

## **SECTION II STANDARD GENERAL CONTRACT TERMS AND CONDITIONS**

### **For**

### **USAID-FINANCED COMMERCIAL ITEMS**

#### **ARTICLE 1. INDEPENDENT SUPPLIER**

The Parties acknowledge that the relationship between them pursuant to this Subcontract and any resulting Orders 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. GOODS AND RELATED SERVICES**

- A. The Supplier shall deliver the Goods and the Services, if any, described in this Subcontract and as specified in any resulting Order, of the type, in the quantity, at the delivery date and at the price as indicated, in accordance with the stated Subcontract and Order terms and conditions. Shipment delivery, including split or partial shipments, must be approved by Chemonics in writing. The quality of the Goods and Services shall conform in all respects to the requirements of this Subcontract and any resulting Order (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. 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, if applicable, shall be as specified; and
  - (2) The Goods (including the components thereof), Services, sub-vendors or suppliers shall not be from Cuba, Iran, North Korea, Syria or other countries or entities which may be subject to U.S. Government sanctions as per the OFAC list of sanctioned entities.
- D. For any Pharmaceuticals being procured:
  - (1) All Pharmaceuticals supplied shall be manufactured in accordance with Good Manufacturing Practice. Unless otherwise specifically stated in this Subcontract or the Order, "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 aforementioned FDA standard/guidance, the alternative authority shall be specified in the Subcontract or the Order (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 the Supplier is the manufacturer of Pharmaceuticals supplied under this Subcontract, as part of its compliance with the current GMP (or other applicable standards and guidance), the Supplier shall collect and retain representative samples of each lot or batch of Pharmaceuticals supplied. If the Supplier is not the Manufacturer, the Supplier 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. The Supplier 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.
- E. If the Order is for Plasters, Liquid Extracts or Ointments, Goods supplied shall be modified, where necessary, to render them suitable for use in the Cooperating Country(ies), but the specified proportion of the active ingredients must, in all cases, be maintained.
- F. All Goods with a shelf life (such as test kits), including all Pharmaceuticals, must be freshly manufactured, and thus have maximum possible shelf life. Unless otherwise required in the Order, Goods with a maximum possible shelf life of less than twenty-four (24) months shall have at least 85% of shelf life remaining when delivered. Goods with a maximum possible shelf life of more than twenty-four (24) months shall have at least twenty-four (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.
- G. 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 the Supplier, 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 to its delivery destination, return to the Supplier unused items or quantities of Delivered Goods.
- H. If the Subcontract calls for performance of Related Services overseas by the Supplier’s employees or consultants (collectively, “personnel”), the Supplier shall comply with the following requirements:
- (1) The Supplier 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) The Supplier 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 Supplier, the Supplier'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) The Supplier 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 the Supplier's behalf for performance of Related Services shall possess appropriate language skills, if any, stated in the Subcontract and resulting Order, and shall be physically fit in accordance with AIDAR 752.7033.
- (6) In performing Related Services, the Supplier 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 the Supplier, as will all liability for the acts and omissions of the Supplier'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 resulting Order and solely in the form of the firm, fixed, all-inclusive prices.
- (10) Notwithstanding any other provisions of the Subcontract, no additional compensation or reimbursement will be provided to the Supplier for complying with these requirements concerning provision of Related Services.

### **ARTICLE 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 resulting Order 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 according to the best international packing standards suitable to prevent theft, loss, or damage and to withstand exposure to the elements, including extreme temperature and water, and rough handling during air, sea or land shipment.
- B. The Supplier shall be solely responsible for complying with all applicable laws and sound international practices, which includes having all relevant licenses in place at the Supplier's factory for the Goods and for shipping/loading in accordance with the applicable INCOTERM, for the packaging and labeling of the Goods (including, if applicable, hazardous materials safeguards).

C. Packaging shall be prepared in accordance with the Subcontract and resulting Order and to ensure that:

- (1) All tertiary, secondary, and primary (when applicable) packaging for Goods are properly labelled per Section D below and clearly identifies any special handling instructions. Temperature control category group requirements can be found in Article 11.C.3.
- (2) Special Packaging Requirements: Individual boxes and shipping cartons (tertiary packaging) must be shrink wrapped on all sides in order to protect the goods from water damage during transit time. Pallets must be shrink wrapped with continuous coverage on all sides and top.
- (3) Euro pallets (100x120 is preferable size, 80x120 is acceptable in consultation with Chemonics), heat treated. Other pallet types may be approved in consultation with and subject to prior written approval from Chemonics. In cases wherein the destination requires a specific pallet type/size, it will be specified on the relevant Order and the Supplier will provide the Goods using the specified pallet type/size.
- (4) Pallet height not to exceed 1.25 m (incl. pallet) for Air freight. For Ocean freight, pallets may be double stacked if doing so will not compromise the integrity of the packaging or quality of the product. If the pallets are double stacked, then the height of each pallet should not exceed 1.25m and the combined height of the stacked pallets should not exceed 2.20m. Chemonics may provide a written request to exceed the pallet height restrictions on an Order by Order basis. Supplier requests to exceed pallet height restrictions may be accepted on an Order by Order basis upon Chemonics review and written approval.
- (5) Partial cartons, including those with batch-end products require an extra label clearly marking the cartons as “Partial” or equivalent and the quantity of units included within.
- (6) Like product and batches should be kept contiguous when loaded into containers and should not be separated. Corrugated separator sheets should be used between batches when multiple batches are packed on the same pallet.
- (7) Packaging should clearly state whether or not pallets can be stacked.

D. GHSC-PSM is implementing global standards for product identification, labeling and data exchange as detailed below. Please reference the [Global Standards Technical Implementation Guideline for Global Health Commodities](#) for definitions and information on how to implement this requirement, unless an exemption is approved by Chemonics in accordance with these Guidelines.

- (1) *Identification*. GHSC-PSM requires that all global health commodities are identified as follows:
  - (a) The Supplier must assign and provide GHSC-PSM with a Global Trade Item Number (GTIN) for each trade item level of the packaging hierarchy (e.g. pallet, case, inner box, each).
  - (b) The Supplier must assign and provide GHSC-PSM with a Global Location Number (GLN) for each contracting, invoicing, manufacturing, and shipping entity with which GHSC-PSM may transact.
- (2) *Labeling*. GHSC-PSM requires that pharmaceuticals, medical devices, sterile kits, and reagents are labeled as follows:
  - (a) Pharmaceuticals

(1) Tertiary Packaging – Logistics Units

- (i) The minimum GS1 identification keys and application identifiers (AIs) to be included in a GS1-128 barcode, with the applicable human readable interpretation (HRI) printed adjacent:

<b>Application Identifier</b>	<b>Requirement Date</b>
(00) Serial Shipping Container Code (SSCC)	As soon as possible (ASAP) but no later than (NLT) Jun 30, 2022

(2) Tertiary Packaging – Trade Item

- (i) The minimum GS1 identification keys and AIs to be included in a GS1-128 barcode or GS1 DataMatrix, with the applicable HRI printed adjacent:

<b>Homogenous Pack</b>	
<b>Application Identifier</b>	<b>Requirement Date</b>
(01) Global Trade Item Number (GTIN)	ASAP but NLT Dec 30, 2018
(10) BATCH/LOT	ASAP but NLT Dec 30, 2018
(17) EXPIRATION DATE	ASAP but NLT Dec 30, 2018
(21) SERIAL NUMBER	ASAP but NLT Jun 30, 2022

<b>Mixed or Partial Pack</b>	
<b>Application Identifier</b>	<b>Requirement Date</b>
(00) SSCC	ASAP but NLT Jun 30, 2022

- (ii) Within thirty (30) days of a request by Chemonics, the Supplier will make serial number data for Goods procured under any resulting Order in a mutually agreed upon format.

(3) Secondary Packaging – Trade Item

- (i) The minimum GS1 identification keys and AIs to be included in a GS1 DataMatrix, with the applicable HRI printed adjacent:

<b>Application Identifier</b>	<b>Requirement Date</b>
(01) GTIN	ASAP but NLT Jun 30, 2020
(10) BATCH/LOT	ASAP but NLT Jun 30, 2020
(17) EXPIRATION DATE	ASAP but NLT Jun 30, 2020

(21) SERIAL NUMBER

ASAP but NLT Jun 30, 2022

- (ii) Within thirty (30) day of a request by Chemonics, the Supplier will make serial number data for Goods procured under any resulting Order in a mutually agreed upon format.

(b) Medical Devices, Sterile Kits, and Laboratory Reagents

(1) Tertiary Packaging – Logistics Units

- (i) The minimum GS1 identification keys and AIs to be included in a GS1-128 barcode, with the applicable HRI printed adjacent:

**Application Identifier**

**Requirement Date**

(00) SSCC

ASAP but NLT Jun 30, 2022

(2) Tertiary Packaging – Trade Item

- (i) The minimum GS1 identification keys and AIs to be included in a GS1-128 barcode or GS1 DataMatrix, with the applicable HRI printed adjacent:

**Homogenous Pack**

**Application Identifier**

**Requirement Date**

(01) GTIN

ASAP but NLT Dec 30, 2018

(10) BATCH/LOT (as applicable)

ASAP but NLT Dec 30, 2018

(17) EXPIRATION DATE (as applicable)

ASAP but NLT Dec 30, 2018

**Mixed or Partial Pack**

**Application Identifier**

**Requirement Date**

(00) SSCC

ASAP but NLT Jun 30, 2022

(3) Secondary Packaging – Trade Item

- (i) The minimum GS1 Identification Key and AI to be included in a GS1-128 barcode or GS1 DataMatrix, with the applicable HRI printed adjacent:

**Application Identifier**

**Requirement Date**

(01) GTIN

ASAP but NLT Jun 30, 2020

(10) BATCH/LOT (as applicable)

ASAP but NLT Jun 30, 2020

(17) EXPIRATION DATE (as applicable)

ASAP but NLT Jun 30, 2020

E. Product Master Data

Master data for all pharmaceuticals, medical devices, sterile kits, and reagents, including the GTIN and all relevant requested attribute data, must be provided to GHSC-PSM through the Global Data Synchronization Network (GDSN) as of 30 December 2019. To access the *GHSC-PSM Data Synchronization Implementation Guide* and *GHSC-PSM Attribute Guide*, please see <http://ghsupplychain.org/globalstandards>.

F. Transaction and Production Data

For Orders with INCOTERM other than DAP or DDP, all transaction and production data must be provided to GHSC-PSM through the ARTMIS Logistics Management Information System (LMIS), including but not limited to the SSCC, GTIN, batch/lot number, and expiration date. For Orders with INCOTERM DAP or DDP, all transaction and production data must be provided to GHSC-PSM via the Procurement Specialist. Data presented on transaction documents – including but not limited to the packing list, commercial invoice, and advanced ship notice – must align with the identifiers used on the shipping label (i.e. once the Supplier has transitioned to using the GTIN as the primary identifier, this must be used on packing lists as well).

G. A complete itemized packing list shall be carried in a secure, durable clearly-marked “packing list” envelope affixed to the outside of each pallet, shipping container or box that represents a separate unit of the shipment used to deliver the Goods. Each packing list must show the specified Chemonics Order number (unless otherwise required by Chemonics in writing, a complete narrative description of the Goods, all applicable part numbers, and the corresponding line item number.

H. Damage resulting from improper packing, export marking and preparation for shipment shall be the liability of the Supplier and deducted from amounts due.

I. 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 or otherwise agreed to by Chemonics in writing.

J. 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.

K. In addition, the following further requirements shall apply only to Orders for the supply of Pharmaceuticals: The Supplier 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). The Supplier 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 Order):

(1) the International Nonproprietary Name (INN) of the product;

(2) the pharmacopeia standard, e.g. USP; EP, BP, or BPC monograph, if applicable;

- (3) the strength of the preparation, if applicable;
- (4) the name and location of the manufacturer;
- (5) the date (YYYY-MM-DD) the Goods were manufactured, if applicable;
- (6) the Expiry Date, if applicable;
- (7) any other marking specified in the Order.

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

#### **ARTICLE 4. INTERNATIONAL COMMERCIAL INCOTERMS 2020**

The International Commercial Terms (INCOTERM 2020) is a universally recognized set of definitions of international trade terms. The preferred INCOTERM for all Orders issued under this Subcontract and shipments is FCA. However, other delivery INCOTERMS, such as CIP, DAP and DDP, may be used by Chemonics. The INCOTERM applicable to the Order shall be indicated on the Order issued hereunder.

#### **ARTICLE 5. EXPORT AND TRANSPORTATION CLEARANCE**

The Supplier's responsibility in connection with export and transportation clearances depend on the applicable INCOTERM/delivery terms, and shall be as specified in the Order issued hereunder.

#### **ARTICLE 6. DELIVERY AND DELIVERY COORDINATION**

- A. The applicable INCOTERM for delivery shall be indicated in the Order issued hereunder.
- B. The Supplier shall notify Chemonics of the intended availability of Goods at least ten (10) working days prior to the GAD (Goods Available Date). This notification should take place using Chemonics' Booking Form or via the Supplier portal in the Logistics Management Information System (when implemented), unless alternate notification method is agreed in writing by the Parties.
- C. The notice shall include the following:
  - (1) Shipment level information including but not limited to shipper/manufacturer addresses, booking contact, number/type of containers (sea), number/type of trucks (Land) and weight in kilograms (air) that is to ship. The shipper shall also advise on any special handling instructions. Shipment and corresponding booking requests may be split into multiple requests so that each booking does not to exceed the following: Air-5000kgs; Sea-10 containers; Truck-1 truck.
  - (2) PSM Order-line level information including but not limited to PSM Order/line references, item description, quantity, number/type of packages, package dimensions/weights and batch information (quantity by batch number and expiry date).
  - (3) Notice of availability (booking) shall also include the following as soft copy attachments:
    - (a) a Commercial Invoice referencing PSM Order/item numbers as defined previously;
    - (b) a Packing List with items, weights and dimensions per pallet as well as a Detailed Packing List with aggregate quantities per item, weights and dimensions as well as shipping conditions applicable to the items (i.e. temperature control, special instructions around loading, or hazardous goods declarations) and all batch numbers and quantities. A Detailed Packing List template may be provided to the Supplier;
    - (c) For temperature control category group, i.e. (1) Frozen (Minus 20 Celsius), 2) Cold Chain (2-8 Celsius), 3) temperature control of 15-25 Celsius, and 4) ambient, the

Supplier shall provide a separate set of commercial documents. The Supplier shall guarantee Frozen (Minus 20 Celsius) and Cold Chain (2-8 Celsius) shipment for a minimum standard transit of ninety-six (96) hours for each shipment and shall provide temperature loggers for each and every Order that is Frozen (Minus 20 Celsius) and Cold Chain (2-8 Celsius). Unless specifically requested, the Supplier shall not deliver on Thursdays through Sunday or during the destination country local holidays.

- (d) The Supplier shall identify cargo with dangerous / hazardous characteristics and, if applicable, provide details around transportation limitations and packing requirements that suit the appropriate mode of transport. If air, this should be for passenger (PAX) aircraft as the base requirement except in the event the product quantity per package exceeds the allowable quantities and is only permitted to ship via cargo aircraft only (CAO). At this point, GHSC-PSM should be alerted for actions and or direction on next steps. The Safety Data Sheet (SDS) shall be provided for these commodities alongside the notice of availability. Any products with hazardous/dangerous characteristics shall be packaged / palletized separately so as not to impact the mode of shipment. Where applicable, suggestions should be offered to GHSC-PSM around packing and mode of transport. Combinations of dangerous goods should be packed in a fashion best suited to the correct mode of transport for the quantities or characteristics and to ensure that these are segregated as necessary on the shipping documentation i.e. where flammable solids and flammable liquids are ordered together, these should be split and assigned new packing lists wherein acceptable quantities should be further aligned.
- (e) Please note that the use of dry ice as a refrigerant in Frozen (Minus 20 Celsius) and Cold Chain (2-8 Celsius) shipments does not in and of itself require a declaration of dangerous goods. A shipper's declaration of dangerous goods is only required if the dry ice is used as a refrigerant for other dangerous goods. Otherwise only an air waybill is required with the following information: Dry Ice or Carbon dioxide, solid, 9, UN 1845, number of packages and the net quantity of dry ice in each package.
- (f) if the Goods include pharmaceuticals, a Certificate of Analysis, or other certificate is 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 Supplier or a competent independent organization, confirming the compliance of each and every batch supplied with the Subcontract's and resulting Order's specifications and regulatory authority's Standards;
- (g) such other information and documents as are specified by Chemonics (such as a Legalized Certificate of Origin or a Certificate of Pharmaceutical Product), and as Chemonics may reasonably request from time to time.

The Supplier acknowledges that a delay in the provision of the aforementioned documents may result in delayed pick up by Chemonics' nominated freight forwarder.

- D. Upon receipt of a Notice of Availability following completion of any required Quality Assurance (QA) testing or verification—
  - (1) Where the Order delivery term is FCA, within fifteen (15) working days after receipt of notice and unless destination requires extended processing, Chemonics shall endeavor to arrange for the Goods to be collected or give instructions to the Supplier for transfer of the Goods to the nominated carrier. Notice of Availability must include all soft copy attachments needed to obtain necessary waivers for the destination. The Supplier will be bound by country specific timelines and document requirements as specified in the

Subcontract and the resulting Order. In some instances (e.g. lengthy sea shipments), Chemonics may secure necessary import duty and other waivers concurrently during outbound transit of Goods. The Supplier acknowledges that Chemonics will often be required to secure import duty waivers from the destination country prior to picking up Goods from the Supplier. In such instances, the Supplier agrees to hold Chemonics' Orders up to the number of days specified in the GHSC-PSM Destination Import Guidelines which will be provided with the Order. The Supplier agrees that where pre-inspection is required by a destination country and/or QA testing is required on the Goods, the Supplier will reasonably make the outbound Goods available for such inspections at the Supplier's site. The Supplier must provide proper guidance and access to pick up Goods.

- (2) For all other Order delivery terms, such as INCOTERM CIP, DAP or DDP, the Supplier shall not ship without final approval and instruction from Chemonics. Copies of the shipping documents must be provided in advance for Chemonics review and approval. If the Subcontract and/or Order calls for pre-shipment QA testing and/or pre-shipment inspection by the destination country, the Supplier shall provide access to the products on their premises for pre-shipment inspection and load supervision where required by destination country. 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.

Upon receipt of an Authorization to Deliver, the Supplier shall immediately proceed to complete delivery of the Goods in accordance with the Subcontract and Order delivery term. The Supplier shall provide real-time visibility of shipment to Chemonics, to include pick up date, departure date, arrival date, customs clearance date, and delivery date. All surface shipments shall be to designated INCOTERM location, and unless shipment is by air, shall utilize one or more exclusive use 20' or 40' ocean transport containers, unless otherwise approved.

- E. Where the Supplier is required to arrange shipment, shipments by sea shall be on an FCL (Full Container Load) basis, and via an American flag carrier, unless otherwise approved. Prior to such shipment, or immediately upon availability, the Supplier 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 Subcontract:

- (1) Air Waybill, or rated ocean Bill of Lading;
- (2) Insurance Certificate (if required by the Subcontract 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, on-board, 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 Supplier 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 the Supplier's facility in the country of manufacture to the final destination. Except as otherwise authorized by Chemonics, the

policy shall name Chemonics as an additional insured, and any loss proceeds shall be payable in United States Dollars.

- F. For the supply of Pharmaceuticals where the Supplier 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).
- G. The Supplier 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. The Supplier shall provide all reasonable assistance toward performance of Chemonics' responsibilities. The Supplier shall 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 the Supplier 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 the Supplier having been defective.
- I. If delivery of the Goods is not completed by the required date, or if performance of any Services pursuant to the Subcontract and Order is not completed by the due date (if any) specified, due to any default or delay of the Supplier (including without limitation any default by the Suppliers, sub-vendors or offerors), Chemonics shall be entitled to deduct from payment(s) otherwise due to the Supplier (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 and the Order to deduct the related costs, along with any additional sampling agent charges from any further payment(s) to the Supplier, or if such payment(s) remain available, to demand and receive a refund from the Supplier.
- J. Liquidated Damages: the Supplier 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 the Supplier fails to make the Goods available per the agreed upon GAD or a Notice of Availability is not duly issued for the entire quantity of Goods in a timely manner, in strict compliance with all specifications and other Subcontract and Order requirements, by the date(s) specified in the Order, Chemonics may, without prejudice and in addition to any other remedies under the Subcontract and Order (or otherwise available at law or in equity), deduct from any payment(s) due or to become due to the Supplier, 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 the Order 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, Supplier shall proceed with delivery and performance of its obligations pursuant to the Order unless otherwise instructed or approved by Chemonics.

#### **ARTICLE 7. QUALITY ASSURANCE TESTING, INSPECTION AND ACCEPTANCE**

- A. The Supplier shall coordinate with a third-party QA 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 any resulting Order and shall implement QA testing, Goods inspection and acceptance within the terms and conditions herein and as specified in the Order issued hereunder. The Supplier shall provide the required sample quantities provided for each relevant line on each Order placed. The required sample quantities are to be provided in addition to the quantities requested on each Order. Chemonics is not responsible for the payment of any products used for sampling or testing.
- B. The Supplier shall only deliver and tender for acceptance those Goods that strictly conform to the requirements specified in the Subcontract and resulting 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 the Subcontract or Orders issued hereunder, 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 Supplier, the Supplier 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. **[Instructions: (Please delete before sharing with external parties) Please include if applicable]** If the shipping of samples is requested, GHSC-QA covers the shipping costs (but not the costs of the samples themselves). The Supplier shall ship the samples using GHSC-QA’s DHL account number which will be provided upon request.
- 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 Supplier 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 Supplier from any warranty or other obligations under this Subcontract and the Order.
- F. The Supplier 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:
  - (1) Obtain from any regulatory authority authorization to import or waiver.
  - (2) Comply with any of its legal, regulatory and/or contractual obligations or any request by any regulatory authority; and

- (3) Determine whether the Services have been performed in accordance with the Subcontract and the Order.
- G. The Supplier shall notify Chemonics, GHSC-QA via [GHSCQA@fhi360.org](mailto:GHSCQA@fhi360.org), and/or GHSC-PSM QA via [PSMQA@ghsc-psm.org](mailto:PSMQA@ghsc-psm.org) of any significant changes that may affect significantly the aspects of design and standards, quality, safety and efficacy and regulatory status of the eligible product, including changes of the manufacturing and testing methodology or compliance with current Good manufacturing practices. The Supplier shall coordinate significant changes with Chemonics, GHSC-QA via [GHSCQA@fhi360.org](mailto:GHSCQA@fhi360.org), and/or GHSC-PSM QA via [PSMQA@ghsc-psm.org](mailto:PSMQA@ghsc-psm.org) 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 Supplier, Chemonics and/or its designated agent shall inspect the commodities to confirm compliance with the Subcontract and the Order 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 the Subcontract and the Order requirements, an inspection certificate will be issued by Chemonics. In the event that the commodities are not fully compliant, the Supplier 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 Supplier 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 the Supplier, 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 the Supplier 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 via [GHSCQA@fhi360.org](mailto:GHSCQA@fhi360.org), and/or GHSC-PSM QA via [PSMQA@ghsc-psm.org](mailto:PSMQA@ghsc-psm.org) within two (2) working days of awareness. The Supplier shall complete an investigation or provide a status report and issue a written report, approved by the designated quality personnel of the Supplier, within twenty (20) business days after the Supplier has been informed or becomes aware of the incident. Subsequent report due date will be set if a status report is provided. Chemonics, GHSC-QA, and/or GHSC-PSM QA may work together with the Supplier 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. The Supplier 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. The Supplier 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 five (5) days of the Supplier’s receipt. In all circumstances where a warning letter is issued by the Regulatory Authority, Supplier shall provide a copy within forty-eight (48) hours

of such letter to Chemonics, GHSC-QA via [GHSCQA@fhi360.org](mailto:GHSCQA@fhi360.org), and/or GHSC-PSM QA via [PSMQA@ghsc-psm.org](mailto:PSMQA@ghsc-psm.org). 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 Supplier to the Regulatory Authority in response to inspection results if such responses concern the commodities supplied hereunder.

K. Chemonics may, at its sole discretion

- (1) require the Supplier 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, storing, and disposition of the non-conforming Goods and the sampling, inspection and testing of replacement Goods shall be the responsibility of the Supplier; and/or
- (2) exercise any other rights and remedies available to it under the Subcontract and the Order, or under applicable law and regulation, including, but not limited to, termination of the Subcontract and/or the Order, 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 -- FIXED-PRICE (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 Supplier, 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, the Supplier 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 QA. Only Goods that have successfully passed testing may be deemed to be acceptable 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. The Supplier 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 ten (10) business days after receiving notification of rejection of Goods or Services.

M. If delivery of the Goods (or, with respect to INCOTERMS 2020, issues of a Notice of Availability), is not completed by the required date, or if performance of any Services pursuant to the Subcontract and resulting Order is not completed by the due date (if any) specified, due to any default or delay of the Supplier (including without limitation any default by the Suppliers, sub-vendors or suppliers), Chemonics shall be entitled to deduct from payment(s) otherwise due to the Supplier 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 the Supplier, or, if such payment(s) remain available, to demand or receive a refund from the Supplier.

#### **ARTICLE 8. TITLE AND RISK OF LOSS OR DAMAGE**

- A. Supplier shall ensure that the title to Goods delivered and supplied hereunder shall pass directly to USAID upon acceptance pursuant to the Article labeled “Quality Assurance, Testing, Inspection and Acceptance” above.
- B. Notwithstanding completion of delivery, the Supplier 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 Supplier’s part.

#### **ARTICLE 9. PAYMENT AND PAYMENT TERMS**

- A. Chemonics will pay the total Order price as a lump sum, or in installments for agreed upon shipments, after the Supplier’s delivery of the corresponding Goods and/or Related Services and Chemonics’ designated agent’s acceptance thereof, or as otherwise provided in the Order, according to the delivery schedule agreed by the Parties. Chemonics will pay the Supplier’s invoice within forty-five (45) net days of receipt of a complete invoice and receipt of the corresponding evidence of delivery per the INCOTERM. The Supplier’s submission must be in compliance with the Article labeled “Invoice Requirements” below.
- B. Payments for approved invoices will be made by check or via Electronic Funds Transfer (EFT) for US bank/financial institution accounts or Wire Transfer for non-US bank accounts. Payment will be sent to the Supplier’s designated recipient account name, account number, and bank or financial institution as identified in the Subcontract and in the payment account forms required herein to establish a payment account with Chemonics International. Incomplete or incorrect payment account forms to establish a new account or update an existing account will delay payment. All costs and risks arising out of, relating to, or resulting from EFT or Wire Transfer shall be borne by the Supplier. The following account forms are required to establish or update a payment account:
  - (1) All US based Suppliers are required to complete the Chemonics Electronic Funds Transfer Form and W9 Tax form to set up a payment account with Chemonics.
  - (2) Suppliers with international bank accounts are required to complete the Chemonics International Wire Transfer form (See Attachment 2, International Wire Transfer Form), including the Domestic (US) Intermediary Bank section. Selecting a US intermediary bank facilitates an efficient transfer of funds and is the responsibility of the Supplier to provide.
- C. Payments will not be issued to third parties unless specifically authorized. Payments will only be issued to the account set up through the forms referenced above. Should the Supplier desire to change the account for payment, the Supplier shall submit a request to change the payment account on official letterhead signed by an authorized representative along with updated EFT or Wire Transfer Forms. Payments will be processed to the original authorized account until Chemonics confirms that the new account information has been approved and activated.
- D. All invoices, and documentation, will be submitted electronically to Chemonics International Inc./GHSC-PSM at [PSMinvoices@ghsc-psm.org](mailto:PSMinvoices@ghsc-psm.org).

#### **ARTICLE 10. INVOICE REQUIREMENTS**

- A. Invoices shall only be submitted to Chemonics for Goods/Services that have been delivered in accordance with the terms stipulated in this Subcontract and/or the applicable Order and accepted by Chemonics or its agent. The official invoice must be submitted electronically as indicated in Article labeled “Payment and Payment Terms” above.

- B. By submitting an invoice, the Supplier certifies that
- (1) the invoice has been prepared in accordance with the terms herein and any corresponding Order, and the sum claimed is proper and due and has not been claimed or paid in advance or before for the Goods/Services delivered,
  - (2) the quantities and prices specified are consistent with the Subcontract and the resulting Order,
  - (3) any necessary approvals as may be needed dependent on the delivery terms of the Subcontract and the resulting Order have been obtained, and
  - (4) appropriate refund to Chemonics will be made promptly upon request in the event of disallowance of any portion of the invoice pursuant to the terms of this Subcontract and the resulting Order.
- C. To constitute a proper invoice, the invoice must include the following information and/or include attached documentation:
- (1) Authorized entity legal name, Subcontract and Order number, invoice date, and invoice number, product name/description of each type of Goods and Related Services included in the invoice, unit price, quantity, extended line item price and total price, Country of Origin (if applicable), final destination, consignee, payment terms, INCOTERMS and INCOCITY (if applicable), mode of transportation (if applicable), and packing list.
  - (2) Packing lists will include the Subcontract and Order number, exporter name/supplier name, country of origin/port, destination, consignee, quantity (gross and net weight), description of Goods (batches, pallets, shippers, cartons, packages as applicable).
  - (3) Bank account information corresponding to the approved payment account established by the Subcontract or authorized Electronic Funds Transfer Authorization Form or International Wire Transfer Form.
  - (4) Such other documentation as may be requested by Chemonics in relation to the Goods and/or Related Services.
  - (5) Documentation confirming delivery and receipt per the identified Order delivery INCOTERM:

Documents	INCOTERMS		Information Attributes
	EXW/FCA	CIP/CPT/DDP	
Air Freight Shipping/Delivery Doc: Airway Bill (AWB)	X (Prepared for Chemonics)	X (Provided by Supplier)	Dimensions or Volume and Gross Weight, Airport Departure, Airport Destination, Shipper's Name, Consignee, Carrier Charges
Ocean Shipping/Delivery Doc: (BOL)			Dimensions or Volume and Gross Weight, Seaport Departure, Seaport Destination, Shipper's Name, Consignee, Carrier Charges
Delivery to Freight Forwarders	X (Supplier collects from Designated	X (Provided by Supplier)	Volume and Gross/Net Weight, Consignee, Shipper's Name, Invoice #, PO #, Description of

Documents	INCOTERMS		Information Attributes
	EXW/FCA	CIP/CPT/DDP	
Certificate of Receipt (Note: for International Trucking only the Freight Forwarders Certificate of Receipt is provided)	Freight Forwarder and Provides)		Goods, Packaging Details, destination
End Recipient Goods Receipt Notice or Proof of Delivery Receipt	N/A	X (Provided by Supplier)	Volume and Gross/Net Weight, Consignee, Shipper's Name, Invoice #, PO #, Description of Goods, Packaging Details, destination

- D. Invoices determined to be proper will be paid by Chemonics in accordance with the Article labeled "Payment and Payment Terms" above and the terms of the Subcontract and the Order. Invoices determined not to be proper due to the existence of deficiencies will be rejected and the Supplier promptly notified, generally within ten (10) business days of submission, with deficiencies noted for correction. In the event that an invoice is submitted, which is partially proper, Chemonics may, in its sole discretion, either reject the entire invoice for correction or make payment of the proper portion and return the portion deemed not to be proper.

#### **ARTICLE 11. 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, the Subcontract and resulting Orders are free and exempt from any taxes, VAT, tariffs, duties, or other levies imposed by the laws in effect in the Cooperating Country(ies). The Supplier shall not pay any host country taxes, VAT, tariffs, duties, levies, etc. from which this USAID program is exempt. In the event that any exempt charges are paid by the Supplier, they will not be reimbursed to the Supplier by Chemonics unless approved in advance in writing by Chemonics. The Supplier shall immediately notify Chemonics if any such taxes are assessed against the Supplier or its subcontractors/suppliers at any tier.

The Supplier 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 Supplier and who are directed to work as required under this Subcontract. The Supplier is liable for payment of all applicable taxes associated with revenues (profit), and other such taxes, fees, or dues for which the Supplier is normally responsible as a result of operating its business.

#### **ARTICLE 12. SET-OFF CLAUSE**

Chemonics reserves the right of set-off against amounts payable to the Supplier under the Subcontract or any other agreement in the amount of any claim or refunds Chemonics may have against the Supplier.

#### **ARTICLE 13. 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 in any resulting Order. At the time that any Good(s) supplied under the Order is (are) transferred to the counterpart identified in the Order, or another entity within the Cooperating Country(ies), all rights to warranty support and service provided to Chemonics under this Subcontract and the Order shall be transferred with the commodity(ies) to the entity's end-user. The Supplier shall continue to honor all warranty support and services for the duration of the warranty period.
- B. In addition to paragraph A above, the Supplier warrants that the Goods and Services delivered and rendered hereunder are merchantable and fit for use for the particular purpose described in this Subcontract and any resulting Order (or, if no such purpose is specifically described, for the purposes for which the Goods or Services, as applicable, are ordinarily used).
- C. The Supplier also hereby expressly warrants that all Goods (including without limitation their parts) and Services supplied, as applicable:
- (1) conform to the Subcontract and the Order requirements (including without limitation the description in the Order and the Specifications), as well as, if one or more specific Cooperating Countries is mentioned in the solicitation or the Subcontract or the Order, 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 or the resulting Order, 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 or any resulting Order, 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. Unless otherwise approved in writing by Chemonics, the period of all warranties set forth in this Article or in any other provision of the Subcontract shall be no less than [Instructions: (Please delete before sharing with external parties) Please choose 12, 18 or 24 months as applicable] twelve (12) months from the date of delivery of possession of the Goods, or for Goods with a shelf-life (e.g. pharmaceuticals), the warranty period shall be no less than the

minimum shelf-life, as required under the Article labeled “Goods and Related Services” of this Subcontract.

- 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 the Supplier's sole expense;
  - (3) retain it/them at an equitably adjusted price; or
  - (4) require the Supplier to provide, if available, corrections in the form of field change order kits (including components, instructions and other necessary materials) from the Supplier 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 the Supplier's possession and while in transit during return to the Supplier and reshipment to or as directed by Chemonics, all risks and costs of loss, destruction or damage shall be for the Supplier's account.
- F. Chemonics shall submit warranty claims to the Supplier within a reasonable time after discovery of any breach, indicating the nature and date of the claim.
- G. The Supplier 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 the Supplier becomes aware of any non-conformance to any warranty relating to the Delivered Goods, the Supplier 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 the Supplier that do not conform to the warranties and other requirements of the Subcontract and the Order, and in such event Chemonics shall advise the Supplier of Chemonics' best identification and assessment of the problems. Further deliveries of Goods shall not be made to Chemonics until and unless the Supplier has corrected the specified areas of nonconformance in the Goods, or Chemonics authorizes in writing the shipment of such Goods pending the Supplier's correction. Chemonics' actions pursuant to this paragraph shall not be deemed to constitute a change order, and the Supplier shall not be entitled to any compensation due to the delays (if any) associated with or resulting from these actions.

#### **ARTICLE 14. ANNOUNCEMENTS, RECALLS AND COUNTERFEITING NOTICES**

- A. The Supplier shall promptly provide Chemonics with any bulletins, safety notices and recall notices etc. issued by the Supplier (or, if the Supplier is not the manufacturer, by the Manufacturer) either directly or via the Manufacturer's local agent, if any.
- B. The Supplier shall promptly provide 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 Country(ies).
- 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 the Supplier pursuant to the Subcontract and the Order.

- D. The Supplier will provide Chemonics or its QA 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 15. SUPPLIERS WHO ARE NOT THE MANUFACTURERS OF THE GOODS**

The Suppliers 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 to the extent specified in the Subcontract or otherwise as necessary to ensure the Suppliers' own compliance.

#### **ARTICLE 16. GOVERNING LANGUAGE**

The Subcontract and Orders are 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 and the Orders.

#### **ARTICLE 17. AUTHORIZED USAID GEOGRAPHIC CODE**

The authorized USAID geographic code for this Subcontract and the Orders issued hereunder is USAID Geographic Code 935, unless otherwise specified in writing by Chemonics, in accordance with the United States Code of Federal Regulations (CFR), 22 CFR §228, available at: <https://www.gpo.gov/fdsys/pkg/CFR-2015-title22-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: Cuba, Iran, North Korea, and Syria. Related services include incidental services pertaining to any/all aspects of this work to be performed under a resulting Order (including transportation, fuel, lodging, meals, and communications expenses).

#### **ARTICLE 18. 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 Supplier shall not acquire for its use in the performance of this Subcontract and the Orders issued hereunder, 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, North Korea and Syria 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 Supplier'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 Supplier shall insert this Article, including this paragraph C, in all subcontracts and sub awards issued under the Subcontract.

#### **ARTICLE 19. COMPLIANCE WITH U.S. EXPORT LAWS**

The Supplier 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 anti-boycott 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, the Supplier 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. The Supplier agrees to cooperate in providing any reports, authorizations, or other documentation related to export compliance requested by Chemonics. The Supplier 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 the Supplier's non-compliance with this provision.

#### **ARTICLE 20. COMPLIANCE WITH ANTI-CORRUPTION REGULATIONS**

The Supplier 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 the Subcontract and the Order will be performed outside of the United States of America. Specifically, the Supplier understands and agrees that it shall be unlawful for the Supplier and/or any officer, director, employee or agent of the Supplier 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:

- (1) *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
- (2) *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 the Subcontract and any resulting Order, "foreign official" means any appointed, elected, or honorary official or employee of a) a foreign government (or if an Order is to be performed outside the United States that 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 21. PRIVACY OF CONTRACT AND COMMUNICATIONS WITH OTHER THIRD PARTIES**

- A. The Supplier shall not communicate with Chemonics' client in connection with this Subcontract and any resulting Order, except as expressly permitted, in writing, by Chemonics. Any Supplier news release, public announcement, advertisement or publicity concerning the Subcontract and any resulting Order, or the USAID Contract will be subject to prior written approval of Chemonics. The Supplier shall not disclose any information relating to this Subcontract and any resulting Order 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 Supplier from communicating with the client with respect to:

- (1) matters the Supplier is required by law to communicate to the U.S. Government;
  - (2) any ethics or anti-corruption matter;
  - (3) any matter for which the Subcontract, including a FAR or AIDAR clause that is included in the Subcontract, provides for direct communication by the Supplier to the U.S. Government; or
  - (4) if the Supplier is a U.S. small business concern, any material matter pertaining to payment or utilization.
- B. The Supplier (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 22. SUPPLIER EMPLOYEE WHISTLEBLOWER RIGHTS**

The Supplier and the Supplier's employees working on the Subcontract and the Orders issued hereunder 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.

As required by the regulations, the Supplier 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 contracting is authorized in the Subcontract or any resulting Orders, the Supplier shall insert the substance of this clause in all contracts over the simplified acquisition threshold.

## **ARTICLE 23. GRATUITIES AND ANTI-KICKBACK**

- A. The Supplier 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 the Subcontract and any Orders issued hereunder, the Supplier 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 Supplier has reasonable grounds to believe that a violation described in paragraph B of this provision may have occurred, the Supplier 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.
- D. The Supplier agrees to cooperate fully with any United States Government agency investigating a possible violation described in paragraph B of this Article.
- E. Chemonics may offset the amount of the kickback against any monies owed by Chemonics under the Subcontract and the Orders issued hereunder or order the monies withheld from future payments due the Supplier.
- F. The Supplier agrees to include the substance of this Article in any contract it may issue under the Subcontract or Orders issued hereunder.

#### **ARTICLE 24. TERRORIST FINANCING PROHIBITION**

The Supplier (including its employees, consultants and agents) by entering into this Subcontract and any resulting Order certifies that it does not engage, support or finance individuals and/or organizations associated with terrorism. The Supplier 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 Supplier 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 the Subcontract and any resulting Orders issued hereunder.

#### **ARTICLE 25. PROTECTING CHEMONICS' INTERESTS WHEN THE SUPPLIER 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 the Subcontract and any resulting Order, it is further understood and agreed that Chemonics shall be at liberty to terminate the Subcontract and any resulting Order immediately at any time following any of the following conditions:

- A. the Supplier 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 Supplier is ineligible to receive USAID funding pursuant to U.S. laws and regulations; or
- C. the Supplier 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 and any resulting Orders, upon such termination the Supplier shall have no right to receive any further payments. This applies to the Supplier and the Supplier's suppliers as well.

## **ARTICLE 26. BUSINESS ETHICS AND COMPLIANCE WITH APPLICABLE LAWS AND STANDARDS**

- A. The Supplier shall undertake to perform the services hereunder in accordance with the highest standards of professional and ethical competence and integrity in the Supplier's industry and to ensure that the Supplier's employees assigned to perform any services under the Subcontract and any resulting Order will conduct themselves in a manner consistent therewith.
  - (1) The Supplier shall exercise due diligence to prevent and detect criminal conduct and otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with law.
  - (2) The Supplier shall timely disclose, in writing, to Chemonics and the USAID Office of the Inspector General (OIG), whenever, in connection with this Subcontract, or any Order issued hereunder, if applicable, the Supplier has credible evidence that a principal, employee, agent, or subcontractor of the Supplier has committed a violation of the provisions against fraud, conflict of interest, bribery or gratuity, or false claims found in this Subcontract or any resulting Orders.
  - (3) The Supplier shall refer to FAR 52.203-13 Contractor Code of Business Ethics and Conduct incorporated by reference herein for applicability of additional requirements.
- B. The Supplier 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 Supplier shall also comply with the applicable USAID regulations governing this Subcontract, which are incorporated by reference into this Subcontract and any resulting Order.
- C. This Subcontract and any resulting Order shall be governed and construed under the laws of the District of Columbia, except that Subcontract and Order 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 27. INDEMNITY**

- A. The Supplier 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 Supplier in performance of this Subcontract and any resulting Orders.
- B. The Supplier shall defend and settle at its sole expense all suits or proceedings arising out of the foregoing, provided that the Supplier has notice or is given prompt written notice of such claim or suit and, further, that the Supplier shall be given necessary information, reasonable assistance and the authority to defend such claim or suit. The Supplier 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 the Subcontract or any resulting Orders and to which Chemonics is or may reasonably be expected to be a Party, unless and until the Supplier 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 the Supplier 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, the Supplier 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.
- D. If none of the above-mentioned can be successfully implemented, then the Supplier shall refund to Chemonics all monies paid to the Supplier for the infringing Goods and Services.

#### **ARTICLE 28. INTELLECTUAL PROPERTY RIGHTS**

- A. The Supplier warrants that the work performed or delivered under this Subcontract and the Orders 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 therefore, the Supplier 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 or any resulting Order 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. The Supplier'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 Subcontract, the Supplier 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 Subcontract and any resulting Order 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 the Supplier and furnished to Chemonics pursuant to this Subcontract and Order shall become the sole property of Chemonics.

#### **ARTICLE 29. 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. Each Party shall give due notice and consideration to any proposals for modification made by the other Party.

#### **ARTICLE 30. OPTION FOR INCREASED QUANTITY**

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 the Supplier within the period of performance stipulated in the Subcontract and 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 31. ASSIGNMENT AND DELEGATION**

This Subcontract and resulting Orders may not be assigned or delegated, in whole or in part, by the Supplier 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 under a Subcontract or relating to a Subcontract and any resulting Orders, to USAID or to an alternate procurement services contractor if so designated by USAID, at any time or from time to time during the Period of Performance, without the Supplier's consent but with written notice to the Supplier.

#### **ARTICLE 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 Supplier to the extent that it relates to this Subcontract, provided that Chemonics shall have promptly notified the Supplier of such decision and, if requested by the Supplier, shall have brought suit or filed claim, as appropriate against the Government, or, in alternative, agreed to sponsor the Supplier's suit or claim. A final judgment in any such suit or final disposition of such claim shall be conclusive upon the Supplier.
- (2) For any action brought, or sponsored, by Chemonics on behalf of the Supplier pursuant to this clause, the Supplier 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 paragraph 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 Subcontract and the Orders. No demand for arbitration may be made after the date when the institution of legal or equitable proceedings based on such claim or dispute would be barred by the applicable District of Columbia statute of limitation for such claim. 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 Supplier shall proceed diligently with performance under the Subcontract in accordance with Chemonics' 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.

##### *E.* The Supplier acknowledges and agrees that it has no direct action against the U.S. Government or USAID for any claims arising under this Subcontract or any resulting Order.

#### **ARTICLE 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 Supplier or which the Supplier could not reasonably be expected to have taken into account and which or the consequences of which the Supplier could not reasonably be expected to have avoided or overcome.

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

#### **ARTICLE 34. TERMINATION**

- A. Chemonics reserves the right to terminate this Subcontract and/or any resulting Order issued hereunder in whole at any time, or in part from time to time, for its sole convenience. In the event of such termination, the Supplier shall immediately stop all work hereunder and shall immediately cause any and all of its contractors and lower-tier suppliers (including the Manufacturer, if different from the Supplier) to cease work. Subject to the terms of this Subcontract and/or Orders issued hereunder and to reimbursement of Chemonics by the Government, the Supplier shall be paid a percentage of the total Order Price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Supplier can demonstrate to Chemonics' satisfaction using its standard record keeping system, have resulted from the termination. The Supplier shall not be paid for any work performed or costs incurred which reasonably could have been avoided.
- B. Chemonics may also terminate the Subcontract and/or any resulting Order issued hereunder at any time in whole, or from time to time in part, for cause in the event of default by the Supplier (including, but not limited to, any default by the Supplier's subcontractors, the suppliers, or by the manufacturer), or if the Supplier fails to comply with any Subcontract or any resulting Order 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 the Supplier for any Goods or Related Services not already delivered, and shall have any and all of the other rights and remedies against the Supplier provided by the Subcontract and resulting Orders or by applicable law and regulation.
- C. If it is determined that Chemonics improperly terminated the Subcontract and/or any resulting Order 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 and/or Order or by applicable law and regulation, Chemonics may purchase elsewhere Goods similar to those not yet delivered, and the Supplier shall pay Chemonics any costs that it incurs over the Order Price (or relevant part thereof). For purposes of this

Subcontract and/or Order, "default by the Supplier" shall include defaults by the Manufacturer (if different from the Supplier) as well.

- D. If performance of the USAID GHSC-PSM prime contract is suspended for any reason, Chemonics may, by written notice, instruct the Supplier 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 the Supplier'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 and/or Order pursuant to paragraph A or B above. If the suspension is cancelled before it expires, or the suspension period expires without renewal, the Supplier shall resume its performance. No additional compensation will be due to the Supplier due to the suspension; however, if necessary, the Supplier 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 and/or any resulting Order shall not affect the existing rights and licenses granted to Chemonics or the Government, which shall survive such termination.
- F. In the event that the Supplier (or the Manufacturer, if the Supplier 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 Supplier-provided information, documentation and materials used in connection with the Goods as are necessary for the continued performance of the USAID Contract. The Supplier 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, the Supplier shall, unless otherwise specifically instructed in writing by Chemonics, continue performance of any not terminated or not suspended portion of the Subcontract.

#### **ARTICLE 35. REPORTING ON SUPPLIER 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 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. The Supplier's Responsibility to Report Identifying Data. **Within seven (7) days of an award with a value of \$30,000 or greater unless exempted, the Supplier shall report its identifying data required by FAR 52.204-10 (including executive compensation, if applicable) in the required questionnaire and certification found herein.** If the Supplier maintains a record in the System for Award Management ([www.SAM.gov](http://www.SAM.gov)), the Supplier 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 Supplier does not maintain a record in the System for Award Management, the Supplier shall complete the "FSRS Reporting Questionnaire and Certification" included herein within seven (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 Article may constitute a material breach of the Subcontract and resulting Orders and

cause for withholding payment to the Supplier until the required information has been supplied to Chemonics or the Supplier demonstrates to Chemonics that its System for Award Management record has been updated. In addition to contractual remedies, Chemonics may make the Supplier's failure to comply with the reporting requirements a part of the Supplier's performance information record.

#### **ARTICLE 36. SURVIVAL**

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

#### **ARTICLE 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 and any resulting Order 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 38. SEVERABILITY**

If any provision of this Subcontract or any resulting Order 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 or any resulting Order had been executed with the affected provision eliminated.

#### **ARTICLE 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 or any resulting Order, 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 40. CLAUSES INCORPORATED BY REFERENCE**

This Subcontract and any resulting Order 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/aidar9-1.pdf>. Modifications which apply to the Subcontract appear after each clause. It is understood and agreed that the Supplier may be obligated by and to Chemonics for any specifications or documentation required of Chemonics under these clauses. The Supplier 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 Supplier shall incorporate, and require its Suppliers at all tiers to incorporate, commercial items or non-developmental items as components of items to be supplied under this contract. The Supplier shall insert the following clauses in subcontracts for commercial items under this Subcontract or any resulting Order.

##### **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 and any resulting Order.

This Subcontract and any resulting Order is entered into by the Parties in support of a U.S. Government contract.

As used in the clauses referenced below and otherwise in this Subcontract and any resulting Order:

- (1) "Commercial Item" means a commercial item as defined in FAR 2.101.
- (2) "Contract" means this Subcontract and any Orders issued hereunder.
- (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 Supplier, with whom Chemonics is contracting, acting as the immediate supplier to Chemonics.
- (5) "Prime Contract" means the contract between Chemonics and the U.S. Government.
- (6) "Subcontract" means any contract placed by the Supplier or lower-tier suppliers under this Subcontract and any Orders issued hereunder.
- (7) Where the clause refers expressly to the first-tier subcontract, definitions 2, 3, 4, and 6 do not apply.

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 the Supplier 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 Supplier is a non-U.S. firm or organization, this clause applies to the Subcontract and any resulting Orders only if Work will be performed in the United States or the Supplier is recruiting employees in the United States to Work on the Subcontract and any Order issued hereunder.

The Supplier agrees that upon the request of Chemonics it will negotiate in good faith with Chemonics relative to modifications to this Subcontract and any resulting Order 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 Contractor with the provisions of modifications to such Prime Contract. If any such modifications cause an increase or decrease in the cost of, or the time required for, performance of any part of the Work under the Subcontract and resulting Orders, an equitable adjustment shall be negotiated.

<b>Clause Number</b>	<b>Title</b>	<b>Date</b>	<b>Notes and Applicability</b>
<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)
<u>52.203-6</u>	RESTRICTIONS ON SUBCONTRACTORS SALES TO THE GOVERNMENT (ALT I)	SEP 2006	Fixed price subcontracts over \$150,000.
<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>52.203-13</u>	CONTRACTOR CODE OF ETHICS AND CONDUCT	APR 2010	All subcontracts that have a value in excess of \$5 million and a performance period of more than 120 days. Disclosures made under this clause shall be directed to the agency Office of the Inspector General, with a copy to the Contracting officer.
<u>52.203-17</u>	CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENTS TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS	APR 2014	All Subcontracts equal to or greater than \$150,000
<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 Supplier 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 Supplier employees who were not recruited within the United States.
<u>52.222-35</u>	EQUAL OPPORTUNITY FOR VETERANS	JUL 2014	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>	EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES	JUL 2014	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>52.222-40</u>	NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT	DEC 2010	Applies if this Subcontract exceeds \$10,000 and will be performed wholly or partially in the United States, unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 3 of Executive Order 13496 of January 30, 2009.
<u>52.222-37</u>	EMPLOYMENT REPORTS ON VETERANS	JUL 2014	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 and resulting Orders.

- (1) The Subcontract is entered into by the Parties in support of a U.S. Government contract. As used in the clauses referenced below and otherwise in this Subcontract:
  - (a) “Commercial Item” means a commercial item as defined in FAR 2.101.
  - (b) “Contract” means this Subcontract and any resulting Orders issued hereunder.
  - (c) “Contracting Officer” shall mean the U.S. Government Contracting Officer for Chemonics’ government prime contract under which this Subcontract is entered.
  - (d) “Contractor” and “Offeror” means the Subcontractor, with whom Chemonics is contracting, acting as the immediate Subcontractor to Chemonics.
  - (e) “Prime Contract” means the contract between Chemonics and the U.S. Government.
  - (f) “Subcontract” means any contract placed by the Subcontractor or lower-tier subcontractors under this Subcontract and any Orders issued hereunder.
  - (g) Where the clause refers expressly to the first-tier subcontract, definitions 2, 3, 4, and 6 do not apply.
- (2) The following notes apply to the clauses incorporated by reference below only when specified in the parenthetical phrase following the clause title and date.
  - (a) Substitute “Chemonics” for “USAID,” “Government,” or “United States” throughout this clause.
  - (b) Substitute “Chemonics Procurement Representative” for “Contracting Officer”, “Administrative Contracting Officer”, and “ACO” throughout this clause.
  - (c) Communication/notification required under this clause from/to Supplier to/from the USAID Contracting Officer shall be through Chemonics.

The Supplier agrees that upon the request of Chemonics it will negotiate in good faith with Chemonics relative to modifications to this Subcontract and any resulting Orders 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 Contractor with the provisions of modifications to such Prime Contract. If any such modifications cause an increase or decrease in the cost of, or the time required for, performance of any part of the Work under this Subcontract and resulting Orders, an equitable adjustment shall be negotiated.

<b>Clause Number</b>	<b>Title</b>	<b>Date</b>	<b>Notes and Applicability</b>
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	DEC 1998	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.)

<p>ADS 302.3.5. 16(a) (4)</p>	<p>PROHIBITION ON THE PROMOTION OR ADVOCACY OF THE LEGALIZATION OR PRACTICE OF PROSTITUTION OR SEX TRAFFICKING</p>	<p>SEP 2014</p>	<p>Applies to all subcontracts obligating funds for HIV/AIDS activities. Exempt organizations:</p> <p>(i) The Global Fund to Fight AIDS, Tuberculosis and Malaria; the World Health Organization; the International AIDS Vaccine Initiative; and any United Nations agency.</p> <p>(ii) U.S. non-governmental organization recipients/subrecipients and contractors/subcontractors.</p> <p>(iii) Non-U.S. contractors and subcontractors are exempt if the contract or subcontract is for commercial items and services as defined in FAR 2.101, such as pharmaceuticals, medical supplies, logistics support, data management, and freight forwarding.</p> <p>Notwithstanding the above, not exempt from this provision are non-U.S. contractors and subcontractors that implement HIV/AIDS programs under this contract or subcontract by: (i) Providing supplies or services directly to the final populations receiving such supplies or services in host countries; (ii) Providing technical assistance and training directly to host country individuals or entities on the provision of supplies or services to the final populations receiving such supplies and services; or (iii) Providing the types of services listed in FAR 37.203(b)(1)-(6) that involve giving advice about substantive policies of a recipient, giving advice regarding the activities referenced in (i) and (ii), or making decisions or functioning in a recipient's chain of command (e.g., providing managerial or supervisory</p>
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#### **ARTICLE 41. REPRESENTATIONS AND CERTIFICATIONS**

Any representations and certifications submitted resulting in award of this Subcontract are hereby incorporated either in full text or by reference, and any updated representations and certifications submitted thereafter are incorporated by reference and made a part of this Subcontract with the same force and effect as if they were incorporated by full text. By signing this Subcontract and any resulting Order, the Supplier hereby certifies that as of the time of award of this Subcontract: (1) the Supplier, including its principals, is not debarred, suspended or proposed for debarment or declared ineligible for award by any Federal agency; (2) no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of the U.S. Congress, an officer or employee of the U.S. Congress, or an employee of a member of the U.S. Congress on its behalf in connection with awarding the contract or this Subcontract; and (3) no changes have occurred to any other representations and certifications made by the Supplier resulting in award of this Subcontract. The Supplier agrees to promptly notify Chemonics in writing of any changes occurring at any time during performance of this Subcontract or any resulting Order to any representations and certifications submitted by the Supplier.