

SAIC-Frederick, Inc.

Solicitation No. SW09-003

A. SUPPLIES/SERVICES

<u>ITEM # SUPPLIES / SERVICES</u>	<u>QTY</u>	<u>UNIT</u>	<u>UNIT PRICE</u>		
			<u>YEAR 1</u> (CY 09)	<u>YEAR 2</u> (CY 10)	<u>YEAR 3</u> (CY 11)
			<u>RENEWAL OPTION 1</u>	<u>RENEWAL OPTION 2</u>	
1. Blanket Purchase Agreement for Recycled Office Paper, 8 1/2 x 11, 10 reams/case Cat. #: HPE1120 - Hewlett Packard	3,000	Cs	\$ _____/cs	\$ _____/cs	\$ _____/cs
2. Recycled Office Paper 8 1/2 x 11, 10 reams/cs Cat. #: 86700, Hammermill	3,000	Cs	\$ _____/cs	\$ _____/cs	\$ _____/cs

_____ % Discount Off List Price

Quote #: _____

B. SPECIFICATIONS/WORK STATEMENT

1. The catalog number and Manufacturer names are referenced above.
2. Offerors are requested to quote on line item one (1) as specified. Offerors may quote on line item two (2) as specified or an equivalent.
3. "Equivalent" offers shall provide complete specifications and/or descriptive literature for any alternates offered, stating catalog number, manufacturer, packaging, size, brightness, recycled material content; failure to include complete specifications may cause offer to be non-responsive.

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4. Equivalent offers shall meet the following specifications:
 - Size, 8 1/2" x 11"
 - Color, white
 - Brightness, 92
 - Weight, 20 lbs.
 - 5,000 sheet per case
 - Must contain a minimum of 30% recycled material
 - Acid Free
5. Offerors quoting on alternate/equivalent products for line item two (2) may be requested to submit sample(s) at no charge; to be evaluated for acceptability. (See Section C-10)
6. Paper must be stored in a climate controlled environment, prior to delivery.
7. Products and/or product packaging considered to be defective will be replaced at no charge to the Government.
8. Successful offeror shall provide the requested items as defined in this contract.
9. Initial inspection upon receipt at SAIC-Frederick, Inc. shall be confined to obvious external damage to shipping containers. SAIC-Frederick, Inc. accepts no responsibility for concealed damages.
10. The distribution of vendor catalogs will be handled as follows: Catalogs shall "only" be sent at the request of the SAIC-Frederick, Inc. Purchasing Department

C. CONTRACT TERMS/LOGISTICS

1. Successful offeror shall be awarded an Indefinite Quantity/Indefinite Delivery contract for the items specified. Successful contractor agrees to stock a thirty (30) day supply (1/12 of the quantity listed).
2. This procurement is being solicited as a small business set-aside. Award will be made only to a small business.
3. Effective dates for this subcontract shall be from 09/26/08 through 9/25/09.
4. Offers of a multi-year contract for the items cited will be considered. Please quote pricing for a one (1) year agreement and renewal option(s) as specified in A.1. This solicitation is intended to result in either a one (1) year contract or a one (1) year contract and option(s) to renew.

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5. This is a multi-year contract, however, funds are not presently available for years 2 and 3; obligation to purchase is contingent upon the availability of appropriated funds.
6. Partial offers will be accepted. SAIC-Frederick reserves the right to award on a line item basis.
7. In the event the SAIC-Frederick, Inc./NCI-Frederick Central Supply Warehouse becomes a Just-In-Time (JIT_ operation, the NCI-Frederick reserves the right to cancel this blanket agreement with 60 days written notice to contractor.
8. PERIOD OF PERFORMANCE. (CY dates are shown below for option years).

September 26, 2009 through September 24, 2010
September 25, 2010 through September 23, 2011
9. The quantities given represent the estimated yearly usage of the items listed. These quantities are an estimate only and must not be construed as a guarantee.
10. PRODUCT EVALUATION
 - a. For evaluation purposes, offerors may be requested to submit samples(s) at no charge.
 - b. Sample(s) shall be delivered within three (3) working days after telephone request has been made by Nancy Mayo. A minimum of one (1) case (10 reams/case), shall be required for testing.
 - c. Samples shall be shipped to:

SAIC-Frederick, Inc.
Building 1050, Boyles Street
Frederick, Maryland 21702-1201
Solicitation No. SW09-003/SAMPLE
Attn: Ms. Nancy Mayo
 - d. Each sample must be clearly marked to indicate the product, number, solicitation number and offeror's name.
 - e. Samples shall be provided in accordance with FAR Clause 52.214.20. Bid samples will not be returned whether or not they are destroyed during pre-award testing (FAR 52.214-20(d)(2)).
 - f. Failure to supply sample(s) by the date requested shall cause offer to be considered non-responsive.

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11. SAIC-FREDERICK, INC. HOLIDAYS

Delivery shall not be made on any of the below listed holidays:

New Year's Day	Labor Day
Martin Luther King Jr. Day	Veterans Day
Presidents Day	Columbus Day
Memorial Day	Thanksgiving Day
Independence Day	Christmas Day

Delivery shall be scheduled for the following work day.

12. OFFERS. All proposals, modifications and/or withdrawals must be signed, dated and received in the place specified and at the time required in this solicitation document.

Telephone offers will not be accepted; however, offers will be accepted transmitted via facsimile machine (301) 846-5311.

Offers may be withdrawn by written notice received at any time before the exact time set for receipt of bids in accordance with FAR clause 52.214-7(e).

Offers must be compliant with all solicitation requirements in order to be eligible for award.

Offers may be submitted on SAIC-Frederick, Inc. forms or on offeror letterhead stationery. For the latter, the same format must be utilized and the offeror must enter "see attached" next to the sections that are separately addressed on their letterhead. All attached pages must be marked with the solicitation number. If the pricing structure renders the offeror unable to conform to the requested format. Offer must state 1) the reason(s) for non-conformance and 2) the extent of agreement with all terms, conditions, and provisions included in the solicitation. Offerors that fail to furnish the required representations or information, or reject the terms and conditions of the solicitation will be excluded from consideration.

13. By offer submission the offeror agrees that in the event the prime contract of SAIC Frederick, Inc. is succeeded by a successor contractor as selected by the Government, before any award by SAIC Frederick, Inc. the offer may be assigned to the successful contractor.
14. Offeror must state any and all fees that could be applicable to any contract awarded from this solicitation. Payment will not be made for any additional charge unless stated in solicitation response and/or is approved on a case-by-case basis by the SAIC-Frederick, Inc..

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15. Discounts quoted shall be firm for the contract period; offers which cite a reduction in discounts shall not be considered.

16. INVOICE SUBMISSION

A. Invoices shall be prepared in accordance with the following:

1. An original and one (1) copy to the following designated payment office:

Attn: Accounts Payable Department
SAIC-Frederick, Inc.
P. O. Box B
Frederick, Maryland 21702-1201

2. An invoice is a written request for payment under the contract for items delivered or services rendered. In order to be proper, an invoice must include, as applicable, the following:

- a. Invoice date, (note: date of Contractor's invoice shall not be earlier than delivery/service date);
- b. Contractor name;
- c. Order number and Contract number, as entered in Blocks 4 and 2 of SF-1449-08, respectively (including delivery order number, if applicable);
- d. Description of items or services, quantity, contract unit of measure, contract unit price, and extended total;
- e. Payment terms;
- f. Name and address to which payment is to be sent; and
- g. Name, title, phone number, and mailing address of person to be notified in event of a defective invoice.

B. SAIC-Frederick, Inc. shall pay the Contractor, upon the submission of proper invoices or vouchers, the prices stipulated in this contract for services rendered and accepted, less any deductions provided in this contract.

17. VENDOR SELF CERTIFICATION

Information is available at the Acquisition Central website, <http://acquisition.gov/>.

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A. Central Contractor Registration

By submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the Central Contractor Registration (CCR) database prior to award, during performance and through final payment of any contract, basic agreement, or blanket purchasing agreement resulting from this solicitation. Full text is available at FAR Part 52.204-7 or complete information at <http://www.ccr.gov>.

B. Annual Representations and Certifications

The North American Industry Classification System (NAICS) code for this acquisition is _____ (insert NAICS code).

The small business size standard for this procurement is _____ (insert size standard). The small business size standard is based on a concern submitting an offer in its own name to furnish a product which it did not itself manufacturer is 500 employees.

The offeror has completed the annual representations and certifications electronically via the Online Representations and Certifications Application (ORCA) website at <http://orca.bpn.gov>. After reviewing the ORCA database information, the offeror verifies by submission of the offer that the representations and certifications currently posted electronically have been entered or updated within the last 12 months, are current, accurate, complete, and applicable to this solicitation, and as of the date of this offer are incorporated in this offer by reference except any changes identified below.

Any changes inserted below will be identified by clause number, title and date. These amended representation(s) and /or certification(s) are also incorporated in this offer and are current, accurate and complete as of the date of this offer.

FAR Clause #	Title	Date	Change
_____	_____	_____	_____

Any changes provided by the offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications posted on ORCA.

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a. Administrative Information

Offeror shall provide the following information:

1. Payment Terms: _____
2. Contact Name: _____
3. Contact phone number _____
4. Contact facsimile number _____
5. Contact e-mail address: _____

18. All offers must be f.o.b. destination. The term f.o.b. destination means 1) free of expense to the SAIC- Frederick, Inc. on board the carrier's conveyance, at a specified delivery point where the consignee's facility (plant, warehouse, store, lot or other location to which shipment can be made) is located; and 2) supplies shall be delivered to the SAIC-Frederick, Inc. receiving dock. SAIC-Frederick, Inc, shall not be liable for any delivery, storage, demurrage or other charges

involved before the actual delivery of the supplies to the destination, unless an act or order of the SAIC-Frederick, Inc. in its contractual capacity causes such charges. The Contractor will prepare the shipment in conformance with carrier requirements, prepare and distribute commercial bills of lading, deliver the shipment in good order and condition to the delivery point specified in the contract, be responsible for any loss of and/or damage to the goods occurring before receipt of the shipment at the SAIC- Frederick, Inc. receiving dock, furnish a delivery schedule, designated mode of delivering carrier and pay and bear all charges to the specified delivery point.

(f.o.b. - Free on Board - defined as B Contractor owns goods until delivered at SAIC-Frederick, Inc. dock. Contractor files claim).

F.O.B. Origin is not acceptable. All offers for other than F.O.B. destination shall be considered non-responsive.

19. SAIC-Frederick, Inc. is eligible for Federal Supply Schedule pricing. If the items offered are on FSS, the contract number must be cited and a copy

of the GSA Schedule or VA Schedule must accompany the offer.

20. Award of this solicitation may be made without discussion.

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21. The SAIC-Frederick, Inc. retains the right to access the contractor's pertinent accounting records, personnel, job sites, warehouses and other contract related areas to the extent that such accounts are relevant to the contract work. This right may be exercised at any time during the course of the contract and up to three (3) years after final payment is made. This will occur during normal business hours upon thirty (30) days notice to the contractor.

22. QUESTIONS.

· Questions concerning this solicitation shall be directed in writing "only" to Nancy Mayo, Purchasing Department, SAIC-Frederick, Inc., 1050 Boyles Street, Frederick, MD 21702, telephone: (301) 846-5167, fax: (301) 846-5311, or email: nmayo@ncifcrf.gov; by August 13, 2008.

Offeror's shall not make inquiries to the status of the procurement. No information may be released prior to award.

23. SUBMITTAL FORMAT All forms and submissions must be in the required format to be eligible for award. Failure to adhere to any completion requirement will cause the offer to be considered non-responsive.

Proposal Elements. Offeror shall submit a complete proposal that contains the following elements:

- Complete Solicitation, include ALL pages
- Form SF 1449-08 with signature and requisite blocks completed.
- Name, address, phone number of three recent references
- Terms and Conditions (Must be signed and dated)
- Signed solicitation and amendments (if any)

Mailing Envelope. Offeror must return the proposal with the solicitation number **SW09-003** clearly visible on the outside of the sealed proposal envelope. The SAIC-Frederick, Inc. will not be responsible for the handling of any offers not returned with the solicitation number shown in the required manner.

Proposal Package. The proposal packages shall be addressed as follows: SAIC-Frederick,

Inc., 1050 Boyles Street, Frederick, MD 21702-1201, ATTN: Nancy Mayo, Room 211.

24. ECONOMIC PRICE ADJUSTMENT - STANDARD SUPPLIES

An adjustment of prices based upon increases or decreases in cost of production in accordance with FAR Contract Clause 52.216.2 will become a part of any subcontract awarded as a result of this solicitation. Contractor shall provide documentation referencing production cost increases or decreases to SAIC-Frederick, Inc./NCI-Frederick.

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D. DELIVERY ORDERS

1. There shall be neither minimum nor maximum quantities per delivery order.

Deliveries shall be made upon telephone delivery order by authorized SAIC-Frederick, Inc. personnel. All deliveries shall be directed to SAIC-Frederick, Inc. Receiving Warehouse, Building 1050, Frederick, MD 21702-1201 and shall be clearly marked with the appropriate purchase order number and the name of the individual issuing the delivery order.

The external packaging label(s) shall indicate the SAIC-Frederick, Inc. purchase order number to allow payment according to the credit terms. Failure to provide the required purchase order number will cause delay of payment and will automatically relegate the credit terms to net 60.

All delivery orders against this contract shall be subject to the terms and conditions of this contract. In the event of conflict between a delivery order and this contract, the contract shall control.

Subpart 16.5 - Indefinite Delivery Contracts is incorporated herein by reference.

2. Delivery orders against this contract for SAIC-Frederick, Inc. shall be issued either by the Purchasing Department for one-time purchase orders or by SAIC-Frederick, Inc. personnel against Blanket Order # SW09-003.

3. The contractor is responsible for the delivery of each item quantity and shall make effort to deliver the exact quantity ordered by SAIC-Frederick, Inc. Should any quantities in excess of the allowed quantity be received, the SAIC-Frederick, Inc. has the option to either retain or return these excess quantities. Return of over shipped items will be at the Contractor's risk and expense. Retained items will be paid for by the SAIC-Frederick, Inc. at the contract unit price.

A packing slip must be inside or attached to each box. Boxes without packing slips may be refused.

All delivery order packages, packing slips and invoices must be clearly marked with the appropriate SAIC-Frederick, Inc. purchase order number.

All delivery order items must be packaged and shipped in accordance with applicable federal regulations.

Special delivery charges. If special delivery is requested (for example Air Freight), contractor shall prepay and may submit a paper invoice for these charges only. The purchase order number for the item shall appear on the invoice. If any freight charge exceeds \$250.00, a copy of the actual freight bill must be included with the invoice.

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4. Offeror agrees to make delivery of the quoted items in three (3) days after receipt of order.

E. EVALUATION

1. EVALUATION FACTORS

- a. Basis of award shall be as follows:

1. Conformance to all solicitation specifications
2. Vendor Performance History
3. Acceptability of Product/Service
4. Cost

2. Award of any order or subcontract as a result of this solicitation will NOT be made to any supplier with evident deficient past performance as documented in the SAIC-Frederick, Inc. Vendor File.

TERMS AND CONDITIONS

1. GOVERNMENT RELATIONSHIP

This Order is made by SAIC-Frederick, Inc., a Subsidiary of Science Applications International Corporation under its contract with the National Cancer Institute at Frederick (NCI-Frederick). The provisions and clauses contained herein are influenced by and reflect the relationship of the parties in that contract, which was awarded and is administered under the provision of the Federal Acquisition Regulation (FAR). There is no privity of contract between the Seller and the Government.

2. GENERAL RELATIONSHIP

The Seller is not an employee of SAIC-Frederick, Inc. for any purpose whatsoever. Seller agrees that in all matters relating to this Order it shall be acting as an independent contractor and shall assume and pay all liabilities and perform all obligations imposed with respect to the performance of this Order. Seller shall have no right, power or authority to create any obligation, expressed or implied, on behalf of Buyer and/or Buyer's customers and shall have no authority to represent Buyer as an agent.

3. DEFINITIONS

Buyer – SAIC-Frederick, Inc.

Seller – The party (contractor) receiving the award from SAIC-Frederick, Inc.

Prime Contract – The Government contract under which this Order is issued (see paragraph 1 entitled "Government Relationship").

NCI Government Contracting Officer –The NCI-Frederick person with the authority to interpret, modify, administer, and/or otherwise make decisions with regard to the Prime Contract". This term includes authorized representatives of the NCI-Frederick Contracting Officer within their delegated authority.

Contracting Officer – The SAIC-Frederick, Inc. person with the authority to enter into and administer Orders. The term includes authorized representatives of the Contracting Officer acting within their delegated authority.

Order – The contractual agreement between SAIC-Frederick, Inc. and the Seller.

Special Definitions – See paragraph 4 for the special definitions that apply in the use of the solicitation and award clauses of this Order.

4. SOLICITATION AND AWARD CLAUSES – SPECIAL DEFINITIONS

FAR clauses included in this Order, including any solicitation document, shall be interpreted as follows:

Unless a purposeful distinction is made clear and the context of the clause requires retention of the original definition, the term "Contractor" shall mean Seller, the term "Contract" shall mean this Order, the term "Subcontractor" shall mean subcontractors of Seller at any tier, and the terms "Government", "Contracting Officer" and equivalent phrases shall mean SAIC-Frederick, Inc. and SAIC-Frederick's Contracting Officer, respectively. It is intended that the referenced clauses shall apply to Seller in such manner as is necessary to reflect the position of Seller as a contractor to SAIC-Frederick, Inc. to insure Seller's obligations to SAIC-Frederick, Inc. and to the United States Government, and to enable SAIC-Frederick, Inc. to meet its obligations under its Prime Contract.

Full text of the referenced clauses may be found in the FAR (Code of Federal Regulation [CFR] Title 48), obtainable from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402 or online at <http://www.arnet.gov/far/>.

Copies of the clauses will be furnished by the Contracting Officer upon request.

5. ENTIRE AGREEMENT

This Order, including all attachments and/or documents incorporated by reference by Buyer, shall constitute the entire agreement between Buyer and Seller. No other document (including Seller's proposal, quotation or acknowledgement forms, etc.) shall be a part of this Order, even if referred to, unless specifically agreed to in writing by Buyer. No right that Buyer has regarding this Order may be waived or modified except in writing by Buyer.

6. ACCEPTANCE AND MODIFICATION OF TERMS

Acceptance of this Order by Seller may be made by signing the acknowledgement copy hereof or by partial performance hereunder, and any such acceptance shall constitute an unqualified agreement to all terms and conditions set forth herein unless otherwise modified in writing by the parties. Any additions, deletions or differences in the terms proposed by Seller are objected to and hereby rejected, unless Buyer agrees otherwise in writing. No additional or different terms and conditions proposed by the Seller in accepting this Order shall be binding upon Buyer unless accepted in writing by Buyer and no other addition, alteration or modification to, and no waiver of any of the provisions herein contained shall be valid unless made in writing and executed by Buyer

and Seller. Seller shall perform in accordance with the Description/Quantity schedule set forth in this Order and all attachments thereto.

7. LEGAL CONSTRUCTION AND INTERPRETATIONS

This Order shall be governed by and interpreted in accordance with the principles of Federal Contract Law, and to the extent that Federal Contract Law is not dispositive, and the state law becomes applicable, the law of the State of Maryland shall apply.

8. COMPLIANCE WITH LAWS AND REGULATIONS

Seller shall submit all certifications required by Buyer under this Order and shall at all times, at its own expense, comply with all applicable Federal, State and local laws, ordinances, administrative orders, rules or regulations.

9. GIFTS

Seller shall not make or offer a gratuity or gift of any kind to Buyer's employees or their families. Seller should note that the providing of gifts or attempting to provide gifts under government subcontracts might be a violation of the Anti-Kickback Act of 1986 (4 U.S.C. 51-58).

10. MARYLAND SALES AND USE TAX

The State of Maryland has issued Direct Payment Permit #3, effective date August 29, 1996, to SAIC-Frederick, Inc. that will be issued to vendors of NCI-Frederick for purchases of goods and services. A copy of this Permit is available to vendors upon request. As a holder of a Direct Payment Permit, SAIC-Frederick, Inc. is authorized to make direct payment of sales and use tax to the State of Maryland. Accordingly, sellers that provide goods and services to SAIC-Frederick, Inc. are relieved from collecting sales tax from SAIC-Frederick, Inc. Therefore, sellers to SAIC-Frederick, Inc. shall not place a separate line item for tax on any invoice sent to SAIC-Frederick, Inc. Please note that the Permit is not to be used by sellers to make purchases free of sales tax, nor shall the Permit be transferred or assigned.

11. BUYER FURNISHED DATA AND MATERIALS

Seller agrees that it will keep confidential and not disclose, disseminate or publish the features of any equipment, tools, gauges, patterns, designs, drawings, engineering data, computer programs and software or other technical or proprietary information furnished, loaned or bailed by Buyer hereunder (hereinafter collectively referred to as (items/information), and will use such items/information only in the performance of this Order or, if authorized, other orders from Buyer, and not otherwise without Buyer's written consent.

All such items furnished, loaned or bailed by Buyer hereunder, or fabricated, manufactured, purchased, or otherwise acquired by Seller for the performance of this Order and specifically charged to Buyer, are the property of Buyer.

Upon completion, expiration or termination of this Order, Seller shall return all such items in good condition, reasonable wear only excepted, together with all spoiled and surplus items to Buyer, or make such other

disposition thereof as may be directed or approved by Buyer. Seller agrees to replace, at its expense, all such items not so returned. Seller shall make no charge for any storage, maintenance or retention of such items. Seller shall bear all risk of loss for all such items in Seller's possession.

Seller also agrees to use any designs or data contained or embodied in such items in accordance with any restrictive legends placed on such items by Buyer or any third party. If Buyer furnishes any material, for fabrication hereunder, Seller agrees: (i) not to substitute any other material for such fabrication with Buyer's prior written consent, and (ii) that title to such material shall not be affected by incorporation in or attachment to any other property.

12. NOTICE OF DELAY

Seller agrees to immediately notify Buyer in writing of any actual or potential delay in Seller's performance under this Order. Such notice shall, at a minimum, describe the cause, effect, duration and corrective action proposed by Seller to address the problem. Seller shall give prompt written notice to the Buyer of all changes to such conditions.

13. CHANGES AND SUSPENSION

Buyer may, by written notice to Seller at any time, make changes within the general scope of this Order in any one or more of the following: (a) drawings, designs or specifications; (b) quantity; (c) time or place of delivery; (d) method of shipment or packing; and (e) the quantity of Buyer furnished property. Buyer may, for any reason, direct Seller to suspend, in whole or in part, delivery of goods or performance of services hereunder for such period of time as may be determined by Buyer in its sole discretion. If any such change or suspension causes a material increase or decrease in the cost of, or the time required for the performance of any part of the work under this Order, an equitable adjustment shall be made in the Order price or delivery schedule, or both, provided Seller shall have notified Buyer in writing of any claim for such adjustment within twenty (20) days from the date of notification of the change or suspension from Buyer. No such adjustment or any other modification of the terms of this Order will be allowed unless authorized by Buyer by means of a written modification to the Order. Seller shall proceed with the work as changed without interruption and without awaiting settlement of any such claim.

14. ADVERTISING

Seller agrees that prior to the issuance of any publicity or publication of any advertising that in either case makes reference to this Order, or to Buyer, Seller will obtain the written permission of Buyer with respect thereto.

15. CONFIDENTIAL INFORMATION

Seller shall not at any time, even after the expiration or termination of this Order, use or disclose to any person for any purpose other than to perform this Order, any information it receives, directly or indirectly from Buyer in connection with this Order, except information that is or becomes publicly available, or is rightfully received by Seller from a third party without restriction. Upon request by Buyer, Seller shall return to Buyer all documentation and other material containing such information.

16. INDEMNIFICATION

Seller shall indemnify, defend and hold harmless Buyer from and against any and all claims, liabilities, damages, losses, causes of action, lawsuits, costs and expenses, including reasonable attorneys' fees and litigation costs incurred in connection therewith and regardless of legal theory (hereinafter referred to as "claims"), occasioned wholly or in part by any act or omission of Seller or any of its lower tiers, or their employees, agents or representatives arising out of or relating to this Order. Notwithstanding the foregoing, Seller's obligations under this Section shall not apply to any claims that are finally determined by a court of competent jurisdiction to be occasioned solely by the negligence or willful misconduct of Buyer.

17. INFRINGEMENT INDEMNITIES

Seller shall, at its expense, indemnify, defend, save and hold Buyer and its successors, affiliates, officers, directors, employees, agents, independent contractors and customers, and the officers, agents and employees of such customers (hereinafter collectively referred to in this section as "Buyer") harmless from and against any and all damages, liabilities, penalties, interest and costs awarded against and reasonable expenses, including without limitation attorneys' fees that result or arise out of or relate to, in whole or part, any claims, suits, proceedings, actions, causes of action and demands brought against the Buyer asserting that the deliverables, including without delivery, including without limitation all software, goods or services, or any part thereof, furnished under this Order, or the creation, delivery, use modification, reproduction, release, performance, display or disclosure, including without limitation resale or sublicensing thereof, constitutes an infringement of any patent, trademark, trade secret, copyright or other proprietary or intellectual property right or rights of privacy or publicity. In the event such goods or services or use thereof are enjoined in whole or in part, Seller shall at its expense and Buyer's option undertake one of the following: (i) obtain for Buyer the right to continue the use of such goods or services; (ii) in a manner acceptable to Buyer, substitute equivalent goods or services or make modifications thereto so as to avoid such infringement and extend this indemnity thereto; or (iii) refund to Buyer an amount equal to the purchase price for such goods or services plus any excess costs or expenses incurred in obtaining substitute goods or services from another source.

Notwithstanding this Section 17, should the deliverables or portion thereof be held to constitute an infringement and use as contemplated by this Order be enjoined or be threatened to be enjoined, Seller shall notify Buyer and immediately, at Seller's expense; (i) procure for Buyer the right to continue to use the deliverables or portion thereof with a version that is non-infringing, provided that the replacement or modified version meets any applicable specifications to Buyer's satisfaction. If (i) or (ii) are not available to Seller, in addition to any damages or expenses reimbursed under this section, Seller shall refund to Buyer all amounts paid to Seller by Buyer under this Order.

18. NON-WAIVER OF RIGHTS

The failure of Buyer to insist upon strict performance of any of the terms and conditions in this Order or to exercise any rights or remedies, shall not be construed as a waiver of its rights to assert any of same or to rely on any such terms or conditions at any time thereafter. Acceptance or payment of any part of the Order shall not bind Buyer to accept future shipments or performance of services nor deprive Buyer of the right to return goods already accepted or for which Buyer has made payment. Acceptance or payment shall not be deemed to be a waiver of Buyer's right to cancel or return all or any part of the goods because of failure to conform to the Order or by reason of defects, whether latent or patent, or other breach of warranty, or to make any claim for damages of any and all kind.

19. INSURANCE REQUIREMENTS FOR WORK ON A GOVERNMENT INSTALLATION

If this Order entails effort on a Government installation, including any off-site buildings owned or leased by the Government, the Seller must provide and maintain the minimum amounts of insurance stated below.

At Buyer's request, Seller agrees to provide Certificates of Insurance evidencing that the required insurance coverages are in force and providing not less than thirty days written notice prior to any cancellation or restrictive modification of the policies.

Further, the required insurance coverages below shall be primary and non-contributing with respect to any other insurance that may be maintained by Buyer. The below required coverages and their limits in no way lessen nor affect Seller's other obligations or liabilities set forth in this Order.

Seller agrees to purchase and maintain at its own expense the following insurance coverages with minimum limits as stated:

- (i) Statutory Workers' Compensation and Employer's Liability in an amount no less than \$1 Million per occurrence covering its employees, including a waiver of subrogation obtained from the carrier in favor of Buyer;
- (ii) Commercial General Liability in an amount no less than \$1 Million per each occurrence and \$2 Million in this Aggregate covering bodily injury, broad form property damage, personal injury, products and completed operations, contractual liability and independent contractors' liability. Buyer, its officers and employees shall be included as Additional Insureds and a waiver of subrogation shall be obtained from the carrier in favor of Buyer;
- (iii) Automobile Liability in an amount no less than \$1 Million Combined Single Limit for Bodily Injury covering use of all owned, non-owned, and hired vehicles. Buyer, its officers and employees shall be included as Additional Insureds on the policy;

- (iv) Professional Liability in an amount no less than \$1 Million per occurrence covering damages caused by any acts, errors, and omissions arising out of the professional services performed by Seller, or any person for whom the Seller is legally liable. To the extent that coverage for Seller's services are not excluded in (ii) above by virtue of being deemed not of a professional nature, this requirement does not apply.
- (v) All-Risk Property Insurance in an amount adequate to replace property, including supplies covered by this Order, of Buyer and/or Buyer's customer that may be in the possession or control of Seller. Buyer shall be named as a Loss Payee with respect to loss or damage to said property and/or supplies furnished by Buyer.

The required insurance coverages above shall be primary and non-contributing with respect to any other insurance that may be maintained by Buyer and notwithstanding any provision contained herein, Seller, and its employees, agents, representatives, consultants, subcontractors and suppliers, are not insured by the Buyer, and are not covered under any policy of insurance that the Buyer has obtained or has in place.

Any self-insured retentions, deductibles and exclusions in coverage in the policies required under this Article shall be assumed by, for the account of, and at the sole risk of Seller which provides the insurance and to the extent applicable shall be paid by Seller. In no event shall the liability of Seller be limited to the extent of any insurance or the minimum limits required herein.

20. EXPORT CONTROL COMPLIANCE FOR FOREIGN PERSONS

Seller shall not, nor shall Seller authorize or permit its employees, agents or lower tiers to disclose, export or re-export any Buyer information, or any process, product or services that is produced under this Order, without prior notification to Buyer and complying with all applicable Federal, State and local laws, regulations and ordinances, including the regulations of the U.S. Department of Commerce and/or the U.S. Department of State. In addition, Seller agrees to immediately notify Buyer if Seller is listed on any of the Department of State, Treasury or Commerce proscribed persons or destinations lists, or if Seller's export privileges are otherwise denied, suspended or revoked in whole or in part.

Under its contract with NCI-Frederick, Buyer conducts research activities that include export-controlled technology that cannot be readily segregated. Buyer may require Seller (including any lower tiers) to place restrictions on their work force performing onsite at SAIC-Frederick, Inc. to protected individuals as established under the guidelines of the Commerce Department Export Administration Regulations (EAR) and the State Department International Traffic in Arms Regulations (ITAR).

Contractors (including any lower tiers) may be required to disclose the status of personnel proposed to perform work onsite prior to award.

Contractors shall include in all agreements and related documents with lower tiers, notice to third parties that the export of any process, goods and/or technical data from the United States may require an export control license from the U.S. Government and that, failure to obtain such export control license may result in termination of Order, and/or criminal liability under U.S. laws.

21. ASSIGNMENT

Neither this Order nor any interest herein may be assigned, in whole or in part, without the prior written consent of Buyer except that the Seller shall have the right to assign this Order to any successor of such party by way of merger or consolidation or the acquisition of substantially all of the business and assets of the Seller relating to the subject matter of this Order. This right shall be retained provided that such successor shall expressly assume all of the obligations and liabilities of the Seller under this Order, and that the Seller shall remain liable and responsible to Buyer for the performance and observance of all such obligations.

Notwithstanding the foregoing, any amounts due the Seller may be assigned in accordance with the provisions of the clause 52.232-23, Assignment of Claims.

In the event the prime contract of SAIC-Frederick, Inc. with the Government is succeeded by a successor contractor selected by the Government, this Order may be assigned to the successor contractor.

22. DISPUTES

(A) If a decision relating to the Prime Contract is made by the NCI-Frederick Contracting Officer and such decision is also related to this Order, said decision, if binding upon Buyer under the Prime Contract shall in turn be binding upon Buyer and Seller with respect to such matter; provided, however, that if Seller disagrees with any such decision made by the NCI Contracting Officer and Buyer elects not to appeal any such decision, Seller shall have the right reserved to Buyer under the Prime Contract with the Government to prosecute a timely appeal in the name of Buyer, as permitted by the contract or by law, Seller to bear its own legal and other costs. If Buyer elects not to appeal any such decision, Buyer agrees to notify Seller in a timely fashion after receipt of such decision and to assist Seller in its prosecution of any such appeal in every reasonable manner. If Buyer elects to appeal any such decision of the NCI Contracting Officer, Buyer agrees to furnish Seller promptly of a copy of such appeal. Any decision upon appeal, if binding upon Buyer, shall in turn be binding upon Seller. Pending the making of any decision, either by the NCI Contracting Officer or on appeal, Seller shall proceed diligently with performance of this Order.

If, as a result of any decision or judgment which is binding upon Seller and Buyer, as provided above, Buyer is unable to obtain payment or reimbursement

from the Government under the Prime Contract for, or is required to refund or credit to the Government, any amount with respect to any item or matter for which the Buyer has reimbursed or paid Seller, Seller shall, on demand, promptly repay such amount to Buyer. Additionally, pending the final conclusion of any appeal hereunder, Seller shall, on demand promptly repay any such amount to Buyer. Buyer's maximum liability for any matter connected with or related to this Order which was properly the subject of a claim against the Government under the Prime Contract shall not exceed the amount of the Buyer's recovery from the Government.

Seller agrees to provide certification that data supporting any claim made by Seller hereunder is made in good faith and that the supporting data is accurate and complete to the best of the Seller's knowledge or belief, all in accordance with the requirements of the Contracts Disputes Act of 1978 (41USC601-613) and implementing regulations. If any claim of Seller is determined to be based on upon fraud or misrepresentation, Seller agrees to defend, indemnify, and hold Buyer harmless for any and all liability, loss, cost, or expense resulting there from.

Any dispute not addressed in paragraph (A) above, will be subject to paragraph (B) as described below.

(B) Buyer and Seller agree to first enter into negotiations to resolve any controversy, claim or dispute ("dispute") arising under or relating to this Order. The parties agree to negotiate in good faith to reach a mutually agreeable resolution of such dispute within a reasonable period of time. If good faith negotiations are unsuccessful, Buyer and Seller agree to resolve the dispute by binding and final arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect. The arbitration shall take place in the County of Frederick, State of Maryland. The arbitrator(s) shall be bound to follow the provisions of this Order in resolving the dispute, and may not award punitive damages. The decision of the arbitrator(s) shall be final and binding on the parties, and any award of the arbitrator(s) may be entered or enforced in any court of competent jurisdiction.

Seller hereby waives any immunity, sovereign or otherwise, that it would otherwise have to such jurisdiction and agrees that its rights, obligations, and liabilities hereunder shall be determined in the same manner and to the same extent as those of a private litigant under like circumstances.

All costs of the arbitration shall be shared equally between the Parties, but the Parties specifically agree that each Party shall bear the expense of any costs incurred by it for its own counsel, experts, witnesses, preparation of documents, presentations, and logistics related to the proceedings.

Pending any decision, appeal or judgment referred to in this provision or the settlement of any dispute arising under this Order, Seller shall proceed diligently with the performance of this Order.

23. NOTIFICATION OF DEBARMENT/SUSPENSION

By acceptance of this Order either in writing or by performance, Seller certifies that as of the date of award of this Order neither the Seller, lower tiers, nor any of its principals, is debarred, suspended, or proposed for debarment by the Federal Government. Further, Seller shall provide immediate written notice to the Buyer in the event that during performance of this Order the Seller or any of its principals is debarred, suspended, or proposed for debarment by the Federal Government.

24. QUALITY ASSURANCE/INSPECTION

All goods furnished and services performed pursuant hereto shall be subject to inspection and test by Buyer at all reasonable times and places, during the Order term, and in any event, prior to Final Acceptance as that term is defined in the Statement of Work. No inspection made prior to Final Acceptance shall relieve Seller from responsibility for defects or other to meet the failure requirements of this Order. In the event that goods furnished or services supplied are not in accordance with the Statement of Work and Schedule or other requirements. Buyer may require Seller to promptly correct, repair, replace or re-perform the goods or services. The cost of correction, repair, replacement, or re-performance shall be determined under Section 7 of this Order. If Seller fails to proceed with reasonable promptness to perform the required correction, repair, replacement, or re-performance, Buyer may terminate the Order for default. If Seller is unable to accomplish the foregoing, then Buyer may procure such materials and services from another source or perform such services in-house and charge to Seller's account all costs, expenses and damages associated therewith. Buyer's approval of designs furnished by Seller shall not relieve Seller of its obligations hereunder.

25. ORDER OF PRECEDENCE

In the event of an inconsistency or conflict between these SAIC Terms and Conditions and the Order issued, the inconsistency or conflict shall be resolved by giving precedence in the following order:

- 1) The Order including SAIC-Frederick, Inc. Standard Terms and Conditions, Exhibits thereto and any provisions.
- 2) Specifications and/or drawings.
- 3) Other documents or exhibits when attached.

26. TERMINATION

Termination for Convenience

1) Buyer shall have the right to terminate this Order, in whole or in part, at any time, without cause, by providing written notice to Seller. Upon receiving notice of such termination, Seller shall:

- a) stop all work on this Order on the date and to the extent specified;
- b) place no further contracts hereunder except as may be necessary for completing such portions of the Order that have not been terminated; and

c) terminate all contracts to the extent that they may relate to portions of the Order that have been terminated; and

d) protect all property in which Buyer has or may acquire an interest and deliver such property to Buyer.

2) Within twenty (20) days from such termination, Seller may submit to Buyer its written claim for termination charges in the form prescribed by Buyer. Failure to submit such claim within such time shall constitute a waiver of all claims and a release of all Buyer's liability arising out of such termination. Under no circumstances shall Seller be entitled to anticipatory or lost profits.

3) Buyer reserves the right to verify claims hereunder and Seller shall make available to Buyer, upon its request, all relevant, non-proprietary books and records for inspection and audit (e.g. time cards and receipts). If Seller fails to afford Buyer its rights hereunder, Seller shall be deemed to have relinquished its claim.

Termination for Default

1) Buyer may, by written notice of default to Seller, terminate the whole or any part of this Order, in any one of the following circumstances:

a) Seller fails to make delivery of the goods or to perform the services within time specified herein or any extension thereof; or

b) Seller fails to perform any of the other provisions of this Order in accordance with its terms and does not cure such failure within a period of ten (10) days after receipt of notice from Buyer specifying such failure; or

c) Seller becomes insolvent or the subject of proceedings under any law relating to the relief of debtors or admits in writing its inability to pay its debts as they become due.

2) If this Order is so terminated, Buyer may procure or otherwise obtain, upon such terms and in such manner as Buyer may deem appropriate, goods or services similar to those terminated. Seller shall be liable to Buyer for any excess costs of such similar supplies or services.

3) Seller shall transfer title and deliver to Buyer, in the manner and to the extent requested in writing by Buyer at or after termination, such complete or partially completed articles, property, materials, parts, tools, fixtures, plans, drawings, information and contract rights as Seller has produced or acquired for the performance of the terminated part of this Order, and Buyer will pay Seller the contract price for completed articles delivered to and accepted by Buyer and the fair value of the other property of Seller so requested and delivered.

4) Seller shall continue performance of this Order to the extent not terminated. Buyer shall have no obligation to Seller with respect to the terminated part of this Order except as herein provided.

27. SECURITY

Under its contract with NCI-Frederick, SAIC-Frederick, Inc. may be required to conduct, on persons performing work on Government Owned or controlled installations,

individual background checks prior to the commencement of effort. As part of this process, information will be required to enable SAIC-Frederick, Inc. to conduct the appropriate background checks, including name (including any aliases), daytime phone number, SSN, date of birth, and country of birth. Individuals who are unable or unwilling to provide the required information and/or receive the required authorizations will not be allowed access to NCI-Frederick or any controlled premises.

Seller agrees to comply with the Information Technology (IT) systems security and /or privacy specifications set forth in the Agreement; the Computer Security Act of 1987; Office of Management and Budget (OMB) Circular A-130, Appendix III, "Security of Federal Automated Information Systems", and the DHHS Automated Information Systems Security Program (AISSP) Handbook, which may be found at the following websites: Computer Security Act of 1987: http://csrc.nist.gov/ispab/csa_87.txt, OMB A-130 Appendix III: http://www.whitehouse.gov/omb/circulars/a130/a130appendix_iii.html, DHHS AISSP Handbook : <http://irm.cit.nih.gov/policy/aissp.html>

The Seller further agrees to include this provision in any Order awarded pursuant to the Agreement. Failure to comply with these requirements may constitute cause for termination under Paragraph 26 of these Terms and Conditions.

The Seller shall be responsible for properly protecting all information used, gathered, or developed as a result of the Agreement. The Seller shall establish and implement appropriate administrative, technical, and physical safeguards to ensure the security and confidentiality of sensitive Government information, data and/or equipment. Any Seller employee who may have access to sensitive information under this agreement shall complete the form entitled, "Commitment to Protect Non-Public Information – Contractor Agreement," which may be found at the following website: <http://irm.cit.nih.gov/security/Nondisclosure.pdf>

A copy of each signed and witnessed Non-Disclosure agreement shall be submitted to the Contracting Officer prior to performing any work under the Agreement.

The Seller shall assure that each employee has completed the NIH Computer Security Awareness Training (<http://irtsectraining.nih.gov>) prior to performing any work under this contract.

The Seller shall maintain and submit to the Contracting Officer a listing by name and title of each individual working under this contract, who has completed the NIH required training. Any additional security training completed by Seller staff shall be included on this listing.

In addition, during all activities and operations on Government premises, the Seller shall comply with DHHS, including National Institutes of Health (NIH), rules of conduct. Should the Seller have questions concerning these requirements or need of procedural guidance to ensure compliance they may contact the cognizant SAIC-Frederick, Inc. acquisition representative.

28. TOBACCO USE AT THE NCI-FREDERICK

In accordance with the Department of Health and Human Services (HHS) directive, the NCI-Frederick campus is a tobacco free workplace. Use of tobacco in any form is prohibited on the entire NCI-Frederick campus. This includes personal vehicles while on NCI-Frederick property and all government vehicles, regardless of their location.

This policy applies to all employees, Government and Contractor, visitors, subcontractors, vendors and guests of the NCI-Frederick, and extends to all HHS owned or leased facilities and properties external to the NCI-Frederick campus where the sole tenant(s) are HHS and/or SAIC-Frederick employees.

29. PAYMENT AND INVOICING

Payment – Work accepted by Buyer shall be paid for in U.S. dollars (\$USD) within the negotiated terms upon receipt of proper invoice.

30. STANDARDS OF BUSINESS ETHICS

Seller, including all lower tiers are expected and required to comply fully with Buyer's standards of business ethics and conduct and to inform appropriate Buyer officials immediately of any illegal or unethical conduct in their dealings with Buyer's officers or employees. Copies of the Buyer's Code of Ethics and contacts for such reports are available on www.saic.com under Corporate Governance.

31. SEVERABILITY

If any term contained in this Subcontract is held or finally determined to be invalid, illegal or unenforceable in any respect, in whole or in part, such term shall be severed from this Subcontract, and the remaining terms contained herein shall continue in force and effect, and shall in no way be affected, prejudiced or disturbed thereby.

32. INTERPRETATION

The captions and headings used in this Subcontract are solely for the convenience of the parties, and shall not be used in the interpretation of the text of this Subcontract. Each party has read and agreed to the specific language of this Subcontract; therefore no conflict, ambiguity or doubtful interpretation shall be construed against the drafter.

33. ELETRONIC AND INFORMATION TECHNOLOGY STANDARDS

Seller agrees to comply with Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d) as amended by P.L. 105-220 under Title IV (Rehabilitation Act Amendments of 1998). Electronic and Information Technology (EIT) developed, procured, maintained, and/or used under this contract shall be in compliance with the "Electronic and Information Technology Accessibility Standards" set forth by the Architectural and Transportation Barriers Compliance Board (also referred to as the "Access Board") in 36 CFR Part 1194. The complete text of Section 508 Final Standards can be

Accessed at <http://www.access-board.gov/news/508-final.htm>. Applicable standards to this requirement are set forth in 36 CFR Part 1194.21 through 26.

Seller further agrees to include this provision in any Order awarded pursuant to the Agreement. Failure to comply to these requirements may constitute cause for termination under Paragraph 26 of these Terms and Conditions.