On-line access to contract ordering information, terms and conditions, up-to-date pricing, and the option to create an electronic delivery order are available through GSA Advantage®, a menu-driven database system. The INTERNET address for GSA Advantage® is: GSAAdvantage.gov.

MULTIPLE AWARDSCHEDULE (FSS MAS)

Large Category: F Information Technology  
Subcategory: F01 Electronic Commerce  
FSC/PSC Code: DG10 IT and Telecom–Network As A Service  
Special Item Number: 54151ECOM Electronic Commerce and Subscription Services

CONTRACT # 47QTCA19D0022

For more information on ordering from Federal Supply Schedules, click on the FSS Schedules button at fss.gsa.gov

Contract Period: November 9, 2018 – November 8, 2023  
Pricelist current through Modification A837, dated October 22, 2021, and PS-0010, dated January 19, 2022

Contractor:

O’REILLY®

O’Reilly Media, Inc.  
1005 Gravenstein Hwy N  
Sebastopol, CA 95472  
Telephone: 800-775-7330  
Telephone: 910-233-2435  
Fax: 910-222-3801  
www.oreilly.com

Contract Administration:  
Mike Tuckerman (mtuckerman@oreilly.com)  
or  
Jerry Roche (jroche@oreilly.com)

SMALL BUSINESS

Supplement No. 5  
January 19, 2022
<table>
<thead>
<tr>
<th>1a.</th>
<th>Awarded SINs:</th>
<th>54151ECOM Electronic Commerce and Subscription Services Cooperative Purchasing: Yes (Call for pricing options not listed)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1b.</td>
<td>Lowest Price for SIN awarded:</td>
<td>751-1,000 Users $220.44 each</td>
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<tr>
<td>2.</td>
<td>Maximum Order</td>
<td>$500,000</td>
</tr>
<tr>
<td>3.</td>
<td>Minimum Order</td>
<td>$397.99</td>
</tr>
<tr>
<td>5.</td>
<td>Point of Production:</td>
<td>Sebastopol, CA</td>
</tr>
<tr>
<td>6.</td>
<td>Discount from list prices or statement of net price:</td>
<td>21% to 35% based on number of users</td>
</tr>
<tr>
<td>7.</td>
<td>Volume Discounts:</td>
<td>None</td>
</tr>
<tr>
<td>8.</td>
<td>Prompt Payment Terms:</td>
<td>Net 30; &quot;Information for Ordering Offices: Prompt payment terms cannot be negotiated out of the contractual agreement in exchange for other concessions.&quot;</td>
</tr>
<tr>
<td>9a.</td>
<td>Notification that Government Purchase Cards are accepted at or below the micropurchase threshold.</td>
<td>Contractor will accept the Government Commercial Credit Card for purchases up to the micropurchase threshold.</td>
</tr>
<tr>
<td>9b.</td>
<td>Notification whether Government purchase cards are accepted or not accepted above the micropurchase threshold.</td>
<td>Contractor will accept the Government Commercial Credit Card for purchases up to $15,000.</td>
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<tr>
<td>10.</td>
<td>Foreign Items:</td>
<td>N/A</td>
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<tr>
<td>11a.</td>
<td>Delivery Time: Normal</td>
<td>48 hours for standard implementation, between 10 to 15 business days for customized implementation.</td>
</tr>
<tr>
<td>11b.</td>
<td>Delivery Time: Expedited</td>
<td>N/A</td>
</tr>
<tr>
<td>11c.</td>
<td>Delivery Time: Overnight &amp; 2-day delivery</td>
<td>N/A</td>
</tr>
<tr>
<td>11d.</td>
<td>Delivery Time: Urgent Requirements</td>
<td>N/A</td>
</tr>
<tr>
<td>12.</td>
<td>FOB Point(s):</td>
<td>Destination</td>
</tr>
<tr>
<td>13a.</td>
<td>Ordering Address:</td>
<td>ATTN: Mike Tuckerman or Jerry Roche, O'Reilly Media, Inc., 1005 Gravenstein Hwy N, Sebastopol, CA 95472</td>
</tr>
<tr>
<td>13b.</td>
<td>Ordering procedures:</td>
<td>For supplies and services, the ordering procedures, information and Blanket Purchase Agreements (BPAs) are found in Federal Acquisition Regulation (FAR) 8.405-3.</td>
</tr>
<tr>
<td>14.</td>
<td>Payment Address:</td>
<td>DEPT CH 19813 Palatine, IL 60055</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
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<tr>
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</tr>
<tr>
<td>15.</td>
<td><strong>Warranty Provision:</strong></td>
<td>Standard Commercial Warranty</td>
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<tr>
<td>16.</td>
<td><strong>Export packing charges, if applicable:</strong></td>
<td>N/A</td>
</tr>
<tr>
<td>17.</td>
<td><strong>Terms and conditions of Government purchase card acceptance (any thresholds above the micro-purchase level):</strong></td>
<td>Contractor will accept the Government Commercial Credit Card for purchases up to $15,000.00. Contractor will accept the Government Commercial Credit Card for purchases in excess of $15,000 if the authorized user pays credit card transaction fees when permitted under applicable state law.</td>
</tr>
<tr>
<td>18.</td>
<td><strong>Terms and conditions of rental, maintenance, and repair (if applicable):</strong></td>
<td>N/A</td>
</tr>
<tr>
<td>19.</td>
<td><strong>Terms and conditions of installation (if applicable):</strong></td>
<td>N/A</td>
</tr>
<tr>
<td>20.</td>
<td><strong>Terms and conditions of repair parts indicating date of parts price lists and any discounts from list prices (if applicable):</strong></td>
<td>N/A</td>
</tr>
<tr>
<td>20a.</td>
<td><strong>Terms and conditions for any other services (if applicable):</strong></td>
<td>N/A</td>
</tr>
<tr>
<td>21.</td>
<td><strong>List of service and distribution points (if applicable):</strong></td>
<td>N/A</td>
</tr>
<tr>
<td>22.</td>
<td><strong>List of participating dealers (if applicable):</strong></td>
<td>N/A</td>
</tr>
<tr>
<td>23.</td>
<td><strong>Preventive maintenance (if applicable):</strong></td>
<td>N/A</td>
</tr>
<tr>
<td>24a.</td>
<td><strong>Special attributes such as environmental attributes (e.g., recycled content, energy efficiency, and/or reduced pollutants):</strong></td>
<td>N/A</td>
</tr>
<tr>
<td>24b.</td>
<td><strong>Section 508 Compliance:</strong></td>
<td>See Contractor’s VPATs</td>
</tr>
<tr>
<td>25.</td>
<td><strong>DUNS Number:</strong></td>
<td>130840077</td>
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<tr>
<td>26.</td>
<td><strong>Notification regarding registration in CCR database:</strong></td>
<td>Registered</td>
</tr>
<tr>
<td>SIN</td>
<td>Item Description</td>
<td>GSA OFFER PER USER PRICE (inclusive of the .75% IFF)</td>
</tr>
<tr>
<td>-------------</td>
<td>------------------------------------------------------------</td>
<td>------------------------------------------------------</td>
</tr>
<tr>
<td>54151ECOM</td>
<td>O'Reilly Online Learning (FKA New Safari Library)</td>
<td>$397.99</td>
</tr>
<tr>
<td></td>
<td>1 to 5 Users</td>
<td></td>
</tr>
<tr>
<td>54151ECOM</td>
<td>O'Reilly Online Learning (FKA New Safari Library)</td>
<td>$396.67</td>
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<tr>
<td></td>
<td>6 to 10 Users</td>
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</tr>
<tr>
<td>54151ECOM</td>
<td>O'Reilly Online Learning (FKA New Safari Library)</td>
<td>$391.00</td>
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<tr>
<td></td>
<td>11 to 20 Users</td>
<td></td>
</tr>
<tr>
<td>54151ECOM</td>
<td>O'Reilly Online Learning (FKA New Safari Library)</td>
<td>$387.02</td>
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<tr>
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<td>21 to 50 Users</td>
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<tr>
<td>54151ECOM</td>
<td>O'Reilly Online Learning (FKA New Safari Library)</td>
<td>$371.06</td>
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<tr>
<td></td>
<td>51 to 100 Users</td>
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<tr>
<td>54151ECOM</td>
<td>O'Reilly Online Learning (FKA New Safari Library)</td>
<td>$353.11</td>
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<tr>
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<td>101 to 250 Users</td>
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<tr>
<td>54151ECOM</td>
<td>O'Reilly Online Learning (FKA New Safari Library)</td>
<td>$315.20</td>
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<tr>
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<td>251 to 500 Users</td>
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</tr>
<tr>
<td>54151ECOM</td>
<td>O'Reilly Online Learning (FKA New Safari Library)</td>
<td>$258.34</td>
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<tr>
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<td>501 to 750 Users</td>
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<tr>
<td>54151ECOM</td>
<td>O'Reilly Online Learning (FKA New Safari Library)</td>
<td>$220.44</td>
</tr>
<tr>
<td></td>
<td>751 to 1000 Users</td>
<td></td>
</tr>
<tr>
<td>54151ECOM</td>
<td>O'Reilly Online Learning (FKA New Safari Library)</td>
<td>Contact O'Reilly representative</td>
</tr>
<tr>
<td></td>
<td>1000+ Users</td>
<td></td>
</tr>
<tr>
<td>54151ECOM</td>
<td>O'Reilly Online Learning (FKA New Safari Library)</td>
<td>Contact O'Reilly representative</td>
</tr>
<tr>
<td></td>
<td>Enterprise License Program (ELP)</td>
<td></td>
</tr>
<tr>
<td>54151ECOM</td>
<td>O'Reilly Online Learning (FKA New Safari Library)</td>
<td>Contact O'Reilly representative</td>
</tr>
<tr>
<td></td>
<td>Enterprise Wide Program</td>
<td></td>
</tr>
</tbody>
</table>
1. SCOPE

The prices, terms and conditions stated under Special Item Number 54151ECOM Electronic Commerce (EC) Services apply exclusively to EC Services within the scope of this Information Technology Schedule.

2. ELECTRONIC COMMERCE CAPACITY AND COVERAGE

The Ordering Activity shall specify the capacity and coverage required as part of the initial requirement.

3. INFORMATION ASSURANCE

a. The Ordering Activity is responsible for ensuring to the maximum extent practicable that each requirement issued is in compliance with the Federal Information Security Management Act (FISMA).

b. The Ordering Activity shall assign an impact level (per Federal Information Processing Standards Publication 199 & 200 (FIPS 199, “Standards for Security Categorization of Federal Information and Information Systems”) (FIPS 200, “Minimum Security Requirements for Federal Information and Information Systems”) prior to issuing the initial statement of work. Evaluations shall consider the extent to which each proposed service accommodates the necessary security controls based upon the assigned impact level. The Contractor awarded SIN 54151ECOM is capable of meeting at least the minimum security requirements assigned against a low-impact information system (per FIPS 200).

c. The Ordering Activity reserves the right to independently evaluate, audit, and verify the FISMA compliance for any proposed or awarded Electronic Commerce services. All FISMA certification, accreditation, and evaluation activities are the responsibility of the ordering activity.

4. DELIVERY SCHEDULE.

48 hours for standard implementation, between 10 to 15 business days for customized implementation. Expedited delivery is not available. Overnight and Urgent delivery are not applicable.

5. INTEROPERABILITY.

TERMS AND CONDITIONS APPLICABLE TO ELECTRONIC COMMERCE AND SUBSCRIPTION SERVICES (SPECIAL IDENTIFICATION NUMBER 54151ECOM)

When an Ordering Activity requires interoperability, this requirement shall be included as part of the initial requirement. Interfaces may be identified as interoperable on the basis of participation in a sponsored program acceptable to the Ordering Activity. Any such access or interoperability with teleports/gateways and provisioning of enterprise service access will be defined in the individual requirement.

6. ORDER

a. Agencies may use written orders, EDI orders, blanket purchase agreements, individual purchase orders, or task orders for ordering electronic services under this contract. Blanket Purchase Agreements
shall not extend beyond the end of the contract period; all electronic 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.

7. PERFORMANCE OF ELECTRONIC SERVICES

The Contractor shall provide electronic services on the date agreed to by the Contractor and the ordering activity.

8. RESPONSIBILITIES OF THE CONTRACTOR

The Contractor shall comply with all laws, ordinances, and regulations (Federal, State, City, or otherwise) covering work of this character.

9. RIGHTS IN DATA

Rights in Technical Data shall be governed by the negotiated O'Reilly GSA Terms and Conditions attached hereto as Exhibit A.

10. ACCEPTANCE TESTING

There is no acceptance testing. Once the ordering activity account is set up, the end users will immediately have access to Contractor’s service. However, Contractor will assist the ordering activity, as may be reasonably required and needed, in resolving any issues the ordering activity may have in setting up the account.

11. WARRANTY

The Contractor shall provide a warranty covering each Contractor-provided electronic commerce service. The minimum duration of the warranty shall be the duration of the manufacturer’s commercial warranty for the item listed below:

See O'Reilly GSA Terms and Conditions attached hereto as Exhibit A.

The warranty shall commence upon Activation of the user’s service.

12. MANAGEMENT AND OPERATIONS PRICING

The Contractor shall provide management and operations pricing on a uniform basis. All management and operations requirements for which pricing elements are not specified shall be provided as part of the basic service.

13. TRAINING

The Contractor shall provide normal commercial installation, operation, maintenance, and engineering interface training on the system. If there is a separate charge, indicate below:
Contractor will provide training for end-users and account administrator, at no charge, on an as-needed and per-request basis. Such training on the use of the service and its features may be conducted online or onsite.

14. REPORTS

In accordance with commercial practices, the Contractor may furnish the ordering activity, upon request, with a usage summary report.

15. ELECTRONIC COMMERCE SERVICE PLAN

(a) Describe the electronic service plan and eligibility requirements.

Technical support assistance will be provided by Contractor, at no extra charge, for the ordering activity’s end users and account administrators, via telephone or email. The contacts and hours for Contractor’s technical support are:

Support Contacts: Tel: +1 707-827-4118
Toll Free: +1 800-775-7330
E-mail: support@oreilly.com

Support Hours: Mon- Fri, 9am-8pm ET, excluding U.S. federal holidays

(b) Describe charges, if any, for additional usage guidelines.

N/A

(c) Describe corporate volume discounts and eligibility requirements, if any.

N/A
O'REILLY GSA TERMS AND CONDITIONS

Pursuant to the order (the "Order") placed under the GSA Schedule MAS contract number ("GSA Contract"), O'Reilly Media, Inc. ("O'Reilly") grants to the subscriber ("Subscriber" or "GSA Customer Agency") identified on the Order the rights described herein to utilize the O'Reilly services designated on the Order (collectively, the "Services") during the Subscription Term, on the condition that Subscriber complies fully with these Terms and Conditions ("SA").

1. USERS
Access to the Service, and content made available through it, is limited to Subscriber's employees, contractors, agents, or such other persons within Subscriber's organization who are specifically authorized to use the Service ("Users") under the Order. Each User's access to the Service is strictly limited to the period of time that the User is qualified to be a User by virtue of his or her relationship with Subscriber. Users are not allowed to share user names, passwords or accounts. In order to access the Service, Users must have their own user name and password assigned by the account administrator. If a User becomes disqualified to use the Service, the User must immediately cease using the Service, and all copies of content accessed via the Service stored by that User on any hard drive or other storage device or in hard copy must be deleted or destroyed. Subscriber will be deemed to have taken any action that it permits, assists or facilitates any person or entity (including any User) to take related to the Service or this SA. Subscriber is responsible for its Users and will ensure its Users compliance with Subscriber's obligations under the Order and this SA.

2. CONTENT USE AND LIMITATION.

2.1 Each User is permitted to use the electronic tools provided by the Service to:

2.1.1 electronically search across and view onscreen the full content of all of the works included in the Service;

2.1.2 print, download and store Sections (defined below) of a work on the individual User's hard drive or other storage device for such individual User's personal use only;

2.1.3 quote portions of works accessible via the Service in works authored by the User, up to an aggregate of 250 words from any single text work or a comparable strictly limited portion of material in other media, provided that the copyright owner is given proper attribution in any publication or other media in which the quote appears, based on the proprietary notices that appear with the content in the Service. "Section" means the limited portion of a work that is displayed to the User at one time by the Service. Users can scroll freely throughout a single Section. To access another Section, a User is required to click through.

2.1.4 Each User that Subscriber employs or retains as a faculty member and/or course instructor is also permitted to:

2.2.1 post up to 2 Sections of any work in the Service on Subscriber's instruction-related intranet site, provided that (a) the site is monitored for unauthorized use by Subscriber and any such use is promptly halted, (b) use of the posted Sections is limited to bona fide students enrolled in the User's course, and (c) the posted material is removed when the course is completed (or upon termination of the right of Subscriber or the User to access the Service, if either occurs first); and

2.2.2 reproduce in hard copy format no more than 2 Sections of any work included in the Service, for use by enrolled students in courses conducted by the User.

2.2.3 Subscriber acknowledges and agrees that use of "web spiders," or any other automated retrieval mechanisms (other than search and retrieval features of the Service) for any purpose is prohibited. Subscriber will not, and will not permit others to: (a) modify, remove, augment, publish, transmit, or in any way exploit any of the content accessed via the Service, in whole or in part, except as expressly provided in this SA, or except in ways which qualify as "fair use" under U.S. copyright law under Section 107 of Title 17 of the United States Code ("U.S. Fair Use"); (b) post any content accessed via the Service to Usenet, or any third party website, or provide such content to others by any other means, such as an intranet system, blogs or RSS feeds, except as permitted by this SA, or under U.S. Fair Use; (c) provide any hosting service with access to the Service, and/or content accessed through the Service; and/or (d) assign or otherwise transfer to any third party, all or any part of rights granted under this SA, or any content accessible through the Service. Subscriber will notify O'Reilly immediately of any actual or suspected (a) unauthorized use(s) of the Service, or any content accessed through the Service, or (b) breach of security, including loss, theft, or unauthorized disclosure of any password or credit card information, or confidential information related to the Service. Except as expressly permitted by this SA, content accessed via the Service may not be stored, reproduced, or transmitted in any form and/or by any means without the express prior written permission of the copyright owner. O'Reilly or its content providers own the title, copyright, and other intellectual property rights to all content accessed through the Service. Subscriber will not remove or obscure any copyright or other proprietary notices that appear on the Service, or on content accessed through it. The Service, and the content accessed through it, are provided on a limited basis under the Order and this SA, and are not being sold or otherwise transferred to Subscriber.
3. ORDERS, PAYMENTS AND TERMINATION.

3.1 All payments under this Agreement are due within thirty (30) days of the invoice receipt date.

3.2 Additional users may be added to this SA in groups of 5 or more at any time during the Subscription Term by written agreement of the parties and signed by a duly warranted government contracting officer, subject to Subscriber's payment of the pro-rata fees due for such users in accordance with the GSA Schedule pricelist.

3.3 Upon termination or expiration of this SA for any reason: (a) Subscriber's rights and Subscriber User's rights to use the Service shall immediately terminate, and (b) Subscriber and all the Users must immediately cease using the Service, and all copies of content accessed via the Service stored on any hard drive or other storage device must be deleted or destroyed. Terms that by their nature would survive the termination of this SA shall so survive.

3.4 The content accessed through the Service may include inaccuracies or errors. Changes are periodically made to the content to correct such inaccuracies or errors but will not affect the terms and conditions of the underlying GSA Schedule contract, pricelist, and/or applicable Customer Purchase orders. If O'Reilly notifies Subscriber in writing that it has been required by any of its content providers to remove a work from the Service, all content from that work stored on any of Subscriber's (or any User's) hard drive or storage device must be destroyed or deleted. O'Reilly in its discretion may rename the Service, provided, however that such renaming will not affect the terms and conditions of the underlying GSA Scheduled contract and/or applicable Customer Purchase Orders.

3.5 The Service may include links to third party sites. The third party sites are not under O'Reilly's control, and O'Reilly is not responsible for their contents, or any links contained in them. O'Reilly is providing these links as a convenience, and the inclusion of any link does not imply endorsement by O'Reilly. Subscriber consents on its own behalf, and on behalf of its Users, to the collection by O'Reilly of technical information and usage information in the course of managing, providing, and supporting the Service, and to the use of that information for purposes of managing, providing, and supporting the Service pursuant to the Order and this SA.

3.6 [Reserved].

3.7 The warranty term for the Service, its content, and any hardware product shall be ninety (90) days from the Subscriber’s date of receipt of the Service under the Order. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, THE SERVICE AND ITS CONTENTS ARE PROVIDED "AS IS" AND WITHOUT WARRANTIES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, WARRANTIES IN RESPECT OF TITLE, ACCURACY, OMISSIONS, COMPLETENESS, DELAYS, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ANY OTHER IMPLIED WARRANTIES. USE OF THE SERVICE IS ENTIRELY AT SUBSCRIBER'S OWN RISK. In the event of an O'Reilly service outage that impacts the availability of the Service for the Users during the ninety (90) day warranty term, O'Reilly warrants that it will replace the Service missed as a result of the Service unavailability by extending the Subscription Term by the amount of time the Service was not available. For purposes herein, “availability” means the Users may execute the Service without encountering any of these HTTP error codes: 403 Forbidden, 404 Page Not Found, 500 Internal Server Error, or 503 Server Unavailable, and does not include any scheduled routine maintenance, or outages caused by Subscriber or third-party internet service providers. Excusable delays shall be governed by FAR 52.212-4(f). To claim this warranty, the Subscriber must notify O'Reilly of its warranty claim within thirty (30) days of the Service outage, and the warranty claim must include the days and times the Service was not available to Subscriber. The U.S. Government reserves all rights and remedies under the contract, the Federal Acquisition Regulations, and the Contract Disputes Act, 41 U.S.C. 7101-7109. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from O'Reilly's negligence; (2) fraud or any other matter for which liability cannot be excluded by law; or (3) express remedies provided under any FAR, GSAR, or Schedule MAS solicitation clauses incorporated into the GSA Schedule MAS contract.

3.8 O'Reilly agrees to indemnify Subscriber, and hold Subscriber harmless against any costs, damages and expenses (including, without limitation, reasonable attorneys' fees) that Subscriber sustains by reason of any claim, suit, or action that any content supplied to Subscriber through the Service, when used in accordance with this SA, infringes any intellectual property right of any third party, on the conditions that Subscriber provides O'Reilly with: (a) prompt written notice of such claim or action, and (b) the opportunity for O'Reilly to intervene in the proceedings at its own expense through counsel of its choice. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or suit brought against the U.S. pursuant to its jurisdictional statute 28 U.S.C. § 516.

3.9 In utilizing any social features that may be included in the Service, Subscriber and its Users are prohibited from (a) transmitting spam, bulk, or unsolicited communications; (b) forging headers or otherwise manipulating identifiers (including URLs) in order to disguise the origin of any transmitted content; (c) making misrepresentations about any User's identity, or affiliation(s); (d) disrupting the normal flow of dialogue or otherwise acting in a manner that negatively affects the ability of others to participate in or use the Service; (e) engaging in activities that would violate, any applicable local, state, national or international law; or (f) collecting or storing personal data about other users unless specifically authorized to do so by such users.

3.10 During the performance of this SA, certain information may be disclosed by one party (“Owner”) to the other party (“Recipient”) that is deemed proprietary or confidential. “Proprietary Information” means, without limitation, all technical, financial and business information of any kind whatsoever, and all tangible and intangible embodiments thereof, disclosed by Owner or obtained by Recipient through observation or examination of the foregoing, and non-
public information which under the circumstances would reasonably be assumed to be confidential and proprietary, but only to the extent such information or embodiment is maintained as confidential by Owner. When the licensee is an instrumentality of the U.S. Government, neither this SA nor the GSA Schedule Pricelist shall be deemed to be confidential notwithstanding marking to that effect. Notwithstanding anything in this SA to the contrary, the GSA Customer may retain such confidential or proprietary information as required by law, regulation, or its bona fide document retention procedures for legal, regulatory, or compliance purposes. O’Reilly recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as “confidential” by the vendor unless the information is subject to a FOIA exemption, including but not limited to FOIA Exemption 4, or such information is prohibited from disclosure by the Trade Secrets Act, 18 U.S.C. § 1905; however, the government will make the final determination on whether information is covered by a FOIA exemption(s). For the avoidance of doubt, data and analytics regarding usage of the Service provided to Subscriber by O’Reilly (or accessed by Subscriber through tools included in the Service) are the Proprietary Information of O’Reilly and are made available solely for Subscriber’s internal use in managing Service usage. Proprietary Information may be exempt from release under the Freedom of Information Act, 5 U.S.C. 552, and may be subject to the Federal Trade Secrets Act, 18 USC 1905. Recipient shall not disclose or use Proprietary Information for any purpose other than those identified in this Agreement or except as expressly agreed to in writing by the Owner or as directed by applicable law, rule, or regulation including the Freedom of Information Act, 5 U.S.C. 552. Additionally, each party agrees not to disclose or use any Proprietary Information of the other party in any manner, directly or indirectly, for the purpose or with the result of obtaining, for itself or any third party, an advantage, benefit or gain, whether real or potential, over the general public, whether in connection with investing or trading in securities or for any other purpose other than the Agreement. Each party acknowledges that such use or disclosure of Proprietary Information may constitute insider trading in violation of federal law. Recipient shall (i) maintain in confidence and prevent the unauthorized use of Proprietary Information, and (ii) exercise the same degree of care as it uses for its own confidential information, but no less than reasonable care. Recipient shall disclose Proprietary Information only to those of its directors, officers, employees, contractors or agents as reasonably necessary to facilitate the Agreement or pursuant to applicable law, rule, or regulation including the Freedom of Information Act, 5 U.S.C. 552, provided that such persons are required by written agreement or fiduciary obligation to maintain in confidence and not use Proprietary Information except as permitted by this Agreement or in accordance with applicable law, rule, or regulation including the Freedom of Information Act, 5 U.S.C. 552. Recipient shall promptly notify Owner upon discovery of any unauthorized use or disclosure of Proprietary Information as required by applicable law, rule, or regulation. Notwithstanding the foregoing: (i) Recipient may disclose Proprietary Information to the extent required by court order or subpoena, provided that Recipient shall give Owner prompt written notice and sufficient opportunity to object to such disclosure, or to request confidential treatment; and (ii) Recipient's nonuse and nondisclosure obligations shall not apply to such Proprietary Information as Recipient can establish by written documentation to have been: (a) public knowledge at the time of such disclosure by Owner to Recipient, and not as a result of wrongful acts attributed the Recipient; (b) rightfully known (without a duty of confidentiality) by Recipient prior to the date of disclosure by Owner; (c) disclosed to Recipient on an unrestricted basis from a third party not under a duty of confidentiality to Owner or to any third party; or, (d) independently developed by employees or agents of Recipient without access to or use of Proprietary Information. This section shall not be construed to grant either party any rights in the other party's patents, copyrights, trademarks, trade secrets, or other intellectual property. The parties understand and acknowledge that in performing this SA, a party may gain access to information, technology or items that are export-controlled by the United States. Without limitation, each party agrees that it shall comply with all such applicable export laws and regulations. Each party acknowledges that unauthorized disclosure or use of the other party's Proprietary Information could cause irreparable harm and significant injury to the other party that may be difficult to ascertain. This Article 3.10 shall survive termination of this SA as it applies to the Order, for a period of five (5) years.

3.11 The GSA Contract, including this SA, the Schedule Price List and any applicable GSA Customer purchase orders, supersedes all other oral or written communications, proposals and representations made at any time with respect to any subject matter covered by the Order. This SA, however, shall not take precedence over any specific negotiated terms on the GSA Customer’s Purchase Order. If any part of the Order, the GSA Contract, the Schedule Price List, and/or this SA is held to be invalid or unenforceable, the other provisions shall continue in full force and effect.

3.12 The Service is a "commercial item" as that term is defined at FAR 2.101.

3.13 Except as otherwise provided, all written notices must be sent by courier, overnight delivery service, or certified mail to the contacts and addresses designated in the applicable GSA Customer Purchase Order. No failure of either party to exercise or enforce any of its rights under this SA will constitute a waiver of such rights.
Exhibit B

52.212-4 Contract Terms and Conditions—Commercial Items (Jan 2017)

(a) Inspection/Acceptance. The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. If repair/replacement or reperformance will not correct the defects or is not possible, the Government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its post acceptance rights
   (1) within a reasonable time after the defect was discovered or should have been discovered; and
   (2) before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(b) Assignment. The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727). However, when a third party makes payment (e.g., use of the Government-wide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.

(c) Changes. Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) Disputes. This contract is subject to 41 U.S.C. chapter 71, Contract Disputes. Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) Definitions. The clause at FAR 52.202-1, Definitions, is incorporated herein by reference.

(f) Excusable delays. The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(g) Invoice.

   (1) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include—
      (i) Name and address of the Contractor;
      (ii) Invoice date and number;
      (iii) Contract number, line item number and, if applicable, the order number;
      (iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;
      (v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;
      (vi) Terms of any discount for prompt payment offered;
      (vii) Name and address of official to whom payment is to be sent;
      (viii) Name, title, and phone number of person to notify in event of defective invoice; and
(ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(x) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (e.g., 52.232-33, Payment by Electronic Funds Transfer—System for Award Management, or 52.232-34, Payment by Electronic Funds Transfer—Other Than System for Award Management), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(2) Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR part 1315.

(h) Patent indemnity. The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings. However, such defense and payments are subject to the condition that Government gives the Contractor prompt written notice of such claim, and allow the Contractor the opportunity to intervene in the proceedings at its own expense through counsel of its choice.

Should the Service or the operation thereof, become or in Contractor’s opinion be likely to become, the subject of such claim, Contractor may, at the Contractor’s option and expense, procure for the Government the right to continue using the Service, replace or modify the Service so that it becomes non-infringing, or terminate the Service for such infringement and refund to the Government the amount paid (less a reasonable charge for the period during which the Government has had availability of such Service). Contractor will have no liability for any infringement claim to the extent it: (i) is based on modification of the Service other than by Contractor, with or without authorization; (ii) is based on the combination or use of the Service with any other software, program, content or device not provided by Contractor if such infringement would not have arisen but for such use or combination; or (iii) is based on use of the Service in violation of the terms of the O'Reilly GSA Terms and Conditions – THE FOREGOING STATES CONTRACTOR’S ENTIRE LIABILITY AND THE GOVERNMENT’S EXCLUSIVE REMEDY FOR INTELLECTUAL RIGHTS INFRINGEMENT. The foregoing exclusion/limitation of liability shall not apply to: (1) personal injury or death resulting from Contractor’s negligence; (2) for fraud; or (3) express remedies provided under any FAR, GSAR, or Schedule MAS solicitation clauses incorporated into the GSA Schedule MAS contract. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or suit brought against the U.S. pursuant to its jurisdictional statute 28 U.S.C. § 516.

(i) Payment—

(1) Items accepted. Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

(2) Prompt payment. The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and prompt payment regulations at 5 CFR part 1315.

(3) Electronic Funds Transfer (EFT). If the Government makes payment by EFT, see 52.212-5(b) for the appropriate EFT clause.

(4) Discount. In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(5) Overpayments. If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall—
(i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—

(A) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(B) Affected contract number and delivery order number, if applicable;

(C) Affected line item or subline item, if applicable; and

(D) Contractor point of contact.

(ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(6) Interest.

(i) All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in 41 U.S.C. 7109, which is applicable to the period in which the amount becomes due, as provided in (i)(6)(v) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(ii) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(iii) Final decisions. The Contracting Officer will issue a final decision as required by 33.211 if—

(A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt within 30 days;

(B) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(C) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see 32.607-2).

(iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(v) Amounts shall be due at the earliest of the following dates:

(A) The date fixed under this contract.

(B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(vi) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—

(A) The date on which the designated office receives payment from the Contractor;

(B) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(vii) The interest charge made under this clause may be reduced under the procedures prescribed in 32.608-2 of the Federal Acquisition Regulation in effect on the date of this contract.
(j) **Risk of loss.** Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:

1. Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or
2. Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

(k) **Taxes.** The contract price includes all applicable Federal, State, and local taxes and duties.

(l) **Termination for the Government's convenience.** The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) **Termination for cause.** The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) **Title.** Title shall be governed by Section 2.2.3 of the O'Reilly GSA Terms and Conditions.

(o) **Warranty.** Warranty shall be governed by Section 3.7 of the O'Reilly GSA Terms and Conditions.

(p) **Limitation of liability.** Limitation of liability shall be governed by Section 3.7 of the O'Reilly GSA Terms and Conditions.

(q) **Other compliances.** The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.


(s) **Order of precedence.** Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order: (1) the schedule of supplies/services; (2) The Assignments, Disputes, Payments, Invoice, Other Compliances, Compliance with Laws Unique to Government Contracts, and Unauthorized Obligations paragraphs of this clause; (3) the clause at 52.212-5; (4) addenda to this solicitation or contract, including any license agreements for computer software and including, without limitation, the O'Reilly GSA Terms and Conditions incorporated into any order; (5) solicitation provisions if this is a solicitation; (6) other paragraphs of this clause; (7) the Standard Form 1449; (8) other documents, exhibits, and attachments; and (9) the specification.

(t) **System for Award Management (SAM)**

(1) Unless exempted by an addendum to this contract, the Contractor is responsible during performance and through final payment of any contract for the accuracy and completeness of the data within the SAM database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the SAM database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the SAM database to ensure it is current, accurate and
complete. Updating information in the SAM does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(2)  
(i)  If a Contractor has legally changed its business name, “doing business as” name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in FAR subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to (A) change the name in the SAM database; (B) comply with the requirements of subpart 42.12; and (C) agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (t)(2)(i) of this clause, or fails to perform the agreement at paragraph (t)(2)(ii)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the SAM information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the “Suspension of Payment” paragraph of the electronic funds transfer (EFT) clause of this contract.

(3) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the SAM record to reflect an assignee for the purpose of assignment of claims (see Subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the SAM database. Information provided to the Contractor's SAM record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the “Suspension of payment” paragraph of the EFT clause of this contract.

(4) Offerors and Contractors may obtain information on registration and annual confirmation requirements via SAM accessed through https://www.acquisition.gov.

(u) Unauthorized Obligations.

(1) Except as stated in paragraph (u)(2) of this clause, when any supply or service acquired under this contract is subject to any End User License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause requiring the Government to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:

(i) Any such clause is unenforceable against the Government.

(ii) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument or agreement is invoked through an “I agree” click box or other comparable mechanism (e.g., “click-wrap” or “browse-wrap” agreements), execution does not bind the Government or any Government authorized end user to such clause.

(iii) Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.

(2) Paragraph (u)(1) of this clause does not apply to indemnification by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

(v) Incorporation by reference. The Contractor’s representations and certifications, including those completed electronically via the System for Award Management (SAM), are incorporated by reference into the contract.