

STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

ADDENDUM TO NEMO-Q, INC.'S AGREEMENT

THIS ADDENDUM ("Addendum") is entered into by and between Fort Bend County, ("County"), a body corporate and politic under the laws of the State of Texas, and Nemo-Q, Inc., ("Nemo-Q"), a company authorized to conduct business in the State of Texas (hereinafter collectively referred to as the "parties").

WHEREAS, the parties have executed and accepted Nemo-Q's Quote, System Sales Agreement Terms and Conditions, and the System Service Agreement (collectively the "Agreement"), attached hereto as Exhibit "A" and incorporated by reference, for specified hardware, software, maintenance services, and installation service (the "Product");

WHEREAS, Nemo-Q is the sole source provider of the Product as indicated by the letter attached hereto as "Exhibit B" and incorporated by reference; and

WHEREAS, the following changes are incorporated as if a part of the Agreement:

1. **Term.** The term of the Agreement is effective upon execution by both parties (the "Execution Date") and will expire on the first anniversary of the Execution Date, unless terminated sooner pursuant to the Agreement. This Agreement shall not automatically renew, but may be subsequently renewed in writing upon agreement of the parties.
2. **Payment; Non-appropriation; Taxes.** Payment shall be made by County within thirty (30) days of receipt of invoice. It is specifically understood and agreed that in the event no funds or insufficient funds are appropriated by Fort Bend County under this Agreement, Fort Bend County shall notify all necessary parties that this Agreement shall thereafter terminate and be null and void on the last day of the fiscal period for which appropriations were made without penalty, liability or expense to Fort Bend County. County is a body corporate and politic under the laws of the State of Texas and claims exemption from sales and use taxes. A copy of a tax-exempt certificate will be furnished upon request. Interest resulting from late payments by County shall be governed by Chapter 2251, TEXAS GOVERNMENT CODE.
3. **Limit of Appropriation.** Nemo-Q clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available the total maximum sum of One Hundred Sixty-Two Thousand, Nine Hundred Ninety-Three and 00/100 dollars (\$162,993.00), specifically allocated to fully discharge any and all liabilities County may incur. Nemo-Q does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Nemo-Q may become entitled to and the total maximum sum that County may become liable to pay to Nemo-Q shall not under any conditions, circumstances, or interpretations thereof exceed One Hundred Sixty-Two Thousand, Nine Hundred Ninety-Three and 00/100 dollars (\$162,993.00). In no event will the amount paid by the County for all services under this Agreement exceed this Limit of Appropriation without an agreement executed by the parties.

4. **Confidential Information.** Nemo-Q expressly acknowledges that County is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, County will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to County by Nemo-Q shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed. The terms and conditions of the Agreement are not proprietary or confidential information.
5. **Indemnity.** The parties agree that under the Constitution and laws of the State of Texas, County cannot enter into an agreement whereby County agrees to indemnify or hold harmless another party; therefore, all references of any kind to County defending, indemnifying, holding or saving harmless Nemo-Q for any reason are hereby deleted. Nemo-Q shall indemnify and defend County against all losses, liabilities, claims, causes of action, and other expenses, including reasonable attorney's fees, arising from activities of Nemo-Q, its agents, servants or employees, performed under this agreement that result from the negligent act, error, or omission of Nemo-Q or any of Nemo-Q's agents, servants or employees.
6. **Applicable Law; Arbitration; Attorney Fees.** The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity. County does not agree to submit disputes arising out of the Agreement to binding arbitration. Therefore, any references to binding arbitration or the waiver of a right to litigate a dispute are hereby deleted. County does not agree to pay any and/or all attorney fees incurred by Nemo-Q in any way associated with the Agreement.
7. **Certain State Law Requirements for Contracts.** The contents of this Section are required by Texas Law and are included by County regardless of content.
 - a. Agreement to Not Boycott Israel Chapter 2271 Texas Government Code: By signature below, Nemo-Q verifies Nemo-Q does not boycott Israel and will not boycott Israel during the term of this Agreement.
 - b. Texas Government Code § 2252.152 Acknowledgment: By signature below, Nemo-Q represents pursuant to § 2252.152 of the Texas Government Code, that Nemo-Q is not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that are identified under § 806.051, § 807.051, or § 2252.153.
8. **Modifications.** The parties may not amend or waive this Agreement, except by a written agreement executed by both Parties.

9. **Human Trafficking.** BY ACCEPTANCE OF CONTRACT, NEMO-Q ACKNOWLEDGES THAT FORT BEND COUNTY IS OPPOSED TO HUMAN TRAFFICKING AND THAT NO COUNTY FUNDS WILL BE USED IN SUPPORT OF SERVICES OR ACTIVITIES THAT VIOLATE HUMAN TRAFFICKING LAWS.
10. **Use of Customer Name.** Nemo-Q may use County's name without County's prior written consent only in any Nemo-Q's customer lists, any other use must be approved in advance by County.
11. **Personnel.** Nemo-Q represents that it presently has, or is able to obtain, adequate qualified personnel in its employment for the timely performance of the Services required under this Agreement and that Nemo-Q shall furnish and maintain, at its own expense, adequate and sufficient personnel, in the opinion of County, to perform the Services when and as required and without delays.

All employees of Nemo-Q shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of Nemo-Q or agent of Nemo-Q who, in the opinion of County, is incompetent or by his conduct becomes detrimental to providing Services pursuant to this Agreement shall, upon request of County, immediately be removed from association with the Services required under this Agreement.

When performing Services for the County, Nemo-Q shall comply with, and ensure that all Nemo-Q Personnel comply with, all rules, regulations and policies of County that are communicated to Nemo-Q, including security procedures concerning systems and data and remote access thereto, building security procedures, including the restriction of access by County to certain areas of its premises or systems for security reasons, and general health and safety practices and procedures.

12. **Product Assurance.** Nemo-Q represents and warrants that its hardware, software and any related systems and/or services related to its software and/or hardware (collectively, the "Product") furnished by Nemo-Q to County will not infringe upon or violate any patent, copyright, trademark, trade secret, or any other proprietary right of any third party. Nemo-Q will, at its expense, defend any suit brought against County and will indemnify County against an award of damages and costs (including reasonable attorney fees, court costs and appeals), made against County by settlement or final judgment of a court that is based on a claim that the use of Nemo-Q's Product infringes an intellectual property right of a third party. Such defense and indemnity shall survive termination or expiration of the Agreement and Nemo-Q's liability for the above is not limited by any limitation of liability clauses that may appear in any document executed by the Parties.
13. **Independent Contractor.** In the performance of work or services hereunder, Nemo-Q shall be deemed an independent contractor, and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of Nemo-Q or, where permitted, of its subcontractors. Nemo-Q and its agents, employees, officers, or volunteers shall not, by performing work pursuant to this Agreement, be deemed

to be employees, agents, or servants of County and shall not be entitled to any of the privileges or benefits of County employment.

14. **Confidential Information.** Nemo-Q acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to County. Any and all information of any form obtained by Nemo-Q or its employees or agents from County in the performance of this Agreement shall be deemed to be confidential information of County ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Nemo-Q shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by Nemo-Q) publicly known or is contained in a publicly available document; (b) is rightfully in Nemo-Q's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; or (c) is independently developed by employees or agents of Nemo-Q who can be shown to have had no access to the Confidential Information.

Nemo-Q agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Nemo-Q uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to County hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Nemo-Q shall use its best efforts to assist County in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, Nemo-Q shall advise County immediately in the event Nemo-Q learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and Nemo-Q will at its expense cooperate with County in seeking injunctive or other equitable relief in the name of County or Nemo-Q against any such person. Nemo-Q agrees that, except as directed by County, Nemo-Q will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Agreement or at County's request, Nemo-Q will promptly turn over to County all documents, papers, and other matter in Nemo-Q's possession which embody Confidential Information.

Nemo-Q acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to County that is inadequately compensable in damages. Accordingly, County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Nemo-Q acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of County and are reasonable in scope and content.

Nemo-Q in providing all services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.

15. **Insurance.** Prior to commencement of the Services under this Agreement, Nemo-Q shall furnish County with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to County. Nemo-Q shall provide certified copies of insurance endorsements and/or policies if requested by County. Nemo-Q shall maintain such insurance coverage from the time Services commence until Services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of Services. Nemo-Q shall obtain such insurance written on an Occurrence form from such companies having Bests rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:

(a). Workers' Compensation insurance. Substitutes to genuine Workers' Compensation Insurance will not be allowed. Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.

(b). Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.

(c). Business Automobile Liability insurance with a combined Bodily Injury/Property Damage limit of not less than \$1,000,000 each accident. The policy shall cover liability arising from the operation of licensed vehicles by policyholder.

(d). Professional Liability insurance with limits not less than \$1,000,000.

County and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation. All Liability policies including Workers' Compensation written on behalf of Nemo-Q shall contain a waiver of subrogation in favor of County and members of Commissioners Court.

If required coverage is written on a claims-made basis, Nemo-Q warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of two years beginning from the time that work under the Agreement is completed.

16. **Conflict.** In the event there is a conflict between this Addendum and the Agreement, this Addendum controls.
17. **Understanding, Fair Construction.** By execution of this Addendum, the parties acknowledge that they have read and understood each provision, term and obligation contained in this Addendum. This Addendum, although drawn by one party, shall be construed fairly and reasonably and not more strictly against the drafting party than the nondrafting party.

18. **Captions.** The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.
19. **Electronic and Digital Signatures.** The Parties to this Agreement agree that any electronic and/or digital signatures of the Parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as the use of manual signatures.
20. **County Data.** Nothing in this Agreement will be construed to waive the requirements of § 205.009 of the Texas Local Government Code.
21. **Compliance with Laws.** Nemo-Q shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required by County, Nemo-Q shall furnish County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.
22. **Grant Funding.** Nemo-Q understands that and acknowledges that this Agreement may be totally or partially funded with federal funds. Nemo-Q represents and warrants that it is and will remain in compliance with all applicable federal provisions, including those attached as Exhibit "C" attached hereto and incorporated herein for all purposes.
23. **Severability.** If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

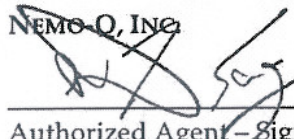
IN WITNESS WHEREOF, this Addendum is signed, accepted, and agreed to by all parties by and through the parties or their agents or authorized representatives. All parties hereby acknowledge that they have read and understood this Addendum and the attachments and exhibits hereto. All parties further acknowledge that they have executed this legal document voluntarily and of their own free will.

FORT BEND COUNTY

 KP George,
 Fort Bend County Judge

 Date

~~NEMO-Q, INC~~



 Authorized Agent - Signature

Dick Eason

 Authorized Agent- Printed Name

NJM

 Title

8/8/20

 Date

AUDITOR'S CERTIFICATE

I hereby certify that funds in the amount of \$_____ are available to pay the obligation of Fort Bend County within the foregoing Agreement.

Robert Ed Sturdivant, County Auditor

Exhibit A: Nemo-Q's Quote, System Sales Agreement Terms and Conditions, and the System Service Agreement

Exhibit B: Sole Source Letter

Exhibit C: Federal Clauses

Exhibit A

QUOTATION FROM NEMO-Q 7/21/20 Quote #: IN-yymmddxxxx
 By: Michael Bruner Phone: 972-347-1766

Customer: Ft Bend County Enterprise software
 Hardware for Justice center District Court and
 County Clerk



<u>QTY.</u>	<u>PART NO</u>	<u>DESCRIPTION</u>	<u>UNIT PRICE</u>	<u>PRICE</u>
HARDWARE				
6	11041-NP	Black Touchscreen Kiosk w/ NP Printer	\$3,800	\$22,800
7	12795	NQ Video Extender Kit HDMI	\$999	\$6,993
4	91000	Installation Hardware	\$500	\$2,000
DISPLAYS				
SOFTWARE				
1	15606	SMS Branch License 100000 Per Month	\$13,200	\$13,200
20	99080	Online Appointment Scheduler	\$400	\$8,000
1	15201	GALA C Centralized Enterprise License	\$105,000	\$105,000
1	15203	GALA C Branch Software	\$0	\$0
1	15504	GALA Touchscreen License	\$0	\$0
1	15501	GALA TV License	\$0	\$0
EQUIPMENT TOTAL:				\$157,993
SERVICES				
1	99000	Installation Labor, Travel & Training	\$5,000	\$5,000
PAPER				
	42100	UPS-Battery Back-Up System Shipping Charge		
<u>GRAND TOTAL</u>				<u>\$162,993</u>

ANNUAL COSTS

Annual maintenance agreement. After the 1-year Warranty	\$23,699
Annual appointment	\$8,000
Annual SMS 100000 per month	\$13,200
SMS overage .012 Per SMS after 100000 per month	
Customer is responsible for any taxes or local user fees	
Quote is valid for 90 days	

NEMO-Q, L.P.
 4023 W. Universtiy Dr, Bldg B
 McKinney, TX 75071
 Phone: 972-347-1766

Fed ID: 14-1906060
 DUNS: 19-274-2901



NEMO-Q SYSTEM SALES AGREEMENT TERMS AND CONDITIONS

CUSTOMER COMPANY Name:	
Contact Name(s):	
System Location, City:	Address:
State:	Phone # / email:
Tax ID #:	Effective Date:
Purchase Order #:	NEMO-Q Quote #(s):

This Master Services Agreement (the "Agreement") is made as of the Effective Date set forth above between NEMO-Q, INC. (Nemo-Q), a Texas company having its principal place of business at 4023 W. University, Building B, McKinney, TX. 75071 and the Customer identified above. Nemo-Q and Customer are collectively referred to herein as the "Parties" and individually as a "Party". This Agreement sets forth certain rights and obligations governing the provisioning and delivery of Equipment and Services by Nemo-Q to Customer. The Agreement consists of Service Agreement, Equipment List and the General Terms and Conditions herein unless those Terms and Conditions are expressly superseded by the terms and conditions contained in any Amendment hereto duly executed by the Parties.

These NEMO-Q Terms and Conditions are made as of the Effective Date set forth above between NEMO-Q and the Customer identified above.

1. Definitions

- (a) **Agreement.** "Agreement" means these Terms and Conditions and any accompanying price schedules.
- (b) **Customer.** "Customer" means an end user customer which purchases Equipment and Services from NEMO-Q.
- (c) **Documentation.** "Documentation" means any online or printed user manuals or functional specifications that are provided to Customer by NEMO-Q, and any derivative works of the foregoing.
- (d) **NEMO-Q Product.** "NEMO-Q" means the NEMO-Q product(s) (Equipment) identified on a Nemo-Q quote.
- (e) **Purchase Order Form.** "Purchase Order Form" means a document signed by authorized representatives of Customer and itemizing the NEMO-Q Products and Services purchased by an end user customer thereunder.
- (f) **Services.** "Services" means Queuing and Queue Management services that NEMO-Q agrees to provide to a Customer pursuant to a Purchase Order Form.
- (g) **Target Installation Date.** The start date of on-site installation as agreed upon the first five (5) business days after NEMO-Q receives the Purchase Order or the execution of this agreement, whichever occurs first.
- (h) **Software.** "Software" means those computer programs provided to Customer as part of a NEMO-Q Product, including any replacements, updated versions or bug fixes that may be provided hereunder, and any derivative works of the foregoing.

2. Services and License

- (a) **Services.** NEMO-Q shall provide and Customer shall use the underlying Services and Equipment as specified on the applicable Purchase Order Form, subject to the terms of Customer's agreement with NEMO-Q. To the extent Nemo-Q agrees to provide Services or Equipment not specified on a Purchase Order Form, Customer shall pay Nemo-Q its then current services rate, plus expenses, for such Services or Equipment.
- (b) **No Alteration of Services.** Customer acknowledges and agrees that it will not alter any NEMO-Q Equipment or Software, in any manner, sold under the terms of this Agreement without prior consent from NEMO-Q. Furthermore, Customer acknowledges and agrees to indemnify NEMO-Q for any claim from any third party resulting from any such alteration of any NEMO-Q Product or Software by Customer. Such unauthorized alterations may result in the warranty being voided.
- (c) **License and Use Restrictions.** See Attachment

3. Implementation, Support and Training.

- (a) **Implementation and Training by Resellers.** NEMO-Q will provide Equipment configuration, implementation and initial training services at Customer location as identified on in this agreement and/or on the Purchase Order. User Training shall be for not less than one (1) business hours per fifteen (15) workstations. Manager Training shall be for not less than two (2) business hours.

4. Financial Terms

- (a) **Compensation.** Customer shall pay NEMO-Q based on the following:
- (b) Thirty Three percent (33%) of the total price for software, equipment and services shall be invoiced upon NEMO-Q's receipt of Customer Purchase Order or this Agreement, whichever is first and payable prior to Equipment shipment from NEMO-Q to Customer or within thirty (30) business days, whichever is first.
- (c) Thirty Three percent (33%) of the total price for software, equipment and services shall be invoiced upon shipment of said equipment from NEMO-Q to Customer and payable within fifteen (15) business days from the date of shipment.
- (d) Thirty Four percent (34%) of the total price for software, equipment and services shall be invoiced upon the completion of the Target system installation and payable within fifteen (15) business days from the completion of said services. Should Target Date be met NEMO-Q shall reduce the final invoice to Thirty percent (30%) of the total price for software, equipment and services.

- (e) **Taxes.** Customer shall pay or shall reimburse NEMO-Q for all applicable sales taxes and other taxes, however characterized by the taxing authority incurred on account of Customer with NEMO-Q under this Agreement, except for any taxes based upon NEMO-Q's net income.

5. Term and Termination

- (a) **Term.** The term of this Agreement commences on the Effective Date hereof and will continue for an initial term of (one) 1 year. Thereafter, this Agreement will automatically renew for an unlimited number of additional one year terms unless either party notifies the other party of its intention not to renew at least 90 days in advance of the expiration of the then current term.
- (b) **Termination for Cause.** Either party can terminate this Agreement for cause upon written notice to the other party:
if a party fails to pay the other party any delinquent amounts owed to the other party hereunder within 10 days of written notice by the other party specifying the amounts owed;
in the case of NEMO-Q, immediately upon any breach by Customer of Section 2(c) above;
in the case of NEMO-Q, immediately upon any breach of any confidentiality obligations owed to NEMO-Q by Customer;
if the other party has committed any other material breach of its obligations under this Agreement and has failed to cure such breach within 45 days of written notice by the non-breaching party specifying in reasonable detail the nature of the breach (or, if such breach is not reasonably curable within 45 days, has failed to begin and continue to work diligently and in good faith to cure such breach); or
in the case of NEMO-Q, upon the institution of bankruptcy or state law insolvency proceedings against Customer, if such proceedings are not dismissed within 30 days of commencement.
- (c) **Obligations Upon Termination.** Upon termination of this Agreement: NEMO-Q shall immediately terminate access to the Software by Customer; and Should there be monies owed by Customer to Nemo-Q, Customer shall, within 5 days of termination, return all equipment provided to Customer by NEMO-Q.

6. Indemnification

- (a) **Indemnification.** Customer shall indemnify NEMO-Q, NEMO-Q's affiliates, and all of its stockholders, officers, directors, agents, and employees (each, an "Indemnified Party") at all times from and after the Effective Date against any liability, loss, damages (including punitive damages), claim, settlement payment, cost and expense, interest, award, judgment, diminution in value, fine, fee, and penalty, or other charge, including reasonable legal expenses, arising out of or relating to any claim by an unaffiliated third party (i) alleging that the use in accordance with this Agreement of the Software or the Services infringes or misappropriates any intellectual property or privacy rights of the unaffiliated third party; (ii) that arises or is alleged to have arisen solely out of the negligence or intentional misconduct of the indemnifying party (each a "Third Party Claim"); (iv) that arises or is alleged to have arisen out of the alteration of any NEMO-Q Product, the Software or Services by Customer, or (iv) damage to tangible personal or real property and/or personal injuries arising out of the negligence or willful misconduct of the Indemnifying Party or its agents, servants, employees, contractors or representatives. NEMO-Q has no liability for, and no obligation to indemnify CUSTOMER against, any Third Party Claim arising or alleging based in whole or in part on use of the Software other than as specified in this Agreement, or its documentation, including use with third party hardware and software products not specifically authorized by NEMO-Q.
- (b) **Indemnification Process.** NEMO-Q shall promptly notify the indemnifying party in writing of any Third Party Claim, stating the nature and basis of the Third Party Claim, to the extent known. The indemnifying party shall have sole control over the defense and settlement of any Third Party Claim, provided that, within fifteen (15) days after receipt of the above-described notice, the indemnifying party notifies the Indemnified Party of its election to so assume full control. The foregoing notwithstanding, the Indemnified Party shall be entitled to participate in the defense of such Third Party Claim and to employ counsel at its own expense to assist in the handling of such claim, except that the Indemnified Party's legal expenses in exercising this right shall be deemed legal expenses subject to indemnification hereunder to the extent that (x) the indemnifying party fails or refuses to assume control over the defense of the Third Party Claim within the time period



set forth above; (y) the Indemnified Party deems it reasonably necessary to file an answer or take similar action to prevent the entry of a default judgment, temporary restraining order, or preliminary injunction against it; or (z) representation of both parties by the same counsel would, in the opinion of that counsel, constitute a conflict of interest. The Indemnifying Party shall not settle any such Third Party Claim without the written consent of the Indemnified Party, except for a complete settlement requiring only the payment of money damages to be paid by the Indemnifying Party.

7. Disclaimers and Limitations

(a) Disclaimer of Warranties. OTHER THAN AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEMO-Q MAKES NO, AND HEREBY DISCLAIMS ANY, REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE SOFTWARE, THE SOFTWARE, PRODUCTS OR SERVICES PROVIDED OR THE AVAILABILITY, FUNCTIONALITY, PERFORMANCE OR RESULTS OF USE OF THE SOFTWARE, PRODUCTS OR SERVICES. WITHOUT LIMITING THE FOREGOING, EXCEPT AS SPECIFICALLY SET FORTH HEREIN, NEMO-Q DISCLAIMS ANY WARRANTY THAT THE SOFTWARE, THE PRODUCTS AND SERVICES PROVIDED BY NEMO-Q, OR THE OPERATION THEREOF ARE OR WILL BE ACCURATE, ERROR-FREE OR UNINTERRUPTED. NEMO-Q MAKES NO, AND HEREBY DISCLAIMS ANY, IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, OF FITNESS FOR ANY PARTICULAR PURPOSE OR ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE.

(b) Disclaimer of Consequential Damages. NEMO-Q HAS NO LIABILITY WITH RESPECT TO THE SOFTWARE, SERVICES, OR ITS OTHER OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION LOSS OF PROFITS AND THE COST OF COVER) EVEN IF NEMO-Q HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(c) Limitations of Remedies and Liability. EXCEPT FOR ANY CLAIMS SUBJECT TO INDEMNIFICATION HEREUNDER, NEMO-Q'S TOTAL LIABILITY TO CUSTOMER FOR ANY REASON AND UPON ANY CAUSE OF ACTION INCLUDING WITHOUT LIMITATION, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, AND OTHER TORTS, IS LIMITED TO ALL FEES PAID TO NEMO-Q BY CUSTOMER DURING THE THREE MONTHS IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO THE LIABILITY.

8. General

(a) Changes in Law. If any law, regulation, court order, or regulatory authority (i) prohibits NEMO-Q from performing under this Agreement, (ii) renders any part of NEMO-Q's performance under this Agreement illegal, or (iii) otherwise makes a change that materially adversely impacts NEMO-Q's ability to perform under this Agreement, then the parties shall negotiate in good faith to amend this Agreement as necessary to address the change. If the parties cannot amend the agreement in accordance with the above within 30 days, then either party can terminate this agreement on 30 days' notice without liability to the other party.

(b) Force Majeure. "Force Majeure Event" means any act or event that (a) prevents a party (the "Nonperforming Party") from performing its obligations or satisfying a condition to the other party's (the "Performing Party") obligations under this Agreement, (b) is beyond the reasonable control of and not the fault of the Nonperforming Party, and (c) the Nonperforming Party has not, through commercially reasonable efforts, been able to avoid or overcome. "Force Majeure Event" does not include economic hardship, changes in market conditions, and insufficiency of funds. If a Force Majeure Event occurs, the Nonperforming Party is excused from the performance thereby prevented and from satisfying any conditions precedent to the other party's performance that cannot be satisfied, in each case to the extent limited or prevented by the Force Majeure Event. When the Nonperforming Party is able to resume its performance or satisfy the conditions precedent to the other party's obligations, the Nonperforming Party shall immediately resume performance under this Agreement. The relief offered by this paragraph is the exclusive remedy available to the Performing Party with respect to a Force Majeure Event.

(c) Assignment. CUSTOMER shall not assign any of its rights under this Agreement, except with the prior written consent of NEMO-Q. The preceding sentence applies to all assignments of rights, whether they are voluntary or involuntary, by merger, consolidation, dissolution, operation of law or any other manner. Any change of control transaction is deemed an assignment hereunder. Any purported assignment of rights in violation of this Section is void.

(d) Governing Law; Venue. The laws of the State of Texas (without giving effect to its conflict of laws principles) govern all matters arising out of or relating to this Agreement and the transactions it contemplates, including, without limitation, its

interpretation, construction, performance, and enforcement. Except as set forth in Section 8(e) below, any claims or actions regarding or arising out of this Agreement must be brought exclusively in a court of competent jurisdiction sitting in Wichita, Kansas, and each party to this Agreement submits to the jurisdiction of such courts for the purposes of all legal actions and proceedings arising out of or relating to this Agreement. Each party waives, to the fullest extent permitted by law, any objection that it may now or later have to (i) the laying of venue of any legal action or proceeding arising out of or relating to this Agreement brought in any state or federal court sitting in McKinney, Texas; and (ii) any claim that any action or proceeding brought in any such court has been brought in an inconvenient forum.

(e) Arbitration. Any controversy or claim arising out of or relating to this Agreement, or any breach thereof, must be resolved by confidential binding arbitration in Wichita, Kansas in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Either party may, without inconsistency with this agreement to arbitrate, seek from a court any provisional remedy that may be necessary to protect trademarks, copyrights, or other rights or property pending the establishment of the arbitral tribunal or its determination of the merits of the controversy. The parties agree that the arbitrator has the power to award all costs of the arbitration, including reasonable attorney's fees and expenses, to the prevailing party.

(f) Recovery of Litigation Costs. If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the unsuccessful party shall pay to the successful party its reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which the successful party may be entitled.

(g) Entire Agreement. This Agreement, including the CUSTOMER Application and any pricing schedules constitute the final agreement between the parties. It is the complete and exclusive expression of the parties' agreement on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement. The provisions of this Agreement cannot be explained, supplemented or qualified through evidence of trade usage or a prior course of dealings. In entering into this Agreement, neither party has relied upon any statement, representation, warranty or agreement of any other party except for those expressly contained in this Agreement. There are no conditions precedent to the effectiveness of this Agreement, other than any that are expressly stated in this Agreement.

(h) Amendments. The parties can amend this Agreement only by a written agreement of the parties that identifies itself as an amendment to this Agreement.

(i) Survival of Certain Provisions. Each party hereto covenants and agrees that the provisions in Sections 1, 2(c), 7, and 8 in addition to any other provision that, by its terms, is intended to survive the expiration or termination of this Agreement, shall survive the expiration or termination of this Agreement.

(j) Notices. Each party giving or making any notice, request, demand or other communication (each, a "Notice") pursuant to this Agreement must give the Notice in writing and use one of the following methods of delivery, each of which for purposes of this Agreement is a writing: personal delivery, registered or certified U.S. Mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid). Any party giving a Notice must address the Notice to the appropriate person at the receiving party (the "Addressee") at the address listed on the signature page of this Agreement or to another Addressee or another address as designated by a party in a Notice pursuant to this Section. Except as provided elsewhere in this Agreement, a Notice is effective only if the party giving the Notice has complied with this paragraph.

NEMO-Q INC.
By: [Signature]
Print: Nick Easton
Title: VP
CUSTOMER:
By: _____
Print: _____
Title: _____

SYSTEM SERVICE AGREEMENT
CUSTOMER NAME



4023 West University Blvd. Building B
McKinney, TX 75071
Technical Support: 866-725-3277
Main Office: 972-347-1766

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AGREEMENT OVERVIEW

This Agreement represents a System Parts and Remedial Maintenance Agreement ("Agreement") between NEMO-Q Inc. (The Company), Federal ID 14-1906060 DUNS 19-274-2901 and the _____, located at _____,

with an Effective Date of _____ for the NEMO-Q SYSTEMS; Nemo-Q software, ticket printers, displays, interfaces and other hardware, hereafter called the "equipment", that were purchased from NEMO-Q. The SYSTEM(S) covered by this agreement are listed in Exhibit 1. This Agreement remains valid until superseded by a revised agreement mutually endorsed by the Company and Customer.

This Agreement outlines the parameters of all services covered as they are mutually understood by the Company and the Customer.

Goals and Objectives

The goal of this Agreement is to ensure that the proper elements and commitments are in place to provide consistent product service and support to the Customer by the Company.

The objectives of this Agreement are to:

- Provide clear reference to service ownership, accountability, roles and/or responsibilities.
- Present a clear, concise and measurable description of service provision to the customer.
- Define the hardware coverage (warranty or extended warranty) covered by this agreement.

Effective Date

This Agreement is valid from the Effective Date outlined herein and is valid until further notice unless written notification is provided thirty (30) days prior to the end of an annual term. This Agreement should be reviewed at a minimum once per fiscal year; however, in lieu of a review during any period specified, the current Agreement will remain in effect unless defined written notice is provided.

Service Agreement

The following detailed service parameters are the responsibility of the Service Provider, Company, in the ongoing support of this Agreement. The First year from the "In Service" date is considered **Warranty Period** and Blue Service Coverage is included in the original sales price. Should Gold Service Coverage be selected the difference between the Annual Blue Coverage and Annual Gold Coverage shall be due with the installation of the system, in line with agreed to net terms, for the First year Warranty Period.

Service and Parts Warranty Scope

The following Parts Warranty and Remedial Maintenance Services are covered by this Agreement;

- Hardware parts replacement when defined as "covered",
- Manned telephone support as defined by the selected level of Service,
- Monitored email support as defined by the selected level of Service,
- Remote assistance using *TeamViewer* where available and when authorized by Customer contacts (listed in Exhibit 1). *Should TeamViewer or other customer approved remote access not be allowed, additional service fee may apply.*
- Planned or Emergency Onsite assistance (extra costs may apply)

Software

Company sells a version of the Nemo-Q NQS software that is the latest "Released" version based on customer purchased application solutions.

"Release" means such consecutive releases of the Software as the Company decides to market in the normal course of its business. The term Release shall include the following deliverables:

- Patches, which shall include error corrections made as a result of the identification of errors in the Software;
- Updates, which at least shall include patches (the term upgrade shall have the same meaning as the term update); and
- Versions which shall include all patches, updates, upgrades issued since the Release of the previous version together with any versions for alternative platforms and any improvement of and

additions to the functionality of the previous Release.

New Versions are not released on a regular schedule and will be made available to:

- Resolve defined Customer issues;
- Provide core NQS functionality to support newly purchased Nemo-Q application solutions;
- Provide core NQS functionality to support newly developed Nemo-Q features.

Customer Requirements

Customer responsibilities and/or requirements in support of this Agreement include:

- Payment for all support costs at the agreed interval.
- Reasonable availability of customer representative(s) when resolving a service related incident or request.
- Software upgrades of Windows operating system software (i.e.; Windows XP to Windows 7)
 - Should Company be required to perform such Customer requested upgrades after business hours additional costs may apply.

Company Requirements

Company responsibilities and/or requirements in support of this Agreement include:

- Meeting response times associated with service related incidents.
- Appropriate notification to Customer for all scheduled maintenance.
- Assumptions related to in-scope services and/or components include that changes to services will be communicated and documented to Customer

Service Management

Effective support of services is a result of maintaining consistent service levels. The included pricing is contingent upon Company's ability to remotely access and service the system(s) using *TeamViewer* or other agreed upon and approved access methods. The following sections provide relevant details on service availability, monitoring of services and related components.

Service Availability

Coverage parameters specific to the service(s) covered in this Agreement are as follows:

NEMO-Q GOLD:

1. Parts Shipped!: Next Business Day except Low Impact; Ground

Incident Severity	Response Time	On Site Support
High Impact - system unusable	Business Day: Live or return call within 10 minutes, After Hours: 30 minutes.	Within 72 hours once determined on site required
Medium Impact - system useable with severely restricted functionality or performance	Business Day: Live or return call within 20 minutes, After Hours: 1 Hour.	Within 3 business days once determined on site required
Low Impact - system useable with minor impact on functionality or performance	Business Day: Live or return call within 40 minutes, After Hours: 2 Hours.	Within 10 business days once determined on site required Delays due to airlines or weather are exclusive.

Additional Services – Costs included

- Expanded Business Day support to Customer Service # 469-712-6400 or support@nemo-q.com : **7:00 A.M. to 7:00 P.M. Monday – Friday Central Time Zone (CST)**
- Extended Support 8 A.M. - 1 P.M. Saturdays CST.
- Emails will be handled with the same response times as telephone calls to Customer Service. After Business Hours is exclusive of 10 PM to 7 AM CST business days, after 1 PM Saturdays, Sundays and Nemo-Q Holidays.
- Remote "Call Home" application for early warning of system engine unavailable, requires ability to send emails from system site(s) to Company Support Personnel.
- Ten (10) percent discount on all Nemo-Q ticket stock ("Paper").
- One (1) business day per year of on-site system(s) performance review, to be scheduled thirty (30) or more days in advance. Technician time may be used at system location(s) of Customer's choice.



NEMO-Q BLUE:Parts Shipped¹: 2 Business Days for High Impact, Otherwise; Ground

Incident Severity	Response Time	On Site Support
High Impact - system unusable	Business Day: Live or return call within 30 minutes, After Hours: 2 Coverage Hours	Within 4 business days once determined on site required
Medium Impact - system useable with severely restricted functionality or performance	Business Day: Live or return call within 1 Hour, After Hours: 4 Coverage Hours	Within 10 business days once determined on site required
Low Impact - system useable with minor impact on functionality or performance	Business Day: Live or return call within 1 Hour, After Hours: Next Business Day	Within 15 business days once determined on site required Delays due to airlines or weather are exclusive.

- Business Day support to Customer Service # 469-712-6400 or support@nemo-q.com : 8:00 A.M. to 5:00 P.M. Monday – Friday Central Time Zone, USA.
- Emails will be handled with the same response times as telephone calls to Customer Service. After Business Hours is exclusive of 10 PM to 8 AM CST business days, Saturdays, Sundays and Nemo-Q Holidays.
- ¹ For shipping outside of the USA additional shipping charges will apply. These charges will vary by the size and weight of the shipment and will be billed additional to the agreement amount. Also, additional business days may be required for shipments outside of the USA.

Problem Resolution Process

We have several steps that may need to be taken prior to issue resolution. Some of the steps will require assistance on the Customer's part.

1. Initial efforts between Company and Customer are to define the issue. This will involve conversations over the phone or via an email exchange between Company technician(s) and authorized Customer contact (as listed in Exhibit 1). A service ticket will be assigned for all issues. The last 4 digits are commonly used as reference.
2. If the issue cannot be resolved in step 1, then Company can remote into Customer system, if authorized, using *TeamViewer* or other approved access methods.
3. If it has been determined that a minor part replacement will resolve the issue, then a part will be sent by Company and Customer assistance will be required to replace the part with the support of a Company technician over the phone.
4. For the purpose of this agreement, minor part replacement for parts previously purchased from Company, may include, but is not limited to:
 - a. Replacing a printer or printer part,
 - b. Replacing a hardware control module,
 - c. Replacing a control pad.
 - d. Replacing an amplifier,
 - e. Replacing a customer feedback panel,
 - f. Replacing a kiosk computer,
 - g. Replacing a engine computer,
 - h. Replacing a media computer,
 - i. Replacing a SMS modem,
 - j. Replacing a part that requires unplugging cables of old and plugging in cables of new.
5. If it has been determined that a minor repair will resolve the issue, for example clearing a paper jam, then a Company technician will walk a Customer representative through the process over the phone.
6. If an issue **cannot be resolved** over the phone, through remote access, with a minor part replacement or with a minor repair then an authorized Company technician will be sent to the location at the next available opportunity and in accordance with onsite assistance response times of the defined Company plan (NEMO-Q Gold or NEMO-Q Blue).

Remedial Action on Defective Parts

During the above one year period Company will repair, adjust and / or replace the equipment or its defective parts with a new or reconditioned model of equivalent quality, at Company's discretion and in accordance to the defined service plan, without charge to Customer. If any equipment is replaced it will continue with the warranty or service agreement coverage of the original equipment.

Not Covered by Warranty or Service Agreement

The warranty and service agreement do not cover equipment that has been damaged by one or more of the following, but not limited to:

- Moves, adds or changes
- Accident
- Unreasonable use
- Neglect
- Improper service through an agent other than NEMO-Q Authorized Technician
- Acts of God
- Power outages
- Power surges
- Network spikes
- Network reconfiguration impacting the system, without prior notification and approval of the NEMO-Q TSC
- Performing service, remedial maintenance or part replacement activity on a system without first contacting the NEMO-Q TSC
- Using unauthorized "paper" tickets in NEMO-Q provided printers
- For shipping outside of the USA delays may occur that are outside of the defined days in this agreement.

Fees

Customer shall pay annual fee on or before the Effective Date each year. Company reserves the right to adjust fees annually, not to exceed a three percent (3%) increase, with thirty (30) days advance written notice prior to the end of the annual term. Fees are identified with the various service levels as follows:

NEMO-Q GOLD: \$ _____ Annually

First Year (Difference between Gold-Blue) \$ _____ Year 1 Gold

NEMO-Q BLUE: \$ _____ Annually

Expenses

If travel is required to a Customer site to repair/replace covered parts, then Company will pay for all associated travel costs under NEMO-Q.GOLD AND NEMO-Q BLUE if travel occurs in the timeframes defined herein. Should the Customer request the travel occur sooner than the defined timeframes, the additional expenses (typically additional airfare) shall be billable. If several issues are resolved during the visit and all issues are not covered under warranty or the Service Agreement, then partial payment may be divided accordingly between both parties.

Authorized Technical Assistance

Company reserves the right to appoint any other company for the purpose of warranty and service agreement preventive or remedial work. This assignment will not affect any aspect of the warranty or Service Agreement.

Notice

All notices, requests, demands and other communications required by or permitted under this Agreement shall be in writing and shall be sufficiently delivered if delivered by hand, by courier service, or sent by registered or certified mail, postage prepaid, to the parties at their respective addresses listed below; If to the Company, to the address set forth on the cover page of this Agreement:

If to the Customer, to the address set forth above or:

Either party may change such party's address by providing written notice to the other party.

Miscellaneous Provisions

Assignment. This Agreement is non-assignable by Customer without prior written agreement of the Company.

Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Texas, USA.



Binding Upon Successors. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, legal representatives, successors and permitted assigns.

Entire Agreement. This Agreement constitutes the entire agreement between the Company and the Customer with respect to the terms of the service of the System(s) by the Company and supersedes all prior agreements and understandings, whether written or oral, between them concerning such terms of employment.

Waiver and Amendments; Cumulative Rights and Remedies.

This Agreement may be amended, modified or supplemented, and any obligation hereunder may be waived, only by a written instrument executed by the parties hereto. The waiver by either party of a breach of any provision of the Agreement shall not operate as a waiver of any subsequent breach.

No failure on the part of any party to exercise, and no delay in exercising, any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or remedy by such party preclude any other or further exercise thereof or the exercise of any other right or remedy. All rights and remedies hereunder are cumulative and are in addition to all other rights and remedies provided by law, agreement or otherwise.

The Company's obligations to the Customer and the Customer's rights and remedies hereunder are in addition to all other obligations of the Company and rights and remedies of the Consultant created pursuant to any other agreement.

Construction. Each party to this Agreement has had the opportunity to review this Agreement with legal counsel. This Agreement shall not be construed or interpreted against any party on the basis that such party drafted or authored a particular provision, parts of or the entirety of this Agreement.

Severability. In the event that any provision or provisions of this Agreement is held to be invalid, illegal or unenforceable by any court of law or otherwise, the remaining provisions of this Agreement shall nevertheless continue to be valid, legal and enforceable as though the invalid or unenforceable parts had not been included therein. In addition, in such event the parties hereto shall negotiate in good faith to modify this Agreement so as to affect the original intent of the parties as closely as possible with respect to those provisions which were held to be invalid, illegal or unenforceable.

Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

Arbitration

Customer and Company agree that if any dispute shall arise with respect to this Agreement, each will resolve such dispute by arbitration pursuant to the rules and regulations of the American Arbitration Association located nearest to McKinney, Texas USA.

Signatures

IN WITNESS WHEREOF, the Company and the Customer have executed this Agreement under to be effective as of the date first above written.

COMPANY: NEMO-Q, INC

CUSTOMER:

By: (Signature) 

By: (Signature) _____

Print name: Nick Ferson

Print name: _____

Title: NSM

Title: _____

Date: 8/3/20

Date: _____



Exhibit 1

System(s) – Reference Nemo-Q quote(s) dated:

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.

Additional as may be required.

System location(s): Authorized Customer Contacts:

NAME / LOCATION	PHONE NUMBER	EMAIL ADDRESS	TITLE

Travel outside of standard service coverage must be approved by authorized customer contact.

Exhibit B



NEMO-Q
4023 West University Drive, Building B
McKinney, TX 75071
972-347-1766 phone
972-347-1766 fax
www.nemo-q.com

May 15, 2020

To whom it may concern,

This letter is to certify that NEMO-Q, Inc., located in McKinney Texas, is the only entity in the United States and Canada authorized to sell, distribute, service and or warranty NEMO-Q proprietary software, including GALA, hardware and printer paper. Further, using any printer paper that is not approved by NEMO-Q will void the warranty on those printers.

Sincerely,

Debbie Dickenson
CFO

Exhibit C

CONTRACT PROVISIONS FOR CONTRACTS UNDER FEDERAL AWARDS

Nemo-Q, Inc., ("Contractor") understands and acknowledges that this Agreement may be totally or partially funded with federal and or state funds. As a condition of receiving these funds, Contractor represents that it is and will remain in compliance with all federal and or state terms as stated below. These terms flow down to all third party contractors and their subcontracts at every tier that exceed the simplified acquisition threshold, unless a particular award term or condition specifically indicates otherwise. The Contractor shall require that these clauses shall be included in each covered transaction at any tier.

1. Remedies and Breach.

Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

2. Termination.

All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

3. Equal Employment Opportunity.

In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. 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 also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance modified only if necessary to identify the affected parties.

4. Davis-Bacon Act.

As amended (40 U.S.C. 3141–3148), when required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141–3144, and 3146–3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Sub-contractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or sub-recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

5. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708).

Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

6. Rights to Inventions under a Contract or Agreement.

Contractor acknowledges that the federal government reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and authorize others to use (in whole or in part, including in connection with derivative works), for state (or Federal) purposes. Contractor will comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts and Cooperative Agreements”.

7. Clean Air.

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. The Contractor agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the appropriate EPA Regional Office. The Contractor agrees it will not use any violating facilities. It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities". It will report violations of use of prohibited facilities to the appropriate EPA Regional Office.

The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

8. Clean Water.

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. The Contractor agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the appropriate EPA Regional Office. The Contractor agrees it will not use any violating facilities. It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities". It will report violations of use of prohibited facilities to the appropriate EPA Regional Office.

The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

9. Energy Policy and Conservation Act.

The Contractor must comply with the requirements of The Energy Policy and Conservation Act (42 U.S.C. Section 6201) which contain policies relating to energy efficiency that are defined in the state energy conservation plan issued in compliance with this Act.

10. Government-wide Debarment and Suspension.

The Contractor shall comply and facilitate compliance with the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. A contract award in any tier must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. § 180 that implement Executive Orders Nos. 12549 (3 C F R part 1986 Comp., p. 189) and 12689 (3 C.F.R. part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order No. 12549. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount).

This certification is a material representation of fact relied upon by the County. 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 County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

Contractor 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.

11. Byrd Anti-Lobbying Amendment.

Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 C.F.R. Part 20, "New Restrictions on Lobbying." Contractor certifies that it and all its subcontractors at every tier will not and have 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, award, including any extension, continuation, renewal, amendment, or modification covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352.

12. Procurement of Recovered Materials.

The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.