



**TERMS AND CONDITIONS APPLICABLE TO  
ELECTRONIC-COMMERCE (EC) (SPECIAL IDENTIFICATION NUMBER 132-52)**

**For Online Video Service, Inc.'s Services**

**1) SCOPE**

- a) The prices, terms and conditions stated under Special Item Number 132-52 Electronic Commerce (EC) Services including Online Video Inc's ("OVS") standard commercial terms and conditions attached as Exhibit A to these Terms and Conditions Applicable to EC SIN 132-52, apply exclusively to EC Services within the scope of this Information Technology Schedule.
- b) The Contractor shall provide services at the Contractor's facility and/or at the ordering activity location, as agreed to by the Contractor and the ordering activity.

**2) PERFORMANCE INCENTIVES I-FSS-60 Performance Incentives (April 2000)**

- a) Performance incentives may be agreed upon between the Contractor and the ordering activity on individual fixed price orders or Blanket Purchase Agreements under this contract .
- b) The ordering activity must establish a maximum performance incentive price for the services and/or total solutions on individual orders or Blanket Purchase Agreements.
- c) Incentives should be designed to relate results achieved by the contractor to specified targets. To the maximum extent practicable, ordering activities shall consider establishing incentives where performance is critical to the ordering activity's mission and incentives are likely to motivate the contractor. Incentives shall be based on objectively measurable tasks. Incentives shall be based on objectively measurable tasks.

**3) ORDER**

- a) Agencies may use written orders, blanket purchase agreements, individual purchase orders, or task orders for ordering services under this contract. Blanket Purchase Agreements shall not extend beyond the end of the contract period; all services and delivery shall be made and the contract terms and conditions shall continue in effect until the completion of the order. Orders for tasks which extend beyond the fiscal year for which funds are available shall include FAR 52.232-19 (Deviation – May 2003) Availability of Funds for the Next Fiscal Year. The purchase order shall specify the availability of funds and the period for which funds are available.
- b) All task orders are subject to the terms and conditions of the contract. In the event of conflict between a task order and the contract, the contract will take precedence.

**4) PERFORMANCE OF SERVICES**

- a) The Contractor shall commence performance of services on the date agreed to by the Contractor and the ordering activity.
- b) The ordering activity should include the criteria for satisfactory completion for each task in the Statement of Work or Delivery Order. Services shall be completed in a good and workmanlike manner.
- c) Any Contractor travel required in the performance of EC Services must comply with the Federal Travel Regulation or Joint Travel Regulations, as applicable, in effect on the date(s) the travel is performed. Established Federal Government per diem rates will apply to all Contractor travel. Contractors cannot use GSA city pair contracts.



**5) STOP-WORK ORDER (FAR 52.242-15) (AUG 1989)**

- a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either-
  - 1) Cancel the stop-work order; or
  - 2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.
- b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if-
- c) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
- d) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.
- e) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

**6) INSPECTION OF SERVICES**

The Inspection of Services–Fixed Price (AUG 1996) (Deviation – May 2003) clause at FAR 52.246-4 applies to firm-fixed price orders placed under this contract. The Inspection–Time-and-Materials and Labor-Hour (MAY 2001) (Deviation – May 2003) clause at FAR 52.246-6 applies to time-and-materials and labor-hour orders placed under this contract.

**7) RESPONSIBILITIES OF THE CONTRACTOR**

The Contractor shall comply with all laws, ordinances, and regulations (Federal, State, City, or otherwise) covering work of this character. If the end product of a task order is software, then FAR 52.227-14 (Deviation – May 2003) Rights in Data – General, may apply.

**8) RESPONSIBILITIES OF THE ORDERING ACTIVITY**

Subject to security regulations, the ordering activity shall permit Contractor access to all facilities necessary to perform the requisite EC Services.

**9) INDEPENDENT CONTRACTOR**



All EC Services performed by the Contractor under the terms of this contract shall be as an independent Contractor, and not as an agent or employee of the ordering activity.

## 10) ORGANIZATIONAL CONFLICTS OF INTEREST

### a) Definitions.

“Contractor” means the person, firm, unincorporated association, joint venture, partnership, or corporation that is a party to this contract.

“Contractor and its affiliates” and “Contractor or its affiliates” refers to the Contractor, its chief executives, directors, officers, subsidiaries, affiliates, subcontractors at any tier, and consultants and any joint venture involving the Contractor, any entity into or with which the Contractor subsequently merges or affiliates, or any other successor or assignee of the Contractor.

An “Organizational conflict of interest” exists when the nature of the work to be performed under a proposed ordering activity contract, without some restriction on ordering activities by the Contractor and its affiliates, may either (i) result in an unfair competitive advantage to the Contractor or its affiliates or (ii) impair the Contractor’s or its affiliates’ objectivity in performing contract work.

b) To avoid an organizational or financial conflict of interest and to avoid prejudicing the best interests of the ordering activity, ordering activities may place restrictions on the Contractors, its affiliates, chief executives, directors, subsidiaries and subcontractors at any tier when placing orders against schedule contracts. Such restrictions shall be consistent with FAR 9.505 and shall be designed to avoid, neutralize, or mitigate organizational conflicts of interest that might otherwise exist in situations related to individual orders placed against the schedule contract. Examples of situations, which may require restrictions, are provided at FAR 9.508.

## 11) INVOICES

The Contractor, upon completion of the work ordered, shall submit invoices for EC services. Progress payments may be authorized by the ordering activity on individual orders if appropriate. Progress payments shall be based upon completion of defined milestones or interim products. Invoices shall be submitted monthly for recurring services performed during the preceding month.

## 12) PAYMENTS

For firm-fixed price orders the ordering activity shall pay the Contractor, upon submission of proper invoices or vouchers, the prices stipulated in this contract for service rendered and accepted. Progress payments shall be made only when authorized by the order. For time-and-materials orders, the Payments under Time-and-Materials and Labor-Hour Contracts at FAR 52.212-4 (MAR 2009) (ALTERNATE I – OCT 2008) (DEVIATION I – FEB 2007) applies to time-and-materials orders placed under this contract. For labor-hour orders, the Payment under Time-and-Materials and Labor-Hour Contracts at FAR 52.212-4 (MAR 2009) (ALTERNATE I – OCT 2008) (DEVIATION I – FEB 2007) applies to labor-hour orders placed under this contract. 52.216-31(Feb 2007) Time-and-Materials/Labor-Hour Proposal Requirements—Commercial Item Acquisition. As prescribed in 16.601(e)(3), insert the following provision:

- a) The Government contemplates award of a Time-and-Materials or Labor-Hour type of contract resulting from this solicitation.
- b) The offeror must specify fixed hourly rates in its offer that include wages, overhead, general and administrative expenses, and profit. The offeror must specify whether the fixed hourly rate for each labor category applies to labor performed by—
  - 1) The offeror;
  - 2) Subcontractors; and/or



- 3) Divisions, subsidiaries, or affiliates of the offeror under a common control.

### **13) INCIDENTAL SUPPORT COSTS**

Incidental support costs are available outside the scope of this contract. The costs will be negotiated separately with the ordering activity in accordance with the guidelines set forth in the FAR.

### **14) APPROVAL OF SUBCONTRACTS**

The ordering activity may require that the Contractor receive, from the ordering activity's Contracting Officer, written consent before placing any subcontract for furnishing any of the work called for in a task order.

### **15) DESCRIPTION OF ELECTRONIC COMMERCE (EC) SERVICES AND PRICING**

- a) The Contractor shall provide a description of each type of EC Service offered under Special Item Numbers 132-52 E-Commerce. Services and rates should be presented in the same manner as the Contractor sells to its commercial customers and other ordering activity customers. Please submit a description of all corresponding commercial EC services to be provided.
- b) Pricing for all EC Services shall be in accordance with the Contractor's customary commercial practices; e.g., hourly rates, monthly rates, term rates, unit prices and/or fixed prices.



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ELECTRONIC-COMMERCE (EC) (SPECIAL IDENTIFICATION NUMBER 132-52)

For Online Video Service, Inc.'s Services

Exhibit A  
Online Video Service, Inc.  
Standard Terms & Conditions

Terms

The Acceptance of a Proposal for materials and services with Online Video Service (OVS) constitutes Client's agreement to the following terms and conditions.

Storage & Insurance

OVS will exercise care in the handling and storage of any client source materials left or stored on OVS' premises. However, we cannot assume any liability for loss or damage to property. If properties of value are left at OVS for file or storage, we recommend that the appropriate insurance be secured by Client to cover their full value. Client's source materials will be stored at the Client's own risk and for a maximum of three years.

Delivery of Materials & Taxes

Our prices are based on delivery of materials to Client at our place of business. For delivery to other location, we will ship at Client's discretion and bill Client for any applicable shipping, file transfer protocol (FTP) or other digital delivery fees and the cost of packaging and handling materials. We will add any applicable taxes to all invoices.

Permissions for Live Webcasting

If the Proposal includes live webcasting services, Client represents and warrants that Client shall bear full responsibility for obtaining any and all written or verbal permissions in advance from event speakers, attendees and/or other individuals or legal entities as required by local, state, federal or other applicable laws and regulations in the location in which any live webcasting and/or videotaping services shall be provided by OVS on behalf of Client.

Registration Data

Client shall retain full ownership and rights to any registration data collected by OVS as part of its fulfillment of the Proposal. Client shall have the right to approve any such registration requirements in advance.

Liability & Indemnification

Client represents and warrants that any live webcast footage, or archival film, videotape, audio tape and/or other media provided or delivered to OVS does not in any way defame, violate or infringe on copyright, civil right of privacy or any other right of any other person, firm or corporation. Client agrees to indemnify OVS and its officers, directors, agents and employees, and hold each of them harmless from any and all claims, costs, losses, detriments and expenses of any kind or nature, including without limitation, attorney's fees and costs incurred by OVS by reason of any breach or alleged breach of any representation, warranty or agreement herein made by Client.

For loss or damage to Client from defects in material, equipment and/or negligence of OVS personnel, OVS will perform its originally agreed-upon services again without charge. But all damages consequential or otherwise (including, without limitation, lost profits) are expressly assumed by Client. OVS makes no warranties, express or implied, with reference to services and/or personnel furnished by it, and shall not be liable for any failure to perform



the services for any cause whatsoever, including but not limited to acts of God, fire, strike, labor disturbance, civil commotion, shortage of anything under the sun, regulation, ruling or action of any labor union or association of employees affecting OVS or the industry in which it is engaged, or delays in delivery of materials and supplies.

Client will obtain any rights and licenses that may be required by applicable federal, state or local laws or regulations, and pay all sums due, if any, including but not limited to: 1) sales and excise taxes and 2) copyright costs. Client will indemnify and hold OVS harmless against any loss or damage (including attorney's fees) by reason of Client's failure to pay such sums.