
Standard Terms and Conditions

- 1. Acceptance & Applicability:** These terms and conditions, which are hyperlinked from or referenced in the Request for Proposal (“RFP”) or Request for Quote (“RFQ”) or otherwise provided to the supplier (“Vendor”) of goods (“Goods”) and/or services (“Services”) collectively constitutes a binding agreement (“Agreement”) between the Vendor and the Heartland entity (“Heartland”) identified in the RFP/RFQ. This Agreement may be accepted only in accordance with all terms and conditions herein without modification, addition, deletion or alteration.
- 2. Assignment:** Vendor may not assign this Agreement or any benefits or rights arising therefrom without the prior written consent of Heartland, and, unless otherwise agreed in writing, the rights of any assignee shall be subject to all set-offs, counterclaim.
- 3. Proprietary Information & Confidentiality:** Vendor shall consider all data, documentation, drawings, specifications software and other information furnished by Heartland to be confidential and proprietary and shall not disclose any such information or use such information itself for any purpose other than that for which it was intended in completing the Contract, unless Vendor obtains written permission from Heartland to do so.
- 4. Terms of Payment:** Subject to any superseding terms on the face hereof, Vendor shall invoice the Heartland entity awarding the RFP/RFQ. All invoices should be addressed to: Accounts Payable Division, 208 S. LaSalle St., Suite 1300, Chicago, IL 60604, and be paid upon completion/acceptance of the required Goods/Services. Vendor shall be paid not later than thirty (30) days after Heartland’s receipt of an acceptable invoice or Heartland’s receipt of the completed Goods/Services, together with any required documents. Drafts will not be honored.
- 5. Identification:** All shipping containers, shipped documents and invoices must be labeled with the purchase order number and "Shipped to" information without exception. Every shipment must be accompanied by a legible packing list or tally containing complete order information.
- 6. Delivery:** No delivery should take place outside the specified destination. If delivery cannot be made within the stated date and time, vendor must contact the originator that is receiving on the behalf of Heartland. Deliveries made to Heartland and its affiliates must have a signature.
- 7. Special Payment:** No C.O.D. shipments will be accepted. Vendor is responsible for the cost of shipment to Heartland.
- 8. Compliance with Law:** Vendor’s performance of Services and all Goods to be delivered hereunder shall be in accordance with any and all applicable executive orders, Federal, State, municipal, and local laws and ordinances, and rules, orders, requirements and regulations.
- 9. Title and Risk of Loss:** Title to and risk of loss of, each Goods and/or Services to be delivered hereunder shall, unless otherwise provided herein, pass from Vendor to Heartland upon acceptance of by Heartland.

10. Inspection: (a) Vendor shall work within professional standards and limitations specified on work statements, drawings and specifications covering the work and shall make such inspections as are deemed necessary to ensure Vendor compliance, unless deviation there from is authorized in writing by Heartland. (b) All shipments shall be subject to final inspection by Heartland after receipt by Heartland at destination. If Goods supplied or Services performed by Vendor are found to be defective, Vendor shall be given the opportunity to correct any deficiencies within a reasonable period of time. If correction of such work is impracticable, Vendor shall bear all risk after notice of rejection and shall, if so requested by Heartland and at its own expense, promptly make all necessary replacements. Vendor shall provide immediate notice to Heartland of any potential failure on the part of its suppliers to provide supplies/services required hereunder. Vendor is responsible for any deficiency on the part of its suppliers. VENDOR SHALL BE RESPONSIBLE FOR ANY COSTS OF REPROCUREMENT AS MAY NECESSARY FOR HEARTLAND TO SECURE THE SUPPLIES/SERVICES AS A RESULT OF VENDOR'S INABILITY TO PERFORM THAT EXCEED THE AGREED UPON PRICE HEREIN. (d) Final inspection and acceptance by Heartland shall be conclusive except for latent defects, fraud, or for any rights provided by any product warranty.

11. Force Majeure: The Vendor shall not be liable by reason of any failure in performance of this Agreement in accordance with its terms if such failure arises out of causes beyond the control and without the fault or negligence of Vendor. Such cases may include, but are not restricted to, acts of God, acts of government or municipal or other authorities, fires, floods, epidemics, quarantines, strikes, and labor disputes. Such causes do not include deficiencies on the part of its suppliers.

12. General Warranty: Vendor warrants all Goods/Services to be free from all materials defects and expressly represents that all such required supplies/services are capable of performing the function service for which they were intended. Vendor agrees to pass on all manufacturers' warranties to Heartland.

13. Liens: Vendor agrees to deliver the Goods/Services which are the subject-matter of this Agreement to Heartland free and clear of all liens, claims, and encumbrances.

14. Stop Work and Termination: (a) Heartland shall have the right to direct Vendor to stop work at any time. Such direction must be in writing and shall be effective for a period of not more than 30 days after which time Vendor may continue work absent direction to do so or a notice of termination. (b) This Agreement may be terminated upon default of either party in meeting its obligations hereunder. (c) This Agreement may be terminated for convenience, without fault of either party, by Heartland with advance written notice to Vendor. Vendor shall be paid for Goods supplied and accepted by Heartland, and Services completed and shall be reimbursed all actual costs for work in process incurred at time of termination notification inclusive of any associated administrative costs, restocking charges, vendor cancellation charges and settlement costs. Under no circumstances shall Vendor receive more than the original value of this Agreement. (d) This Agreement may be terminated for constructive default in the event that the Heartland has reasonable cause to believe that the Vendor will not be able to perform in accordance with the terms and conditions of the Agreement. Vendor shall be given a reasonable opportunity to respond to a notice of constructive default termination. In the event of failure of the Vendor to deliver/complete any part of this Agreement, then Heartland shall, at its sole discretion, have the right to accept any delivered/completed part and unilaterally reduce the agreed upon price accordingly. (e) Heartland acceptance of partial deliveries shall not constitute a waiver of any of the Vendor's remaining obligations hereunder. (f) The preceding paragraph (e) shall not limit any legal rights of either party to cancel this Agreement by reason of any default, and Heartland further reserves the right to cancel this Agreement without further liability for articles not accepted by Heartland in the event Vendor commits an act of bankruptcy, files or has filed against the petition of bankruptcy or insolvency or suffers any receivership or other similar petition to be filed for or against it.

15. Independent Relationship: Nothing in this Agreement shall be construed as creating anything other than an independent Contractor relationship between Heartland and the Vendor.

16. Work Product Presumptive Heartland Property: All writings, books, articles, computer programs, databases, source and object codes, and other material of any nature whatsoever, including trademarks, trade names, and logos, that is subject to copyright protection and reduced to tangible form in whole or in part by Vendor in the course of Vendor's service to Heartland shall be considered a work made for hire, or otherwise Heartland property. During this Agreement and thereafter, Vendor agrees to take all actions and execute any documents that Heartland may consider necessary to obtain or maintain copyrights, whether during the application for copyright or during the conduct of an interference, infringement, litigation, or other matter (Heartland shall pay all related expenses). Vendor shall identify all materials in which Vendor intends to exempt from this provision prior to the use or development of such materials.

17. Rights in Data: The Vendor understands and agrees that Heartland may itself and permit others, including government agencies of the United States and other foreign governments, to reproduce through but not limited to the publication, broadcast, translation, creation of other versions, quotations there from, any provided publications and materials, and otherwise utilize this work and material based on this work. During the performance of this Agreement and thereafter, Vendor agrees to take all actions and execute any documents that Heartland may consider necessary to obtain or maintain copyrights, whether during the application for copyright or during the conduct of an interference, infringement, litigation, or other matter (all related expenses to be borne by Heartland). The Vendor shall identify all materials it intends to exempt from this provision prior to the use or development of such materials. The Vendor shall defend, indemnify, and hold harmless Heartland against all claims, suits, costs, damages, and expenses that Heartland may sustain by reason of any scandalous, libelous, or unlawful matter contained or alleged to be contained in the work, or any infringement or violation by the work of any copyright or property right; and until such claim or suit has been settled or withdrawn, Heartland may withhold any sums due the Vendor under this Agreement. Vendor agrees to specifically identify to Heartland any and all computer software licenses ("including shrink-wrap") that may be conveyed to Heartland. Vendor agrees that any and all computer software developed in the performance of this Agreement shall, unless otherwise agreed, become and remain the property of Heartland.

18. Indemnity: Vendor shall defend, indemnify, and hold harmless Heartland, its directors, officers, and employees harmless, against all suits, costs, damages, and expenses that Heartland may sustain by reason of Vendor's negligent or unlawful actions resulting from Vendor's performance under this Agreement, and Vendor shall hold Heartland, its directors, officers, and employees harmless from all liability and litigation expenses based upon alleged infringement of any patent except for the specific designs or specifications of Heartland.

19. Liquidated Damages: If the Vendor fails to deliver the supplies or perform the services within the time specified in this Agreement, Heartland may require that Vendor pay, in place of actual damages, liquidated damages in the amount of one percent (1%) of the agreement value for each day of delay. If Heartland terminates this agreement in whole or in part for default, as provided under Section 14 above, Vendor is liable for liquidated damages accruing until such time that Heartland reasonably obtains delivery or performance from another vendor. These liquidated damages shall be in addition to any excess costs for re-purchase. Vendor will not be charged with liquidated damages when delay of delivery or performance is beyond the control and without the fault or negligence of the Vendor.

20. Warranty: For a minimum of one (1) year after delivery to Heartland, Vendor warrants that the goods furnished hereunder shall conform to the requirements and specifications of this Agreement and shall be of good workmanship and quality, free of all defects and fit for the purpose for which they are intended. Disclaimers of express or implied warranties and limitations of liability from or in connection with Vendor's products ordered hereby will be of no effect unless assented to in writing by Heartland.

21. Assignment: Vendor cannot assign or subcontract any part of this Agreement without the prior written approval of Heartland.

22. Non-Waiver: Heartland's failure to insist upon strict performance of the terms and conditions hereof shall not be

construed as a waiver of the right to rely thereon in the future.

23. Drug Trafficking: Heartland reserves the right to terminate this Agreement and to demand a refund or take other appropriate measures if the Vendor is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking as defined in 22 CFR Part 140.

24. Terrorism E.O. 13224: Vendor agrees and certifies to take all necessary actions to comply with Executive Order No. 13224 on Terrorist Financing; blocking and prohibiting transactions with persons who commit, threaten to commit, or support terrorism. (E.O.13224 text available at: <http://www.whitehouse.gov/news/releases/2001/09/20010924-1.html> Note: Vendor is required to obtain the updated lists at the time of procurement of goods or services. The updated lists are available at: <http://treasury.gov/offices/enforcement/ofac/sanctions/terrorism.htm> and <http://www.un.org/Docs/sc/committees/1267>.

25. Computer Software Licenses: Vendor agrees to specifically identify to Heartland any and all computer software licenses ("including shrinkwrap") as may be conveyed to Heartland. The Vendor agrees that any and all computer software developed in the performance of this Agreement shall, unless otherwise agreed, become and remain the property of Heartland.

26. Vendor Terms and Conditions: The terms and conditions of this Agreement shall supersede any other terms and conditions except those expressly accepted by Heartland in writing.

27. Gratuities: This Agreement may be terminated for cause in accordance with Section 14 above should it be determined by Heartland that Vendor offered or gave a gratuity (e.g. entertainment, gift, services or money) to any Heartland employee or other persons responsible for or connected to those responsible for the decision to award this Agreement or the acceptance of performance under this Agreement and that gratuity was intended to obtain this award or favorable treatment.

28. Independent Price Determination: (a) Vendor certifies that— (1) The prices in this Agreement have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror, including but not limited to subsidiaries or other entities in which Vendor has any ownership or other interests, or any competitor relating to (i) those prices, (ii) the intention to submit an offer, or (iii) the methods or factors used to calculate the prices offered; (2) The prices in this Agreement were not knowingly disclosed by the Vendor, directly or indirectly, to any other offeror, including but not limited to subsidiaries or other entities in which Vendor has any ownership or other interests, or any competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated or competitive solicitation) unless otherwise required by law; and (3) No attempt was made by the Vendor to induce any other business or individual to submit or not to submit an offer for the purpose of restricting competition or influencing the competitive environment. Vendor understands and agrees that violation of this certification will result in the termination of this Agreement for default as well as exclusion from future solicitations.

29. Eligibility Rules for Goods and Services: Vendors shall not procure any goods or services from firms or individuals whose name appears on the "Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs."

30. Ocean Shipment of Goods: Applicable for awards for \$100,000 or more and when goods purchased under this award are transported to cooperating countries on ocean vessels whether or not award funds are used for the transportation. Vendor must ensure transport on a US flag commercial vessels. When U.S. flag vessels are not available, or their use would result in a significant delay, the vendor must contact Heartland Program Director before proceeding.

31. Air Transportation: In accordance with the standard provision entitled International Air Transportation, any international travel requires prior written approval from the Heartland Program Director.

32. Authorized Geographic Code: Vendor shall comply with the Geographic Code specified by the U.S. Government prime contract with Heartland, if any.

33. Excusable Delays: The Vendor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Vendor and without its fault or negligence. The Vendor shall notify Heartland in writing as soon as it is reasonably possible after the commencement of any excusable delay.

34. Export Control: Vendor shall comply in all respects with all applicable local, state, and federal laws and regulations, as well as all U.S. statutes, regulations, and administrative requirements regarding relationships with non-U.S. governmental and quasi-governmental entities including but not limited to the export control regulations of the Department of State and the International Traffic in Arms Regulations ("ITAR"), the Department of Commerce and the Export Administration Act ("EAA"), the anti-boycott and embargo regulations and guidelines issued under the EAA, and the regulations of the U.S. Department of the Treasury, Office of Foreign Assets Control.

35. Foreign Corrupt Practices Act: The anti-bribery provisions of the Foreign Corrupt Practices Act of 1977 ("FCPA"), 15 U.S.C. §§ 78dd1", et seq., makes it unlawful for U.S. companies, as well as their officers, directors, employees, and agents, to corruptly offer or make a corrupt payment of money or anything of value to a foreign official for the purpose of obtaining or retaining business. Vendor acknowledges and understands that he/she must comply fully with the anti-bribery provisions of the FCPA. Specifically, Vendor understands and agrees that it shall be unlawful for the Vendor to pay, offer, promise to pay (or authorize to pay or offer) money or anything of value to a foreign official in order to assist Heartland in obtaining or retaining business for or with, or directing business to, Heartland. A "foreign official" means any officer or employee of a foreign government, a public international organization, or any department or agency thereof, or any person acting in an official capacity.

36. Environment: Vendor must operate in a manner that complies with national and local environmental laws, regulations and standards including, but not limited to, laws related to air emissions, waste management, recycling, water discharge, toxic substances and hazardous waste disposal. Vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401- 7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251- 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

37. Rights to Inventions: If the Vendor has been contracted for the assignment or performance of experimental, developmental, or research work under a Federal funding agreement, the Vendor must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.