

**MEMORANDUM OF AGREEMENT
BETWEEN
FEDERAL AVIATION ADMINISTRATION
AND
TRUCKEE TAHOE AIRPORT DISTRICT**

ARTICLE 1. PARTIES

The parties to this Memorandum of Agreement (“*MOA*”) are the Federal Aviation Administration (“*FAA*”), and the Truckee Tahoe Airport District (“*TTAD*”), herein collectively referred to as the “*Parties*” and singularly referred to as a “*Party*”.

ARTICLE 2. SCOPE

a. Purpose

FAA Surveillance Broadcast Services (“*SBS*”) Program Office is in a contractual relationship under contract number DTFAWA-07-C-00067 with its selected service provider (“*Service Provider*” or “*SP*” in **Article 4**). The Service Provider is fulfilling the following Department of Transportation, Federal Aviation Administration's *SBS* service requirements:

- Automatic Dependent Surveillance-Broadcast (“*ADS-B*”).
- Automatic Dependent Surveillance-Rebroadcast (“*ADS-R*”).
- Traffic Information Service-Broadcast (“*TIS-B*”),
- Flight Information Service-Broadcast (“*FIS-B*”), and
- Wide Area Multilateration (“*WAM*”).

Period of performance under this contract with the Service Provider is currently active with the potential for *SBS* service being rendered through August 31, 2025.

In the past, as part of the FAA *SBS* Program Baseline *SBS* Joint Resource Council (“*JRC*”) approval, Truckee Tahoe Airport (“*TRK*”) did not meet FAA cost-benefit ratio, and therefore did not qualify to be part of the FAA *SBS* baseline.

Air Traffic services in and out of *TRK* are provided by Oakland Air Traffic Control Center (“*ZOA*”) using primary non-cooperative Air Route Surveillance Radar (“*ARSR*”), and secondary cooperative long-range beacon radar. Due to the surrounding terrain, radar coverage over *TRK* is extremely limited or in some cases non-existent below the Mean Sea Level (“*MSL*”) of 11,500 feet. There is a control tower at the airport, but there is no terminal Airport Surveillance Radar (“*ASR*”) system from which to obtain supplementary track data. Inclement weather, terrain, high-density altitude, short runways, and other factors related to the mountainous environment also affect operational efficiency. *TRK* operations are limited to the use of non-radar rules to provide positive separation between Instrumental Flight Rules (“*IFR*”) flights. This limits *TRK* traffic to one aircraft at a time cleared for arrival or departure.

TTAD sees the benefits of becoming part of the FAA SBS program, and as a beneficiary of the FAA-provided SBS services. The benefits to TTAD include improved safety and increased operational efficiency. As such, TTAD has decided to establish an independent SBS Service Volume (“SV”) in the Truckee Tahoe area, and to become part of ZOA’s Consolidated Traffic Volume (“CTV”).

TTAD desires to establish a direct relationship with FAA’s SBS Service Provider.

The purpose of this MOA is to establish each Party’s responsibilities for the design and implementation of a SBS SV covering TRK and the area surrounding the Reno, Truckee, and South Lake Tahoe region.

Under this MOA, the FAA and the TTAD shall collaborate to define SBS SV requirements to provide data to ZOA Service Delivery Point (“SDP”). Contingent on the TTAD purchase of the agreed to SBS SV services, the FAA shall incorporate Truckee SBS data into ZOA En Route Automation Modernization (“ERAM”). This shall permit ZOA controllers to use radar separation criteria between tracked flights throughout controlled airspace. The FAA shall incorporate TRK SBS SV into the FAA National Airspace System (“NAS”) operational (referred to in FAA as 1st level support) and 2nd level support. FAA Technical Operational Support includes onsite support (1st level), and National support (2nd level).

b. Scope of Work

As used in this MOA, the term “*Scope of Work*” shall consist of the following respective obligations and responsibilities of the Parties:

- FAA and TTAD shall identify the operational requirements at TRK;
- FAA shall provide technical support for TTAD procurement of the SBS services to be received from the FAA-selected SBS Service Provider

Independently from this MOA, as TTAD establishes a direct relationship with FAA’s Service Provider, TTAD shall ensure that:

- The Service Provider installs the required number of Ground Based Transceivers (“GBTs”) to meet SV coverage requirement; and
- The Service Provider creates Composite Traffic Volume (CTV)

Independently from this MOA and contingent on TTAD establishing a direct relationship with FAA’s Service Provider:

- FAA shall perform Implementation Service Acceptance Test (“ISAT”);
- FAA shall conduct Flight Check for the new TRK SV;

- FAA shall add TRK to FAA SBS Operation and Maintenance database;
- FAA shall achieve TRK SBS SV Initial Operational Capability (“IOC”);
- FAA shall monitor TRK SBS SV Technical Performance Measurements (“TPM”); and
- Following TRK IOC, FAA ZOA shall provide the following basic services to TRK:
 - i. Safety Alerts
 - ii. Merging Target Alerts
 - iii. Terrain or Obstruction Alerts
 - iv. Aircraft Conflict Alerts
 - v. Sequencing
 - vi. Services for Visual Flight Rules (“VFR”) aircraft
 - vii. Assistance to Search and Rescue (“SAR”) for lost aircraft
 - viii. Monitor TRK SV TPMs

c. Management of the Project

Overall project integration and management shall be performed by:

- The FAA’s Surveillance and Broadcast Services Program Office (AJM-232) in the Surveillance Services Group (AJM-23) in the Air Traffic Systems Directorate (AJM-2) of the Program Management Organization (AJM-0):

FAA National Headquarters, Surveillance and Broadcast Service Group
 Wilbur Wright Building (FOB10B)
 600 Independence Avenue, SW
 Washington, DC 20591
 ATTN: David E. Gray, SBS Program Manager
 V 202-267-0513
 David.E.Gray@FAA.gov
 Hardy S. Bullock C. M.
 Director of Aviation & Community Services
 Truckee Tahoe Airport District (KTRK)
 10356 Truckee Airport Road
 Truckee, CA 96161
 V 530-587-4119 Ext 106
 F 530-587-2984
 hardy.bullock@truckeetahoeairport.com

d. Roles and responsibilities:

- **The FAA shall, either directly or indirectly, through a contractual agreement with its Service Provider, perform the following duties which shall require TTAD reimbursement to the FAA per Article 9 instructions in advance of FAA providing services:**
 - (i) Coordinate with the TTAD to define and develop the TRK SBS SV requirements document;
 - (ii) Perform TRK SBS SV operational impact assessment on ZOA Air Traffic; and
 - (iii) Review and provide comments on the proposal that TTAD receives from the Service Provider.

- **Independently from this MOA and contingent upon TTAD procurement of FAA-approved TRK SBS service volume, the FAA shall, either directly or indirectly, through a contractual agreement with its selected Service Provider, perform the following duties:**
 - (iv) Participate in Design Review and Technical Interchange Meetings (“TIM”);
 - (v) Participate in all operational tests and evaluations;
 - (vi) Review and provide comments on all Tests Reports;
 - (vii) Provide Quality Requirements Officer (“QRO”) support to ensure Ground Based Transceivers (“GBTs”) meets FAA SBS baseline requirements and quality standards;
 - (viii) Support ISAT;
 - (ix) Incorporate the new TRK SBS data into ZOA ERAM training system;
 - (x) Conduct Flight Inspection for the new TRK SBS SV;
 - (xi) File appropriate Notices to Airman (NOTAMs) and any other applicable FAA-issued advisories/compliance documents as necessary;

- (xii) Perform NAS configuration management tasks including generation and coordination of any necessary NAS change proposals related to the Project; and
 - (xiii) Following FAA declaring TRK SBS SV IOC, FAA Oakland Air Route Traffic Control Center (ZOA) shall provide the following services:
 - a. Safety Alerts,
 - b. Merging Target Alerts,
 - c. Terrain or Obstruction Alerts,
 - d. Aircraft Conflict Alerts,
 - e. Sequencing,
 - f. Services for VFR aircraft,
 - g. Assistance to SAR for lost aircraft; and
 - h. Monitor TRK SV TPMs.
- **The TTAD must, either directly or indirectly, as its sole responsibility, through coordination with the FAA, or with its Service Provider, perform the following duties:**
 - (i) Coordinate with the FAA to define and develop TRK SBS SV requirements document.
 - (ii) TTAD will take the following steps to support FAA mandate for all aircrafts to become equipped with ADS-B per FAA Avionic Standard Order TSO-C195B by January 1, 2020:
 - Equip aircrafts operated by companies on the field with ADS-B transponders through aircraft modification agreements.
 - Equip gliders operating on the field with ADS-B transponders for higher visibility within a changing fleet mix.
 - Collect data from its flight tracking system, aggregated that data and furnished reports to the FAA on fleet equipage rates.
 - Advertise to TRK tenants and constituents the upcoming deadline mandating equipage with ADS-B.
 - (iii) Undertake responsibility for the award and management of FAA-approved TRK SBS SV subscription contract with its Service Provider who is also FAA SBS prime contractor identified by means of FAA contract vehicle DTFAWA-07-C-00067, which has a period of performance under a current active contract through

September 30, 2021, and with the possibility of an additional option period extension from October 1, 2021 through August 31, 2025;

f. Contributions of the Parties:

The FAA shall contribute \$0.00 as its share of the cost to perform this MOA.

Under the terms of this MOA, TTAD shall hereby commit for the term of this Agreement to pay funds in the amount of \$21,400 to FAA in accordance to the following payment schedule (“Payment Schedule”):

- i. \$21,400.00 payable to FAA within ten (10) business days after MOA approval for Article 2, paragraph (d), Tasks (i) through (iii);

As identified within this Article, TTAD shall be responsible for all financial obligations established within this MOA as identified within, but not limited to, Articles: 3, 9, 10 and 20.

g. Type of Agreement:

This MOA is an "other transaction". It is not intended to be, nor shall it be construed as, a partnership, corporation, or other business organization.

ARTICLE 3. EFFECTIVE DATE and TERM

The effective date of this MOA is the last date of signature between the FAA and TTAD. This MOA shall continue in effect until August 31, 2025 or until earlier terminated by the parties as provided herein. By written agreement between the FAA and TTAD, this MOA may be extended to replicate any extension(s) between the FAA and the FAA’s Service Provider beyond the current expiration date as associated with contract DTFWA-07-C-00067.

The FAA currently maintains one contractual option with its current Service Provider. FAA shall not guarantee that the remaining option with the current Service Provider will be exercised. The FAA recommends that TTAD verify with the FAA’s Service Provider if the remaining contractual option have/will be exercised.

The term of this MOA is as follows:

Active: Execution of MOA thru September 30, 2021

Option: October 1, 2021 thru August 31, 2025

By written agreement between the FAA and TTAD, this MOA may be extended to replicate any extension between the FAA and the Service Provider beyond the current contract's (DTFAWA-07-C-00067) expiration date. TTAD shall be solely responsible for management and administration of any independent contract between TTAD and the Service Provider.

ARTICLE 4. MILESTONES

Work shall be accomplished according to the following milestones.

<u>Milestone</u>	<u>Completion Date</u>	<u>Responsible Party</u>
FAA Reimbursable Payment per Article 9	10 BD ¹ after MOA approval	TTAD
Finalize TRK SBS SV	20 BD after MOA approval	TTAD and FAA

ARTICLE 5. REPORTING REQUIREMENTS

TTAD shall:

- Provide copies of any Service Provider deliverable to FAA;
- Provide project status within one (1) business day after FAA request; and
- Participate in project management review meetings if requested by FAA.

FAA shall:

- Participate in project management review and/or technical interchange meetings if requested by TTAD.

ARTICLE 6. INTELLECTUAL PROPERTY

a. Rights in Data

The Government retains Government Purpose Rights in all data developed under this agreement.

"Data" means recorded information, regardless of form or method of recording, which includes but is not limited to, technical data, computer software, trade secrets, and mask works. The term does not include financial, administrative, cost, pricing or management information.

"Government Purpose Rights" means the rights to –

- (1) Use, modify, reproduce, release, perform, display, or disclose data within the government without restriction; and,

¹ Business Days ("BD")

- (2) Release or disclose technical data outside the government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for government purposes.

"Government Purpose" means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations, or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive acquisition by or on behalf of the government but do not include the rights to use, modify, reproduce, release, perform, display, or disclose data for commercial purposes or authorize others to do so.

b. Rights in Inventions

The respective rights of the Government and the other parties to this agreement are the same as those found at T.5-10 "Patent Rights – Retention by the Contractor (Short Form).

ARTICLE 7. LEGAL AUTHORITY

This MOA is entered into under the authority of 49 U.S.C. § 106(l) and (m), which authorizes agreements and other transactions on such terms and conditions as the Administrator determines necessary.

ARTICLE 8. POINTS OF CONTACT

Federal Aviation Administration

David E. Gray, SBS Program Manager
Federal Aviation Administration
Surveillance and Broadcast Service Group
Wilbur Wright Building (FOB10B)
600 Independence Avenue, SW
Room 3W21EN Washington, DC 20591
David.E.Gray@faa.gov
(202) 267-0513

Chontice Boykin, Contracting Officer
Federal Aviation Administration
Wilbur Wright Building (FOB10B)
600 Independence Avenue, SW
Room 3W21FN
Washington, DC 20591 Chontice.Boykin@faa.gov (202) 267-0797

Truckee Tahoe Airport District
Director of Aviation & Community Services
10356 Truckee Airport Rd.
Truckee, CA 96161
ATTN: Hardy S. Bullock C.M.

V 530-587-4119 Ext 106

F 530-587-2984

hardy.bullock@truckeetahoeairport.com

ARTICLE 9. Reimbursement and Accounting Arrangements

- a. TTAD agrees to pay the entire estimated cost of the MOA as specifically described in Article 2(f) of this MOA. TTAD will send a copy of the executed MOA and submit payments described in Article 2(f) of this MOA to the Accounting Division listed in sub-section (c) of this Article 9. Any advance payment will be held as a non-interest bearing deposit. Such advance payment by TTAD must be received before FAA incurs any obligation to implement this MOA. Upon completion or termination of this MOA, the final costs will be netted against any advance payment and, as appropriate, a refund or final bill will be sent to TTAD. Per U.S. Treasury guidelines, refunds under \$1.00 will not be processed. Additionally, FAA will not bill TTAD for amounts less than \$1.00.
- b. TTAD certifies that arrangements for sufficient funding have been made to cover the estimated costs of this MOA in accordance with the negotiated Payment Schedule.
- c. The Accounting Division is identified by the FAA as the billing office for this MOA. Payment shall be submitted either by mail to the address listed below or electronically via pay.gov. All payments mailed to the FAA must include the MOA number, MOA name, company name, and company/project location.

The mailing address is:

FAA Mike Monroney Aeronautical Center
Attn: AMK-322, Reimbursable Receipt Team
P.O. Box 25770
Oklahoma City, OK 73125

The overnight mailing address is:

FAA Mike Monroney Aeronautical Center
Attn: AMK-322, Reimbursable Receipt Team
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169

Telephone: 405-954-3771

- d. The Payment Schedule is listed in Article 2 (f).
- e. The cost estimates contained in Article 2 (f) are expected to be the maximum costs associated with this MOA, but may be amended to recover the FAA's actual costs. If during the course of this MOA, FAA's actual costs are expected to exceed the estimated costs, the FAA will notify TTAD immediately. At the same time, FAA will also provide TTAD a proposed amendment to the MOA which includes the FAA's additional costs. Notwithstanding this Article 9(e), any amendment to this MOA must be agreed to in writing by both Parties pursuant to Article 13 herein. Work identified in the amendment cannot start until receipt of payment in accordance an agreed to milestone schedule.
- f. In the event that a contractor performing work pursuant to the scope of this MOA brings a claim against the FAA and the FAA incurs additional costs as a result of the claim, TTAD agrees to reimburse the FAA for the additional costs incurred whether or not a final bill or a refund has been sent.

ARTICLE 10. LIMITATION OF FUNDS

The TTAD's liability to make payments to the FAA is limited to the amount of funds specified in Article 2(f), including written modifications to this MOA.

ARTICLE 11. APPROVAL OF SUBCONTRACTORS

The FAA Contracting Officer shall be reasonably notified in advance of TTAD entering into any subcontract in connection with the performance of its obligations under this MOA. Any subcontractors and outside associates, or consultants, required by TTAD in connection with the services covered by this MOA shall be limited to individuals or firms that are specifically agreed to in writing by all the Parties. TTAD must obtain the FAA Contracting Officer's written consent before placing any subcontract.

ARTICLE 12. AUDITS

FAA has the right to examine or audit relevant financial records of TTAD for three years after expiration or termination of this MOA. TTAD must maintain an established accounting system that complies with generally accepted accounting principles.

ARTICLE 13. AMENDMENTS

Amendments to this MOA shall be in writing and signed by a FAA Contracting Officer and the [CO identify representative or designee] of TTAD. Any amendment shall cite the subject MOA,

and shall state the exact nature of the modification. No oral statement by any person shall be interpreted as modifying or otherwise affecting the terms of this MOA.

ARTICLE 14. TERMINATION

In addition to any other termination rights provided by this MOA, either Party may terminate this MOA at any time prior to its expiration date, with or without cause, and without incurring any liability or obligation to the other Party (other than payment of amounts due and owing and performance of obligations accrued, in each case on or prior to the termination date) by giving the other Party at least sixty (60) days prior written notice of termination to the persons and addresses listed in Article 8. Upon receipt of a notice of termination, the receiving party shall take immediate reasonable steps to cease performance under this MOA that would accrue additional obligations on the part of the terminating Party.

ARTICLE 15. ORDER OF PRECEDENCE

In the event of any inconsistency between the terms of this MOA and any of the Attachments hereto, this MOA shall be controlling.

ARTICLE 16. CONSTRUCTION OF THE AGREEMENT

This MOA is an "other transaction" issued under the authority of 49 U.S.C § 106 (1) and (m) is not a procurement contract, grant, or cooperative agreement. Nothing in this MOA shall be construed as incorporating by reference or implication any provision of Federal acquisition law or regulation.

The Parties acknowledge equal participation in the negotiation and drafting of this MOA, and that, accordingly, this MOA shall not be construed more stringently against one Party..

ARTICLE 17. DISPUTES

Where possible, disputes shall be resolved by informal discussion between the Parties. Any claim for the threatened, alleged, or actual breach of this MOA by any Party (a "Dispute"), which cannot otherwise be resolved after good faith negotiations by the Parties, shall first be referred for resolution to the respective Parties' executive management (for TTAD, executive management shall be the direct manager of the most senior point of contact described in **Article 8**, Points of Contact.), If the Parties' executive management are unable to resolve the Dispute within thirty (30) calendar days of such referral, the Dispute shall be referred to the FAA Administrator for a decision, whose decision is not subject to further administrative review, and to the extent provided by law, is final and binding with respect to the administrative review.

ARTICLE 18. WARRANTIES

The Parties makes no express or implied warranties as to any matter arising under this MOA, or as to the ownership, merchantability, or fitness for a particular purpose of any property, including any equipment, device, or software that may be provided under this MOA.

ARTICLE 19. INSURANCE

TTAD shall arrange by insurance or otherwise for the full protection of TTAD from and against all liability to third parties arising out of, or related to, its performance of this MOA. The FAA assumes no liability under this MOA for any losses arising out of any action or inaction by TTAD, its employees, or contractors, or any third party acting on its behalf. TTAD agrees to hold the United States harmless against any claim by third persons for injury, death or property damage arising out of or in connection with TTAD's performance under this MOA.

ARTICLE 20. LIMITATION OF LIABILITY

The FAA assumes no liability under this Agreement for any losses arising out of any action or inaction by the other Party, its employees, or contractors, or any third party acting on its behalf. Claims for damages of any nature whatsoever pursued under this Agreement shall be limited to direct damages only up to the aggregate amount of funding obligated by FAA under this Agreement, which may be \$0.00, at the time the dispute arises. In no event shall the FAA be liable for claims for consequential, punitive, special and incidental damages, claims for lost profits, or other indirect damages.

ARTICLE 21. LOWER TIER AGREEMENTS

If identified by the FAA Contracting Officer, TTAD shall include specific Articles from this MOA (or reasonably modified versions of those Articles) in all contracts or subcontracts entered into by TTAD in connection with the services under this MOA. These Articles will be identified during processing of any and all contracting or subcontracting actions pursuant to **Article 11** of this MOA.

ARTICLE 22. CIVIL RIGHTS ACT

TTAD shall comply with Title VI of the Civil Rights Act of 1964 relating to nondiscrimination in federally assisted programs and provide a certification to that effect.

ARTICLE 23. OFFICIALS NOT TO BENEFIT

The FAA's Acquisition Management System (AMS) Clause 3.2.5-1, "*Officials Not to Benefit*" and Clause 3.2.5-7, "*Disclosure Regarding Payments to Influence Certain Federal Transactions*" is attached hereto as Attachment 1 and incorporated by reference into this Agreement.

ARTICLE 24. PROTECTION OF INFORMATION

The Parties agree that they shall take appropriate measures to protect proprietary, privileged, or otherwise confidential information that may come into their possession as a result of this MOA.

The Parties acknowledge that the Freedom of Information Act and state public records laws may apply to any or all public records generated or received as a result of this MOA. Each Party agrees that if it should receive any request, demand, subpoena, or claim, whether based on the Freedom of Information Act, state public records laws, or any legal process whatsoever for the release of confidential or proprietary information, it will notify the other Parties as soon as reasonably practical so that each disclosing Party may take appropriate actions as it deems necessary to protect its interests in the confidential or proprietary information and to limit any disclosure to that portion of the confidential or proprietary information that may be required.

AGREED

The Parties approve of the provisions of this Agreement as indicated by the signatures of their duly authorized officers.

<i>Non-Government Entities</i>	<i>Government Entities</i>
Truckee Tahoe Airport District	Federal Aviation Administration
BY:	BY: Chontice Boykin
TITLE:	TITLE: Contracting Officer

DATE:	DATE:
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ATTACHMENT 1

FAA Acquisition Management System Clauses

3.2.5-7 Disclosure Regarding Payments to Influence Certain Federal Transactions (June 1999)

(a) Definitions.

(1) “The Act,” as used in this clause, means section 1352, title 31, United States Code.

(2) “Agency,” as used in this clause, means executive agency, within the meaning of 5 U.S.C. 101, 102, and 104(I), and any wholly owned Government corporation within the meaning of 31 U.S.C. 9101..

(3) “Covered Federal action,” as used in this clause, means any of the following Federal actions:

(i) The awarding of any Federal contract.

(ii) The making of any Federal grant.

(iii) The making of any Federal loan.

(iv) The entering into of any cooperative agreement.

(v) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(4) “Indian tribe” and “tribal organization,” as used in this clause, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.

(5) “Influencing or attempting to influence,” as used in this clause, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

(6) “Local government,” as used in this clause, means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

(7) “Officer or employee of an agency,” as used in this clause, includes the following individuals who are employed by an agency:

(i) An individual who is appointed to a position in the Government under title 5, United States Code, including a position under a temporary appointment.

(ii) A member of the uniformed services, as defined in subsection 101(3), title 37, United States Code.

(iii) A special Government employee, as defined in section 202, title 18, United States Code.

(iv) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, United States Code, appendix 2.

(8) 'Person,' as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

(9) 'Reasonable compensation,' as used in this clause, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

(10) 'Reasonable payment,' as used in this clause, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

(11) 'Recipient,' as used in this clause, includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

(12) 'Regularly employed,' as used in this clause, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

(13) 'State,' as used in this clause, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibitions. The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal action) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the screening information request (SIR), the offeror shall complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and

(3) He or she will include the language of this clause in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall disclose accordingly.

(4) This certification and disclosure is a prerequisite for making or entering into this contract imposed by the Act. Any person who makes a prohibited expenditure or fails to file or amend a disclosure form, shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000, for each such failure.

(c) The prohibitions of the Act do not apply under the following conditions:

(1) Agency and legislative liaison by own employees.

(i) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(ii) For purposes of subdivision (c)(1)(i) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

(iii) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:

(A) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.

(B) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(iv) The following agency and legislative liaison activities are permitted where they are prior to Screening Information Request (SIR) of any covered Federal action:

(A) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(B) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(C) Capability presentations by persons seeking awards from an agency pursuant to the provisions of a law authorizing such actions;

(v) Only those services expressly authorized by subdivision (c)(1)(i) of this clause are permitted under this clause.

(2) Professional and technical services.

(i) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of:

(A) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of submittal/offer or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(B) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any submittal/offer or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(ii) For purposes of subdivision (c)(2)(i) of this clause, ‘professional and technical services’ shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a submittal/offer by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client’s submittal/offer, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a submittal/offer are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(iii) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(iv) Only those services expressly authorized by subdivisions (c)(2)(i) and (ii) of this clause are permitted under this clause.

(v) The reporting requirements herein shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(d) Disclosure.

(1) The Contractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB Standard Form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using non-appropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph (b)(1) of this clause, if paid for with appropriated funds.

(2) The Contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph (e)(1) of this clause. An event that materially affects the accuracy of the information reported includes:

(i) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(ii) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

(iii) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(3) The Contractor shall require the certification, and if required, a disclosure form by any person who requests or receives any subcontractor exceeding \$100,000 under the Federal contract.

(4) All subcontractor disclosure forms shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall submit all disclosures to the Contracting Officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor.

(e) Agreement. The Contractor agrees not to make any payment prohibited by this clause.

(f) Penalties.

(1) Any person who makes an expenditure prohibited under paragraph (b) of this clause or fails to file or amend the disclosure form to be filed or amended by paragraph (b) shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(2) Contractors may rely without liability on the representations made by their subcontractors in the certification and in the disclosure form.

(g) Cost allowability. Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.