

SECTION II: STANDARD GENERAL CONTRACT TERMS AND CONDITIONS
For
USAID-FINANCED COMMERCIAL ITEMS

ARTICLE 2.1. INDEPENDENT SUBCONTRACTOR

The Parties acknowledge that the relationship between them pursuant to this subcontract is that of independent contractors, and nothing contained herein shall be deemed to create a relationship of partners, joint venture, agent and principal, employer and employee, or any relationship other than that of independent contractors. At no time shall either Party make any commitments or incur any charges or expenses for or in the name of the other Party.

ARTICLE 2.2. GOODS AND RELATED SERVICES

- A. Vendor shall deliver the Goods and the Services, if any) described in this subcontract (or on any associated Order Form, if applicable) of the type, in the quantity, at the delivery date and at the price as indicated, in accordance with the stated terms and subcontract conditions. The quality of the Goods and Services shall conform in all respects to the requirements of the subcontract (including, but not limited to, all required testing and warranties).
- B. All Goods (including, but not limited to, materials, parts, components, and sub-assemblies thereof) shall, unless otherwise expressly approved by Chemonics in writing, be new, and not used, remanufactured, refurbished or Government surplus; and shall be produced entirely from goods meeting all of the foregoing requirements.
- C. If the subcontract is other than an Indefinite Quantity Subcontract (IQS), the maximum optional quantity, if any, and the firm fixed unit price(s) for the optional quantity to be supplied pursuant to this subcontract are specified in the subcontract.
- D. Unless otherwise expressly approved by Chemonics in writing (based on approval by the Government's Contracting Officer) —
 - (1) The origin of any of the Goods for which a specific "Origin" is indicated herein or any associated Order form, if applicable, shall be as specified; and
 - (2) The Goods (including the components thereof), services, sub-vendors or subcontractors shall not be from Burma (Myanmar), Cuba, Iran, North Korea, (North) Sudan, Syria or other countries or entities which may be subject to U.S. Government sanctions as per the OFAC list of sanctioned entities.
- E. For any subcontracts under which Pharmaceuticals are being procured:
 - (1) All Pharmaceuticals supplied shall be manufactured in accordance with Good Manufacturing Practice. Unless otherwise specifically stated in the subcontract, "Good Manufacturing Practice" shall be deemed to mean the standards and guidance issued by the U.S. Food and Drug Administration (FDA), including without limitation the Current Good Manufacturing Regulations for Finished Pharmaceuticals ("GMP") and the related regulations in 21 CFR Parts 210 and 211. If a waiver is approved and a different stringent

drug regulatory authority's standards are eligible for use in lieu of the afore-mentioned FDA standard/guidance, the alternative authority shall be specified in the subcontract (or as otherwise expressly agreed in writing by Chemonics). A stringent regulatory authority (SRA) is a drug regulatory authority that closely resembles FDA in the standards utilized in its operations. Currently, countries that participate in the International Conference on Harmonization (ICH) are considered as stringent regulatory authorities.

- (2) If Subcontractor is the manufacturer of Pharmaceuticals supplied under this subcontract, as part of its compliance with the current GMP (or other applicable standards and guidance), Subcontractor shall collect and retain representative samples of each lot or batch of Pharmaceuticals supplied. If Subcontractor is not the Manufacturer, Subcontractor shall ensure that the Manufacturer, as part of its compliance with the aforesaid standards or guidance, collects and retains representative samples of each lot or batch of Pharmaceuticals supplied. Subcontractor shall also ensure that Chemonics and its designees if any are provided with reasonable access to the samples upon request.
 - (3) The premises used for manufacturing the Pharmaceuticals shall hold a current manufacturing license issued by the relevant Ministry of Health or other cognizant national drug regulatory authority, and shall be open to visits from inspectors appointed by Chemonics.
 - (4) In addition, and without prejudice to the above, the Pharmaceuticals shall comply with the standards of the current edition (or the latest edition in which they are included) of the United States Pharmacopoeia (USP); or, if applicable, with another acceptable pharmacopoeia standard, e.g. the European Pharmacopoeia (EP), the British Pharmacopoeia (BP), or the British Pharmaceutical Codex (BPC). Where the USP gives no definition of the Pharmaceuticals and no other standards are specified, the Pharmaceuticals shall be manufactured in accordance with tested "in-house" formulations so as to be suitable for human medicine.
- F. If the subcontract is for Plasters, Liquid Extracts or Ointments, Goods supplied shall be modified, where necessary, to render them suitable for use in the Cooperating Countries, but the specified proportion of the active ingredients must, in all cases, be maintained.
- G. All Goods with a shelf life (such as test kits), including all Pharmaceuticals, must be freshly manufactured, and thus have maximum possible shelf life. Goods with a maximum possible shelf life of less than 24 months shall have at least 85% of shelf life remaining when delivered. Goods with a maximum possible shelf life of more than 24 months shall have at least 24 months, or 85%, of shelf life remaining whichever is longer, when delivered. No Goods will be accepted which do not comply with these requirements unless Chemonics has agreed in writing to different requirements, in which case the Goods must strictly comply with those modified requirements.
- H. Notwithstanding any other provision of the subcontract, Chemonics may:
- (1) Prior to shipment of the Goods and the initiation of performance of any Related Services, by written notice to subcontract, cancel in its entirety, or reduce the quantity(ies) of, any individual item(s) of the Goods without charge to Chemonics; and/or

- (2) In the event that the USAID Contract with Chemonics is terminated by the Government in whole or in pertinent part prior to shipment, return to Subcontractor unused items or quantities of Delivered Goods.
- I. If the subcontract calls for performance of Related Services overseas by Subcontractor's employees or consultants (collectively, "personnel"), Subcontractor shall comply with the following requirements:
 - (1) Subcontractor shall notify Chemonics (sufficiently in advance to permit Chemonics to notify USAID and obtain its concurrence if needed) of any planned travel overseas by personnel in connection with performance of Related Services. Such notice shall include the number and names of the personnel participating, the proposed itinerary and logistics arrangements, and the Services to be provided, along with the information specified in AIDAR 752.7004, EMERGENCY LOCATOR INFORMATION.
 - (2) Subcontractor shall ensure that its personnel, while in a Cooperating Country, abide by all applicable laws of the Cooperating Country and political subdivisions thereof.
 - (3) Other than work performed under the subcontract for which personnel are assigned by the Subcontractor, Subcontractor's personnel shall not engage, directly or indirectly, either in their own name or in the name or through the agency of another person, in any business, profession or occupation in the Cooperating Country, nor shall they make loans or investments to or in any business, profession or occupation in the Cooperating Country, without Chemonics' approval. This provision does not apply to personnel who are citizens or legal residents of the Cooperating Country.
 - (4) Subcontractor shall obtain (a) worker's compensation (Defense Base Act) insurance pursuant to FAR 52.228-3 and AIDAR 752.228-3, and (b) medical evacuation insurance for personnel travelling to a Cooperating Country in connection with this subcontract.
 - (5) Personnel travelling on Subcontractor's behalf for performance of Related Services shall possess appropriate language skills, if any, stated in the subcontract, and shall be physically fit in accordance with AIDAR 752.7033.
 - (6) In performing Related Services, Vendor shall comply with USAID guidance, if any, relating to branding/marketing of activities.
 - (7) FAR 52.246-4 INSPECTION OF SERVICES – FIXED PRICE (AUG 1996) shall apply to Related Services.
 - (8) All logistics support, visas, legal compliance matters and taxes in connection with its personnel overseas shall be the sole responsibility of Subcontractor, as will all liability for the acts and omissions of Subcontractor's personnel performing the Related Services.
 - (9) Compensation for satisfactory performance of Related Services shall be paid upon completion thereof in compliance with the terms and conditions of the subcontract and solely in the form of the firm, fixed, all-inclusive prices.
 - (10) Notwithstanding any other provisions of this subcontract, no additional compensation or reimbursement will be provided to Vendor for complying with these requirements concerning provision of Related Services.

ARTICLE 2.3. PACKING, EXPORT MARKING, PREPARATION FOR SHIPMENT AND PACKAGING

- A. All Goods supplied under this subcontract shall be packed and marked for export as required by the subcontract and by all applicable transportation regulations, carrier tariffs, US FDA/SRA regulations(if any), and sound commercial practice. Without limiting the generality of the

foregoing, all Goods shall be properly prepared for export to withstand exposure to the elements and rough handling during air, sea or land shipment.

- B. All Goods must be packed according to the best international packing standards, suitable to prevent theft, loss, or damage, including water damage to cargo during transit and until safe arrival at the delivery point, and fully cover such hazards as extreme temperature and exposure to weather and open storage. Where appropriate, packing size and heights shall take into consideration the remoteness of the Goods' destination and the absence of heavy handling facilities at some or all points during transit.
- C. The contents of each box in any shipments delivered under this Subcontract shall be clearly labeled with the corresponding part/product number and line item number from the commodity schedule and technical specifications sheets. The Subcontractor shall be solely responsible for complying with all Cooperating Country laws and sound international practices for the packaging and labeling of the goods (including, if applicable, hazardous materials safeguards).
- D. Chemonics will be implementing GS1 labeling requirements on tertiary packaging (pallet/logistics unit and carton/trade item) during the period of performance of this Subcontract. The Subcontractor may be required to comply with GS1 General Specifications for identification and marking details under Orders issued hereunder, if applicable. The Subcontractor may refer to the GS1 barcode specifications for detailed requirements (http://www.gs1.org/docs/barcodes/GS1_General_Specifications.pdf). Chemonics will provide the Subcontractor with reasonable notice of the implementation requirement applicable to subcontract or any applicable Orders.
- E. Unless otherwise required by Chemonics in writing (including any Order issued under this Subcontract, if applicable), Subcontractor shall mark each unit of export packaging with the USAID contract number specified on the cover page of this Subcontract. A complete itemized packing list shall be carried in a secure, durable clearly-marked "packing list" envelope affixed to the outside of each shipping container or box used to deliver the goods. Each packing list must show the specified Chemonics subcontract number (unless otherwise required by Chemonics in writing, including through any Order issued under this Subcontract, if applicable), a complete narrative description of the goods, all applicable part numbers, and the corresponding line item number.
- F. Damage resulting from improper packing, export marking and preparation for shipment shall be the liability of the Subcontractor and deducted from amounts due.
- G. No extra charge shall be payable by Chemonics for export packaging, crating, boxing, handling, dunnage, drayage, storage, or any other action necessary to comply with the requirements of this clause or for any transfer to Chemonics nominated carrier unless specifically stated in this Subcontract or any resulting Order, if applicable, or otherwise agreed to by Chemonics in writing.
- H. In addition and without the prejudice to afore-mentioned paragraphs, the following further requirements shall apply to Pharmaceuticals, test kits and other medical products: packaging, packing and marking shall be in accordance with applicable FDA regulations and the Manufacturer's current public sector packaging for overseas distribution. Packaging and packing must ensure the safety, efficacy and quality of the product and be appropriate for distribution in harsh climates under less than ideal transport and storage conditions.

- I. In addition, the following further requirements shall apply only to subcontracts for the supply of Pharmaceuticals: Subcontractor shall supply the Pharmaceuticals in closed pharmaceutical storage containers, i.e. bottles, tins, vials, ampoules, bubble pack, ensuring that the containers adequately protect the Pharmaceuticals while they are in transit, or stored in warehouses, or on pharmacy shelves under conditions expected to prevail in the Cooperating Country(ies). Subcontractor shall mark each pharmaceutical storage container (or in the case of ampoules, the box containing them) with the following information, in English (unless otherwise specified on the PO):

- (i) the International Nonproprietary Name (INN) of the product;
- (ii) the pharmacopeia standard, e.g. USP; EP, BP, or BPC monograph, if applicable;
- (iii) the strength of the preparation, if applicable;
- (iv) the name and location of the manufacturer;
- (v) the date or month and year the Goods were manufactured, if applicable;
- (vi) the Expiry Date, if applicable;
- (vii) any other marking specified in the PO.

If labels are used, these shall be affixed with adhesive suitable for conditions in the Cooperating Country(ies).

ARTICLE 2.4. EXPORT AND TRANSPORTATION CLEARANCES

Subcontractor's responsibility in connection with export and transportation clearances depend on the applicable delivery terms, and shall be as specified in Section I this Subcontract or any resulting Order, if applicable.

ARTICLE 2.5. DELIVERY AND DELIVERY COORDINATION

- A. Subcontractor shall notify Chemonics when the Goods are available for delivery by sending a Notice of Availability by e-mail to the Chemonics contact identified as the authorized technical representative in this Subcontract or any resulting Order Form, if applicable. The notice shall clearly reference the Subcontract Number and, if applicable, the Order reference number, and shall include:
- (1) a Commercial Invoice;
 - (2) a Packing List with weights and dimensions;
 - (3) if the Goods include pharmaceuticals, a Certificate of Analysis, or other certificate as required. The Certificate of Analysis shall be supplied in a form and content acceptable to Chemonics and signed by a qualified individual associated with the Subcontractor or a competent independent organization, confirming the compliance of each and every batch supplied with the subcontract's specifications and regulatory authority's Standards
 - (4) where the delivery term is EXW or FCA, the name of the Subcontractor representative responsible for collecting the Goods and transferring them to Chemonics' nominated carrier, and
 - (5) such other information and documents as are specified in the Subcontract (such as a Legalized Certificate of Origin or a Certificate of Pharmaceutical Product), and as Chemonics may reasonably request from time to time in writing.
- B. Upon receipt of a Notice of Availability—

- (1) Where the Subcontract delivery term is EXW or FCA, within three working days after receipt, Chemonics shall endeavor to arrange for the Goods to be collected or give instructions to Subcontractor for transfer of the Goods to the nominated carrier.
 - (2) For all other subcontract delivery terms, within a reasonable time after receipt, Chemonics shall issue an Authorization to Deliver; provided, that if the subcontract calls for preshipment quality assurance testing, Chemonics shall promptly arrange for such testing, and shall issue an Authorization to Deliver promptly upon receipt of the results thereof for all Goods that pass.
- C. Upon receipt of an Authorization to Deliver, Subcontractor shall immediately proceed to complete delivery of the Goods in accordance with the subcontract delivery term. If the specified delivery term is CPT, CIF, or CIP, unless otherwise expressly approved, all surface shipments shall be Door-to-Port, and unless shipment is by air, shall utilize one or more exclusive use 20 or 40' ocean transport containers.
- D. Where Subcontractor is required to arrange shipment, shipments by sea shall be on an FCL/FCL (Full Container Load) basis, and via an American flag carrier, to the extent required by Cargo Preference regulations. Prior to such shipment, or immediately upon availability, Subcontractor shall send the following original documents by express courier, and PDF copies of those documents by e-mail, to the Chemonics Contact identified on the PO:
 - (1) Air Waybill, or rated ocean Bill of Lading;
 - (2) Insurance Certificate (if required by the Contract delivery term);
 - (3) Packing List;
 - (4) Commercial Invoice;
 - (5) Any other document included with the Notice of Availability; and
 - (6) Other documents as Chemonics may reasonably request from time to time.

The Air Waybill (for air shipment) or the Bill of Lading (for ocean shipment) shall be clean, onboard, marked "freight paid" issued by the vessel-owning common carrier, and on a through basis (covering all intermodal and/or inland transportation, if any, to destination). All air and ocean shipments managed by the Subcontractor must be insured. The Certificate of Insurance shall provide all risk marine cargo insurance on terms no less favorable than the Institute Cargo Clause (All Risks), including war risks and strike clauses. The amount of coverage shall be 110% of the delivered price of the Goods, and shall be from Subcontractor's facility in the country of manufacture to the final destination. Except as otherwise authorized by Chemonics, the policy shall name Chemonics as the insured, and any loss proceeds shall be payable in United States Dollars.

- E. For Subcontract for the supply of Pharmaceuticals where the Subcontractor is not the Manufacturer, the following documents may be needed in addition:
 - (1) Certificate of GMP (Good Manufacturing Practice) of Manufacturer of Pharmaceuticals Supplied.
 - (2) Certificate that Manufacturing Site of Pharmaceuticals supplied is approved by Stringent Regulatory Authority (if applicable).
- F. Any international air or ocean transportation services executed under this subcontract must be made on carriers and vessels under flag registry of the United States in compliance with U.S. Federal Acquisition Regulation (FAR) Part 47.403 ("Guidelines for Implementation of the Fly America Act") and FAR Part 47.5 ("Ocean Transportation by U.S.-Flag Vessels"). If no U.S.-flag service is available, the Freight Forwarder must immediately notify Chemonics in writing with date and details of available and unavailable carriers before effecting shipment to obtain further instructions.

- G. Subcontractor shall advise Chemonics of all information concerning the Goods that is pertinent to the transportation and in-country handling and storage (including, but not limited to, any hazardous material indications and any other special handling and storage requirements), and shall be solely responsible for the consequences of any failure to do so.
- H. Chemonics shall secure any necessary licenses, approvals, permits, and other authorizations for the required customs clearance, needed for the importation of the Goods into the country of destination. Subcontractor shall provide all reasonable assistance toward performance of Chemonics' responsibilities. For other than EXW deliveries, Subcontractor shall also be solely responsible for all costs and risks relating to payment of all duties, taxes, and other official charges assessed on exportation from the country of manufacture and shipment. Any import duties or other costs assessed by the government of the country of destination, as well as container demurrage/detention and comparable charges shall be payable by Chemonics', except for :
- (1) container demurrage/detention and comparable charges levied in those instances in which Subcontractor fails to comply with the shipping document delivery schedule or has otherwise caused the delays giving rise to such demurrage/detention or comparable charges; and
 - (2) the costs of duties, taxes, and similar official import charges on replacement Goods, when required due to the Goods originally supplied by Subcontractor having been defective.
- I. If the Goods are not delivered in a timely manner (or, with respect to transactions required by this Subcontract or any resulting Order, if applicable, to be on an INCOTERMS 2010 basis or a Notice of Availability is not duly issued for the Goods in a timely manner), in all respects in accordance with the subcontract, Subcontractor shall reimburse Chemonics or the Government for any loss or expense incurred by Chemonics that may result. Subcontractor shall be deemed conclusively to have authorized Chemonics to deduct any such amount(s) from payment(s) otherwise due and owing to Subcontractor.
- J. If delivery of the Goods is not completed by the required date, or if performance of any Services pursuant to subcontract is not completed by the due date (if any) specified, due to any default or delay of Subcontractor (including without limitation any default by subcontractors, sub-vendors or offerors), Chemonics shall be entitled to deduct from payment(s) otherwise due to Subcontractor (in addition to liquidated damages, provided for below) any additional costs of sampling, testing, and inspection caused by such default or delay. Should such default or delay cause an inspection or testing firm to undertake additional inspections or tests, Chemonics shall be entitled, in addition and without prejudice to any other remedies available under or in connection with the subcontract to deduct the related costs, along with any additional sampling agent charges from any further payment(s) to Subcontractor, or if such payment(s) remain available, to demand and receive a refund from Subcontractor.
- K. Liquidated Damages: Subcontractor acknowledges the urgent need for the Goods, as well as the difficulty of ascertaining at the time of contracting the precise nature and amount of actual damages that will be suffered in the event of delayed performance. In view of foregoing, if Subcontractor fails to issue a Notice of Availability for the entire quantity of Goods, in strict compliance with all specifications and other subcontract requirements, by the date(s) specified in this Subcontract or any resulting Order, if applicable, Chemonics may, without prejudice and in addition to any other

remedies under the subcontract (or otherwise available at law or in equity), deduct from any payment(s) due or to become due to the Subcontractor, under or in connection with this or any other agreement as liquidated damages of 1% of the order value per week past the first week late, up to a maximum of 10% of the order value. The Parties agree that this sum represents a reasonable estimate of the actual damages anticipated at the time of contracting, and confirm that this amount has been specifically negotiated and mutually agreed upon. Once the maximum deduction has been reached, Chemonics may, in addition and without prejudice to any other termination right set forth in the subcontract, unilaterally terminate this subcontract for default. In the event of timely and compliant delivery of partial quantities, Chemonics may reduce the periodic or total deduction to the extent it deems appropriate, in its reasonable discretion. Notwithstanding the imposition of liquidated damages in accordance with this paragraph, Subcontractor shall proceed with delivery and performance of its obligations pursuant to the subcontract unless otherwise instructed or approved by Chemonics.

ARTICLE 2.6. QUALITY ASSURANCE TESTING, INSPECTION AND ACCEPTANCE

- A. The Subcontractor shall coordinate with a third-party quality assurance contractor, either the USAID identified and funded GHSC-QA contractor ("GHSC-QA") or a third-party identified by Chemonics ("GHSC-PSM QA"), during implementation of this subcontract and shall implement quality assurance testing, Goods inspection and acceptance within the terms and conditions herein and as specified in any Order issued hereunder.
- B. Subcontractor shall only deliver and tender for acceptance those Goods that strictly conform to the requirements specified in the Subcontract/Order. Chemonics, GHSC-QA, and/or GHSC-PSM QA shall have the right to sample, inspect, and test the Goods at the time(s) and location(s) indicated in this subcontract or Orders issued thereunder, or at any other time at the request of Chemonics, GHSC-QA, and/or GHSC-PSM QA.
- C. If any Goods inspection or test is made by or on behalf of Chemonics, GHSC-QA, and/or the GHSC-PSM QA on the premises of the Subcontractor, Subcontractor shall provide all reasonable facilities for such sampling, inspection and testing of Goods at no cost to Chemonics, GHSC-QA, and/or GHSC-PSM QA or their inspectors in the performance of their duties to complete sampling.
- D. Chemonics in collaboration with GHSC-QA and/or GHSC-PSM QA will use its best efforts to complete sampling, testing and inspection of Goods as promptly as possible after the Goods are made available.
- E. Chemonics, GHSC-QA, and/or GHSC-PSM QA will notify the Subcontractor in writing of the names of any inspectors or inspection firms. It is understood that inspection or testing shall not in any way release the Subcontractor from any warranty or other obligations under this subcontract.
- F. Subcontractor shall provide Chemonics, GHSC-QA, and/or GHSC-PSM QA all information and documentation reasonably requested and shall render any other assistance reasonably requested, to enable Chemonics, GHSC-QA, and/or GHSC-PSM QA to:
 - a. Obtain from any regulatory authority authorization to import or waiver.
 - b. Comply with any of its legal, regulatory and/or contractual obligations or any request by any regulatory authority; and
 - c. Determine whether the services have been performed in accordance with this subcontract.

- G. Subcontractor shall notify Chemonics, GHSC-QA, and/or GHSC-PSM QA of any significant changes that may affect significantly the aspects of quality, safety and efficacy and regulatory status of the eligible product, including changes of the manufacturing and testing facilities or compliance with current good manufacturing practices. Subcontractor shall coordinate significant changes with Chemonics, GHSC-QA, and/or GHSC-PSM QA and provide information and documentation reasonably requested to document regulatory approvals when appropriate.
- H. Once commodities have been delivered to the delivery point by the Subcontractor, Chemonics and/or its designated agent shall inspect the commodities to confirm compliance with the subcontract requirements, including source compliance. Copies of any international shipping documents for all commodities will be required to verify the source of the commodities. If the commodities are compliant with subcontract requirements, an inspection certificate will be issued by Chemonics. In the event that the commodities are not fully compliant, the Subcontractor shall be required to remedy any defects or faults prior to acceptance by Chemonics.
- I. Chemonics, GHSC-QA, and/or GHSC-PSM QA may conduct site audits on a routine basis to ensure compliance with international standards when deemed necessary but will provide the Subcontractor with notice. Additionally, any systematic or isolated non-conformance or compliance gap that may directly or indirectly affect patient safety, product quality, purity, efficacy, integrity, or where there is a data integrity, validity of data and/or an ethical violation shall be considered a significant finding under this subcontract. In the event that Subcontractor, Chemonics, GHSC-QA, and/or GHSC-PSM QA become aware of any issue that could meet the definition of “significant” and substantially affect data integrity, patient safety and/or product quality for commodities supplied under this subcontract, Chemonics, GHSC-QA, and/or GHSC-PSM QA, shall be entitled to perform audits. In the event that Subcontractor becomes aware of any incident that may directly or indirectly affect patient safety, product quality, purity, efficacy, integrity, or where there is a data integrity, validity of data and/or an ethical violation, related to a commodity supplied hereunder, the incident will be reported to Chemonics, GHSC-QA, and/or GHSC-PSM QA. Subcontractor shall complete an investigation and issue a written report, approved by the designated quality personnel of the Subcontractor, within twenty (20) business days after the Subcontractor has been informed or becomes aware of the incident. Chemonics, GHSC-QA, and/or GHSC-PSM QA may work together with Subcontractor to resolve concerns related to commodities supplied hereunder. Chemonics, GHSC-QA, and/or GHSC-PSM QA reserve the right to review the investigation report related to commodities supplied hereunder.
- J. Subcontractor shall notify Chemonics, GHSC-QA, and/or GHSC-PSM QA in the event of a Regulatory Authority inspection (e.g., US Food and Drug Administration, European Medicines Agency or any local equivalent thereof) at the manufacturing sites for the products within seventy two (72 hours) of confirmation of the inspection dates. Subcontractor shall keep Chemonics, GHSC-QA, and/or GHSC-PSM QA apprised of the outcome of any inspection and shall provide a copy of any written report or comments, whether written or oral, issued by the Regulatory Authority in connection with, or as a result of, the Regulatory Authority inspection within 5 days of Subcontractor’s receipt. In all circumstances where a warning letter is issued by the Regulatory Authority, Subcontractor shall provide a copy within 48 hours of such letter to Chemonics, GHSCQA, and/or GHSC-PSM QA, and Chemonics, GHSC-QA, and/or GHSC-PSM QA shall have the right to request to review any responses, whether written or oral, provided by the Subcontractor to the Regulatory Authority in response to inspection results if such responses concern the commodities supplied hereunder.

- K. Chemonics may, at its sole discretion
- a. require Subcontractor to repair or replace any nonconforming Goods, or re-perform of any nonconforming Services, at no increase in the Price, and with all additional costs, including those arising from the handling and disposition of the non-conforming Goods and the sampling, inspection and testing of replacement Goods, the responsibility of the Subcontractor; and/or
 - b. exercise any other rights and remedies available to it under the subcontract, or under applicable law and regulation, including, but not limited to, termination of the subcontract, call of performance security, and/or assessment of excess re-procurement and other resulting costs. Chemonics will use its best efforts to exercise the foregoing rights within a reasonable time after a non-conformity is discovered and, to the maximum extent practicable, before any substantial change occurs in the condition of the non-conforming Goods, unless such change is due to their non-conformity.
- L. Without prejudice to the foregoing, FAR 52.246-2, INSPECTION OF SUPPLIES -- FIXEDPRICE (AUG 1996), and FAR 52.246-16, RESPONSIBILITY FOR SUPPLIES (APR 1984), shall apply to the subcontract. Pursuant to these provisions— If/when deemed necessary and appropriate, Chemonics GHSC-QA, and/or GHSC-PSM QA may, by written notice to Subcontractor, require pre-delivery sampling, inspection and testing of the Goods including, without limitation, physical inspections of the production, warehousing and other facilities involved, the product packaging and labeling; inspection and review of manufacturing records, Certificates of Analysis, analytical reports and documentation; and product sampling and testing by an independent testing facility. In such cases, Subcontractor will cooperate fully with Chemonics, GHSC-QA, and/or GHSC-PSM QA, the Sampling Agent and the testing facility and take such steps and supply such information as may be needed in order to ensure timely and effective quality assurance. Only Goods that have successfully passed testing may be deemed to be ready for delivery. Chemonics, GHSC-QA, and/or GHSC-PSM QA may also direct post-delivery sampling, testing, and/or inspection of the Goods at any point in the chain of supply and distribution when it deems such action to be in the best interests of the Government. Subcontractor will fully cooperate with such measures as well. Prompt removal and replacement or correction (as applicable), for purposes of FAR 52.246-2 (g) and (h) shall be deemed, unless otherwise subsequently agreed by Chemonics, to mean (10) business days after receiving notification of rejection of Goods or Services.
- M. If delivery of the Goods (or, with respect to INCOTERMS 2010, issues of a Notice of Availability), is not completed by the required date, or if performance of any Services pursuant to the subcontract is not completed by the due date (if any) specified, due to any default or delay of Subcontractor (including without limitation any default by subcontractors, sub-vendors or suppliers), Chemonics shall be entitled to deduct from payment(s) otherwise due to Subcontractor any additional costs of sampling, testing, and inspection caused by such default or delay. Should such default or delay cause an inspection or testing firm to undertake additional inspections or tests, Chemonics shall be entitled, in addition and without prejudice to any other remedies available under or in connection with the subcontract to deduct the related costs, along with any additional Sampling Agent charges from any further payment(s) to Subcontractor, or, if such payment(s) remain available, to demand or receive a refund from Subcontractor.

ARTICLE 2.7. TITLE AND RISK OF LOSS OR DAMAGE

- A. Subcontractor shall ensure that the title to Goods delivered and supplied hereunder shall pass directly to USAID upon acceptance pursuant to Article Quality Assurance, Testing, Inspection and Acceptance above.
- B. Notwithstanding completion of delivery, Subcontractor shall bear all risk of loss or damage to the Goods prior to acceptance, except to the extent that any loss or damage is due to Chemonics' fault, or occurs after delivery and not due to fault on the Subcontractor's part.

ARTICLE 2.8. PAYMENT TERMS

Chemonics will pay the total price after Subcontractor's provision of the Goods and/or Related Services and Chemonics' acceptance thereof. Chemonics will pay the Subcontractor's invoice within thirty (30) business days after the following conditions have been fulfilled:

- (1) The Subcontractor has delivered a proper invoice, in compliance with Article Invoice Requirements below.
- (2) Chemonics has issued an inspection certificate, in compliance with Article Quality Assurance, Testing, Inspection and Acceptance.

Chemonics shall remit payment corresponding to approved, complete invoices submitted in accordance with the terms herein payable to the Subcontractor's official address or wire transfer to the authorized account indicated in Section I.

Payment of unpaid balances will be made upon completion and final acceptance of all works and deliverables by Chemonics. Any invoices for services rendered and deliverables/Goods submitted—but not accepted by Chemonics—will not be paid until the Subcontractor makes sufficient revisions to the deliverables/Goods such that Chemonics may approve the deliverables and thus the invoice.

ARTICLE 2.9. INVOICE REQUIREMENTS

- A. The Subcontractor shall present an invoice to Chemonics only for services and/or commodities that have been accepted by Chemonics. The invoice must be an original invoice, submitted to the address indicated in Section I.
- B. To constitute a proper invoice, the Subcontractor's invoice must include the following information and/or attached documentation.
 - (1) Subcontractor legal name, subcontract number, invoice date, and invoice number.
 - (2) Description of each type of Goods and Related Services included in the invoice, together with the applicable subcontract Unit Price, quantity delivered, and extended line item price.
 - (3) Bank account information to which payment shall be sent corresponding to the authorized account in Section I. All costs and risks arising out of, relating to, or resulting from such wiring shall be borne by Subcontractor.
 - (4) Such other documentation as may be requested by Chemonics in relation to the Goods and/or Related Services.
 - (5) The Subcontractor's certification, manually signed by an authorized official of Subcontractor.

VENDOR CERTIFICATION

The undersigned hereby certifies that (i) the invoice has been prepared from Vendor's books and records in accordance with the terms of the cited subcontract, and to the best of my knowledge and belief, it is correct, the sum claimed is proper and due and has not been claimed or paid before, the Goods have been delivered and all required Services have been performed, the quantities and prices specified are consistent with the subcontract, and all necessary Buyer approvals have been obtained, and (ii) appropriate refund to Buyer will be made promptly upon request in the event of disallowance of any portion of the invoice pursuant to the terms of the subcontract by Buyer or the Government.

By: _____

Title: _____

Date: _____

- C. Chemonics will promptly review invoices submitted to determine whether they are proper invoices or not. Invoices determined to be proper will be paid by Chemonics as specified in Article Payment Terms. Invoices determined not to be proper due to the existence of deficiencies will be returned to Subcontractor, generally within ten (10) business days of submission, with major deficiencies noted for correction. In the event that an invoice is submitted which is partly proper and partner not proper, Chemonics may, in its sole discretion, either return the entire invoice for correction or make payment of the proper portion and return the portion deemed not to be proper.

ARTICLE 2.10. COOPERATING COUNTRY FEES, TAXES, AND DUTIES

This subcontract is entered into by Chemonics on behalf of the GHSC-PSM Project, an official project of the Government of the United States in Cooperating Country(ies). As such, this subcontract is free and exempt from any consular or legalization fees, inspection or validation charges, and any taxes, tariffs, duties, or other levies imposed by the laws in effect in Cooperating Country(ies). The Subcontractor shall not pay any host country taxes, duties, levies, etc. from which this USAID project is exempt. In the event that any exempt charges are paid by the Subcontractor, they will not be reimbursed to the Subcontractor by Chemonics. The Subcontractor shall immediately notify Chemonics if any such taxes are assessed against the Subcontractor or its subcontractors/suppliers at any tier.

The Subcontractor is responsible for payment of all applicable taxes, as prescribed under the applicable laws, associated with wages/salaries/compensation for services rendered by individuals employed by the Subcontractor and who are directed to work as required under this Subcontract. The Subcontractor is liable for payment of all applicable taxes associated with revenues (profit), and other such taxes, fees, or dues for which Subcontractor is normally responsible as a result of operating its business.

ARTICLE 2.11. SET-OFF CLAUSE

Chemonics reserves the right of set-off against amounts payable to Subcontractor under this subcontract or any other agreement in the amount of any claim or refunds Chemonics may have against the Subcontractor. Chemonics will use this authority cautiously and fairly, providing advance written notice and an opportunity to comment whenever doing so is deemed practicable in Chemonics' sole discretion (if prior notice is deemed impracticable, Chemonics will give notice subsequently).

ARTICLE 2.12. WARRANTIES

- A. All Goods delivered and Services rendered hereunder shall be covered by the Manufacturer's standard international warranty in favor of Chemonics and the counterpart identified in this Subcontract or any resulting Order Form, if applicable. At the time that any Goods supplied under this subcontract is (are) transferred to the counterpart identified in in this Subcontract or any resulting Order Form, if applicable, or another entity within the cooperating country, all rights to warranty support and service provided to Chemonics under this subcontract shall be transferred with the commodity(ies) to the that entity's end-user. The Subcontractor shall continue to honor all warranty support and services for the duration of the warranty period.
- B. In addition to Paragraph A above, Subcontractor warrants that the Goods and Services delivered and rendered hereunder are merchantable and fit for use for the particular purpose described in the subcontract (or, if no such purpose is specifically described, for the purposes for which the Goods or Services, as applicable, are ordinarily used).
- C. Subcontractor also hereby expressly warrants that all Goods (including without limitation their parts) and Services supplied, as applicable:
 - (1) conform to subcontract requirements (including without limitation the description in the subcontract and the Specifications), as well as, if one or more specific Cooperating Countries is mentioned in the solicitation or the Subcontract, the requirements of that Cooperating Country and any other applicable regulatory agencies' requirements, and are free of defects in design;
 - (2) are free of latent defects (as used herein, defects that meet the following criteria: (a) such defects are not apparent to either Party during customary manufacturing or quality testing and/or inspection; and (b) such defects result solely from defective material, workmanship, or design and are not caused by misuse or misapplication of the Goods);
 - (3) will, to the extent found to be in breach of any warranty specified in the subcontract, be removed, and repaired or replaced, covered by new warranties identical to those that applied to the originally supplied Goods and Services, extending for the longer of [a] the remainder of the original warranty period, or [b] a new warranty period;
 - (4) ensure that all spares and replacement parts are the same as the original spares and parts unless formally replaced by an improved and Chemonics-approved technical equivalent; and
 - (5) are covered by intellectual property licenses, patents, permissions, or rights which will not infringe the intellectual property rights of any third person, and which, being granted to Chemonics and the Government pursuant to the subcontract, will be adequate to ensure that they may freely utilize the licenses, permissions and rights free and clear of any claim, encumbrance, lien or interest of any other person or entity, and in all other respects without disturbance or impediment.
- D. The period of all warranties set forth in this Article or in any other provision of the subcontract shall be as stipulated on this Subcontract or any resulting Order Form, if applicable.
- E. If any Goods or Services supplied hereunder are defective or otherwise do not meet the warranties specified herein or otherwise applicable at any time during the warranty period, Chemonics may, at its option: (1) reject the affected item(s) and require a full refund or credit; (2) reject the affected item(s) and require prompt correction or replacement (freight prepaid) at Subcontractor's sole

expense; (3) retain it/them at an equitably adjusted price; or (4) require Subcontractor to provide, if available, corrections in the form of field change order kits (including components, instructions and other necessary materials) from Subcontractor' so that Chemonics or its designee may make necessary changes or repairs. Repaired or corrected items shall be subject to the same warranties as if they were new. While returned item(s) are in Subcontractor's possession and while in transit during return to Subcontractor and reshipment to or as directed by Chemonics, all risks and costs of loss, destruction or damage shall be for Subcontractor's account.

- F. Chemonics shall submit warranty claims to Subcontractor within a reasonable time after discovery of any breach, indicating the nature and date of the claim.
- G. Subcontractor shall promptly correct any problem reported by the Government and/or Chemonics by making necessary changes in the Goods or their manufacturing processes so that further Goods to be delivered to the Government and/or Chemonics shall be as warranted herein. If Subcontractor becomes aware of any non-conformance to any warranty relating to the Delivered Goods, Subcontractor shall promptly notify Chemonics thereof in writing.
- H. Chemonics shall have the right, at any time and from time to time, to stop further deliveries of Goods from Subcontractor that do not conform to the warranties and other requirements of the subcontract, and in such event Chemonics shall advise Subcontractor of Chemonics' best identification and assessment of the problems. Further deliveries of Goods shall not be made to Chemonics until and unless Subcontractor has corrected the specified areas of nonconformance in the Goods, or Chemonics authorizes in writing the shipment of such Goods pending Subcontractor's correction. Chemonics' actions pursuant to this Paragraph shall not be deemed to constitute a change order, and Subcontractor shall not be entitled to any compensation due to the delays (if any) associated with or resulting from these actions.

ARTICLE 2.13. ANNOUNCEMENTS, RECALLS AND COUNTERFEITING NOTICES

- A. Subcontractor shall promptly provide the Chemonics with any bulletins, safety notices and recall notices etc. issued by Subcontractor (or, if Subcontractor is not the manufacturer, by the Manufacturer) either directly or via the Manufacturer's local agent, if any.
- B. Subcontractor shall promptly provide the Chemonics with written notice (including all pertinent particulars) regarding instances that may come to its attention by whatever means of possible counterfeiting, piracy, or unauthorized sales by third parties of diluted, adulterated, impure, misbranded, mislabeled, unsafe, ineffective, inefficacious, or otherwise non-standard items of the same type and brand as the Goods supplied in the Cooperating Countries.
- C. Notwithstanding any other provision in the Subcontract or any other agreement between the Parties, Chemonics may disclose this information to appropriate authorities of the U.S. Government or the Cooperating Country governments, as well as others, as deemed necessary in Chemonics' sole discretion to perform the USAID Contract, comply with its obligations under applicable law, or otherwise. The obligations under this Article shall continue to apply until the end of the warranty period of all Goods furnished by Subcontractor pursuant to the Subcontract.
- D. Subcontractor will provide Chemonics or its Quality Assurance designee access, upon request, to information, and any documentation related to product quality complaints, investigations conducted

by the manufacturer, or any medical adverse event reports, and/or trends that are directly related to the supplied product.

ARTICLE 2.14. VENDORS WHO ARE NOT THE MANUFACTURERS OF THE GOODS

Subcontractors who are not also the Manufacturers of the Goods being supplied shall fully comply with the requirements of the subcontract themselves. In addition, they shall also be responsible for requiring the actual Manufacturers to comply with the extent specified in the subcontract or otherwise as necessary to ensure the Subcontractors' own compliance.

ARTICLE 2.15. GOVERNING LANGUAGE

The subcontract is executed in the English language, which shall be the binding and controlling language for all matters relating to the meaning and/or interpretation of this subcontract.

ARTICLE 2.16. AUTHORIZED USAID GEOGRAPHIC CODE

The authorized USAID geographic code for this subcontract is USAID Geographic Code 935, unless otherwise specified on an Order issued hereunder, if applicable, in accordance with the United States Code of Federal Regulations (CFR), 22 CFR §228, available at: <https://www.gpo.gov/fdsys/pkg/CFR-2015title22-vol1/pdf/CFR-2015-title22-vol1-part228.pdf>.

No commodities or related services may be supplied under this subcontract that are manufactured or assembled in, shipped from, transported through, or otherwise involving any of the following countries: Burma (Myanmar), Cuba, Iran, North Korea, (North) Sudan, Syria. Related services include incidental services pertaining to any/all aspects of this work to be performed under a resulting subcontract (including transportation, fuel, lodging, meals, and communications expenses).

ARTICLE 2.17. RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (FAR 52.225-13)

- A. Except as authorized by the Department of Treasury's Office of Foreign Assets Control (OFAC), the Subcontractor shall not acquire for its use in the performance of this subcontract, any supplies or services if any proclamation, U.S. Executive Order, U.S. statute, or OFAC's implementing regulations (31 CFR Chapter V), would prohibit such a transaction by a U.S. person, as defined by law.
- B. Except as authorized by OFAC, most transactions involving Cuba, Iran, Sudan, Burma (Myanmar) and North Korea are prohibited, including importing/exporting to/from the United States, engaging in financial transactions, or facilitating any prohibited transactions by third parties. Lists of entities and individuals subject to economic sanctions – which are updated routinely - are included in OFAC's List of Specially Designated Nationals and Blocked Persons at <http://www.treas.gov/offices/enforcement/ofac/sdn>. It is the Subcontractor's responsibility to remain informed as to sanctioned parties and to ensure compliance with all relevant U.S. sanctions and trade restrictions. More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 CFR Chapter V and/or on OFAC's website at <http://www.treas.gov/offices/enforcement/ofac>.

- C. The Subcontractor shall insert this article, including this paragraph C, in all subcontracts and sub awards issued under this subcontract.

ARTICLE 2.18. COMPLIANCE WITH U.S. EXPORT LAWS

Subcontractor warrants and agrees to comply with all U.S. export laws and regulations and other applicable U.S. law and regulations, including but not limited to: (i) the Arms Export Control Act (AECA), 22 U.S.C. 2778 and 2779; (ii) Trading with the Enemy Act (TWEA), 50 U.S.C. App. §§ 1-44; (iii) International Traffic in Arms Regulations (ITAR), 22 C.F.R. Parts 120-130.; (iv) Export Administration Act (EAA) of 1979 and the Export Administration Regulations (EAR) 15 C.F.R. Parts 730-774, (including the EAR antiboycott provision); (v) the International Emergency Economic Powers Act (IEEPA), 50 U.S.C. 1701-1706 and Executive Orders of the President under IEEPA, 50 U.S.C. app. §§ 2401-2420; (vi) Office of Foreign Asset Controls (OFAC) Regulations, 31 C.F.R. Parts 500-598; and (vii) other applicable U.S. laws and regulations.

As required, subject to Chemonics' prior approval for all exports or imports under the subcontract, Subcontractor shall determine any export license, reporting, filing or other requirements, obtain any export license or other official authorization, and carry out any customs formalities for the export of goods or services. Subcontractor agrees to cooperate in providing any reports, authorizations, or other documentation related to export compliance requested by Chemonics. Subcontractor agrees to indemnify, hold harmless and defend Chemonics for any losses, liabilities and claims, including as penalties or fines as a result of any regulatory action taken against Chemonics as a result of Subcontractor's non-compliance with this provision.

ARTICLE 2.19. COMPLIANCE WITH U.S. ANTI-CORRUPTION REGULATIONS

Subcontractor represents and warrants that it shall comply fully with the anti-bribery provisions of the U.S. Foreign Corrupt Practices Act, as amended ("FCPA"), as well as the a) UN Convention against Corruption (UNCAC), b) OECD Convention on the Bribery of Foreign Public Officials (OECD Convention); and c) any other applicable local anti-corruption laws, rules, and regulations if any part of this subcontract will be performed outside of the United States of America. Specifically, Subcontractor understands and agrees that it shall be unlawful for the Subcontractor and/or any officer, director, employee or agent of the Subcontractor to make any kind of offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to:

- (a) *any foreign official* (or foreign political party) for purposes of either influencing any act or decision of such foreign official in his official capacity, or inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official, or securing any improper advantage, or inducing such foreign official to use his influence with a foreign government, or instrumentality thereof, to affect or influence any act or decision of such government or instrumentality in order to assist such person in obtaining or retaining business for or with, or directing business to any person; or
- (b) *any person*, while knowing that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official (or foreign political party), or to any candidate for foreign political office, for any of the prohibited purposes described above.

For purposes of this subcontract "foreign official" means any appointed, elected, or honorary official or employee of a) a foreign government (or if this Subcontract is to be performed outside the United States

than of the Host Country) or political party, or b) of a public international organization, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality, or for or on behalf of any such public international organization (e.g., the UN, DFID, or WHO, or the World Bank).

For purposes of this Article, the “government” includes any agency, department, embassy, or other governmental entity, and any company or other entity owned or controlled by the government.

ARTICLE 2.20. PRIVACY OF CONTRACT, PUBLICITY, AND COMMUNICATIONS WITH OTHER THIRD PARTIES

- A. The Subcontractor shall not communicate with Chemonics’ client in connection with this subcontract, except as expressly permitted, in writing, by Chemonics. Any Subcontractor news release, public announcement, advertisement or publicity concerning this subcontract or the USAID Contract will be subject to prior written approval of Chemonics. Subcontractor shall not disclose any information relating to this subcontract to any person not authorized by Chemonics or the Government to receive it.

All approvals required from USAID shall be obtained through Chemonics.

This provision does not prohibit the Subcontractor from communicating with the client with respect to:

- (1) matters the Subcontractor is required by law to communicate to the U.S. Government;
 - (2) any ethics or anti-corruption matter;
 - (3) any matter for which this subcontract, including a FAR or AIDAR clause is included in this Subcontract, provides for direct communication by the Subcontractor to the U.S. Government; or
 - (4) if Subcontractor is a U.S. small business concern, any material matter pertaining to payment or utilization.
- B. The Parties shall not publicly disclose information concerning the project supported under this Subcontract to any other third party, unless the other Party approves such disclosure in advance. No news releases, marketing materials or advertisements, public announcement or presentation, denial or confirmation of any specific technical or management information pertaining to this Subcontract, or any phase of any program hereunder shall be made without each Party’s prior written consent. Either Party can, without the other Party's permission, refer to the type of work performed in resumes, qualification statements, or company past performance summaries, and may release same to a third party. The restrictions of this paragraph shall continue in effect upon completion or termination of this Subcontract for a period of three years.
- C. The Subcontractor (or any entity it subcontracts with) shall not use the USAID, PEPFAR, or President’s Malaria Initiative logo or the GHSC-PSM Project name in any public communications, including but not limited to press releases or corporate marketing materials, without express written consent from the GHSC-PSM Knowledge

Management and Communications Manager, or his/her designee. Any authorized use of the USAID logo or GHSC-PSM project name must be in accordance with the approved GHSC-PSM Branding and Marking Plan.

ARTICLE 2.21. SUBCONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS

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

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

If lower tier subcontracting is authorized in this Subcontract, the Subcontractor shall insert the substance of this clause in all subcontracts over the simplified acquisition threshold.

ARTICLE 2.22. GRATUITIES AND ANTI-KICKBACK

- A. Subcontractor shall not offer or give a kickback or gratuity (in the form of entertainment, gifts, or otherwise) for the purpose of obtaining or rewarding favorable treatment as a Chemonics supplier.
- B. By accepting this subcontract, Subcontractor certifies and represents that it has not made or solicited and will not make or solicit kickbacks in violation of FAR 52.203-7 or the Anti-Kickback Act of 1986 (41 USC 51-58), both of which are incorporated herein by this specific reference, except that paragraph (c)(1) of FAR 52.203-7 shall not apply.
- C. When the Subcontractor has reasonable grounds to believe that a violation described in paragraph B of this provision may have occurred, the Subcontractor shall promptly report in writing the possible violation. Such reports shall be made to Chemonics, who shall forward the report to the USAID Inspector General for investigation, as required.

The Subcontractor agrees to cooperate fully with any United States Government agency investigating a possible violation described in paragraph B of this article.

Chemonics may offset the amount of the kickback against any monies owed by Chemonics under this fixed price subcontract or order the monies withheld from future payments due the Subcontractor.

The Subcontractor agrees to include the substance of this article in any contract it may issue under this subcontract.

ARTICLE 2.23. TERRORIST FINANCING PROHIBITION

The Subcontractor (including its employees, consultants and agents) by entering into this subcontract certifies that it does not engage, support or finance individuals and/or organizations associated with terrorism. The Subcontractor is reminded that U.S. Executive Orders and U.S. law prohibits transactions

with, and the provision of resources and support to, individuals and organizations associated with terrorism. A list of entities and individuals subject to restrictions, prohibitions and sanctions can be found at the web site of the Department of Treasury's Office of Foreign Assets Control (OFAC), at <http://treasury.gov/ofac>. It is the legal responsibility of the Subcontractor to ensure compliance with the Executive Order 13224 and other U.S. laws prohibiting terrorist financing. This provision must be included in all subcontracts or sub awards issued under this subcontract.

ARTICLE 2.24. PROTECTING CHEMONICS' INTERESTS WHEN SUBCONTRACTOR IS NAMED ON SUSPECTED TERRORISTS OR BLOCKED INDIVIDUALS LISTS, INELIGIBLE TO RECEIVE USAID FUNDING, OR SUSPENDED, DEBARRED OR EXCLUDED FROM RECEIVING FEDERAL FUNDS

In addition to any other rights provided under this subcontract, it is further understood and agreed that Chemonics shall be at liberty to terminate this subcontract immediately at any time following any of the following conditions:

- (a) the Subcontractor is named on any list of suspected terrorists or blocked individuals maintained by the U.S. Government, including but not limited to (a) the Annex to Executive Order No. 13224 (2001) (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or (b) the List of Specially Designated Nationals and Blocked persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury;
- (b) USAID determines that the Subcontractor is ineligible to receive USAID funding pursuant to U.S. laws and regulations; or
- (c) the Subcontractor is identified on the U.S. Government's Excluded Party List System, or successor listing, as being suspended, debarred, or excluded from receiving federal awards or assistance.

Notwithstanding any other provision of the Subcontract, upon such termination the Subcontractor shall have no right to receive any further payments. This applies to the Subcontractor and the Subcontractor's subcontractors and suppliers as well.

ARTICLE 2.25. COMPLIANCE WITH APPLICABLE LAWS AND STANDARDS

- A. The Subcontractor shall perform all work, and comply in all respects, with applicable laws, ordinances, codes, regulations, and other authoritative rules of the United States and its political subdivisions and with the standards of relevant licensing boards and professional associations. The Subcontractor shall also comply with the applicable USAID regulations governing this subcontract, which are incorporated by reference into this subcontract, and appear in **Article 2.40:** Federal Acquisition Regulation (FAR) and Agency For International Development Acquisition Regulation (AIDAR) Flowdown Provisions For Subcontracts And Task Orders Under USAID Prime Contracts.
- B. This subcontract shall be governed and construed under the laws of the District of Columbia, except that subcontract provisions and requirements that are based on government contract laws, regulations, or Federal Acquisition Regulation clauses shall be construed in accordance with the federal common law of Government Contracts as represented by decisions of the Federal Courts, and the Armed Services and Civilian Boards of Contract Appeals.

ARTICLE 2.26. INDEMNITY

- A. Subcontractor shall fully indemnify, hold harmless and defend Chemonics and its directors, officers, employees, agents (as well as the Government), stockholders and Affiliates (collectively, Indemnified Parties) from and against all claims, actions, suits, demands, damages, liabilities, obligations, losses, settlements, judgments, costs and expenses (including without limitation reasonable attorney's fees and costs), whether or not involving a third party claim, which arise out of, relate to or result from acts, errors or omissions of the Subcontractor in performance of this Agreement.
- B. Subcontractor shall defend and settle at its sole expense all suits or proceedings arising out of the foregoing, provided that Subcontractor has notice or is given prompt written notice of such claim or suit and, further, that Subcontractor shall be given necessary information, reasonable assistance and the authority to defend such claim or suit. Subcontractor shall not settle, compromise or discharge any pending or threatened suit, claim or litigation, arising out of, based upon, or in any way related to the subject matter of this subcontract and to which Chemonics is or may reasonably be expected to be a party, unless and until Subcontractor has obtained a written agreement, approved by Chemonics (which shall not be unreasonably withheld) and executed by each party to such proposed settlement, compromise or discharge, releasing Chemonics from any and all liability.
- C. If any of the goods or services provided by Subcontractor hereunder, including without limitation software and all forms of written materials, become the subject of a claim of infringement or violation of a third party's intellectual property, privacy and/or proprietary rights, Subcontractor shall, at its own expense, use its best efforts—
 - (1) to procure for Chemonics the right to continue use and, if authorized under this subcontract, distribution of the infringing goods or services or,
 - (2) to modify the goods or services to make them non-infringing, or to replace them with equivalent, non-infringing counterparts.If none of the above-mentioned can be successfully implemented, then Subcontractor shall refund to Chemonics all monies paid to the Subcontractor for the infringing goods and services.
- D. Subcontractor shall be included as an insured under the Commercial General Liability (CGL) policy, using SO CG 2015 – ADDITIONAL INSURED – VENDORS endorsement or a substitute providing equivalent coverage, and under the commercial umbrella, if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the Indemnitee. There shall be no endorsement or modification of the CGL to make it excess over other available insurance; alternatively, if the CGL states that it is excess or pro rata, the policy shall be endorsed to be primary with respect to the additional insured.

ARTICLE 2.27. INTELLECTUAL PROPERTY RIGHTS

- (a) Subcontractor warrants that the work performed or delivered under this Subcontract will not infringe or otherwise violate the intellectual property rights of any third party in the United States or any foreign country. Except to the extent that the U.S. Government assumes liability therefor, Subcontractor shall defend, indemnify, and hold harmless Chemonics and its clients from and against any claims, damages, losses, costs, and expenses, including reasonable attorneys' fees, arising out of any action by a third party that is based upon a claim that the Work performed or delivered under this subcontract infringes or otherwise violates the intellectual property rights of any person or entity. This indemnity and hold harmless shall not be considered an allowable cost under any provisions of this subcontract except with regard to allowable insurance costs.

(b) Subcontractor's obligation to defend, indemnify, and hold harmless Chemonics and its customers under

Paragraph (a) above shall not apply to the extent FAR 52.227-1 "Authorization and Consent" applies to Chemonics' Prime Contract for infringement of a U.S. patent and Chemonics and its clients are not subject to any actions for claims, damages, losses, costs, and expenses, including reasonable attorneys' fees by a third party.

(c) In addition to any other allocation of rights in data and inventions set forth in this agreement, Subcontractor agrees that Chemonics, in the performance of its prime or higher tier contract obligations (including obligations of follow-on contracts or contracts for subsequent phases of the same program), shall have under this agreement an unlimited, irrevocable, paid-up, royalty-free right to make, have made, sell, offer for sale, use, execute, reproduce, display, perform, distribute (internally or externally) copies of, and prepare derivative works, and authorize others to do any, some or all of the foregoing, any and all, inventions, discoveries, improvements, mask works and patents as well as any and all data, copyrights, reports, and works of authorship, conceived, developed, generated or delivered in performance of this subcontract.

(d) The tangible medium storing all reports, memoranda or other materials in written form including machine readable form, prepared by Subcontractor and furnished to Chemonics pursuant to this subcontract shall become the sole property of Chemonics.

ARTICLE 2.28. MODIFICATIONS

Modifications to the terms and conditions of this subcontract, including any modification to the scope of work, may only be made by written agreement between authorized personnel of both Parties to this subcontract. Each Party shall give due notice and consideration to any proposals for modification made by the other Party.

ARTICLE 2.29. CHANGES

In accordance with FAR Clause 52.243-1 "Changes—Fixed-Price" (AUG 1987), Chemonics may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this subcontract in the services to be performed.

If any such change(s) causes an increase or a decrease in the cost, or the time required for the performance, or any part of the work under the subcontract, an equitable adjustment shall be made in the subcontract price or delivery schedule, or both, and the subcontract shall be modified in writing accordingly. Any claim by the Subcontractor for adjustment under this subcontract must be asserted within 30 (thirty) days from the date of receipt by the Subcontractor of the modification or change.

ARTICLE 2.30. OPTION FOR INCREASED QUANTITY

Unless this is an Indefinite Delivery/Indefinite Quantity type of subcontract, Chemonics may increase the Goods and/or Related Services called for by the quantity and at the unit price(s) specified. Chemonics may exercise this additional option by providing written notice to Subcontractor within the period of performance stipulated in the Subcontract Agreement or Order, if applicable. Delivery of the additional Goods or performance of the additional Related Services, as applicable, shall be subject to the terms and conditions of the subcontract, except as the Parties may otherwise agree in writing.

ARTICLE 2.31. ASSIGNMENT AND DELEGATION

This subcontract may not be assigned or delegated, in whole or in part, by the Subcontractor without the written consent of Chemonics. Absent such written consent, any assignment is void. Chemonics reserves the unilateral right to assign the Subcontract and any or all rights, obligations and claims there under or relating thereto, to the USAID or to an alternate procurement services contractor if so designated by the USAID, at any time or from time to time during the Period of Performance, without Subcontractor's consent but with written notice to Vendor.

ARTICLE 2.32. DISPUTES

A. *Disputes Based on Client Actions.*

- (1) Any decision of the Government under the Prime Contract, if binding on Chemonics, shall also bind the Subcontractor to the extent that it relates to this subcontract, provided that Chemonics shall have promptly notified the Subcontractor of such decision and, if requested by Subcontractor, shall have brought suit or filed claim, as appropriate against the Government, or, in alternative, agreed to sponsor Subcontractor's suit or claim. A final judgment in any such suit or final disposition of such claim shall be conclusive upon the Subcontractor.
- (2) For any action brought, or sponsored, by Chemonics on behalf of the Subcontractor pursuant to this clause, the Subcontractor agrees to indemnify and hold Chemonics harmless from all costs and expenses incurred by Chemonics in prosecuting or sponsoring any such appeal.

B. *Other Disputes.* The Parties agree to make every reasonable effort to resolve amicably through mutual agreement any dispute that may arise between them pursuant to this subcontract. If such efforts are unsuccessful in resolving the disputes, all disputes not covered under subparagraph (a) above shall be resolved by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules. Arbitration shall be conducted in Washington, DC. Arbitrators shall be empowered to award only direct damages consistent with the terms of this Agreement. Each party shall bear its own costs of arbitration, including attorneys' and experts' fees. An arbitration decision shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

C. *Duty to Continue to Perform.* Notwithstanding any such dispute, the Subcontractor shall proceed diligently with performance under this subcontract in accordance with the Contractor's directions.

D. *Limitations.* Neither party shall be liable to the other for any indirect, consequential, special, incidental, or punitive damages including, without limitation, loss of revenue or profits, loss of production, loss or denial of opportunity or use, loss of market, loss of goodwill, loss of reputation, or damage to credit rating.

The Subcontractor acknowledges and agrees that it has no direct action against the U.S. Government or USAID for any claims arising under this Subcontract.

ARTICLE 2.33. FORCE MAJEURE

“Force Majeure” as used herein means: acts of God, natural disasters, invasion or war (whether declared or not) and other hostilities, revolution, rebellion, labor disputes, insurrection or riot, confrontation or other disorder, ionizing radiation or confrontation by regular activity from any unclear or waste, radio-active, biological, chemical or toxic explosives or other hazardous properties of any explosives, biological or chemical agents, nuclear assembly or nuclear components thereof, or other act, event or circumstance of a similar nature or force, arising from circumstances beyond the control of the Subcontractor or which Subcontractor could not reasonably be expected to have taken into account and which or the consequences of which the Subcontractor could not reasonably be expected to have avoided or overcome.

The Subcontractor shall not be liable for any excess costs if the failure to perform the subcontract arises out of a Force Majeure cause and if the Subcontractor, within 20 (twenty) days from the beginning of any such Force Majeure, notifies Chemonics of such prevention of performance and the cause thereof. If the failure to perform is caused by the fault of a Subcontractor’s subcontractor and if such default arises out of causes beyond the control of both the Subcontractor and the Subcontractor’s subcontractor and without the fault or negligence of either of them (Force Majeure), and the Subcontractor, within 20 (twenty) days from the beginning of any such Force Majeure, notifies Chemonics in writing of such prevention of performance and the cause thereof, the Subcontractor shall not be liable for any excess costs due to the failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Subcontractor to meet the required delivery schedule.

ARTICLE 2.34. TERMINATION

- A. Chemonics reserves the right to terminate this subcontract in whole at any time, or in part from time to time, for its sole convenience. In the event of such termination, Subcontractor shall immediately stop all work hereunder and shall immediately cause any and all of its contractors, suppliers and subcontractors (including the Manufacturer, if different from the Subcontractor) to cease work. Subject to the terms of this subcontract and to reimbursement of Chemonics by the Government, Subcontractor shall be paid a percentage of the total Subcontract Price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges Subcontractor can demonstrate to Chemonics' satisfaction using its standard record keeping system, have resulted from the termination. Subcontractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.
- B. Chemonics may also terminate the Subcontract at any time in whole, or from time to time in part, for cause in the event of default by Subcontractor (including, but not limited to, any default by Subcontractor's sub-contracts, suppliers or subcontractors, or by the manufacturer), or if Subcontractor fails to comply with any subcontract term or condition, or fails to provide Chemonics, upon request, with adequate assurances of future performance. In the event of termination for cause, Chemonics shall not be liable to Subcontractor for any Goods or Related Services not already delivered, and shall have any and all of the other rights and remedies against Subcontractor provided by the subcontract or by applicable law and regulation.
- C. If it is determined that Chemonics improperly terminated the Subcontract for default, such termination shall be deemed a termination for convenience. If the termination for default is not improper, in addition to the other rights and remedies provided by the subcontract or by applicable law and regulation, Chemonics may purchase elsewhere goods similar to those not yet delivered, and Subcontractor shall pay Chemonics any costs that it incurs over the subcontract Price (or relevant part thereof). For purposes of this subcontract, “default by the Vendor” shall include defaults by the Manufacturer (if different from the Vendor) as well.

- D. If performance of the USAID GHSC-PSM prim contract is suspended for any reason, Chemonics may, by written notice, instruct Subcontractor to immediately suspend all or any part of its performance. The period of suspension shall extend for up to ninety (90) days from the date of Subcontractor's receipt of the notice, and may be extended if, and to the extent that, the suspension of the USAID contract is extended. Before the end of the period, Chemonics will either cancel the suspension or terminate the subcontract pursuant to Paragraph A or B above. If the suspension is cancelled before it expires, or the suspension period expires without renewal, Subcontractor shall resume its performance. No additional compensation will be due to Subcontractor due to the suspension; however, if necessary, Subcontractor may propose an appropriate adjustment in the performance schedule. In the event of termination, the procedures in Paragraph A or B, as applicable, will be followed.
- E. Termination of the subcontract shall not affect the existing rights and licenses granted to Chemonics or the Government, which shall survive such termination.
- F. In the event that Subcontractor (or the Manufacturer, if Subcontractor is not also the manufacturer) shall cease conducting that portion of its business which produces, distributes or supports the Goods described herein, Chemonics shall have, in order to fulfill its obligations to the Government, such rights to technical data, computer software and any other Subcontractor-provided information, documentation and materials used in connection with the Goods as are necessary for the continued performance of the USAID Contract. Subcontractor shall assist Chemonics and the Government in every reasonable manner in arranging for the orderly transfer, under such provisions stated herein, of all activities to Chemonics or to the designees of either of the foregoing.
- G. Notwithstanding termination or suspension in accordance with this article, Subcontractor shall, unless otherwise specifically instructed in writing by Chemonics, continue performance of any not terminated or not suspended portion of the subcontract.

ARTICLE 2.35. REPORTING ON SUBCONTRACTOR DATA PURSUANT TO THE REQUIREMENTS OF THE FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT

- A. Public Availability of Information. Pursuant to the requirements of FAR 52.204-10, Chemonics is required to report information regarding its award of subcontracts and sub-task orders to the Federal Funding Accountability and Transparency Act Sub award Reporting System (FSRS). This information will be made publicly available at <http://www.USASpending.gov>.
- B. Subcontractor's Responsibility to Report Identifying Data. **Within 7 days of an award with a value of \$30,000 or greater unless exempted, the Subcontractor shall report its identifying data required by FAR 52.204-10 (including executive compensation, if applicable) in the required questionnaire and certification found in herein.** If the Subcontractor maintains a record in the System for Award Management (www.SAM.gov), the Subcontractor shall keep current such registration, including reporting of executive compensation data, as applicable, and the data is not required to be submitted in the above referenced certification. If reporting of executive compensation is applicable and the Subcontractor does not maintain a record in the System for Award Management, Subcontractor shall complete the "FSRS Reporting Questionnaire and Certification" found in herein within 7 days of each anniversary of the subcontract award date.

- C. Remedy. Failure to comply with the reporting requirements in a timely manner as required under this section may constitute a material breach of the Subcontract and cause for withholding payment to the Subcontractor until the required information has been supplied to Chemonics or the Subcontractor demonstrates to Chemonics that its System for Award Management record has been updated. In addition to contractual remedies, Chemonics may make the Subcontractor's failure to comply with the reporting requirements a part of the Subcontractor's performance information record.

ARTICLE 2.36. SURVIVAL

In addition to the rights and obligations which survive as expressly provided for elsewhere in the Subcontract, the other provisions which by their nature should survive shall survive and continue after any termination or expiration of this Subcontract until fulfilled.

ARTICLE 2.37. NON-WAIVER

Chemonics' failure to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this subcontract or to exercise any right hereunder, shall not be construed as a waiver of the future performance of any such term, covenant or condition or the future exercise of such right.

ARTICLE 2.38. SEVERABILITY

If any provision of this subcontract is determined by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions shall continue in full force and effect as if this subcontract had been executed with the affected provision eliminated.

ARTICLE 2.39. LIMITATION OF DAMAGES

If a claim for damages or a right to any other form of relief, based on subcontract, indemnity, negligence or otherwise should arise in connection with this subcontract, the claiming Party shall take all necessary measures to mitigate the damages or loss, to the extent that this can be accomplished without unreasonable cost or inconvenience. In no event shall any such claim or relief include or permit recovery of exemplary or consequential damages, however described.

ARTICLE 2.40. FEDERAL ACQUISITION REGULATION (FAR) AND AGENCY FOR INTERNATIONAL DEVELOPMENT ACQUISITION REGULATION (AIDAR) FLOWDOWN PROVISIONS FOR SUBCONTRACTS AND TASK ORDERS UNDER USAID PRIME CONTRACTS

This fixed price/fixed unit price subcontract incorporates the following clauses of the Federal Acquisition Regulation (48 Code of Federal Regulations, Chapter 1) and USAID Acquisition Regulation (48 Code of Federal Regulations, Chapter 7) by reference, with the same force and effect as if they were given in full text. The full text is available at <http://www.arnet.gov/far/> and <http://www.info.usaid.gov/pubs/ads/aidar91.pdf>. Modifications which apply to this fixed price/fixed unit price subcontract appear after each clause. It is understood and agreed that the Subcontractor may be obligated by and to Chemonics for any specifications or documentation required of Chemonics under these clauses. The Subcontractor hereby agrees to abide by the terms and conditions imposed by these clauses.

With respect to documentation and approvals required under these clauses, all such documentation and approvals shall be submitted to or requested from Chemonics.

To the maximum extent practicable, the Subcontractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or non-developmental items as components of items to be supplied under this contract. The Subcontractor shall insert the following clauses in subcontracts for commercial items under this subcontract:

A. Provisions of the Federal Acquisition Regulation (FAR) Incorporated by Reference

The FAR clauses referenced below and cited elsewhere in this Subcontract are incorporated herein by reference, with the same force and effect as if they were given in full text, and may be applicable, including any notes following the clause citation, to this Subcontract.

(a) This Subcontract is entered into by the parties in support of a U.S. Government contract.

- (b) As used in the clauses referenced below and otherwise in this Subcontract:
1. “Commercial Item” means a commercial item as defined in FAR 2.101.
 2. “Contract” means this Subcontract.
 3. “Contracting Officer” shall mean the U.S. Government Contracting Officer for Chemonics’ government prime contract under which this Subcontract is entered.
 4. “Contractor” and “Offeror” means the Subcontractor, with whom Chemonics is contracting, acting as the immediate subcontractor to Chemonics.
 5. “Prime Contract” means the contract between Chemonics and the U.S. Government.
 6. “Subcontract” means any contract placed by Subcontractor or lower-tier subcontractors under this Subcontract.
 7. Where the clause refers expressly to the first-tier subcontract, definitions 2, 3, 4, and 6 do not apply.

(c) The following notes apply to the clauses incorporated by reference below only when specified in the parenthetical phrase following the clause title and date.

1. Substitute “Chemonics” for “Government” or “United States” throughout this clause.
2. Substitute “Chemonics Procurement Representative” for “Contracting Officer”, “Administrative Contracting Officer”, and “ACO” throughout this clause.
3. Insert “and Chemonics” after “Government” throughout this clause.
4. Insert “or Chemonics” after “Government” throughout this clause.
5. Communication/notification required under this clause from/to Subcontractor to/from the USAID Contracting Officer shall be through Chemonics.
6. Insert “and Chemonics” after “Contracting Officer”, throughout the clause.
7. Insert “or Chemonics Procurement Representative” after “Contracting Officer”, throughout the clause.

8. If the Subcontractor is a non-U.S. firm or organization, this clause applies to this Subcontract only if Work under the Subcontract will be performed in the United States or Subcontractor is recruiting employees in the United States to Work on the Contract.

(d) Subcontractor agrees that upon the request of Chemonics it will negotiate in good faith with Chemonics relative to modifications to this Subcontract to incorporate additional provisions herein or to change provisions hereof, as Chemonics may reasonably deem necessary in order to comply with the provisions of the applicable Prime Contract with the provisions of modifications to such Prime Contract. If any such modifications to this Subcontract causes an increase or decrease in the cost of, or the time required for, performance of any part of the Work under this Subcontract, an equitable adjustment shall be negotiated.

Clause Number	Title	Date	Notes and Applicability
<u>52.202-1</u>	DEFINITIONS	NOV 2013	All subcontracts regardless of value
<u>52.203-2</u>	CERTIFICATION OF INDEPENDENT PRICE DETERMINATION	APR 1985	Fixed price subcontracts over \$150,000.
<u>52.203-3</u>	GRATUITIES	APR 1984	All subcontracts regardless of value (Note 4 applies)

Clause Number	Title	Date	Notes and Applicability
<u>52.203-7</u>	ANTI-KICKBACK PROCEDURES	MAY 2014	Applies to all Subcontracts greater than \$150,000, except paragraph (c)(1).
<u>52.203-11</u>	CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS	SEP 2007	All subcontracts equal to or greater than \$150,000 (Note 2 applies)
<u>52.203-12</u>	LIMITATIONS ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS	OCT 2010	All subcontracts equal to or greater than \$150,000 (Note 2 applies)
<u>52.203-17</u>	CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENTS TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS	SEP 2013	All Subcontracts equal to or greater than \$150,00
<u>52.204-6</u>	DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER	JUL 2013	All Subcontracts equal to or greater than \$30,000
<u>52.204-10</u>	REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS	JUL 2013	Applies to first-tier subcontract only.
<u>52.209-2</u>	PROHIBITION ON CONTRACTING WITH INVERTED DOMESTIC CORPORATIONS –REPRESENTATION	DEC 2014	All subcontracts regardless of value (Note 1 applies)
<u>52.209-5</u>	CERTIFICATE REGARDING RESPONSIBILITY MATTERS	OCT 2015	All Subcontracts > \$150,000. (Notes 2, 3 apply)

<u>52.209-6</u>	PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT	AUG 2013	All Subcontracts > \$35,000. (Note 2 applies)
<u>52.209-10</u>	PROHIBITION ON CONTRACTING WITH INVERTED DOMESTIC CORPORATIONS	DEC 2014	All subcontracts regardless of value (Note 1 applies)
<u>52.216-22</u>	INDEFINITE QUANTITY	OCT 1995	Applies to Indefinite Quantity Subcontracts (IQS) Or Indefinite Delivery Indefinite Quantity (IDIQ) Subcontracts only. (Note 1 applies)
<u>52.219-8</u>	UTILIZATION OF SMALL BUSINESS CONCERNS	JUL 2013	Applies to all Subcontracts >\$150,000 except when the Subcontract will be performed entirely outside of the U.S. (Note 8 applies.)
<u>52.222-21</u>	PROHIBITION OF SEGREGATED FACILITIES	FEB 1999	(Note 8 applies.) Does not apply to work performed outside the United States by Subcontractor employees who were not recruited within the United States.
<u>52.222-26</u>	EQUAL OPPORTUNITY	MAR 2007	(Notes 2 and 8 apply Note 1 applies in paragraph (8).) Does not apply to work performed outside the United States by Subcontractor
Clause Number	Title	Date	Notes and Applicability
			employees who were not recruited within the United States.
<u>52.222-35</u>	EQUAL OPPORTUNITY FOR VETERANS	SEP 2010	Applies if this Subcontract is for \$100,000 or more. Does not apply to Subcontracts issued to non-U.S. firms where the work is performed entirely outside the U.S. (Notes 5 and 8 apply.)
<u>52.222-36</u>	AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES	OCT 2010	Applies if this Subcontract exceeds \$15,000. Does not apply to Subcontracts issued to non-U.S. firms where the work is performed entirely outside the U.S. (Note 8 applies.)
<u>52.222-37</u>	EMPLOYMENT REPORTS ON VETERANS	SEP 2010	Applies if this Subcontract is for \$100,000 or more. Does not apply to Subcontracts issued to non-U.S. firms where the work is performed entirely outside the U.S. (Note 8 applies.)

<u>52.222-50</u>	COMBATING TRAFFICKING IN PERSONS (Alternate I applies when work is performed outside the U.S. and it is included in the Prime Contract)	MAR 2015	Applies to all Subcontracts, regardless of type, value. (Note 2 applies starting in paragraph c. Note 3 applies in paragraph (e). Note 1 applies in paragraph (h).)
<u>52.225-13</u>	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES	JUN 2008	Applies to all Subcontracts regardless of value or type
<u>52.228-3</u>	WORKERS' COMPENSATION INSURANCE (DEFENSE BASE ACT)	JUL 2014	Applies to all Subcontracts to which the Defense Base Act applies.
<u>52.242-13</u>	BANKRUPTCY	JUL 1995	Notes 1 and 2 apply.
<u>52.242-15</u>	STOP-WORK ORDER Alternate I (APR 1984) applies if this is a cost-reimbursement Subcontract.	AUG 1989	Notes 1 and 2 apply.
<u>52.243-1</u>	CHANGES-FIXED PRICE (Alt III)	AUG 1987	Applies to Fixed Price Subcontracts of any value. (Note 2 applies)

B. Agency for International Development Acquisitions Regulation (AIDAR) Clauses

The AIDAR clauses referenced below and cited elsewhere in this Subcontract are incorporated herein by reference, with the same force and effect as if they were given in full text, and may be applicable, including any notes following the clause citation, to this Subcontract.

(a) This Subcontract is entered into by the parties in support of a U.S. Government contract.

(b) As used in the clauses referenced below and otherwise in this Subcontract:

1. "Commercial Item" means a commercial item as defined in FAR 2.101.
2. "Contract" means this Subcontract.
3. "Contracting Officer" shall mean the U.S. Government Contracting Officer for Chemonics' government prime contract under which this Agreement is entered.
4. "Contractor" and "Offeror" means the Subcontractor, with whom Chemonics is contracting, acting as the immediate subcontractor to Chemonics.
5. "Prime Contract" means the contract between Chemonics and the U.S. Government.
6. "Subcontract" means any contract placed by Subcontractor or lower-tier subcontractors under this Agreement.
7. Where the clause refers expressly to the first-tier subcontract, definitions 2, 3, 4, and 6 do not apply.

(c) The following notes apply to the clauses incorporated by reference below only when specified in the parenthetical phrase following the clause title and date.

1. Substitute "Chemonics" for "USAID," "Government," or "United States" throughout this clause.
2. Substitute "Chemonics Procurement Representative" for "Contracting Officer", "Administrative Contracting Officer", and "ACO" throughout this clause.
3. Communication/notification required under this clause from/to Subcontractor to/from the USAID Contracting Officer shall be through Chemonics.

(d) Subcontractor agrees that upon the request of Chemonics it will negotiate in good faith with Chemonics relative to modifications to this Subcontract to incorporate additional provisions herein or to change provisions hereof, as Chemonics may reasonably deem necessary in order to comply with the provisions of the applicable Prime Contract with the provisions of modifications to such Prime Contract. If any such modifications to this Subcontract causes an increase or decrease in the cost of, or the time required for, performance of any part of the Work under this Subcontract, an equitable adjustment shall be negotiated.

Clause Number	Title	Date	Notes and Applicability
752.202 Alt.70 and Alt.72	DEFINITIONS ALT. 70/ALT.72	JAN 1990	All subcontracts regardless of value
752.211-70	LANGUAGE AND MEASUREMENT	JUN 1992	Applies to all subcontracts. (Note 1 applies to paragraph (b).)
752.225-70	SOURCE AND NATIONALITY REQUIREMENTS	FEB 2012	Applies to all Subcontracts, unless source and nationality requirements do not apply as set forth at 22 CFR 228.02 (Notes 1, 2 apply.)
752.228-3	WORKER'S COMPENSATION INSURANCE (DEFENSE BASE ACT)	DEC 1991	Applies to all subcontracts.
752.228-9	CARGO INSURANCE		Applies to all subcontracts.
752.228-70	MEDICAL EVACUATION (MEDEVAC) SERVICES	JUL 2007	Applies to all subcontracts. (Notes 1, 2 apply.)
752.247-70	PREFERENCE FOR PRIVATELY OWNED US-FLAG COMMERCIAL VESSELS	OCT 1996	Applies to all subcontracts. (Note 3 applies.)

ARTICLE 2.41. Federal Funding Accountability And Transparency Act (FFATA) Sub award Reporting Questionnaire And Certification For Subcontracts And Sub-Task Orders Under Indefinite Delivery/Indefinite Quantity Subcontracts

Subcontractor Name:

Subcontract Order Number:

Subcontract Order Start Date:

Subcontract Order Value:

The information in this section is required under FAR 52.204-10 "Reporting Executive Compensation and First-Tier Subcontract Awards" to be reported by prime contractors receiving federal contracts through the Federal Funding

Accountability and Transparency Act (FFATA) Subaward Reporting System (FSRS). **As required by the referenced FAR, complete this questionnaire and certification as part of the Subcontract or Sub-Task Order with a value of \$30,000 or more, unless exempted from reporting by a positive response to Section A.**

A. In the previous tax year, was your company's gross income from all sources under \$300,000?

☐ Yes ☐ No

B. If "No", please provide the below information and answer the remaining questions.

(i) **Subcontractor DUNS Number:**

(ii) In your business or organization's preceding completed fiscal year, did your business or organization (the legal entity to which the DUNS number belongs) receive (1) 80 percent or more of its annual gross revenues in U.S. federal contracts, subcontracts, loans, grants, sub grants, and/or cooperative agreements; and (2) \$25,000,000 or more in annual gross revenues from U.S. federal contracts, subcontracts, loans, grants, sub grants, and/or cooperative agreements?:

☐ Yes ☐ No

(iii) Does the public have access to information about the compensation of the executives in your business or organization (the legal entity to which the DUNS number it provided belongs) through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986?:

☐ Yes ☐ No

(iv) Does your business or organization maintain a record in the System for Award Management (www.SAM.gov)?

☐ Yes ☐ No

(v) If you have indicated "Yes" for paragraph (ii) **and** "No" for paragraph (iii) and (iv) above, provide the names and total compensation* of your five most highly compensated executives**for the preceding completed fiscal year.

1. Name: _____

Amount: _____

2. Name: _____

Amount: _____

3. Name: _____

Amount: _____

4. Name: _____

Amount: _____

5. Name: _____

Amount: _____

The information provided above is true and accurate as of the date of execution of the referenced Subcontract or SubTask Order. Annual certification is required for information provided in paragraph (v) above.

*“Total compensation” means the cash and noncash dollar value earned by the executive during the Subcontractor’s preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

- (1) *Salary and bonus.*
- (2) *Awards of stock, stock options, and stock appreciation rights.* Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Financial Accounting Standards Board’s Accounting Standards Codification (FASB ASC) 718, Compensation-Stock Compensation.
- (3) *Earnings for services under non-equity incentive plans.* This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- (4) *Change in pension value.* This is the change in present value of defined benefit and actuarial pension plans.
- (5) *Above-market earnings on deferred compensation which is not tax-qualified.*
- (6) Other compensation, if the aggregate value of all such other compensation (*e.g.*, severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

**“Executive” means officers, managing partners, or any other employees in management positions