

# Exhibit 5 - Purchase Agreement

## 1. Identification of Parties

**“Buyer”:**

Great Lakes Communication Corp

**Buyer Business Address:**

1501 35th Avenue  
Spencer, IA 51301

**“Seller”:**

\_\_\_\_\_  
(As filed with the state in which Seller is organized)

**Seller Business Address:**

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

## 2. Overview.

This Purchase Agreement establishes the terms and conditions pursuant to which the Seller must provide the Goods and/or Services as more fully described in Exhibit 4 - Identification of Goods and/or Services for Bid (“Exhibit 4”) in consideration for funds made available pursuant to Invitation For Bids #003 and in accordance with the Applicable Law.

## 3. Definitions.

Unless otherwise specifically defined herein, capitalized terms used but not defined herein shall have the meanings ascribed to them in the IFB.

## 4. Term.

This Purchase Agreement is effective as of the date of last signature below (the “Effective Date”) and terminates one year from that date, unless otherwise terminated in accordance with the terms. Buyer in its sole discretion may offer Seller an opportunity to renew this Purchase Agreement for up to two (2) additional one (1) year terms.

## 5. Scope of Purchase and Sale.

Seller agrees to sell the Goods and/or Services for the price and upon the delivery terms set forth in Exhibit 4 hereto. Buyer agrees to pay Seller the price as set forth in Exhibit 4 based on (a) the quantity actually purchased in the case of goods or services priced by unit, or (b) the total price for a stated quantity of goods or services, upon (i) delivery of the Goods and/or Services to the Buyer, (ii) the Buyer’s Acceptance thereof, and (iii) Seller’s submission and Buyer’s approval of a verified claim for the amount due.

**6. Irrevocable Offer.**

Seller understands and acknowledges that its signature on this Purchase Agreement constitutes an irrevocable offer to provide the Goods and/or Services. There is no contract unless and until an Authorized Agent executes this Purchase Agreement accepting Seller's Bid.

**7. Documents Incorporated and Order of Precedence.**

This Purchase Agreement is composed of multiple parts which, when enumerated below, are each incorporated into and made part of this Agreement by this reference. In the event of any conflict or inconsistency between the specific provisions of an incorporated part, any such conflict or inconsistency shall be resolved in the following order:

- 7.1. Exhibit 5 - Purchase Agreement and its Attachments:
  - 7.1.1. Attachments A - General Provisions; and
  - 7.1.2. Attachment B - Required Certifications, Representations, Warranties, and Covenants;
- 7.2. Invitation For Bids #003 and its Amendments, if applicable;
- 7.3. Exhibit 4 - Identification of Goods and/or Services for Bid
- 7.4. Exhibit 3 - Bidder's Qualifications
- 7.5. Exhibit 2 - Bidder Identification
- 7.6. Any additional support documentation submitted by the Bidder

**8. Notice.**

Any notice, demand, or request required by or made pursuant to this Agreement shall be deemed properly made if:

- 8.1. Personally delivered in writing or deposited in the United States mail, postage prepaid, to the addresses specified under Section 1 - Identification of Parties; or
- 8.2. Sent electronically by email to the Assigned Contact including the IFB Number on the subject line of the message. Sellers will receive an email response verifying that their notice, demand or request has been received.

**9. Non-Responsive Bids.**

Seller understands and acknowledges that if it adds terms and conditions to its Bid that are different from the terms set forth herein that its Bid may be rejected as non-responsive. Furthermore, if the Buyer accepts and selects Seller's Bid, the Buyer shall not be bound to any exceptions, changes, or additions made by Seller which are not expressly agreed to by the Buyer in writing. Such exceptions, changes, or additions will be void and of no force and effect and the parties will be governed according to the document precedence set forth in Section 6 - Documents Incorporated and Order of Precedence.

**10. Compliance with Laws.**

Seller certifies that it and all of its subcontractors to be used in the performance of this Purchase Agreement shall be responsible for complying with all applicable federal, state and local laws, regulations and standards. Seller is responsible for any costs of such compliance.

**11. Termination.**

The Buyer, by written notice, may terminate this Agreement, in whole or in part, when such action is in the best interest of the Buyer. If this Agreement is terminated, the Buyer shall be liable only for payment of Goods and/or Services accepted and rendered prior to the effective date of termination. Buyer’s right to terminate this Purchase Agreement is cumulative to any other rights and remedies provided by law or by this Agreement.

11.1. Termination for Convenience: the Buyer may terminate this Agreement, in whole or in part, for convenience without the payment of any penalty or incurring any further obligation or liability to Seller. Termination for convenience may be for any reason or no reason at all.

**12. Signatures**

IN WITNESS WHEREOF, in consideration of the mutual covenants set forth above and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the Parties have caused their respective duly authorized representatives to execute this Agreement.

**Buyer:**

**Seller:**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## Attachment A - General Provisions

### **1. Time of Essence.**

Buyer and Seller agree that time is deemed to be of the essence with respect to this Agreement.

### **2. Binding Effect.**

This Purchase Agreement shall be binding upon the Buyer and the Seller and their respective successors, heirs, legal representatives and permitted assigns.

### **3. Severability Provision.**

If any term or provision herein is determined to be illegal or unenforceable, the remainder of this Purchase Agreement will not be affected thereby. It is the intention of the parties that if any provision is held to be illegal, invalid or unenforceable, there will be added in lieu thereof a provision as similar in terms to such provision as is possible to be legal, valid and enforceable.

### **4. Choice of Law, Forum, and Dispute Resolution.**

This Purchase Agreement shall be governed in all respects by, and construed in accordance with, the laws of the State of Iowa, without giving effect to the choice of law principles thereof. The exclusive jurisdiction for any and all litigation related to this Purchase Agreement shall be the state or federal courts sitting in Polk County, Iowa. Any litigation between the parties related to this Purchase Agreement shall be brought and maintained in the courts sitting in Polk County, Iowa. Seller waives any objection to such jurisdiction based on forum non conveniens or otherwise. Seller irrevocably consents to service of process by certified or registered mail addressed to Seller's agent identified in Exhibit 2 - Bidder Identification.

### **5. No Waiver.**

A waiver of any breach of any provision of this Purchase Agreement shall not constitute or operate as a waiver of any other provision, nor shall any failure to enforce any provision hereof operate as a waiver of the enforcement of such provision or any other provision

### **6. Independent Contractor Status.**

Seller, Seller Contractors, and Seller Personnel shall not hold themselves out as an employee or agent of the Buyer. Seller or Seller Contractors shall be responsible for maintaining and furnishing a place of work, and any tools, supplies, apparel, facilities, equipment, and appropriate communications devices and services required for Seller Personnel pursuant to this Purchase Agreement. Seller Personnel are not eligible for and Seller shall ensure Seller Personnel never claim they are eligible for or otherwise entitled to any State employee benefits, including retirement benefits, insurance coverage, or the like. Seller Personnel shall not be considered employees of the Office or the State of Iowa for any purpose, including for federal or state tax purposes. The Office or the State of Iowa shall not withhold taxes on behalf of

Seller or Seller Contractors. Seller and Seller Contractors shall be responsible for payment of all taxes in connection with any income earned from performing this Agreement.

**7. Not a Joint Venture.**

Nothing in this Purchase Agreement shall be construed as creating or constituting the relationship of a partnership, joint venture, or other association of any kind or agent/principal relationship between the Parties hereto. No Party, unless otherwise specifically provided for herein, has the authority to enter into any agreement or create an obligation or liability on behalf of, in the name of, or binding upon, another Party to this Purchase Agreement.

**8. Obligations of Joint Entities.**

If Seller is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of this Purchase Agreement, and for any default with respect to such activities and obligations.

**9. Use of Third Parties.**

Subject to Applicable Laws, Seller may enter into contracts or subcontracts for the provision or delivery of services related to this Purchase Agreement. The Seller may enter into these contracts provided that the Seller remains responsible for all deliverables provided under this Purchase Agreement. All restrictions, obligations, and responsibilities of the Seller under this Purchase Agreement shall also apply to the subcontractors and the Seller shall include in all of its subcontracts a clause that so states.

**10. Amendments.**

This Purchase Agreement may be amended, modified, or replaced from time to time by mutual consent of the Buyer and Seller. Both Parties must execute all amendments to this Agreement in writing.

**11. Multiple Counterparts and Electronic Signatures.**

This Purchase Agreement, any amendments hereto, or any related instruments, attachments, exhibits, or addenda executed separately in connection with this Purchase Agreement may be executed in several counterparts, all of which when taken together shall constitute one contract binding on all Parties. Each copy of such document(s) so executed shall constitute an original. The parties consent to the use of electronic signatures for execution of this Purchase Agreement, and any such electronic signatures shall be deemed original signatures.

**12. Warranties.**

Seller shall assure that the Goods and/or Services purchased hereunder are covered by all available and applicable manufacturers' or provider's warranties for such Goods and/or Services. Seller warrants that the Goods and/or Services shall be of good materials and workmanship and free from defects for either a minimum of one (1) year from the date of Acceptance by the Buyer, or as specified by the applicable

manufacturer's or provider's, whichever is later. In no event shall Seller be allowed to disclaim or otherwise limit the express warranties set forth herein.

**13. Warranty Remedies.**

Buyer shall notify Seller if any of the Goods and/or Services fails to meet the warranties set forth above, and Seller shall promptly correct, repair or replace such Goods and/or Services at Seller's sole expense. Notwithstanding the foregoing, if such Goods and/or Services shall be determined by the Buyer to be defective or non-conforming within the first thirty (30) days after the date of Acceptance, then Buyer at its option shall be entitled to a complete refund of the purchase price and, in the case of Goods, shall promptly return such Goods to Seller. Seller shall pay all expenses related to the return of such Goods to Seller.

**14. Minority Owned, Women Owned, and Small Business Vendors ("MWSBLSA Vendors").**

14.1. Seller is committed to taking all necessary affirmative steps to assure that minority business, women's business enterprises and labor surplus area firms are used whenever possible. Such steps include:

- 14.1.1. Placing qualified MWSBLSA Vendors on solicitation lists;
- 14.1.2. Soliciting MWSBLSA Vendors whenever they are potential sources;
- 14.1.3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by MWSBLSA Vendors;
- 14.1.4. Establishing delivery schedules, where requirement permits, which encourage participation by MWSBLSA Vendors;
- 14.1.5. Using services and assistance, as appropriate, of such organizations as Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- 14.1.6. Requiring any contractors or subcontractors to take affirmative steps listed in paragraphs 14.1.1 through 14.1.5 of this section.

**15. No Indemnification by Buyer.**

Buyer shall not indemnify nor hold Seller harmless for loss, damage, expense or liability arising from or related to this Purchase Agreement, including any attorneys' fees and costs. In addition, Seller shall not limit its liability to the Buyer for actual loss or direct damages for any claim based on a material breach of this Purchase Agreement and the documents incorporated herein. The Buyer reserves the right to pursue all legal and equitable remedies to which it may be entitled.

**16. Indemnification by Seller.**

Seller agrees to indemnify, defend, and save harmless the Buyer and its officers, employees and agents from all suits and actions of any nature brought against them due to the use of patented appliances, products or processes provided by Seller hereunder. Seller shall pay all royalties and charges incident to such patents.

**17. Exclusivity.**

This Purchase Agreement is not exclusive, and the Buyer may enter into other Purchase Agreements with third parties for the provision of similar Goods and/or Services.

**18. Authorization.**

Seller represents and warrants that it has the right, power, and authority to enter into and perform its obligations under this Purchase Agreement and that it has taken all requisite action (corporate, statutory, or otherwise) to approve execution, delivery, and performance of this Purchase Agreement, and this Purchase Agreement constitutes a legal, valid, and binding obligation of Seller, enforceable in accordance with its terms.

**19. Restrictions and certifications regarding non-disclosure agreements.**

Seller may not require any Buyer to sign an internal confidentiality agreement or statement that prohibits or otherwise restricts, or purports to prohibit or restrict, the reporting (in accordance with law) of waste, fraud, or abuse to the Office or an investigative or law enforcement representative of a federal or state department or agency authorized to receive such information. Buyer represents that it neither requires nor has required internal confidentiality agreements or statements from Seller, Seller's Contractors or Seller Personnel that currently prohibit or otherwise currently restrict (or purport to prohibit or restrict) reports of waste, fraud, or abuse as described above.

**20. Force Majeure.**

Neither Party shall be in default under this Purchase Agreement if performance is prevented, delayed or made impossible to the extent that such prevention, delay, or impossibility is caused by a "force majeure."

- 20.1. The term "force majeure" as used in this Purchase Agreement includes an event that no human foresight could anticipate or which if anticipated, is incapable of being avoided. Circumstances must be abnormal and unforeseeable, so that the consequences could not have been avoided through the exercise of all due care, such as acts of God, war, civil disturbance and other similar catastrophic events or causes. The delay or impossibility of performance must be beyond the control and without the fault or negligence of the Parties.

- 20.2. “Force majeure” does not include: financial difficulties of Seller or Seller Contractors; claims or court orders that restrict Seller’s or Seller Contractor’s ability to perform or deliver the services contemplated by this Purchase Agreement; strikes; labor unrest; Covid-19, pandemics, epidemics or any other outbreak or event causing illness or disease or resulting in a state of emergency or disaster declared by either the State of Iowa or the United States of America; any impacts to any Seller Contractor’s, Seller Personnel, or Seller’s supply chain caused in whole or in part by any pandemic, epidemic or outbreak, illness or disease.
- 20.3. If delay results from a Seller Contractor’s conduct, negligence or failure to perform, Seller shall not be excused from compliance with the duties and obligations of Seller hereunder unless the Seller Contractor is prevented from timely performance by a “force majeure” as defined in this Purchase Agreement.
- 20.4. If a “force majeure” delays or prevents Seller’s performance, Seller shall immediately use its best efforts to directly provide alternate, and to the extent possible, comparable performance. Comparability of performance and the possibility of comparable performance shall be determined solely by the Buyer.
- 20.5. The Party seeking to exercise this provision and not perform or delay performance pursuant to a “force majeure” shall immediately notify the other Party of the occurrence and reason for the delay.
- 20.6. The Parties shall make every effort to minimize the time of nonperformance and the scope of Goods and/or Services not being provisioned due to the unforeseen events.



# Attachment B - Required Certifications, Representations, Warranties, and Covenants

The Seller understands and acknowledges that the Buyer is subject and bound to each of the certifications set forth and enumerated below pursuant to the Broadband Grants Program - Empower Rural Iowa, and in accordance with the terms and conditions of the Notice of Funding Availability #007 (“NOFA#007”) and the usage of Coronavirus State and Local Fiscal Recovery Funds (“CSLFRF”). Furthermore, Buyer requires any of its contractors or subcontractors in the performance of this Purchase Agreement to certify, agree to, and be subject to and bound by each of the same required certifications.

By signing the Purchase Agreement, Seller’s Authorized Agent, under penalty of perjury as authorized by Iowa Code section 622.1 and pursuant to the laws of the State of Iowa, certifies and attests to Seller’s compliance with the following required certifications, which shall also apply to Seller’s contractors or subcontractors. In addition, any criminal penalties authorized by Iowa Code section 720.2 are applicable to the Seller that is subsequently determined to have made a statement, representation, warranty, certification, or attestation herein that is later proven untrue in any material respect.

## 1. **Certifications Regarding Conflicts of Interest.**

- 1.1. Seller was not involved in any way or form in the development or design of this IFB’s specifications or requirements.
- 1.2. Neither the Seller nor anyone subject to the Seller’s direction or control has been a party:
  - 1.2.1. To any collusion among Bidders in restraint of freedom of competition by agreement to Bid at a fixed price or to refrain from Bidding;
  - 1.2.2. To any collusion with any member of the Buyer’s Purchasing Team as to quantity, quality, or price in the prospective contract, or as to any other terms of such prospective contract; nor
  - 1.2.3. In any discussions between Bidders and any member of the Buyer’s Purchasing Team concerning exchange of money or other things of value for special consideration in the letting of a contract.
- 1.3. None of the Seller’s owners with either directly or indirectly ownership of five percent (5%) interest or more or such a percentage that constitutes a controlling interest is a member of the Buyer’s Purchasing Team.
- 1.4. No officer or employee of the Buyer owns an interest in the Seller’s business which is less than a controlling interest, either direct or indirect.

**2. Certifications of Truth, Accuracy and Completeness.**

- 2.1. Seller certifies that all statements and information contained in its Bid Packet are true, accurate and complete;
- 2.2. Seller certifies that the Goods and/or Services furnished will be provided in accordance with this Purchase Agreement and its multiple parts. Furthermore, all invoices to be submitted pursuant to this Purchase Agreement will be true and correct.

**3. Certifications of Restrictions on Telecommunications Equipment.**

- 3.1. Seller will not provide any telecommunications equipment or services produced by Huawei Technologies Company, ZTE Corporation, Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- 3.2. Seller will not provide telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense reasonably believes to be an entity owned, controlled by, or otherwise connected to the government of a covered foreign country.

**4. Certification Regarding Iowa Code Chapter 8F.**

If Seller is or becomes subject to Iowa Code chapter 8F during the entire term of this Purchase Agreement, including any extensions or renewals thereof, Seller shall comply with the following:

- 4.1. Seller shall certify that it has the information required by Iowa Code § 8F.3 available for inspection by the Agency and the Legislative Services Agency.
- 4.2. Seller will provide the information described in this section to the Buyer, the Office or the Legislative Services Agency upon request. Seller shall not impose a charge for making information available for inspection or providing information to the Office or the Legislative Services Agency.
- 4.3. Pursuant to Iowa Code § 8F.4, Seller shall file an annual report with the Office and the Legislative Services Agency within ten (10) months following the end of Seller's fiscal year (unless the exceptions provided in Iowa Code § 8F.4(1)(b) apply). The annual report shall contain:
  - 4.3.1. Financial information relative to the expenditure of state and federal moneys for the prior year pursuant to this Agreement. The financial information shall include but is not limited to budget and actual revenue and expenditure information for the year covered.

- 4.3.2. Financial information relating to all service contracts with the Office during the preceding year, including the costs by category to provide the contracted services.
- 4.3.3. Reportable conditions in internal control or material noncompliance with provisions of laws, rules, regulations, or contractual agreements included in external audit reports of Seller covering the preceding year.
- 4.3.4. Corrective action taken or planned by Seller in response to reportable conditions in internal control or material noncompliance with laws, rules, regulations, or contractual agreements included in external audit reports covering the preceding year.
- 4.3.5. Any changes in the information submitted in accordance with Iowa Code § 8F.
- 4.3.6. A certification signed by an officer and director, two directors, or the sole proprietor of Seller, whichever is applicable, stating the annual report is accurate and the recipient entity is in full compliance with all laws, rules, regulations, and contractual agreements applicable to the recipient entity and the requirements of Iowa Code chapter 8F.

**5. Drug Free Workplace.**

This certification is required by the regulations implementing Sections 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. § 701 et seq.). These regulations require certification by Sellers (and Seller Contractors) that they will maintain a drug-free workplace. In accordance with these Applicable Laws, Seller certifies that it does currently and will continue to provide a drug-free workplace, including by minimally:

- 5.1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in Seller’s workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- 5.2. Establishing an ongoing drug-free awareness program to inform employees about:
  - 5.2.1. The dangers of drug abuse in the workplace;
  - 5.2.2. Seller’s policy of maintaining a drug-free workplace;
  - 5.2.3. Any available drug counseling, rehabilitation, and employee assistance programs; and
  - 5.2.4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

- 5.3. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by Section 51.
- 5.4. Notifying the employee in the statement required by Section 5.1, as a condition of their continued employment, that the employee will:
  - 5.4.1. Abide by the terms of the statement; and
  - 5.4.2. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction.
- 5.5. Notifying the Office in writing, within ten (10) calendar days after receiving notice under Section 5.4 from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant.
- 5.6. Taking one of the following actions, within thirty (30) calendar days of receiving notice under Section 5.5, with respect to any employee who is so convicted:
  - 5.6.1. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
  - 5.6.2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency.
- 5.7. Making a good faith effort to continue to maintain a drug-free workplace consistent with Sections 5.1 through 5.6 during the Term.

## **6. Lobbying.**

This certification is required by the provisions of Section 319 of Public Law 101-121, Government wide Guidance for New Restrictions on Lobbying, and 31 U.S.C. § 1352. These regulations require certification by Sellers (and Seller Contractors) that they have not engaged in prohibited lobbying activities and/or have filed any required disclosures in accordance with these Applicable Laws. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code; any person who fails to file the required certification may be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**7. Suspension and Debarment.**

This certification is required by the provisions of Executive Orders 12549 and 12689 and 31 C.F.R. part 19 regarding Debarment, Suspension, and Other Responsibility. A contract award must not be made to parties listed on the government-wide exclusions in SAM, in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 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 12549.

**8. Tobacco Free Environment.**

Seller agrees that it will not allow smoking or tobacco use within any portion of any indoor facility it leases, rents, or owns, and over which it has the authority to establish policy. Seller agrees that it shall comply with Iowa’s Smokefree Air Act, contained at Iowa Code chapter 142D.

**9. Certification Regarding Environmental Tobacco Smoke.**

This certification is required by Public Law 103-227, also known as the Pro-Children Act of 1994 (“Pro-Children Act”). The Pro-Children Act requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs either directly or through state or local governments, by federal grant, contract, loan, or loan guarantee. The Pro-Children Act also applies to children’s services that are provided in indoor facilities that are constructed, operated, or maintained with such federal funds. The Pro-Children Act does not apply to children’s services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where WIC coupons are redeemed. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity. In accordance with these Applicable Laws, Seller certifies and agrees to the following with respect to it and its principles, as applicable. Seller certifies that it will comply with the requirements of the Pro-Children Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Pro-Children Act.

**10. Assurance of Compliance Nondiscrimination in Federally Assisted Programs & Equal Opportunity.**

This certification requires Seller to comply with any applicable federal nondiscrimination requirements or laws providing for or requiring equal opportunity in employment. Except as otherwise provided under 41 C.F.R. part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 C.F.R. part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 C.F.R. part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 C.F.R. part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.” To the extent required by these Applicable Laws, Seller certifies during the performance of this Agreement that:

- 10.1. The Seller will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Seller 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, sexual orientation, gender identity, 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 Seller 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.
- 10.2. The Seller will, in all solicitations or advertisements for employees placed by or on behalf of the Seller, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- 10.3. The Seller will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in

furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Seller's legal duty to furnish information.

- 10.4. The Seller 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 Seller's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 10.5. The Seller 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.
- 10.6. The Seller 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.
- 10.7. In the event of the Seller'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 Seller 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 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.
- 10.8. The Seller will include the portion of the sentence immediately preceding paragraph 10.1 and the provisions of paragraphs 10.1 through 10.8 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 Seller will take such action with respect to any subcontract or purchase order as the Buyer may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Seller becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Buyer, the Seller may request the United States to enter into such litigation to protect the interests of the United States.

- 10.9. The Seller further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work.
- 10.10. The Seller agrees that it will assist and cooperate actively with the Buyer in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the Buyer and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the Buyer in the discharge of the Buyer's primary responsibility for securing compliance.

**11. Americans with Disabilities Act.**

Seller certifies that it shall comply with Subtitle A, title II of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12131-12134, and Department of Justice implementing regulation, 28 C.F.R. part 35.

**12. Equal Treatment for Faith Based Organizations.**

Seller shall comply with any applicable requirements of 28 C.F.R. part 38, governing “Equal Treatment for Faith Based Organizations.” The Equal Treatment Regulation provides in part that grant awards may not be used to fund any inherently religious activities, such as worship, religious instruction, or proselytization. Grant recipients, including contractors may still engage in inherently religious activities, but such activities must be separate in time or place from the grant funded program, and participation in such activities by individuals must be voluntary. The Equal Treatment Regulation also makes clear that organizations participating in programs funded through grant funding are not permitted to discriminate in the provision of services on the basis of a beneficiary’s religion. Notwithstanding the foregoing, faith-based organizations may, in some circumstances, consider religion as a basis for employment. See [http://www.ojp.gov/about/ocr/equal\\_fbo.htm](http://www.ojp.gov/about/ocr/equal_fbo.htm).

**13. Immigration and Naturalization Service.**

Seller certifies that it keeps on file, as appropriate, Immigration and Naturalization Service Employment Eligibility Verification Form (I-9) forms for applicable Seller Personnel. This form is to be used by recipients of federal funds to verify that persons are eligible to work in the United States.

**14. Contract Work Hours and Safety Standards Act (40 U.S.C. § 3701-3708).**

Where applicable, all contracts awarded by the Buyer 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 C.F.R. part 5). To the extent applicable, Seller must 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.

**15. Clean Air Act (42 U.S.C. §§ 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. §§ 1251-1387), as amended.**

- 15.1. For Purchase Agreements in excess of \$150,000, the Seller agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387).
- 15.2. Seller agrees to comply with these Applicable Laws, violations of which must be reported to the Buyer and federal awarding agency and the regional office of the Environmental Protection Agency (EPA).

**16. Representations, Warranties, and Covenants.**

- 16.1. Seller represents and warrants that it is fully aware of the terms, conditions, and requirements of this Agreement, the NOFA, and Applicable Laws, and intended outcomes of the provision of Goods and/or Services hereunder, and that any such Goods and/or Services shall satisfy such requirements in all material respects and are fit for such intended purposes and uses.
- 16.2. Seller represents and warrants that: (i) it owns, possesses, holds, and has received or secured all rights, permits, permissions, licenses and authority necessary to provide the Goods and/or Services required hereunder.
- 16.3. Seller represents, warrants, and covenants that the Goods and/or Services provided under this Agreement shall be performed or provided in a professional, competent, diligent and workmanlike manner by knowledgeable, trained and qualified personnel, all in accordance with the terms of this Agreement and the highest standards of performance applicable to service providers in the industry for similar tasks and projects. In the

absence of a specification for the performance of any portion of this Agreement, the Parties agree that the applicable specification shall be the generally accepted industry standard.

- 16.3.1. So long as the Buyer notifies Seller of any aspects of any Goods and/or Services performed in violation of this standard, Seller shall re-provide the relevant aspects of the Goods and/or Services at no additional cost to the Buyer or impacted consumers, such that the Goods and/or Services are rendered in the above-specified manner, or if the Seller is unable to provide the Goods and/or Services as warranted, Seller shall reimburse the Buyer any fees or compensation paid to Seller for the unsatisfactory performance.
- 16.4. Seller represents, warrants, and covenants that it is knowledgeable about, and shall comply with, all Applicable Laws in connection with its performance of this Agreement and with all terms, conditions, requirements, and assurances, made directly or implicitly, set forth or made by Seller in or under this Purchase Agreement, the Bid Packet, the NOFA007, and Applicable Laws.
- 16.5. Seller represents, warrants, and covenants that the Goods and/or Service will at all times meet, conform to and comply with: (1) this Purchase Agreement; (2) any and all representations or assurance made, directly or implicitly, in the Bid Packet; and (3) Applicable Laws.
- 16.6. Seller represents and warrants that it is not in arrears with respect to the payment of any monies due and owing the or any department, agency, office, or any other governmental entity, unit, or subdivision thereof, including but not limited to the payment of taxes and employee benefits. Seller represents that its accounting system is adequate to comply with this Purchasing Agreement.
- 16.7. Seller represents, warrants, covenants, and promises that Seller, Seller Contractors, and Seller Personnel have complied with and will continue to comply with, that the Goods and/or Services as implemented will comply with, and that the use or expenditure of any funds paid hereunder will comply with any and all Applicable Laws, both generally and in connection with the performance of this Purchase Agreement, including the following:
  - 16.7.1. Those prohibiting discriminatory employment practices or related to equal opportunity in employment or affirmative action under federal or state law, rules, regulations, or orders, including Iowa Code chapter 216 and section 19B.7 and the rules of the Iowa Department of Administrative Services and the Iowa Civil Rights Commission. Upon the Buyer's written request, Seller shall submit to the

State a copy of its affirmative action plan, containing goals, time specifications, accessibility plans, and policies as required by Iowa Administrative Code chapter 11—121.

- 16.7.2. Those pertaining to any permitting and licensure requirements in carrying out the work performed under this Purchase Agreement.
  - 16.7.3. Those relating to prevailing wages, occupational safety and health standards, payment of taxes, gift laws, and lobbying laws.
  - 16.7.4. American Rescue Plan Act Requirements.
  - 16.7.5. Seller shall take such steps as necessary to ensure Seller Contractors and Seller Personnel are bound by the terms and conditions contained in this Section. Notwithstanding anything in this Purchase Agreement to the contrary, Seller, Seller Contractors, and Seller Personnel's failure to fulfill any requirements set forth in this Section shall be regarded as a material breach of this Purchase Agreement and the Buyer may cancel, terminate, or suspend, in whole or in part, this Purchase Agreement without penalty or legal liability. In addition, the Office or its designee may declare Seller ineligible for future State contracts in accordance with authorized procedures or Seller may be subject to other sanctions as provided by law, rule, or order.
- 16.8. All representations, warranties, and covenants made by Seller in this Purchase Agreement, shall not be construed as limiting or negating any warranty provided by law, including without limitation, warranties which arise through the course of dealing or usage of trade. The warranties expressed in this Agreement are intended to modify the warranties implied by law only to the extent that they expand those warranties. Seller's warranties provided in this Attachment B are in addition to and not in lieu of any other warranties provided in this Purchase Agreement. All warranties provided for in this Purchase Agreement shall be cumulative, shall be deemed consistent and not in conflict, are intended to be given full force and effect and to be interpreted expansively to give the broadest warranty protection to the Buyer, the Office, the State of Iowa, and any and all consumers intended to benefit from such warranties, this Purchase Agreement, or the Goods and/or Services resulting herefrom.