

GENERAL PROVISIONS - SERVICES (MCCS) (MAR 09)

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1 **DEFINITIONS.** As used throughout this contract, the following terms shall have the meaning set out below:

a. "MR" identifies the Personal and Family Readiness Division, Headquarters, United States Marine Corps. "MCCS" identifies United States Marine Corps Community Services activities.

b. "Contract" identifies this contract or any modification thereto.

c. "Contracting Officer" means a person authorized in writing to execute and administer the contract on behalf of MR and MCCS. It includes said contracting officer's successor or successors. (NOTE: Only the contracting officer may waive or change contract terms; impose additional contract requirements, issue cure, show cause, or termination notices; or render final decisions according to contract terms.) Other MCCS and government officials who are by virtue of their positions concerned with the administration and operation of this contract may take certain administrative actions in behalf of the contracting officer. These officials may conduct inspections, process and collect contract payments, make administrative decisions, and perform other duties of an administrative nature. All questions concerning the authority of other MCCS or government officials should be referred to the Contracting Officer.

d. "Contractor" means the individual, partnership, corporation, or other entity which is a party to this contract and who is responsible for all actions, performance and work thereunder, to include that of any subcontractor.

2 **LEGAL STATUS (MAR 09).** Marine Corps Community Services (MCCS) activities are an integral part of the Department of Defense, and are a Non-Appropriated Fund Instrumentality (NAFI) of the United States Government. MCCS contracts are United States contracts; however, they do not obligate appropriated funds of the United States except for a judgment or compromise settlement in suits brought under provisions of the Contract Disputes Act (41 USC 601-613), in which event MCCS will reimburse the United States Government (31 USC 1304 [c]). MCCS procurement is governed by Department of Defense Instruction (DODI) 4105.71 available at <http://www.dtic.mil/whs/directives/corres/pdf/410571p.pdf> and Marine Corps

Order P7010.20 available at <http://www.marines.mil/news/publications/Documents/MCO%20P7010.20.pdf>. (NOTE: The Federal Acquisition Regulation [FAR] published pursuant to the Office of Federal Procurement Policy Act of 1974, as amended, applies to procurements with appropriated funds. It does not apply to MCCS procurement except for those provisions of the FAR that have been administratively adopted by MCCS.)

3 EXAMINATION OF RECORDS

a. This clause is applicable if the amount of this contract exceeds \$10,000 and the contract was entered into by means of negotiation. The Contractor agrees that the Contracting Officer or his duly authorized representative shall have the right to examine and audit the books and records of the Contractor directly pertaining to the contract during the period of the contract and until the expiration of three (3) years after final payment under the contract.

b. The Contractor agrees to include clause "a" in all subcontracts hereunder which exceed \$10,000.

4 OFFICIALS NOT TO BENEFIT. No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

5 GRATUITIES. The MR or MCCS may terminate the right of the Contractor to proceed if, after notice and hearing, the agency head or designee determines that the Contractor, its agent, or another representative—

a. Offered or gave a gratuity (i.e., entertainment or gift) to an officer, official, or employee of the MR, MCCS or Marine Corps; and

b. Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

If this contract is terminated per this clause, the MR or MCCS is entitled to pursue the same remedies as in a breach of the contract.

6 ORAL REPRESENTATIONS. This written contract includes the entire agreement between the parties. MR and MCCS will not be bound by any oral or written representation not included in the written contract or a change or amendments thereto. MR and MCCS will not be bound by any terms on Contractor forms or letter unless such terms are specifically agreed to and incorporated in the contract and signed by the Contracting Officer.

7 CHANGES. The Contracting Officer may at any time, by a written order, make changes within the general scope of the contract, in any one or more of the following: (a) specifications (including drawings and designs); (b) method or manner of performance of the work; (c) MR or MCCS furnished facilities, equipment, materials, services, or site; or (d) accelerating the performance of work. If any such change causes an increase or decrease in the cost of the work under the contract which was changed, an equitable adjustment may be made in the contract price and the contract may be modified in writing accordingly. Any claim by Contractor for adjustment under this clause must be asserted no later than 30 days from the date of receipt by the Contractor of the notification of change. Claims for constructive changes to the contract will not be considered.

8 **REPRESENTATIONS**. The Contractor shall not represent itself to be an agent or representative of MR, MCCA or any other agency or instrumentality of the United States.

9 **ADVERTISEMENTS**. The Contractor shall not represent in any manner, expressly or by implication, that items or services purchased or sold under this contract are approved or endorsed by any element of the U.S. Government. Any advertisement by the Contractor which refers to a military resale or MCCA activity will contain a statement that the advertisement was neither paid for nor sponsored, in whole or in part, by the particular activity.

10 **SUBCONTRACTING**. Contractor shall not subcontract any part of the work to be performed without the prior written consent of the Contracting Officer. Any subcontractor used in connection with this contract is the agent of the Contractor and not the agent of MR and MCCA.

11 **ASSIGNMENT**. Contractor shall not assign its rights or delegate its obligations under this contract without the prior written consent of the Contracting Officer.

12 **REPRESENTATIVES**. Contractor is fully responsible for the actions of all contractor employees, agents, and representatives. Books and records of contractor representatives are subject to examination and audit under the Examination of Records clause of the contract.

13 **TAXES**. Contractor assumes complete and sole liability for all federal, state, and local taxes applicable to the property, income, and transactions of the Contractor. The prices charged MCCA under this contract will be deemed to include all applicable taxes. The prices charged will not include any amount for taxes which are not applicable:

a. by reason of MCCA legal status as an instrumentality of the United States government; or

b. by reason of MR and MCCA immunity from direct state or local taxation; or

c. by reason of federal, state, or local tax exemptions for sales to the Federal Government; or

d. otherwise, such as items purchased for export.

It will be the sole responsibility of Contractor to demonstrate, to the reasonable satisfaction of the Contracting Officer, the applicability and amount of any taxes which are included in the prices charged MR and MCCA. The Contracting Officer, upon request, will furnish additional documentation to support tax exemptions if required by an appropriate tax authority.

14 **PERMITS AND LICENSES**. Contractor shall, at his own expense, obtain all necessary permits, give all notices, pay all license fees and comply with all laws, rules, ordinances, and regulations relating to the preservation of the public health or applicable to the service or business carried on under this contract. The burden of determining applicability of licensing requirements, laws, ordinances, and regulations for Contractor and his employees rests with the Contractor.

15 **NON-WAIVER OF DEFAULTS**. Any failure by MR and MCCA at any time or from time to time to enforce or require strict performance of any terms or conditions of this contract will not constitute waiver thereof and will not affect or impair such terms and conditions in any way or MR and MCCA's right

at any time to avail itself of such remedies as it may have for breach or breaches of such terms and conditions.

16 **INDEMNIFY AND HOLD HARMLESS**

a. Contractor shall indemnify, hold harmless and defend MR and MCCS and all other agencies and instrumentalities of the United States, their agents, representatives, employees and customers from any and all suits, judgments and claims, including those established by or pursuant to court decisions, to international agreements, or duly promulgated regulations of the United States Government, and all charges and expenses incident thereto which arise out of or in connection with:

(1) The alleged or established violation or infringement of any patent, license, copyright or trademark rights asserted by any third party with regard to items or services provided by Contractor;

(2) Loss, death, damage or injury alleged or established to have arisen out of or in connection with products, services, or equipment provided by Contractor, unless such loss, death, damage, or injury was caused by or resulted solely from the acts or omissions of MR, MCCS, its agents, representatives, or employees.

(3) Any loss, death, damage, or injury alleged or established to have arisen out of or in connection with any other acts or omissions of the Contractor, the Contractor's subcontractors, representatives, agents, or employees.

b. MR and MCCS will give Contractor notice and an opportunity to defend.

17 **INSURANCE**. The Contractor shall maintain, during any contract period, insurance coverage as stated in this contract, with insurance company(ies) acceptable to MR and MCCS. All liability insurance coverage will name the United States, MR, and MCCS as additional and several insureds for claims, demands, suits, judgments, costs, charges, and expenses arising out of or in connection with any loss, damage, or injury resulting from the negligence or other fault of Contractor, or Contractor's agents, representatives, or employees.

18 **WARRANTY**. Contractor warrants that:

a. The items furnished shall be merchantable, and fit and sufficient for the use intended and are not "seconds" as the term is normally understood in the trade. This warranty shall survive acceptance by MR and MCCS of the items and is in addition to other warranties of additional scope given by the Contractor to MR and MCCS.

b. The items or services furnished under this contract are covered by the most favorable warranties the Contractor gives to any customer for such items or services and that the rights and remedies provided in the Contractor's warranties are in addition to and do not limit any rights afforded to MR and MCCS by any other clause of this contract.

c. Where applicable, the items furnished under this contract have been manufactured in accordance with Underwriter's Laboratories, Inc. (UL) standards, or if manufactured overseas, the overseas equivalent of UL and the applicable item and/or component items carry the appropriate UL or overseas equivalent Seal of Approval.

d. Items, packing, and packaging provided will comply with all contract terms and with all laws, rules, and regulations applicable to delivery for

domestic resale. Contractor shall comply with the Magnuson-Moss Warranty Act on all sales to MR and MCCS.

19 **ITEM SUBSTITUTION AND VARIATION IN QUANTITY**. No substitution or variation in the quantity of any item called for by this contract will be accepted unless authorized by the Contracting Officer.

20 **NON-EXCLUSIVE CONTRACT**. Unless specified elsewhere, this contract does not establish Contractor as the sole supplier of goods or services to be provided on this military installation.

21 **INSPECTION AND ACCEPTANCE**. Inspection and acceptance shall be made by the government per Section E of this contract.

a. The Contractor shall maintain an in-process and end-item quantity control program to ensure shipments to MR and MCCS do not include defective/nonconforming items.

b. Inspection and acceptance shall not be conclusive with respect to latent defects or fraud, or with respect to MR and MCCS rights under the warranty provisions contained herein.

c. In case any supplies or services are defective in material or workmanship, or are otherwise not in conformity with the requirements of this contract, MR and MCCS shall have the right to reject such supplies or services, or to require replacement or correction. Rejected supplies shall be removed by and at the expense of the Contractor promptly after notice. If required by MR or MCCS, the Contractor, after notice of defect or non-conformance, shall with all possible speed, correct or replace the defective or non-conforming supplies or services, or any part thereof. When such rejection, correction or replacement requires transportation of the supplies or part thereof, all shipping and administrative costs to and from the Contractor's plant shall also be borne by the Contractor.

d. In the event the Contractor is unable to replace/reperform products/services and the Contractor refunds the purchase price, the Contractor shall be liable to MR and MCCS for the additional costs of reprocurement (if any).

e. The provisions of this clause do not affect the rights or obligations of either party, as they may be provided for in other portions of this contract or otherwise under applicable law.

22 **INVOICING AND PAYMENT**

a. **Invoicing Instructions**. In order to be considered proper invoices for purposes of the Prompt Payment Act, invoices must be submitted as follows:

(1) Contractor must prepare a separate numbered invoice for each order or part of an order. Do not consolidate multiple purchase orders on one invoice. Additionally, when partial shipments are authorized, use a separate invoice. Do not duplicate an invoice number used for prior billings.

(2) Invoices must be issued by the company whose name is on the contract/order (unless otherwise authorized by Contracting Officer) and must contain the following minimum information to enable timely payment:

(a) Name of Contractor.

(b) Invoice date. This cannot be a date earlier than the ship date required by the contract or purchase/delivery order. In the event that the invoice date is a date earlier than the required ship date, MR and

MCCS retains the right either to return the improper invoice to the Contractor for correction or to change the invoice date to be the required ship date. In the event that an improper invoice is returned to a Contractor because the date on the invoice is earlier than the required ship date or because the invoice is improper for any other reason, the invoice date, for purposes of prompt payment discounts, will be considered to be the date of receipt of the corrected, proper invoice.

(c) Contract or purchase/delivery order number.

(d) Item description and quantity shipped/delivered.

(e) Contract/order line item cost and total.

(f) Shipping and discount terms, including prompt payment discounts, and special allowance(s) if included in the contract. Prompt payment discounts and special allowances must be shown on the invoice using percentage figures only. Do not deduct any of these from the item cost or from the invoice total.

(g) "Ship To" address as shown on order or contract.

(h) Freight charges (on FOB origin shipments).

(i) Name, title and phone number of Contractor's contact person.

(j) Complete "remit to" mailing address on the invoice to indicate where Contractor's payment is to be sent. This address must be the same address as on the contract unless in accordance with paragraph b.(8) below.

(3) Correcting invoices and credit memos must be marked as such and must cross-reference the corrected invoice.

b. **Payment**

(1) A proper invoice is an invoice which contains all of the information/documentation specified in paragraph a.(2) above, and is sent to the address specified in the contract or purchase/delivery order for the designated MR or MCCS paying office. Improper invoices may be returned without payment to the Contractor.

(2) The net payment date for MR and MCCS contracts is established at 30 days after receipt of a proper invoice. Discounts for prompt payment, if included in the contract, will be applied as follows:

(a) If the contract or purchase order specifies a prompt payment discount period of less than 30 days, the discount will be taken if payment can be made within the stated period otherwise the net payment will be due 30 days after receipt of a proper invoice.

(b) If the contract or purchase order specifies a prompt payment discount period of 30 days or more, the discount will be taken if payment can be made within the stated period otherwise the net payment will be due 30 days after the prompt payment discount period ends.

(c) If the contract fails to specify any prompt payment discount, then net payment will be due 30 days after receipt of a proper invoice.

(3) In the event that a prompt payment discount, or other special discounts or allowances specified on Contractor's invoice are better than that specified in the contract or purchase order, MR or M CCS may take the more favorable discounts and/or allowances.

(4) For the purpose of determining whether payment is timely made by MR or M CCS, a "day" is counted for each calendar day. When payments fall due on Saturday, Sunday or legal Federal holidays, payments made the following business day will not incur late payment interest penalties.

(5) A discount for prompt payment can be taken by MR or M CCS if the discounted payment is made within the discount period specified. The prompt payment discount period begins to run on the date of the invoice. Computation of the period for prompt payment discounts begins with the date of invoice; computation for net payment begins with receipt of a proper invoice.

(6) Payment is made:

(a) the date a check for payment is dated.

(b) the date an electronic fund transfer is received, regardless of the date the financial institution posts the transfer.

(c) the date a withholding authorized by the contract is initiated by MR or M CCS.

(7) Payment will be made by mailing a check to the address shown on the contract, unless the Contractor provided a different "remit to" address to the Contracting Officer at the time the terms were negotiated or the contract was issued.

(a) If a Contractor wishes to change the address (e.g., street, P.O. box, city/state) to which payment should be sent or wishes its payments to also reflect a factor's name and be sent to the factor's address, the request must be in writing, signed by a responsible official of the Contractor, and submitted to the Contracting Officer. All such requests must clearly establish which division or subsidiary of a corporation such changes apply to and the address which is superseded by the changes. These changes will become effective on the date determined by MR or M CCS, normally 30 days after approval. Changes will be done on an accommodation basis only, with the understanding that no legal obligation is imposed on MR or M CCS for failure to make payment to the new payee/address.

(b) Any request by the Contractor to change the name shown on the contract or to delegate its obligation under the contract must be sent to the Contracting Officer.

(8) Any questions or inquiries concerning invoice payments should be directed to the MR or M CCS paying office designated on the contract or purchase/delivery order.

(9) Any interest penalties due to Contractors will be computed in accordance with the Prompt Payment Act, 31 U.S.C. 3901-3906, as amended.

23 **WITHHOLDING**. MR or M CCS may withhold payment for:

a. Amounts due or creditable to MR or M CCS under this contract, e.g., returns, damages.

b. Amounts otherwise due or creditable to MR or M CCS. Any dispute will be processed under the Disputes clause of this contract unless it became due pursuant to another contract which included a Disputes clause.

24 Disputes (MCCS)

a. This contract is not subject to the Contract Disputes Act of 1978 (41 U.S.C. 601-613). All disputes arising under or relating to this contract will be resolved under this clause.

b. "Claim" as used in this clause means a written demand or written assertion by one of the contracting parties seeking the payment of money in a sum certain or other relief arising under or relating to this contract. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under this clause.

c. Contractor must submit any request for monetary or other relief relating to this contract in writing to the Contracting Officer. The request must specify the amount of money or the other relief requested and include all supporting data. In addition, with the request or any amendment thereto, Contractor must submit a signed certificate reading as follows:

"I certify that this request and any ensuing claim are made in good faith, that the supporting data are accurate and complete to the best of my knowledge and belief, and that any amount requested accurately reflects the amount for which Contractor believes MR or MCCS is liable.

(Signature of Individual Authorized to Bind Contractor)"

(NOTE: SUBMISSION OF FALSE CLAIMS IS A VIOLATION OF FEDERAL LAW AND MAY RESULT IN CIVIL AND OR CRIMINAL PENALTIES.)

d. Contractor's request for payment of money or other relief is not a "claim" until:

(1) A written request has been received by the Contracting Officer complying fully with subparagraph "c" above,

(2) A dispute arises between the parties after a reasonable time for review and disposition, and

(3) Contractor requests the Contracting Officer to issue a final decision.

e. Contractor's request for a contract modification or for relief that is discretionary with the Contracting Officer will not be considered a "claim."

f. All disputed claims relating to this contract will be decided by the Contracting Officer, who will issue a written Final Decision and mail or otherwise furnish a copy thereof to Contractor.

g. The Contractor may appeal the Contracting Officer's dispute decision by mailing or otherwise furnishing the written appeal (two copies) addressed to the Director, MR, or if applicable, Installation Commander, and furnishing a copy of the appeal to the Contracting Officer within 90 days of receipt of the Contracting Officer's decision. The decision of the Director, MR, or Installation Commander is final and conclusive and not subject to further appeal.

h. Pending final resolution on any request for relief, disputed claim, appeal, or action, related to this contract, Contractor will proceed diligently with the performance of this contract and will comply with the Contracting Officer's decisions.

i. If Contractor cannot support any part of its claim as a result of fraud or misrepresentation of fact, then, in addition to other remedies or penalties provided for by law, Contractor will pay MR or M CCS an amount equal to the unsupported part of the claim plus all MR or M CCS costs attributable to reviewing that part of the claim.

25 CONTRACTOR LIABILITY

a. Except as set out specifically elsewhere in the contract, Contractor shall be liable for costs to MR, M CCS and other agencies of the United States associated with termination for default, rejection of items, and breach of warranty, in addition to reimbursement of payment of the purchase price and procurement costs.

b. Contractor will not be liable for damages if the failure to perform arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather. In such case Contractor shall provide prompt written notice to the Contracting Officer; the Contracting Officer, at his option may accept late, partial or substituted performance, or may terminate the contract in whole or in part effective immediately upon receipt of written notice by Contractor.

26 TERMINATION. The rights and remedies of MR and M CCS provided in this clause are in addition to any other rights and remedies provided by law or under other clauses of this contract.

a. Termination for Default. MR and M CCS by written notice may terminate this contract in whole or in part for failure of the Contractor to perform any of the provisions hereof. In such event, the Contractor shall be liable for damages including the excess costs of reprocurring similar products and services provided that if (i) the Contractor was not in default; or (ii) the Contractor's failure to perform is without his/her or his/her subContractor's control or negligence, the termination shall be deemed a "Termination for Convenience."

b. Termination for Convenience. MR and M CCS by written notice may terminate this contract in whole or in part when it is in the best interest of MR or M CCS. If this contract is for products and services and is so terminated, the Contractor shall be compensated in accordance with Federal Acquisition Regulation in effect on this contract's date. To the extent that this contract is for services and is so terminated, MR and M CCS shall be liable for payment as set forth in the payment provisions of this contract for services rendered prior to the effective date of termination.

c. Mutual Termination. This contract may be terminated by mutual agreement of both MR or M CCS and the Contractor at any time by contract modification.

27 REQUESTS FOR MONETARY OR OTHER RELIEF. No claim by Contractor may be considered unless submitted in writing to the Contracting Officer within 90 days after termination of performance under the contract; however, this clause will not extend the period for filing claims which is further limited by another clause of the contract.

28 **NOTIFICATION OF DEBARMENT OR SUSPENSION STATUS.** The Contractor shall provide immediate notice to the Contracting Officer in the event of being suspended, debarred or declared ineligible by any Federal Department or Agency, or upon receipt of a notice of proposed debarment from another DoD Agency, during the performance of this contract.

29 **EQUAL EMPLOYMENT OPPORTUNITY**

a. The Contractor agrees to comply with regulations of the Department of Labor contained in Title 41, Code of Federal Regulations, Chapter 60, which are incorporated herein by reference.

b. A contract award in the amount of \$10,000 or more shall not be made unless the Contractor, and each first-tier subcontractor which will receive a subcontract of \$10,000 or more, are found on the basis of a review to be in compliance with the Equal Employment Opportunity regulations of the Department of Labor.

30 **EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS.** If this contract equals or exceeds \$10,000, and is not otherwise exempt, the Contractor agrees to comply with the regulations of the Department of Labor and the Office of Federal Contract Compliance Program, and the Affirmative Action clause as set out in Title 41, Code of Federal Regulations, Part 60-250, which are incorporated herein by reference.

31 **AFFIRMATIVE ACTION AND NONDISCRIMINATION FOR WORKERS WITH DISABILITIES.** If the contract amount equals or exceeds \$10,000, and is not otherwise exempt, the Contractor agrees to comply with the regulations of the Department of Labor and the Affirmative Action clause as set forth in Title 41, Code of Federal Regulations, Part 60-741, which are incorporated herein by reference.

32 **CONVICT LABOR.** Except as provided in 48 CFR 5222-3, the Contractor shall not employ in the performance of this contract any person undergoing a sentence of imprisonment.

33 **DRUG-FREE WORK PLACE.** To the extent applicable, the Contractor will comply with the requirements of the Drug Free Workplace Act of 1988 (41 USC sec. 701, Pub. L. 100-690, as amended).

34 **ACCIDENT PREVENTION, FIRE PROTECTION, AND SANITATION.** If this contract is performed in whole or in part on premises owned or under the control of the United States Government, MCCS, and or the MCCS, the Contractor shall conform to all safety regulations and requirements concerning such premises in effect any time during the performance of the contract and take all necessary steps and precautions to prevent accidents. Any violation of safety regulations, unless immediately corrected as directed by the Contracting Officer, shall be grounds for termination of the contract under the "Termination For Default" clause.

35 **ENVIRONMENTAL PROTECTION.** The Contractor will comply with all applicable Environmental Protection laws and regulations.

36 **PERSONAL IDENTIFICATION OF CONTRACTOR PERSONNEL.** Contractor and any subcontractors shall be required to comply with applicable MR or MCCS identity verification procedures, installation access requirements, and security clearance policies.

37 **RESTRICTIONS ON PURCHASES OF FOREIGN GOODS (MAR 09)**

a. Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR Chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.

b. Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from Burma or North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at <http://www.treas.gov/offices/enforcement/ofac/sdn>. 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 Contractor shall insert this clause, including this paragraph c., in all subcontracts.