

**PROFESSIONAL SERVICES CONTRACT**

**[[ CONTRACT NUMBER ]]**

**BETWEEN**

**[[ NAME (PRIMARY FIRST PARTY) ]]**

**AND**

**[[ NAME (PRIMARY SECOND PARTY) ]]**

**FOR**

**[[ GENERAL DESCRIPTION OF GOODS AND/OR SERVICES ]]**

**THIS DRAFT DOES NOT CONSTITUTE A BINDING OFFER AND SHALL NOT FORM THE BASIS FOR AN AGREEMENT BY ESTOPPEL OR OTHERWISE. [[ NAME (PRIMARY FIRST PARTY) ]] RESERVES THE RIGHT, IN ITS SOLE DISCRETION, TO MODIFY THIS DRAFT AT ANY TIME. ANY ACTIONS TAKEN BY A PARTY IN RELIANCE ON THE TERMS SET FORTH IN THIS DRAFT OR ON STATEMENTS MADE DURING NEGOTIATIONS PURSUANT TO THIS DRAFT SHALL BE AT THAT PARTY'S OWN RISK. UNTIL [[ NAME (PRIMARY FIRST PARTY) ]] HAS COMPLETED ITS DUE DILIGENCE AND THIS AGREEMENT IS NEGOTIATED, APPROVED BY MANAGEMENT, EXECUTED AND DELIVERED, NO PARTY SHALL HAVE ANY LEGAL OBLIGATIONS, EXPRESSED OR IMPLIED, OR ARISING IN ANY OTHER MANNER UNDER THIS DRAFT OR IN THE COURSE OF ANY NEGOTIATIONS.**

**TABLE OF CONTENTS**

	<u>PAGE</u>
ARTICLE 1. DEFINITIONS.....	3
ARTICLE 2. DESCRIPTION OF WORK .....	4
ARTICLE 3. PERIOD OF PERFORMANCE.....	5
ARTICLE 4. CONSIDERATION AND PAYMENT .....	5
ARTICLE 5. TAXES .....	5
ARTICLE 6. TRAVEL.....	5
ARTICLE 7. ACCOUNTING AND AUDITING .....	5
ARTICLE 8. CREDIT REQUIREMENTS .....	6
ARTICLE 9. SECURITY .....	6
ARTICLE 10. WITHHOLDING PAYMENT.....	6
ARTICLE 11. DESIGNATED REPRESENTATIVES AND NOTICES .....	6
ARTICLE 12. EXAMINATION OF WORK AND PROGRESS REPORTS.....	7
ARTICLE 13. PROFESSIONAL RESPONSIBILITY .....	8
ARTICLE 14. CHANGES.....	8
ARTICLE 15. INSURANCE.....	8
ARTICLE 16. INDEMNIFICATION.....	10
ARTICLE 17. CHANGES IN PERSONNEL .....	11
ARTICLE 18. CONSULTANT'S PERSONNEL; DRUGS, ALCOHOL AND FIREARMS .....	11
ARTICLE 19. ACCESS TO COMPANY'S FACILITIES .....	11
ARTICLE 20. SUBSTANCE ABUSE; DRUG AND ALCOHOL POLICY .....	12
ARTICLE 21. DEPARTMENT OF TRANSPORTATION .....	12
ARTICLE 22. BUSINESS ETHICS.....	13
ARTICLE 23. REVIEW OF DELIVERABLES .....	13
ARTICLE 24. SAFETY AND SITE REGULATIONS.....	13
ARTICLE 25. PROGRESS MEETINGS .....	13

ARTICLE 26. COOPERATION WITH OTHERS ..... 13

ARTICLE 27. LIENS ..... 13

ARTICLE 28. CONFLICTS, ERRORS, OMISSIONS, OR DISCREPANCIES IN CONTRACT DOCUMENTS ..14

ARTICLE 29. CLAIM NOTICE AND RESOLUTION PROCEDURE..... 14

ARTICLE 30. SUSPENSION OF WORK ..... 14

ARTICLE 31. TERMINATION FOR CONVENIENCE..... 14

ARTICLE 32. TERMINATION FOR CAUSE ..... 15

ARTICLE 33. DELAYS..... 16

ARTICLE 34. COMPLIANCE WITH LAWS ..... 16

ARTICLE 35. INDEPENDENT CONTRACTOR..... 17

ARTICLE 36. RELEASE OF INFORMATION; ADVERTISING AND PROMOTION ..... 17

ARTICLE 37. CONFIDENTIAL INFORMATION; NONDISCLOSURE ..... 17

ARTICLE 38. OWNERSHIP OF DESIGNS, DRAWINGS AND WORK PRODUCT..... 17

ARTICLE 39. PATENT AND COPYRIGHT INDEMNITY ..... 18

ARTICLE 40. CYBER SECURITY..... 18

ARTICLE 41. OFFICE OF FOREIGN ASSETS CONTROL SANCTIONS LISTS; STATE OR GOVERNMENT OWNED ENTERPRISES OR CORPORATIONS CYBERSECURITY ..... 20

ARTICLE 42. CALIFORNIA CONSUMER PRIVACY ACT ..... 22

ARTICLE 43. ASSIGNMENT..... 22

ARTICLE 44. SUBCONTRACTS ..... 22

ARTICLE 45. NON-EXCLUSIVE RIGHTS ..... 23

ARTICLE 46. NONWAIVER..... 23

ARTICLE 47. SEVERABILITY..... 23

ARTICLE 48. APPLICABLE LAW AND VENUE ..... 23

ARTICLE 49. ENTIRE AGREEMENT; DOCUMENTS INCORPORATED BY REFERENCE ..... 24

ARTICLE 50. EXECUTION AND EFFECTIVE DATE ..... 25

EXHIBITS

- EXHIBIT A, SCOPE OF WORK
  - APPENDIX 1: CONTRACTOR VENDOR INFORMATION FORM
  - APPENDIX A - SYSTEM INFO 010821\_to PC
  - APPENDIX B - TECH REQ\_010821\_to PC
- EXHIBIT B, PRICING SCHEDULE
- EXHIBIT C, LETTER OF CREDIT REQUIREMENTS
- EXHIBIT D, FORM OF RELEASE/PURCHASE ORDER
- EXHIBIT E, STATUTORY FORM OF LIEN AND CLAIM RELEASE FOR CALIFORNIA WORK
- EXHIBIT F, CONTRACTOR HEALTH, SAFETY AND ENVIRONMENTAL
- EXHIBIT G, EXPENSE GUIDELINES
- EXHIBIT H, DIVERSITY SUBCONTRACTOR SPEND REPORT
- EXHIBIT I, PROHIBITED VENDORS

**PROFESSIONAL SERVICES CONTRACT**

**[[ CONTRACT NUMBER ]]**

**BETWEEN**

**[[ NAME (PRIMARY FIRST PARTY) ]]**

**AND**

**[[ NAME (PRIMARY SECOND PARTY) ]]**

**FOR**

**[[ GENERAL DESCRIPTION OF GOODS AND/OR SERVICES ]]**

**PARTIES**

The Parties to this Professional Services Contract (“Contract”) are **[[ NAME (PRIMARY FIRST PARTY) ]]** (hereinafter “Company”), whose address is **[[ Street Line 1 (Primary First Party) ]]**, **[[ City/Town (Primary First Party) ]]**, **[[ State/Province (Primary First Party) ]]** **[[ Postal Code (Primary First Party) ]]**, and **[[ NAME (PRIMARY SECOND PARTY) ]]** (hereinafter “Consultant”), whose address is **[[ Street Line 1 (Primary Second Party) ]]**, **[[ City/Town (Primary Second Party) ]]**, **[[ State/Province (Primary Second Party) ]]** **[[ Postal Code (Primary Second Party) ]]**. Company and Consultant are hereinafter sometimes collectively referred to as “Parties” and individually as a “Party,” as the context may require.

**ARTICLE 1. DEFINITIONS**

**BES Cyber System Information (BCSI)** shall mean information concerning CIPS Covered Assets that: (i) relates to the production, generation or transmission of energy; (ii) could be useful to a person planning an attack on critical infrastructure; and (iii) provides strategic information beyond the geographic location of the critical asset, and which is identified as BCSI by Company.

**CIPS Covered Assets** shall mean any assets identified by Company as “BES assets,” “BES cyber assets,” “BES cyber systems,” “protected cyber assets,” “electronic access control or monitoring systems,” “electronic access points,” or, “physical access control systems,” as those terms are defined in the North American Electric Reliability Corporation (NERC) Glossary of Terms. “BES” refers to the “Bulk Electric System” as defined by NERC.

**Company’s Facilities** shall mean any facilities owned, operated or otherwise controlled by Company which require Company authorization to obtain access.

**Confidential Information** shall mean: (i) proprietary information of Company; (ii) information marked or designated by Company as confidential; (iii) BES Cyber System Information of Company; (iv) information, whether or not in written form and whether or not designated as confidential, which is known to Consultant as being treated by Company as confidential; (v) information provided to Company that Company is obligated to keep confidential (including but not limited to information that identifies an individual or customer of Company, such as customer account numbers, customer addresses, customer energy usage information, credit or bank account numbers, social security numbers, passport or driver’s license numbers, whether or not such information is publicly available); and (vi) information developed by Consultant in connection with the performance of this Contract.

**Cyber Assets** shall mean programmable electronic devices, including the hardware, software, and data in those devices.

**Data** shall mean any and all data, information, formulae, algorithms, or other content that Company or its Personnel create, generate or modify (i) using the Software, (ii) that is hosted by Contractor or (iii) that is stored on Company’s systems and that is accessible by Contractor. Data also includes user identification information and metadata which may contain the foregoing data or from which the foregoing data may be ascertainable.

**Deliverables** shall mean those items to be developed and delivered by Consultant as set forth in the Scope of Work.

**E-Verify** shall mean the web-based system that allows enrolled employers to confirm the eligibility of their employees to work in the United States. E-Verify employers verify the identity and employment eligibility of newly hired employees by electronically matching information provided by employees on the Form I-9, Employment Eligibility

Verification, against records available to the Social Security Administration (SSA) and the Department of Homeland Security (DHS).

**Force Majeure Event** shall mean a delay caused by any national or general strikes (but excluding strikes relating solely to the work force of Company, Consultant or a Subcontractor), fires, riots, acts of God, acts of the public enemy, floods, acts of terrorism, unavoidable transportation accidents or embargoes, or other events which are: (i) not reasonably foreseeable as of the date the Contract was executed; and (ii) attributable to a cause beyond the control and without the fault or negligence of the Party incurring such delay.

**Material Adverse Change** or **MAC** shall mean, with respect to Consultant, if Consultant, in the reasonable opinion of Company, has experienced a material adverse change in Consultant's financial condition or Consultant's ability to fulfill its obligations under this Contract, including, but not limited to, any such change that results in its inability to satisfy the CREDIT REQUIREMENTS article or ARTICLE 9. SECURITY article, including any event or circumstance that would give Company the right to terminate for cause pursuant to the TERMINATION FOR CAUSE article.

**Net Replacement Costs** shall mean the "cost to cover" remedy available to Company in the event of a default by Consultant under this Contract. The Net Replacement Costs shall be: (i) the incremental costs incurred by Company to complete the Work itself or through use of a replacement consultant; plus (ii) a sum for additional managerial, administrative, and other reasonable costs Company incurs as a result of Consultant's default.

**Notice** shall mean a formal written communication which, pursuant to the Contract, one Party must deliver to the other in order to invoke a Contract right set forth herein.

**Personnel** shall mean the employees of Consultant or any of its agents, Subcontractors, or independent contractors who are employed to perform Work under this Contract.

**Scope of Work** shall be detailed in this Contract, including all exhibits hereto and all standards, specifications, criteria and other requirements which are incorporated by reference.

**Security Incident** shall mean any circumstance when (i) Consultant knows or reasonably believes that the confidentiality, integrity, or availability of any Company Data has been adversely impacted, including but not limited to, incidents where Company Data has been damaged, lost, corrupted, destroyed, or accessed, acquired, modified, used, or obtained by any unauthorized person, by any person in an unauthorized manner, or for an unauthorized purpose; (ii) Consultant knows or reasonably believes that an act or omission has adversely impacted the cybersecurity of the products or services provided to Company by Consultant or the physical, technical, administrative, or organizational safeguards protecting Consultant's systems or Company's systems holding Company Data; or (iii) Consultant receives any complaint, notice, or communication which relates directly or indirectly to (A) Consultant's handling of Company Data or Consultant's compliance with the data safeguards in this Agreement or applicable law in connection with Company Data or (B) the cybersecurity of the products or services provided to Company by Consultant.

**Sensitive Personnel** shall mean all Personnel with authorized unescorted physical access or cyber access to Company's CIPS Covered Assets.

**Service(s)** shall mean any labor, skill, or advice provided to Company pursuant to this Contract.

**Subcontractor** shall mean any entity or person (including subcontractors at any tier) having an agreement with Consultant or any other Subcontractor to perform a portion of Consultant's obligations under this Contract.

**Unescorted Personnel** shall mean all Personnel with authorized unescorted physical access to Company's Facilities.

**Work** shall mean all obligations, duties, requirements, and responsibilities for the successful completion of the Contract by Consultant, including furnishing of all Services, Deliverables and incidental materials and equipment in accordance with the terms and conditions set forth in the Contract.

**Workers' Compensation Laws** shall mean the statutory requirements of the state and/or federal regulations (e.g., FELA, USL&H, Jones Act) where the Work is to be performed.

**Work Site** shall mean the location or locations on Company's premises where the Work is to be performed.

## **ARTICLE 2. DESCRIPTION OF WORK**

Consultant shall perform the Work in accordance with the Scope of Work.

Except as otherwise provided in this Contract, Consultant shall be solely responsible for the means, methods, and procedures of performing the Work.

**ARTICLE 3. PERIOD OF PERFORMANCE**

Time is of the essence. Consultant shall commence performance upon execution of this Contract by Company and shall complete the Work not later than December 31, 2026, with Company's option to extend annually but no longer than December 31, 2031. Unless earlier terminated as provided herein, this Contract shall continue in effect until final completion of all Work set forth herein; provided, however, that all warranties, indemnities, insurance requirements, confidentiality obligations, or other obligations which by their own terms are intended to survive the completion of the Work shall continue in full force and effect after such date.

**ARTICLE 4. CONSIDERATION AND PAYMENT**

As full consideration for the satisfactory performance of Consultant's obligations under this Contract, Company will pay Consultant in accordance with Exhibit B.

Consultant shall invoice Company on a monthly basis, and shall submit each invoice to the Company designated representative. All invoices shall include each employee's name and skill classification responsible for Work under said invoice, hours worked on the project (billable hours), hourly rate, and a subtotal cost by skill classification. Consultant shall not bill Company for a higher skill classification than is required for the Work. Consultant shall furnish reasonable backup detail supporting each invoice including, without limitation, receipts supporting expenses that are reimbursed pursuant to ARTICLE 6. TRAVEL article. Consultant shall identify and clearly set forth on the invoice any discount for early payment.

Company will pay all undisputed invoice amounts within sixty (60) calendar days of receipt of a proper invoice and Company's acceptance of the Work. Payment shall be contingent upon Consultant's satisfactory compliance with the invoicing requirements.

Company may offset any such payment to reflect amounts owing from Consultant to Company or its subsidiaries pursuant to this Contract. In addition, Company may withhold all payments otherwise due Consultant until such time as Consultant has provided any Default Security required by this Contract.

Upon request by Company, Consultant shall also provide lien and claim releases executed by Consultant, its Subcontractors and their suppliers through the date of each invoice submitted.

**ARTICLE 5. TAXES**

The consideration to be paid under the Contract includes all taxes arising out of Consultant's performance hereunder, including without limitation state and local sales and use taxes, value-added taxes, import duties, payroll taxes, income taxes and other taxes relating to the performance of the Work.

**ARTICLE 6. TRAVEL**

If required for the Work, pre-approved expenses for travel and related expenses will be reimbursed at Consultant's cost to the extent that such expenses are supported by original receipts or invoices and are in accordance with Company's travel policy attached hereto as Exhibit G. Such expenses will be invoiced as separate line items on any applicable invoice.

**ARTICLE 7. ACCOUNTING AND AUDITING**

Consultant shall keep accurate and complete accounting records in support of any cost-based billings and claims to Company in accordance with generally accepted accounting principles. Company, or its audit representatives, shall have the right at any reasonable time or times to examine, audit, and copy the records, vouchers, and other source documents which relate to any claim for compensation other than pricing elements which are fixed in amount by this Contract. Such documents shall be available for examination, audit and reproduction for three (3) years after completion or termination of this Contract.

Consultant shall assist Company with preparing necessary audit material and will allow Company to review any work papers prepared by independent auditors as allowed by professional standards.

Audit findings by Company's representative will be considered to be final and conclusive for the period audited. Any over collections shall be returned to Company within thirty (30) calendar days from date of Notice of overcharge.

**ARTICLE 8. CREDIT REQUIREMENTS**

Consultant shall meet the requirements of either clause (i) or clause (ii) below: **(i)** Consultant maintains a senior unsecured debt rating from Standard & Poor's of BBB- or better; or **(ii)** if Consultant does not maintain a satisfactory debt rating, Consultant meets ALL of the following credit standards: a) tangible net worth ten (10) times the projected maximum liability of Consultant under this Contract; b) no change in the condition of its earnings, net worth, or working capital over the last twenty-four (24) months, which would reasonably be anticipated to impair Consultant's ability to meet its obligations under this Contract; and c) Consultant is not in default under any of its other agreements and is current on all of its financial obligations.

If requested by Company, Consultant shall within thirty (30) calendar days provide Company with copies of its most recent annual and quarterly financial statements prepared in accordance with generally accepted accounting principles.

**ARTICLE 9. SECURITY**

In the event Consultant is unable to satisfy the credit requirements set forth in the CREDIT REQUIREMENTS article at any time during the performance of the Work, or if Consultant experiences a Material Adverse Change at any time during such performance, then Consultant shall provide Company with security against defaults by Consultant under this Contract in such form and amount as may be reasonably required by Company ("Default Security"), and pursuant to such additional agreements or instruments as may be reasonably required by Company, including but not limited to letters of credit, third party guaranties, escrow accounts, labor and material payment bonds and/or performance bonds. Company may at any time, at its own discretion or pursuant to a request by Consultant, recalculate the amount of Default Security required pursuant to this Article, in which case Company shall increase or decrease the existing amount of Default Security, as appropriate. At no time shall the amount of Default Security to which Company is entitled pursuant to this Article be less than Company's Net Replacement Costs.

The terms of any letter of credit required by Company shall conform to the attached Exhibit C, as well as the requirements of this Contract and be issued by a bank acceptable to Company. The letter of credit shall provide for payment to Company of the letter of credit stated amount if Consultant defaults under the terms of this Contract. Company shall have the right to call the entire amount of the letter of credit if Consultant has not renewed the letter of credit thirty (30) calendar days prior to its expiration.

Consultant's expenses of complying with additional Default Security obligations as set forth in this Article shall be borne by Consultant.

**ARTICLE 10. WITHHOLDING PAYMENT**

Company may, without limiting any other rights or remedies Company may have, withhold from payments amounts which reflect the reasonable cost to repair or replace non-conforming or defective Work or the value of any claim which Company has against Consultant under the Contract. Company may also retain from any payment sufficient funds to discharge any delinquent accounts of Consultant for which liens on Company's property have been or can be filed, and Company may at any time pay therefrom for Consultant's account such amounts as are, in the reasonable opinion of Company, due thereon, including any sums due under any federal or state law.

**ARTICLE 11. DESIGNATED REPRESENTATIVES AND NOTICES**

Prior to the commencement of the Work, each Party shall designate a representative authorized to act on its respective behalf and shall advise the other Party in writing of the name, address and telephone number of such designated representative, and shall inform the other Party of any subsequent change in such designation. All communications relating to the day-to-day activities under this Contract shall be exchanged between such designated representatives through any agreed form of communication.

Any formal Notice required to be delivered in writing under the terms of this Contract shall be delivered to the representative of the other Party as designated below. All formal written Notices shall be: (i) hand delivered; (ii) deposited in the mail, properly stamped with the required postage; (iii) sent via registered or certified mail; or (iv) sent via recognized overnight courier service. The Parties' addresses for purposes of Notice shall be as set forth below:

If to Company: \_\_\_\_\_

If to Consultant: \_\_\_\_\_

[[ Name (Primary First Party) ]]

[[ Name (Primary Second Party) ]]

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

Attention: \_\_\_\_\_

Email: \_\_\_\_\_

Email: \_\_\_\_\_

Telephone: \_\_\_\_\_

Telephone: \_\_\_\_\_

Either Party may change the name or address of the designated recipient of Notices by delivery of a Notice of such change as provided for in this Article.

Requested changes to Consultant’s banking information must be independently verified with Consultant and may take up to 60 days to process. Company shall continue to use Consultant’s previous banking information during the verification period unless an exception is approved by Company’s Chief Financial Officer or designee. Company shall not be liable for late fees or interest on any late or missed payments due to Consultant’s requested changes that could not be reasonably verified by Company. Changes to Consultant information will be confirmed by Company with the following Consultant staff:

Consultant Treasurer:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

Consultant Website: \_\_\_\_\_

Consultant Senior Manager:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

Consultant Senior Manager:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

**ARTICLE 12. EXAMINATION OF WORK AND PROGRESS REPORTS**

Consultant shall submit periodic progress reports as requested by Company. Company, its agents or representatives may visit Consultant’s office at any reasonable time to determine the status of ongoing Work required by this Contract.

All Work will be subject to examination at any reasonable time or times by Company, which shall have the right to reject unsatisfactory Work. Neither examination of Work nor the lack of same nor acceptance of the Work by Company nor payment therefor shall relieve Consultant from any of its obligations under this Contract.

**ARTICLE 13. PROFESSIONAL RESPONSIBILITY**

Consultant shall perform the Work in accordance with the Scope of Work and using the standards of care, skill, and diligence normally provided by a professional in the performance of similar Services, and shall comply with all laws, codes and standards applicable to the Work.

In the event of Consultant's failure to do so, Consultant shall, upon Notice by Company, promptly reperform the Work and correct the defect at Consultant's sole cost. Consultant's obligation to correct and reperform its Work shall be in addition to, and not in lieu of, any other right that Company may have.

**ARTICLE 14. CHANGES**

Company may at any time in writing direct changes and/or additions within the general scope of this Contract or direct the omission of or variation in Work. If any such direction results in a material change in the amount or character of the Work, an equitable adjustment in the Contract price and/or other such provisions of this Contract as may be affected shall be made and this Contract shall be modified in writing accordingly. Any claim by Consultant for an adjustment under this Article shall be processed in accordance with the provisions of the CLAIM NOTICE AND RESOLUTION PROCEDURE article.

No change shall be binding upon Company until a change order is executed by an authorized representative of Company which expressly states that it constitutes a change order to this Contract. The issuance of information, advice, approvals, or instructions by anyone other than the authorized Company representative shall not constitute an authorized change order pursuant to this Article.

**ARTICLE 15. INSURANCE**

Without limiting any liabilities or any other obligations of Consultant, Consultant shall, prior to commencing Work, secure and continuously carry with insurers having an A.M. Best Insurance Reports rating of A-:VII or better such insurance as will protect Consultant from liability and claims for injuries and damages which may arise out of or result from Consultant's performance and operations under the Contract and for which Consultant may be legally liable, whether such performance and operations are by Consultant or a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Consultant shall insure the risks associated with the Work and this Contract with at least the minimum coverage and limits as set forth below:

Workers' Compensation. Consultant shall comply with all applicable workers' compensation laws and shall furnish proof thereof satisfactory to Company prior to commencing Work. Consultant also shall include the alternate employer endorsement with Company listed as alternate employer.

Employers' Liability. Consultant shall maintain employers' liability insurance with a minimum single limit of \$1,000,000 each accident, \$1,000,000 disease each employee, and \$1,000,000 disease policy limit, and covering locations of all work places involved in this Contract.

Commercial General Liability. Consultant shall maintain commercial general liability insurance on the most recently approved ISO policy form, or its functional equivalent, written on an occurrence basis, with limits not less than \$1,000,000 per occurrence/\$2,000,000 general aggregate (on a per location and/or per job basis) and shall include, without sublimit, the following coverage:

- a. Premises and operations coverage
- b. No independent contractor's exclusion
- c. Blanket contractual liability
- d. Products and completed operations coverage through the statute of limitations or statute of repose, whichever is longer, and including any tolling extension of each state
- e. No exclusion for explosion, collapse, and underground property damage
- f. Broad form property damage liability
- g. Personal and advertising injury liability, with the contractual exclusion removed
- h. Sudden and accidental pollution liability, if actions under the scope of the work can result in a pollution event
- i. No subsidence or earth movement exclusion
- j. Liability arising from wildfire
- k. Operations on or adjacent to a railroad or railroad right of way, as applicable

Business Automobile Liability. Consultant shall maintain business automobile liability insurance on the most recently approved ISO policy form, or its functional equivalent, with a minimum single limit of \$1,000,000 each accident for bodily



injury and property damage including pollution liability resulting from an accident, with respect to Consultant's vehicles whether owned, leased, hired or non-owned, assigned to or used in the performance of the Work. If the scope of work includes the transport of pollutants or can result in an environmental restitution obligation, the automobile liability policy will include pollution liability coverage equivalent to that provided under the ISO Pollution Liability Broadened Coverage for Covered Autos endorsement (CA9948) and Motor Carrier Act endorsement (MCS90) shall be attached.

Umbrella or Excess Liability. Consultant shall maintain umbrella or excess liability insurance with a minimum limit of \$5,000,000 each occurrence/aggregate on a following form basis and include drop-down coverage in the event the underlying limits are eroded, to be excess of the insurance coverage and limits required in employers' liability insurance, commercial general liability insurance and business automobile liability insurance above. Consultant shall provide Notice to Company, if at any time the full umbrella limit required under this Contract is not available, and will purchase additional limits, if requested by Company.

The following additional coverages are required if the Work or Services meet the requirements set forth in the description of the coverage.

Network Security & Privacy Liability. If the Work or Services under the Contract involves the rendering of information technology services including, but not limited to: software, software or hardware or systems development or consulting services; internet/application services (e.g., web hosting); providing content; connections to systems, technology or network(s); or if Consultant in any way collects, obtains, maintains or in any way accesses or uses Confidential Information or Data, then Consultant, and its Subcontractors of any tier shall maintain Network Security & Privacy Liability coverage, including Professional Errors & Omissions, throughout the term of this Contract and for a period of two (2) years thereafter, with a minimum required limit of \$5,000,000 each claim.

Transit and Installation. If the Consultant will engage in air, land and water shipments or installation of plant, equipment, machinery, components, supplies and materials, Consultant shall maintain transit and installation insurance covering all worldwide air, land and water shipments, and installation of plant, equipment, machinery, components, supplies and materials, and shall include loading and unloading and offsite storage if the Consultant or Subcontractor will perform.. Coverage shall attach at Consultant's point of shipment and continue until installed, constructed or rigged by Consultant or its Subcontractors in conjunction with this Work. Consultant shall have obtained such transit or installation coverage on or prior to the date on which the exposure to the risk arises. Company will be named loss payee or additional named insured for its interest in the covered property.

Consultant's Pollution Liability. If the Work or Services can cause pollution, Consultant shall maintain contractor's pollution liability insurance on the most recently approved ISO policy form, or its functional equivalent, with a minimum limit of \$3,000,000 per occurrence and \$6,000,000 annual aggregate.

Consultant's Professional and Protective Indemnity Liability. If the Consultant provides professional services such as advisory, architectural, engineering, environmental, design and survey services, Consultant shall maintain contractor's professional and protective indemnity liability insurance with a minimum limit of \$5,000,000 per claim and \$5,000,000 project aggregate. Coverage shall include all claims associated with professional services rendered by or on behalf of lead contractor.

Rigger or Crane Operator Liability. If the Consultant will be using a crane to perform the Work, Consultant will maintain rigger or crane operator liability coverage with limits of \$5 million, which may be met with subcontractors insurance.

Company does not represent that the insurance coverage specified herein (whether in scope of coverage or amounts of coverage) are adequate to protect the obligations of Consultant, and Consultant shall be solely responsible for any deficiencies thereof.

Except for workers' compensation and professional liability, the policies required herein shall include provisions or endorsements naming Company, its affiliates, parent organization, divisions, subsidiary companies, co-lessees, co-venturers, and the officers, directors, agents, employees, servants and insurers of the same as additional insured. The commercial general liability additional insured endorsement shall be ISO Form CG 20 10 and CG 20 37 or their factual equivalent, including additional insured coverage for both on-going and completed operations, and containing no language limiting the coverage to the minimum amount required by a written agreement.

All policies required by this Contract shall include: (i) provisions that such insurance is primary insurance with respect to the interests of Company and that any other insurance maintained by Company is excess and not contributory insurance with the insurance required hereunder, (ii) provisions that the policy contain a cross liability or severability

of interest clause or endorsement in the commercial general liability, automobile liability and umbrella or excess liability coverage; and (iii) provisions that such policies not be canceled or their limits of liability reduced without: (a) ten (10) days prior written Notice to Company if canceled for nonpayment of premium; or (b) thirty (30) days prior written Notice to Company if canceled for any other reason. Unless prohibited by applicable law, all required insurance policies shall contain provisions that the insurer will have no right of recovery or subrogation against Company, its parent, divisions, affiliates, subsidiary companies, co-lessees or co-venturers, agents, directors, officers, employees, servants, and insurers, it being the intention of the Parties that the insurance as effected shall protect all of the above-referenced entities evidenced by waiver of subrogation wording.

Consultant is solely responsible for any deductibles or self-insured retentions associated with all policies required by this Contract. Deductibles or self-insured retentions shall not exceed One Hundred Thousand Dollars (\$100,000) without prior written approval of Company.

A certificate of insurance shall be furnished to Company confirming the issuance of such insurance prior to commencement of Work by Consultant and prior to the renewal or replacement of any required policy. Copies of additional insured, waiver of subrogation, and primary/non-contributory endorsements or excerpts of applicable policy provisions shall also be provided. Should a loss arise during the term of the Contract that may give rise to a claim against Consultant and/or Company as an additional insured, Consultant shall deliver to Company (or cause to be delivered to Company) certified copies of such insurance policies.

Consultant shall require Subcontractors who perform Work at the Work Site to carry liability insurance (auto, commercial general liability and excess), contractor's pollution liability, contractor's professional and protective indemnity liability, and workers' compensation/employer's liability insurance commensurate with their respective scopes of work. Subcontractors shall be contractually required to include Company as an additional insured for ongoing and completed operations with regards to liability insurance (auto, commercial general liability and excess), and shall provide waivers of subrogation with regards to all policies required herein. Consultant shall remain responsible for any claims, lawsuits, losses and expenses, including defense costs that exceed any of its Subcontractors' insurance limits or for uninsured claims or losses.

Should Consultant or its Subcontractors fail to provide or maintain any of the insurance coverage referred to in this Contract, Company shall have the right, but not the obligation, to provide or maintain such coverage, or coverage affording equivalent protection, at Consultant's sole expense, either by direct charge or set-off.

#### **ARTICLE 16. INDEMNIFICATION**

To the fullest extent permitted by law, Consultant specifically and expressly agrees to indemnify, defend, protect, and hold harmless Company, all affiliates, and their officers, directors, employees and agents (hereinafter collectively "Indemnitees") against and from any and all claims, demands, suits, losses, judgments, costs, expenses and damages of every kind and description, including attorneys' fees and/or litigation expenses, brought or made against or incurred by any of the Indemnitees resulting from or arising out of, in whole or in part, the acts, errors, omissions, or willful misconduct of Consultant, its employees, agents, representatives or any Personnel of any tier, their employees, agents or representatives in the performance or nonperformance of Consultant's obligations under this Contract or in any way related to this Contract. The indemnity obligations under this Article shall include without limitation:

- a. Loss of or damage to any property of Company, Consultant or any third party;
- b. Bodily injury to, or death of any person(s), including without limitation employees of Company, or of Consultant or its Subcontractors of any tier; and
- c. Claims arising out of workers' compensation, unemployment compensation, disability, or similar such laws or obligations applicable to employees of Consultant or its Personnel of any tier, including claims that such Consultant or Personnel of any tier are employees of Company.

Consultant's indemnity obligations owing to Indemnitees under this Article are not limited by any applicable insurance coverage identified in ARTICLE 15. INSURANCE article. Consultant's indemnity obligation under this Article shall not extend to the extent any liability is directly caused by the sole negligence of any of the Indemnitees.

For Work performed in the States of Oregon and Washington, Consultant's indemnity obligations under this Article shall extend only to liability for damage arising out of death or bodily injury to persons or damage to property to the extent that the death or bodily injury to persons or damage to property arises out of the fault of Consultant, or the fault of Consultant's agents, representatives or Subcontractors.

To the extent applicable, Consultant specifically and expressly waives any immunity under either Industrial Insurance, Title 51, RCW, or Workers' Compensation Law, Chapter 656, ORS, and acknowledges that this waiver was mutually negotiated by the Parties herein.

The invalidity, in whole or in part, of any of the foregoing paragraphs will not affect the remainder of such paragraph or any other paragraphs in this Article.

**ARTICLE 17. CHANGES IN PERSONNEL**

Prior to: (i) changing or replacing any "key" Personnel, as identified in this Contract or in Consultant's proposal for the Work; or (ii) changing any classification, grade or rate of any Personnel working on the Contract, Consultant shall notify Company of the proposed replacement/change before executing such replacement/change, and obtain Company's prior written approval to such replacement/change. Any replacement Personnel shall have the capabilities equivalent to or better than the person replaced. If Consultant replaces or changes the classification, grade or rate of any person for performance of the Work described in the Contract, without the express approval of Company, then Consultant shall bear all costs associated with any and all such replacements and changes, and said costs shall not be reimbursable from Company.

**ARTICLE 18. CONSULTANT'S PERSONNEL; DRUGS, ALCOHOL AND FIREARMS**

Consultant shall employ in the performance of the Work only persons qualified for the same. Consultant shall at all times enforce strict discipline and good order among its employees and the employees of any Subcontractor of any tier. Consultant shall not permit or allow the introduction or use of any firearms, illegal drugs or intoxicating liquor upon the Work Site under this Contract, or upon any of the grounds occupied, controlled, or used by Consultant in the performance of the Work. Consultant shall immediately remove from the Work, whenever requested by Company, any person considered by Company to be incompetent, insubordinate, careless, disorderly, in violation of the above restriction on firearms, illegal drugs or intoxicating liquor, or under the influence of illegal drugs or intoxicating liquor, and such person shall not again be employed in the performance of the Work herein without the consent of Company.

**ARTICLE 19. ACCESS TO COMPANY'S FACILITIES**

19.1 Requirements for Access

Access to Company controlled areas is granted on an as-needed basis only in accordance with Company's internal badge and access policies. Company shall specify in the Release or Scope of Work whether or not the Work under this Contract requires either: (i) unescorted physical access to Company's Facilities; or (ii) local or remote access to Company's Cyber Assets. For all Personnel who require either such access, Consultant shall:

- a. Conduct, at Consultant's cost and expense, a Personnel risk assessment to include at a minimum an identity verification, E-Verify and seven-year criminal background check for the current residence and past locations of residence of all Personnel requiring access. All background checks will be conducted in accordance with federal, state, provincial and local laws, and subject to existing collective bargaining unit agreements or other agreements, if any. A background check completed within two (2) years prior to the date the Consultant signed a Contractor/Vendor Information Form for each such person will be considered valid. Following the initial background check, updates shall be performed no less frequently than every seven (7) years or upon request by Company. In the event Company notifies Consultant of impending expiration of a background check, Consultant shall provide an updated Contractor/Vendor Information Form reflecting a refreshed background check within twenty (20) days of receipt of the Notice in order to avoid revocation of such person's access. An appropriate authorization form must be signed by each of the Personnel prior to a background check being conducted, acknowledging that the background check is being conducted and authorizing the information obtained to be provided to Company;
- b. Ensure that Personnel have passed the background checks outlined in subsection 19.1(a) prior to requesting access to Company's Facilities and/or Cyber Assets. In the event any such person: (i) is currently under indictment for a crime punishable by imprisonment for a term exceeding one year; (ii) has been convicted (within the past seven years) in any court of a crime punishable by imprisonment for a term exceeding one year; (iii) is currently a fugitive of justice; or (iv) is an alien illegally or unlawfully in the United States, such person shall be considered a "restricted person" and may not be granted access without prior written consent from Company. In the event any such person's background check reveals any residency gap of six (6) consecutive months or more, Consultant shall review, evaluate, and document any such residency gap

- to ensure that it does not pose a risk to Company's Facilities or Cyber Assets, prior to making a determination that Personnel have passed the background check;
- c. Ensure that Personnel complete Company provided or approved training prior to requesting access;
  - d. Ensure that Personnel have passed Consultant's drug and alcohol exam and are in compliance with Consultant's substance abuse/drug and alcohol policy as outlined in the SUBSTANCE ABUSE; DRUG AND ALCOHOL POLICY article; and
  - e. Keep accurate and detailed documentation to confirm completion dates for background checks and all required training (initial and annual training, to the extent applicable), and certify to Company such documentation by completing a Contractor/Vendor Information Form, attached as Exhibit A, Appendix 1, hereto, for each person who will have access. Company has the right to audit Consultant's records supporting each Contractor/Vendor Information Form submitted to Company and to verify that the requisite background checks and training were performed. Consultant shall provide Company with all requested records supporting Contractor/Vendor Information forms within a reasonable time after receiving such a request, and in the form requested by Company, but not longer than three (3) business days following the date of such request.
  - f. Notify the company in a timely manner of termination or change in status removing the need for access. In the case of Sensitive Personnel and/or involuntary termination, notification must be immediate. In all other cases, notification must be within one business day. The Enterprise Service Desk is available 24 hours a day by calling either (503) 813-5555 or (801) 220-5555.

Consultant shall not allow any person who has not met the foregoing requirements of this subsection 19.1 to perform Work, unless Consultant has received prior written consent from Company.

#### 19.2 Additional Access Requirements Specific to Sensitive Personnel

In addition to the access requirements outlined in subsection 19.1, with respect to all Sensitive Personnel, Consultant also shall:

- a. Ensure that Sensitive Personnel (and any Personnel with access to BCSI) are informed of and comply with Company's BCSI requirements contained in any confidentiality agreement previously executed by Consultant as well as the BCSI requirements set forth herein in the CONFIDENTIAL INFORMATION; NONDISCLOSURE article; and
- b. In addition to the initial training requirement outlined in subsection 19.1(c), ensure that Sensitive Personnel complete annual Company provided or approved CIPS compliance training within Company's prescribed training window.

Consultant shall not allow any person who has not met the foregoing requirements of this subsection 19.2 to perform Work, unless Consultant has received prior written consent from Company.

#### **ARTICLE 20. SUBSTANCE ABUSE; DRUG AND ALCOHOL POLICY**

- a. Consultant shall have and ensure compliance with a substance abuse/drug and alcohol policy that complies with all applicable federal, state and/or local statutes or regulations. Consultant shall subject each of the Personnel to a drug test at Consultant's sole cost and expense. Such drug test shall, at a minimum, be a five (5) Panel Drug Test, which should be recognizable at testing labs as a "SamHSA5 panel at 50NG – THC cut-off".
- b. For any Personnel who have had a recent drug test, such recent drug test shall be documented pursuant to the previous Article. Consultant warrants that Consultant and the Personnel are in compliance with Consultant's substance abuse/drug and alcohol policy.
- c. During the course of Work performed under this Contract, Consultant shall keep accurate and detailed documentation of its drug policy and Personnel drug tests, which it shall submit to Company upon request.
- d. Consultant shall designate one person to be responsible for compliance with the requirements of this Article and all reporting and inquiries shall be made to a duly authorized representative of Company in a timely manner.

#### **ARTICLE 21. DEPARTMENT OF TRANSPORTATION**

Consultant shall ensure Department of Transportation compliance, including but not limited to valid driver's license, equipment inspections, hours of service and all appropriate documentation for any Personnel who may drive while on assignment to Company.

**ARTICLE 22. BUSINESS ETHICS**

Consultant, its employees, officers, agents, representatives and Subcontractors shall at all times maintain the highest ethical standards and avoid conflicts of interest in the performance of Consultant's obligations under this Contract. In conjunction with its performance of the Work, Consultant and its employees, officers, agents and representatives shall comply with, and cause its Subcontractors and their respective employees, officers, agents and representatives to comply with, all applicable laws, statutes, regulations and other requirements prohibiting bribery, corruption, kick-backs or similar unethical practices including, without limitation, the United States Foreign Corrupt Practices Act, the United Kingdom Bribery Act 2010, and the Company Code of Business Conduct. Without limiting the generality of the foregoing, Consultant specifically represents and warrants that neither Consultant nor any Subcontractor employees, officers, representatives or other agents of Consultant have made or will make any payment, or have given or will give anything of value, in either case to any government official (including any officer or employee of any governmental authority) to influence his, her, or its decision or to gain any other advantage for Company or Consultant in connection with the Work to be performed hereunder. Consultant shall maintain and cause to be maintained effective accounting procedures and internal controls necessary to record all expenditures in connection with this Contract and to verify Consultant's compliance with this Article. Company shall be permitted to audit such records as reasonably necessary to confirm Consultant's compliance with this Article. Consultant shall immediately provide notice to Company of any facts, circumstances or allegations that constitute or might constitute a breach of this Article and shall cooperate with Company's subsequent investigation of such matters. Consultant shall indemnify and hold Company harmless from all fines, penalties, expenses or other losses sustained by Company as a result of Consultant's breach of this provision. The Parties specifically acknowledge that Consultant's failure to comply with the requirements of this Article shall constitute a condition of default under this Contract.

**ARTICLE 23. REVIEW OF DELIVERABLES**

Review by Company of any Deliverables submitted by Consultant shall be solely for the benefit of Company and shall not relieve Consultant of its responsibility to comply with all requirements of the Contract and for the accuracy of the Deliverables.

**ARTICLE 24. SAFETY AND SITE REGULATIONS**

Consultant shall be solely responsible for being aware of and initiating, maintaining, and supervising compliance with all safety laws, regulations, precautions, and programs in connection with the performance of this Contract. Consultant shall, also make itself aware of and adhere to all applicable Company Work Site regulations including, without limitation, environmental protection, loss control, dust control, safety, and security. As a continuing condition to performing Work at any Work Site, Consultant may be required to maintain a subscription with Company's third-party safety and loss information reporting service (the "Administrator"). The Administrator manages safety ratings and insurance certificates of Company's contractors. Consultant will provide safety related information as requested by the Administrator including Consultant's safety programs, OSHA documents, experience modification rates (EMR) and an insurance and safety questionnaire. A variance or exclusion to the subscription and information requirements under this paragraph may be granted by the Company's Designated Representative.

**ARTICLE 25. PROGRESS MEETINGS**

Company will conduct weekly, or at other regular intervals as agreed by both Parties, meetings with Consultant to discuss the performance of the Work.

**ARTICLE 26. COOPERATION WITH OTHERS**

Consultant shall fully cooperate and coordinate with Company employees and other contractors who may be awarded other work. Consultant shall not commit or permit any act which will interfere with the performance of work by Company employees or other contractors.

**ARTICLE 27. LIENS**

Consultant shall: (i) indemnify, defend, and hold harmless Company from all laborers', materialmen's, and mechanics' liens, or claims made or filed upon the Work Site or other Company property on account of any Work or Service performed or furnished by Consultant's Subcontractors of any tier in connection with the Work (including any liens or claims based on the failure or alleged failure to maintain a payment bond); and (ii) keep Company property free and clear of all liens or claims arising from the performance of any Work covered by this Contract by Consultant or its Subcontractors of any tier.

If any lien arising out of this Contract is filed before or after Work is completed, Consultant, within ten (10) calendar days after receiving from Company written Notice of such lien, shall obtain release of or otherwise satisfy such lien. If Consultant fails to do so, Company may take such steps and make such expenditures as in its discretion it deems advisable to obtain release of or otherwise satisfy any such lien or liens, and Consultant shall upon demand reimburse Company for all costs incurred and expenditures made by Company in obtaining such release or satisfaction. If any non-payment claim is made directly against Company arising out of non-payment to any Subcontractor (including any liens or claims based on the failure or alleged failure to maintain a payment bond), Consultant shall assume the defense of such claim within ten (10) calendar days after receiving from Company written Notice of such claim. If Consultant fails to do so, Consultant shall upon demand reimburse Company for all costs incurred and expenditures made by Company to satisfy such claim.

Consultant's obligation to indemnify, defend, and hold harmless Company from liens shall not in any way be rendered unenforceable, or altered, amended, eliminated or otherwise conditioned by any laws and regulations related to processing such liens. Company shall have no obligation to deliver a copy of any notice of claim or right to a lien to Consultant or any other person or entity.

**ARTICLE 28. CONFLICTS, ERRORS, OMISSIONS, OR DISCREPANCIES IN CONTRACT DOCUMENTS**

Consultant shall advise Company in writing of all conflicts, errors, omissions, or discrepancies among the various documents comprising this Contract immediately upon discovery and prior to Consultant's performing the affected Work. Company shall resolve such conflicts and such resolution shall be final. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be considered as if shown or mentioned in both.

**ARTICLE 29. CLAIM NOTICE AND RESOLUTION PROCEDURE**

In the event Consultant has a claim or request for a time extension, additional compensation, any other adjustment of the Contract terms, or any dispute arising under the Contract (hereinafter "Claim"), Consultant shall provide Company with Notice of such Claim within five (5) business days following the occurrence of the event giving rise to the Claim. Consultant's failure to give Notice as required will constitute a waiver of all of Consultant's rights with respect to the Claim.

As soon as practicable after Claim notification, Consultant shall submit the Claim to Company with all supporting information and documentation. Consultant shall also respond promptly to all Company inquiries about the Claim and its basis.

Any Claim that is not disposed of by mutual agreement between the Parties shall be decided by Company, which shall provide a written decision to Consultant. Such decision shall be final unless Consultant, within thirty (30) days after such receipt of Company's decision, provides to Company a written protest, stating clearly and in detail the basis thereof. Consultant's failure to protest Company's decision within that time period shall constitute a waiver by Consultant of its right to dispute the decision. Even if a Claim arises, Consultant shall continue its performance of this Contract.

**ARTICLE 30. SUSPENSION OF WORK**

Company may, by written Notice, direct Consultant to suspend performance of any or all of the Work for a specified period of time. Upon receipt of such Notice to suspend, Consultant shall: (i) discontinue Work; (ii) place no further orders or subcontracts; (iii) suspend all orders and subcontracts; (iv) protect and maintain the Work; and (v) otherwise mitigate Company's costs and liabilities for those areas of Work suspended. Company shall pay Consultant an equitable amount for incremental costs incurred by Consultant as a result of the suspension and equitably extend any guaranteed completion dates to the extent such suspension adversely impacts Consultant's critical path to completion; provided, however, that if the suspension is due to Consultant's failure to comply with the Contract, no such payment shall be made or extension granted.

**ARTICLE 31. TERMINATION FOR CONVENIENCE**

Company may terminate this Contract in whole or in part at any time without cause prior to its completion by sending to Consultant written Notice of such termination. Upon such termination, Company shall pay to Consultant, in full satisfaction and discharge of all liabilities and obligations owed Consultant, an equitable amount for all Work satisfactorily performed by Consultant as of the date of termination, plus an equitable termination fee to address

Subcontractor termination charges and other reasonable out-of-pocket costs demonstrably incurred by Consultant as the result of the termination provided that such costs cannot be reasonably mitigated. Company shall not be liable for anticipated profits, costs or overhead based upon Work not yet performed as of the date of termination.

**ARTICLE 32. TERMINATION FOR CAUSE**

32.1 For purposes of this Contract, a default by Consultant shall be the occurrence of any of the following:

- a. A breach by Consultant of any of its material obligations under the Contract, if such breach continues uncured for a period of seven (7) days after receipt of Notice from Company, unless Company agrees, in writing, to grant Consultant an extension of such seven (7) day period for a period of time to be determined at Company's sole discretion. In such circumstance, Company shall prescribe the new cure period in writing. For purposes of the Contract, a default by Consultant shall be deemed to include, without limitation, Consultant's refusal or neglect to supply sufficient and properly skilled Personnel, materials or Deliverables of the proper quality or quantity, or equipment necessary to perform the Work or Services described in the Contract properly, or Consultant's failure in any respect to prosecute the Work or Services described in the Contract or any part thereof with promptness, diligence and in accordance with all of the material provisions hereof;
- b. Consultant fails in any material respect to comply with any laws, ordinances or regulations pertaining to safety or environmental compliance;
- c. A determination that any representation, statement or warranty made by Consultant in this Contract or any other statement, report or document which Consultant is required to furnish to Company, was false or misleading in any material respect;
- d. The occurrence of any of the following: (i) the filing by or against Consultant of a proceeding under any bankruptcy or similar law, unless such proceeding is dismissed within thirty (30) calendar days from the date of filing; (ii) the making by Consultant of any assignment for the benefit of creditors; (iii) the filing by or against Consultant for a proceeding for dissolution or liquidation, unless such proceeding is dismissed within thirty (30) calendar days from the date of filing; (iv) the appointment of or the application for the appointment of a receiver, trustee, or custodian for any material part of Consultant's assets unless such appointment is revoked or dismissed within thirty (30) calendar days from the date thereof; (v) the attempt by Consultant to make any adjustment, settlement, or extension of its debts with its creditors generally; (vi) the insolvency of Consultant or; (vii) the filing or recording of a notice of lien or the issuance or the obtaining of a levy of execution upon or against a material portion of Consultant's assets, unless such lien or levy of execution is dissolved within thirty (30) calendar days from the date thereof; or
- e. A Material Adverse Change has occurred with respect to Consultant and Consultant fails to provide such performance assurances as are reasonably requested by Company, including without limitation the posting of Default Security pursuant to ARTICLE 9. SECURITY article.

32.2 Upon the occurrence of any such default, following the applicable process described in this Article, Company shall be entitled upon written Notice to Consultant and without notice to Consultant's sureties and without limiting any of Company's other rights or remedies, to terminate this Contract or Consultant's right to proceed with that portion of the Work affected by any such default and collect the Net Replacement Costs incurred to complete the Work.

32.3 Upon the occurrence of any such default, Company shall be entitled to make one or more draws against any Default Security as may be provided by Consultant hereunder.

32.4 Upon the occurrence of any such default, Company shall be entitled to pursue any and all other rights and remedies that it may have against Consultant under this Contract or at law or in equity.

32.5 In the event of a full or partial termination under this Article, Company may, for the purpose of completing the Work or enforcing these provisions, take possession of all completed and in-process Deliverables use them or may finish the Work by whatever method it may deem expedient including: (i) Company may hire a replacement contractor or contractors to complete the remaining Work that Consultant was otherwise obligated to complete under the Contract using such form of agreement as Company may deem advisable; or (ii) Company may itself provide any labor or materials to complete the Work.

32.6 All rights and remedies provided in this Article are cumulative, and are not exclusive of any other rights or remedies that may be available, whether provided by law, equity, statute, in any other agreement between the

Parties or otherwise. Upon the occurrence of any such default, following the applicable process described in this Article, Company shall be entitled to pursue any and all other rights and remedies, including without limitation damages, that Company may have against Consultant under this Contract or at law or in equity.

### **ARTICLE 33. DELAYS**

**Force Majeure.** Neither Party shall be liable for delays caused by a Force Majeure Event; provided, however, that both Parties agree to seek to mitigate the potential impact of any such delay. Any delay attributable to a Force Majeure Event shall not be the basis for a request for additional compensation. In the event of any such delay, the required completion date(s) may be extended for a reasonable period not exceeding the time actually lost by reason of the Force Majeure Event.

**Company-Caused Delay.** If Consultant is actually delayed in its performance of the Work by the actions or omissions of Company (excluding the Company's good faith exercise of rights and remedies provided under the Contract), or by changes ordered with respect to the Work, and if Consultant is able to prove that it has used all reasonable means to avoid or minimize the effects of the delay, then, as Consultant's sole remedy, Consultant's guaranteed completion dates shall be equitably adjusted to reflect the impacts of such Company-caused delays. No adjustment under this Article shall be made for any delay to the extent that it is caused or contributed to by Consultant or performance would have otherwise been delayed by any other cause, including the fault or negligence of Consultant. Company may determine whether Consultant has met its burden described in this Article either before or after the completion deadline. If before the completion deadline, Company determines Consultant has met its burden as described in this Article, then Company may issue a written change order to extend the schedule. If after the completion deadline, Company determines Consultant has met its burden described in this Article, then Company may extend the completion deadline and thereby relieve Consultant of the obligation to pay liquidated damages.

**Consultant-Caused Delays.** Any Work that is not delivered in accordance with the Scope of Work may constitute a default to the extent set forth in the terms and conditions of this Contract, provided that the delay is not related to either a Force Majeure Event or Company-caused delay.

**Request For Time Extension.** Any request for time extension shall be made in accordance with the CLAIM NOTICE AND RESOLUTION PROCEDURE article.

### **ARTICLE 34. COMPLIANCE WITH LAWS**

Consultant shall at all times comply with all laws, statutes, regulations, rules, executive orders, ordinances, codes, and standards applicable to Consultant's performance of the Work including, without limitation, those governing health and safety, wages, hours, employment of minors, desegregation and employment discrimination, as each may be applicable to the Work performed hereunder, and based on total anticipated dollar value of this Contract. Consultant further confirms that its employees and the employees of all Subcontractors employed under the Contract may legally work in the United States.

**Without limiting the generality of the foregoing, Consultant and any Subcontractors shall abide by the requirements of 41 CFR §§60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, national origin or discussion of compensation. Moreover, these regulations require that covered prime contractors and Subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. Consultant and any Subcontractors shall also abide by the requirements of Executive Order 11246, as amended, to develop and maintain a written affirmative action program (AAP) and Executive Orders 11625 and 13170 (utilization of disadvantaged business enterprises) and the Small Business Act. To the extent applicable, the employee notice requirements set forth in 29 CFR Part 471, Appendix A to Subpart A, are hereby incorporated by reference into this Contract.**

Consultant shall indemnify, defend and hold harmless Company, its directors, officers, employees and agents from all losses, costs and damages by reason of any violation thereof and from any liability, including without limitation fines, penalties and other costs arising out of Consultant's failure to so comply.



### **ARTICLE 35. INDEPENDENT CONTRACTOR**

Consultant is an independent contractor and all persons employed by Consultant in connection herewith shall be employees of Consultant and not employees of Company in any respect. Consultant shall maintain complete control over Consultant's employees and Subcontractors.

### **ARTICLE 36. RELEASE OF INFORMATION; ADVERTISING AND PROMOTION**

Consultant shall not publish, release, disclose, or announce to any member of the public, press, official body, or any other third party any information concerning this Contract and/or the Work, or any part thereof, without the express prior written consent of Company, except as required by law. Neither the names of Company, nor the Work Site shall be used in any advertising or other promotional context by Consultant without the express prior written consent of Company.

### **ARTICLE 37. CONFIDENTIAL INFORMATION; NONDISCLOSURE**

**BES Cyber System Information.** Confidential Information of Company labeled as BCSI shall be protected consistent with the following requirements: (a) BCSI shall be protected at all times, either by appropriate storage or having it under the personal observation and control of a person authorized to receive it; (b) each person who works with protected BCSI is personally responsible for taking proper precautions to ensure that unauthorized persons do not gain access to it; (c) reasonable steps shall be taken to minimize the risks of access to BCSI by unauthorized personnel (when not in use, BCSI shall be secured in a secure container, such as a locked desk, file cabinet or facility where security is provided); (d) documents or material containing BCSI may be reproduced to the minimum extent necessary, consistent with the need to carry out the Work, provided that the reproduced material is marked and protected in the same manner as the original material; (e) material containing BCSI should be disposed of through secured shredding receptacles or other secured document destruction methods; (f) BCSI shall be transmitted only by the following means: (i) hand delivery; (ii) United States first class, express, certified or registered mail, bonded courier, (iii) secure electronic means with NIST- or ISO-compliant encryption; and (g) documents or material containing BCSI shall be returned to Company or certified destroyed upon completion of the Work..

**Nondisclosure.** Consultant agrees that it will not disclose Confidential Information, directly or indirectly, under any circumstances or by any means, to any third person without the express written consent of Company.

**Nonuse.** Consultant further agrees that it will not use Confidential Information except as may be necessary to perform the Work called for by this Contract.

**Protection.** Confidential Information will be made available by Consultant to its employees only on a "need to know" basis and only after notifying such employees of the confidential nature of the information and after having obligated them to the nonuse and nondisclosure obligations of this Contract. Consultant agrees to take all reasonable precautions to protect the confidentiality of Confidential Information and, upon request by Company, to return to Company any documents which contain or reflect such Confidential Information.

**Federal Defend Trade Secrets Act.** The Federal Defend Trade Secrets Act of 2016 provides immunity from civil or criminal liability for any employee or contractor who discloses a trade secret "in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney" where the disclosure by the employee or contractor is "solely for the purpose of reporting or investigating a suspected violation of law" or "is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal." 18 U.S.C. § 1833(b). Nothing in this Contract is intended to conflict with 18 U.S.C. § 1833(b) or create liability for disclosures of trade secrets that are expressly allowed by 18 U.S.C. § 1833(b).

Unless waived by Company, Consultant shall require its employees and Subcontractors of any tier to adhere to these confidential information and nondisclosure terms.

### **ARTICLE 38. OWNERSHIP OF DESIGNS, DRAWINGS AND WORK PRODUCT**

The Deliverables prepared or developed hereunder, or other documents or information provided to Company, by Consultant or its employees or agents, or Subcontractors or their employees or agents, including without limitation drawings, specifications, manuals, calculations, maps, sketches, designs, tracings, notes, reports, data, computer programs, models and samples, shall become the physical property of Company when prepared and, to the extent subject to protection under copyright laws, shall constitute "work made for hire" and shall become the intellectual property of Company, without regard to any markings that may denote a confidential or proprietary interest of Consultant in the said items. To the extent the Deliverables incorporate pre-existing intellectual property of Consultant

or of any third party (“Pre-Existing Property”), Consultant hereby grants Company a perpetual, fully paid, transferable right to use, copy and modify such Pre-Existing Property for the purpose of Company’s operation, administration, maintenance, modification, improvement and replacement of the Company’s assets the fullest extent necessary to accomplish those purposes. Such license includes the right of Company to share Pre-Existing Property to Company’s contractors, agent, officers, directors, employees, joint owners, affiliates and consultants for the foregoing purposes, without regard to any markings that may denote a confidential or proprietary interest in the said items. Consultant hereby represents, warrants and covenants that it holds all requisite rights and third party consents necessary to grant the foregoing license without infringing the rights of any third party. Consultant shall deliver all Deliverables, together with any documents or information furnished to Consultant and its employees or agents by Company hereunder, upon Company’s request and, in any event, upon termination or final acceptance of the Work.

#### **ARTICLE 39. PATENT AND COPYRIGHT INDEMNITY**

Consultant shall indemnify, defend, and hold harmless Company, its directors, officers, employees, and agents against and from all claims, losses, costs, suits, judgments, damages, and expenses, including attorneys’ fees, of any kind or nature whatsoever on account of infringement of any patent, copyrighted or uncopyrighted work, including claims thereof pertaining to or arising from Consultant’s performance under this Contract. If notified promptly in writing and given authority, information, and assistance, and contingent upon Company not taking any position adverse to Consultant in connection with such claim, Consultant shall defend, or may settle at its expense, any suit or proceeding against Company so far as based on a claimed infringement which would result in a breach of this warranty, and Consultant shall pay all damages and costs awarded therein against Company due to such breach.

In case any Service or Deliverable is in such suit held to constitute such an infringement and the use of said Service or Deliverable is enjoined, Consultant shall, at its expense and through mutual agreement between Company and Consultant, either procure for Company the right to continue using said Service or Deliverable, or replace same with a non-infringing Service or Deliverable, or modify same so it becomes non-infringing.

#### **ARTICLE 40. CYBER SECURITY**

##### **40.1 SCOPE OF THIS ARTICLE**

This Article applies to Consultant and its Personnel and Subcontractors that provide hardware, software, or services to the Company that may impact the confidentiality, integrity, or availability of the Company’s networks, systems, software, Data, or Confidential Information for the term of the Contract.

##### **40.2 CYBER SECURITY CONTROLS**

- a. Consultant shall have and maintain security controls to protect the Company’s networks, systems, software, Confidential Information, and Data that are no less rigorous than the latest published version of ISO/IEC 27001 – Information Security Management Systems–Requirements, and ISO/IEC 27002 – Code of Practice for International Security Management
- b. Consultant agrees to disclose to the Company known security vulnerabilities in hardware, software, and services provided under the Contract in a timely manner.
- c. Consultant warrants that the hardware, software, and patches provided under the Contract, will not contain malicious code or any unwanted or unexpected features. Consultant agrees to provide a method to verify the integrity and authenticity of all software and patches provided by the Consultant.
- d. If Consultant will have remote access to Company systems or networks, Consultant shall follow all applicable Company requirements for Consultant-initiated interactive remote access and system-to-system remote access with Consultant. To the extent Consultant’s Personnel will have interactive remote access to Company’s networks, systems or applications, Consultant’s Personnel will use multi-factor authentication provided by the Company. Authentication tokens and passwords must not be shared. Upon either (i) Personnel termination actions or (ii) changes in the status of Personnel which removes their need for remote access, Consultant shall report such termination or change in status to the Company’s Service Desk by telephone and email as soon as practicable and no later than close of the same business day. In the case of Sensitive Personnel and/or involuntary termination, notification must be immediate. In all other cases, notification must be within one business day.

##### **40.3 OVERSIGHT OF COMPLIANCE**

If the contract includes hosted or cloud services, Consultant shall provide annually to the Company a Statement on Standards for Attestation Engagements (SSAE) Service Organization Control (SOC) 2 Type II audit covering the

scope of the contract and pertaining directly to the Consultant.

If the contract does not include hosted or cloud services, Consultant shall either:

- a. Annually provide a copy of ISO 27001 certification covering the scope of the contract and pertaining directly to the Consultant; or,
- b. Annually provide a copy of a third-party audit covering the security controls relevant to hardware, software, or services provided under this contract and pertaining directly to the Consultant. Audit results and Consultant's plan to correct any negative findings must also be made available to the Company; or,
- c. Allow Company to conduct an assessment, audit, examination, or review of Consultant's security controls to confirm Consultant's adherence to the terms of this Article, as well as any applicable laws, regulations, and industry standards, not more than once per year or upon notification of any Security Incident or complaint regarding Consultant's privacy and security practices. Company may elect to obtain the services of a mutually-agreeable third party to conduct this assessment, audit, examination, or review on behalf of Company. Company shall give Consultant no less than thirty (30) calendar days' notice of its intent to conduct such assessment, audit, examination, or review. As part of this assessment, audit, examination, or review, Company may review all controls in Consultant's physical and/or technical environment in relation to all Confidential Information being handled and/or hardware, software, or services being provided pursuant to this Contract. Consultant shall fully cooperate with such assessment by providing access to knowledgeable personnel, physical premises, documentation, infrastructure, application software, and systems relevant to the provision of hardware, software, or services under the Contract.

#### **40.4 SECURITY BREACH PROCEDURES; EQUITABLE RELIEF**

In the event of a Consultant, or Subcontractor Security Incident affecting the Company, the Company's networks, systems, software, Data, or the Company's Confidential Information,

- a. Consultant shall:
  - (i) Notify the Company of the Security Incident as soon as practicable, but no later than 48 hours after Consultant becomes aware of it, by telephone and email; and
  - (ii) Provide the Company with the name and contact information for any Personnel who shall serve as Consultant's primary security contact and shall be available to assist the Company with Security Incident management, response, and recovery associated with the Security Incident.
- b. Immediately following Consultant's notification to the Company of a Security Incident, the Parties shall coordinate with each other to investigate such Security Incident. Consultant agrees to coordinate with Company in Company's handling of the matter, including: (i) assisting with any investigation and (ii) making available all relevant records and other materials required to comply with applicable law, regulation, industry standards, or otherwise reasonably required by Company.
- c. Consultant shall use best efforts to immediately remedy any Security Incident and prevent any further or recurrent Security Incident at Consultant's expense in accordance with applicable privacy laws, regulations, and standards. Consultant shall reimburse Company for actual reasonable costs incurred by Company in responding to, and mitigating damages caused by, any Security Incident, including all costs of notice and/or remediation pursuant to this section.
- d. Consultant shall fully cooperate at its own expense with Company in any litigation or other formal action deemed reasonably necessary by Company to protect its rights relating to the use, disclosure, protection, and maintenance of its Confidential Information and Data.
- e. Consultant acknowledges that any breach of Consultant's obligations set forth in this Article may cause Company substantial irreparable harm for which monetary damages would not be adequate compensation and agrees that, in the event of such a breach or threatened breach, Company is entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance and any other relief that may be available from any court, in addition to any other remedy to which Company may be entitled at law or in

equity. Such remedies shall not be deemed to be exclusive but shall be in addition to all other available remedies at law or in equity, subject to any express exclusions or limitations in the Contract to the contrary.

#### **40.5 OBLIGATIONS ON TERMINATION AND TERMINATION ASSISTANCE**

- a. In addition to any other obligations that arise on termination or expiration of this Contract, the Parties agree that, on any expiration or termination of this Contract, upon completion of the delivery of the products and services to be provided under this Contract, or at any time upon Company's request, regardless of the circumstance:
- (i) If Consultant has access to Company facilities or systems, Consultant shall immediately surrender to Company all access cards, security passes, passwords and other such devices granting access to any Work Site or to Company networks or computer systems; and
  - (ii) If Consultant has Company Data, Consultant shall return any Company Data that is in its care, custody or control to Company in the format requested by Company and Consultant shall, after receiving Company's written confirmation that it can read the Data provided by Consultant, permanently delete any copies of the Data in Consultant's care, custody or control.
  - (iii) If Consultant has Company hardware or removable media, Consultant will return to Company all hardware and removable media provided by Company that contains Company Data. Company Data in such returned hardware and removable media may not be removed or altered in any way. The hardware should be physically sealed and returned via a bonded courier or as otherwise directed by Company. If the hardware or removable media containing Company Data is owned by Consultant or a third-party, a written statement detailing the destruction method used and the data sets involved, the date of destruction and the entity or individual who performed the destruction will be sent to a designated Company security representative within fifteen (15) calendar days after completion of the delivery of the products and services to be provided under this Contract, or at any time upon Company's request. Consultant's destruction or erasure of Company Data pursuant to this Article must be in compliance with NIST or ISO Standards.
- b. Prior to the expected expiration or termination of a Contract Document by either Party for any reason, or prior to the expected expiration or termination of this Contract for any reason, including the default of the terms of a Contract Document or a default under this Contract, Consultant agrees to provide Company with the reasonable assistance services requested by Company. These services will include, at a minimum, converting data, providing parallel services until Company has transitioned to a new system, providing on-site technical support, cooperating with Company or its designated vendor in developing required interfaces, and such other assistance services as shall be necessary or appropriate to facilitate, without material or extended interruption to the Services, the orderly transition of the Services to Company or its new provider of services. The Parties agree that assistance services may extend beyond the Term as reasonably required by Company.

#### **40.6 PROHIBITED VENDORS**

Consultant may not use in the provision of Work or Services to Company, directly or indirectly using subcontractors, the services, products, component pieces or sub-assemblies of any company identified by Company or by the U.S. Government and/or regulatory authorities as a security threat (collectively, the "Prohibited Vendors"), including without limitation the companies identified by Company in Exhibit I and by the U.S. Department of Commerce (which are currently posted on the internet at <https://www.bis.doc.gov/index.php/regulations/export-administration-regulations-ea> and as published in 15 CFR, Subchapter C, part 744, Supplement No. 4). Consultant is responsible for being familiar with the Prohibited Vendors, including additional Prohibited Vendors that Company may identify by Notice to Consultant and that the U.S. Government may identify from time to time during the term of this Contract. If Consultant fails to abide by the requirements of this Section, Company will provide Consultant with Notice and a 30 day opportunity to cure. Continued failure to abide by this requirement will be considered a material breach of this Contract.

#### **ARTICLE 41. OFFICE OF FOREIGN ASSETS CONTROL SANCTIONS LISTS; STATE OR GOVERNMENT OWNED ENTERPRISES OR CORPORATIONS CYBERSECURITY**

41.1 Consultant warrants that neither Consultant nor a) any parent, affiliate, or subsidiary to Consultant, or b) any officer, director, employee, agent, lobbyist, or representative of Consultant is on any sanction list maintained and published by the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"), including but not

limited to the Specially Designated Nationals and Blocked Persons List and Consolidated Sanctions List maintained and published by OFAC and available at <https://www.treasury.gov/resource-center/sanctions/Pages/default.aspx> (collectively the “OFAC sanctions lists”). Consultant further warrants, acknowledges, and agrees that:

- a. Neither Consultant nor any a) any parent, affiliate, or subsidiary to Consultant, or b) any officer, director, employee, agent, lobbyist, or representative of Consultant is operating or acting under any alias or pseudonym to avoid detection as a person or entity on any of OFAC sanctions lists;
- b. Consultant is prohibited from and shall not, either directly or indirectly, involve or engage in any manner any person or entity that is on any of the OFAC sanctions lists in the performance of this Contract, whether as an officer, director, employee, agent, lobbyist, representative, contractor, subcontractor, vendor, consultant, supplier, materialman, or any other role or relationship of any kind; and
- c. Consultant’s obligations under this Article are ongoing, and Consultant shall remain up-to-date with recent actions and updates by OFAC and shall immediately notify Company at any time it learns that a representation made in this Article is no longer accurate or that Consultant otherwise has been or is in violation of this Article.
- d. The warranties, representations, and obligations of this Article are material to Company’s decision to enter into this Contract, and any failure or violation of same is grounds for termination for cause by Company as a material breach of a provision of the Contract.

Consultant further agrees that it will fully comply and cooperate with Company in any inquiry, request, or investigation initiated by OFAC arising from or related to Consultant’s performance under this Contract and will defend, indemnify, and hold harmless Company, its agents, representatives, and employees of and from all fines, fees, penalties, or other liabilities or damages of any kind arising from or related to any failure or violation of Consultant’s warranties, representations, and obligations under this Article. This obligation is in addition to and not in derogation of any other obligation Consultant may have to defend, indemnify, or hold harmless Company, its agents, representatives, and employees under this Contract.

41.2 Consultant warrants that neither Consultant nor any parent, affiliate, or subsidiary to Consultant has fifty-percent (50%) or more equity ownership by a state-owned enterprise or government owned-corporation acting on behalf of the following foreign countries (the “prohibited countries”):

Afghanistan	Crimea Region of Ukraine	Russia	Venezuela
Angola	Iran		Somalia
Yemen	Chad		Iraq
Sudan	China		Libya
Syria	Congo		North Korea
Uganda			

Consultant further warrants, acknowledges, and agrees that:

- a. Consultant is prohibited from and shall not, either directly or indirectly, involve or engage in any manner any entity with fifty-percent (50%) or more equity ownership by a state-owned enterprise or government owned-corporation acting on behalf of any of the prohibited countries in the performance of this Contract, whether as a contractor, subcontractor, vendor, consultant, supplier, materialman, or any other role or relationship of any kind, without first fully disclosing said involvement or engagement to Company;
- b. Consultant’s obligations under this Article are ongoing, and Consultant shall immediately notify Company in the event a state-owned enterprise or government owned-corporation acting on behalf of any of the prohibited countries attains or acquires fifty-percent (50%) or more equity ownership in Consultant, or any parent, affiliate, or subsidiary to Consultant, or at any time Consultant learns a state-owned enterprise or government owned-corporation acting on behalf of any of the prohibited countries has or has attained or acquired a fifty-percent (50%) or more equity ownership in any entity directly or indirectly involved or engaged by Consultant in the performance of this Contract;
- c. In the event of such disclosure or notice, Company shall have the right, in its sole discretion, to terminate the Contract for cause by Company as a material breach of a provision of the Contract, or, in the event the disclosure involves an entity other than Consultant or any parent, affiliate, or subsidiary to Consultant, Consultant shall, in addition to the right to termination, have the alternative right, in its sole discretion, to

reject said entity's further involvement or engagement in the performance of the Contract, in which case Consultant shall immediately terminate said entity's involvement or engagement.

41.3 Consultant acknowledges and agrees that the warranties, representations, and obligations of this Article are material to Company's decision to enter into this Contract, and any failure or violation of same is grounds for termination for cause by Company as a material breach of a provision of the Contract.

#### **ARTICLE 42. CALIFORNIA CONSUMER PRIVACY ACT**

Consultant agrees that, in connection with the performance of its obligations hereunder, it is a "service provider" of Company within the meaning of the California Consumer Privacy Act (as in effect from time to time, including all applicable regulations issued thereunder, the "CCPA"). Accordingly, Consultant agrees to comply with all of the requirements of the CCPA that apply to service providers (as defined under the CCPA), including without limitation the prohibition on retaining, using, selling or disclosing personal information (as so defined) provided by or collected on behalf of Company for any purpose other than for the specific business purpose of performing obligations on behalf of Company hereunder, or as otherwise permitted under the CCPA. Moreover, to the extent Consultant's obligations under this Agreement include the collection of personal information on behalf of Company, Consultant agrees that it shall limit the personal information it collects to that personal information which is necessary to enable it to perform its obligations under this Contract. Consultant will defend, indemnify and hold Company harmless from and against any claims and losses (including reasonable attorney's fees) to the extent arising from actual or alleged breaches of this Section or violations of the CCPA by Consultant with respect to personal information received, collected, processed, disclosed or retained by Consultant in connection with the performance or non-performance of its obligations under this Contract.

In the event Company receives a verifiable consumer request from a consumer to delete the consumer's personal information, Consultant shall delete the consumer's personal information from its records promptly upon Company's request.

In the event Company receives a verifiable consumer request from a consumer to provide the consumer with consumer's personal information stored or retained by Consultant on behalf of Company, Consultant shall promptly provide Company all of the requesting consumer's personal information retained in its records in a secure format and secure mean of transmission as is approved by Company and otherwise in a manner that is consistent with the requirements of the CCPA.

In the event Consultant either receives the foregoing requests to delete or disclose or receives a "do not sell" request, in each case, directly from a consumer whose personal information Consultant collects, processes, retains or stores on behalf of Company, Consultant shall provide prompt written notice to Company, and, as directed by Company, Consultant shall either act on behalf of Company in responding to the request or inform the consumer that the request cannot be acted upon because the request has been sent to a service provider instead of Company.

#### **ARTICLE 43. ASSIGNMENT**

Company may at any time assign its rights and delegate its obligations under this Contract, in whole or in part, including, without limitation, transferring its rights and obligations under this Contract to any: (i) affiliate; (ii) successor in interest with respect to the Work Site; or (iii) corporation or any other business entity in conjunction with a merger, consolidation, or other business reorganization to which Company is a party. Consultant shall not assign any of its rights or responsibilities, nor delegate its obligations, under this Contract or any part hereof without the prior written consent of Company, and any attempted transfer in violation of this restriction shall be void.

#### **ARTICLE 44. SUBCONTRACTS**

Consultant shall not subcontract any or all of the Work without prior written consent of Company which shall not be unreasonably withheld. Consultant shall be fully responsible for the acts or omissions of any Subcontractors of any tier and of all persons employed by them, shall maintain complete control over all such Subcontractors, and neither the consent by Company, nor anything contained herein, shall be deemed to create any contractual relation between the Subcontractors of any tier and Company.

Company is committed to and understands the importance of promoting diversity among its consultants and their Subcontractors by increasing the amount of business conducted with qualified diverse business enterprises, including women-owned, minority-owned, disabled veteran-owned, and lesbian, gay, bisexual, and transgender ("LGBT")-owned businesses. Company expects the same level of commitment from Consultant when it subcontracts any of the

Work to Subcontractors of any tier. In the event of any spend activity with qualified diverse Subcontractors in a given monthly period, Consultant shall submit, by the 10th day of the following month, the Diversity Subcontractor Spend Report included as Exhibit H. Consultant shall submit the Diversity Subcontractor Spend Report to [supplierdiversity@pacificcorp.com](mailto:supplierdiversity@pacificcorp.com).

In the event that a state agency or regulatory commission audits any Company report or filing concerning diverse consultant spend activity that had been prepared utilizing information provided at least in part by Consultant, Consultant shall provide Company with all substantiating documentation to sufficiently support Company's report or filing within five (5) business days of any request. Examples of documentation that Company may request include, but are not limited to, contracts or purchase orders between Consultant and any of its Subcontractors identifying Company as the ultimate recipient, invoices between Consultant and any of its Subcontractors identifying Company as the ultimate recipient, and proof of payment by Consultant to any of its Subcontractors.

**ARTICLE 45. NON-EXCLUSIVE RIGHTS**

Nothing in this Contract is to be construed as granting to Consultant an exclusive right to provide any or all of the Work anticipated herein. The use of Consultant's services is completely discretionary with Company. This Contract shall not be construed in any way to impose a duty upon Company to use Consultant.

**ARTICLE 46. NONWAIVER**

The failure of Company to insist upon or enforce strict performance by Consultant of any of the terms of this Contract or to exercise any rights herein shall not be construed as a waiver or relinquishment to any extent of Company's right to enforce such terms or rights on any future occasion.

**ARTICLE 47. SEVERABILITY**

Any provision of this Contract prohibited or rendered unenforceable by operation of law shall be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Contract.

**ARTICLE 48. APPLICABLE LAW AND VENUE**

This Contract shall be interpreted in accordance with the substantive and procedural laws of the State of Oregon. Any litigation between the Parties arising out of or relating to this Contract will be conducted exclusively in federal or state courts in the State of Oregon and Consultant consents to jurisdiction by such courts. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS CONTRACT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THIS PARAGRAPH WILL SURVIVE THE EXPIRATION OR TERMINATION OF THIS CONTRACT.

FOR WORK PERFORMED IN CALIFORNIA, THE FOLLOWING JURY TRIAL WAIVER AND ARBITRATION PROVISION APPLIES. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS CONTRACT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. IF A WAIVER OF JURY TRIAL IS DEEMED BY ANY COURT OF COMPETENT JURISDICTION TO NOT BE ENFORCEABLE FOR ANY REASON, THEN TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO AGREE TO BINDING ARBITRATION. SUCH ARBITRATION SHALL BE IN ACCORDANCE WITH THE RULES AND PROCEDURES OF THE AMERICAN ARBITRATION ASSOCIATION (AAA). NOTWITHSTANDING ANY AAA RULES AND PROCEDURES, OR ANY OTHER PROVISION OF ANY STATE OR FEDERAL LAWS, THE PARTIES AGREE THAT THE ARBITRATORS SHALL NOT CONSIDER OR AWARD PUNITIVE DAMAGES AS A REMEDY. UPON THE COMPANY'S REQUEST, AAA SHALL PROVIDE THE PARTIES A LIST OF ARBITRATORS EACH OF WHOM HAVE EXPERIENCE AND EXPERTISE APPLICABLE TO THE WORK. UPON EACH OF THE PARTIES' RECEIPT OF SUCH LISTS, EACH PARTY SHALL HAVE TEN (10) DAYS TO SELECT AN ARBITRATOR. THE TWO SELECTED ARBITRATORS SHALL THEN SELECT A THIRD ARBITRATOR WITHIN THIRTY (30) DAYS FROM THE DATE THE INITIAL TWO ARBITRATORS WERE SELECTED AND THE MATTER SUBJECT TO ARBITRATION SHALL BE ARBITRATED AND A DECISION OF THE ARBITRATORS ISSUED WITHIN SIXTY (60) DAYS AFTER THE SELECTION OF THE THIRD ARBITRATOR.

**ARTICLE 49. ENTIRE AGREEMENT; DOCUMENTS INCORPORATED BY REFERENCE**

This Contract and any referenced exhibits and attachments, constitute the complete agreement between the Parties. All understandings, representations, warranties, agreements and any referenced attachments, if any, existing between the Parties regarding the subject matter hereof are merged into and superseded by this Contract, which fully and completely expresses the agreement of the Parties with respect to the subject matter hereof. Any Scope of Work, drawings, schedules or other documents listed in this Contract are incorporated by reference into this Contract. In the event of a conflict between (i) any Scope of Work, drawings, schedules or other attachment or exhibit to this Contract and (ii) the above terms and conditions of this Contract, the above terms and conditions of this Contract shall take precedence and control.

Company assumes no responsibility for any understanding or representation made by any of its employees, officers or agents during or prior to the negotiations and execution of this Contract, unless such understanding or representation is expressly stated in the Contract.

[Signature Page Follows]

DRAFT



**ARTICLE 50. EXECUTION AND EFFECTIVE DATE**

This Contract has been executed by duly authorized representatives of the Parties and shall only be effective as of date of execution by both Parties.

**CONSULTANT:**  
[[ NAME (PRIMARY SECOND PARTY) ]]

**COMPANY:**  
[[ NAME (PRIMARY FIRST PARTY) ]]

**By:** \_\_\_\_\_  
(Signature)

**By:** \_\_\_\_\_  
(Signature)

**Name:** \_\_\_\_\_  
(Type or Print)

**Name:** \_\_\_\_\_  
(Type or Print)

**Title:** \_\_\_\_\_  
\_\_\_\_\_  
(Date Executed)

**Title:** \_\_\_\_\_  
\_\_\_\_\_  
(Date Executed)

