

# Services Agreement

This Services Agreement (this "**Agreement**"), dated as of [DATE] (the "**Effective Date**"), is entered into by and between [SERVICE PROVIDER NAME], a [JURISDICTION OF ORGANIZATION] [corporation/limited liability company/[OTHER ENTITY]], with offices located at [ADDRESS] ("**Service Provider**") and [CUSTOMER NAME], a [JURISDICTION OF ORGANIZATION] [corporation/limited liability company/[OTHER ENTITY]], with offices located at [ADDRESS] ("**Customer**" and together with the Service Provider, the "**Parties**", and each a "**Party**").

WHEREAS, Service Provider has the capability and capacity to provide certain [CATEGORY OF SERVICES] services; and

WHEREAS, Customer desires to retain Service Provider to provide the said services under the terms and conditions hereinafter set forth, and Service Provider is willing to perform such services;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Service Provider and Customer agree as follows:

1. Services.

1.1 Service Provider shall provide to Customer the services (the "**Services**") set out in one or more statements of work to be issued by Customer and accepted by Service Provider (each, a "**Statement of Work**"). The initial accepted Statement of Work is attached hereto as **Exhibit A**. Additional Statements of Work substantially in the same form as the Statement of Work attached hereto shall be deemed accepted and incorporated into this Agreement only if signed by the Service Provider Representative (as defined in Section 2.1(a) below) and the Customer Representative (as defined in Section 3.1 below), appointed pursuant to Section 2.1(a) and Section 3.1, respectively. The Service Provider shall provide the Services (a) in accordance with the terms and subject to the conditions set forth in the respective Statement of Work and this Agreement; (b) using personnel of required skill, experience, and qualifications; (c) in a timely, workmanlike, and professional manner; (d) in accordance with generally recognized industry standards in Service Provider's field; and (e) to the reasonable satisfaction of the Customer.

1.2 For the sake of clarity, nothing in this Agreement shall be construed to prevent the Customer from itself performing or from acquiring services from other providers that are similar to or identical to the Services.

2. Service Provider Obligations. Service Provider shall:

2.1 Appoint representatives to the following positions after obtaining Customer's consent, which consent shall not be unreasonably withheld or delayed:

(a) A primary contact to act as its authorized representative with respect to all matters pertaining to this Agreement (the "**Service Provider Representative**").

(b) A sufficient number of employees or contractors to perform the Services set out in each Statement of Work, each of whose names, positions, billing rates, and respective levels of experience and relevant licenses shall be set out in the respective Statement of Work (collectively, with Service Provider Representative, "**Provider Representatives**").

2.2 Make no changes in Provider Representatives except:

(a) With the prior consent of Customer , which consent shall not be unreasonably withheld or delayed.

(b) At the request of Customer, in which case Service Provider shall use commercially reasonable efforts to promptly appoint a replacement.

(c) Upon the resignation, termination, death, or disability of the existing Provider Representative.

2.3 Assign only qualified, legally authorized Provider Representatives to provide the Services.

2.4 Comply with all applicable laws and regulations in providing the services.

2.5 Comply with all material Customer rules, regulations, and policies of which it has been made aware, in its provision of the Services.

2.6 Maintain complete and accurate records relating to the provision of the Services under this Agreement, including records of the time spent and materials used by Service Provider in providing the Services in such form as Customer shall approve. During the Term (as defined in Section 8.1) and for a period of three years thereafter, upon Customer's written request, Service Provider shall allow Customer or Customer's representative to inspect and make copies of such records and interview Provider Representatives in connection with the provision of the Services; provided that Customer provides Service Provider with reasonable advance written notice of the planned inspection, and any such inspection shall take place during regular business hours.

No required Customer consent or approval under this Section 2 shall be unreasonably withheld or delayed.

3. Customer Obligations. Customer shall:

3.1 Designate one of its employees or agents to serve as its primary contact with respect to this Agreement and to act as its authorized representative with respect to matters pertaining to this Agreement (the "**Customer Representative**"), with such designation to remain in force unless and until a successor Customer Representative is appointed, in Customer's sole discretion.

3.2 Require that the Customer Representative respond promptly to any reasonable requests from Service Provider for instructions, information, or approvals required by Service Provider to provide the Services.

4. Fees and Expenses.

4.1 In consideration of the Services to be performed under this Agreement, Customer shall pay to Service Provider a fee determined in accordance with the fee schedule set out in each Statement of Work. Unless otherwise provided in the Statement of Work, said fee will be payable within sixty days of receipt by the Customer of an invoice from Service Provider accompanied by documentation reasonably requested by the Customer evidencing all charges.

4.2 Customer shall reimburse Service Provider for all reasonable expenses incurred in accordance with the Statement of Work, if such expenses have been pre-approved, in writing by the Customer Representative, within 30 days of receipt by the Customer of an invoice from Service Provider accompanied by receipts and supporting documentation acceptable to the Customer. All Service Provider expenses not pre-approved by the Customer Representative or not otherwise meeting the requirements of this Agreement or the Statement of Work to which it applies shall be the sole responsibility of the Service Provider.

4.3 The fees set forth in this Agreement shall cover and include all sales and use taxes, duties, and charges of any kind imposed by any federal, state, or local governmental authority on amounts payable by Customer under this Agreement, and in no event shall Customer be required to pay any additional amount to Service Provider in connection with such taxes, duties, and charges, or any taxes imposed on, or regarding, Service Provider's income, revenues, gross receipts, personnel, or real or personal property or other assets.

5. Intellectual Property.

5.1 Service Provider assigns to the Customer, Service Provider's entire right, title, and interest in any invention, technique, process, device, discovery, improvement, or know-how, whether patentable or not, hereafter made or conceived solely or jointly by Service Provider while working for or on behalf of the Customer, which relate to, is suggested by, or results from matters set out in any active Statement of Work and depends on either:

(a) Service Provider's knowledge of Confidential Information (as defined in Section 6) it obtains from the Customer.

(b) The use of Customer equipment, supplies, facilities, information, or materials.

5.2 Service Provider shall disclose any such invention, technique, process, device, discovery, improvement, or know-how promptly to the Customer Representative. Service Provider shall, upon request of the Customer, promptly execute a specific assignment of title to the Customer and do anything else reasonably necessary to enable the Customer to secure for itself, patent, trade secret, or any other proprietary rights in the United States or other countries. It shall be conclusively presumed that any patent applications relating to a Statement of Work, related to trade secrets of the Customer, or which relate to tasks assigned to Service Provider by the Customer, which Service Provider may file within one year after termination of this Agreement, shall belong to the Customer, and Service Provider hereby assigns same to the Customer, as having been conceived or reduced to practice during the term of this Agreement.

5.3 All writings or works of authorship, including, without limitation, program codes or documentation, produced or authored by Service Provider in the course of performing services for the Customer, together with any associated copyrights, are works made for hire and the exclusive property of the Customer. To the extent that any writings or works of authorship may not, by operation of law, be works made for hire, this Agreement shall constitute an irrevocable assignment by Service Provider to the Customer of the ownership of and all rights of copyright in, such items, and the Customer shall have the right to obtain and hold in its own name, rights of copyright, copyright registrations, and similar protections which may be available in the works. Service Provider shall give the Customer or its designees all assistance reasonably required to perfect such rights.

5.4 If for any reason, including incapacity, the Customer is unable to secure Service Provider's signature on any document needed to apply for, perfect, or otherwise acquire title to the intellectual property rights granted to it under this Section 5, or to enforce such rights, Service Provider hereby designates the Customer as Service Provider's attorney-in-fact and agent, solely and exclusively to act for and on Service Provider's behalf to execute and file such documents with the same legal force and effect as if executed by Service Provider and for no other purpose.

5.5 Service Provider owns the discoveries, improvements, inventions, or intellectual property identified by title and number or date on **Exhibit B**, attached. Such discoveries, improvements, inventions, and intellectual property, made or conceived by Service Provider before the effective date of this Agreement, are expressly reserved and excepted from the provisions of this Agreement. IF THERE ARE NO SUCH DISCOVERIES, IMPROVEMENTS OR INVENTIONS TO BE EXCLUDED, SERVICE PROVIDER SHOULD INITIAL HERE \_\_\_\_\_.

6. Confidentiality. All non-public, confidential or proprietary information of Customer ("**Confidential Information**"), including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates disclosed by Customer to Service Provider, whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as "confidential," in connection with this Agreement is confidential, solely for Service Provider's use in performing this Agreement and may not be disclosed or copied unless authorized by Customer in writing. Confidential Information does not include any

information that: (a) is or becomes generally available to the public other than as a result of Service Provider's breach of this Agreement; (b) is obtained by Service Provider on a non-confidential basis from a third-party that was not legally or contractually restricted from disclosing such information; (c) Service Provider establishes by documentary evidence, was in Service Provider's possession prior to Customer's disclosure hereunder; or (d) was or is independently developed by Service Provider without using any Confidential Information. Upon Customer's request, Service Provider shall promptly return all documents and other materials received from Customer. Customer shall be entitled to injunctive relief for any violation of this Section.

7. Intentionally Omitted.

8. Term, Termination, and Survival.

8.1 This Agreement shall commence as of the Effective Date and shall continue thereafter until the completion of the Services under all Statements of Work unless sooner terminated pursuant to Sections 8.2 and 8.3.

8.2 Customer, in its sole discretion, may terminate this Agreement or any Statement of Work, in whole or in part, at any time without cause, and without liability except for required payment for services rendered, and reimbursement for authorized expenses incurred, prior to the termination date.

8.3 Either Party may terminate this Agreement, effective upon written notice to the other Party (the "**Defaulting Party**"), if the Defaulting Party:

(a) Breaches this Agreement, and such breach is incapable of cure, or with respect to a material breach capable of cure, the Defaulting Party does not cure such breach within 30 days after receipt of written notice of such breach.

(b) Becomes insolvent or admits its inability to pay its debts generally as they become due.

(c) Becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, which is not fully stayed within seven business days or is not dismissed or vacated within 45 days after filing.

(d) Is dissolved or liquidated or takes any corporate action for such purpose.

(e) Makes a general assignment for the benefit of creditors.

(f) Has a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

8.4 Upon expiration or termination of this Agreement for any reason, Service Provider shall promptly:

- (a) Deliver to Customer all documents, work product, and other materials, whether or not complete, prepared by or on behalf of Service Provider in the course of performing the Services for which Customer has paid.
- (b) Return to Customer all Customer-owned property, equipment, or materials in its possession or control.
- (c) Remove any Service Provider-owned property, equipment, or materials located at Customer's locations.
- (d) Deliver to Customer, all documents and tangible materials (and any copies) containing, reflecting, incorporating, or based on Customer's Confidential Information.
- (e) Provide reasonable cooperation and assistance to Customer upon Customer's written request and at Customer's expense, in transitioning the Services to an alternate service provider.
- (f) On a pro rata basis, repay all fees and expenses paid in advance for any Services which have not been provided.
- (g) Permanently erase all of Customer's Confidential Information from its computer systems.
- (h) Certify in writing to Customer that it has complied with the requirements of this Section 8.4.

8.5 The rights and obligations of the Parties set forth in this Section 8 and Section 5, Section 6, Section 9, Section 10, Section 11, Section 13, Section 15, Section 22, Section 23 and Section 24, and any right or obligation of the Parties in this Agreement which, by its nature, should survive termination or expiration of this Agreement, will survive any such termination or expiration of this Agreement, and with respect to Confidential Information that constitutes a trade secret under applicable law, the rights and obligations set forth in Section 6 hereof will survive such termination or expiration of this Agreement until, if ever, such Confidential Information loses its trade secret protection other than due to an act or omission of Service Provider or its affiliates and its or their employees, officers, directors, shareholders, partners, members, managers, agents, independent contractors, service providers, sublicensees, subcontractors, attorneys, accountants, and financial advisors.

## 9. Independent Contractor.

9.1 It is understood and acknowledged that the Services which Service Provider will provide to Customer hereunder shall be in the capacity of an independent contractor and not as an employee or agent of the Customer. Service Provider shall control the conditions, time, details, and means by which Service Provider performs the Services. The Customer shall have the right to inspect the work of Service Provider as it progresses solely for the purpose of determining whether the work is completed according to the applicable Statement of Work.

9.2 Service Provider has no authority to commit, act for or on behalf of the Customer, or to bind the Customer to any obligation or liability.

9.3 Service Provider shall not be eligible for and shall not receive any employee benefits from Customer and shall be solely responsible for the payment of all taxes, FICA, federal and state unemployment insurance contributions, state disability premiums, and all similar taxes and fees relating to the fees earned by Service Provider hereunder.

10. Indemnification. Service Provider shall indemnify, defend, and hold harmless Customer and its officers, directors, employees, agents, affiliates, successors, and permitted assigns (collectively, "**Indemnified Party**") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, fees and the costs of enforcing any right to indemnification under this Agreement, and the cost of pursuing any insurance providers, incurred by Indemnified Party in a final judgment (collectively, "**Losses**"), relating to any claim of a third party arising out of or occurring in connection with Service Provider's negligence, willful misconduct, or breach of this Agreement. Service Provider shall not enter into any settlement without Customer's or Indemnified Party's prior written consent.

11. Remedies.

11.1 If the Service Provider violates any provision of this Agreement, the Customer shall, in addition to any damages to which it is entitled, be entitled to immediate injunctive relief against the Service Provider prohibiting further actions inconsistent with the Service Provider's obligations under this Agreement.

11.2 In the event Service Provider fails to satisfactorily perform any of the Services on a timely basis, the Customer shall have the right, without prejudice to any other rights or remedies it may have under this Agreement or any applicable Statement of Work, to take one or more of the following steps:

(a) Suspend Service Provider's right and obligation to complete its performance of the Services until such time as the Service Provider is able to demonstrate to the Customer's reasonable satisfaction that it can satisfactorily meet its obligations under this Agreement;

(b) Itself provide and/or engage a replacement service provider to provide any or all of the delayed or unsatisfactory Services;

(c) Assign one or more of its representatives to supervise and work with the Service Provider to correct and mitigate the effects of the Service Provider's breach;

(d) Withhold payment of any amounts otherwise due to the Service Provider in a sufficient amount to set off against any damages caused to the Customer as a consequence of the Service Provider's breach.

11.3 Intentionally Omitted.

11.4 To the extent a Party is required to seek enforcement of this Agreement or otherwise defend against an unsuccessful claim of breach, the unsuccessful Party shall be liable for all attorney's fees and costs incurred by the successful party to enforce the provisions of this Agreement.

11.5 Except for a breach of Section 6, all rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the Parties, or otherwise. Despite the previous sentence, the Parties intend that the Service Provider's exclusive remedy for Customer's payment breach shall be its right to damages equal to its earned but unpaid fees.

12. Compliance with Law. Service Provider is in compliance with and shall comply with all applicable laws, regulations, and ordinances. Service Provider has and shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Agreement.

13. Insurance. Service Provider shall, at its own expense, maintain and carry insurance in full force and effect with financially sound and reputable insurers, that includes, but is not limited to, (i) commercial general liability with limits no less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate, including bodily injury and property damage and completed operations and advertising liability, with no railroad exclusion, which policy will include contractual liability coverage insuring the activities of Contractor and any Subcontractors who perform any Services under this Agreement, and workers' compensation insurance to the extent required by law; (ii) one million dollar (\$1,000,000) for auto liability including owned, hired, and non-owned vehicles; and (iii) five million dollars (\$5,000,000) umbrella coverage. Company may require Contractor increase its umbrella coverage up to ten million dollars (\$10,000,000) when Contractor is contracted for services to multiple states. Upon Customer's request, Service Provider shall provide Customer with a certificate of insurance from Service Provider's insurer evidencing the insurance coverage specified in this Agreement. The certificate of insurance shall name Customer as an additional insured. Service Provider shall provide Customer with sixty days' advance written notice in the event of a cancellation or material change in Service Provider's insurance policy. Except where prohibited by law, Service Provider shall require its insurer to waive all rights of subrogation against Customer's insurers and Customer or the Indemnified Parties.

If it shall have any employees providing services for Customer, Service Provider shall also provide workers' compensation insurance covering those employees for at least \$100,000 and shall provide a certificate of insurance to Customer evidencing such coverage within 30 days of the effective date of this Agreement.

14. Entire Agreement. This Agreement, including and together with any related Statements of Work, exhibits, schedules, attachments, and appendices, constitutes the sole and entire agreement between the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding such subject matter.



15. Notices. All notices, requests, consents, claims, demands, waivers, and other communications under this Agreement (each, a "**Notice**") must be in writing and addressed to the other Party at its address set forth below (or to such other address that the receiving Party may designate from time to time in accordance with this Section). Unless otherwise agreed herein, all Notices must be delivered by personal delivery, nationally recognized overnight courier, or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) on receipt by the receiving Party; and (b) if the Party giving the Notice has complied with the requirements of this Section 15.

Notice to Customer:

[CUSTOMER ADDRESS]

Attention: [TITLE OF OFFICER TO  
RECEIVE NOTICES]

Notice to Service Provider:

[SERVICE PROVIDER ADDRESS]

Attention: [TITLE OF OFFICER TO  
RECEIVE NOTICES]

16. Severability. If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon a determination that any term or provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement to effect the original intent of the Parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

17. Amendments. No amendment to, or modification of or rescission, termination, or discharge of this Agreement is effective unless it is in writing, identified as an amendment to or rescission, termination, or discharge of this Agreement and signed by an authorized representative of each Party.

18. Waiver. No waiver by any Party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

19. Assignment. Service Provider shall not assign, transfer, delegate, or subcontract any of its rights or obligations under this Agreement without the prior written consent of Customer which consent shall not be unreasonably withheld, conditioned or delayed. Any purported assignment or delegation in violation of this Section 19 shall be null and void. No assignment or delegation shall relieve the Service Provider of any of its obligations hereunder. Customer may

at any time assign or transfer any or all of its rights or obligations under this Agreement without Service Provider's prior written consent.

20. Successors and Assigns. This Agreement is binding on and inures to the benefit of the Parties and their respective successors and permitted assigns.

21. No Third-Party Beneficiaries. This Agreement benefits solely the Parties and their respective successors and permitted assigns and nothing in this Agreement, express or implied, confers on any third party any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

22. Choice of Law. This Agreement and all related documents including all exhibits attached hereto, and all matters arising out of or relating to this Agreement, whether sounding in contract, tort, or statute are governed by, and construed in accordance with, the laws of the State of Missouri, United States of America (including its statutes of limitations), without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Missouri.

23. Choice of Forum. Each Party irrevocably and unconditionally agrees that it will not commence any action, litigation, or proceeding of any kind whatsoever against the other Party in any way arising from or relating to this Agreement, including all exhibits, schedules, attachments, and appendices attached to this Agreement, and all contemplated transactions, including contract, equity, tort, fraud, and statutory claims, in any forum other than the US District Court for the Western District of Missouri or, if such court does not have subject-matter jurisdiction, the courts of the State of Missouri sitting in Jackson County, Missouri, and any appellate court from any thereof. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and agrees to bring any such action, litigation, or proceeding only in US District Court for the Western District of Missouri or, if such court does not have subject-matter jurisdiction, the courts of the State of Missouri sitting in Jackson County, Missouri. Each Party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

24. Waiver of Jury Trial. EACH PARTY ACKNOWLEDGES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT, INCLUDING EXHIBITS, SCHEDULES, ATTACHMENTS, AND APPENDICES ATTACHED TO THIS AGREEMENT, IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ANY EXHIBITS, SCHEDULES, ATTACHMENTS, OR APPENDICES ATTACHED TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY.

25. Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. Notwithstanding anything to the contrary in Section 15, a signed copy of this Agreement

delivered by facsimile, email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

26. Force Majeure. No Party shall be liable or responsible to the other Party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such Party's (the "Impacted Party") failure or delay is caused by or results from the following force majeure events ("Force Majeure Event(s)"): (a) acts of God; (b) flood, fire, earthquake, epidemic, pandemic or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or action; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns or other industrial disturbances; (h) telecommunication breakdowns, power outages or shortages, lack of warehouse or storage space, inadequate transportation services, or inability or delay in obtaining supplies of adequate or suitable materials; and [(i) other similar events beyond the reasonable control of the Impacted Party. Notwithstanding the foregoing, Service Provider's financial inability to perform, changes in cost or availability of materials, components or services, market conditions, or supplier actions or contract disputes will not excuse performance by Service Provider under this Section 26.

The Impacted Party shall give notice within seven days of the Force Majeure Event to the other Party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of thirty consecutive days following written notice given by it under this Section, the other Party may thereafter terminate this Agreement upon thirty days' written notice, subject to the provisions of Section 8.4 and Section 8.5.

27. Federal Grant Funded Services. For any Services funded by Federal Grant monies, the terms in Addendum A, attached hereto and incorporated as if fully set forth herein, shall apply. In the event of any conflict between any term in Addendum A and the terms in this Agreement or a Purchase Order, the terms of Addendum A shall prevail.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the Effective Date by their respective officers thereunto duly authorized.

[CUSTOMER NAME]

By \_\_\_\_\_

Name:

Title:

[SERVICE PROVIDER NAME]

By \_\_\_\_\_

Name:

Title:

**EXHIBIT A**  
**INITIAL STATEMENT OF WORK**

**EXHIBIT B**

**SERVICE PROVIDER OWNED INVENTIONS**

[LIST OF PRE-OWNED SERVICE PROVIDER INVENTIONS]

## ADDENDUM A

### **Contract Provisions Specific To Federal Grant Funded Construction Contracts**

#### 1. Equal Employment Opportunity

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said

rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

2. Davis Bacon Act and Copeland Anti-Kickback Act: applies to all construction contracts in excess of \$2,000

**(a) Davis-Bacon Act and the Copeland Anti-Kickback Act**

**(1) *Minimum wages.***

- (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be



alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in §(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)

(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives,

and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

- (iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) **Withholding.** Company shall upon its own action or upon written

request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the National Telecommunications and Information Administration may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

**(3) *Payrolls and basic records.***

- (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of

apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)

(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the National Telecommunications and Information Administration if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the National Telecommunications and Information Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (*e.g.*, the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the National Telecommunications and Information Administration if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under

§ 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

- (iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the National Telecommunications and Information Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

**(4) *Apprentices and trainees* —**

- (i) ***Apprentices.*** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor,

Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize

apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (ii) ***Trainees.*** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (iii) ***Equal employment opportunity.*** The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment

opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

- (5) **Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.
- (6) **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the National Telecommunications and Information Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.
- (7) **Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
- (8) **Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
- (9) **Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
- (10) **Certification of eligibility.**
- (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).



- (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001

- 3. Contract Work Hours and Safety Standards Act: applies to all construction contracts in an amount in excess of \$100,000.

Compliance with the Contract Work Hours and Safety Standards Act.

- (1) **Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in [paragraph \(1\)](#) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in [paragraph \(1\)](#) of this section, in the sum of \$31 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in [paragraph \(1\)](#) of this section.
- (3) **Withholding for unpaid wages and liquidated damages.** The National Telecommunications and Information Administration or Company shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work

performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in [paragraph \(2\)](#) of this section.

(4) **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in [paragraphs \(1\)](#) through [\(4\)](#) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in [paragraphs \(1\)](#) through [\(4\)](#) of this section.

4. Clean Air Act and the Federal Water Pollution Control Act: applies to contracts in excess of \$150,000.

Clean Air Act

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (2) The contractor agrees to report each violation to the National Telecommunications and Information Administration and understands and agrees that the National Telecommunications and Information Administration will, in turn, report each violation as required to assure notification to Company and the appropriate Environmental Protection Agency Regional Office.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by National Telecommunications and Information Administration.

Federal Water Pollution Control Act

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (2) The contractor agrees to report each violation to the National Telecommunications and Information Administration and understands and agrees that the National Telecommunications and Information Administration will, in turn, report each violation as required to assure

notification to Company and the appropriate Environmental Protection Agency Regional Office.

- (3) The contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by National Telecommunications and Information Administration.

5. Debarment and Suspension: applies to contracts in excess of \$25,000.

- (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification is a material representation of fact relied upon by Company. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to Company, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

6. Byrd Anti-Lobbying Amendment: applies to contracts in excess of \$100,000.

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has

not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient."

APPENDIX A. 44 C.F.R. PART 18-CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative

Agreements (To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form- LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

\_\_\_\_\_  
Signature of Contractor's Authorized Official

\_\_\_\_\_  
Name and Title of Contractor's Authorized Official

\_\_\_\_\_  
Date

7. Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (Nov 2021)

(a) Definitions. As used in this clause—

Backhaul means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).

Covered foreign country means The People’s Republic of China.

Covered telecommunications equipment or services means—

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

(2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

(3) Telecommunications or video surveillance services provided by such entities or using such equipment; or

(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Critical technology means—

(1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;

(2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled-

(i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or

(ii) For reasons relating to regional stability or surreptitious listening;

(3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);

(4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);

(5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or

(6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

Interconnection arrangements means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

Reasonable inquiry means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.

Roaming means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

Substantial or essential component means any component necessary for the proper function or performance of a piece of equipment, system, or service.

(b) Prohibition.

(1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Contractor is prohibited from providing to the Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR [4.2104](#).

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a contract, or extending or renewing a contract, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR [4.2104](#). This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract.

(c) Exceptions. This clause does not prohibit contractors from providing—

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(d) Reporting requirement.

(1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (d)(2) of this clause to the Contracting Officer, unless elsewhere in this contract are established procedures for reporting the information; in the case of the Department of Defense, the Contractor shall report to the website at <https://dibnet.dod.mil>. For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at <https://dibnet.dod.mil>.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause

(i) Within one business day from the date of such identification or notification: the contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (e) and excluding paragraph (b)(2), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial products or commercial services.



## 8. Domestic Preferences for Procurements

Bluebird, as the recipient of a federal grant from the National Telecommunications and Information Administration has a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). This preference must be included in all subawards including all contracts and purchase orders for work or products under this award.

For purposes of this section:

- (1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- (2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.