

# MASTER CONSTRUCTION SERVICES AGREEMENT

This Master Construction Services Agreement (this "**Agreement**"), dated as of #[DATE]# (the "**Effective Date**"), is entered into by and between #[CONTRACTOR\_NAME]#, a #[STATEOFORGANIZATION]# #[ENTITY\_TYPE]#, with offices located at #[ADDRESS]# ("**Contractor**") and Bluebird Network LLC, and its subsidiaries, a Missouri Limited Liability Company, with offices located at 10024 Office Center Avenue, Suite 201, St. Louis, Missouri 63128 ("**Company**" and together with the Contractor, the "**Parties**", and each a "**Party**").

**WHEREAS**, Contractor has the capability and capacity to provide the construction and installation of a fiber optic network system or portions thereof; and

**WHEREAS**, Company desires to retain Contractor to provide the said services under the terms and conditions hereinafter set forth, and Contractor is willing to perform such services;

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

1. Services.

1.1 Contractor shall provide to Company the services (the "**Services**") set out in a Purchase Order to be issued by Company and accepted by Contractor (each, a "**Purchase Order**"). A sample Purchase Order is attached hereto as **Exhibit A**. Additional Purchase Orders substantially in the same form as the Purchase Order attached hereto, containing the individual statements of work developed per project and outlining the specific Services and deliverables, shall be deemed accepted and incorporated into this Agreement if not rejected in writing by Contractor within 10 days of issuance by Company. The Contractor shall provide the Services (a) in accordance with the terms and subject to the conditions set forth in the Contract Documents; (b) using personnel of required skill, experience, and qualifications; (c) in a timely, workmanlike, and professional manner; and (d) in accordance with the highest professional standards in Contractor's field; and (e) to the satisfaction of the Company. In the event of a conflict between the terms and conditions of this Agreement and a Purchase Order, the terms of the Purchase Order shall take precedence for work provided pursuant to the Purchase Order.

Unified operations are essential to efficiency and control of the Services, limitations of hazards and general public relations. Contractor understands that its activities must take into consideration the fact that other facilities may be under construction simultaneously at other work sites. Contractor shall fully coordinate its activities with the activities being performed by others to the end that all facilities may be constructed with a minimum of delay or interference.

1.2 For the sake of clarity, nothing in this Agreement shall be construed to prevent the Company from itself performing or from acquiring services from other providers that are similar to or identical to the Services. Further, nothing in this Agreement shall be construed to require Company to issue any Purchase Orders under this Agreement.

1.3 Company reserves the right to hire other contractors in connection with work on a specific route or property ("**Right of Way**") on which Contractor is providing Services. Contractor shall afford such other contractors reasonable opportunities for the execution of their work, and shall cooperate and coordinate its work with such contractors; however, should any such work performed by any contractors delay the work of Contractor hereunder, such delay will be excused under Section 42.0, EXCUSABLE DELAYS AND TIME EXTENSIONS

1.4 Nothing in this Agreement shall be construed to require Contractor to accept any Purchase Order issued under this Agreement.

2. Contractor represents and warrants to Company that it possesses a valid license to perform the Services in the state or states where the work is to be performed and is registered in good standing with the Board of Contractors therein. Contractor shall remain licensed and in good standing during the performance of the Services. Contractor shall bear all costs associated with said license and good standing.

3. Contractor Obligations. Contractor shall:

3.1 Complete the Services in accordance with the schedule set forth in the Contractor's Schedule. Company may require Contractor to alter the schedule with respect to the order of completion of particular segments of the Services. Except as otherwise provided herein, the parties expressly agree that Contractor shall not be entitled to any increase in the Contract Price nor shall Contractor be entitled to any extension of the completion date as a result of any such schedule alteration by Company.

- a) The Contractor shall submit a planning schedule with his technical proposal (Gantt Chart or spreadsheet). The Contractor will develop a construction schedule detailing the sequence of the Services, number of work locations, and the means and methods of performing the Services, within the limitations stated in the Contract Documents ("**Contractor's Schedule**"). The Contractor shall submit the initial Contractor's Schedule for approval not later than seven (7) days following acceptance of the Purchase Order.
- b) Throughout the provision of Services, Contractor shall be responsible for maintaining an updated schedule for any Services, monitoring the progress of various activities, and periodic reporting of the progress status of any and all activities, issues, and concerns relating to the performance of the Services. The Contractor will submit each month an updated Contractor's Schedule in electronic format to the Company Representative. The monthly schedule update, when compared with the actual Services completed, will be used by Company to verify the progress of construction. If Contractor fails to submit the required schedules and progress reporting documentation, the Company may withhold approval of Contractor's invoices until such time as Contractor furnishes the required information.

- c) If, in the opinion of Company, Contractor falls behind the schedule for reasons other than an Excusable Delay, the Company Representative shall so notify Contractor in writing and Contractor shall take such steps as may be necessary to improve its progress. Company may, at its discretion, require Contractor to increase the number of shifts, or overtime operations, days of work, or the amount of construction plant, or all of them, and to submit for approval such supplementary schedules as necessary to demonstrate the manner in which the schedule will be regained, all without additional cost to Company.
- d) Contractor shall immediately notify Company of any Excusable Delay which may affect the times and sequences in the schedule, and shall make all requests for extensions of time, in writing, to Company within five (5) days of occurrence.
- e) Failure of Contractor to comply with the requirements of this Section 3.1 shall be grounds for determination by Company that Contractor is not prosecuting the Services with such diligence as will ensure its completion within the time specified. Upon such determination, Company may terminate Contractor's right to proceed with the work, or any separable part thereof, in accordance with Section 16.0 Term, Termination, and Survival, hereof.

3.2 Appoint a primary contact to act as its authorized representative with respect to all matters pertaining to this Agreement (the "**Contractor Representative**") after obtaining Company's consent, which consent shall not be unreasonably withheld.

- a) Whenever the Services are in progress, the Contractor Representative shall be present at the work site to control performance of the Services.

3.3 Assign only qualified, legally authorized employees or contractors to provide the Services.

3.4 Provide an adequate number of qualified and competent project management and supervisory staff, craft persons, and other personnel to perform the Services. At all times during the course of the Services, Contractor shall provide at the job site a qualified, competent, and responsible project manager (the "**Project Manager**"). The Project Manager shall have full authority to represent Contractor with respect to any and all matters pertaining to this Agreement and direction given to him by Company shall be binding on Contractor. Contractor shall furnish the Company Representative a written appointment of its Project Manager, within one (1) week from the effective date of this Agreement. Contractor shall not transfer or remove any of its supervisory or key personnel from performance of the Services without the prior written approval of Company, which approval shall not be unreasonably withheld.

- a) Any employees (including a subcontractor or its employees) of Contractor deemed by Company, in its sole judgment, to be objectionable shall be promptly replaced by Contractor at no additional expense to Company.

- b) If requested by Company, Contractor shall furnish Company with the names of Contractor's employees, subcontractor's employees, and others who have performed or are performing the Services hereunder.

3.5 Maintain workable and harmonious relations with its employees and between Contractor's employees and the employees of other subcontractors and the employees of Company and Right of Way Owner. Whenever Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of the Services, Contractor shall immediately give notice thereof including all relevant information to Company.

3.6 Upon request of Company, furnish Company with a certificate satisfactory in form to Company that goods furnished by Contractor in performance of the Services were produced in full compliance with the requirements of Sections 6, 7, and 12 of the Fair Labor Standards Act of 1938 as amended and the regulations and orders of the U S. Department of Labor.

3.7 Upon request of Company, comply fully with the provisions designated by Company of Executive Order No.11246 (Equal Employment Opportunity) dated September 24, 1965, effective October 24, 1965, as amended, and the regulations and orders issued thereunder, including without limitation the reporting and affirmative action requirements thereof. Failure of Contractor to comply with this clause may be deemed by Company to be a material breach of this Agreement.

3.8 Comply strictly with Company, Right of Way Owner (the legal owner of the property upon which the Right of Way exists), and the federal, state, and local safety and health and performance rules governing the conduct of Contractor and Contractor's employees, agents, and subcontractors at and about the job site. Contractor agrees that it shall ensure that its supervisory personnel, employees, agents, and subcontractors at the job site comply strictly with such rules.

3.9 Comply with all applicable federal and state laws and regulations, local ordinances, orders, and other legal requirements, and all rules and regulations of the Right of Way Owner in providing the Services, including but not limited to relating to the environment, health and/or safety (collectively "**EHS Requirements**"), including but not limited to EHS Requirements arising under: the Occupational Safety and Health Act ("OSHA"), 29 U.S.C. §651 et seq.; the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §6901 et seq.; the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §2601 et seq.; the Federal Water Pollution Control Act ("Clean Water Act"), 34 U.S.C. §1251 et seq.; the Clean Air Act ("CAA"), 42 U.S.C. §7401 et seq.; Hazardous Materials Transportation Act ("HMTA"), 49 U.S.C. Appx. 1801 et seq. all as amended and including their state counterparts. In so agreeing, Contractor warrants that its employees, agents and subcontractors are fully competent in the practices applicable to the Services and are aware of all EHS Requirements that apply or relate to it activities under this Agreement and that it and its employees, agents and subcontractors, prior to performing under this Agreement, have the training, experience and knowledge necessary to comply with all applicable EHS Requirements. Contractor further agrees that it will identify itself, rather than Company, as

the generator of any waste generated as a result of its performance under this Agreement. Contractor warrants the materials, equipment and facilities, whether temporary or permanent, furnished by Contractor in connection with the performance of the Services shall comply therewith.

- a) Contractor shall comply with applicable provisions of 49 CFR 390-399, the Federal Motor Carrier Safety Regulations, in transportation of materials including, but not limited to regulations which apply to securing of equipment for transport, marking and placarding of transport vehicles and regulations governing driver qualifications. If applicable, Contractor shall comply with the requirements of the drug testing, education and training program imposed upon operators of commercial vehicles by the Department of Transportation pursuant to 49 CFR, Part 391 and 394, incorporated herein by reference.
- b) The Contractor shall comply with the following safety and construction standards:
  - (i) National Electrical Manufacturer's Association (NEMA).
  - (ii) Code of Federal Regulations, Title 29, Occupational Safety and Health
  - (iii) Standards (OSHA).
  - (iv) National Electrical Code (NEC)
  - (v) National Fire Protection Association (NFPA).
  - (vi) Underwriter's Laboratories, Inc. (UL)
  - (vii) Applicable Local, State, and County Ordinances.
  - (viii) Any rules and regulations established by landowners and building managers.
- c) Contractor warrants, represents, and agrees that it will not assign any individual to perform work under this Agreement who is an unauthorized alien under the Immigration Reform and Control Act of 1986 or its implementing regulations. In the event any employee of Contractor working under this Agreement is discovered to be an unauthorized alien, Contractor will immediately remove this individual from work under this Agreement and replace that individual with one who is not an unauthorized alien.

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

3.11 Maintain complete and accurate records relating to the provision of the Services under this Agreement, including records of the time spent and materials used by Contractor in providing the Services, in such form as Company shall approve. During the Term (as defined in Section 16) and for a period of three (3) years thereafter, upon Company's written request, Contractor shall allow Company or Company's representative to inspect and make copies of such records and interview Contractor employees and contractors in connection with the provision of the Services; provided that Company provides Contractor with at least thirty (30) business days advance written notice of the planned inspection, and any such inspection shall take place during regular business hours.

3.12 Be responsible to Company for acts and omissions of Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Services under a Purchase Order.

3.13 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, and other facilities and services necessary for proper execution and completion of the Services.

- a) Such equipment, tools, and machinery shall be serviceable and shall be kept in good operating condition. Although Company does not hereunder lease, hire, or rent such equipment and shall exercise no rights, power, dominion, or control over such equipment, if in the opinion of the Company Representative, the condition of any piece of equipment is such that it would adversely affect the workmanship of the completed job or unduly retard progress, it shall be repaired or replaced with equipment satisfactory to the Company Representative.
- b) Contractor agrees that performance or inspection of equipment, tools, or machinery shall not be probative in any dispute over the quality of work performed with that piece of equipment, tool or machinery.
- c) Contractor shall identify itself on all equipment, tools, and machinery owned. The identification shall include Contractor name, and may, at Company discretion, include a local phone number where Contractor can be reached during business hours.
- d) Any materials and equipment furnished by Company shall be received and unloaded by Contractor and the quantity and quality thereof shall be checked and tested by Contractor for compliance with the Contract Documents requirements. The delivery and Contractor's receipt and acceptance of all such materials and equipment shall be recorded in writing. If Contractor elects not to perform such tests upon receipt of Company-furnished materials or equipment, the receipt thereof as evidenced by Contractor's prepared documentation will be construed as conclusive evidence of Contractor's acceptance thereof and the full conformance therewith with the Contract Documents requirements. Upon receipt by the Contractor, Company-furnished material and equipment will be the sole responsibility of Contractor who shall bear all risks for damage or loss thereto.
- e) Company will consider Contractor recommendations, which shall be in writing, as to shipping of materials or equipment. If Contractor requests, in writing, a diversion of the material after it has been shipped or is enroute to the designated material sites, any additional cost involved in the diversion will be charged to Contractor and deducted from the total amount paid to Contractor.
- f) Contractor shall carefully note any visible damage to Company-furnished materials and equipment prior to Contractor's acceptance of delivery. Contractor shall notify Company of any materials and equipment supplied to

Contractor by Company which are surplus and without additional compensation shall cooperate with Company in the disposition of such surplus as directed by Company.

- g) Contractor shall notify Company of any lack of or requirement for materials and equipment supplied by Company in sufficient time for Company to furnish said materials or equipment in advance of Contractor's need. In the event of misfit of Company-furnished materials or equipment, Contractor shall promptly notify Company of such misfit. Contractor shall take all reasonable steps to avoid standby time due to such misfit or lack of Company-furnished materials or equipment and to continue the progress of other portions of the Services pending correction of such misfit and/or the furnishing of materials or equipment.
- h) Contractor shall return to Company unused quantities of materials and supplies provided by Company (including empty reels) not disposed of pursuant to Section 2.8(f) above. Waste materials generated by Contractor in completion of the Services, including empty containers of paint, glue, solvent, and similar products and paper and cloth material used for cleanup or application of paints, glue, solvents or other materials shall be accumulated and disposed of by Contractor.
- i) All material furnished by Contractor must be satisfactory to the Company Representative, and any material that is not satisfactory shall, at Contractor's expense, be removed and satisfactory material substituted.
- j) Contractor shall load, haul, and unload all materials, including those furnished by Company, upon the right-of-way provided by Company or at places designated by the Company Representative. Contractor shall perform all Services in a manner that will avoid damage to materials. Contractor shall place material in a manner that will cause the least interference with the normal use of the land crossed by the right-of-way.
- k) Contractor warrants that all materials and equipment furnished and incorporated into Services shall be new unless otherwise specified.

3.14 Confine operations at the site(s) to areas permitted by applicable permits, laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, and shall not unreasonably encumber the site(s) with materials or equipment.

3.15 Perform Services only during daylight hours unless otherwise authorized by the Company Representative.

3.16 Keep the site free from accumulation of waste materials or rubbish caused by provision of Services under a Purchase Order; upon completion of Services, Contractor shall remove waste materials, rubbish, tools, construction equipment, machinery and surplus material from and about the site.

3.17 As soon as practicable after execution of a Purchase Order, notify Company of any entities or persons who are not Contractor's own employees proposed to perform Services under the Purchase Order ("**Subcontractors**") or any suppliers proposed to provide materials for Services under the Purchase Order. Contractor will not contract with any Subcontractor or supplier to whom Company makes objection within ten (10) days after Company receives said notification. Contractor shall be responsible for the work done by Subcontractors to the same extent as if done by Contractor.

- a) Contractor agrees that if any work to be performed under this Agreement is subcontracted, the requirements of paragraphs 3.3, 3.6, 3.7, 3.8, 3.9, 3.10, 3.11, 3.14, 3.21, 3.22, 3.23, 3.24 (safety and compliance with laws sections) shall be incorporated into a written Agreement executed between Contractor and the Subcontractor.
- b) Contractor guarantees that the performance of any portions of the Services by its subcontractors shall comply with the terms of the Contract Documents.
- c) Where a portion of the Services is subcontracted, Contractor remains fully responsible for proper and safe performance of the Services, and shall be responsible to Company for any and all acts and omissions of the subcontractor and its employees. Nothing contained in this Agreement shall create any contractual obligation or other liability on Company's part to the Contractor's subcontractors and suppliers.
- d) Contractor shall provide fully executed lien waivers from all subcontractors and suppliers prior to receiving final payment for Services.

3.18 At all times, in accordance with the best practices, preserve and protect all materials and equipment (whether furnished by Contractor or Company) used by Contractor in the execution of the Services from damage or loss due to weather, fire, theft, unexplained disappearance, or other similar casualty.

3.19 At all times, in accordance with the best practices, protect from damage due to Contractor's and its subcontractors' operations, equipment and materials (whether stored or installed), paving, structures and any and all other items on job site belonging to Right of Way Owner, Company, or others.

3.20 Promptly remedy damage and loss to property caused in whole or in part by Contractor, a Subcontractor, or anyone employed directly or indirectly by any of them, or by anyone for whose acts they may be liable and for which Contractor is responsible under any Contract Document, except for damage or loss caused by Company or anyone for whose acts Company may be liable and not attributable to the fault or negligence of Contractor. The obligations under this paragraph are in addition to those under Section 22 (Indemnification).

3.21 Conduct the job in a safe manner. Contractor shall develop an appropriate safety management plan and take all necessary safety and other precautions to protect property



and persons from damage, injury, or illness arising out of the performance of the Services.

3.22 Provide a safe working environment at all times while any of Contractor's employees, agents, or subcontractors are on the Right of Way Owner's premises. Contractor shall inspect the working environments where its employees, agents, or subcontractors are or may be present on the Right of Way Owner's premises and shall promptly take action to correct conditions that cause or may reasonably be expected to cause these working environments to become an unsafe place of employment. Contractor shall indemnify and hold harmless Company and the Right of Way Owner, their respective directors, officers, employees, servants, heirs, assigns, and agents from and against any and all claims, loss, or liability in any manner arising directly or indirectly out of Contractors' failure to comply with this section. This indemnification specifically extends to OSHA fines and penalties, costs and attorney's fees incurred as the result of the conduct caused by or contributed to by the Contractor.

- a) Accidents, injuries, and illnesses requiring medical attention other than first aid, damage to property of Company, Right of Way Owner, and Contractor, and fires shall be orally reported to Company at the time of the incident. Written reports, satisfactory in form and content to Company and meeting applicable codes/regulations, shall be submitted, promptly after each incident, by Contractor to all involved parties as required by the applicable regulations, codes, and other requirements.
- b) Contractor shall maintain job site accident, injury and illness records and statistics as required by all applicable laws, statutes, ordinances, regulations, and codes; and such records and statistics shall be available for inspection and copying by Company, and shall be submitted to governmental agencies as required by law.
- c) When the possibility of injury to persons or damage to property is anticipated, Contractor shall take immediate remedial action, including the stoppage of Services where necessary, to prevent such injury or damage.
- d) Contractor shall be responsible for, at Contractor's expense, the provision of all necessary warning devices, barricades, flaggers, and uniformed patrolmen as are necessary to safely perform and protect the work. Contractor shall be responsible for, at Contractor's expense, determination of necessity of, and provision of, security to protect materials, work in progress, or finished work. The foregoing notwithstanding, on railroad right of way Company will arrange for and pay for railroad flaggers.

3.23 Arrange its Services when working on railroad right of way so that the personnel, trains and the tracks and appurtenances will be protected and safeguarded at all times. When working on railroad right of way, the safety and continuity of operations of trains are of paramount importance.

- a) Contractor shall utilize a suitably qualified safety inspector who will head its safety management program. This safety inspector will be responsible for developing the required safety management plan, ensuring attendance by all Contractor's and its subcontractors' personnel at railroad safety training classes, and enforce compliance therewith in accordance with the applicable railroad safety rules, requirements, laws, regulations, codes, and the Contract Documents.
- b) Contractor shall take particular care to prevent the fouling of the railroad tracks , and to avoid coming into contact with, or causing damage to the railroad tracks, any water, sewer, steam, gas, fuel, or other pipe lines, mains or service pipes, electrical, communications, other energy transmission conduits, cables, wires, or service connections, other private, utility, or governmental facilities, and any hazardous, toxic, or dangerous condition or thing, whether they are located upon, below, or above the ground surface. Contractor shall be responsible for protection of the integrity of all railroad tracks. Repair of any and all damage, if sustained, will be the responsibility of and costs shall be borne solely by Contractor or its subcontractors. Contractor shall take all necessary and/or customary precautions to prevent injury to persons or property from open manholes, excavations, ditches, and from materials or equipment left on the job site, by placing signs and lights, erecting barricades, or doing other things as prudence may require or as mandated by law, local regulations, or the Right of Way Owner.

3.24 Be responsible for compliance with the Contract Documents regarding hazardous materials and substances. If Contractor encounters a hazardous material or substance not addressed in the Contract Documents, and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death resulting from hazardous materials or substances, Contractor shall, upon recognizing the condition, immediately stop work in the affected area and notify Company of the condition. When the material or substance has been rendered harmless, work in the affected area shall resume upon written agreement of Contractor and Company. By Change Order, the schedule for completion of Services shall be extended appropriately.

- a) If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by the Contractor, a subcontractor or anyone directly or indirectly employed by them, the Contractor shall, prior to harmful exposure of any employees on the site to such substance, give both immediate oral notice and follow up written notice of the chemical composition thereof to Company in sufficient detail and time to permit compliance with such laws by Company, other contractors and employers on the site, to the extent Material Safety Data Sheets (MSDS) exist, they shall also be provided.
- b) In the event the Contractor encounters on the site material reasonably believed to be asbestos, lead, or polychlorinated biphenyl (PCB), or other potentially dangerous substance, which has not been rendered harmless, the Contractor shall

immediately stop work in the area affected and report the condition to Company in writing. The Services in the affected area shall resume in the absence of such substances, or when it has been rendered harmless. In case of dispute, Company shall have the right to determine whether work should resume and shall so state in writing.

3.25 Be responsible for having taken steps reasonably necessary to ascertain the nature and location of the work, and the general and local conditions which can affect the work or the cost thereof. Failure by the Contractor to do so will not relieve the Contractor from responsibility for successfully performing the work without additional expense to Company. Company does not assume responsibility for any understanding or representations concerning conditions made by any of its officers, employees or agents prior to or during the performance of Services, unless such understanding or representations are expressly stated in the Contract Documents. The Contractor shall promptly, and before such conditions are disturbed, notify Company in writing of:

- a) Subsurface or latent physical conditions at the work sites differing materially from those indicated in the Contract Documents;
- b) Physical conditions at the work sites of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in provision of the Services;
- c) Company shall promptly investigate the conditions. If Company finds that such conditions do materially differ from those ordinarily encountered and generally recognized as inherent in provision of the Services, and that such conditions cause an increase or decrease in the Contractor's cost of, or the time required for, performance of the Services, an equitable adjustment may be made and the Purchase Order modified in writing accordingly. Any claim of the Contractor for adjustment hereunder shall not be allowed unless Contractor has given notice as required above.

3.26 At all times keep its work area in a neat, clean, and/or safe condition and remove from the Right of Way and the vicinity thereof and properly dispose of all debris and rubbish caused by Contractor. Upon completion of the Services, Contractor shall promptly return unused materials furnished by Company and remove from the Right of Way all of Contractor's equipment, material, and like items, leaving such premises and the vicinity clean, safe, and ready for use. All work areas shall be restored by Contractor and its subcontractors to their original conditions. Contractor and its subcontractors shall replace in kind and/or bear the sole expense all disturbed material.

- a) In the event Contractor or any of its subcontractors shall fail to maintain the work area as described above in a manner satisfactory to Company, the Right of Way Owner, or other authorities with jurisdiction, or fails to effect such clean up or removal in compliance with the applicable regulations, codes, Company's or Right of Way Owner's requirements within seven (7) calendar days after having received Company's written order to do so, Company shall

have the right, without further notice to Contractor, to perform such cleanup and remove such items on behalf of, at the risk of and at the expense of Contractor. Any and all costs and expenses so incurred by Company will be deducted from any moneys due Contractor.

- b) Waste materials including, but not restricted to, refuse, garbage, sanitary wastes, industrial wastes, oil and other petroleum products, shall be disposed of by the Contractor. Waste materials removed from the construction area shall be disposed of at an approved disposal site. It shall be the responsibility of the Contractor to make any necessary arrangements with private parties and state/local officials pertinent to locations and regulations of such disposal. Any fees or charges required to be paid for dumping of materials shall be paid by the Contractor. Material to be disposed of by removal shall be removed from the construction area prior to completion of the Services.

3.27 Not offer Company personnel and representatives any gift or entertainment at any time.

4. Company Obligations. Company shall:

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

- a) The Company Representative may advise the Contractor Representative when the Company Representative observes that the Services do not comply with the provisions of the Contract Documents. Such instructions given to the Contractor Representative by the Company Representative shall be considered as having been given to the Contractor.

4.2 Require that the Company Representative respond promptly to any reasonable requests from Contractor for instructions, information, or approvals required by Contractor to provide the Services.

5. Bonds. Contractor shall provide the Company Representative, within fifteen (15) calendar days from the receipt of a written request from the Company Representative, payment and performance bonds payable to Company in form satisfactory to Company each in the full amount of the Purchase Order and all subsequent modifications, with surety thereon satisfactory to Company, for the faithful performance of this Agreement, including changes, alterations, or extras thereto without consent of surety, and for the payment of all labor, services, materials and supplies used in, or furnished for, performance or prosecution of Services. In the event Contractor fails to provide such bonds, Company shall be entitled to terminate the agreement for default pursuant to Section 16.0, Term, Termination, and Survival, hereof. To secure performance by Contractor and any extended funds hereunder by Company, Company shall have

a lien upon all materials, tools, appliances, and equipment of Contractor on the premises or used in connection with the Services.

5.1 The period of validity of the payment and performance bonds shall extend one hundred eighty (180) calendar days after the expiration of the one (1) year period of Guarantees defined in Section 44.0, Guarantees, hereof.

5.2 In the event Company requests that Contractor post a bond, then the direct costs of the bond will be borne by Contractor.

6. Care, Custody, Control, and Title to Materials and Equipment.

6.1 Good and clear title to all material and equipment furnished by Contractor under this Agreement for the Services shall pass to Company upon its incorporation into the Services. In addition, title to material and equipment not yet incorporated into the Services shall pass to Company when Contractor has been paid for such material and equipment. Contractor shall ensure that vendors and suppliers from whom Contractor obtains materials and equipment do not retain, encumber, or reserve title to such items. Contractor shall execute such other and additional documentation as Company may require as evidence of such transfer of title to Company.

6.2 Notwithstanding the provisions of Section 6.1 above, the care, custody, and control (but not title) of Contractor's material and equipment incorporated into the Services shall remain with Contractor until the Services have been accepted in writing by Company pursuant to Section 10.0, Notice Of Completion And Final Acceptance, hereof, and shall thereupon pass to Company unless Company notifies Contractor in writing that such care, custody, and control is assumed by Company at an earlier date. The taking of possession of the Services pursuant to Section 18.0, Possession Prior To Completion, hereof, shall not constitute the assumption of care, custody, and control of the Services until such time as the Services has either been accepted in writing by Company or Contractor has been notified as set forth herein.

7. Modification. After execution, Company may modify a Purchase Order, Drawing, or Specification through additions, deletions, or revisions to the Services. Contractor will be notified of such changes by the Company Representative through receipt of a written "Change Order" and additional and/or revised documents.

- a) Contractor shall submit to Company Representative within ten (10) working days after receipt of a Change Order, a proposal comprised of a detailed estimate with supporting calculations and pricing for the change together with any adjustments in the Contractor's Schedule required for the performance of Services as changed. Requests for time extensions shall be accompanied with a complete schedule update to demonstrate the impact to the Contractor's Schedule. Pricing of changes shall be in accordance with the unit prices or pricing structure of the original Purchase Order and shall clearly define any increase, decrease, or no change in compensation and/or performance period.

- b) Contractor shall not perform changes in the Services in accordance with the Change Order until the Company Representative has approved in writing, through the issuance of an amended Purchase Order, the pricing for the change and any adjustment in the schedule for performance of the Services. Upon receiving such amended Purchase Order from Company, Contractor shall diligently perform the change in strict accordance with the Contract Documents.
- c) Contractor shall not suspend performance of the Services pending the review and negotiation of any change, except as may be directed by the Company Representative pursuant to Section 8.0, Suspension Of Work, hereof.
- d) Changes the Contractor deems will not affect the cost, schedule, or integrity of the Services may be undertaken upon verbal request by the Company, with no written Change Order required. If Contractor believes that any request for change in the Services made verbally by Company may involve a change in the cost, time to perform, or integrity of the Services, Contractor shall require that the change be given pursuant to the procedures for a written Change Order herein. Any and all costs incurred by Contractor to perform changes made pursuant to a verbal request shall be for Contractor's account and Contractor shall not be entitled to claim any additional time to perform the Services. Contractor hereby waives any and all rights to claim from Company such costs or additional time to perform the Services as a result of compliance by Contractor with such verbal requests for change.
- e) No one other than Company's OSP Manager or, when authorized in writing, Company's Representative, shall be entitled to issue Change Orders. In no event shall Contractor be entitled to compensation for its costs in executing Change Orders given to Contractor by anyone not authorized in writing by the Company OSP Manager.

8. Suspension of Work. Company may at any time, and from time to time, by written notice to Contractor suspend further performance of all or any portion of the Services by Contractor. Said notice of suspensions shall specify the day of suspension and the estimated duration of the suspension. Upon receiving any such notice of suspension, Contractor shall promptly suspend further performance of the Services to the extent specified, and during the period of such suspension shall properly care for and protect all Services in progress and materials, supplies, and equipment Contractor has on hand for performance of the Services. Upon the request of Company, Contractor shall promptly deliver to Company copies of outstanding purchase orders, rental agreements and subcontracts of Contractor for materials, equipment and services for the Services, and shall take such action relative to such purchase orders and subcontracts as may be directed by Company. Company may at any time withdraw the suspension of performance of the Services as to all or part of the suspended Services by written notice to Contractor specifying the effective date and scope of withdrawal, and Contractor shall resume diligent performance of the Services for which the suspension is withdrawn on the specified effective date of withdrawal.

If Contractor believes that any such suspension or withdrawal of suspension justifies modification of the Contract Price or time of completion, Contractor shall comply with the provisions of the procedure set forth in Section 7.0, MODIFICATIONS, hereof. In no event shall Contractor be entitled to any prospective profits or any damages because of such suspensions or withdrawals of suspension.

9. Fees, Expenses and Payment.

9.1 In consideration of the Services to be performed under this Agreement, Company shall pay to Contractor a fee (“Contract Price”) determined in accordance with the fee schedule set forth in each Purchase Order. The Contractor shall submit to Company within two (2) weeks following the end of each billing period, on a form approved by Company, an application for each payment requested. Each application for payment shall also include a statement of the Services performed by the Contractor during such billing period, including production reports and itemization of payment according to unit costs set forth in a Project Service Agreement, as well as the project number, route name, Purchase Order number and an itemization of any charges which may be due, all certified as correct by the Contractor. Each application for payment shall be verified by the Company Representative within thirty (30) days from receipt thereof before being submitted for payment.

- a) The amount so stated, subject to any retainage described in subsection (b) below, shall be paid by Company within fifteen (15) days of approval of the application for payment by Company.
- b) Company, at its option and discretion, may retain and withhold from each payment ten percent (10%) of any payment plus any other withholdings or retainage which may be authorized by the Contract Documents, up to forty-five (45) days after Final Acceptance of the Services in accordance with the provisions of the Contract Documents and the acceptance of such work by Company. Company, at its option and discretion, may retain and withhold the final payment of the entire unpaid balance of any specific Services up to thirty (30) days after Final Acceptance of the Services in accordance with the provisions of the Contract Documents and the acceptance of the Services by Company.
- c) Company reserves the right, before making any payments, or at any time during the progress of the work, to require the Contractor to furnish evidence in a form satisfactory to Company, that all claims, liens and causes of action, if any, for the payment of wages or salaries or the payment of charges for labor, materials, tools, machinery, or supplies have been satisfied, released or settled, and in case such evidence is not furnished, the amount of such claims, liens, and causes of action may be retained from any moneys otherwise due the Contractor hereunder until they shall have been furnished.
- d) Final payment on a Purchase Order shall be made when Contractor has fully performed the Services except for Contractor’s responsibility to correct work as

provided in Section 10.0, and to satisfy other requirements, if any, that extend beyond final payment.

- e) Contractor shall maintain for a period of three (3) years after final payment under this Agreement, all records and accounts pertaining to Services performed for a unit price Contract Price, a reimbursable Contract Price, or otherwise authorized in writing by Company for performance on a reimbursable basis. Company shall have the right to audit, copy and inspect said records and accounts at all reasonable times during the course of such Services, and for three (3) years following the completion of the Services, for the purpose of verifying units furnished and reimbursable costs incurred, as applicable.

9.2 Company shall reimburse Contractor for all reasonable expenses incurred in accordance with the Purchase Order, if such expenses have been pre-approved, in writing by the Company Representative, within thirty (30) days of receipt by the Company of an invoice from Contractor accompanied by receipts and supporting documentation acceptable to the Company. All Contractor expenses not pre-approved by the Company Representative or not otherwise meeting the requirements of this Agreement or the Purchase Order to which it applies shall be the sole responsibility of the Contractor.

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

9.4 Contractor shall make timely payments to all Subcontractors and suppliers providing work or materials under the Purchase Order. Contractor shall defend and indemnify Company from all loss, liability, damage or expense, including attorney's fees and litigation expenses arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of a notice of lien claim or any other claim for payment, Company shall notify Contractor.

9.5 Contrary provisions notwithstanding, final payment shall not become due until Contractor has delivered to Company a complete release or waiver of all liens or receipts in full covering all labor, materials, and equipment for which a lien could be filed, or a bond satisfactory to Company to indemnify Company from such liens.

## 10. Notice of Completion and Final Acceptance.

10.1 Substantial Completion. **Substantial Completion** is the stage at which the Service is sufficiently complete so that Company can utilize the Service for its intended purpose. When the Contractor considers that the Services, or a designated portion thereof as is acceptable to the Company, is Substantially Complete, and when Contractor has satisfactorily completed inspections, tests and documentation that are required by the Contract Documents,



the Contractor shall promptly give notice to Company, specifying the Services completed and the date it was completed. Contractor and Company shall then promptly participate in a walk-through inspection of the Services, and shall jointly prepare a punch-list of items remaining to be completed or corrected. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Services in accordance with the Contract Documents. When the Company determines, on the basis of this review, that the Services or designated portion thereof is Substantially Complete, the Company and the Contractor shall execute a certificate of Substantial Completion that shall establish the date of Substantial Completion. The certificate of Substantial Completion shall also establish the responsibilities of the Company and the Contractor for security, maintenance, heat, utilities, damage to the Services and insurance, and shall fix the time within which the Contractor shall complete or correct the items listed therein. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Services, or designated portion thereof, unless otherwise provided in the certificate of Substantial Completion. Upon Substantial Completion of the Services, or designated portion thereof, and upon application by the Contractor, the Company shall make payment, reflecting adjustment in retention, if any, for such Services or portion thereof as provided in the Contract Documents.

10.2 Final Completion. Upon receipt of written notice that the Services are ready for final review and acceptance (“**Notice of Completion**”), and upon receipt of a final application for payment, the Company will promptly review the completed Services and, if it finds the work acceptable under the Contract Documents and the Agreement fully performed, the Company shall make final payment to Contractor.

The foregoing notwithstanding, neither the final payment nor the remaining retained percentage shall become due until the Contractor submits to the Company (a) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Services for which the Company might in any way be responsible, have been paid or are otherwise satisfied, (b) consent of surety, if any, to final payment, and (c) if required by the Company, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens arising out of the Agreement, to the extent and in such form as may be designated by the Company. If any subcontractor refuses to furnish a release or waiver required by the Company, the Contractor may furnish a bond satisfactory to the Company to indemnify against any such lien. If any such lien remains unsatisfied after all payments to Contractor are made, the Contractor shall refund to the Company all monies that the Company may be compelled to pay in discharging such lien, including all costs and reasonable attorneys’ fees.

If, after Substantial Completion of the Services, Final Completion thereof is materially delayed through no fault of the Contractor or by the issuance of Change Orders affecting final completion, the Company shall, upon application by the Contractor, and without terminating the Agreement, make payment of the balance due for that portion of the Services fully completed and accepted. If the balance for Services not fully completed or corrected is less than the retainage stipulated in the Contract Documents, and if bonds have been furnished, written Consent of Surety to the payment of the balance due for that portion of Services fully completed and

accepted shall be submitted by the Contractor to the Company prior to certification of such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

The making of final payment shall constitute a waiver of all claims by the Company except those arising from:

- (1) Unsettled liens;
- (2) Faulty or defective Services;
- (3) Failure of the Services to comply with the requirements of the Contract Documents, including the terms of any special warranties required by the Contract Documents; or
- (4) Incomplete Services appearing or discovered after Substantial Completion.

The acceptance of final payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the final application for payment.

10.3 If Company rejects the Notice of Completion and specifies defective or unfinished portions of the Services, Contractor shall, within seven (7) calendar days, commence to remedy such defective and unfinished portions of the Services. Thereafter, Contractor shall again give Company a written Notice of Completion of the Services specifying a new date for the completion of the Services based on the date such defective or unfinished portions of the Services were corrected. The foregoing procedure shall apply again and successively thereafter until Company has given Contractor notice in writing that the Services have been completed to Company's satisfaction ("**Notice of Acceptance**").

10.4 Any failure by Company to inspect or to reject the Services or to reject Contractor's Notice Of Completion as set forth above, shall not be deemed to be acceptance of the Services for any purpose by Company nor imply acceptance of or agreement with the said Notice Of Completion.

10.5 Neither final payment nor any provision in this Agreement shall relieve Contractor of responsibility for faulty workmanship or faulty Contractor-furnished material that may be discovered within a period of one (1) year from the date of final payment. Contractor shall, at Contractor's expense remedy any such defects and pay for all damages resulting therefrom. Company shall give notice of observed defects with reasonable promptness.

11. Contract Documents. The Contract Documents consist of this Agreement and any Exhibits hereto, any Purchase Order issued hereunder, any supplementary or other conditions applicable to the Purchase Order, all Drawings, Specifications, and/or addenda issued in connection with a Purchase Order, and any Change Order issued after execution of the Purchase Order. The Contract Documents are complementary and what is required by one will be as binding as if required by all; performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. Should Contractor find or perceive any conflicts in or between

or among these Contract Documents, Contractor shall advise Company and Company shall determine their application. In the event of conflicting terms therein, the order of precedence to be given these Contract Documents shall be: Change Order, Purchase Order, this Agreement.

11.1 The "Drawings" are the graphic and pictorial depictions of the design, location and dimensions of the Services, generally including plans, elevations, sections, details, schedules and diagrams.

11.2 "Specifications" are the written requirements for materials, equipment, construction systems, standards and workmanship for Services.

## 12. Intellectual Property.

12.1 Company shall be deemed the author and owner of all Drawings, Specifications, and other documents constituting the Contract Documents or provided in connection with Services. Company shall retain all common law, statutory, and other reserved rights in these works, including copyrights. Contractor shall not own or claim a copyright in these works. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Service is not to be construed as publication in derogation of Company's reserved rights.

12.2 Contractor shall not use the Contract Documents outside the scope of the Service being provided pursuant to a specific Purchase Order without the specific written consent of Company.

12.3 Contractor acknowledges and agrees that any and all work product, including any deliverables, it conceives, creates, develops or reduces to practice, in whole or part, during the term of the Agreement, including without limitation, all "works of original authorship" and all content, inventions, improvements, enhancements, designs, ideas, source code, software applications, formula, processes, techniques, discoveries, or know-how, whether or not patentable or copyrightable, are "works for hire" and is and/or shall become and remain the sole and exclusive property of the Company and the Company shall be the sole owner of all patents, copyrights and other rights in connection therewith throughout the world. To the extent any such works are not deemed works for hire, Contractor hereby assigns to the Company, Contractor's entire right, title, and interest in any invention, technique, process, device, discovery, improvement, or know-how, whether patentable or not, hereafter made or conceived solely or jointly by Contractor while working for or on behalf of the Company, which relates to, is suggested by, or results from matters set forth in any active Purchase Order and depends on either:

- a) Contractor's knowledge of Confidential Information (as defined in Section 14) it obtains from the Company.
- b) The use of the Company's equipment, supplies, facilities, information, or materials.

12.4 Contractor shall disclose any such invention, technique, process, device, discovery, improvement, or know-how promptly to the Company Representative. Contractor shall, upon

request of the Company, promptly execute a specific assignment of title to the Company and do anything else reasonably necessary to enable the Company to secure for itself, patent, trade secret, or any other proprietary rights in the United States or other countries. It shall be conclusively presumed that any patent applications relating to a Purchase Order, related to trade secrets of the Company, or which relate to tasks assigned to Contractor by the Company, which Contractor may file within one year after termination of this Agreement, shall belong to the Company, and Contractor hereby assigns same to the Company, as having been conceived or reduced to practice during the term of this Agreement.

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

12.6 If for any reason, including incapacity, the Company is unable to secure Contractor's signature on any document needed to apply for, perfect, or otherwise acquire title to the intellectual property rights granted to it under this Section 12, or to enforce such rights within seven (7) business days of such request, Contractor hereby designates the Company as Contractor's attorney-in-fact and agent, solely and exclusively to act for and on Contractor's behalf to execute and file such documents with the same legal force and effect as if executed by Contractor and for no other purpose.

12.7

13. Time. Time is of the essence in the performance of the Services by Contractor.

14. Confidentiality. All non-public, confidential, or proprietary information of Company ("**Confidential Information**"), including, but not limited to, any trade secrets, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates disclosed by Company to Contractor, whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as "confidential," in connection with this Agreement is confidential, solely for Contractor's use in performing this Agreement and may not be disclosed or copied or used for any purposes other than for the performance of the Services unless authorized by Company in writing. Confidential Information does not include any information that: (a) is or becomes generally available to the public other than as a result of Contractor's breach of this Agreement; (b) is obtained by Contractor on a non-confidential basis from a third party that was not legally or contractually restricted from disclosing such information; or (c) Contractor establishes by documentary evidence, was in Contractor's possession prior to Company's disclosure hereunder. Contractor shall maintain the Confidential Information with the same degree of care Contractor uses to maintain its own Confidential Information, and, in all

events, Contractor shall maintain the Confidential Information with no less than commercially reasonable care. Upon Company's request, Contractor shall promptly return all documents and other materials received from Company. Company shall be entitled to injunctive relief for any violation of this Section.

Contractor agrees that it shall not make disclosure of any such Confidential Information to anyone except employees and consultants of Contractor to whom disclosure is necessary for the purposes of this Agreement, and who have agreed to be bound by the obligations of confidentiality and restrictions on use hereunder. Contractor shall cause its employees and consultants to whom it makes disclosure to observe the obligations of confidentiality and restrictions on use in accordance with this Agreement. All such documents furnished by Company to Contractor and documents prepared by Contractor shall become the property of Company; and upon completion of the Services, or earlier upon termination of this Agreement or when requested by Company, Contractor shall return to Company all such documents including any copies thereof.

The provisions of this Article shall survive termination or expiration of this Agreement for any reason.

#### 15. Publicity.

15.1 Neither Contractor nor any of its Subcontractors shall make news releases, publicize, or issue advertising pertaining to the Services or this Agreement without first obtaining the written approval of Company.

15.2 All communications with the Government regarding the Project shall be through Company, except where expressly otherwise approved in writing by Company.

#### 16. Term, Termination, and Survival.

16.1 This Agreement shall commence as of the Effective Date and shall continue thereafter until the completion of the Services under all Purchase Orders unless sooner terminated pursuant to Sections [16.2](#)[16.2](#) and 16.3.

16.2 Company, in its sole discretion, may terminate this Agreement or any Purchase Order, in whole or in part, at any time without cause, and without liability except for required payment for services rendered, and reimbursement for authorized expenses incurred, prior to the termination date, by providing at least sixty (60) days' prior written notice to Contractor. On the date of such termination stated in said notice, Contractor shall discontinue performance of the Services and shall preserve and protect tools, construction equipment, and facilities on job site, materials and plant equipment purchased for or committed to the Services (whether at job site or elsewhere), Services in progress and completed Services (whether at job site or other locations) pending Company's instructions and if requested by Company and upon payment for Services properly provided up to the effective date of termination, shall turn over the same to Company, including title to said materials and plant equipment, or dispose of same in accordance with Company's instructions.

- a) In the event of such termination, Contractor shall, upon request of Company, promptly advise Company of outstanding subcontracts, rental agreements, purchase orders, and any other agreements, which Contractor has with others pertaining to performance of the Services, and shall furnish Company with complete copies thereof. Contractor shall assign to Company in form satisfactory to Company, such of its subcontracts, rental agreements, purchase orders, and other agreements as are designated by Company, or shall take such other action relative to such subcontracts, rental agreements, purchase orders, and other agreements as may be directed by Company.
- b) If Contractor has fully and completely performed all of its obligations under this Agreement up to the date of such termination, Contractor shall recover from Company as complete and full settlement for such termination: (a) all amounts due to Contractor for Services activities fully complete; plus (b) partially completed Services based on the unit prices or pricing structure in this Agreement after making appropriate adjustments to reflect the percentage of completion; plus (c) actual costs (if any) incurred by Contractor to remove tools, construction equipment and facilities to its premises or to otherwise dispose of them as directed by Company instructions; plus (d) actual costs necessarily incurred in terminating, in accordance with Company directions, pending subcontracts, rental agreements, purchase orders, and other agreements.
- c) All requests for compensation under any of the foregoing provisions of Section 16.2 shall be submitted to Company in accordance with the provisions of Section 7.0 MODIFICATIONS, hereof. In no event shall Contractor be entitled to any prospective profits or any damages because of such termination.

16.3 If Contractor fails to prosecute the Services or separable parts thereof with due diligence so as to endanger the ultimate completion thereof, or if Contractor shall default in the performance of any of its obligations under the Contract Documents and shall fail to correct such default (or if immediate correction is not possible, shall fail to commence and diligently continue effective action to correct such default) within seven (7) calendar days following written notice thereof from Company, Company may, at its option and without prejudice to any other rights or remedies Company may have, hold in abeyance further payments to Contractor and/or terminate the Contract Documents by written notice to Contractor specifying the date of termination. In the event of such termination, Company may take possession of the Services at the job site and any or all materials and plant equipment (whether delivered to the job site or on order therefor by Contractor at job site) and finish the Services by whatever method Company deems expedient. The foregoing notwithstanding, if Contractor vacates the job site, Company may terminate for default without opportunity to correct such default.

- a) In the event of termination by Company under this Section 16.3, Contractor shall, within seven (7) calendar days from the effective date of termination, advise Company of all outstanding subcontracts, rental agreements, purchase orders, and any other agreements which Contractor may have with others pertaining to performance of the Services and furnish Company with complete copies thereof.

Upon request by Company, Contractor shall assign to Company in form and content satisfactory to Company, Contractor's title to materials and plant equipment (i.e., equipment purchased on behalf of the Company) for the Services and such of the subcontracts, rental agreements, purchase orders, and other agreements as may be designated by Company.

- b) In the event of termination by Company under Section 16.3 above, Contractor shall not be entitled to receive any further payment until the Services are completed. If the amounts due Contractor, including retainage, for Services completed by Contractor at the time of termination, shall exceed the sum of the total cost to Company for completing the Services, such excess amount, including retainage, shall be paid to Contractor. If the sum of the total cost to Company of completing the Services plus amounts previously paid to Contractor, shall exceed the Contract Price for the completed Services, Contractor shall promptly pay the difference to Company, or at Company's discretion, Company may deduct this excess cost from moneys due Contractor. Company shall have the right and is authorized to offset against and deduct from any moneys due Contractor any other damages suffered by Company due to said default or event giving rise to the termination or due to any other defaults of Contractor. Contractor shall continue to be fully liable for all such other damages suffered by Company.
- c) A waiver by Company of one default by Contractor shall not be considered to be a waiver of any subsequent default by Contractor, nor be deemed to amend or modify the terms of the Contract Documents. Except as may be prohibited or to the extent permitted by law, both parties expressly affirm the written notice requirement by Company of Contractor's failure to perform, or any breach of Contractor's express obligations under the Contract Documents.
- d) Contractor (and its sureties) agree that a termination by Company under Section 16.3 above will NOT be cause for the discharge of the payment and performance bonds defined in Section 5.0, BONDS, hereof.

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

- a) Breaches this Agreement, and such breach is incapable of cure, or with respect to a breach capable of cure, the Defaulting Party does not cure such breach within thirty (30) days after receipt of written notice of such breach. Contractor's default in the performance of its obligations under the Contract Documents is governed by Section 16.3 above.
- b) Becomes insolvent or admits its inability to pay its debts generally as they become due.
- c) Becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, which is not fully stayed

within seven (7) business days or is not dismissed or vacated within forty-five (45) days after filing.

- d) Is dissolved or liquidated or takes any corporate action for such purpose.
- e) Makes a general assignment for the benefit of creditors.
- f) Has a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

16.5 Upon expiration or termination of this Agreement for any reason, Contractor shall promptly:

- a) Deliver to Company all documents, work product, and other materials, whether or not complete, prepared by or on behalf of Contractor in the course of performing the Services for which Company has paid.
- b) Return to Company all Company-owned property, equipment, or materials in its possession or control.
- c) Remove any Contractor-owned property, equipment, or materials located at Company's locations.
- d) Deliver to Company, all documents and tangible materials (and any copies) containing, reflecting, incorporating, or based on Company's Confidential Information.
- e) Provide reasonable cooperation and assistance to Company upon Company's written request in transitioning the Services to an alternate contractor.
- f) On a pro rata basis, repay all fees and expenses paid in advance for any Services which have not been provided.
- g) Permanently erase all of Company's Confidential Information from its computer systems.
- h) Certify in writing to Company that it has complied with the requirements of this Section 16.5.

16.6 The rights and obligations of the Parties set forth in this Section 16 and Section 12 (Intellectual Property), Section 14 (Confidentiality), Section 21 (Independent Contractor), Section 22 (Indemnification), Section 23 (Remedies), Section 25 (Insurance), Section 27 (Notices), Section 36 (Choice of Law), Section 22 (Choice of Forum), and Section 39 (Waiver of Jury Trial), and any right or obligation of the Parties in this Agreement which, by its nature, should survive termination or expiration of this Agreement, will survive any such termination or expiration of this Agreement, and with respect to Confidential Information that constitutes a trade secret under applicable law, the rights and obligations set forth in Section



14 (Confidentiality) hereof will survive such termination or expiration of this Agreement until, if ever, such Confidential Information loses its trade secret protection other than due to an act or omission of Contractor or its employees, officers, or directors.

17. Possession Prior to Completion. Company shall have the right to move into Contractor's working and storage areas and the right to take possession of or use any completed or partially completed parts of the Services as Company deems necessary for its operations. In the event Company desires to exercise the foregoing right, Company will so notify Contractor. Upon receiving such notification from Company, Contractor shall, within seven (7) calendar days, advise Company of any reasons why Contractor believes the takeover would be undesirable and of any problems which may result from such takeover, and Company may at its option thereafter withdraw its notification or elect to proceed as originally proposed. In the event Company takes possession of or uses such part of the Services, Company will exercise all reasonable efforts to avoid interference with Contractor's continuance of the Services. Such possession or use shall not constitute acceptance of the Services. In the event Contractor believes that any interference from Company as a result of such move-in or taking possession or use justifies modification of the Contract Price or the schedule for completion of the Services, Contractor shall comply with the provisions of Section 7.0 MODIFICATIONS, hereof. Following Company possession or use described herein, Contractor shall remain responsible under its Guarantees as provided herein.

18. Offset. Company, without waiver of any rights or remedies which it may at any time have against the Contractor, shall be entitled from time to time to deduct from any amounts due or owing by Company to Contractor in connection with this Agreement (or any other contract, agreement or document with Company executed in connection with this Agreement), any and all amounts owed by Contractor to Company in connection with this Agreement.

19. Taxes, Duties, and Fees. Contractor shall be the sole party economically responsible for any taxes with respect to Services provided under this Agreement. Contractor's invoices must itemize and separately calculate taxes from Contractor's charges to Company for Services rendered to Company. Contractor shall accept all tax exemption certificates presented in good faith by Company. Prior to Contractor's issuance of any invoice on which it intends to include a charge for sales tax, Contractor shall notify the Company and the Company shall be permitted to issue or to remedy any tax exemption certificate that Contractor is questioning. If a tax exemption certificate is impermissible in a jurisdiction or if the Company fails to deliver a tax exemption certificate, Contractor may invoice the appropriate sales tax to the Company accompanied by reasonable supporting documentation evidencing such taxes.

20. Liens.

20.1 To the full extent permitted by applicable laws, Contractor hereby waives and releases any and all rights of mechanics', materialmen's, or other similar liens and similar rights for payment for services, labor, equipment, or materials furnished by Contractor in performance of the Services and granted by law to persons supplying materials, equipment, services and other things of value to improve or modify land or structures thereon, which Contractor may have against Company or the Right of Way Owner's premises, property

belonging to Company, or to any of them, or funds payable by Company to the Right of Way Owner, if any.

20.2 Contractor shall at all times promptly pay for all services, materials, equipment, and labor used or furnished by Contractor in the performance of the Services under this Agreement and shall at its expense keep the Right of Way Owner's premises and all property belonging to Company and/or the Right of Way Owner free and clear of any and all of the above mentioned liens and rights of lien arising out of services, labor, equipment, or materials furnished by Contractor or its employees, materialmen, or subcontractors in the performance of the Services. If Contractor fails to release and discharge any such claim of lien against the Right of Way Owner's premises or the property of Company and/or the Right of Way Owner arising out of performance of the Services within five (5) working days after receipt of written notice from Company to remove such claim of lien, Company may, at its option, discharge or release the claim of lien or otherwise deal with the lien claimant, and Contractor shall pay Company any and all costs and expenses of Company in so doing, including reasonable attorney's fees incurred by Company, or alternatively Company may, at its choosing, deduct such costs and fees from Contractor's invoices.

21. Independent Contractor.

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

21.2 Contractor has no authority to commit, act for or on behalf of the Company, or to bind the Company to any obligation or liability.

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

22. Indemnification. To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless Company and Right of Way Owner, and the officers, directors, managers, shareholders, members, partners, employees, agents, affiliates, successors, and permitted assigns of each (collectively, "**Indemnified Party**") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including but not limited to attorneys' fees, fees, and the costs of enforcing any right to indemnification under this Agreement, and the cost of pursuing any insurance providers, incurred by Indemnified Party in a final judgment (collectively, "**Losses**"), relating to, arising out of or resulting from or occurring in connection with performance of the Services to the extent caused by the negligence, willful misconduct, or breach of this Agreement by Contractor, a Subcontractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Contractor shall not enter into

any settlement without Company's or Indemnified Party's prior written consent. Contractor's indemnification obligation with respect to third party claims as set forth in this Section shall include indemnification of the Indemnified Parties from and against any and all consequential, special, exemplary, punitive, or other damages; fines, penalties, assessments asserted by any governmental agency; and/or claims therefor which the Indemnified Parties, or any of them, may suffer and/or incur as a result of any such claim or action included within Contractor's said indemnification obligation.

### 23. Remedies.

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

23.2 In the event Contractor fails to satisfactorily perform any of the Services on a timely basis, the Company shall have the right, without prejudice to any other rights or remedies it may have under this Agreement or any applicable Purchase Order, to take one or more of the following steps:

- a) Suspend Contractor's right and obligation to complete its performance of the Services until such time as the Contractor is able to demonstrate to Company's reasonable satisfaction that it can satisfactorily meet its obligations under this Agreement;
- b) Itself provide and/or engage a replacement Contractor to provide any or all of the delayed or unsatisfactory Services;
- c) Assign one or more of its representatives to supervise and work with the Contractor to correct and mitigate the effects of the Contractor's breach;
- d) Withhold payment of any amounts otherwise due to the Contractor in a sufficient amount to set off against any damages caused to the Company as a consequence of the Contractor's breach.

23.3 Because the damages the Company would sustain on a breach by Contractor of the Confidentiality provisions set forth in Section 14 of this Agreement are not readily ascertainable, for each unauthorized use or disclosure of the Company's Confidential Information, Contractor will be liable to, and shall pay the Company the sum of \$50,000 as liquidated damages (the "**Liquidated Damages**"). The Parties intend that the Liquidated Damages constitute compensation, and not a penalty. The Parties acknowledge that the Liquidated Damages are a reasonable estimate of the anticipated or actual harm that might arise from a Contractor breach of Section 14. The Contractor's payment of the Liquidated Damages is its sole liability and entire obligation and the Company's exclusive remedy for any Contractor breach of Section 14.

23.4 Contractor acknowledges that if the Services are not complete for each segment or milestone by the scheduled completion date, Company will suffer damages in an amount

which is uncertain or difficult to estimate. Therefore, Contractor agrees that if the Services are not complete by the scheduled completion date, Contractor shall continue to complete the Services, but shall pay to Company as liquidated damages the amount of one thousand dollars (\$1,000) for each calendar day of delay in Substantial Completion of the segment beyond the scheduled completion date outlined in the applicable Purchase Order. Contractor shall pay such liquidated damages to Company in the form of a reduction in the Contract Price. The Parties agree that the amount of liquidated damages is a reasonable pre-estimate of the probable damages to Company. The payment of such damages shall not release Contractor's obligations to otherwise fully perform under this Agreement. Upon request by Company, Contractor shall furnish to Company such evidence as Company may require to confirm Contractor's ability to fully perform under this Agreement in the manner and within the time agreed upon.

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

23.6 Except for a breach of Section 14, all rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the Parties, or otherwise. Despite the previous sentence, the Parties intend that the Contractor's exclusive remedy for Company's payment breach shall be its right to damages equal to its earned but unpaid fees.

#### 24. Compliance with Law.

24.1 Contractor is in compliance with and shall comply strictly with all applicable local, municipal, state, and federal laws, orders, codes, regulations, and ordinances, including but not limited to laws requiring the payment of prevailing wage. Contractor has and shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Agreement.

24.2 Contractor shall not under any circumstance apply to or enter into negotiations with any governmental authority or agency for acceptance of variations from or revisions to safety or health, or air, water, or noise pollution laws or regulations relating to this Agreement or to the performance thereof, without Company's prior written approval, given in Company's sole discretion.

#### 25. Insurance.

25.1 In addition to any insurance required pursuant to a Purchase Order, Contractor shall, at its own expense, maintain and carry insurance in full force and effect with insurers rated A or better by Best's Key Rating Guide, which insurance shall be primary and shall include, but not be limited to, (i) commercial general liability with limits no less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate,

including bodily injury and property damage and completed operations and advertising liability, with no railroad exclusion, which policy will include contractual liability coverage insuring the activities of Contractor and any Subcontractors who perform any Services under this Agreement, and workers' compensation insurance to the extent required by law; (ii) one million dollar (\$1,000,000) for auto liability including owned, hired, and non-owned vehicles; and (iii) five million dollars (\$5,000,000) umbrella coverage. Company may require Contractor increase its umbrella coverage up to ten million dollars (\$10,000,000) when Contractor is contracted for services to multiple states. Upon Company's request, Contractor shall provide Company with a certificate of insurance from Contractor's insurer evidencing the insurance coverage specified in this Agreement. The certificate of insurance shall name Company as an additional insured. Contractor shall provide Company with thirty (30) days' advance written notice in the event of a cancellation or material change in Contractor's insurance policy. Except where prohibited by law, Contractor shall require its insurer to waive all rights of subrogation against Company's insurers and Company or the Indemnified Parties. In the event Contractor's insurance policies do not cover Subcontractors, Contractor shall require in its contract with any Subcontractor that such Subcontractor maintain insurance of the type and amounts required of the Contractor.

25.2 If it shall have any employees providing services for Company, Contractor shall also provide workers' compensation insurance covering those employees in amounts required by applicable law and shall provide a certificate of insurance to Company evidencing such coverage within thirty (30) days of the effective date of this Agreement. Additionally, Contractor shall provide Employer's Liability insurance covering all employees of Contractor and any Subcontractors wherever they may be in the United States so long as they are engaged in the work covered by this Agreement, with a limit of at least one million dollars (\$1,000,000.00) per occurrence.

25.3 Contractor also shall maintain at all times during the term of this Agreement "All Risk" property insurance in an amount equal to the replacement cost of any and all equipment owned, leased, or borrowed while in Contractor's or Subcontractor's care, custody, or control including while in transport at the direction of Contractor or Subcontractor. Such "All Risk" insurance shall also cover all materials and equipment stored on the project site for incorporation into the Services as well as all partially constructed structures.

25.4 Contractor shall procure and maintain automobile liability insurance covering death or injury to any person or persons, or damage to property arising from the operation of vehicles or equipment, with limitations of not less than two million dollars (\$2,000,000).

25.5 In the event the Contractor fails to obtain the required insurance or to obtain the required certificates from any Subcontractor and a claim is made or suffered, such party shall indemnify and hold harmless Company from any and all claims for which the required insurance would have provided coverage. Further, in the event of any such failure which continues after seven (7) days' written notice thereof by Company, Company may, but shall not be obligated to, obtain such insurance and will have the right to deduct the cost of such insurance from the moneys due the Contractor.

25.6 In the event coverage is denied or reimbursement of a properly presented claim is disputed by the carrier for insurance provided above, the Contractor carrying such coverage shall make good faith efforts to pursue such claim with its carrier.

26. Entire Agreement. The Contract Documents constitute the sole and entire agreement of the Parties with respect to the subject matter contained therein, and supersede all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding such subject matter.

27. Notices. All notices, requests, consents, claims, demands, waivers, and other communications under this Agreement (each, a "Notice") must be in writing and addressed to the other Party at its address set forth below (or to such other address that the receiving Party may designate from time to time in accordance with this Section). Unless otherwise agreed herein, all Notices must be delivered by personal delivery, nationally recognized overnight courier, or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) on receipt by the receiving Party; and (b) if the Party giving the Notice has complied with the requirements of this Section 27.

Notice to Company:

4215 Philips Farm Road  
Suite 103  
Columbia, MO 65201

Attention: President & CEO

Email:

Contract.Management@BluebirdNetwork.com

Notice to Contractor:

#[ADDRESS]#

Attention: #[NAME]#

Email: #[EMAIL]#

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

29. Amendments. No amendment to, or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each Party.

30. Waiver. No waiver by any Party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a

waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

31. Assignment. Contractor shall not assign, transfer, delegate, or subcontract any of its rights or obligations under this Agreement without the prior written consent of Company which consent shall not be unreasonably withheld, conditioned, or delayed. Any purported assignment or delegation in violation of this Section 31 shall be null and void. No assignment or delegation shall relieve the Contractor of any of its obligations hereunder. Company may at any time assign or transfer any or all of its rights or obligations under this Agreement without Contractor's prior written consent. Such consent shall not relieve Contractor from full responsibility and liability for the work hereunder and the proper performance of all the terms and conditions of this Agreement.

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

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

34. Non-solicitation. During the Term of the Agreement and for a period of two (2) years thereafter, neither party shall directly or indirectly solicit the employment of (or advise, suggest or recommend that any other person or entity employ, offer employment to or solicit the employment of) any of the other party's personnel (including but not limited to employees, agents or consultants with whom the hiring party comes in contact in performing its obligations under this Agreement).

35. Dispute Resolution. All claims and disputes relating to this Agreement shall be subject to arbitration in Kansas City Missouri. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, and judgment of the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

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

37. Choice of Forum. Each Party irrevocably and unconditionally agrees that it will not commence any action, litigation, or proceeding of any kind whatsoever against the other Party in any way arising from or relating to this Agreement, including all exhibits, schedules, attachments, and appendices attached to this Agreement, and all contemplated transactions,

including, but not limited to, contract, equity, tort, fraud, and statutory claims, in any forum other than the US District Court for the Western District of Missouri or, if such court does not have subject matter jurisdiction, the courts of the State of Missouri sitting in Jackson County, and any appellate court from any thereof. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and agrees to bring any such action, litigation, or proceeding only in the US District Court for the Western District of Missouri or, if such court does not have subject matter jurisdiction, the courts of the State of Missouri sitting in Jackson County. Each Party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

38. Order of Precedence. Except as otherwise set forth herein, in the event of inconsistency between provisions of the Contract Documents, the inconsistency shall be resolved by giving precedence in the following order:

- (a) The Agreement
- (b) Purchase Order
- (c) Exhibits A, Outside Plant Manual, and B, Inside Plant/Cabinet Installation

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

40. Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. Notwithstanding anything to the contrary herein, a signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

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



Contractor's financial inability to perform, changes in cost or availability of materials, components or services, market conditions, or supplier actions or contract disputes will not excuse performance by Contractor under this Section 41.

The Impacted Party shall give notice within five (5) days of the Force Majeure Event to the other Party, stating the period of time the occurrence is expected to continue. The period of such delay shall be added by a Change Order to the time for performance under the Purchase Order, with no additional costs to the other Party. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. In the event that the Impacted Party's failure or delay remains uncured for a period of thirty (30) consecutive days following written notice given by it under this Section 41, the other Party may thereafter terminate this Agreement upon ten (10) days' written notice, subject to the provisions of Section 1616.5 and Section 16.6.

42. Excusable Delays And Time Extensions. In addition to the provisions in Section 41 above, Contractor shall be entitled to treat as an excusable delay hereunder any delay caused by the acts of railroad (not otherwise permitted hereunder), the failure of Company to discharge any of its obligations hereunder, or any other delay which Company and Contractor agree in writing should be treated as an excusable delay hereunder.

43. Warranty of Construction.

43.1 Contractor warrants to Company that materials and equipment furnished in connection with the Services will be of good quality and new unless the Contract Documents require or permit otherwise. Contractor further warrants that the Services conform to the requirements of the Contract Documents and will be free from defects except for those inherent in the quality of the Service required or permitted by the Contract Documents. Work, materials, or equipment not conforming to these requirements may be considered defective.

43.2 Contractor warrants that the work performed under this Agreement conforms to the Agreement requirements and is free from defects in design or workmanship performed by the Contractor or any of its subcontractors.

43.3 These warranties shall remain in effect for twenty-four (24) months from the date the Company delivers its Notice of Acceptance for all Services.

43.4 The Contractor shall remedy at its expense any such defect or failure to conform and is responsible for any damages to persons and property resulting from such defects or failure to conform. The Contractor shall also restore any Services damaged in fulfilling the terms of this warranty.

43.5 In addition to other rights and remedies provided by this clause, all subcontractors', manufacturers', and suppliers' warranties expressed or implied, respecting any work and materials shall, at the direction of Company be enforced by the Contractor for the benefit of Company. The Contractor shall obtain any warranties which the Contractor's subcontractors, manufacturers, or suppliers would give in normal commercial practice.

43.6 If, within the warranty periods, any defect appears, then Company shall have the right to take the following actions:

(a) Retain such defective items or work and an equitable reduction will be made in the Contract Price for such defective items or work; or

(b) Return such defective items to the Contractor and require Contractor to repair or replace such defective items. Such repair or replacement shall be at the Contractor's sole expense at no cost to Company, including all related shipping costs and import duties, if applicable. Responsibility for the items while in transit shall be borne by the Contractor; or

(c) Correct or replace such defective items or work with similar items and recover the total cost incurred by Company, including shipping costs and import duties, if applicable, from the Contractor; or

(d) Require the Contractor to correct or replace the defective items or work.

43.7 Upon discovery or disclosure of any defect within the warranty periods provided hereby, the following conditions shall apply:

a) Company shall furnish written notice to the Contractor of the item or work involved and, if known to the Company, set forth the nature of the defect.

b) Within fifteen (15) days after receipt by the Contractor of the notification provided pursuant to Section 43.7(a), the Contractor shall provide to Company, in writing, the following information:

(i) Acknowledgment of the notification given to the Contractor by Company of the defect;

(ii) The corrective action to be taken by the Contractor to remedy the defect;

(iii) Disposition instructions regarding the defective item or work;

(iv) The date that the defective items or work shall be repaired, or replaced as required; or

(v) With the advance approval of Company, submit a proposed price reduction to this Agreement for Company's consideration.

43.8 Approvals by Company shall not release the Contractor from any obligations under the warranties set forth herein.

43.9 The terms "work" and "items" as used herein include related services and data to be delivered under this Agreement except for normal maintenance items.

43.10 Items or work repaired or replaced pursuant to this clause shall be subject to all provisions of this clause to the same extent as items or work initially delivered, except that time elapsed after Notice of Acceptance and prior to written notification by Company of the failure or defect shall be deducted from the warranty periods provided hereby for the purpose of computing time remaining under this warranty for repaired or replacement items or work. Any time subsequent to notification by Company of a defect and prior to repair or replacement and redelivery shall be added to the period of this warranty for the purpose of computing time remaining under this warranty.

43.11 The aforesaid warranties shall survive acceptance and payment and shall not be deemed to be the exclusive rights of Company but shall be in addition to the other rights of Company under law and the terms of this Agreement.

#### 44. Guarantees.

44.1 Consistent with the Warranty of Construction set forth in more detail in Section 43 above, Contractor guarantees to Company that the Services shall strictly comply with the Drawings and the Specifications, and that the Services shall be professional in every particular and free from defects, errors, and omissions in construction and workmanship. Contractor further guarantees that all materials, equipment, and supplies furnished for the Services by Contractor, and its subcontractors or suppliers, shall be new, merchantable, of the most suitable grade, and fit for their intended purposes and shall comply in all respects with the Specifications provided by Company.

44.2 Contractors' guarantees set forth in Section 43.1 above shall extend for twenty-four (24) months after the date of written Notice of Acceptance of the Services by Company. Design and engineering, labor, equipment, and/or materials furnished by Contractor pursuant to Section 43 above to correct defects shall be guaranteed by Contractor in accordance with the guarantees set forth in Section 43 above for a period of twenty-four (24) months from the date of completion of the correction.

44.3 In the event Contractor shall have been notified of any defects in the Services in violation of Contractor's foregoing guarantees and shall fail to promptly and adequately correct such defects, Company shall have the right to correct or to have such defects corrected for the account of Contractor, and Contractor shall promptly pay Company for costs incurred in correcting such defects plus any damages suffered by Company, or alternatively Company may, at its discretion, deduct such costs and damages from any payments due Contractor.

44.4 With respect to any items of manufactured equipment specified by Company and purchased by Contractor from others, Contractor warrants that the equipment is as specified, and agrees to pass on and assign to Company the manufacturer's warranty.

44.5 Contractor has sufficient legal rights to enter into this Agreement, and is not presently suspended, proposed for debarment, or debarred or otherwise ineligible for award of a Government contract; and

44.6 CONTRACTOR shall comply with all applicable Federal, state, and local laws, rules, or regulations.

45. Permits, Fees, and Notices. It will be the responsibility of Company to obtain all governmental approvals, rights of way, licenses, permits, easements, and other third party or private individual consents which Company in its sole discretion deems to be required by the Services. Contractor will not contact any government agency with respect to the Services unless authorized and requested to do so by Company. Contractor will promptly report to the Company Representative any inquiry or contact it receives from any government agency or any private individual with respect to the Services. Contractor will fully instruct any of its Subcontractors with respect to the requirements of this section.

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

[SIGNATURE PAGE FOLLOWS]

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

Bluebird Network LLC

By \_\_\_\_\_

Name:

Title:

#[CONTRACTOR\_NAME]#

By \_\_\_\_\_

Name:

Title:

## ADDENDUM A

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

#### 1. Equal Employment Opportunity

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

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

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

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

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

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

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

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

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

(ii)

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

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

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

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



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

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

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

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

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

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

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

Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)

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

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

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29

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

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

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

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

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

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

**(4) *Apprentices and trainees* —**

(i) ***Apprentices.*** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and

individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office,

withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

- (iii) ***Equal employment opportunity.*** The utilization of

apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) ***Compliance with Copeland Act requirements.*** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) ***Subcontracts.*** The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the National Telecommunications and Information Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) ***Contract termination: debarment.*** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) ***Compliance with Davis-Bacon and Related Act requirements.*** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) ***Disputes concerning labor standards.*** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) ***Certification of eligibility.***

- (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm

ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

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

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

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

Compliance with the Contract Work Hours and Safety Standards Act.

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



National Telecommunications and Information Administration or Company shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in [paragraph \(2\)](#) of this section.

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

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

Clean Air Act

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

Federal Water Pollution Control Act

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

- (2) The contractor agrees to report each violation to the National Telecommunications and Information Administration and understands and agrees that the National Telecommunications and Information Administration will, in turn, report each violation as required to assure notification to Company and the appropriate Environmental Protection Agency Regional Office.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by National Telecommunications and Information Administration.

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

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

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

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

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient."

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

Certification for Contracts, Grants, Loans, and Cooperative

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

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form- LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

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

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

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

\_\_\_\_\_  
Date

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

(a) Definitions. As used in this clause—

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

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

Covered telecommunications equipment or services means—

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

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

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

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

Critical technology means—

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

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

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

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

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

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

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

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

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

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

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

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

(b) Prohibition.

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

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

FAR [4.2104](#). This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract.

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

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

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

(d) Reporting requirement.

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

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

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

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

telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

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

#### 8. Domestic Preferences for Procurements

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

For purposes of this section:

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



## **EXHIBITS**

**EXHIBIT A**  
**SAMPLE PURCHASE ORDER**



**PURCHASE ORDER**

Vendor	PO	Date	Page
			1

**Vendor**

**Ship To**

**Bill To**

Bluebird Network - Lee's Summit  
800 NW Chipman Rd #5750  
Lee's Summit, MO 64083

Missouri Network Alliance, L.L.C.  
4215 Philips Farm Road  
Ste 103  
Columbia, MO 65201

Ship Via	Terms	Buyer	Delivery Date
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Line #	Item #	Description	Qty	Rate	Amount
1		SAMPLE PO	1	\$0.00	\$0.00

**Total**      **\$0.00**

**Notes :**



**[END OF DOCUMENT]**