized representative, the Contractor shall substantiate invoices (including any subcontractor hours reimbursed at the hourly rate in the schedule) by evidence of actual payment, individual daily job timecards, records that verify the employees meet the qualifications for the labor categories specified in the contract, or other substantiation specified in the contract.

(E) Unless the Schedule prescribes otherwise, the hourly rates in the Schedule shall not be varied by virtue of the Contractor having performed work on an overtime basis.

(1) If no overtime rates are provided in the Schedule and the Contracting Officer approves overtime work in advance, overtime rates shall be negotiated.

(2) Failure to agree upon these overtime rates shall be treated as a dispute under the Disputes clause of this contract.

(3) If the Schedule provided rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the Contracting Officer.

(ii) *Materials.*

(A) If the Contractor furnishes materials that meet the definition of a commercial item, the price to be paid for such materials shall not exceed the Contractor's established catalog or market price, adjusted to reflect the--

(1) Quantities being acquired; and

(2) Any modifications necessary because of contract requirements.

(B) Except as provided for in paragraph (i)(1)(ii)(A) and (D)(2) of this clause, the Government will reimburse the Contractor the actual cost of materials (less any rebates, refunds, or discounts received by the contractor that are identifiable to the contract) provided the Contractor—

(1) Has made payments for materials in accordance with the terms and conditions of the agreement or invoice; or

(2) Makes these payments within 30 days of the submission of the Contractor's payment request to the Government and such payment is in accordance with the terms and conditions of the agreement or invoice.

(C) To the extent able, the Contractor shall—

(1) Obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and

(2) Give credit to the Government for cash and trade discounts, rebates, scrap, commissions, and other amounts that are identifiable to the contract.

(D) *Other Costs.* Unless listed below, other direct and indirect costs will not be reimbursed.

(1) *Other direct Costs.* The Government will reimburse the Contractor on the basis of actual cost for the following, provided such costs comply with the requirements in paragraph (i)(1)(ii)(B) of this clause: None.

(2) *Indirect Costs (Material handling, Subcontract Administration, etc.).* The Government will reimburse the Contractor for indirect costs on a pro-rata basis over the period of contract performance at the following fixed price: none.

(2) *Total cost.* It is estimated that the total cost to the Government for the performance of this contract shall not exceed the ceiling price set forth in the Schedule and the Contractor agrees to use its best

efforts to perform the work specified in the Schedule and all obligations under this contract within such ceiling price. If at any time the Contractor has reason to believe that the hourly rate payments and material costs that will accrue in performing this contract in the next succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 85 percent of the ceiling price in the Schedule, the Contractor shall notify the Contracting Officer giving a revised estimate of the total price to the Government for performing this contract with supporting reasons and documentation. If at any time during the performance of this contract, the Contractor has reason to believe that the total price to the Government for performing this contract will be substantially greater or less than the then stated ceiling price, the Contractor shall so notify the Contracting Officer, giving a revised estimate of the total price for performing this contract, with supporting reasons and documentation. If at any time during performance of this contract, the Government has reason to believe that the work to be required in performing this contract will be substantially greater or less than the stated ceiling price, the Contracting Officer will so advise the Contractor, giving the then revised estimate of the total amount of effort to be required under the contract.

(3) *Ceiling price.* The Government will not be obligated to pay the Contractor any amount in excess of the ceiling price in the Schedule, and the Contractor shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the Schedule, unless and until the Contracting Officer notifies the contractor in writing that the ceiling price has been increased and specifies in the notice a revised ceiling that shall constitute the ceiling price for performance under this contract. When and to the extent that the ceiling price set forth in the Schedule has been increased, any hours expended and material costs incurred by the Contractor in excess of the ceiling price before the increase shall be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the ceiling price.

(4) *Access to records.* At any time before final payment under this contract, the Contracting Officer (or authorized representative) will have access to the following (access shall be limited to the listing below unless otherwise agreed to by the Contractor and the Contracting Officer):

- (i) Records that verify that the employees whose time has been included in any invoice met the qualifications for the labor categories specified in the contract.
- (ii) For labor hours (including any subcontractor hours reimbursed at the hourly rate in the schedule), when timecards are required as substantiation for payment—
 - (A) The original timecards (paper-based or electronic);
 - (B) The Contractor's timekeeping procedures;
 - (C) Contractor records that show the distribution of labor between jobs or contracts;
 - and
 - (D) Employees whose time has been included in any invoice for the purpose of verifying that these employees have worked the hours shown on the invoices.
- (iii) For material and subcontract costs that are reimbursed on the basis of actual cost—
 - (A) Any invoices or subcontract agreements substantiating material costs; and
 - (B) Any documents supporting payment of those invoices.

(5) *Overpayments/Underpayments.* Each payment previously made shall be subject to reduction to the extent of amounts, on preceding invoices, that are found by the Contracting Officer not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. The Contractor shall promptly pay any such reduction within 30 days unless the parties agree otherwise. The Government within 30 days will pay any such increases, unless the parties

agree otherwise. The Contractor's payment will be made by check. If the Contractor becomes aware of a duplicate invoice payment or that the Government has otherwise overpaid on an invoice payment, the Contractor shall—

- (i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—
 - (A) Circumstances of the overpayment (*e.g.*, duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);
 - (B) Affected contract number and delivery order number, if applicable;
 - (C) Affected line item or subline item, if applicable; and
 - (D) Contractor point of contact.
 - (ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.
- (6)
- (i) All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury, as provided in 41 U.S.C. 7109, which is applicable to the period in which the amount becomes due, and then at the rate applicable for each six month period as established by the Secretary until the amount is paid.
 - (ii) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.
 - (iii) *Final Decisions*. The Contracting Officer will issue a final decision if—
 - (A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt in a timely manner;
 - (B) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or
 - (C) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer).
 - (iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.
 - (v) Amounts shall be due at the earliest of the following dates:
 - (A) The date fixed under this contract.
 - (B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.
 - (vi) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—
 - (A) The date on which the designated office receives payment from the Contractor;
 - (B) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or
 - (C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.
 - (vii) Upon receipt and approval of the invoice designated by the Contractor as the “completion invoice” and supporting documentation, and upon compliance by the Contractor with all terms

of this contract, any outstanding balances will be paid within 30 days unless the parties agree otherwise. The completion invoice, and supporting documentation, shall be submitted by the Contractor as promptly as practicable following completion of the work under this contract, but in no event later than 1 year (or such longer period as the Contracting Officer may approve in writing) from the date of completion.

(7) *Release of claims.* The Contractor, and each assignee under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, a release discharging the Government, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions.

(i) Specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible to exact statement by the Contractor.

(ii) Claims, together with reasonable incidental expenses, based upon the liabilities of the Contractor to third parties arising out of performing this contract, that are not known to the Contractor on the date of the execution of the release, and of which the Contractor gives notice in writing to the Contracting Officer not more than 6 years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier.

(iii) Claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Government against patent liability), including reasonable incidental expenses, incurred by the Contractor under the terms of this contract relating to patents.

(8) *Discount.* In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(l) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid an amount for direct labor hours (as defined in the Schedule of the contract) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the contract, less any hourly rate payments already made to the Contractor plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system that have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

(m) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon written request, with adequate assurances of future performance. Subject to the terms of this contract, the Contractor shall be paid an amount computed under paragraph (i) Payments of this clause, but the "hourly rate" for labor hours expended in furnishing work not delivered to or accepted by the Government shall be reduced to exclude that portion of the rate attributable to

profit. Unless otherwise specified in paragraph (a)(4) of this clause, the portion of the "hourly rate" attributable to profit shall be 10 percent. In the event of termination for cause, the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

9.3000-4 Dissemination of Contract Performance Information (DEC 2018)

The Contractor must not publish, permit to be published, or distribute for public consumption, any information, oral or written, concerning the results or conclusions made pursuant to the performance of this contract, without the prior written consent of the Contracting Officer. Two copies of any material proposed to be published or distributed must be submitted to the Contracting Officer for approval.

9.3000-5 Contractor Advertisements, Publicizing Award, and News Releases (DEC 2018)

(a) Under no circumstances shall the Contractor, or anyone acting on behalf of the Contractor, refer to the supplies, services, or equipment furnished pursuant to the provisions of this contract in any publicity/ news release or commercial advertising without first obtaining explicit written consent to do so from the Contracting Officer.

(b) The Contractor agrees not to refer to awards in commercial advertising in such manner as to state or imply that the product or service provided is endorsed or preferred by the Federal Government or is considered by the Government to be superior to other products or services.

9.3002-2 Contractor Key Personnel (DEC 2018)

(a) In order to ensure a smooth and orderly startup of work, it is essential that the key personnel specified in the Contractor's proposal be available on the effective date of the contract. If these personnel are not made available at that time, the Contractor must notify the Government Contracting Officer (CO) and show cause. If the Contractor does not show cause, the Contractor may be subject to default action.

(b) The Contractor shall not of its own will remove or replace any personnel designated as "key" personnel without the written concurrence of the cognizant CO. Prior to utilizing employees other than specified personnel, the Contractor shall notify the CO and the Contracting Officer's Representative. This notification must be no later than five (5) calendar days in advance of any proposed substitution and must include justification (including resume(s) of proposed substitution(s)) in sufficient detail to permit evaluation of the impact on contract performance.

(c) Substitute personnel qualifications must be equal to, or greater than, those of the personnel being substituted. If the Government Contracting Officer and the COR determine that the proposed substitute personnel is unacceptable, or that the reduction of effort would be so substantial as to impair the successful performance of the work under the contract, the Contractor may be subject to default action. If deemed necessary by the Government, substitute personnel must be given an orientation by Contractor personnel at no additional cost to the Government and with no change in the delivery schedule.

(d) In the event that the performance of assigned Contractor personnel or any substitute(s) is determined by the Government to be unsatisfactory at any time during the life of the Contract, the Government reserves the right to request and receive satisfactory personnel replacement within five (5) calendar days of receipt by the Contractor of written notification. Notification will include the reason for requesting replacement personnel.

(e) The Contractor-supplied personnel are employees of the Contractor and under the administrative control and supervision of the Contractor. The Contractor, through its personnel, shall perform the tasks prescribed herein. The Contractor must select, supervise, and exercise control and direction over its employees (including subcontractors) under this Contract. The Government shall not exercise any supervision or control over the Contractor in its performance of contractual services under this contract. The Contractor is accountable to the Government for the action of its personnel.

(f) The Contractor is herewith notified that employee recruiting and employee retention practices shall be monitored on a regular basis.

9.3002-4 Reducing Text Messaging While Driving (DEC 2018)

(a) In accordance with Section 4 of Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving", you are hereby encouraged to:

(1) Adopt and enforce policies that ban text messaging while driving company-owned or -rented vehicles or Government-owned, -leased or -rented vehicles, or while driving privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government; and

(2) Consider new company rules and programs, and reevaluating existing programs to prohibit text messaging while driving, and conducting education, awareness, and other outreach for company employees about the safety risks associated with texting while driving. These initiatives should encourage voluntary compliance with the company's text messaging policy while off duty.

(b) For purposes of complying with the Executive Order:

(1) "Texting" or "Text Messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of SMS texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to park.

(2) "Driving" means operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light or stop sign, or otherwise. It does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary.

9.5400-2 Option to Extend Services (DEC 2018)

The Government may require continued performance of any services within the limits and at the rates specified in the contract. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months.

9.5400-3 Option to Extend the Term of the Contract (DEC 2018)

The Government may extend the term of this contract by notice to the Contractor; provided that the Government gives the Contractor a preliminary notice of its intent to extend before the contract expires. If the

Government exercises this option, the extended contract shall be considered to include this option clause. The preliminary notice DOES NOT commit the Government to exercise the Option nor does it in any manner obligate Government funds against the subject contract, and is subject to the availability of applicable Budget Year funding.

If the Option is exercised by the government, it will be accomplished via a unilateral modification. The modification will specifically identify the Option period of performance and contract amount referenced above.

9.5900-1 Good Faith Effort (DEC 2018)

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

Minority, minority-owned business, and women-owned business each shall have the meanings set forth in Section 342(g) of the Dodd-Frank Act., 12 U.S.C. 5452(g).

Good Faith Effort, shall include actions by the contractor intended to identify and, if present, to remove barriers to minority and women within its workforce or expand employment opportunities for minorities and women within its workforce by means such as recruiting minorities and women, providing job-related training, or other activity that could lead to those results.

(b) *Prime Contractor.* In all prime contracts having a dollar value exceeding \$100,000, the Contractor confirms its commitment to equal opportunity in employment and contracting. To implement this commitment, the Contractor shall ensure, to the maximum extent possible consistent with applicable law, the fair inclusion of minorities and women in its workforce.

(c) *Good Faith Effort to Comply.* Within ten business days of a written request from NCUA’s contracting officer, or such longer time as the contracting officer determines, and at no additional cost to the Agency, the Contractor shall provide documentation, satisfactory to the Agency, of the actions it (and as applicable, its subcontractors) has undertaken reflecting its good faith effort to comply with the aforementioned provisions. For purposes of this contract, “good faith effort” may include actions by the contractor intended to identify and, if present, to remove barriers to minority and women employment or to expand employment opportunities for minorities and women within its workforce. Efforts to remove such barriers may include, but are not limited to, recruiting minorities and women, providing job-related training, or other activity that could lead to those results.

The documentation requested by the contracting officer to demonstrate “good faith effort” may include, but is not limited to, the following:

- (1) The total number of Contractor’s employees broken down by race, ethnicity, and gender (e.g., an EEO-1);
- (2) A list of subcontracts awarded under the Contract that includes: dollar amount, date of award, and subcontractor’s minority and/or gender ownership status;
- (3) With respect to subcontracts exceeding \$100,000, the total number of subcontractor’s employees broken down by race, ethnicity, and gender (e.g., EEO-1);

Actions taken and plans made, by the Contractor to ensure that minorities and women have appropriate

opportunities to enter and advance within its workforce, including outreach efforts.

(d) *Failure to Comply*. Consistent with Section 342(c)(3) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”), 12 U.S.C. 5452(c)(3), a failure to demonstrate to the Director of the NCUA Office of Minority and Women Inclusion such good faith efforts to include minorities and women in the Contractor’s workforce (and as applicable, the workforce of its subcontractors), may be cause for termination of the Contract, referral to the Office of Federal Contract Compliance Programs, or other appropriate action.

(e) *Subcontracts*. The Contractor shall insert the substance of the above clause as a contractual condition in all subcontracts under this Contract that have dollar value exceeding \$100,000.

NONDISCLOSURE AGREEMENT

NONDISCLOSURE AGREEMENT (“**Agreement**”), made this date, December 20, 2019, by and between the NATIONAL CREDIT UNION ADMINISTRATION (in such capacity, “**NCUA**”); and Edelman (“**Company**”). The NCUA and Company are individually referred to as a “Party” and together as the “Parties”.

WHEREAS, during the performance of the writing/editorial support under contract number NCUA-19-C-00072, effective date December 20, 2019, and associated tasks (the “**Contract**”), which will be incorporated into this Agreement simultaneously upon its signatory execution by the Parties as Exhibit A, Company will have access to Confidential Information, as defined in this Agreement; and

NOW THEREFORE, in consideration of the mutual agreements and covenants herein, as well as other valuable consideration received, the NCUA and Company agree as follows with respect to the Confidential Information:

1. Definitions.

- (a) “**Confidential Information**” shall mean any data, record, report, notes, document, or other information or material (whether written, oral, electronic, or in any other form) regarding services provided under the Contract that is disclosed or provided to, and received by, Receiving Party; provided that Confidential Information shall not include any information that is (i) publicly available at the time of disclosure to Receiving Party or becomes publicly available through no act of Receiving Party that is in violation of this Agreement; (ii) received by Receiving Party from a third party who, to Receiving Party’s knowledge, is not in violation of any obligation of confidentiality owed to Disclosing Party; (iii) developed by Receiving Party on an independent basis without use of, or reference to, any Confidential Information; or (iv) already in the lawful and rightful possession of Receiving Party and not subject to this Agreement.
- (b) “**Receiving Party**” shall mean Company.
- (c) “**Disclosing Party**” shall mean NCUA.

2. Obligation of Confidentiality.

- (a) Receiving Party acknowledges and agrees that the Confidential Information received or accessed by Receiving Party is confidential and/or proprietary and is entitled to, and shall receive, treatment as such. The Confidential Information shall be held in confidence by Receiving Party and, unless otherwise authorized by Disclosing Party, shall not be used for any purpose other than as provided in the Contract and, subject to clause (b) below, may not be disclosed by Receiving Party to anyone (including, but not limited to, any parent, subsidiary, affiliate, or any other person) unless Receiving Party informs all such persons to whom the Confidential Information is disclosed of its confidential nature and of their

obligation to maintain the confidentiality thereof and shall take all reasonable precautions to ensure that all such persons treat the Confidential Information accordingly.

- (b) Receiving Party may disclose the Confidential Information only to those of its affiliates, partners, managers, officers, employees, attorneys, contractors and agents (collectively, "Representatives") with a reasonable need to know or access the Confidential Information. Receiving Party agrees that it is responsible for all use of Confidential Information by its Representatives, and shall inform all such persons to whom the Confidential Information is disclosed of its confidential nature and of their obligation to maintain the confidentiality thereof and shall take all reasonable precautions to ensure that all such persons treat the Confidential Information accordingly. Receiving Party shall promptly notify Disclosing Party upon discovering, or obtaining knowledge of, any unauthorized disclosure or use of the Confidential Information and will reasonably cooperate with Disclosing Party to assist it in regaining possession of and terminating any unauthorized use of the Confidential Information that was subject to the unauthorized disclosure and/or use.
- (c) Confidential Information may not be reproduced, except as required in connection with the Contract or as permitted in (b), above. Confidential Information furnished to Receiving Party or accessed by Receiving Party, together with any and all copies made thereof, shall remain the property of Disclosing Party.
- (d) Receiving Party acknowledges that some of the Confidential Information that may be provided to Receiving Party, or to which Receiving Party may have access, may constitute "Nonpublic Personal Information," which includes 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 (See OMB Circular A-130). Receiving Party agrees to comply with all applicable local, state and federal laws, including, without limitation, all applicable privacy and data protection laws, and to maintain such Nonpublic Personal Information that it receives or accesses in accordance with applicable provisions of applicable federal and state privacy laws. Receiving Party shall maintain such physical and other security measures as shall be necessary to (i) ensure the security and confidentiality of any "Nonpublic Personal Information" that it receives or has access to, (ii) protect against any threats or hazards to the security and integrity of such Nonpublic Personal Information, and (iii) protect against any unauthorized access to or use of such Nonpublic Personal Information. Receiving Party represents and warrants that it has implemented appropriate measures to meet the objectives of OMB Circular A-130 and of the applicable standards adopted pursuant thereto, as now or hereafter in effect. Receiving Party shall notify Disclosing Party promptly following obtaining knowledge of any breach or compromise of the security, confidentiality, or integrity of any such Nonpublic Personal Information.

- (e) Receiving Party represents, acknowledges and agrees that it understands its duties and obligations under the federal and state laws and regulations with respect to the use of material non-public information and shall comply with such laws.
- (f) Notwithstanding anything herein to the contrary, upon the receipt of advice of counsel that Confidential Information is required to be disclosed by Receiving Party by applicable law or regulation or by legal process (including interrogatory, subpoena, civil investigative demand or similar process), or by order of a court or other governmental agency or regulatory authority having competent jurisdiction over Receiving Party, unless prohibited by law or regulation, Receiving Party shall promptly notify Disclosing Party in writing prior to making any such disclosure of Confidential Information and reasonably cooperate in any lawful effort by Disclosing Party to contest such disclosure. The foregoing requirements for advice of counsel and notification of Disclosing Party shall not apply to disclosure requests by Receiving Party's regulators, provided that the Confidential Information disclosure is subject to Receiving Party's request to its regulators that such information be treated in confidence.

3. Remedies. Receiving Party acknowledges that the Confidential Information has tangible value, contains valuable confidential information and/or proprietary information, and that any disclosure of such Confidential Information may cause irreparable and immediate harm to Disclosing Party, for which monetary damages may be insufficient. Therefore, Receiving Party agrees that, in addition to any other remedy to which it may be entitled in law or equity, Disclosing Party may seek, among other things, injunctive relief to prohibit and/or otherwise restrict Receiving Party from committing or continuing any violation of this Agreement, provided that neither party waives any defense to such injunctive or other relief by reason of this paragraph.

4. Notices. All notices or reports permitted or required under this Agreement shall be in writing and shall be by personal delivery, nationally recognized overnight courier service, facsimile transmission, electronic transmission, or by certified or registered mail, return receipt requested, and shall be deemed given upon actual receipt by the party being notified. Notices shall be sent to the addresses set forth in the contract.

5. Entire Agreement; Amendment; Assignment. This Agreement constitutes the entire agreement of the Parties and supersedes all prior understandings or agreements, written or oral, pertaining to the treatment of the Confidential Information. No waiver or amendment of this Agreement shall be effective unless it is in writing and signed by each Party. No party may assign or transfer its obligations under this Agreement without the prior written consent of the other parties.

6. Severability. The provisions of this Agreement shall be considered severable, and the invalidity or unenforceability of any one or more of the provisions of this Agreement shall not affect the remaining provisions hereof.

7. Governing Law/Jurisdiction. This Agreement shall be governed by and construed in accordance with all applicable federal laws and regulations, including the provisions of the Federal Credit Union Act, 12 U.S.C. § 1751, *et seq.* and NCUA Regulations, 12 C.F.R. Chapter

7, and to the extent applicable, the laws of the Commonwealth of Virginia. NCUA reserves the right to have any claim under this Agreement heard by the appropriate United States District Court pursuant to 12 U.S.C. § 1789(a)(2).

8. Term. This Agreement shall remain in effect for a term of two (2) years from the date hereof; *provided*, however, the obligations of confidentiality with respect to Nonpublic Personal Information shall survive termination of this Agreement.